E-FILED
Transaction ID: 1-24-0437
File Date: 4/26/2024 2:24 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-24-0437

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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

BRIEF OF PETITIONERS-APPELLEES

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This case initiated as a challenge, under Section Three of the Fourteenth Amendment to the U.S. Constitution ("Section Three") and Section 5/7-10 of the Illinois Election Code, to Respondent Donald J. Trump's eligibility as a candidate for president in the March 19, 2024 Republican presidential primary. The Illinois State Board of Elections (sitting as the State Officers Electoral Board) (the "Electoral Board") overruled Petitioners' challenge, and the Circuit Court reversed the decision of the Electoral Board and found Trump constitutionally disqualified to serve as president and thus ineligible as a candidate in the primary. Shortly after the Circuit Court's decision, the United States Supreme Court issued a decision holding that "Congress, rather than the States, [is] responsible for enforcing Section 3 against federal officeholders and candidates." *Trump v. Anderson*, 601 U.S. 100, 106 (2024). The United States Supreme Court did not address the issue of whether the Colorado Supreme Court's finding that Trump engaged in an insurrection was in error. This Court reversed and vacated the Circuit Court's opinion only "as it relates to and in light of *Trump v. Anderson*." Supp. R. 198. In other words, because states lack authority under *Anderson* to enforce Section Three, the Circuit Court's finding that Trump is ineligible for the presidency under Section Three was reversed. But this Court's order reversing and vacating the opinion below "as it relates to . . . *Trump v. Anderson*" does not, need not, and should not go any further than that.

Critically, the Supreme Court's opinion in *Anderson* did *not* address any issue of Illinois election law; yet a significant portion of Petitioners' appeal to the Circuit Court concerned the Electoral Board's errors of state law, errors which would be upheld if this Court were to vacate the Circuit Court's opinion in its entirety. Such a result would create dangerously flawed precedent for future election challenges.

Petitioners submit that the Electoral Board clearly erred as a matter of state law when it adopted the legal conclusion of its General Counsel: that even when a candidate is not qualified for the office he seeks, an objection to a candidate's qualifications cannot be sustained unless the objectors prove that the candidate's statement regarding his qualifications was "knowingly false." (Supp. R. 100); *see also* (Supp. R. 103 ¶ 10) (adopting legal conclusions from General Counsel's recommendation). That interpretation of Section 5/7-10 of the Election Code is at odds with the text and purpose of the provision, as well as existing Illinois Supreme Court and other precedent. The Circuit Court agreed with Objectors that the General Counsel's "recommendation raising a scienter requirement under Section 5/7-10 of the Election Code to determine the candidate's qualification to be on the ballot is without basis and contrary to existing Illinois law." (Supp. R. 154 n.32).

In vacating those portions of the Circuit Court's opinion "relate[d] to *Trump v. Anderson*," this Court expressly directed Respondent to brief the "remaining state law issues." Yet Respondent has declined to do so, maintaining that there are "no pertinent state law issues remaining for decision." Br. at 4. State law issues like the proper interpretation of Section 5/7-10, however, are *not* moot because the primary election has already taken place or because the Supreme Court has said that states cannot enforce Section Three. Illinois law clearly provides through the well-established public interest exception to the mootness doctrine that a court can and should reach the merits of an issue in an otherwise moot case where, as here, the question presented is of a public nature, resolution of the question will provide useful guidance to public officers, and the question is likely to recur. *Jackson v. Bd. of Election Comm'rs of City of Chicago*, 2012 IL 111928, ¶ 44.

Under the public interest exception, this Court should reach the merits of this important issue of state election law and affirm that an unqualified candidate is barred from the ballot under Section 5/7-10 of the Election Code, regardless of the candidate's subjective belief that he is qualified.

ISSUES PRESENTED FOR REVIEW

1. Whether the public interest exception to the mootness doctrine applies to a question regarding the standard an electoral board applies when reviewing an objection to a political candidate's qualifications for office under Section 5/7-10 of the Election Code.
2. Whether nomination papers including a statement that a candidate is qualified for the office specified, even though he is not, are nevertheless valid under Section 5/7-10 of the Election Code as long as the candidate subjectively believed that he was qualified.

STATEMENT OF FACTS

On January 4, 2024, Respondent Donald J. Trump filed nomination papers to appear on the ballot in the March 19, 2024 general primary election as a candidate for the Republication nomination for President of the United States. As required by 10 ILCS 5/7-10, Trump certified, among other things, that he was "legally qualified" to hold the office of President. (Supp. R. 193)

That same day, Petitioners filed their objection to Trump's candidacy before the State Board of Elections sitting as the State Officers Electoral Board. (*Id.* at 5) Petitioners asserted that, contrary to Trump's certification, he was not "legally qualified" to hold the office of presidency because he had "engaged in insurrection" against the U.S. Constitution on January 6, 2021 having previously sworn an oath as a federal officer to support the

Constitution, and was thus forbidden from holding office under Section Three of the Fourteenth Amendment. U.S. Const. amend. XIV, § 3; (Supp. R. 10-11). At the time Trump filed his nomination papers in Illinois, tribunals in two other states, Colorado and Maine, had concluded that Trump was ineligible for the presidency under Section Three. (Supp. R. 10-11).

The Electoral Board assigned retired Judge Clark Erickson as the Hearing Officer for Petitioners' objection. Following briefing on Trump's motion to dismiss the objection and Petitioners' motion for summary judgment and a hearing before Judge Erickson, Judge Erickson issued a report and recommended decision. (*Id.* at 166) Judge Erickson found that Petitioners had proven by a preponderance of evidence that Trump had engaged in insurrection within the meaning of Section Three and therefore his name should be removed from the March 2024 primary ballot. (*Id.* at 182) Yet he nevertheless recommended that the Electoral Board grant Trump's motion to dismiss, and thus not reach the question of whether Trump engaged in insurrection, because he concluded that Illinois law "prohibit[s] the Election Board from addressing issues involving constitutional analysis." (*Id.* at 179).

After Judge Erickson issued his report and recommendation, the Electoral Board's General Counsel issued her own recommendation. The General Counsel stated that she "concur[red] in the Hearing Officer's recommended result," but offered alternative bases for that result "to reduce the possibility that a reviewing court remands the matter back to the [Electoral Board] for further proceedings." (*Id.* at 97-98) The General Counsel proceeded to recommend that the Electoral 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, does not violate Section 7-10 and cannot invalidate his nomination papers." (*Id.* at 100) In support of that conclusion, the General Counsel emphasized that Trump had "consistently denied that he engaged in insurrection and violated Section 3." (*Id.*) The General Counsel acknowledged that "proving someone else's state of mind in making a statement of his own beliefs regarding his eligibility for office is not easily proven." (*Id.*) She offered, however, that Petitioners "could have subpoenaed the notary public or other witnesses to the signing of [Trump's] Statement of Candidacy regarding any admissions Candidate may have made when he signed indicating his state of mind." (*Id.*)

At the January 30, 2024 meeting of the Electoral Board, one of the Board's members moved for the Electoral Board to "accept the general counsel's recommendation that the candidate did not file a false statement of candidacy." (*Id.* at 267). The motion passed (*id.* at 269), and the Board issued a decision that adopted "the conclusions of law and recommendations of the General Counsel" and found that Petitioners had not met their burden to prove that Trump's Statement of Candidacy was "falsely sworn" in violation of 10 ILCS 5/7-10. (*Id.* at 103-104)

Petitioners sought judicial review of the Electoral Board's decision in the Circuit Court of Cook County pursuant to 10 ILCS 5/10-10.1. Following briefing and a hearing, the Circuit Court issued a Memorandum of Judgment on February 28, 2024 that reversed the Electoral Board's decision, determined that the Circuit Court had jurisdiction to evaluate ballot challenges that required constitutional analysis, evaluated the merits of Plaintiffs' Section 3 challenge, and found that Petitioners proved by a preponderance of

the evidence that Trump's name should be removed from the ballot for the March 2024 general primary election because Trump engaged in insurrection against the U.S. Constitution under Section Three. (Supp. R. 157, 158). The Circuit Court stayed the effect of its order pending appeal and pending any decision from the United States Supreme Court in *Anderson* that might be inconsistent with the Circuit Court's order. (*Id.* at 158)

Regarding the proper interpretation of 10 ILCS 5/7-10, the Circuit Court rejected the proposition that an unqualified candidate remains eligible for the ballot as long as he subjectively believed he was qualified. Rather, the Circuit Court looked to the plain language of Section 5/7-10 and the Illinois Supreme Court's ruling in *Goodman v. Ward*, 241 Ill. 2d 398 (2011), and determined that a candidate must actually be "legally qualified" when he swears to a Statement of Candidacy to be eligible for the ballot. (Supp. R. 156-57)

Trump filed a Notice of Appeal to this Court on February 28, 2024. On March 4, 2024, the United States Supreme Court issued its opinion in *Trump v. Anderson*, the appeal from the Colorado Supreme Court's ruling that Trump was ineligible to be on the ballot in Colorado under Section Three. The Supreme Court reversed the Colorado Supreme Court, holding that "the Constitution makes Congress, rather than the States, responsible for enforcing Section 3 against federal officeholders and candidates." *Anderson*, 601 U.S. at 106. The Supreme Court did not address whether Trump engaged in insurrection under Section Three. Nor, of course, did it rule on the proper interpretation of the Illinois Election Code. The stay of the Circuit Court's order remained in effect, and Trump remained on the ballot for the March 19, 2024 primary.

On March 27, 2024, upon Trump's motion, this Court reversed and vacated the Circuit Court's Memorandum of Judgment only "as it relates to and in light of *Trump v. Anderson*." (Supp. R. 198). The Court further ordered the parties to brief the "remaining state law issues." (*Id.*)

STANDARD OF REVIEW

Whether an appeal should be dismissed as moot is "entirely a question of law" to be reviewed *de novo*. *In re Alfred H.H.*, 233 Ill. 2d 345, 350 (2009); *see also In re K.C.*, 2019 IL App (4th) 180693, ¶ 20 (deciding *de novo* whether public-interest exception to mootness doctrine applies). The proper interpretation of 10 ILCS 5/7-10 is, likewise, a pure question of law subject to *de novo* review. *Goodman v. Ward*, 241 Ill. 2d 398, 406 (2011).

ARGUMENT

I. The Court Should Apply The Public Interest Exception To The Mootness Doctrine And Rule On The Proper Interpretation of Section 5/7-10

The Electoral Board's erroneous imposition of a "knowing lie" standard for ballot challenges under 10 ILCS 5/7-10 should not be allowed to stand. Correcting that error will not affect Petitioners' challenge to Trump's eligibility for the March 2024 primary, which has already passed. But clarifying the applicable standard for challenges to candidate qualifications will provide critical guidance to public officials on an issue that is likely to recur every election cycle.

Illinois courts have developed the public interest exception to the mootness doctrine for situations precisely like this one. The exception "permits 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." *Goodman v. Ward*, 241 Ill. 2d 398, 404 (2011).

As in *Goodman*, "[a]ll three factors are present here." *Id.* First, the proper interpretation of Section 5/7-10 is "a question of election law which, inherently, is a matter of public concern." *Id.* Second, the question is highly likely to recur. If the Electoral Board's interpretation were to stand, it would provide a new argument for *every* candidate whose qualifications for office are challenged: even if I am not legally qualified, they will argue, I *believed* I was qualified at the time I filed my nomination papers. This Court has the opportunity to resolve whether this argument will be viable in future qualification challenges. Third, an authoritative resolution of the issue will be especially useful to guide public officers here. As a member of the Electoral Board noted during the hearing on Petitioners' objection, the State Officers Electoral Board that adopted the standard at issue here "sets the standards, the legal standard and the procedural standard, for all other Electoral Boards across the state" including for "county elections, the village boards, school boards and the like." (Supp. R. 265-66) If, as the member suggested, the "knowing lie" standard adopted by the Electoral Board will become the standard practice "for all other Electoral Boards," even if not technically binding, it is critically important for this Court to assess whether that standard is the correct one.[1]

II. Under Section 5/7-10, A Candidate Who Is Not "Legally Qualified" For The Office Sought Is Ineligible For the Ballot, Regardless Of His Subjective Beliefs About His Qualifications

Section 5/7-10 directs that ballots must include only the names of candidates who are qualified for the office they seek. The provision mandates that candidates submit nomination papers that include a sworn statement that they are "qualified for the office

[1] On this point, Trump's argument that "the decisions of circuit courts have no precedential value," Br. at 5, provides even more reason for *this* Court to issue a precedential ruling that authoritatively resolves this issue for all electoral boards.

specified"; it is an objective standard, and does *not* contain an exception for candidates who genuinely but incorrectly believe they are qualified for the office. 10 ILCS 5/7-10. As this 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 (emphasis added). Similarly, the Illinois Supreme Court in *Goodman* recognized that Section 5/7-10'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 regarding his own qualifications is relevant to an electoral board's review of a qualifications challenge.

By statute, electoral boards must ensure that candidates actually are qualified for office—not whether 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 Electoral 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) ("[T]he legislature is without authority to change . . . the qualifications [for office prescribed in the Constitution] unless the Constitution gives it the power."). The Board's reading of Section 5/7-10 as permitting unqualified candidates on the ballot so long as they did not 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).[2] Notably, even the Illinois Attorney General, representing the State Board of Elections, declined to defend the Board's interpretations of Section 5/7-10 in the proceedings before the Circuit Court and has not filed a brief in support of that interpretation here.

The only purported "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. In other words, because the

[2] The General Counsel's Recommendation, and the Electoral 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 [Electoral Board] 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. (Supp. R. 97-98) The Circuit Court also noted the Electoral Board's apparent intention "to get as far away from this case as possible, likely given its notoriety." (Supp. R. 36 n.35)

Election Code requires candidates to file a statement of economic interest that complies with the requirements of the Ethics Act and the Ethics Act mandates that the statement contain "no willful or intentional falsehood," an inadvertent error in a statement of economic interest would not disqualify a candidate from the ballot. This holding is eminently reasonable in the context of the Ethics Act: extending it to create a "knowing lie" standard to statements of candidacy required by the Electoral Code, however, is not. *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. *See e.g., Cinkus v. 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); *Rudd v. Lake Cnty. Electoral Bd.*, 2016 IL App (2d) 160649, ¶ 21 (affirming Board decision finding candidate unqualified to run as an independent and removing his name from ballot despite candidate's belief that he had properly disaffiliated from the Democratic party); *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).

The General Counsel's Recommendation, which the Electoral Board adopted, 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 Three bars Trump from the ballot. (Supp. R. 99) But this distinction is a fiction, and the line-drawing exercise it implicates is unworkable. Even so-called "simple" challenges involving residency can often entail complex hearings lasting several days, at the end of which the electoral 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 wrong. 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 Electoral Board adopted were the law, electoral boards would see no end to candidates defending objections on the basis that objectors cannot prove that the candidates were subjectively aware of their disqualification. As if to illustrate just how far afield this scienter requirement would take electoral boards from the inquiry into a candidate's qualifications, the General Counsel 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." (Supp. R. 9) Under the proposed standard, 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, an electoral board would be bound to overrule any objections that did not prove by a preponderance of the evidence the perjurious intentions of such candidates. Failure to prove the candidates' states of mind would leave numerous unqualified candidates on Illinois ballots, a result the legislature could not have intended.

Trump may mistakenly argue that proper interpretation of Section 5/7-10 is not at issue because although the Circuit Court agreed with Petitioners that there was no basis to include "a scienter requirement under Section 5/7-10" (Supp. R. 154 n.32), the court also determined that the Electoral Board did not adopt or rely upon any scienter requirement in reaching its decision. (*Id.* at 135) But the Circuit Court's conclusion is impossible to square with the Electoral Board's express adoption of the "legal conclusions" from the General Counsel's Recommendation (Supp. R. 103 ¶ 10) and its refusal to make any factual determinations regarding the events of January 6, 2021 (*id.* ¶ 10(G)) while still concluding that Objectors failed to meet their burden to prove that Trumps Statement of Candidacy was "falsely sworn." (*Id.* ¶ 10(C)). In any event, it is ultimately the decision of the Electoral Board, "not the decision of the circuit [court]," that is under review. *Goodman*, 241 Ill. 2d at 405. And it is the Electoral Board's adoption of its General Counsel's legal conclusion regarding Section 5/7-10's purported scienter standard which this Court can and must correct.

CONCLUSION

For the reasons set forth above, this Court should rule on the proper interpretation of the Election Code, and the only permissible interpretation of Section 5/7-10 is that unqualified candidates are ineligible for the ballot regardless of their subjective beliefs. Thus, although the ruling that Trump is ineligible for the primary ballot has been vacated to the extent it is inconsistent with *Trump v. Anderson*, the remainder of the Circuit Court's decision should not be vacated, and the Court should overrule the Electoral Board's decision on the state law issues addressed in this appeal.

DATED: April 26, 2024

Respectfully submitted,

PETITIONERS-APPELLEES

By: /s/ *Caryn C. Lederer*
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14 pages.

/s/ *Caryn C. Lederer*
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