IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER,	)	**Appeal Case No. 1-24-0282**
Petitioners-Appellees	)	**Appeal from the Circuit Court of Cook County, Illinois County Department, County Division**
v.	)	
DONALD J. TRUMP,	)	**Case No. 2024COEL000013**
Respondent-Appellant, and	)	**Hon. Tracie R. Porter Judge Presiding**
the ILLINOIS STATE BOARD OF ELECTIONS, and its Members CASSANDRA B. WATSON, LAURA K. DONAHUE, JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVIN, SR., and JACK VRETT,	)	
Other Respondents below.	)	

PETITIONERS-APPELLEES' RESPONSE IN OPPOSITION TO TRUMP'S EMERGENCY MOTION TO STAY CIRCUIT COURT PROCEEDINGS PENDING APPEAL

INTRODUCTION

This case involves Petitioners-Appellees' Objection to the validity of Candidate Donald J. Trump's nomination papers under the Illinois Election Code, Section 7-10, on the basis that he filed an invalid statement of qualifications for office and is thus disqualified from appearing on the Illinois ballot under the Election Code and Section Three of the Fourteenth Amendment of the United States Constitution. Following the Cook

County Circuit Court's firm and reasoned denial of Trump's motion to stay this case, after both parties presented briefs and robust oral argument, Trump now improperly seeks emergency intervention from this Court. The Circuit Court's decision to merely proceed with this expedited election case is neither improper nor an emergency, and its decision should not be overturned.

Petitioners-Appellees ("Objectors") first presented their case to the Illinois State Officers Electoral Board ("Electoral Board"). Following proceedings before Judge Clark Erickson (Ret.), who served as the hearing officer, the Electoral Board determined on January 30, 2024: (1) that a false statement of a candidate's qualifications for office only violates the Illinois Election Code if the candidate knowingly lies about their qualifications, and that Objectors failed to show that Candidate Trump acted *knowingly* when he falsely swore that he is qualified for the office of the Presidency; and (2) in the alternative, that the Electoral Board lacks jurisdiction to determine whether Trump is disqualified for engaging in insurrection under Section Three because to do so required the Board to engage in constitutional analysis; and (3) for those reasons, the Board did not evaluate whether to adopt Judge Erickson's finding that the evidence "proves by a preponderance of the evidence that President Trump engaged in insurrection . . . and should have his name removed from the March, 2024 primary ballot in Illinois." *See* Ex. D to Mot.[1] (Board Decision) at 2-3; Ex. 2 (General Counsel Recommendation); Ex. 3 (Hearing Officer's Report and Recommended Decision) at 17.

[1] Respondent-Appellant Donald J. Trump's Emergency Motion to Stay Circuit Court Proceedings Pending Appeal is cited herein as "Mot.," and the Exhibits to that Motion are lettered A-E. The Exhibits appended to this response in opposition to that Motion are numbered 1-5.

Objectors immediately appealed, seeking judicial review by the Circuit Court, which denied Trump's request for a stay and has set the hearing of this matter for February 16, 2024. As Objectors explained below, the issues this case presents likely will require resolution from the Illinois Supreme Court. The U.S. Supreme Court's pending appeal of the decision of the Colorado Supreme Court in *Trump v. Anderson*, barring Trump from the Republican primary ballot in that state, regardless of the outcome, will not and cannot resolve any of the pressing Illinois election law rulings by the Electoral Board, rulings that now govern the outcome of this case and form troubling precedent for other election challenges. The imminent March 19, 2024 Illinois primary election, and electoral deadlines that precede it, mean that waiting to *begin* Circuit Court evaluation until March would create unsustainable circumstances for Illinois election officials and voters. This guided the Circuit Court's denial of Trump's requested stay. Ex. C to Mot. (Feb. 8, 2024 Order) at 7.

Trump now asks this Court to stay the Circuit Court from even considering the issues. He falsely presents the case as a neat package of federal constitutional questions that the U.S. Supreme Court will quickly resolve and argues that Objectors push forward in the Circuit Court to escape that result. Not so. This appeal from the Electoral Board presents robust and important questions of Illinois law. The Circuit Court recognized the importance of beginning the process of resolving them before imminent Illinois election deadlines pass. In contrast, Trump now invokes the extreme remedy of this Court's *emergency* procedures to unilaterally halt the judicial process, inaccurately accusing Objectors' counsel of a host of untoward conduct. Now, as before, Objectors face the challenging task of succinctly unpacking oversimplifications and misrepresentations of

facts, law, and procedural history to provide the reviewing court with a complete and accurate record. Based on that record, the Circuit Court's practical and appropriate decision to deny Trump's motion for a stay and proceed expeditiously to resolve the merits should be upheld.

This Court should leave in place the Circuit Court's well-reasoned decision that: (1) denial of the stay is supported by the Election Code's mandate to schedule a hearing within 30 days of appeal and make an expeditious decision thereafter; (2) the "right of appeal of the Parties to the highest court of this state" should not be delayed pending a U.S. Supreme Court decision on the federal constitutional issue; (3) in addition to the federal constitutional question before the U.S. Supreme Court, the case presents a question of state statutory interpretation; and (4) "any further delay by the Parties in this matter impedes upon the public's confidence in a fair and just election process." Ex. C to Mot. (Feb. 8, 2024 Order) at 6-7.

ARGUMENT

I. No "Genuine Emergency" Exists To Justify Trump's Purported "Emergency" Motion To Stay.

The First District's Rules of Appellate Procedure provide that "Emergency motions shall only be filed when a matter involves a *genuine emergency*." Local Rule 4(j) (emphasis added). But here—where Candidate Trump seeks to stop this case from being *heard* before a decision has even been issued—no "genuine emergency" exists. Putting aside the inadvisability of overturning the Circuit Court's decision to hear the case, Trump's request

to utilize this Court's emergency procedures falls far short of their requirements and should not be permitted.[2]

As the Illinois Supreme Court has observed, an "emergency" is defined as:

> A sudden unexpected happening; an unforeseen occurrence or condition; perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; exigency; pressing necessity. Emergency is an unforeseen combination of circumstances that calls for immediate action without time for full deliberation.

Opyt's Amoco, Inc. v. Vill. of S. Holland, 149 Ill. 2d 265, 277-78 (1992) (citing Black's Law Dictionary 522-23 (6th ed. 1990)). This Court considers this definition of "emergency" to determine whether an emergency exists to justify an emergency motion. *See Nagel v. Gerald Dennen & Co.*, 272 Ill. App. 3d 515, 521 (1st Dist. 1995). Notably, in *Nagel* the defendant-movant cited the "need to stop the flow of attorney fees incurred by defendant" as the justification for the "emergency" label placed on its motion. This Court, in no uncertain terms, rejected the idea that "the flow of attorney fees" could amount to an "emergency" and deemed that the emergency motion was not warranted. *Id.* at 521-522.

Here as well no "genuine emergency" exists to warrant the "emergency" label Trump placed on his motion to stay. The Circuit Court has reached no decision on the merits of Objectors' Petition for Judicial Review. It may affirm the Electoral Board's decision to overrule the Objection or reverse it. And if it does reverse the Electoral Board's

[2] In addition to failing to meet Local Rule 4(j)'s "genuine emergency" criterion, Trump's motion fails to follow other Illinois Supreme Court and Local Rules including the requirement to append the supporting record including "all relevant circuit . . . court documents." *See* Local Rule 4(j); Ill. Sup. Ct. R. 361(a); Ill. Sup. Ct. R. 305(d); Ill. Sup. Ct. R. 328. Trump fails to attach even the briefing on the motion to stay in the circuit court or Objectors' brief in support of their Petition for Judicial Review, despite using it as the basis for accusing Objectors' counsel of "uncivil" and "unprofessional" conduct, and misleadingly quoting words and phrases out of context without the surrounding text. Mot. at 4, 6, 11.

decision and order Trump's name removed from the ballot, it may elect to stay enforcement of its order until the U.S. Supreme Court issues a decision in *Trump v. Anderson*, No. 23-719. At best, Trump's "emergency" motion is woefully premature.

The only purported "emergency" in the present moment that Trump's Motion identifies is the "time and expense of litigating" this case over the next week. *See* Mot. at 4. Trump asks this Court to "immediately call a halt" to the litigation, lest he "be required to file [a] massively overlength brief[] on Tuesday, February 13"[3] and participate in "an in-person public hearing on Friday, February 16." Mot. at 5.

The "time and expense of litigating" a matter for an additional week is not an emergency under any definition of the word, and in *Nagel*, this Court already rejected the contention that the "need to stop the flow of attorney fees" could qualify as an "emergency." 272 Ill. App. 3d at 521-22. Given the circumstances of this expedited election matter, Trump's contention falls particularly flat. As the Illinois Supreme Court has held, "a question of election law" is "inherently a matter of public concern" that requires swift court rulings to "aid election officials . . . in promptly deciding such disputes in the future, thereby avoiding the uncertainty in the electoral process which inevitably results when threshold eligibility issues cannot be fully resolved before voters begin casting their ballots." *Goodman v. Ward*, 241 Ill. 2d 398, 405 (2011). This Court should firmly reject Trump's mislabeled "emergency" motion on this basis alone.

[3] Though Trump claims that "the Electoral Board . . . will be required to file [a] massively overlength brief[] on Tuesday, February 13" as well (Mot. at 5), the Electoral Board did not request any opportunity to file a response brief in the Circuit Court, and the briefing schedule the Circuit Court entered does not include any deadline for the Electoral Board to file such a brief. *See* Ex. B. to Mot. (Feb. 7, 2024 Order). Moreover, the Electoral Board already submitted a Local Rule 22(c) letter in this Court on February 9, 2024, indicating that they do not intend to a file a brief in this appeal.

II. By His "Emergency" Motion, Trump Tries To Obtain The Ultimate Relief He Seeks On Appeal—A Stay Of Proceedings In The Circuit Court—Without Establishing That The Circuit Court Abused Its Discretion By Denying A Stay.

Trump brings this appeal under Illinois Supreme Court Rule 307(a) to challenge the Circuit Court's denial of a stay pending the United States Supreme Court's ruling in *Trump v. Anderson*, No. 23-719. In denying the stay, the Circuit Court recognized that this case, which concerns Trump's eligibility for next month's General Primary Election, must be resolved promptly and that "any further delay by the Parties in this matter impedes upon the public confidence in a fair and just election process." Ex. C to Mot. (Feb. 8, 2024 Order) at 7.

If this Court were to grant Trump's "emergency" motion to stay, he would get the relief he ultimately seeks on appeal: a pause in proceedings and "further delay" of any resolution on the merits of his ballot eligibility. Trump is, in effect, asking this Court to immediately reverse the Circuit Court's denial of a stay before the issue has been briefed.

The Court must deny the "emergency" motion. Not only has Trump failed to establish that there is any genuine "emergency," as discussed above, but he also fails to establish that the Circuit Court's denial of a stay was an abuse of discretion warranting the immediate reversal he now seeks. *See Universal Metro Asian Servs. Ass'n v. Mahmood*, 2021 IL App (1st) 200584, ¶ 26 ("The decision to grant . . . a stay is a matter within the trial court's discretion . . . . A trial court abuses its discretion when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view.").

Trump cannot—and does not even attempt to—show that the Circuit Court abused its discretion. This is a ballot eligibility case concerning an election that is mere weeks away. And the issues on appeal before the Circuit Court involve not only the constitutional

issues regarding Trump's eligibility for office under Section Three of the Fourteenth Amendment to the U.S Constitution, but also state-law issues regarding the Illinois State Election Board's interpretation of the Illinois Election Code. Given the importance of the issues, it is highly likely that this case will ultimately be decided in the Illinois Supreme Court. Thus, any delay in the proceedings below will delay the ultimate resolution on appeal. Each day of delay is one additional day that Illinois voters may vote for a candidate who may ultimately be disqualified and one fewer day for Illinois election officials to react to such a disqualification. Under those circumstances, issuing a stay would be highly inappropriate. Indeed, given the tight deadlines and the importance of clarity, a stay delaying resolution is highly unusual in any election case, and indeed, courts "routinely" do the opposite and "grant *expedited* schedules on ballot access cases." *Lenehan v. Twp. Officers Electoral Bd. of Schaumburg Twp.*, 2013 IL App (1st) 130619, ¶ 18 (emphasis added).

Trump's proposed suspension of these proceedings cannot be justified by a hope that the U.S. Supreme Court will soon issue a ruling in *Trump v. Anderson*. First, there is no certainty as to when the Supreme Court will rule. And second, as the Circuit Court recognized, while it is *not* certain that the U.S. Supreme Court will issue a ruling in *Trump v. Anderson* that will dispose of the constitutional issues in this case, it *is* certain that the Court will not resolve the issues of Illinois law that are before the Circuit Court. *See* Ex. C to Mot. (Feb. 8, 2024 Order) at 6; Ex. 1 (Objectors' Response in Opposition to Respondent/Candidate Donald J. Trump's Motion to Stay) at 7-10. As Objectors explained below, regardless of the Supreme Court's ruling in *Trump v. Anderson*, the Circuit Court will have to address whether the Illinois State Board of Elections erred in determining (a)

that an unqualified candidate can only be disqualified from the ballot if he "knowingly lied" about his qualifications and (b) that the Electoral Board lacks the authority to resolve issues involving "constitutional analysis."

In other words, under the rule created by the Electoral Board, *even if the U.S Supreme Court determines Trump is disqualified from the presidency*, absent a ruling from the Illinois courts in time for the March 19, 2024 primary, Donald Trump will remain on the ballot because the Electoral Board found he did not "knowingly lie" when he swore he was qualified for office—and the new "knowingly lie" standard will become the new precedent for all Illinois election challenges, including those having nothing to do with Trump. The Circuit Court recognized that quick resolution of these critical state election law issues was needed to obviate the impact on Illinois voters—who could be unwittingly disenfranchised if they cast votes for Trump that later are disregarded—and Illinois election officials who must implement ballot decisions.[4]

Thus, Trump cannot establish that the Circuit Court abused its discretion in issuing a stay, and the Court should not allow Trump to obtain a stay anyway via a spurious "emergency" motion.

[4] As Objectors noted in the stay briefing below, *if* the U.S. Supreme Court issues a decision by the end of February, that leaves a mere *nineteen days* for: (1) the parties to brief the Illinois law issues, and any federal law issues that remain, before the Circuit Court, (2) the Circuit Court to hold a hearing; (3) the Circuit Court to issue a decision; (4) appeal of the decision; (5) the parties to brief the issues for the Illinois Supreme Court; (6) oral argument; and (7) the Illinois Supreme Court to issue a decision. Only *after* all that occurs, can election authorities begin to react to the decision and alert voters to necessary ballot updates.

III. Trump's Accusations About Objectors' Counsel Are Inappropriate, Incorrect, And An Attempt To Distract From The Merits Of This Case.

Objectors would prefer to simply ignore Trump's misplaced and untrue accusations about counsel's "uncivil" and "unprofessional" behavior (Mot. at 6, 11-12) and avoid wasting this Court's time devoting briefing to it. Indeed, Judge Erickson below recognized the "lack of rank" and the "collegiality," among the "high quality of counsel on both sides." Ex. 4 (Transcript before Hearing Officer) at 99:24-100:4. But because Trump has attempted to turn Objectors' responses to his own improper arguments on their head to argue for granting his emergency motion—a bizarre attempt to conjure a "genuine emergency" from his own feigned outrage—a few words must be said.

Trump raised these issues before the Circuit Court, which promptly disregarded them. Perhaps that is because she had the benefit of the full context of Objectors' brief and the statements about which Trump complains. Though he couches his complaint in extending to comments about the Electoral Board's decision, Trump mainly takes issue with Objectors' characterization of his description of the January 6, 2021 attack on the U.S. Capitol and his conduct immediately before and during. Mot. at 11. The full passage, which Trump omitted from his emergency motion, reads as follows:

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

Ex. 5 (Objectors' Merits Brief) at 4 (citing Ex. 4 (Transcript before Hearing Officer) at 47:18-23).

Trump has taken a shocking position in these proceedings, one that mirrors his shocking positions in many of the other courtrooms in which he is litigating, and outside them. He has attempted to rewrite history, recast the clear evidence that January 6th resulted in attackers violently overtaking the Capitol and disrupting certification of the 2020 presidential election, and sanitize the decisive evidence of his involvement in the events of that day. Every forum that has thus far made a factual determination regarding the sad and shocking events of January 6th has determined that Trump actively engaged in an insurrection in an effort to illegally hold on to the office of the presidency. This includes the Colorado Supreme Court, the Maine Secretary of State, the United States House of Representatives Select Committee to Investigate the January 6th Attack on the United States Capitol, and the Hearing Officer in this case. Indeed, a federal grand jury has found probable cause to indict Trump for criminally conspiring and engaging in misconduct related to the invasion of Congress and the interference with the certification of the electoral vote. *See United States v. Trump*, No. 23-3228, 2024 WL 436971, at *17 (D.C. Cir. Feb. 6, 2024), *judgment entered,* No. 23-3228, 2024 WL 448829 (D.C. Cir. Feb. 6, 2024) (denying immunity and recognizing "Former President Trump's alleged efforts to remain in power despite losing the 2020 election, were, if proven, an unprecedented assault on the structure of our government."). Objectors neither act unprofessionally nor uncivilly by accurately describing Trump's intentional falsehoods, backed by citations to a robust record.

Regarding the two passages about the legal standard adopted by the Electoral Board, they were made in the context of discussion that the decision does not require deference to the Electoral Board's interpretation of the Election Code because the decision was not supported by controlling Illinois law, runs contrary to the purpose of the relevant provision of the Election Code, and would have a deleterious impact on electoral board function and Illinois election integrity. Ex. 5 (Objectors' Merits Brief) at 17-21. Regardless, neither the Electoral Board nor its counsel at the Illinois Attorney General's Office has taken issue with Objectors' brief, suggesting Trump's focus on it to be opportunistic.

At base, Trump's complaints about Objectors' counsel have no bearing whatsoever on whether this Court should grant his emergency motion to halt Circuit Court proceedings. Objectors made a robust, compelling argument to the Circuit Court detailing why Trump's stay motion should be denied. Objectors respectfully request that this Court decline Trump's premature request to stop the Circuit Court from merely reaching a decision on the issues, and, as the Circuit Court recognized, teeing the case up for appeal to preclude a delay that impedes upon the public's confidence in a fair and just election process.

WHEREFORE, for the above reasons, this Court should deny Candidate's emergency motion to stay the proceedings below pending Candidate's appeal of the denial of his motion to stay.

Dated: February 12, 2024

PETITIONERS-APPELLEES

By: _/s/ Caryn C. Lederer_____
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EXHIBITS INDEX

***Anderson et al. v. Trump, et al.*, No. 1-24-0282**

EXHIBIT	DESCRIPTION	DATE
1	Objectors' Response in Opposition to Respondent/Candidate Donald J. Trump's Motion to Stay	2/5/2024
2	General Counsel Recommendation	1/29/2024
3	Hearing Officer Report and Recommended Decision	1/27/2024
4	Transcript before Hearing Officer	1/26/2024
5	Objectors' Motion to Grant Petition for Judicial Review	2/5/2024

EXHIBIT 1

Objectors' Response in Opposition to Respondent/Candidate Donald J. Trump's Motion to Stay

FILED
2/5/2024 5:53 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000013

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

STEVEN DANIEL ANDERSON, *et al.*	)	
	)	
Petitioners-Objectors,	)	**Case No. 2024 COEL 000013**
	)	
v.	)	
	)	**Hon. Tracie R. Porter**
DONALD J. TRUMP, *et al.*,	)	
	)	**Calendar 9**
Respondents.	)	
	)	

OBJECTORS' RESPONSE IN OPPOSITION TO RESPONDENT/CANDIDATE DONALD J. TRUMP'S MOTION TO STAY

INTRODUCTION AND BACKGROUND

On January 4, 2024, Petitioners-Objectors filed their petition objecting to the validity of Candidate Donald J. Trump's ("Trump" or "Candidate") nomination papers on the basis that the undeniable and largely undisputed facts show that he is disqualified from holding the Office of the President of the United States under Section Three of the Fourteenth Amendment of the United States Constitution because he engaged in insurrection by inciting, encouraging, facilitating, and allowing the January 6, 2021 attack on the U.S. Capitol in an effort to interrupt the certification of the electoral vote and the peaceful transfer of power.

Following expedited briefing and evaluation of a robust evidentiary record, Judge Clark Erickson (Ret.), serving as Hearing Officer for the State Officers Electoral Board ("Electoral Board" or "Board"), found that the evidence "proves by a preponderance of the evidence that President Trump engaged in insurrection . . . and should have his name removed from the March, 2024 primary ballot in Illinois." C-6673 V12 (Hearing Officer's Report and Recommended Decision at 17). Judge Erickson also recommended, however, that the Electoral Board reserve making that decision, which he believed must come from the courts. C-6668 V12 **(***Id.* at 12.) On January 30, 2024, the Electoral Board followed his recommendation, as well as a recommendation the Board's General Counsel surprisingly made for the first time just before the vote, and issued a decision finding: (1) that Objectors were required under the Election Code to show that Candidate Trump acted *knowingly* when he falsely swore that he is qualified for the office of the Presidency; and (2) in the alternative, that the Electoral Board lacks jurisdiction to determine whether Trump is disqualified for engaging in insurrection under Section Three because it required the Board to construe and apply a provision of the United States Constitution. *See* C-6717-18 V12 (Board Decision 2-3); C-6678 V12 (General Counsel Recommendation). Both of the Board's findings are

in complete contravention of controlling Illinois law and if accepted would preclude electoral boards from exercising fundamental duties. Objectors filed their petition for judicial review on the same day, immediately following the vote.

Armed with this improper decision from the Electoral Board, Candidate Trump has strolled into Objectors' appeal, urged that everything slow down, and employed similar tactics he has in other legal proceedings. Only this time, instead of misrepresenting to the Court that the events of January 6th mainly comprised walking, talking, and listening to the song "YMCA," (1/26/2024 Hearing Transcript forthcoming), or blatantly flouting Illinois procedural rules for affidavits (C-6581-86 V12 (Objectors' Reply Br. at 18-12)), he asks the Court to maintain a patently inaccurate, legally unsustainable new status quo. Ignoring looming ballot deadlines, he argues there is no reason to expedite this case and that, instead, this Court should fully stay proceedings pending the U.S. Supreme Court's decision in *Trump v. Anderson*, No. 23-719. Objectors oppose this request on multiple grounds.

Most obviously, even if the U.S. Supreme Court resolves all the federal constitutional issues involved in this Objection, it will not and cannot resolve the critical mistake of Illinois election law the Electoral Board adopted. ***Regardless of the U.S. Supreme Court's decision, absent a ruling from this Court in time for the March 19, 2024 primary, Donald Trump will remain on the ballot because the Electoral Board found he did not "knowingly lie" when he swore he was qualified for office—and this new "knowingly lie" standard will become the new precedent for all Illinois election challenges, including those having nothing to do with Trump.*** In other words, under the Board's manifestly incorrect ruling, even if the Supreme Court finds that Trump engaged in the insurrection of January 6 and is disqualified to run for president, he will remain on the ballot. This erroneous decision *must* be addressed on an expedited basis, both to

ensure ballot accuracy for the presidential primary and to protect Illinois voters from a wholly improper and newly articulated legal standard that will preclude electoral boards from safeguarding voters from wasting votes on unqualified candidates, as electoral boards are mandated to do by the Election Code.

Even beyond this critical point, which alone should require denial of the stay request, the Supreme Court's decision will not be issued "soon" for purposes of this expedited election appeal (Mot. at 2), and there is no certainty that it will even resolve the constitutional issues in this case, let alone resolve them in Trump's favor, circumstances that each caution against a stay. Finally, a stay would create an untenable burden on election officials and Illinois voters, who would face the consequences of last-minute resolution through uncertainty, last minute ballot updates, confusion, and miscast votes. In sum, this Court should decline Candidate Trump's invitation to temporarily ignore a precarious, newly created legal standard and act quickly to protect the integrity of Illinois ballots.

LEGAL STANDARD

"A party seeking a stay must justify it by clear and convincing circumstances outweighing potential harm to the party against whom it is operative." *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 616 (1st Dist. 1994) (cleaned up) (quoting *Zurich Ins. Co. v. Raymark Indus., Inc.*, 213 Ill. App. 3d 591, 595 (1st Dist. 1991)). "Thus, the party seeking a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else." *Id.* (internal alteration and quotations omitted) (quoting *Zurich Ins. Co.*, 213 Ill. App. 3d at 595). To prevail on a motion for a stay, the movant must "present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay." *Stacke v. Bates*, 138 Ill. 2d 295, 309 (1990). "If the balance of the equitable factors does not strongly favor movant, then there must be a more

substantial showing of a likelihood of success on the merits." *Id.*; *Tirio v. Dalton*, 2019 IL App (2d) 181019, ¶¶ 63-69. Here, both the balance of equitable factors as well as the likely outcome on the merits support denial of the stay.

ARGUMENT

I. THE U.S. SUPREME COURT WILL NOT RESOLVE ALL THE ISSUES PRESENTED IN THIS CASE AND MAY NOT ADDRESS TRUMP'S QUALIFICATIONS UNDER SECTION THREE, AND, EVEN IF IT DOES, IT IS LIKELY TO RULE IN FAVOR OF OBJECTORS.

For multiple reasons, this Court should not wait for a ruling from the U.S. Supreme Court in *Trump v. Anderson* to decide this case. First, there is no telling when the U.S. Supreme Court will issue its ruling. The Court is not even holding argument until February 8, the day early voting and vote-by-mail begins in Illinois. Thus, as explained below in Section II, each day spent waiting for a ruling from the Supreme Court is a day that deprives Illinois election officials of time to react to a decision that impacts ballots and other voting protocols and may disenfranchise voters who will vote in the Republican primary on March 19, or before by mail or early voting. Second, as discussed below in Section I(A), the U.S. Supreme Court will not "authoritatively decide the issues in this case," as Trump asserts (Mot. at 3), because essential issues of Illinois state law will remain no matter how the Supreme Court rules. Third, it is quite possible—indeed likely—that the Supreme Court's ruling in *Anderson* will either not dispose of the issues in this case or will not dispose of them in Trump's favor, in which case the delayed resolution here—and the resulting adverse consequences—will have been for nought. *See* Section I(B).

A. The U.S. Supreme Court Decision Will Not Resolve Central Issues in This Case That Require Immediate Review.

1. The Supreme Court's Decision Timing Is Uncertain and May Not Dispose of the Constitutional Issues in This Case.

Despite Trump's assurances that the timing of the Supreme Court's decision in *Anderson*

will come "very soon" (Mot. at 2), there are no guarantees when the Court will rule, and "soon" means something different in an expedited election case. *See Goodman v. Ward*, 241 Ill. 2d 398, 405 (2011) (deciding merits of appeal and recognizing prompt resolution of election matters is necessary to avoid "uncertainty in the election process which inevitably results when threshold eligibility questions cannot be fully resolved before voters begin casting their ballots"). Trump casually suggests the decision is just around the corner, making a "brief" stay of no consequence. Not so. He hopes to delay an outcome of this case past critical upcoming Illinois election deadlines to secure a place on the ballot, regardless of whether the U.S. Supreme Court resolves his appeal in his favor. While the Court has scheduled oral argument for February 8, 2024 (which already is the first day Illinois counties can send out vote-by-mail ballots), it has *not* committed to a decision date. *See Trump v. Anderson*, No. 23-719, 2024 WL 61814, at *1 (U.S. Jan. 5, 2024). And even Trump acknowledges that the Supreme Court may slow the expedited briefing schedule in this case following oral argument, and issue a decision *possibly* by March. *See* Mot. at 2-3. In the meantime, election deadline after election deadline will pass in Illinois, placing both voters and election officials in a precarious position (*see infra.* Sec. II) as they wait for even initial decisions in this case, which will likely require Illinois Supreme Court review.

Moreover, ***the U.S. Supreme Court cannot and will not resolve the critical issues of Illinois election law that are not before it and which undergird this appeal***. That fact distinguishes this case from other cases in other states that have paused proceedings (*see* Mot. at 2). And further, the Supreme Court may not even resolve the Colorado Section Three challenge in a manner that disposes of the constitutional issues here.[1]

[1] Trump mischaracterizes previous filings by Free Speech for People in Michigan, Minnesota, and Oregon challenges to his candidacy, which referred to the Supreme Court's ability to render a "final decision" on Section Three (Mot. at 4) only to make the uncontroversial and accurate point

Even if the U.S. Supreme Court were to rule in Trump's favor and reverse the Colorado Supreme Court, it is quite possible that the Court would do so by determining, as Trump has requested, that Trump's removal from the Colorado ballot was inappropriate as a matter of Colorado *state law* and thus invalid under the U.S. Constitution's Electors Clause. *See* Br. for Petr. Trump at 46-47, *Trump v. Anderson*, No. 23-719 (U.S. Jan. 18, 2024), *available at* https://www.supremecourt.gov/docket/docketfiles/html/public/23-719.html (arguing the Colorado Supreme Court's ruling is inconsistent with Colorado law and in violation of the Electors Clause because the state law provision by which Trump was removed from the ballot limits only the political parties, and not the candidates, that may participate in primary elections); *see also* U.S. Const. art. II, § 1, cl. 2 (requiring states to appoint presidential electors "in such Manner as the *Legislature* thereof may direct") (emphasis added). Two of the three justices who dissented from the Colorado Supreme Court's opinion did so exclusively on the basis that removing Trump from the ballot was inconsistent with the procedures mandated by Colorado's Election Code. *See, e.g.*, *Anderson v. Griswold*, 2023 CO 63, ¶¶ 258-272 (request to disqualify under Section Three not a proper cause of action under Colorado's election code) (Boatright, C.J., dissenting); *id.* ¶¶ 351-398 (Colorado election code does not authorize courts to make Section Three disqualification determination) (Berkenkotter, J., dissenting). And, of course, a reversal based, ultimately, on the

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that the political question doctrine does not bar state courts from deciding Section Three challenges because the U.S. Supreme can resolve conflicts in different state courts' interpretations of the U.S. Constitution. Those filings occurred before the Colorado Supreme Court decided *Anderson*, before the scope of the Supreme Court appeal was known, and are totally immaterial to the Illinois state law questions at issue in this case. Put another way, it is uncontroversial that the U.S. Supreme Court *can* resolve the federal constitutional issues in this case, but there is no guarantee that it *will* do so, nor *when*—and it is equally uncontroversial that the U.S. Supreme Court *cannot* resolve the Illinois state law issues in this case.

interpretation of Colorado state law would provide absolutely no guidance to this Court; the Court would have delayed this critical ballot challenge for nothing.

The Supreme Court could also issue other rulings that would resolve the appeal in *Anderson* without disposing of any issue here. Even if the Court does not conclusively decide as a matter of law that Trump engaged in insurrection under Section Three, it may still, for example, leave resolution of the matter up to individual sovereign states based on application of each state's own laws and procedures. *See* U.S. Const. art. II, § 1, cl. 2 ("*Each* State shall appoint, in such Manner as the Legislature *thereof* may direct, a Number of Electors . . . .") (emphases added); *Hassan v. Colorado*, 495 Fed. Appx. 947, 948 (10th Cir. 2012) (Gorsuch, J.) ("a state's legitimate interest in protecting the integrity and practical functioning of the political process *permits* it to exclude from the ballot [presidential] candidates who are constitutionally prohibited from assuming office") (emphasis added); Brief of Amici Curiae Professors Akhil Reed Amar and Vikram David Amar in Support of Neither Party at 4–5, *Trump v. Anderson*, No. 23-719 (U.S. Jan. 18, 2024) (arguing that the Constitution allows each state to adopt different standards and modes of proof for resolving Section Three challenges).

2. This Appeal Presents Important and Time-Sensitive Issues of Illinois Law that Are Not Before the U.S. Supreme Court.

Candidate Trump's representation that "[o]nly if the Supreme Court rules against President Trump on every ground will this Court need to review the Electoral Board's dismissal on state grounds" (Mot. at 4.) is clearly false. No matter what happens in the U.S. Supreme Court, this Court will need to issue a decision on the newly minted and utterly invalid objection review standard adopted by the Electoral Board, requiring a candidate to "knowingly lie" about their qualifications to be disqualified, even if they objectively fail to meet the qualifications for office.

The "knowingly lie standard," created from whole cloth by the General Counsel and adopted by the Board, imposed a new scienter requirement not set forth in the text of Section 7-10 (governing candidate objections), elsewhere in the Illinois Election Code, or supported by the relevant case law. It limits the Board's review of Trump's Statement of Candidacy to whether he "*knowingly lied*" when swearing he was qualified for office, rather than determining whether he is *actually qualified*—a standard that, if left in place, could extend to electoral board review of candidate qualifications across Illinois. C-6686 V12 (Summary Sheet at 9) C-6717-18 V12 (Board Decision 2-3); *see also* Objectors' Motion to Grant Petition for Judicial Review (forthcoming) at Section I(A).[2] Finding inadequate proof of Trump's perjurious intent, the Board deemed that even if Trump is disqualified from the Presidency under Section Three for engaging in insurrection, he is nonetheless allowed on ballots in Illinois under their reading of Section 7-10.

Without a ruling from this Court and ultimately the Illinois Supreme Court on the Board's brand-new "knowingly lied" requirement, *even if the U.S. Supreme Court determines that Trump is in fact disqualified from the Presidency under Section Three*, under the Electoral Board's rule, he will have to remain on the Illinois ballot because the Board deemed that he did not "know" he was disqualified. In other words, even with a decision from the U.S. Supreme Court that Trump is

[2] As described in detail in Objectors' forthcoming motion, the standard adopted by the State Officers Electoral Board fully contravenes Illinois law requiring electoral boards to limit ballot access to candidates who are *actually* qualified for the office they seek. Creating an exception that allows unqualified candidates who genuinely but incorrectly believe they are qualified to hold office blows up electoral boards' function as gatekeepers for preserving election integrity and would create an absurd and unworkable standard to enforce. *See, e.g. Geer v. Kadera*, 173 Ill. 2d 398, 406 (1996) ("The purpose of [10 ILCS 5/7-10] and similar provisions is to ensure an orderly procedure in which only the names of qualified persons are placed on the ballot."); *Goodman*, 241 Ill. 2d at 408 (recognizing legislature's intent to "require candidates to meet the qualifications for the office they seek" by creating requirement for a sworn statement of candidacy); *Muldrow v. Mun. Officers Electoral Bd. for City of Markham*, 2019 IL App (1st) 190345, ¶ 20 ("[i]f a candidate's statement that he or she is qualified for the office sought is *inaccurate*, the statement fails to satisfy statutory requirements") (emphasis added).

constitutionally barred from the Presidency, Illinois election officials will still be required to print and distribute ballots containing the name of the constitutionally disqualified candidate unless this Court overturns the Electoral Board's decision. This quite likely scenario would leave Illinois voters lost as to how to select a candidate and confused about the impact of their vote. Illinois voters who cast their ballot for Trump—a disqualified candidate—would be unwittingly disenfranchised. This issue needs to be resolved—without waiting for a decision from the U.S. Supreme Court—to avoid this confusing and chaotic scenario.

And even if the U.S. Supreme Court does somehow deem Trump constitutionally qualified for the Presidency, this Court still must rule on the validity of the purported "knowingly lied" requirement and should do so quickly. While the dispute *could* become moot as to Trump, under the public interest exception to the mootness doctrine, this Court, and the Illinois Supreme Court, will be authorized to decide—and remedy—this issue before any adverse impact on Illinois elections. "The public interest exception to the mootness doctrine allows a court to reach the merits of a case which would otherwise be moot if the question presented is of a public nature, an authoritative resolution of the question is desirable for the purpose of guiding public officers, and the question is likely to recur." *Jackson v. Bd. of Election Comm'rs of City of Chicago*, 2012 IL 111928, ¶¶ 43-44.

As the Illinois Supreme Court has held, "a question of election law" is "inherently a matter of public concern" that requires swift court rulings to "aid election officials . . . in promptly deciding such disputes in the future, thereby avoiding the uncertainty in the electoral process which inevitably results when threshold eligibility issues cannot be fully resolved before voters begin casting their ballots." *Id.* Moreover, the question is likely to recur in nearly every ballot challenge until the Board's grave error is corrected. Without court intervention, electoral boards at all levels

of government across the state will see no end to unqualified candidates defending objections by claiming that they *believed* they satisfied the requirements—candidates who "believe" they actually reside in the district; convicted felons who "believe" they are not barred from office; among other examples. Thus, no matter the outcome at the U.S. Supreme Court, this Court—and likely the Illinois Supreme Court—will need to decide this as well as the corollary issue presented in this appeal on the scope of Illinois electoral board authority to apply Illinois and U.S. Constitutional law when evaluating election objections.

B. The Merits of Trump's U.S. Supreme Court Appeal Do Not Warrant a Stay.

Even beyond the decisive state law issues and even if the U.S. Supreme Court were to reach the constitutional questions at issue in this case, a stay would only be justified if the Supreme Court were *likely* to reverse the Colorado Supreme Court. That is because of the strong equities in Objectors' favor. *See Stacke*, 138 Ill. 2d at 309 ("[i]f the balance of the equitable factors does not strongly favor movant, then there must be a more substantial showing of a likelihood of success on the merits"). If this Court stays the case and the Supreme Court then affirms that Trump is disqualified under Section Three, there will be considerable adverse consequences for both Illinois voters and election officials, as discussed below in Section II. Despite Trump's bravado, *see* Exhibit A (compiling recent Trump posts from Truth Social), a reversal of the Colorado Supreme Court in the U.S. Supreme Court is far from a sure bet and certainly cannot be construed as *likely*.

The Colorado Supreme Court's ruling that Donald Trump engaged in insurrection on January 6, 2021, and is therefore ineligible for the office of the Presidency under Section Three of the Fourteenth Amendment, is thoughtful, thorough, and correct. *See generally Anderson*, 2023 CO 63. And in his opening brief before the Supreme Court, Trump does not even contest that January 6th constituted an insurrection under Section Three. *See* Br. for Petr. Trump at 33-38,

Trump v. Anderson, No. 23-719 (U.S.).[3] As to whether Trump engaged in the insurrection, the Colorado trial court found so by "clear and convincing evidence" after hearing five days of live testimony, *Anderson v. Griswold*, No. 23CV32577, ¶¶ 241, 298 (Dist. Ct., City & Cnty. of Denver, CO Nov. 17, 2023), and the Supreme Court could reverse those findings only if they were clearly erroneous. *See Glossip v. Gross*, 576 U.S. 863, 882 (2015) ("Where an intermediate court reviews, and affirms, a trial court's factual findings, this Court will not 'lightly overturn' the concurrent findings of the two lower courts."). The Supreme Court is unlikely to find clear error, especially when no other factfinder to consider the issue—including the Secretary of State in Maine and Judge Erickson below—has reached a contrary finding, and where the record establishes that Trump laid the groundwork for the January 6, 2021 attack, propagated the lie that the 2020 election was somehow "stolen" from him, incited his armed supporters to storm the Capitol, encouraged and supported their efforts to disrupt and endanger Congress while the violent attack was underway, and then sat back and watched the attack on live television, failing for over three bloody hours to call off the attack, until well after the attackers had succeeded in overtaking the Capitol and disrupting certification of the 2020 presidential election. And when he finally did direct the mob to leave the Capitol, he did so with "love." Given these damning and undeniable facts, it is not surprising that Trump has not offered any of his own testimony in the Colorado proceedings (or elsewhere, including here) to rebut the finding that he engaged in insurrection, and thus the finding is, to say the least, more than highly likely to stand.

In addition, the litany of arguments Trump presses for why he should remain on the ballot

[3] In his Motion, Trump describes the issues before the Supreme Court by improperly citing to his Petition for Certiorari rather than his actual merits brief, which focuses on whether Trump engaged in insurrection, as opposed to whether the January 6 attack was an insurrection under Section Three—a critical issue that influences the question of engagement.

despite Section Three's disqualification are all stunningly weak:

- Trump absurdly argues that Section Three somehow bars every oath-taking insurrectionist from holding subsequent office *except for the president*. *See* Br. for Petr. Trump at 20-33, *Trump v. Anderson*, No. 23-719 (U.S.). This reading of Section Three is not only nonsensical, but is also completely at odds with the provision's plain text, which expressly applies to *any* "officer of the United States."

- Trump argues that only Congress may enforce Section Three's disqualification provision, *id.* at 38-40, but that is simply not what Section Three says. On the contrary, Section Three establishes a mandatory qualification standard for holding office, and it gives Congress authority to *remove* a disqualification under Section Three by a two-thirds vote. Section Three says nothing at all about the necessity of any congressional act to enforce the disqualification in the first instance.

- Trump also asserts that insurrectionists who are barred from holding office under Section Three should still be permitted to run for office. The argument is facially absurd. There is simply no reason to allow a candidate to run for an office they are disqualified from holding, and then-Judge, now-Justice Gorsuch rejected the very same argument Trump advances here in *Hassan v. Colorado*, 495 Fed. App'x. 947 (10th Cir. 2012).

In short, it seems likely that if the Supreme Court reaches the merits of the case, it will rule against Trump. But in any event, it is *far* from certain that if the Supreme Court decides the case, the ruling will, as Trump says, "immediately dispose of this case and allow a voluntary dismissal or a stipulated outcome without the need for further substantial proceedings." Mot. at 4. This Court should not delay resolution of this case, leaving voters and election officials in utter limbo, based purely on the hope the U.S. Supreme Court will neatly dispose of this matter. That misplaced hope is likely to leave election officials scrambling when the Supreme Court does rule on this matter—whenever that may be.

II. A STAY WILL CAUSE SEVERE PREJUDICE AND WILL NOT PROMOTE JUDICIAL EFFICIENCY.

Indeed, a stay of this action would create an untenable outcome both for election officials, who must prepare for vote-by-mail and in-person voting across the state, and for Illinois voters who seek to cast votes in the March 19, 2024 Republican primary.

Briefing in the U.S. Supreme Court won't be complete until the date of this filing, February 5, 2024. *Trump v. Anderson*, No. 23-719, 2024 WL 61814, at *1 (U.S. Jan. 5, 2024). Oral argument won't occur until February 8, 2024. *Id.* And after that, there is no deadline for a decision by the U.S. Supreme Court. *Id.* In Candidate's most optimistic estimation, the Supreme Court's decision "*should* be issued before the end of February." (Mot. at 3) (emphasis added). But in truth there is no telling how long the Supreme Court will take to weigh, determine, and announce its decision. What is known is that the Supreme Court will not issue a decision until far past critical election deadlines and the corresponding time period for election officials to print ballots and make other statutorily required preparations for the March primary election.

February 8, 2024 is the first day for an election authority to mail a ballot to vote-by-mail voters, 10 ILCS 5/19-4, and it is the first day for early voting at the office of the election authority, 10 ILCS 5/19A-15. Over a third of Illinois voters rely on early or mail voting to cast their ballot.[4] Every day a stay is in place, local election authorities will issue the Presidential Primary ballot to vote-by-mail voters and early voters with Candidate Trump's name included. If the U.S. Supreme Court upholds the Colorado Supreme Court decision that Section Three precludes Trump from reelection to the Presidency, any votes cast for Trump during that waiting period will necessarily be disregarded. *Every single voter who cast a ballot for Trump will have lost their opportunity to cast a vote for a viable candidate in the presidential primary election.* These voters in the Republican primary would suffer incurable harm.

[4] Patrick Andriesen & Jon Josko, *Record Number of Illinois Voters Cast Ballot by Mail in 2022 Midterms*, ILLINOIS POLICY (Jan. 11, 2023), https://www.illinoispolicy.org/record-number-of-illinois-voters-cast-ballot-by-mail-in-2022-midterms/ (reporting that in Illinois early voting and mail ballots accounted for 39% of total votes in the 2022 midterms).

Indeed, if the Court agrees with Trump's request, in a best-case scenario the U.S. Supreme Court issues its decision by the end of February. That leaves a mere *nineteen days* for: (1) the parties to brief the Illinois law issues, and any others that remain, before this Court, (2) the Court to hold a hearing; (3) the Court to issue a decision; (4) appeal of the decision; (5) the parties to brief the issues for the Illinois Supreme Court; (6) oral argument; and (7) the Illinois Supreme Court to issue a decision. Only *after* all that occurs, can election authorities begin to react to the decision and alert voters to necessary ballot updates.

If, on the other hand, this Court reverses the Electoral Board's decision and sustains the Objection, it need not order Trump's name removed from all ballots. It could, instead, exercise a middle-ground option to order local election authorities to hold their remaining vote-by-mail and early voting ballots until the U.S. Supreme Court and the Illinois Supreme Court resolve the matter. To the extent necessary, once before the Illinois Supreme Court, the parties could react quickly with any necessary briefing or supplementary briefing after the U.S. Supreme Court's decision, primed to fully resolve this case. This approach would preserve the integrity of the democratic process, prevent disenfranchisement, and protect voters' right to cast their vote for a viable candidate.

III. EXPEDITED CONSIDERATION, RATHER THAN A STAY, SHOULD BE GRANTED HERE.

Candidate Trump spills significant ink analyzing whether Section 10-10.1 of the Election Code even permits the Court to stay this case. *See* Mot. 5-7. Those arguments are beside the point. Expedited proceedings are needed, and a stay should not be granted, because Objectors, along with voters and election officials, will suffer prejudice otherwise. That distinguishes this case from others where the petitioning party neither requests nor establishes that waiting 30-plus days for a decision will result in adverse consequences.

During the February 2, 2024 hearing before this Court, Candidate Trump's counsel suggested that by filing a motion to expedite this Section 10-10.1 proceeding, Objectors have asked for relief beyond the statute. To the contrary, as Candidate Trump undoubtedly knows, petitioners in Section 10-10.1 proceedings regularly ask Circuit Court judges to enter further fast-tracked briefing schedules and hearings due to upcoming election deadlines and expected appeals. And judges frequently grant them without issue, condensing an initial hearing, briefing, and merits hearing into 7-10 days. There is good reason to move faster than the 30-day floor that the statute requires: Section 10.1 has not been amended since 2010—before early voting and vote by mail exploded in Illinois. *See supra* n.4 (in the 2022 midterm election, early voting and mail ballots comprised 39% of total votes); 10 ILCS 5/10-10.1; P.A. 96-1008, § 5, eff. July 6, 2010. Now that significant percentages of Illinois voters cast votes via mail and early voting, the earlier deadlines that impact those ballots have added importance. For that reason, and because this case also will almost certainly require an appeal to the Illinois Supreme Court, an updated version of Objectors' requested briefing and hearing schedule should be granted.

CONCLUSION

For these reasons, the Court should: (1) deny Candidate Trump's motion to stay proceedings; (2) grant Petitioners-Objectors' pending Motion for Expedited Consideration of Petition for Judicial Review, with updated briefing and hearing dates.

Dated: February 5, 2024

PETITIONERS-OBJECTORS

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

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CERTIFICATE OF SERVICE

Pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned, an attorney, does hereby certify that Objector's Response in Opposition to Respondent/Candidate Donald J. Trump's Motion to Stay was filed with the Clerk of the Circuit Court using the File & Serve E-Filing System and served on all counsel of record listed below by email on February 5, 2024.

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FILED
2/5/2024 5:53 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000013

Exhibit A

(Compilation of Truth Social Posts)

December 21, 2023

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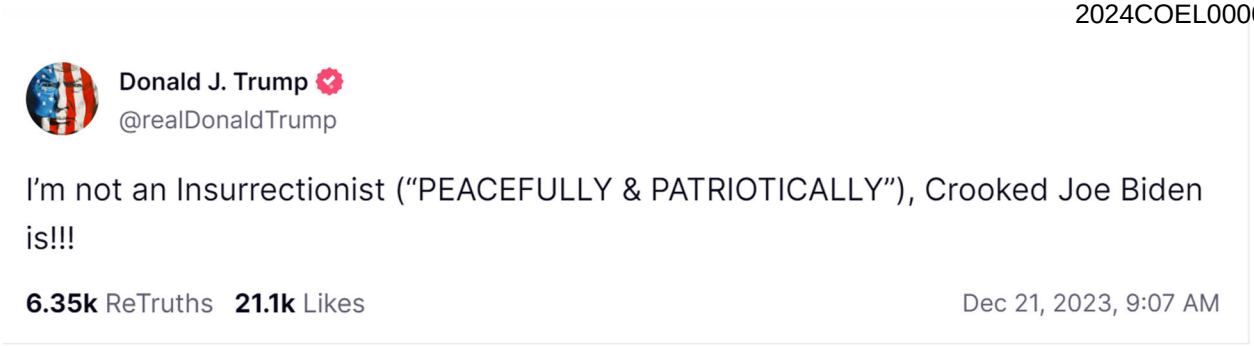

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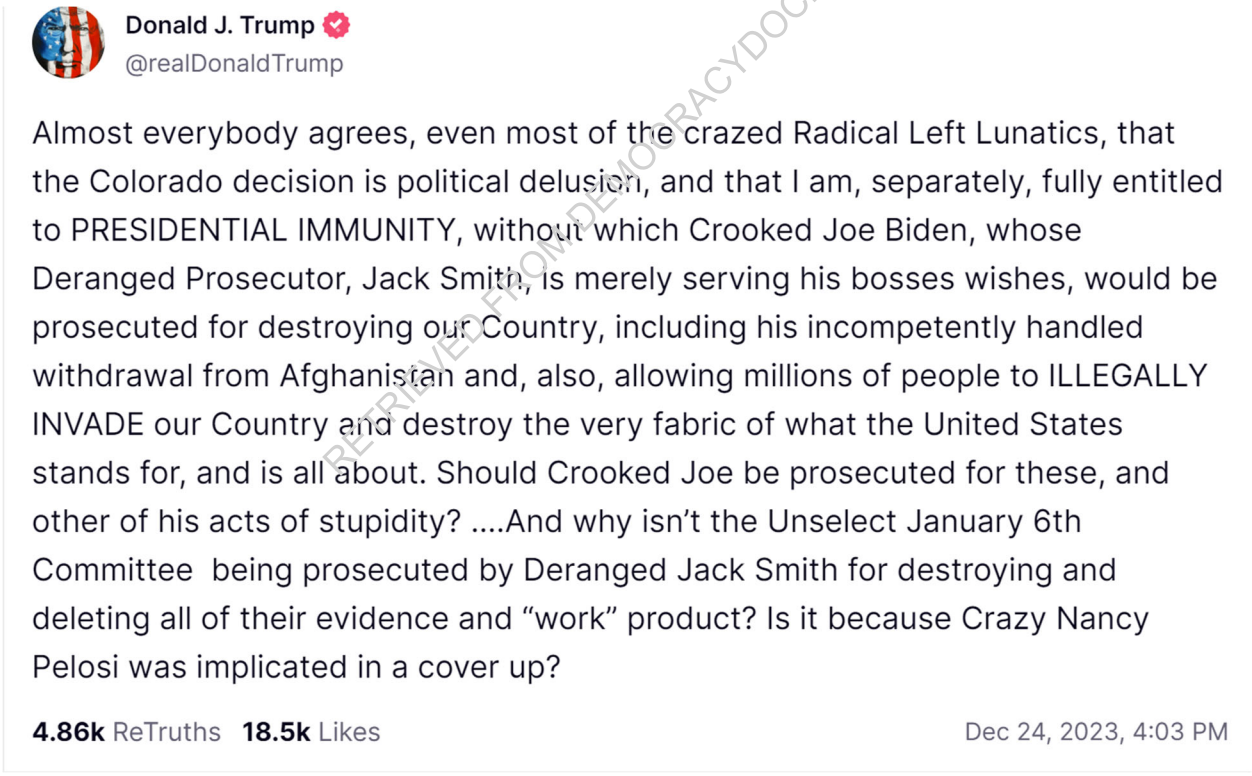
December 24, 2023

4:03 PM



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December 27, 2023

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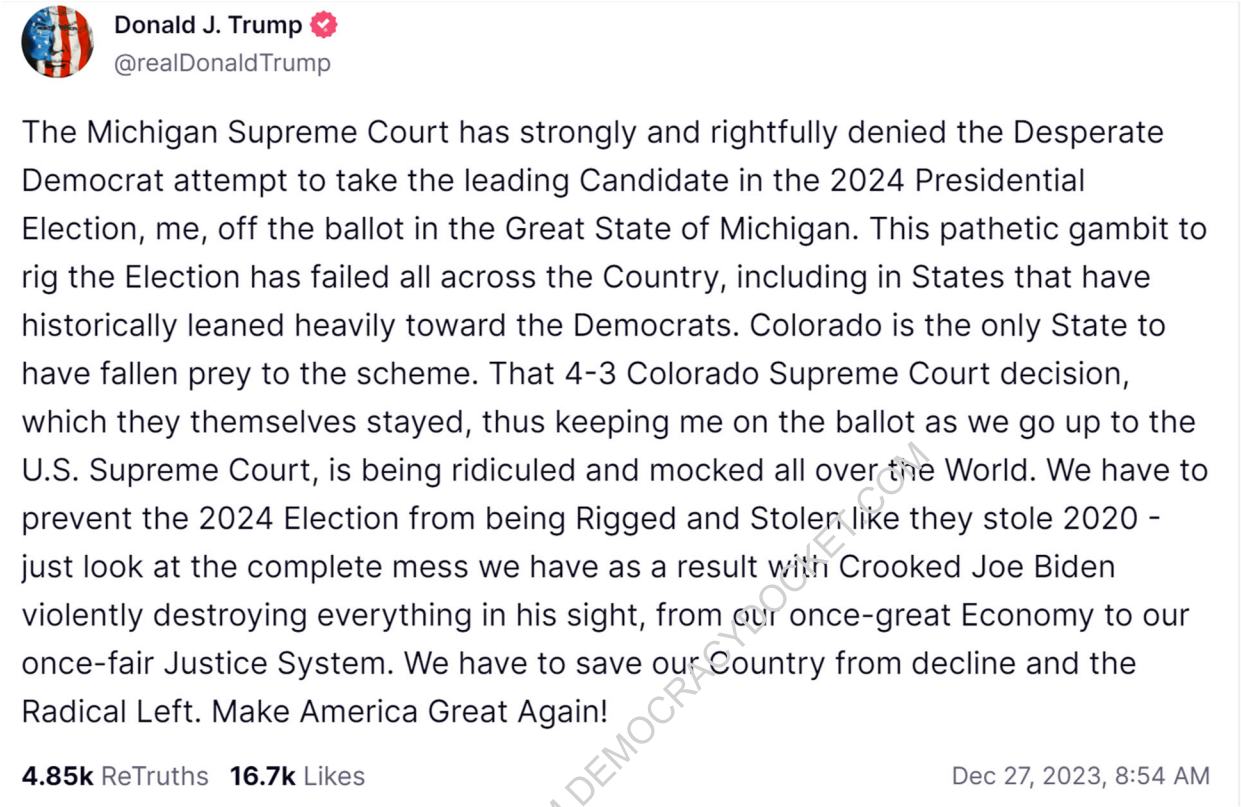

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January 30, 2024

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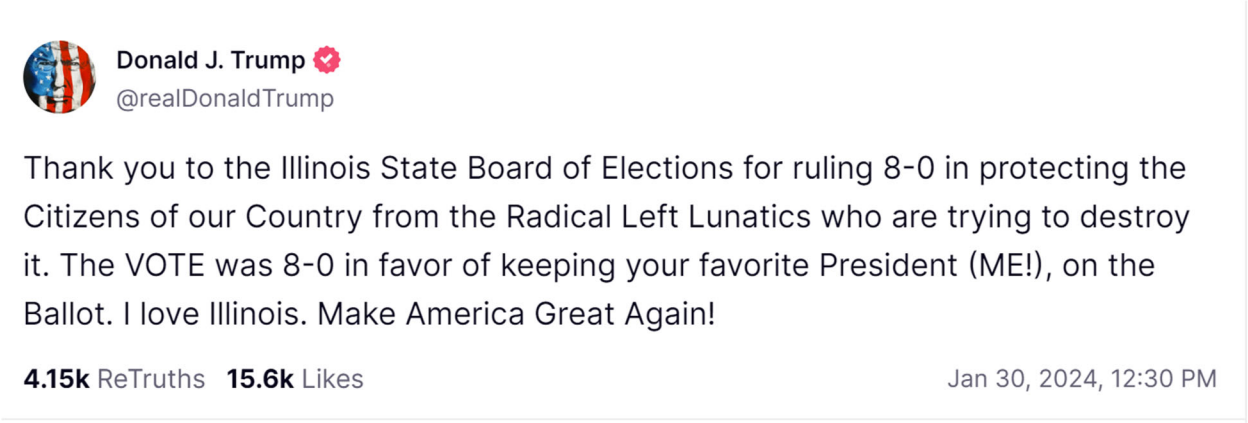

https://truthsocial.com/@realDonaldTrump/111846320360218255

EXHIBIT 2

General Counsel Recommendation

Anderson, Holley, Hickman, Cintron, and Baker v. Trump
24 SOEB GP 517

Candidate: Donald J. Trump

Office: President

Party: Republican

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

Attorneys for Objectors: Caryn C. Lederer, Matthew J. Piers, Margaret E. Truesdale, Justin Tresnowski, Ronald Fein, and Ed Mullen

Attorneys for Candidate: Adam Merrill, Scott E. Gessler, Nicholas J. Nelson

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Candidate's Statement of Candidacy contains a false swearing in violation of Election Code Section 7-10, 10 ILCS 5/7-10, that Candidate is qualified for the office sought because candidate is disqualified from the office of President of the United States by the provisions of Section 3 of the 14th Amendment to the U.S. Constitution ("Section 3"). Section 3 provides:

> No person shall be a Senator or Representative in Congress, or elector of the President and Vice-President, or hold any office, civil or military, under the United Sates or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof…

U.S. Const. amend. XIV, § 3. Objectors ask the Board to reach the merits of their objection petition, citing *Anderson v. Griswold*, 2023 WL 8770111 (Colo. Dec. 19, 2023), and *In Re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States* (Dec 28, 2023) ("Maine Sec. of State Ruling").

Specifically, Objectors rely on the following as the bases of their allegation that Candidate's Statement of Candidacy contains a false swearing of his qualifications under Section 3:

(1) Candidate swore an oath to support the U.S. Constitution and *Worthy v. Barrett*, 63 N.C. 199 (1869), provides that the oath to support the Constitution is the test, and by swearing the oath for his first term as President of the U.S., Candidate falls within the scope of Section 3;
(2) The events of January 6, 2021 ("January 6th") constitute an insurrection or rebellion under Section 3, citing impeachment proceedings against Candidate, 167 Cong. Rec. S729, Congressional classification of January 6th participants as insurrectionists, Pub. L. No. 117-32, as well as the Colorado and New Mexico courts' analyses of similar Section 3 disqualification allegations, *Anderson*, *supra*, and *State ex rel. White v. Griffin*, 2022 WL 4295619;
(3) Candidate engaged in the events of January 6 as "engage" is defined by *United States v. Powell*, 27 F. Cas. 605 (C.C.D.N.C. 1871), *Worthy v. Barrett*, *supra*, and *The Reconstruction Acts*, 12 U.S. Op. Att'y Gen. 141 (1867), as well as the modern definition found in *Anderson*.

Dispositive Motions: Candidate's Motion to Dismiss Objectors' Petition filed January 19, 2024. Candidate moves to dismiss the entirety of Objectors' petition on 5 bases which, he alleges, prove Objectors' petition lacks legal and factual merit.

(1) Candidate argues Illinois law does not authorize the State Officers Electoral Board ("SOEB") to resolve the complex factual issues of federal law presented in this matter. Candidate relies primarily on the plain language of Sections 7-9, 7-11, and 7-14.1 of the Election Code to argue Illinois law grants substantial deference to political parties to nominate Presidential candidates, and *Delgado v. Bd. Of Election Comm'rs*, 224 Ill. 2d 482 (2007), read together with *Goodman v. Ward*, 241 Ill.2d 398 (2011), limit the authority of electoral boards such that the SOEB does not have jurisdiction to rule on the matter.
(2) Second, Candidate argues the matter is a political question properly decided by Congress and the electoral process – not courts or administrative agencies. Candidate cites *Rucho v. Common Cause*, 1398 S. Ct. 2484 (2019), for his argument that political questions are beyond courts' and electoral boards' jurisdiction and are entrusted to one of the political branches. Additionally, Candidate argues this matter is a non-justiciable issue under *Baker v. Carr*, 369 US 186, 217 (1962), because Objectors are requesting the SOEB take up the same matter (disqualification of Candidate under Section 3) that the U.S. Senate declined following receipt of the Articles of Impeachment from the U.S. House of Representatives, an action prohibited by the theory of non-justiciability articulated in *Baker*.
(3) Third, Candidate argues disqualification under Section 3 is a question that can only be addressed by procedures prescribed by Congress and outside the purview of the SOEB. Candidate cites *In re Griffin*, 11 F Cas 7 (C.C.D. Va. 1969), for his contention that Section 3 requires Congressional legislation to be effective. Candidate argues Congress considered, but declined, to revive Section 3 enforcement procedures and the record, Congressional and judicial, remains silent on the subject of enforcement.
(4) Fourth, in the alternative that the SOEB were to consider Section 3, it does not apply to Candidate's qualifications as Section 3 bars holding office, not running for office; was intentionally drafted not to apply to the office of President; and drafted to protect the

Presidency by ensuring members of the Electoral College are loyal to the U.S. Candidate relies on the plain language of Section 3 and historical practice in furtherance thereof.

(5) Candidate seeks dismissal because Objectors have not alleged Candidate engaged in insurrection, and facts alleged by Objectors cannot establish such as, per Candidate and citing 18 U.S.C. 2383, and *United States v. Greathouse*, 2 F. Cas. 18 (C.C.N.D. Cal. 1863), insurrection as contemplated in Section 3 requires action akin to levying war.

Objectors' Response to Candidate's Motion to Dismiss Objectors' Petition filed January 23, 2024. In their Response to Candidate's Motion to Dismiss, Objectors argues the application of proper legal standards to the well-pled facts in Objectors' petition requires denial of Candidate's Motion.

(1) First, Objectors argue Candidate's position that the SOEB has a clear mandate in the Election Code and from the Illinois Supreme Court to decide objections involving candidate qualifications. Objectors also cite *Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, and *Zurek v. Petersen*, 2015 IL App (1st) 150456, for their argument that *Goodman*'s limitation on electoral board authority does not preclude an electoral board from determining whether a constitutional requirement was met, but precludes engaging in an analysis of a requirement's constitutionality.

(2) Second, Objectors argue Candidate's definition of insurrection in his Motion contradicts previous admissions through counsel and the meaning of the term at the time the 14th Amendment was enacted. In support of their argument that the events of January 6th constitute an insurrection under Section 3, Objectors cite *Anderson*, historical and public usage of the term, and legal definitions of the term insurrection including *United States v. Powell*'s definition of "engage" as providing any voluntary assistance for their argument Candidate engaged in an insurrection. (27 F. Cas. at 607).

(3) Third, Objectors argue Candidate's interpretation of Section 3 excluding the Presidency or the President fails under the weight of their own support and logic. Objectors cite *Hassan v. Colorado*, 495 F. App'x 947 (10th Cir. 2012), holding the distinction between being ineligible to assume the office of President and a place on the ballot is false and in opposition of the state's interest protecting the integrity of the political process. Objectors argue the Presidency is an office under the U.S., citing to 25 references to the presidency within the U.S. Constitution and other, secondary sources. They further argue that the President of the United States and the presidential oath are, under the provisions of Section 3, based on the plain language of Section 3 and historical uses of the terms which encompass both the President and presidential oath.

(4) Fourth, Objectors argue Candidate's invocation of the political question doctrine to the present matter is inconsistent with the narrow scope of the doctrine and Supreme Court precedent. Objectors argue Candidate misrepresents the cases relied on for his arguments, citing *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189 (2012), *Baker v. Carr*, *supra*, and *McPherson v. Blackner*, 146 U.S. 1 (1892).

(5) Fifth, Objectors cite the Colorado Supreme Court's decision in *Anderson*, *supra*, for their contention that no portion of Section 3 requires specific enacting legislation; arguing that requiring such would be absurd.

Candidate's Reply in Support of Motion to Dismiss filed January 25, 2024. In his Reply, Candidate reasserts his argument that the SOEB lacks statutory authority to address the objection and argues the cases relied on by Objectors do not justify the expansion of the scope of electoral board authority that Objectors seek here. Second, the U.S. Constitution requires presidential qualification disputes to be decided elsewhere as they are political questions committed to other decision makers aside from courts or administrative agencies. Finally, Candidate reasserts his arguments that Section 3 does not apply to the office of President generally or Candidate specifically as he did not engage in an insurrection as contemplated by Section 3.

Objectors' Motion to Grant Objectors' Petition, or in the Alternative for Summary Judgment filed January 22, 2024. In their Motion to Grant or for Summary Judgment, Objectors argue the material facts asserted in their petition are supported by competent evidence, cannot be genuinely disputed and compel the conclusion that Candidate engaged in insurrection under Section 3 and, therefore, is ineligible for the office of President of the United States. In support of their Motion, Objectors offer the following facts:

- Candidate's oath to uphold the U.S. Constitution on January 20, 2017;
- Specific actions, they argue Candidate did, which constitute a scheme to overturn the government and prevent the peaceful transition of power, including, among others:
    - attempt to enlist government officials and others to illegally overturn the 2020 election,
    - urging supporters to amass at the U.S. Capitol,
    - called for a "wild" protest and his supporters, in turn, planned violence,
    - knew of plans to use violence to forcefully prevent Congress from certifying the 2020 election results;
- Argue that the events of January 6th were an insurrection.

Objectors cite SOEB Rule of Procedure 10(a)(1) that the legal standard is a preponderance of the relevant evidence, that the objection is true, and Candidate's petition is invalid. Objectors argue the allegations within their petition show there is no genuine issue of material fact therein, and they are entitled to judgment as a matter of law. Objectors argue:

(1) SOEB is authorized and obligated under the plain language of Section 10-10 and *Goodman v. Ward*, *supra*, to hear and rule on this objection;
(2) An evaluation of the qualifications of Section 3 are similar to an evaluation of the qualifications of Article II, Section 1, Clause 5, which the SOEB has previously evaluated and ruled on, specifically, whether a candidate was a natural born citizen;
(3) *Anderson, supra*, is based on the same evidence and directs the outcome of this objection in favor of the Objectors;
(4) The facts establish Candidate engaged in an insurrection, per insurrection as defined by *Anderson*, *supra*, and *State v. Griffin*, *supra*, as well as "engage" per definitions included in dictionaries, historical evidence, and case law.
(5) Candidate engaged in rebellion as contemplated by Section 3, as defined by *Eastman v. Thompson*, 594 F.Supp.3d 1156 (C.D. Cal. 2022).
(6) Candidate gave aid or comfort to the enemies of the U.S. as contemplated by Section 3, which encompasses domestic and foreign enemies, Objectors argue, by encouraging and counseling insurrectionists, deliberately failing to exercise his authority and responsibility

to quell the insurrection, praising the insurrectionists and promising or suggesting he would pardon them if reelected to the presidency.

(7) Section 3 applies to the President, citing the plain language of Section 3, *Anderson, supra*, and Article II, Sections 1, 2, and 3 of the U.S. Constitution. Objectors argue if an office of the United States were read to omit the Presidency, a sitting President could simultaneously occupy a seat in Congress, violating the aim of the Incompatibility Clause, per *Buckley v. Valeo*, 424 U.S. 1 (1976).

(8) The President of the U.S is a covered officer of the U.S. under Section 3, relying on *Anderson, supra*, dictionary definitions of officer, *Motions Sys. Corp. v. Bush*, 437 F.2d 1356 (Fed. Cir 2006), as well as Candidate's assertions of such in seeking removal of lawsuits to federal court.

(9) The Presidential oath of Article II, Section 1, clause 8, is an oath to support the constitution, citing *Anderson, supra*, and the plain language thereof, and to hold otherwise would produce an absurd result.

Candidate's Opposition to Objectors' Motion for Summary Judgment filed January 23, 2024. In his Response to Objectors' Motion for Summary Judgment, Candidate argues summary judgment must be denied because the objection rests on a host of disputed facts, citing *Sun-Times v. Cook Cnty. Health & Hosps. Sys.*, 2022 IL 127519, when viewed in the light most favorable to Candidate, and presents genuine issues of material facts. Candidate lists 8 facts offered by Objectors which he objects to:

(1) the sincerity of Candidate's Ellipse speech,
(2) Candidate's overall intent,
(3) Candidate's alleged knowledge of plans for violence,
(4) Candidate's conduct toward public officials,
(5) Candidate's understanding of the 2020 election result,
(6) Candidate's alleged relationship with "extremist groups",
(7) whether January 6th rioters had a broader revolutionary plan, and
(8) the scale and scope of the January 6th riot.

Second, Candidate argues Objectors' own arguments show summary judgment is unwarranted because the precedents Objectors cite and rely on, *Anderson, supra*, and the decision of the Maine Secretary of State, both occurred after a trial or evidentiary hearing.

Third, Candidate argues that much of Objectors' evidence is inadmissible under Illinois Rule of Evidence 191(a) and *Ory v. City of Naperville*, 2023 IL App (3d) 220105.

Objectors' Reply in Support of their Motion to Grant Objectors' Petition or, in the Alternative for Summary Judgment filed January 25, 2024. In their Reply, Objectors argue Candidate misconstrues the summary judgment standard, citing *Porter v. Miller*, 24 Ill. App. 2d 424 (3rd Dist. 1960), arguing summary judgment depends on whether a bona fide issue of fact exists between the parties, and mere denial is not sufficient to raise a genuine issue against uncontroverted evidentiary matter(s). Objectors argue that Candidate's 8 alleged disputed facts require an unreasonable inference to be entertained in his favor and in opposition to governing case law, citing *W. Bend Mut. Ins. Co v. DJW-Ridgeway Bldg. Consultants, Inc.*, 2015 IL App (2d) 140441.

Objectors then reiterate that the core facts of their objection petition are undisputed, supported by admissible evidence and establish Candidate engaged in insurrection because the January 6th Report is admissible under Illinois Rules of Evidence and the SOEB Rules of Procedure.

Objectors identify 13 facts they argue are supported by admissible evidence, and allow for only a single inference that Candidate provided voluntary assistance to and thus engaged in the events of January 6th, which were an insurrection under Section 3.

Objectors argue the Colorado and Maine proceedings do not mean that summary judgment is improper here but, rather, the factual record here should consider those proceedings persuasive reasoning to grant their Motion.

Record Exam Necessary: No

Hearing Officer: Clark Erickson

Hearing Officer Findings and Recommendations: A hearing on the Objector's petition was held on January 29, 2024. Following that hearing, the Hearing Officer recommends denying Objectors' Motion for Summary Judgment because there are numerous disputed material facts, and there is disagreement over the application of constitutional law to those facts.

The Hearing Officer recommends granting the Candidate's Motion to Dismiss, because the Board is unable to decide whether Candidate is disqualified by Section 3 without embarking upon constitutional analysis, and the Board is not permitted by the Election Code to engage in such analysis. In making this recommendation, the Hearing Officer noted that the objection process in Illinois is much shorter in time than in Colorado and leaves no time for meaningful discovery or subpoena of witnesses needed to adjudicate the factual claims. Further, the Illinois Supreme Court, in *Goodman* and *Delgado* has prohibited the Board from addressing issues involving constitutional analysis. If the Motion to Dismiss is granted, the Hearing Officer implies the objection should be overruled, and Candidate Donald J. Trump's name should be placed on the ballot for President of the United States.

The Hearing Officer finds that, if the Board declines to follow the Hearing Officer's recommendation to grant Candidate's Motion to Dismiss, the evidence presented at the hearing proves by a preponderance of the evidence that Candidate engaged in insurrection within the meaning of Section 3, specifically referencing a social media post referencing former Vice President Pence during the breach of the Capitol. As a result, should the Board decide it has jurisdiction to decide the Section 3 question, the Hearing Officer recommends that Candidate Donald J. Trump's name should not be placed on the ballot for President of the United States.

Recommendation of the General Counsel: I concur in the Hearing Officer's ultimate recommended result, which it to overrule the Objectors' petition and certify Candidate's name to the March 19, 2024 General Primary ballot.

To ensure that a reviewing court has sufficient reasons to affirm the SOEB's decision in this matter, I offer several different options for the SOEB to discuss as possible resolutions of this case. My goal is to reduce the possibility that a reviewing court remands the matter back to the SOEB for further proceedings, and offering alternatives to the Hearing Officer's recommendation may further that goal, especially if the court rejects the recommendation that the SOEB lacks jurisdiction.

First, I will discuss my recommendation: Option 1. I recommend that the SOEB consider resolving the objection petition under Illinois law without reaching the constitutional question under Section 3 as follows.

Paragraph 8 of Objectors' petition reads:

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

Pet. at ¶8; *see also* ¶341. On its face, Paragraph 8 alleges a violation of state law: Section 7-10 of the Election Code, 10 ILCS 5/7-10. As explained below, I recommend finding that Candidate's Statement of Candidacy is not knowingly false and therefore does not violate Section 7-10, his nomination papers are valid, and the objection should be overruled.

The Election Code's mandate for an electoral board is contained in Section 10-10:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be…. and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained….

10 ILCS 5/10-10 (in relevant part). An electoral board's jurisdiction extends to determining whether a candidate filed a false statement of candidacy. *See Goodman*, 241 Ill.2d at 410; *see also Cullerton v. DuPage County Officers Electoral Bd.*, 384 Ill.App.3d 989 (2d Dist. 2008) (false statement of candidacy disqualified candidacy). One appellate court interpreted this to mean: "If a candidate's statement that he or she is qualified for the office sought is inaccurate, the statement fails to satisfy statutory requirements and constitutes a valid basis upon which an electoral board may sustain an objector's petition seeking to remove a candidate's name from the ballot." *Muldrow v. Municipal Officers Electoral Bd. for City of Markham*, 2019 IL App (1st) 190345, at ¶20, *quoting Goodman*, 241 Ill.2d at 410.

The *Muldrow* court's statement makes sense when evaluating a candidate swearing he is "legally qualified" for office under state law when the qualifications at issue are clear-cut factual

requirements. For example, in *Goodman v. Ward*, the Illinois Supreme Court held that the Illinois Constitution requires three qualifications for a judicial candidate: being a U.S. citizen, a licensed attorney-at-law, and a resident in the unit that selects him. *Goodman*, 241 Ill.2d at 407, *citing* lll. Const. 1970, art. VI, § 11. The candidate in *Goodman* had sworn under Section 7-10 that he was "legally qualified to hold the office of Circuit Court Judge, 12th District [sic], 4th Judicial Subcircuit[,]" but the Court ruled that statement "was untrue" because the candidate admittedly did not yet live in the 12th District. *Goodman*, 241 Ill.2d at 410. Therefore, he was not "legally qualified" for office when he signed, which invalidated his statement of candidacy and nomination papers. *Id.*

The question of whether a candidate is "legally qualified" for the office sought under Section 7-10 can be simple for issues like residency, citizenship, and age. Indeed, the SOEB has decided the issue of natural born citizenship qualifications for candidates for President in ruling on objections to nomination papers of former President Barack Obama and Senator Marco Rubio, as cited in Paragraph 50 of Objector's petition. However, when as here, it is alleged that being "legally qualified" for office necessarily means not being barred from holding office by Section 3 for engaging in insurrection, this is not a simple question of fact readily known to the candidate. In *Goodman*, the Court criticized the electoral board for engaging in a constitutional analysis beyond the Illinois Constitution's fact-based requirements to hold judicial office, finding: "It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." 241 Ill.2d at 414-415. Therefore, I encourage the SOEB to look at this case through a narrow lens strictly under Illinois law.

In *Welch v. Johnson*, the Illinois Supreme Court considered what constitutes a false statement justifying removal of a candidate from the ballot. 147 Ill.2d 40 (1992). Although *Welch* dealt with statements of economic interests, as opposed to whether the candidate was "legally qualified" for office, the analysis is nonetheless illustrative. The *Welch* Court held that the requirement of subscribing and swearing to the statement of candidacy, "implicates the perjury provision of the Election Code." *Id.* at 52, citing provision currently cited as 10 ILCS 5/29-10 (additional citations omitted). The Court explained:

> Section 29-10 [of the Election Code] makes a false statement, material to the issue or point in question, which the maker does not believe to be true, in any affidavit, certificate or sworn oral declaration required by any provision of the Code, a Class 3 felony. In establishing scienter as an element for false statements subject thereto, section 29-10 strongly intimates that merely innocently or inadvertently false statements shall not be cause for the imposition of any sanction thereunder.

Id. The *Welch* Court held that the perjury provisions of the Election Code "sanction only knowingly or willfully false statements" in connection with elections, generally. *Id.* at 55 (emphasis supplied). In other words, not every incorrect statement sworn in connection with one's nomination papers is sufficient to implicate the Election Code's perjury provisions and invalidate the papers. Rather, a candidate's knowingly or willfully false statements that the maker does not believe to be true justify the sanction of removal from the ballot. *See id*. at 52, 55-56.

I recommend that the SOEB find, regardless of whether Candidate is disqualified from holding office under Section 3 as a matter of law, that his sworn statement on his Statement of Candidacy that he is "legally qualified" for office is not knowingly false, and therefore, does not violate Section 7-10 and cannot invalidate his nomination papers. *See id.* Throughout this proceeding, Candidate has consistently denied that he engaged in insurrection and violated Section 3. Rather, he has argued he is legally qualified to hold the office of President and did not swear his Statement of Candidacy falsely.

This is unlike a simpler case in which a candidate falsely swears he is qualified to hold office, when that qualification is to live within the applicable district, for example, because the candidate knows where he lives and acts with intent in swearing he lives somewhere other than at his residence. The same is not true here, at least not to the extent needed to demonstrate by a preponderance of the evidence that this Candidate knowingly made a false statement when he swore he was legally qualified for the office of President.

Objectors have presented no evidence whatsoever to indicate that Candidate knowingly made a false statement when he signed his Statement of Candidacy and swore he was legally qualified for the office sought. Although I do not doubt that Objectors sincerely believe Candidate engaged in insurrection and is not legally qualified to hold office, Candidate believes the opposite, and Objectors have not offered evidence to refute this. Objectors offered thousands of pages of records in support of their petition, but they did not offer any evidence beyond the Statement of Candidacy itself to show Candidate's intent when he signed his Statement of Candidacy. Objectors could have subpoenaed the notary public or other witnesses to the signing of his Statement of Candidacy regarding any admissions Candidate may have made when he signed indicating his state of mind, but they did not. Granted, it is simple to prove a candidate falsely swore to an untrue fact, but proving someone else's state of mind in making a statement of his own beliefs regarding his eligibility for office is not easily proven. Constitutional scholars around this nation cannot agree whether Section 3 disqualifies Candidate from holding office, and there is no proof Candidate knows he is disqualified. I do not find sufficient evidence in the record to prove Candidate knowingly lied when he swore he was "legally qualified" for office when he signed his Statement of Candidacy. As such, I recommend concluding his Statement of Candidacy is valid, and Objectors' petition should be overruled.

Further, I recommend denying Objectors' Motion for Summary Judgment due to material disputed facts. I further recommend denying Candidate's Motion to Dismiss as moot because the case can be resolved under Illinois law without reaching the questions of jurisdiction and federal law raised.

To the extent Objectors claim that even if a candidate did not falsely swear he was qualified for the office sought in his Statement of Candidacy, he must nevertheless not be disqualified by Section 3, then I recommend adopting the jurisdictional recommendation of the Hearing Officer.

Please see options for the SOEB to discuss on the next page.

Summary of Options

Option 1:

- Accept the Recommendation of the General Counsel
- Deny the Objectors' Motion to Grant Objectors' Petition, or in the Alternative for Summary Judgment ("MSJ") and Candidate's Motion to Dismiss Objectors' Petition ("MTD")
- Overrule the objection

Option 2:

- Accept the Hearing Officer's recommendation
- Deny the MSJ and grant the MTD in for lack of jurisdiction
- Overrule the objection

Option 3:

- Accept the General Counsel Recommendation that Candidate did not file a false Statement of Candidacy
- If the SOEB believes that Illinois law requires a candidate to not be disqualified by Section 3 in order to appear on the ballot, even though the Statement of Candidacy was not false, adopt the Hearing Officer's recommendation that the SOEB lacks jurisdiction to decide whether Candidate engaged in insurrection in violation of Section 3
- Deny the MSJ; Grant the MTD for lack of jurisdiction
- Overrule the objection

Option 4:

- Adopt Option 2 or 3 above but without the Hearing Officer's alternative finding that if the SOEB has jurisdiction, then Candidate engaged in insurrection in violation of Section 3, invaliding his nomination papers

Option 5:

- If the SOEB believes it has jurisdiction over the federal constitutional issue in this matter and disagrees with the General Counsel recommendation, adopt the Hearing Officer's alternate recommendation that Candidate engaged in insurrection in violation of Section 3
- Deny all motions and rule on the merits
- Sustain the objection

Option 6:

- If the SOEB believes it has jurisdiction over the federal constitutional issue in this matter and disagrees with the General Counsel recommendation and Hearing Officer's alternate recommendation that Candidate engaged in insurrection in violation of Section 3, determine on the merits that Candidate did not engage in insurrection
- Handle motions argument by argument
- Overrule the objection

EXHIBIT 3

Hearing Officer Report and Recommended Decision

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

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

HEARING OFFICER REPORT AND RECOMMENDED DECISION

Background of the Case

This matter commenced with the Objector's filing of a Petition to Remove the Candidate, Donald J. Trump from the ballot on January 4, 2024. In summary, the Objector's Petition, and the corresponding voluminous exhibits in support thereof, seek a hearing and determination that Candidate Trump's Nomination Papers are legally and factually insufficient based on Section 3 of the 14th Amendment and based on 10 ILCS 5/7-10 of the Illinois Election Code. The crux of these allegations center around the violent incidents of January 6, 2021 at the United States Capitol building in Washington D.C. and what Candidate Trump's involvement and/or participation in those violent events was. The Petition alleges "Candidate's nomination papers are not valid because when he swore in his Statement of Candidacy that he is "qualified" for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely" based on his participation in the January 6, 2021, events. [See Page 2, Paragraph 8 of Objector's Petition].

The Petition further asks this Board to determine that President Trump is disqualified under Article 3 of the Fourteenth Amendment which states in relevant part that ""No person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, . . . as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

The factual determination before the Board therefore is first, whether those January 6, 2021, events amount to an insurrection. Next, if those events do constitute an insurrection, the question that requires addressing is whether the Candidate's actions leading up to, and on January 6, 2021, amounts to having "engaged" or "given aid" or "comfort" as delineated under Section 3 of the 14th Amendment. However, before the Hearing Officer addresses the factual

determination on the merits, the procedural issues, including the Motions that were filed, must be addressed.

Procedural History

Following the filing of the Petition on January 4, 2024, an Initial Case Management Conference was conducted on January 17, 2024. At the Initial Case Management Conference, the Parties were provided an Initial Case Management Order with corresponding deadlines for certain motions. As part of these proceedings, and in compliance with the Case Management Order, the Candidate filed a timely Motion to Dismiss on January 19, 2024. The Objectors also filed a timely Motion for Summary Judgment. Responses to those Motions were timely filed by the parties on January 23, 2024. Replies to the respective Motions were filed by the parties. Candidate sought a brief extension to file his Reply. The extension was unopposed by the Objectors. The extension was granted without objection and is considered timely. A link to the filings and exhibits is found here for the Board's convenience.

https://1drv.ms/f/s!AiUfM7KmKopbifBCDf_deqdCAMAgrg?e=xhUj5i

The Hearing Officer heard argument on the matter on January 26, 2024. Each party was provided with one hour for their argument. The Hearing Officer commends the attorneys for both Objectors and the Candidate for their cooperation and professionalism. Each of these motions, as well as the merits of the case are addressed in turn. For procedural reasons, we first begin with the Motion to Dismiss. The Hearing Officer further notes that the sufficiency, quality, quantify, and nature of the signatures on the Petition is not challenged and therefore the signatures are deemed sufficient.

Candidate's Motion to Dismiss

The Candidate's Motion to Dismiss states it raises five grounds, but in actuality the Hearing Officer, from the Brief, recognizes six separate arguments raised for dismissal. Those grounds argued by Candidate are as follows:

1. Illinois law does not authorize the SOEB to resolve complex factual issues of federal constitutional law like those presented by the Objectors, especially in light of the United States Supreme Court considering the same issues on an expedited basis.
2. Political questions are to be decided by Congress and the electoral process—not courts or administrative agencies.
3. Whether someone is disqualified under Section Three of the Fourteenth Amendment, is a question that can be addressed only in procedures prescribed by Congress, not by the SOEB.
4. Whether Section Three of the Fourteenth Amendment bars holding office, rather than running for office, and that states cannot constitutionally enlarge the disqualification from the "holding of office stage" to the earlier stage of "running for office."

5. That "officer of the United States," under Section 3 of the Fourteenth Amendment excludes the office of the President.
6. Lastly, even if Section Three of the Fourteenth Amendment applied here and the Board was empowered to apply it, Candidate argues that Objectors have not alleged facts sufficient to find that President Trump "engaged in insurrection."

Candidate's First Ground

Candidate first argues that "Illinois law does not authorize the [Illinois State Officer's Electoral Board] SOEB to resolve complex factual issues of federal constitutional law like those presented by the Objections." Candidate argues that "[10 ILCS 5] Section 10-10 [Of the Illinois Election Code] (and relevant caselaw) makes clear the SOEB's role is to evaluate the form, timeliness and genuineness of the nominating papers and that the SOEB is not authorized to conduct a broad-ranging inquiry into a candidate's qualifications under the U.S. Constitution." [See Candidate's Motion to Dismiss, Page 4].

Section 10 ILCS 5/10-10, in relevant part, states as follows:

> "The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained."

The Candidate argues that the SOEB does not have the authority to reach such complex issues of fact and law. Specifically, he argues that the questions of whether an insurrection happened, and constitutional application of Section 3 of the Fourteenth Amendment are beyond the purview of the power authorized to the SOEB in Section 10-10. Candidates' argument is that this is a fact intensive issue, and without proper vehicles of discovery the procedures afforded by the SOEB "are wholly inadequate for the kind of full-scale trial litigation and complex evidentiary presentation." [See Candidate's Motion to Dismiss, Pages 5-6].

Objectors, in response to this contention, argue that "There is no authority for the unworkable proposition that the Electoral Board's authority to hear objections depends on a subjective consideration of where the facts fall on a continuum from simple to complex." [See Objector's Response, Page 5]. Objectors also rely on Section 10-10 citing specifically to the language from the statute that the SOEB "shall decide whether or not the certificate of

nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained." Objector further cites to *Goodman v. Ward*, 241 Ill. 2d 398 (2011) claiming that "the Illinois Supreme Court has clearly directed that determinations of the validity of a candidate's nominating papers include whether the candidate has falsely sworn that they are qualified for the office specified, and candidate qualifications include constitutional qualifications."

Candidate's Second Ground

Candidate next argues that this matter is a political question, for which the Courts must decide. The Candidate contends that "the vast weight of authority has held that the Constitution commits to Congress and the electors the responsibility of determining matters of presidential candidates' qualifications."

The political question doctrine bars courts from adjudicating issues that are "entrusted to one of the political branches or involve no judicially enforceable rights." *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004). In *Baker v. Carr*, 369 U.S. 186, 217 (1962) the Supreme Court described six circumstances that can give rise to a political question:

> "[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Id.*

The *Baker* Court held that, "[u]nless one of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence. *Castro v. New Hampshire Sec'y of State*, 2023 WL 7110390, at *7. The question therefore becomes, whether the issue before the SOEB, falls into one of these six categories. More recent United States Supreme Court precedent has seemingly narrowed this to two factors. See *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195, 132 S. Ct. 1421, 1427, 182 L. Ed. 2d 423 (2012) holding that "we have explained that a controversy "involves a political question ... where there is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it."

Candidate offers precedent that is directly on point. In particular, *Castro*, the United States District Court for the District of New Hampshire, presiding over a nomination issue involving the same candidate, and the same claim for insurrection, found that this is a nonjusticiable political question barring the Courts from intervening. In so determining, the *Castro* Court recognized prior precedent from *Grinols v. Electoral Coll.*, 2013 WL 2294885, at

*6 (E.D. Cal. May 23, 2013) that held "the Twelfth Amendment, Twentieth Amendment, Twenty-Fifth Amendment, and the Article I impeachment clauses, "make it clear that the Constitution assigns to Congress, and not the Courts, the responsibility of determining whether a person is qualified to serve as President. As such, the question presented by Plaintiffs in this case…is a political question that the Court may not answer." *Castro* at 8.

In response to the precedent cited by Candidate, Objectors contend that the cases involved do not involve a section 3 constitutional challenge. In response, Objectors contend that:

1. Section 3, unlike other Constitutional provisions to which the doctrine applies, is not reserved for Congressional action in its text.
2. Section 3 involves judicially manageable standards, as illustrated by courts that have repeatedly applied and interpreted it.
3. Federal circuit court precedent that the Motion fails to cite demonstrates the inapplicability of the doctrine, as does the Colorado Supreme Court decision giving it close analysis.
4. A host of the cases cited in the Motion do not stand for the propositions relied on and do not hold up against the on-point precedent.

In conflict with *Castro,* is the recent Colorado Supreme Court decision, *Anderson v. Griswold*, 2023 WL 8770111 (Cob. Dec. 19, 2023). The *Anderson* Court "perceive[d] no constitutional provision that reflects a textually demonstrable commitment to Congress of the authority to assess presidential candidate qualifications." Id at ¶ 112. The decision further notes that state legislatures have developed comprehensive and complex election codes involving the selection and qualification of candidates. See also *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 1279, 39 L. Ed. 2d 714 (1974). The *Anderson* decision further finds that "Section Three's text is fully consistent with our conclusion that the Constitution has not committed the matter of presidential candidate qualifications to Congress…although Section Three requires a "vote of two-thirds of each House" to remove the disqualification set forth in Section Three, it says nothing about who or which branch should determine disqualification in the first place."

Candidate's Third Ground

Candidate next argues that the determination of an insurrection can only be made by Congress. In support of this argument, Candidate relies on *In re Griffin*, 11 F Cas 7 (C.C.D. Va. 1869). The *Griffin* Court found that enforcement of Section 3 is limited to Congress. Objectors argue *Anderson v. Griswold* rejected this argument and that the *Griffin* case is wrongly decided.

Candidate's Fourth Ground

Candidate next argues that Section 3 of the Fourteenth Amendment bars holding office, not running for office. In support of this argument Candidate relies on *Smith v. Moore*, 90 Ind. 294,

303 (1883) which allowed Congress to remove disabilities after they were elected. Candidate further argues the Constitution prohibits States from accelerating qualifications for elected office to an earlier time than the Constitution specifies. Candidate gives the example of Schaefer *v. Townsend*, 215 F.3d 1031, 1038 (9th Cir. 2000). In *Shaefer* California once tried to require congressional candidates to be residents of the state at the time when they were issued their nomination papers—rather than "when elected," as the Constitution says. Candidate also cites *US Term Limits, Inc v Thornton*, 514 US 779, 827, 115 S Ct 1842, 1866 (1995) (States do not "possess the power to supplement the exclusive qualifications set forth in the text of the Constitution.").

Objectors argue that the cases relied upon by Candidate are inapplicable. Objectors argue that a Candidate can control and can promise that he or she will be a resident of the state for the position that he is running for in the future.

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Candidate's Fifth Ground

Candidate includes the fifth ground within his fourth ground, but this appears to be a separate challenge. Here Candidate argues that the president is not an officer of the United States under the constitution. The Objectors disagree. Both sides cite a litany of sources, including Judges and the Constitution itself in support of their respective positions. This Hearing Officer has no doubt that given infinite resources, even more sources could be found to support both positions.

Candidate's Sixth Ground

The Candidate's final argument is that insufficient facts have been pled to amount to an insurrection. Although the section is not mentioned, this is the functional equivalent of a 735 ILCS 5/2-615 or Federal Rule of Civil Procedure 12(b)(6) argument. The Hearing Officer treats it as such. Under this section, Candidate puts forth sub-arguments. First, he contends that an insurrection has not been alleged. Candidate puts forth that "Dictionaries of the time confirm that "insurrection" meant a "rebellion of citizens or subjects of a country against its government," and "rebellion" as "taking up arms traitorously against the government.

Candidate next argues that he did not engage in the insurrection. Within this argument he says pure speech cannot amount to engaging in an insurrection. Candidate says that incitement alone cannot equal engagement. Both parties concede that Trump himself did not act with violence., The question therefore becomes whether words alone can amount to engaging in an insurrection.

Objectors' Motion for Summary Judgment

The Hearing Officer now turns his attention to the Motion for Summary Judgment, which also asks for the Petition to be Granted. The request for a ruling on the merits will be addressed separately. First, the Motion for Summary Judgment must be addressed.

In support of the Motion for Summary Judgment, Objectors cite a series of what they claim are undisputed facts. A summary recitation of those facts is warranted. It is clearly undisputed that Candidate Trump took an oath to preserve and protect the Constitution of the United States. It is also clearly undisputed that Candidate Trump ran for re-election. Further, it is alleged that Candidate Trump refused in a September 2020 press conference to acknowledge a peaceful transfer of power if he lost. It is further alleged that Candidate Trump regularly tweeted that if he lost it would be a result of election fraud, and that after he lost, he continued to claim election fraud. It is alleged that Candidate Trump's lawful means of contesting the election results failed. It is alleged that Candidate Trump attempted to convince the Department of Justice to adopt his narrative and failed. It is alleged that Candidate Trump was made aware of plans for violence on January 6, 2021, that despite this information, Trump went ahead with his rally. It is alleged that Candidate Trump had reason to know or believe prior to January 6, that the January 6, 2021, protests would be violent. It is alleged that on January 6, Candidate Trump began to call out Vice-President Pence' s name at the demonstration and ask him to reject the election results or that Trump will be "very disappointed in [him]." It is alleged that attacks began on the Capitol, and that Candidate Trump was aware of the attacks taking place on the Capitol. It is alleged that Candidate Trump tweeted, among other things, that "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution." It is alleged that Candidate Trump tweeted this while the attacks were ongoing and knew that the attacks were ongoing, and that this tweet led to increased violence. It is alleged that Candidate Trump subsequently tweeted "Stay peaceful." It is alleged that Candidate Trump did not call the National Guard despite what was happening. Objector's narrative of facts is quite lengthy, and significantly more detailed than what is laid out here. This is not meant to be an exhaustive retelling of the narrative, but rather a quick synopsis.

As Objector's point out, summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c).

Recommendations on Dispositive Motions

A. Objectors' Motion for Summary Judgment.

The Hearing Officer finds that there are numerous disputed material facts in this case, as well wide range of disagreement on material constitutional interpretations. **Hearing Officer recommends that the Board deny the Objectors' Motion for Summary Judgment**.

B. Candidate's Motion to Dismiss.

Candidate argues in his Motion to Dismiss that the Objector's Petition should be dismissed for several reasons. One of particular interest to the Electoral Board is the argument that "As a creature of statute, the Election Board possesses only those powers conferred upon it by law" and "[a]ny power or authority [the Election Board] exercises must find its source within the law pursuant to which it was created." *Delgado v. Bd. of Election Comm'rs*, 224 Ill. 2d 481,485 (Ill. 2007*).* Candidate's Motion to Dismiss Objector's Petition, page 5.

In *Delgado*, the Illinois Supreme Court found that the Election Board (City of Chicago) exceeded its authority when it overruled the Hearing Officer's recommendation and concluded that a provision of the Illinois Municipal Code was unconstitutional: "Administrative agencies such as the Election Board have no authority to declare a statute unconstitutional or even to question its validity. (Cites omitted). In ruling as it did, the Election Board therefore clearly exceeded its authority." *Id., at 485.*

A more recent decision of the Illinois Supreme Court, *Goodman v. Ward*, 241 Ill.2d 398 (2011), further illustrates the limits that the Court places upon an Election Board. In *Goodman*, Chris Ward, an attorney licensed to practice law in Illinois, filed a petition with the Will County Officers electoral board to have his name placed on the primary ballot as a candidate for circuit judge. At the time he filed his petition, Ward was not a resident of the subcircuit he wished to run in. Two of the three officers of the electoral board decided that Ward could appear on the ballot because governing provisions of the Illinois Constitution were "arguably ambiguous and uncertain." The Court affirmed the lower court's reversal of the electoral board, holding, " ... the electoral board overstepped its authority when it undertook this constitutional analysis. It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Goodman, at 414-415.*

The Illinois Supreme Court in these two decisions has clearly placed a limit upon what an electoral board can consider when ruling on an objection. In *Delgado*, the Court makes it clear that an electoral board may not, in performing its responsibilities in ruling on an objection, go so far as to even question the constitutionality of what it considers to be a relevant statute. The language in *Goodman* extends this prohibition when it uses the language of "constitutional analysis." Thus, an electoral board goes too far not just when it holds a statute unconstitutional but also goes too far when it enters the realm of constitutional analysis. Instead, as the Court wrote, "It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Id., at 414-415.*

The question, then, is whether the Board can decide whether candidate Trump is disqualified by Section 3 of the Fourteenth Amendment, without embarking upon constitutional analysis.

The clear answer is that it cannot.

It is impossible to imagine the Board deciding whether Candidate Trump is disqualified by Section 3 without the Board engaging in significant and sophisticated constitutional analysis.

Section 3 of the Fourteenth Amendment reads as follows:

> Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Much of the language in Section 3, which is part of the United States Constitution, is the subject of great dispute, giving rise to several separate constitutional issues. These issues are being raised in the case now before the Board, even as these issues in dispute are now pending before the United States Supreme Court, Case No.23-719, Donald J. Trump, Petitioner v. Norma Anderson, et al., Respondents.

A breakdown, by issue, makes clear how the issues in dispute in this case are constitutional issues currently before the United States Supreme Court:

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue in their Motion to Dismiss the Objectors' Petition that Section 3 does not bar President Trump running for office. In their petition in support of their position they argue that Section 3 applies to holding office, not running for office.

That very issue is before the United States Supreme Court: "... section 3 cannot be used to deny President Trump (or anyone else) access to the ballot, as section 3 prohibits individuals only from *holding* office, not from *seeking* or *winning election* to office.

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue in their Motion to Dismiss the Objectors' Petition that the constitutional phrase "officers of the United States" excludes the President.

That issue is also before the United States Supreme Court: "The Court should reverse the Colorado decision because President Trump is not even subject to section 3, as the President is not an "officer of the United States" under the Constitution."

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue that Section 3 of the Fourteenth Amendment Can Be Enforced Only as Prescribed by Congress.

That issue is also before the United States Supreme Court: "…state courts should have regarded congressional enforcement legislation as the exclusive means for enforcing section 3, as Chief Justice Chase held in *In re Griffin*, 11 F. Cas. 7, 26 (C.C.D. Va. 1869) (*Griffin's Case*).

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue that President Trump did not engage in insurrection within the meaning of Section Three.

That issue is also before the United States Supreme Court: "And even if President Trump were subject to section 3 he did not "engage in" anything that qualifies as "insurrection."

There is wisdom in the Illinois Supreme Court fashioning decisions which prohibit electoral boards from engaging in constitutional analysis. As the Candidate argues in his Motion to Dismiss, "The Board can and does resolve disputes about nominations and qualifications on records that are undisputed or (in the Board's estimation) not materially disputed. It does not and cannot hold lengthy and complex evidentiary proceedings of the kind that would be needed to assess objections like these."

The Rules of Procedure adopted by the State Board of Elections provides the following schedule for filing of briefs and motions within a time period between January 19, 2024 and January 25, 2024:

Schedule of Brief and Motion Filing
Candidate's Motion to Strike and/or Dismiss or other similar motion (MTD)
Objector's Motion for Summary Judgment or other similar motion (MSJ)
Must be filed no later than 5:00 p.m. on the second business day, **Friday, January 19, 2024,** following the date of the Initial Meeting of the Board, unless extended by the Board or Hearing Officer for good cause shown.
Objector's Response to Candidate's MTD
Candidate's Response to Objector's MSJ
Must be filed no later than 5:00 p.m. on the second business day following the due date of the Candidate's MTD or Objector's MSJ, **Tuesday, January 23, 2024,** unless extended by the Board or Hearing Officer for good cause shown.
Candidate's Reply to Objector's Response to Candidate's MTD
Objector's Reply to Candidate's Response to Objector's MSJ
Must be filed no later than 5:00 p.m. on the second business day following the due date of the Objector's Response to the Candidate's MTD or the Candidate's Response to the Objector's MSJ, **Thursday, January 25, 2024,** unless extended by the Board or Hearing Officer for good cause shown.

Any memorandum of law in support of any of the above pleadings shall accompany such pleading.
Briefs on any issue(s) shall be filed as directed by the Board or the Hearing Officer.
(APPENDIX A to Rules)

The Rules, as if it were even necessary to do, make it clear to all parties that the hearings are handled in an expedited manner:

1. **EXPEDITED PROCEEDINGS**
   a. Timing. On all hearing dates set by the Board or its designated Hearing Officer (other than
   the Initial Meeting), the objector and the candidate shall be prepared to proceed with the hearing of their case. Due to statutory time constraints, the Board must proceed as expeditiously as possible to resolve the objections. Therefore, there will be no continuances or resetting of the Initial Meeting or future hearings except for good cause shown.
   (Rule 1a.)

The Rules provide for very little discovery, although Rule 8 does allow for request of subpoenas:

Rule 8 provides a procedure for subpoenas:

a. Procedure and deadlines for general subpoenas.

1. Any party desiring the issuance of a subpoena shall submit a written request to the Hearing Officer. Such request for subpoena may seek the attendance of witnesses at a deposition (evidentiary or discovery; however, in objection proceedings, all depositions may be used for evidentiary purposes) or hearing and/or subpoenas *duces tecum* requiring the production of such books, papers, records, and documents as may relate to any matter under inquiry before the Board.

2. The request for a subpoena must be filed no later than **5:00 p.m. on Friday, January 19, 2024,** and shall include a copy of the subpoena itself and a detailed basis upon which the request is based. A copy of the request shall be given to the opposing party at the same time it is submitted to the Hearing Officer. The Hearing Officer shall submit the same to the Board (via General Counsel) no later than **5:00 p.m. on Monday, January 22, 2024.** The Chair and Vice Chair shall consider the request and the request shall only be granted by the Chair and Vice Chair.

3. The opposing party may submit a response to the subpoena request; however, any such response shall be given to the Hearing Officer no later than **4:00 p.m. on Monday, January 22, 2024,** who shall then transmit it to the Chair and Vice Chair (through the General Counsel's office) with the subpoena request. The Hearing Officer shall issue a recommendation on whether the subpoena request should be granted no later than **5:00**

p.m. on Wednesday, January 24, 2024. The Chair and Vice Chair may limit or modify the subpoena based on the pleadings of the parties or on their own initiative.

4. Any subpoena request, other than a Rule 9 subpoena request, received subsequent to **5:00 p.m. on Friday, January 19, 2024,** will not be considered without good cause shown.

5. If approved, the party requesting the subpoena shall be responsible for proper service thereof and the payment of any fees required by Illinois Supreme Court Rule or the Circuit Courts Act. *See* 10 ILCS 5/10-10; S. Ct. Rule 204, 208, and 237; 705 ILCS 35/4.3.

This subpoena procedure leaves little time to serve a person. In addition, there is no room for continuances, as the Board rules on the objections on January 30, the Tuesday following the hearing set on January 26.

All in all, attempting to resolve a constitutional issue within the expedited schedule of an election board hearing is somewhat akin to scheduling a two-minute round between heavyweight boxers in a telephone booth.

It is clear from the Election Code and the Rules of Procedure that the intent is for the Board to handle matters quickly and efficiently to resolve ballot objections so that the voting process will not be delayed as a result of protracted litigation. With the rules guaranteeing an expedited handling of cases, the Election Code is simply not suited for issues involving constitutional analysis. Those issues belong in the Courts.

Objectors point to the decision of the Colorado Supreme Court (now before the United States Supreme Court), and the Maine Secretary of State, both of which did resolve the candidate challenges in favor of the objectors and ordered the name of Donald J. Trump removed from the primary ballot.

It is worth taking a closer look at the Colorado opinion. (The Maine decision relied heavily on that opinion, which was announced during its proceeding.)

In *Anderson v Griswold*, 2023 CO 63, the Colorado Supreme Court case which is the subject of the United States Supreme Court appeal, the Colorado Court concluded "that because President Trump is disqualified from holding the office of President under Section Three, it would be a wrongful act under the Election Code for the Secretary to list President Trump as a candidate on the presidential primary ballot." In doing so, the Court upheld the rulings of the trial court, but reversed the trial court's decision that Section 3 did not apply to President Trump.

In their brief, the Objectors in 24 SOEB GP 517 argue that the opinion of the Colorado Supreme Court is a well-reasoned 133-page opinion. What the Objectors fail to say is that the opinion is a four to three decision, with three lengthy dissents.

The Colorado Supreme Court ("The Court") approved the decision by the trial judge to allow into evidence thirty-one findings from the report drafted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol ("The Report"). The Court based its ruling on Federal Rule of Evidence 803(8) and its mirror rule in the Colorado Rules of Evidence. The Illinois Rules of Evidence contain the same rule in its own 803(8).

The Court found that the expedited proceedings in an election challenge provided adequate due process for the litigants: "… the district court admirably—and swiftly—discharged its duty to adjudicate this complex section 1-1-113 action, substantially complying with statutory deadlines." *Anderson*, at 85. (reference is to paragraph, not page). Whether there was substantial compliance is a matter of debate- one dissenting justice wrote that "if there was substantial compliance in this case, then that means substantial compliance includes no compliance." See discussion below.

On the issue of whether Section 3 of the Fourteenth Amendment is self-executing, the Court found that it was: "In summary, based on Section Three's plain language; Supreme Court decisions declaring its neighboring, parallel Reconstruction Amendments self-executing; and the absurd results that would flow from Intervenors' reading, we conclude that Section Three is self-executing in the sense that its disqualification provision attaches without congressional action." Id, at 106.

In arriving at their decision, the Court was required to analyze the *In re Griffin*, 11 F. Cas. 7 (C.C.D. Va. 1869) (No. 5,815) ("*Griffin's Case*"). *Griffin's Case* is a non-binding opinion written by Chief Justice Salmon Chase while he was riding circuit. Caesar Griffin challenged his criminal conviction because the judge who convicted him had previously served in Virginia's Confederate government. Chief Justice Chase concluded that Section 3 could be applied to disqualify only if Congress provided legislation describing who is subject to disqualification as well as the process for removal from office. Thus, Chief Justice Chase concluded that Section Three was not self-executing. *Griffin's Case*, at 26. Caesar Griffin's conviction and sentence were ordered to stand. Nonetheless, the Court concluded that congressional action was only one means of disqualification, and that Colorado's election process provided another, equally valid, method of determining whether a candidate for office was disqualified under Section 3. *Id.* at 105. That alternative to Congressional action is an election challenge hearing.

The Court went on to address each of the Constitutional issues raised by Candidate Trump, deciding each in favor of the objectors.

For example, the Court, found that "the record amply established that the events of January 6 constituted a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish the peaceful transfer of power in this country. Under any viable definition, this constituted an insurrection." *Anderson*, at 189.

The Court concluded that the "record fully supported the district court's finding that President Trump engaged in insurrection within the meaning of Section Three," *Id.* at 225, and ordered that President Trumps' name not be placed on the 2024 presidential primary ballot.

Three justices wrote dissenting opinions.

Justice Boatright described in detail that the complexity of the Electors' claims cannot be squared with section 1-1-113's truncated timeline for adjudication. *Id.* at 264-268. He noted that under Colorado election law, a hearing is to be held within five days; in this case, however, it took nearly two months for a hearing to be held, a fact he argues is proof that the election procedures are inadequate for complex constitutional objections. *Id.* at 266.

Justice Samour argued in his opinion Section 3 was not self-executing; further, that the Colorado procedures dictating expedited proceedings denied President Trump due process.

Hearing Officer's Findings and Recommendation re Candidate's Motion to Dismiss

1. While the timeline for conducting a hearing and issuing findings is similar in both the Illinois election code and the Colorado election code, there are substantial differences, at least in terms of handling identical objections involving Section 3 of the Fourteenth Amendment;

2. In Colorado a trial judge hears evidence at a hearing while in Illinois, the Board conducts the hearing, typically through an appointed hearing officer;

3. The instant Illinois case, 24 SOEB GP 517, was called on January 18, 2024, the same day a hearing officer was appointed to handle the case. with hearing set on January 26, 2024. As described in Appendix A, above, a mad scramble of motions, responses and replies then took place, between January 19 and January 25. The hearing was held on the 26th, with an opinion expected to be filed by the hearing officer in advance of the Election Board hearing set for January 30th. There was no opportunity for meaningful discovery or subpoena of witnesses;

4. The Colorado hearing did not take place for nearly two months following the initial filing of the objection. The hearing lasted more than a week, with a full week devoted to taking testimony. At the hearing, several witnesses testified, including an expert witness in Constitutional law by each party; thereafter, closing arguments were held and a decision was rendered several days later;

5. Illinois law, including the Supreme Court decisions of *Goodman* and *Delgado* prohibit the Election Board from addressing issues involving constitutional analysis.

Recommendation on Candidate's Motion to Dismiss

The Hearing Officer finds that there is a legal basis for granting the Candidate's Motion to Dismiss the Objectors' Petition and **recommends** to the Board that the Motion to Dismiss be **granted.**

Hearing Officer's Findings and Recommendation Regarding the Objector's Petition

1. It is a unique feature of the Rules of Procedure that the final decision on dispositive motions, such as the Motion to Dismiss, are to be made by the Board. Inasmuch as the Board may decline to follow the Hearing Officer's recommendation, and that evidence has been received on the Objector's Petition, it is incumbent upon the hearing officer that he makes findings on the evidence received at the hearing and make a **recommendation** to the Board regarding a decision based on the evidence.

2. The Hearing Officer has received into evidence for consideration numerous exhibits. This evidence also includes the trial testimony heard in the case of *Anderson v.Griswold*, 2023 Co 63 (2023).

3. The Hearing Officer, pursuant to the Stipulated Order Regarding Trial Transcripts and Exhibits from the Colorado Action, has reviewed the entire transcript, consisting of several hundred pages, and finds while the hearing/trial did not afford all the benefits of a criminal trial, (e.g., right to trial by jury; proponent bearing a burden of beyond a reasonable doubt), the proceedings was conducted in a fashion that guaranteed due process for President Trump: parties had the benefit of competent counsel, the right to subpoena witnesses and the right to cross-examine witnesses. The proceeding was conducted in an open and fair manner, with no undue time restrictions that would effect the length of testimony on direct or cross. The parties clearly took advantage of the fact that they were not constrained by the typical expedited manner in which election challenges are normally carried out in Colorado. In fact, one dissenting justice on the Supreme Court commented on the greatly relaxed time frame, in response to the majority claim that the hearing was held in substantial compliance with the statute, by stating that if what the majority claimed was substantial compliance, then that

meant that substantial compliance included no compliance at all. In comparison to the Illinois procedure, the parties had several weeks to prepare for hearing. The result was that the witnesses included two constitutional law professors, with specialty in the history of the Fourteenth Amendment. Further, the lead investigator for the House Select Committee investigating the January 6 Attack upon the United States Capitol testified. A signed copy of the stipulation regarding testimony taken at the Coloado hearing has been transmitted to the General Counsel.

4. Hearing Officer finds that the January 6 Report, including its findings, may properly be considered as evidence, as it was by the Colorado trial court, based on Illinois Rule of Evidence 803(8), as well as the relaxed rules of evidence at an administrative hearing. Hearing Officer further finds, after reviewing the Report, that it is a trustworthy report, the result of months of investigation conducted by professional investigators and a staff of attorneys, many of whom with substantial experience in federal law enforcement. The findings of the Report are attached to this opinion.

5. Ultimately, even when giving the Candidate the benefit of the doubt wherever possible, in the context of the events and circumstances of January 6, 2024, the Hearing Officer recommends that the Board find in favor of the Objectors on the merits by a preponderance of the evidence. While the Candidate's tweets to stay peaceful may give the candidate plausible deniability, the Hearing Officer does not find that denial credible in light of the circumstances. Dr. Simi's testimony in the Colorado trial court provides a basis for finding that the language used by the candidate was recognizable to elements attending the January 6 rally at the ellipse as a call for violence upon the United States Capitol, the express purpose of the violence being the furtherance of the President's plan to disrupt the electoral count taking place before the joint meeting of Congress.

6. The evidence shows that President Trump understood the divided political climate in the United States. He understood and exploited that climate for his own political gain by falsely and publicly claiming the election was stolen from him, even though every single piece of evidence demonstrated that his claim was demonstrably false. He used these false claims to garner further political support for his own benefit by inflaming the emotions of his supporters to convince them that the election was stolen from him and that American democracy was being undermined. He understood the context of the events of January 6, 2021 because he created the climate. At the same time he engaged in an elaborate plan to provide lists of fraudulent electors to Vice President Pence for the express purpose of disrupting the peaceful transfer of power following an election.
7. Even though the Candidate may not have intended for violence to break out on January 6, 2021, he does not dispute that he received reports that violence was a likely possibility on January 6, 2021. Candidate does not dispute that he knew violence was occurring at the capitol.. He understood that people were there to support him. Which makes one single piece of evidence, in this context, absolutely damning to his denial of his participation: the tweet regarding Mike Pence's lack of courage while Candidate knew the attacks were going on is inexplicable. Candidate knew the attacks were

occurring because the attackers believed the election was stolen, and this tweet could not possibly have had any other intended purpose besides to fan the flames. While it is true that subsequently, but not immediately afterwards, Candidate tweeted calls to peace, he did so only after he had fanned the flames. The Hearing Officer determines that these calls to peace via social media, coming after an inflammatory tweet, are the product of trying to give himself plausible deniability. Perhaps he realized just how far he had gone, and that the effort to steal the election had failed because Vice President Pence had refused to accept the bag of fraudulent electors. It was time to retreat, with a final tweet telling the nation that he loved those who had assembled and attacked the caitol.

CONCLUSION

In the event that the Board decides to not follow the Hearing Officer's recommendation to grant the Candidate's Motion to Dismiss, the Hearing Officer recommends that the Board find that the evidence presented at the hearing on January 26, 2024 proves by a preponderance of the evidence that President Trump engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment, and should have his name removed from the March, 2024 primary ballot in Illinois.

Submitted by

Clark Erickson

Hearing Officer

Date _____

FINDINGS OF THE JANUARY 6 HOUSE SELECT COMMITTEE REPORT

This Report supplies an immense volume of information and testimony assembled through the Select Committee's investigation, including information obtained following litigation in Federal district and appellate courts, as well as in the U.S. Supreme Court. Based upon this assembled evidence, the Committee has reached a series of specific findings,[19] including the following:

1. Beginning election night and continuing through January 6th and thereafter, Donald Trump purposely disseminated false allegations of fraud related to the 2020 Presidential election in order to aid his effort to overturn the election and for purposes of soliciting contributions. These false claims provoked his supporters to violence on January 6th.

2. Knowing that he and his supporters had lost dozens of election lawsuits, and despite his own senior advisors refuting his election fraud claims and urging him to concede his election loss, Donald Trump refused to accept the lawful result of the 2020 election. Rather than honor his constitutional obligation to "take Care that the Laws be faithfully executed," President Trump instead plotted to overturn the election outcome.

3. Despite knowing that such an action would be illegal, and that no State had or would submit an altered electoral slate, Donald Trump corruptly pressured Vice President Mike Pence to refuse to count electoral votes during Congress's joint session on January 6th.

4. Donald Trump sought to corrupt the U.S. Department of Justice by attempting to enlist Department officials to make purposely false statements and thereby aid his effort to overturn the Presidential election. After that effort failed, Donald Trump offered the position of Acting Attorney General to Jeff Clark knowing that Clark intended to disseminate false information aimed at overturning the election.

5. Without any evidentiary basis and contrary to State and Federal law, Donald Trump unlawfully pressured State officials and legislators to change the results of the election in their States.

6. Donald Trump oversaw an effort to obtain and transmit false electoral certificates to Congress and the National Archives.

7. Donald Trump pressured Members of Congress to object to valid slates of electors from several States.

8. Donald Trump purposely verified false information filed in Federal court.

9. Based on false allegations that the election was stolen, Donald Trump summoned tens of thousands of supporters to Washington for January 6th. Although these supporters were angry and some were armed, Donald Trump instructed them to march to the Capitol on January 6th to "take back" their country.

10. Knowing that a violent attack on the Capitol was underway and knowing that his words would incite further violence, Donald Trump purposely sent a social media message publicly condemning Vice President Pence at 2:24 p.m. on January 6th.

11. Knowing that violence was underway at the Capitol, and despite his duty to ensure that the laws are faithfully executed, Donald Trump refused repeated requests over a multiple hour period that he instruct his violent supporters to disperse and leave the Capitol, and instead watched the violent attack unfold on television. This failure to act perpetuated the violence at the Capitol and obstructed Congress's proceeding to count electoral votes.

12. Each of these actions by Donald Trump was taken in support of a multi-part conspiracy to overturn the lawful results of the 2020 Presidential election.

13. The intelligence community and law enforcement agencies did successfully detect the planning for potential violence on January 6th, including planning specifically by the Proud Boys and Oath Keeper militia groups who ultimately led the attack on the Capitol. As January 6th approached, the intelligence specifically identified the potential for violence at the U.S. Capitol. This intelligence was shared within the executive branch, including with the Secret Service and the President's National Security Council.

14. Intelligence gathered in advance of January 6th did not support a conclusion that Antifa or other left-wing groups would likely engage in a violent counter-demonstration, or attack Trump supporters on January 6th. Indeed, intelligence from January 5th indicated that some left-wing groups were instructing their members to "stay at home" and not attend on January 6th.[20] Ultimately, none of these groups was involved to any material extent with the attack on the Capitol on January 6th.

15. Neither the intelligence community nor law enforcement obtained intelligence in advance of January 6th on the full extent of the ongoing planning by President Trump, John Eastman, Rudolph Giuliani and their associates to overturn the certified election results. Such agencies apparently did not (and potentially could not) anticipate the provocation President Trump would offer the crowd in his Ellipse speech, that President Trump would "spontaneously" instruct the crowd to march to the Capitol, that President Trump would exacerbate the violent riot by sending his 2:24 p.m. tweet condemning Vice President Pence, or the full scale of the violence and lawlessness that would ensue. Nor did law enforcement anticipate that

President Trump would refuse to direct his supporters to leave the Capitol once violence began. No intelligence community advance analysis predicted exactly how President Trump would behave; no such analysis recognized the full scale and extent of the threat to the Capitol on January 6th.

16. Hundreds of Capitol and DC Metropolitan police officers performed their duties bravely on January 6th, and America owes those individuals immense gratitude for their courage in the defense of Congress and our Constitution. Without their bravery, January 6th would have been far worse. Although certain members of the Capitol Police leadership regarded their approach to January 6th as "all hands on deck," the Capitol Police leadership did not have sufficient assets in place to address the violent and lawless crowd.[21] Capitol Police leadership did not anticipate the scale of the violence that would ensue after President Trump instructed tens of thousands of his supporters in the Ellipse crowd to march to the Capitol, and then tweeted at 2:24 p.m. Although Chief Steven Sund raised the idea of National Guard support, the Capitol Police Board did not request Guard assistance prior to January 6th. The Metropolitan Police took an even more proactive approach to January 6th, and deployed roughly 800 officers, including responding to the emergency calls for help at the Capitol. Rioters still managed to break their line in certain locations, when the crowd surged forward in the immediate aftermath of Donald Trump's 2:24 p.m. tweet. The Department of Justice readied a group of Federal agents at Quantico and in the District of Columbia, anticipating that January 6th could become violent, and then deployed those agents once it became clear that police at the Capitol were overwhelmed. Agents from the Department of Homeland Security were also deployed to assist.

17. President Trump had authority and responsibility to direct deployment of the National Guard in the District of Columbia, but never gave any order to deploy the National Guard on January 6th or on any other day. Nor did he instruct any Federal law enforcement agency to assist. Because the authority to deploy the National Guard had been delegated to the Department of Defense, the Secretary of Defense could, and ultimately did deploy the Guard. Although evidence identifies a likely miscommunication between members of the civilian leadership in the Department of Defense impacting the timing of deployment, the Committee has found no evidence that the Department of Defense intentionally delayed deployment of the National Guard. The Select Committee recognizes that some at the Department had genuine concerns, counseling caution, that President Trump might give an illegal order to use the military in support of his efforts to overturn the election.

* * *

EXHIBIT 4

Transcript before Hearing Officer

ILLINOIS STATE BOARD OF ELECTIONS

Steven Daniel Anderson; Charles J. Holley; Jack L. Hickman; Ralph E. Cintron; Darryl P. Baker, Petitioners-Objectors,	)	
v.	)	Case No.
Donald J. Trump, Respondent-Candidate.	)	24SOEBGP517

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause before Clark Erickson, Hearing Officer, on the 26th day of January, 2024.

Reported By: Julie Walsh, CSR
License No.: 084-004032

incredibly limited amounts of violence and certainly not in an organized mob.

If you look at the Colorado transcripts, I would suggest you look carefully at Tom Bjorklund's testimony. I jokingly refer to him as Ishmael, the character from Moby Dick. He's sort of the witness of everything. And he attended the rally and that was first-person evidence unlike anything that has been provided here. First-person evidence of someone who was actually at the Ellipse. 11:06

And we also produced Ms. Kremer. She testified in Colorado. And that testimony has been admitted. She was the organizer of the rally. And there's video there and we're not showing that video because it's really boring. And the reason why it's really boring is there is no violence. There's people milling about. There's people listening to the YMCA song from the Village People before President Trump goes on to speak. And then there's people walking and talking to one another. And that's really the main stuff that occurred that day. So to argue that the crowd was some organized unified mob 11:06 11:07

submitted by counsel for consideration at this hearing by myself with the help of course with Alex my clerk.

The -- it's my responsibility now as the Hearing Officer to the Board to arrive at an opinion and to -- as to ruling on the various motions that have been filed and ultimately to make recommendations to the Board as to how those motions should be ruled on by the Board and as to the evidence presented to make a recommendation to the Board.

My written ruling will go to the Board this weekend and that will be -- it will actually go to general counsel and then will be -- certainly become part of the recommendation made by the general counsel at the hearing of the State Board on January 30th.

So I'm prepared to at this time adjourn the hearing and as I've said many times as a trial judge to take the matter under advisement. But I do want to comment on the work that I have seen done by the attorneys. Certainly I would follow up and agree with Mr. Piers that there has been a lack of rank here.

There's been collegiality among the attorneys.

So it has been an honor to serve as the Hearing Officer with really such a high quality of counsel on both sides. The briefs have been exemplary and the -- certainly the 12:34
arguments today made by both sides have been of the highest quality and so I commend the attorneys on both sides. And at this time the hearing will be --

MR. MERRILL: Your Honor, may I just mention 12:35
one thing just because we're on the record.

HEARING OFFICER ERICKSON: Yes.

MR. MERRILL: And I think in connection when you mentioned the January 6 report a few minutes ago, you mentioned -- you used the word admitted. 12:35
And I believe perhaps we would ask for clarification that it was submitted to you for your consideration, but there -- that you had not yet made a determination as to admission into evidence or not I'm presuming. 12:35

HEARING OFFICER ERICKSON: Yes. Okay. I understand your point. I have read it and I'm certainly going to consider it. So I, you know, subject to any objections you've made, I will be

EXHIBIT 5

Objectors' Motion to Grant Petition for Judicial Review

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

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

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

OBJECTORS' MOTION TO GRANT PETITION FOR JUDICIAL REVIEW

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

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

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

INTRODUCTION

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

Judge Clark Erickson (Ret.), the hearing officer who painstakingly evaluated the several-thousand-page record in this case and the parties' legal arguments, assessed the evidence and found it "proves by a preponderance of the evidence that President Trump engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment, and should have his name removed from the March, 2024 primary ballot in Illinois." C-6673 V12 (Hearing Officer Report and Recommended Decision at 17). However, Judge Erickson, who performed his duty as a hearing officer for the Board as a one-off specifically for this case, was troubled by resolving a big case through expedited election proceedings. He ultimately recommended that the Electoral Board find that it did not have statutory authority to "address[] issues involving constitutional analysis." C-

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

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

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

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

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

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

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

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

determine that Trump engaged in insurrection as provided in Section 3 of the Fourteenth Amendment, and as a result, is disqualified from the presidency; and (3) order that his name shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President of the United States for the March 19, 2024 General Primary Election or the November 5, 2024 General Election.

PROCEDURAL HISTORY

On January 4, 2024, Objectors timely filed their objection challenging Trump's nomination papers as a candidate for the Republican Nomination for the Office of President. They asserted that Candidate's nomination papers are not valid because when he swore in his Statement of Candidacy that he is "qualified" for the Office of the Presidency as required by 10 ILCS 5/7-10, he did so falsely. C-278 V2 (Objectors' Petition at 2). He is disqualified, because having sworn an oath to support the U.S. Constitution as President of the United States, he engaged in the January 6th insurrection. C-279 V2 (Objectors' Petition at 3). The Objection was assigned to hearing officer Ret. Judge Clark Erickson on January 17, 2024; he was tasked with making a recommendation to the Electoral Board based on his resolution of the legal and factual issues. On January 19, 2024, the parties simultaneously filed dispositive motions: Objectors filed a Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment, and the Candidate filed a Motion to Dismiss Objectors' Petition.

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

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

At the hearing before Judge Erickson on January 26, 2024, the parties relied on the Colorado transcripts and exhibits, affidavits appended to their motions, and other documentary evidence "in the interests of justice and efficiency to minimize unnecessary or duplicative testimony." C-6537 V12 (*Id.* at 1). Significantly, Trump opted not to testify, either in person or even by affidavit. Following the hearing and review of the parties' briefing on the legal issues and the robust record, Judge Erickson issued his ruling. He found that the evidence presented "proves by a preponderance of the evidence that President Trump engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment, and should have his name removed from the March, 2024 primary ballot in Illinois." However, Judge Erickson recommended that the Board dismiss the Objection—not on the merits—but on the grounds that the Board lacks authority to decide it. He concluded that "Illinois law, including the Supreme Court decisions of *Goodman* and *Delgado* prohibit the Election Board from addressing issues involving constitutional analysis." C-6670, C-6673 V12 (Hearing Officer Report and Recommended Decision at 14, 17).

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

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

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

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

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

and exploited [the divided political climate in the United States] to garner further political support for his own benefit by inflaming the emotions of his supporters to convince them that the election was stolen from him and that American democracy was being undermined." C-6672 V12 (Hearing Officer Report and Recommended Decision at 16); *see also* C-4991 V10 (Trump Tweet Compilation at 4) (tweeting that the election was "RIGGED"); C-4991 V10 (*id.*) (tweeting that Joe Biden would be an "illegitimate president"); C-4993 V10 (*id.* at 6) (tweeting that there was "tremendous evidence" of "voter fraud"); C-4999 V10 (*id.* at 12) (tweeting on January 5, 2021 that Vice President Pence had ("the power to reject fraudulently chosen electors").

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

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

11. It is undisputed that Trump and his campaign staff became directly involved in the planning of a demonstration on January 6th at the Ellipse ("Ellipse Demonstration"), a park south of the White House fence and north of Constitution Avenue and the National Mall in Washington,

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

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

13. It is undisputed that at the Ellipse Demonstration, the Trump-approved speakers who preceded him urged the crowd to take action to ensure that Congress and/or Pence rejected electoral votes for Biden. Representative Mo Brooks of Alabama urged the crowd to "start taking down names and kicking ass" and to be prepared to sacrifice their "blood" and "lives" and "do what it takes to fight for America" by "carry[ing] the message to Capitol Hill," since "the fight begins today." C-3729 V8 n.81 (Mot. for Summary Judgment at 19 n.81). Trump's lawyer Rudy Giuliani called for "trial by combat." C-3729 V8 n.82 (*Id*. at 19 n.82).

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

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

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

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

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

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

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

19. It is undisputed that at 2:24 PM, at the height of violence, Trump made his first public statement during the attack, further encouraging and provoking the crowd by tweeting: "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!" C-5003 V10 (Trump Tweet Compilation at 16). As Judge Erickson noted, Trump made this tweet while knowing that an attack was occurring on the Capitol "because the attackers believed the election was stolen." C-6672-73 V12 (Hearing Officer Report and Recommended Decision at 16-17). The only possible purpose of that tweet, Judge Erickson found, was "to fan the flames" of the attack. C-6673 V12 (*Id.* at 17); *see also* C-5116 V10 (January 6th Report at 86) (Trump's tweet "immediately precipitated further violence at the Capitol").

20. It is further undisputed that Trump did not issue any public statement telling the attackers to cease their attack or to disperse until 4:17 PM—more than three hours after the attack began—at which point he tweeted a video stating: "I know your pain. I know your hurt. . . . We love you. You're very special, you've seen what happens. You've seen the way others are treated. . . . I know how you feel, but go home, and go home in peace." C-5610-11 V11 (January 6th Report at 579-80). Immediately after Trump uploaded the video to Twitter—something he could have done hours earlier—the attackers began to disperse from the Capitol and cease the attack. C-5637

V11 (January 6th Report at 606).

21. At 6:01 PM, Trump issued his final tweet of the day in which he stated: "These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!" C-5638 V11 (January 6th Report at 607). This fact is also undisputed.

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

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

24. To this day, Trump has never expressed regret that his supporters violently attacked the U.S. Capitol, threatened to assassinate the Vice President and other key leaders, and obstructed congressional certification of the electoral votes. Instead, Trump has continued to defend and praise the attackers. Just recently, at a 2024 presidential campaign event he stated: "I call them the J6 hostages, not prisoners. I call them the hostages, what's happened. And it's a shame." C-3740 V8 n.155 (Mot. for Summary Judgment at 30 n.155).

STANDARD OF REVIEW

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

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

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

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

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

ARGUMENT

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

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

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

[2] *See, e.g.* U.S. Const. art. II, § 1, cl. 5 (specifying age, residency, and citizenship qualifications for Office of President); U.S. Const. Amend. XXII, § 1 (forbidding the election of a person to the office of President more than twice); U.S. Const. Amend. XIV, § 3 (requiring disqualification of candidates for public office who took an oath to uphold the Constitution and then engaged in or supported insurrection against the United States).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Hearing Officer, and subsequently the Board, read *Goodman* to mean that "an electoral board goes too far not just when it holds a statute unconstitutional but also goes too far when it enters the realm of constitutional analysis," C-6664 V12 (Hearing Officer Report and Recommended Decision at 8), and reasoned the Board is prohibited from applying Section 3 of the Fourteenth Amendment. This is not what *Goodman* says or means.

In *Goodman*, the Electoral Board rejected an objection that a candidate did not meet the residency requirement mandated by the Election Code, instead disregarding the Code's requirements as unconstitutional based on its analysis of the Illinois Constitution. 241 Ill. 2d at 410-11. When the Illinois Supreme Court stated "the electoral board overstepped its authority when it undertook this constitutional analysis. It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code," *id.* at

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

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

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

> The statutory requirements governing statements of candidacy and oaths are mandatory. If a candidate's statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot. Though [the candidate] did sign the statutorily required statement of candidacy and submit it with his nomination petition in the case before us, the statement did not satisfy statutory requirements. As we have discussed, his representation that "I am legally qualified to hold the office of Circuit Court Judge, 12th District [*sic*], 4th Judicial Subcircuit" was untrue. Ward did not meet the qualifications for office.

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

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

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

For example, the Electoral Board has previously, repeatedly, evaluated and applied presidential requirements set out in the U.S. Constitution. In at least one prior case, it even analyzed its own statutory authority to evaluate objections based on presidential candidate qualifications and explicitly determined it was empowered to rule on the objection's constitutional merits. In that case, presidential Candidate Marco Rubio challenged the Board's statutory authority to hear an objection that he did not meet the natural born citizen requirement set out in Article II, Section 1, Clause 5 of the U.S. Constitution. The Board rejected the challenge: "the Objector alleges that the Statement of Candidacy is invalid because the Candidate is not legally qualified to hold the office of President. . . [but] the Board is acting within the scope of its authority in reviewing the adequacy of the Candidate's Statement of Candidacy." *Graham v. Rubio*, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board); *Graham v. Rubio*, No. 16 SOEB GP 528 (Feb. 1, 2016) (adoption by SOEB).[5] *See also, e.g., Freeman v. Obama*, No. 12 SOEB GP 103 (Feb. 2, 2012) (evaluating objection that candidate did not meet qualifications for office of President of the United States set out in Article II, Section 1 of the United States Constitution); *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); *Socialist Workers*

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

Party of Illinois v. Ogilvie, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (approving Electoral Board's decision not to place presidential candidate who did not meet constitutional age qualification on ballot and denying motion for preliminary injunction to enjoin decision).

This is consistent with court decisions confirming that electoral boards not only can but must *apply* constitutional provisions. *See Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 ("While petitioner is correct that *electoral boards* do not have authority to declare statutes unconstitutional, they *are required to decide,* in the first instance, *if a proposed referendum is* permitted by law, even where *constitutional* provisions are implicated." (emphasis added)); *Zurek*, 2015 IL App (1st) 150456, ¶ 33-35 (recognizing while "the Board does not have the authority to declare a *statute* unconstitutional[, this] does not mean that the Board had no authority to consider the constitutionally-based challenges" and that to determine whether the referendum "was valid and whether the objections should be sustained or overruled, the Board was required to determine if the referendum was authorized by statute or the constitution").

Judge Erickson also grounded his recommendation in concern that objections that present complex factual disputes in a short time period fall beyond electoral boards' ability—and thus authority—to resolve. He credited the Candidate's argument: "The Board can and does resolve disputes about nominations and qualifications on records that are undisputed or (in the Board's estimation) not materially disputed. It does not and cannot hold lengthy and complex evidentiary proceedings of the kind that would be needed to assess objections like these." C-6666 V12 (Hearing Officer Report and Recommended Decision at 10). But this principle is simply not true. Just as evaluation of "constitutional issue[s]" is both authorized and required, resolving highly disputed facts is part of electoral boards' bread and butter. The Election Code both mandates and equips them to do so. *See* 10 ILCS 5/10-10 (granting subpoena power for witnesses and documents

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

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

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

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

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

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

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

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

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

A. The January 6th Report is Admissible.

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

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

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

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

B. January 6th Was Unquestionably an Insurrection.

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

Stat 322 (determining that the January 6th attackers were "insurrectionists"); the Trump administration's own Department of Justice, Government's Br. in Supp. of Detention at 1, *United States v. Chansley*, No. 2:21-MJ-05000-DMF, ECF No. 5 (D. Ariz. Jan. 14, 2021); and even Trump's own defense attorney during his impeachment trial, *see* 167 Cong. Rec. S729 ("[T]he question before us is not whether there was a violent insurrection of [sic] the Capitol. *On that point, everyone agrees.*") (emphasis added).[7]

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

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

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

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

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

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

C. Trump Engaged in the January 6th Insurrection.

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

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

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

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

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

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

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

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

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

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

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

III. SECTION 3 BARS FORMER PRESIDENTS FROM THE PRESIDENCY.

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

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

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

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

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

[8] *See, e.g.*, U.S. Const. art. II, § 1, cl. 1 ("[The President] shall hold his *Office* during the Term of four years."), art. II, § 1, cl. 8 ("Before he enter on the Execution of his *Office*, he shall take the following Oath or Affirmation:—'I do solemnly swear (or affirm) that I will faithfully execute the *Office* of President of the United States . . . .'") (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> In summary, based on Section Three's plain language; Supreme Court decisions declaring its neighboring, parallel Reconstruction Amendments self-executing; and the absurd results that would flow from Intervenors' reading, we conclude that Section Three is self-executing in the sense that its disqualification provision attaches without congressional action.

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

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

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

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

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

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

CONCLUSION

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

Dated: February 5, 2024

PETITIONERS-OBJECTORS

By: _/s/ Caryn C. Lederer_____
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