

STEVEN DANIEL ANDERSON, CHARLES J.)
HOLLEY, JACK L. HICKMAN, RALPH E.)
CINTRON, and DARRYL P. BAKER,)
)
Petitioners-Appellees,)
)
v.)
)
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.)

Appeal from the Circuit Court of)
Cook County, Illinois, County)
Department, County Division)
)
Circuit Court No.: 2024 COEL 13)
)
Hon. Tracie R. Porter,)
Judge Presiding)
)
)
E-FILED)
Transaction ID:)
File Date: 3/15/2)
Thomas D. Pale)
Clerk of the App)
APPELLATE CO)

RULE 328 SUPPORTING RECORD¹

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
3/8/2024	Supporting Record Table of Contents	Supp. R. 1
3/8/2024	Respondent's Counsel's Affidavit Regarding Preparation of Supporting Record Pursuant to Supreme Court Rule 328	Supp. R. 3
1/4/2024	"Objectors' Petition," filed with the State Officers Electoral Board (without exhibits) (C274 V2)	Supp. R. 5
1/30/2024	Electoral Board Decision Overruling Objectors' Petition (C6716)	Supp. R. 92

Supp. R. 1

<u>Date Filed</u>	<u>Title/Description</u>	<u>Page No.</u>
1/30/2024	Petitioners/Objectors' "Petition For Judicial Review" of Electoral Board Decision, filed in the Circuit Court (without exhibits)	Supp. R. 96
2/2/2024	Select Pages from Petitioners' Counsel's Briefs in Other States (filed as Exhibit D to Respondent's 2/2/2024 Motion to Stay Pending U.S. Supreme Court Decision)	Supp. R. 102
2/28/2024	Circuit Court's Memorandum of Judgment and Order Reversing the Electoral Board Decision (with Appendices) (the "Judgment")	Supp. R. 112
2/28/2024	Respondent's Notice of Appeal	Supp. R. 184
1/30/2024	Transcript of State Officers Electoral Board Meeting (R139)	Supp. R. 187
2/16/2024	Transcript of Hearing before Circuit Court (with Notice of Filing and correspondence from Court Reporter) filed in the Circuit Court on 3/8/2024	Supp. R. 316

Dated: March 8, 2024

Respectfully submitted,

RESPONDENT-APPELLANT DONALD J. TRUMP

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

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No. 1-24-0437
IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

STEVEN DANIEL ANDERSON, CHARLES J.)	Appeal from the Circuit Court of
HOLLEY, JACK L. HICKMAN, RALPH E.)	Cook County, Illinois, County
CINTRON, and DARRYL P. BAKER,)	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)	
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CATHERINE S. MCCRORY, RICK S.)	
TERVIN, SR., and JACK VRETT,)	
)	
other Respondents below.)	

**AFFIDAVIT REGARDING PREPARATION OF SUPPORTING
RECORD PURSUANT TO SUPREME COURT RULE 328**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned counsel, certifies that the statements set forth herein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true:

1. I am a member of the bar of the State of Illinois. I am a Partner with the law firm of Watershed Law LLC. I represent Respondent-Appellant in the above-captioned matter. I am competent to testify to the matters stated in this affidavit based on my own personal knowledge.

2. I prepared Respondent's Rule 328 Supporting Record (the "Supporting Record"). To the best of my knowledge, the documents contained in the Supporting Record, which are described in the table of contents, are true and correct copies of pleadings, motions, orders, and other documents as they appear in the record before the Illinois State Officers Electoral Board (the "Electoral Board") and in the Circuit Court record.

3. The Electoral Board has transmitted the entirety of its record to the Circuit Court as 12 volumes of common law record numbered C1-C6719 and 1 volume of report of proceedings numbered R1-R267. To the extent pleadings, motions, orders, and other documents from the Electoral Board's record are included in this Supporting Record, they bear the Electoral Board's numbering in addition to the numbering applied to this Supporting Record.

4. This Rule 328 Supporting Record is being filed in support of Respondent's Motion to Vacate Based on U.S. Supreme Court Decision. For purposes of Respondent's motion, the Supporting Record, including this Affidavit and the Table of Contents, have been numbered as "Supp. R. 1-____."

5. Respondent's Rule 328 Supporting Record was completed, including this affidavit, and was filed with the Appellate Court via the Court's Electronic Filing System on March 8, 2024.

FURTHER AFFIANT SAYETH NOT.

/s/ Adam P. Merrill
Adam P. Merrill

FILED
2/5/2024 12:00 AM
Iris Y. Martinez
CIRCUIT CLERK
JACKSON COUNTY, IL
CASE NO. L000013

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

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

Petitioners-Objectors,

v.

Case No.

Donald J. Trump,

Respondent-Candidate.

OBJECTORS' PETITION

STATE BOARD OF ELECTIONS
CHICAGO OFFICE
2024 JAN -4 AM 8:44

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Petitioners-Objectors Steven Daniel Anderson, Charles Holley, Jack L. Hickman, Ralph Cintron, and Darryl Baker ("Objectors") hereby file this Objectors' Petition pursuant to Article 10 of the Election Code and 10 ILCS 5/10-8 challenging the legal and factual sufficiency of the nomination papers of Respondent-Candidate Donald J. Trump ("Candidate" or "Trump") as a candidate for the Republican Nomination for the Office of the President of the United States, and in support of their Petition state the following:

**OBJECTORS' NAME, ADDRESS, LEGAL VOTER STATUS, INTEREST, AND
RELIEF REQUESTED**

1. Objector Steven Daniel Anderson resides at 2857 Falling Waters Drive, Lindenhurst, Illinois 60046 and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

2. Objector Charles J. Holley resides at 7343 S Euclid Avenue, Chicago Illinois 60649, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

3. Objector Jack L. Hickman resides at 39 Wilshire Drive, Fairview Heights, Illinois 62208, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

4. Objector Ralph E. Cintron resides at 720 S Dearborn Street, Apt. 504, Chicago Illinois, 60605, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

5. Objector Darryl P. Baker resides at 401 S. Maple Street, Colfax, Illinois, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

6. The Objectors' interest in filing this objection is that of citizens and voters desirous of seeing to it that the election laws of Illinois are properly complied with and that only duly

qualified candidates for the Republican Nomination for the Office of the President of the United States shall appear on the ballot for the General Primary Election on March 19, 2024.

7. Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate “Donald J. Trump” 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 or the November 5, 2024 General Election.

NATURE OF OBJECTION

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.

U.S. Const. amend. XIV, § 3.

8. 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.

9. Under Section 3 of the Fourteenth Amendment to the U.S. Constitution, known as the Insurrectionist Disqualification Clause, “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, 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.”

Supp. R. 9

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.”

10. As set forth below, after having sworn an oath to support the Constitution of the United States,¹ Trump has “engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof” and is therefore disqualified from public office under Section 3 of the Fourteenth Amendment.

11. On December 19, 2023, the Colorado Supreme Court decided, in a detailed 133-page opinion, a case presenting nearly identical legal and factual issues as this challenge. *See Anderson v. Griswold*, __ P.3d __, 2023 CO 63, 2023 WL 8770111 (Colo. Dec. 19, 2023). (The Colorado Supreme Court decision is attached as Exhibit A, and the trial court’s Final Order dated Nov. 17, 2023 is attached as Exhibit B.) Candidate Trump was a party to that proceeding and participated fully both in the trial court proceedings (including a five-day bench trial) and on appeal. The Court held that:

- a. “Congress does not need to pass implementing legislation for Section Three’s disqualification provision to attach, and Section Three is, in that sense, self-executing.”
- b. “Judicial review of President Trump’s eligibility for office under Section Three is not precluded by the political question doctrine.”
- c. “Section Three encompasses the office of the Presidency and someone who has taken an oath as President.”
- d. The trial court did not err in concluding that “the events at the U.S. Capitol on January 6, 2021, constituted an ‘insurrection.’”
- e. The trial court did not err in concluding that Trump “‘engaged in’ that insurrection through his personal actions.”
- f. “President Trump’s speech inciting the crowd that breached the U.S. Capitol on January 6, 2021, was not protected by the First Amendment.”

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

Thus, it concluded, “Trump is disqualified from holding the office of President under Section Three; because he is disqualified, it would be a wrongful act under [Colorado law] for the Secretary to list him as a candidate on the presidential primary ballot.” *Griswold*, 2023 WL 8770111, at *2-3 (Ex. A).

12. On December 28, 2023, the Maine Secretary of State also determined, following briefing and an evidentiary hearing, that Candidate Trump’s Maine “primary petition is invalid” based on his false declaration that he is qualified to hold office when he, in fact, is constitutionally disqualified under Section 3 of the Fourteenth Amendment. *See* Ruling of the Secretary of State, *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,” attached as Exhibit C). The decision recognized:

- a. The administrative authority of the Secretary of State to assess whether a candidate is “qualified” for office, and thus can be included on the state ballot, encompasses constitutional qualifications, including under Section 3.
- b. Section Three is self-executing without Congressional action and applies to the office of President.
- c. The “events of January 6, 2021 were an insurrection.”
- d. “Trump engaged in the insurrection of January 6, 2021.”
- e. There is no precedent to support Trump’s argument that the First Amendment can “override” Section 3 or any other qualification for public office.
- f. Trump’s speech, in any case, “is unprotected by the First Amendment,” because it was intended to incite lawless action.

Like in Colorado, Trump was a party to the proceeding and fully participated, including through the opportunity to present evidence; call witnesses; cross-examine; and argue legal and factual issues. *Id* at 17.

13. Thus, the only two decisions evaluating Section 3 challenges that reached the *merits* of the challenge and assessed evidence from both Candidate Trump and objectors, determined that Trump is constitutionally barred from office.

14. “*The oath to support the Constitution is the test.* The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress.” *Worthy v. Barrett*, 63 N.C. 199, 204 (1869). Persons who are disqualified by Section 3 are thus ineligible to hold the presidency, just like those who fail to meet the age, residency, or natural-born citizenship requirements of Article II, Section 1 of the Constitution, or those who have already served two terms, as provided by the Twenty-Second Amendment.

15. The events of January 6, 2021 were an insurrection or a rebellion under Section 3: a violent, coordinated effort to storm the Capitol to obstruct and prevent the Vice President of the United States and the United States Congress from fulfilling their constitutional roles by certifying President Biden’s victory, and to illegally extend then-President Trump’s tenure in office.

16. The effort to overthrow the results of the 2020 election by unlawful means, from on or about November 3, 2020, through at least January 6, 2021, constituted a rebellion under Section 3: an attempt to overturn or displace lawful government authority by unlawful means.

17. Candidate Trump, during his impeachment proceedings, admitted the events of January 6 constituted “insurrection”: his defense lawyer acknowledged “everyone agrees,” “there was a violent insurrection of the Capitol.”² Indeed, by overwhelming majorities, both chambers of Congress declared those who attacked the Capitol on January 6, 2021 “insurrectionists.” Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322. Just days afterward, the U.S. Department of Justice under the Trump administration labeled it an “insurrection” in federal court.³ So have at least

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

³ 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).

fifteen federal judges.⁴ And both courts that have addressed the question of whether the January 6 attack constituted an “insurrection” within the meaning of Section 3 have held that it did. *See Griswold*, 2023 WL 8770111, at *37-39 (Ex. A); *State ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at *17-19 (N.M. 1st Jud. Dist., Sept. 6, 2022), appeal dismissed, No. S-1-SC-39571 (N.M. Nov. 15, 2022), cert. filed May 18, 2023.

18. Under Section 3, to “engage” means “a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from the insurrectionists’ perspective] termination.” *United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871); *Worthy*, 63 N.C. at 203 (defining “engage” under Section 3 to mean “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary”); Att’y Gen. Henry Stanbery, *The Reconstruction Acts*, 12 U.S. Op. Att’y. Gen. 141, 161-62 (1867) (defining “engage” in similarly-worded statute to include “persons who . . . have done any overt act for the purpose of promoting the rebellion”); Att’y Gen. Henry Stanbery, *The Reconstruction Acts*, 12 U.S. Op. Att’y. Gen. 182, 204 (1867) (defining “engage” in similarly-worded statute to require “an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose”).

19. An individual need not personally commit an act of violence to have “engaged” in insurrection. *Powell*, 27 F. Cas. at 607 (defendant paid to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (defendant simply served as county sheriff). Indeed, Jefferson Davis—the president of the Confederacy—never fired a shot.

20. All three modern judicial decisions to construe “engage” under Section 3 have adopted this standard. *See Griswold*, 2023 WL 8770111, at *39-45 (Colorado Supreme Court summarizing definition as “an overt and voluntary act, done with the intent of aiding or furthering

⁴ *See infra* notes 219-228.

the common unlawful purpose”); *White*, 2022 WL 4295619, at *19; *Rowan v. Greene*, Case No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off. of State Admin. H’gs, May 6, 2022), slip op. at 13-14. The only courts and election officials that have addressed the merits of a Section 3 challenge to Trump’s eligibility have concluded that Trump “engaged” in the January 6 insurrection.

21. “Engagement” does not require previous conviction, or even charging, of any criminal offense. *See, e.g., Griswold*, 2023 WL 8770111, at *23, *39-40 (Ex. A) (recognizing charging and conviction is not required and defining standard for “engage”); *Powell*, 27 F. Cas. at 607 (defendant not charged with any prior crime); *Worthy*, 63 N.C. at 203 (defendant not charged with any crime); *In re Tate*, 63 N.C. 308 (1869) (defendant not charged with any crime); *see also* Gerard N. Magliocca, *Amnesty and Section 3 of the Fourteenth Amendment*, 36 Const. Comment. 87, 98-99 (2021) (describing special congressional action in 1868 to enforce Section 3 and remove Georgia legislators, none of whom had been charged criminally); William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. __ (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4532751, at 16-22.

22. Most of the House and Senate candidates-elect that Congress excluded from their seats during Reconstruction for engagement in insurrection had never been charged or convicted of any crimes.

23. Indeed, the vast majority of disqualified ex-Confederates were never charged with any crimes.

24. Modern authority agrees that no evidence or authority suggests that a prior criminal conviction—whether under 18 U.S.C. § 2383 (insurrection) or any other statute—was ever

considered necessary to trigger Section 3. *Griswold*, 2023 WL 8770111, at *23 (Ex. A); *White*, 2022 WL 4295619, at *16, *24; *Greene*, *supra* ¶ 20, slip op., at 13.

25. As set forth in detail below and in the reports of publicly available investigations, in the months leading up to January 6, 2021, then-President Donald Trump, who was a candidate for re-election in 2020, plotted to overturn the 2020 presidential election outcome. Indeed, as detailed below, Trump has repeatedly admitted that he actively sought to prevent the certification of the results of that election.

26. First, he disseminated false allegations of fraud and challenged election results through baseless litigation. When his and his allies' 62 separate election lawsuits failed, he attempted unlawful schemes, including repeatedly pressuring then-Vice President Mike Pence to discard electoral votes from states that had voted for President-elect Biden.

27. After votes in the 2020 election were cast, Trump repeatedly exhorted his followers to "stop the fraud" and "stop the count" and falsely told them that he had won the election.⁵

28. On December 14, 2020, presidential electors convened in all 50 states and in D.C. to cast their official electoral votes. They voted 306-232 against Trump.⁶

29. To pressure then-Vice President Mike Pence to discard electoral votes from states that had voted for then-President-elect Biden, Trump summoned tens of thousands of supporters

⁵ See, e.g., Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 4, 2020 at 12:49 AM ET), <https://twitter.com/realDonaldTrump/status/1323864823680126977>, attached hereto as part of a Group Exhibit E, which is also referred to hereinafter as "Trump Tweet Compilation." See also *id.* at 2 (Nov. 5, 2020 at 12:21 PM ET), <https://twitter.com/realDonaldTrump/status/1324401527663058944?lang=en>; *id.* at 1 (Nov. 5, 2020 at 9:12 AM ET), <https://twitter.com/realDonaldTrump/status/1324353932022480896>; *id.* at 2 (Nov. 7, 2020 at 10:36 AM ET), <https://twitter.com/realDonaldTrump/status/1325099845045071873>.

⁶ National Archives, *2020 Electoral College Results*, <https://www.archives.gov/electoral-college/2020>.

to Washington for a violent protest on January 6, 2021, the day that Congress would count and certify the electoral votes.

30. Trump encouraged his supporters to dispute the election results, and on December 19, 2020, he tweeted: “Big protest in D.C. on January 6th. Be there, will be wild!”⁷

31. Armed and militant supporters, including the Proud Boys and Oath Keepers, mobilized in response to Trump’s “wild” tweet and reported for duty at the Capitol on January 6, 2021.⁸

32. Although Trump knew that these supporters were angry and that many were armed, Trump incited them to a violent insurrection and instructed them to march to the Capitol to “take back” their country.

33. His campaign was directly involved in organizing and selecting speakers for a demonstration at a park near the Capitol on January 6, 2021.⁹

34. As his supporters assembled at the Ellipse, Trump learned that approximately 25,000 people refused to walk through the magnetometers at the entrance—because they had weapons that they did not want confiscated by the Secret Service. In response, Trump ordered his team to remove the magnetometers shouting “I don’t [fucking] care that they have weapons.

⁷ See Trump Tweet Compilation, *supra* note 5, at 6 (Group Ex. E) (Dec. 19, 2020 at 1:42 AM ET), <https://twitter.com/realDonaldTrump/status/1340185773220515840>.

⁸ Indictment at 9, *U.S. v. Thomas Caldwell et al.*, 21-cr-28-APM (2021), <https://www.justice.gov/usao-dc/case-multi-defendant/file/1369071/download>; Indictment at 7-8, *U.S. v. Hostetter et al.*, 1:21-cr-00392, (D.D.C. 2021), <https://www.justice.gov/opa/press-release/file/1403191/download>; Affidavit in Support of Criminal Complaint and Arrest Warrant at 7, *U.S. v. Derrick Evans*, 1:21-cr-337, <https://www.justice.gov/usao-dc/press-release/file/1351946/download>. (pleaded guilty 3/18/22); *see also* Ex. H, H.R. REP. NO. 117-663, at 500-15 (2022) [hereinafter January 6th Report]; Ex. M, Proceedings Day 5 Tr., at 200:3-21 (Nov. 3, 2023) [hereinafter Day 5 Transcript] (Heaphy Testimony); *see also* Ex. J, Proceedings Day 2 Tr., at 79:5-80:22 (Oct. 31, 2023) [hereinafter Day 2 Transcript] (Simi Testimony).

⁹ See January 6th Report, *supra* note 8, at 533-36 (Ex. H); Anna Massoglia, *Trump’s political operation paid more than \$3.5 million to Jan. 6 organizers*, OPEN SECRETS (Feb. 10, 2021), <https://www.opensecrets.org/news/2021/02/jan-6-protests-trump-operation-paid-3p5mil/>.

They're not here to hurt me. . . . Let my people in. They can march to the Capitol from here. Take the [fucking] mags away."¹⁰

35. The speakers who preceded Trump on the stage at this demonstration prepped the crowd with violent rhetoric. Trump's lawyer, Rudy Giuliani, called for "trial by combat,"¹¹ and 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."¹²

36. During Trump's speech at the demonstration, he said, "We fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore."¹³ Trump then instructed the crowd to march on the Capitol.¹⁴

37. What followed was a searing image of violence Americans will always remember: violent insurrectionists flooding the Capitol, brandishing the Confederate flag and other symbols of insurrection and white supremacy, beating law enforcement, breaking into the chambers, threatening to kill Vice President Pence, Speaker of the House Nancy Pelosi, and other leaders,

¹⁰ See January 6th Report, *supra* note 8, at 585 (Ex. H).

¹¹ Wash. Post, *Trump, Republicans incite crowd before mob storms Capitol*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/mh3cbd7niTQ>.

¹² The Hill, *Mo Brooks gives FIERY speech against anti-Trump Republicans, socialists*, YOUTUBE (Jan. 6, 2021), <https://youtu.be/ZKHwV6sdrMk>.

¹³ *Rally on Electoral College Vote Certification*, at 4:41:25, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification>; see also *Donald Trump Speech "Save America" Rally Transcript January 6*, at 1:12:43, REV (Jan. 6, 2021), <https://bit.ly/3GheZid> [hereinafter *Donald Trump Speech*]; Brian Naylor, *Read Trump's Jan. 6 Speech, A Key Part Of Impeachment Trial*, NPR (Feb. 10, 2021), <https://n.pr/3G1K2ON>.

¹⁴ *Rally on Electoral College Vote Certification*, *supra* note 13, at 3:46:55; *Donald Trump Speech*, *supra* note 13, at 16:25; Naylor, *supra* note 13.

and ultimately overwhelming law enforcement and successfully seizing control of the Capitol building.¹⁵

38. The insurrectionists shared the common purpose of preventing Congress from certifying the electoral vote.¹⁶ And the attack forced members of Congress and Vice President Pence to flee and suspended Congress' count of the electoral vote.¹⁷

39. Trump watched on television as the insurrectionists demanded Pence's murder (chanting "hang Mike Pence!"),¹⁸ Trump then goaded them further. Knowing that his supporters' violent attack on the Capitol was underway and knowing that his words would aid and encourage the insurrectionists and induce further violence, at 2:24 PM Trump sent a widely-read social media

¹⁵ Ex. F, Staff of S. Comm. on Rules & Admin., 117th Cong., A Review of the Security, Planning, and Response Failures on January 6, at 28 (June 1, 2021) [hereinafter Rules & Admin. Review]; see January 6th Report, *supra* note 8, at 651-59 (Ex. H); Ex. I, Proceedings Day 1 Tr., at 142:9-143:2, 144:11-23, 146:16-18 (Oct. 30, 2023) [hereinafter Day 1 Transcript] (Swalwell Testimony); see also Day 1 Transcript, *supra* at 197:8-13, 199:8-200:8 (Ex. I) (Pigeon Testimony); Ex. L, Proceedings Day 4 Tr., at 192:10-195:24 (Nov. 2, 2023) [hereinafter Day 4 Transcript] (Buck Testimony); H.R. REP. NO. 117-2, at 16 (2021), <https://www.govinfo.gov/app/details/CRPT-117hrpt2/CRPT-117hrpt2>; Audie Cornish et al., *Transcript: 2 reporters who were in the Capitol on Jan. 6 talk about media coverage of the attack*, NPR (Jan. 5, 2022), <https://www.npr.org/2022/01/05/1070700663/2-reporters-who-were-in-the-capitol-on-jan-6-talk-about-media-coverage-of-the-at>; Jacqueline Alemany et al., *What Happened on Jan. 6*, WASH. POST (Oct. 31, 2021), <https://wapo.st/3eSdf2y>; Kelsie Smith & Travis Caldwell, *Disturbing video shows officer crushed against door by mob storming the Capitol*, CNN (Jan. 9, 2021), <https://cnn.it/3eAmdSc>; Clare Hymes & Cassidy McDonald, *Capitol riot suspect accused of assaulting cop and burying officer's badge in his backyard*, CBS NEWS (Mar. 13, 2021), <https://cbsn.ws/3eFAaxS>.

¹⁶ See *Rally on Electoral College Vote Certification*, *supra* note 13, at 4:34:53; *Donald Trump Speech*, *supra* note 13, at 1:05:43; Naylor, *supra* note 13; see also Day 4 Transcript, *supra* note 15, at 230:3-7, 341:24-342:8 (Ex. L) (Buck Testimony); Day 1 Transcript, *supra* note 15, at 197:8-13, 199:8-200:8 (Ex. I) (Pigeon Testimony).

¹⁷ See January 6th Report, *supra* note 8, at 466 (Ex. H); Martha Mendoza & Juliet Linderman, *Officers maced, trampled: Docs expose depth of Jan. 6 chaos*, ASSOCIATED PRESS (Mar. 10, 2021), <https://bit.ly/3F2Hi26>; Alemany, *supra* note 15.

¹⁸ See January 6th Report, *supra* note 8, at 449 n.171 (Ex. H).

message publicly condemning Pence. He said, “Mike Pence didn’t have the courage to do what should have been done to protect our Country and our Constitution.”¹⁹

40. During the attack, contrary to his staff’s urging, Trump did not order any federal law enforcement or the D.C. National Guard to help retake the Capitol or protect Pence or Congress from the attackers.²⁰

41. Despite knowing that violence was ongoing at the Capitol and that his violent supporters would have heeded a call from him to withdraw, for 187 minutes, Trump refused repeated requests that he instruct his violent supporters to disperse and leave the Capitol. Instead, he reveled in the violent attack as it unfolded on television.

42. When he finally made a public statement at 4:17 PM, he said: “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.”²¹

43. The insurrection overwhelmed and defeated the forces of civilian law enforcement; forced the United States Congress to go into recess; stopped the fundamental and essential constitutional process of certifying electoral votes; forced the Vice President, Senators, Representatives, and staffers into hiding; occupied the United States Capitol, a feat never before

¹⁹ This tweet was removed. It is archived on the American Oversight website. 2:24 PM-2:24 PM, AMERICAN OVERSIGHT, <https://www.americanoversight.org/timeline/224-p-m> (archived); *see also* Trump Tweet Compilation, *supra* note 5, at 9 (Group Ex. E) (Jan. 6, 2021 at 2:24 PM ET); January 6th Report, *supra* note 8, at 429, 596 (Ex. H).

²⁰ *See* January 6th Report, *supra* note 8, at 6-7, 595 (Ex. H); Ex. G, The Daily Diary of President Donald J. Trump, January 6, 2021 [Hereinafter Trump Daily Diary]; *READ: Transcript of CNN’s town hall with former President Donald Trump*, CNN (May 11, 2023), <https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html>; *see also* Day 2 Transcript, *supra* note 8, at 245:19-250:16, 259:20-260:11 (Ex. J) (Banks Testimony).

²¹ *See* January 6th Report, *supra* note 8, at 579-80 (Ex. H); *President Trump Video Statement on Capitol Protestors*, C-SPAN (Jan. 6, 2021), <https://www.c-span.org/video/?507774-1/president-trump-video-statement-capitol-protesters>.

achieved in the history of our country, by the Confederate rebellion or otherwise; held the Capitol for hours; and blocked the peaceful transition of power in the United States of America, another feat never achieved by the Confederate rebellion.

44. The Colorado Supreme Court recently confirmed that Trump’s action and inaction during the January 6, 2021 insurrection met the definition of “engag[ing]” in “insurrection” as set out in Section 3 of the Fourteenth Amendment. *Griswold*, 2023 WL 8770111 at *37-44 (Ex. A). The Maine Secretary of State did the same, finding that Trump engaged in insurrection and was thus disqualified from the office of presidency and could not appear on the Maine presidential primary ballot. *See* Ex. C.

45. Donald J. Trump, through his words and actions, after swearing an oath as an officer of the United States to support the Constitution, engaged in insurrection or rebellion, or gave aid and comfort to its enemies, as defined by Section 3 of the Fourteenth Amendment. He is disqualified from holding the presidency or any other office under the United States unless and until Congress provides him relief, which it has not done.

AUTHORITY AND DUTY OF BOARD TO HEAR OBJECTION

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

47. Under the Illinois Election Code, presidential primary candidates, like candidates for other offices, *must include* with their nomination papers a statement of candidacy that, among other things, states that the candidate “is qualified for the office specified.” 10 ILCS 5/7-10. The Election Code specifies candidate qualifications, as do the constitutions of the State of Illinois and the United States. *See, e.g., Goodman v. Ward*, 241 Ill. 2d 398, 407 (2011) (holding electoral board erred in denying objection and striking candidate’s name from ballot where candidate falsely stated he was “qualified” for office despite not meeting eligibility requirements set forth in Illinois Constitution); U.S. Const. art. II, § 1, cl. 5 (specifying age, residency, and citizenship qualifications for Office of President); U.S. Const. Amend. XXII, § 1 (forbidding the election of a person to the office of President more than twice); U.S. Const. Amend. XIV, § 3 (requiring disqualification of candidates for public office who took an oath to uphold the Constitution and then engaged in or supported insurrection against the United States or gave aid or comfort to those who have).

48. The Illinois Supreme Court in *Goodman* directed that objections based on constitutionally-specified qualifications *must be evaluated*, including objections that a candidate has improperly sworn that they meet constitutional qualifications for the office for which they seek candidacy. *Goodman*, 241 Ill. 2d at 409-10 (“The statutory requirements governing statements of candidacy and oaths are mandatory If a candidate’s statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot”).

49. Decisions of other Illinois courts track *Goodman* and recognize that electoral boards *must apply* constitutional criteria governing ballot placement. *See Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 (“While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the

first instance, if a proposed referendum is permitted by law, even where constitutional provisions are implicated”); *Zurek v. Peterson*, 2015 IL App (1st) 150456, ¶ 33-35 (unpublished) (recognizing that while “the Board does not have the authority to declare a *statute* unconstitutional[, this] does not mean that the Board had no authority to consider the constitutionally-based challenges” and that to determine whether the referendum “was valid and whether the objections should be sustained or overruled, the Board was required to determine if the referendum was authorized by a statute or the constitution”).

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

51. Article II, Section 1, Clause 5 of the U.S. Constitution requires the President to be a natural-born citizen, at least thirty-five years of age, and a resident of the United States for at least fourteen years. Section 1 of the Twenty-Second Amendment provides that no person can be elected President more than twice. Section 3 of the Fourteenth Amendment disqualifies from public office any individual who has taken an oath to uphold the U.S. Constitution and then engages in insurrection or rebellion against the United States, or gives aid or comfort to those who have. Objections to a candidate's inclusion on the primary ballot, asking the Electoral Board to apply these constitutional requirements, fall directly within the Electoral Board's jurisdiction and mandatory duties.

52. The Board's evaluation of this objection to the Candidate's constitutional eligibility criteria follows the Election Code and the Illinois Supreme Court's direction in *Goodman* that the board *must* evaluate a candidate's statement of candidacy that they are "qualified" for the office at the time the nomination papers are filed because "statutory requirements governing statements of candidacy and oaths are mandatory." 241 Ill. 2d at 409-10; *see also Delgado v. Bd. of Election Comm'rs of City of Chicago*, 224 Ill. 2d 481, 485-86 (2007) (differentiating the impermissible action of an electoral board's "question[ing] its validity" of underlying legal prerequisites from the required action of an electoral board *applying* a constitutional provision). *Accord* Maine Sec. of State Ruling, Ex. C at 12-13 (evaluating Section 3 challenge and recognizing that the statutory obligation to determine if a candidate's nomination petition meets election code requirements requires limiting ballot access to qualified candidates under the U.S. Constitution).

53. To do so, the Electoral Board has the ability, and indeed the clear obligation, when necessary to evaluate evidence and resolve complex factual issues. The Board is obligated to "decide whether or not the certificate of nomination or nominating papers or petitions on file are

valid or whether the objections thereto should be sustained” 10 ILCS 5/10-10. To fulfill that responsibility, the Board “shall have the power to administer oaths and to subpoena and examine witnesses” and to require “the production of such books, papers, records, and documents as may be evidence of any matter under inquiry” *Id.* Electoral boards and their hearing officers indeed utilize this power to hear and evaluate the credibility of high volumes of witness testimony and documentary evidence in an expedited manner whenever necessary to fulfill their mandate. *See, e.g., Raila v. Cook Cnty. Officers Electoral Bd.*, 2018 IL App (1st) 180400-U, ¶¶ 17-27 (unpublished) (“the hearing officer heard testimony from over 25 witnesses and the parties introduced over 150 documents and a short video clip” and “issued a 68-page written recommendation that contained his summary of the testimony and documentary evidence”); *Muldrow v. Barron*, 2021 IL App (1st) 210248, ¶¶ 28-30 (electoral board properly made factual finding of widespread fraud based on determinations as to the credibility of witnesses’ testimony). *Accord* Maine Sec. of State Ruling, Ex. C at 16-17 (recognizing that determining the validity of a nomination petition can range from straightforward to complex, and may require review of evidentiary records and application of governing law).

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

STATEMENT OF FACTS

55. The facts set out below clearly show that the Candidate cannot meet the eligibility requirements for office as set out in Section 3 of the Fourteenth Amendment because he: (1) was an officer of the United States; (2) took an oath to support the Constitution of the United States, and (3) engaged in insurrection or rebellion or gave aid or comfort to insurrectionists.

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

56. On January 20, 2017, Donald Trump was sworn in as forty-fifth president of the United States.

57. On that day, Trump swore the presidential oath of office required by Article II, section 1, of the Constitution: “I, Donald John Trump, do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my Ability preserve, protect, and defend the Constitution of the United States.”²²

58. After taking the oath, Trump gave an inaugural speech, in which he stated, “Every four years, we gather on these steps to carry out the orderly and peaceful transfer of power.”²³ Less than four years later, he sought to do exactly the opposite.

II. TRUMP’S SCHEME TO OVERTURN THE GOVERNMENT.

A. Trump Sought Re-Election but Prepared to Retain Power Even if He Lost.

59. On June 18, 2019, at a rally in Florida, Trump officially launched his campaign for election to a second term as President.²⁴

60. During his campaign, Trump repeatedly stated that fraudulent voting activity would be the only possible reason for electoral defeat (rather than not receiving enough votes). For example:

²² Trump White House Archived, *supra* note 1, at 26:36; *see also* U.S. Const. art. II, § 1, cl. 8.

²³ Trump White House Archived, *supra* note 1, at 29:52; *see also* Ex. K, Proceedings Day 3 Tr., at 59:17-62.6 (Nov. 1, 2023) (Magliocca Testimony) (testimony that Presidency is historically understood as an “office” within the scope of the Fourteenth Amendment).

²⁴ *Donald Trump formally launches 2020 re-election bid*, BBC (June 18, 2019), <https://www.bbc.com/news/world-us-canada-48681573>.

- a. On August 17, 2020, Trump spoke to a crowd in Oshkosh, Wisconsin and stated: “The only way we’re going to lose this election is if the election is rigged.”²⁵
- b. On August 24, 2020, during his Republican National Convention acceptance speech, Trump stated: “The only way they can take this election away from us is if this is a rigged election.”²⁶
- c. On September 24, 2020, Trump stated: “We want to make sure the election is honest, and I’m not sure that it can be. I don’t know that it can be with this whole situation [of] unsolicited ballots.”²⁷

61. In particular, Trump claimed that this “fraud” occurred or would occur in cities and states with majority or substantial Black populations.

62. In parallel, Trump aligned himself with violent extremist and white supremacist organizations and suggested they should be prepared to act on his behalf.

63. For example, on September 29, 2020, Trump was asked if he would disavow the Proud Boys. Instead, he stated: “Proud Boys, stand back and *stand by*,” later adding “somebody’s got to do something about Antifa and the left.”²⁸

64. The Proud Boys celebrated this as a call to “stand by” to be ready for future action:

²⁵ Kevin Liptak, *Trump warns of ‘rigged election’ as he uses conspiracy and fear to counter Biden’s convention week*, CNN (Aug. 18, 2020), <https://www.cnn.com/2020/08/17/politics/donald-trump-campaign-swing/index.html>.

²⁶ *RNC 2020: Trump warns Republican convention of ‘rigged election’*, BBC (Aug. 25, 2020), <https://www.bbc.com/news/election-us-2020-53898142>.

²⁷ *President Trump Departs White House*, C-SPAN (Sept. 24, 2020), <https://www.c-span.org/video/?476212-1/president-trump-departs-white-house#>.

²⁸ Associated Press, *Trump tells Proud Boys: ‘Stand back and stand by’*, YOUTUBE (Sept. 29, 2020), https://www.youtube.com/watch?v=qIHhB1ZMV_o.

- a. On the social media site Parler, Proud Boys leader Henry “Enrique” Tarrio responded, “Standing by sir.”²⁹ (Tarrio was convicted of seditious conspiracy on May 4, 2023 and sentenced to 22 years in prison for his role on January 6.³⁰)
- b. Another Proud Boys leader, Joseph Biggs, posted, “President Trump told the proud boys to stand by because someone needs to deal with ANTIFA...well sir! We’re ready!!” and “Trump basically said to go fuck them up! this makes me so happy.”³¹ (Biggs was convicted of seditious conspiracy and sentenced to 17 years in prison for his role on January 6.³²)
- c. That same night, the Proud Boys began making and selling merchandise with the slogan “Stand Back and Stand By.”

65. Meanwhile, before November 3, 2020 (“Election Day”), Trump was advised by his campaign manager William Stepien not to prematurely declare victory while lawful votes, including mail-in and absentee ballots, were still being counted.³³

²⁹ See January 6th Report, *supra* note 8, at 507-08 (Ex. H); Mike Baker (@ByMikeBaker), TWITTER (Sept. 29, 2020 at 9:28 PM), <https://twitter.com/ByMikeBaker/status/1311130735584051201> [hereinafter Baker Tweet].

³⁰ *Proud Boys Leader Sentenced to 22 Years in Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, DEP’T. OF JUSTICE (Sept. 5, 2023), <https://www.justice.gov/usao-dc/pr/proud-boys-leader-sentenced-22-years-prison-seditious-conspiracy-and-other-charges>.

³¹ See January 6th Report, *supra* note 8, at 507-08 (Ex. H); Baker Tweet, *supra* note 29.

³² *Two Leaders of the Proud Boys Sentenced to Prison on Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach*, DEP’T. OF JUSTICE (Aug. 31, 2023), <https://www.justice.gov/usao-dc/pr/two-leaders-proud-boys-sentenced-prison-seditious-conspiracy-and-other-charges-related-us>.

³³ Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 7 (June 13, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhr48999/pdf/CHRG-117hhr48999.pdf> [hereinafter Second Jan. 6 Hearing Transcript].

66. Notwithstanding Stepien's advice, Trump and his associates planned to declare victory before all ballots were counted. For instance:

- a. On November 1, 2020, Trump told close associates that he would declare victory on election night if it looked as if he was "ahead."³⁴
- b. Around the same time, Steve Bannon, former White House strategist and advisor to Trump told a group of associates: "And what Trump's going to do is just declare victory, right? He's gonna declare victory, but that doesn't mean he's the winner. He's just gonna say he's a winner."³⁵

67. On November 3, 2020, the United States held its fifty-ninth presidential election.

68. That evening, media outlets projected Biden was in the lead.³⁶

69. Trump falsely and without any factual basis alleged that widespread voter fraud had compromised the validity of such results. For example:

- a. On November 4, 2020, he tweeted: "We are up BIG, but they are trying to STEAL the Election. We will never let them do it. Votes cannot be cast after the Polls are closed!"³⁷

³⁴ Jonathan Swan, *Scoop: Trump's plan to declare premature victory*, AXIOS (Nov. 1, 2020), <https://www.axios.com/2020/11/01/trump-claim-election-victory-ballots>.

³⁵ Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 38 (July 21, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhrg49356/pdf/CHRG-117hhrg49356.pdf>.

³⁶ Meg Wagner et al., *Election 2020 presidential results*, CNN (Nov. 5, 2020), <https://www.cnn.com/politics/live-news/election-results-and-news-11-04-20/index.html>.

³⁷ See Trump Tweet Compilation, *supra* note 5, at 1 (Group Ex. E) (Nov. 4, 2020 at 12:49 AM ET), <https://twitter.com/realDonaldTrump/status/1323864823680126977>.

- b. On November 5, 2020, he tweeted: “STOP THE FRAUD!” and, “STOP THE COUNT!”³⁸

70. On November 7, 2020, news organizations across the country declared that Joseph Biden won the 2020 presidential election.³⁹

71. That same day, Trump falsely tweeted: “I WON THIS ELECTION, BY A LOT!”⁴⁰

B. Trump Attempted to Enlist Government Officials to Illegally Overturn the Election.

72. After Election Day, several aides and advisors close to Trump investigated his election fraud claims and informed Trump that such allegations were unfounded. For example:

- a. Days after the election, lead data expert Matt Oczkowski informed Trump that he would lose because not enough votes were in his favor.⁴¹
- b. At approximately the same time, former Attorney General William Barr told Trump he did not agree with the idea of saying the election was stolen.⁴²
- c. On November 23, 2020, Barr again informed Trump that his claims of fraud were not meritorious.⁴³

³⁸ *Id.* (Nov. 5, 2020 at 9:12 AM ET), <https://twitter.com/realDonaldTrump/status/1324353932022480896>; *id.* at 2, (Nov. 5th, 2020 at 12:21 PM ET), <https://twitter.com/realDonaldTrump/status/1324401527663058944?lang=en>.

³⁹ See, e.g., Bo Erickson, *Joe Biden projected to win presidency in deeply divided nation*, CBS NEWS (Nov. 7, 2020), <https://www.cbsnews.com/news/joe-biden-wins-2020-election-46th-president-united-states/>; Scott Detrow & Asma Khalid, *Biden Wins Presidency, According to AP, Edging Trump in Turbulent Race*, NPR (Nov. 7, 2020), <https://www.npr.org/2020/11/07/928803493/biden-wins-presidency-according-to-ap-edging-trump-in-turbulent-race>.

⁴⁰ See Trump Tweet Compilation, *supra* note 5, at 2 (Group Ex. E) (Nov. 7, 2020 at 10:36 AM ET), <https://twitter.com/realDonaldTrump/status/1325099845045071873>.

⁴¹ Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, No. 117-2, at 6 (June 9, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhr48998/pdf/CHRG-117hhr48998.pdf> [hereinafter First Jan. 6 Hearing Transcript].

⁴² Second Jan. 6 Hearing Transcript, *supra* note 33, at 13.

⁴³ Select Comm. to Investigate the Jan. 6 Attack on the U.S. Capitol, Transcribed Interview of William Barr, at 18 (June 2, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-Supp.R.29>

- d. In mid to late November, campaign lawyer Alex Cannon told Trump's Chief of Staff Mark Meadows that he had not found evidence of voter fraud sufficient to change the results in any of the key states.⁴⁴

73. On December 1, 2020, Attorney General William Barr publicly declared that the U.S. Justice Department found no evidence of voter fraud that would warrant a change of the election result.⁴⁵

74. Sometime between the election and December 14, 2020, Trump asked Barr to instruct the Department of Justice to seize voting machines.⁴⁶

75. Barr refused, citing a lack of legal authority.⁴⁷

76. Around December 6, 2020, Trump called the Chairwoman of the Republican National Committee Ronna Romney McDaniel to enlist the Committee's support in gathering a slate of electors for Trump in states where President-elect Biden had won the election but legal challenges to the election results were underway.⁴⁸

77. On December 8, 2020, a senior campaign advisor to Trump wrote in an internal campaign email: "When our research and campaign legal team can't back up any of the claims made by our Elite Strike Force Legal Team, you can see why we're 0-32 on our cases. I'll

CTRL0000083860/pdf/GPO-J6-TRANSCRIPT-CTRL0000083860.pdf [hereinafter Interview of William Barr].

⁴⁴ First Jan. 6 Hearing Transcript, *supra* note 41, at 6.

⁴⁵ Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, ASSOCIATED PRESS (June 28, 2022), <https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>.

⁴⁶ Interview of William Barr, *supra* note 43, at 40-41.

⁴⁷ *Id.*

⁴⁸ Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Ronna Romney McDaniel, at 8 (June 1, 2022), <https://www.documentcloud.org/documents/23559939-transcript-of-ronna-mcdaniels-interview-with-house-january-6-committee>.

obviously hustle to help on all fronts, but it's tough to own any of this when it's all just conspiracy shit beamed down from the mothership."⁴⁹

78. On December 14, 2020, presidential electors convened in all 50 states and D.C. to cast their official electoral votes. They voted 306-232 for President Biden and against Trump.⁵⁰

79. On December 14, 2020, at Trump's direction, fraudulent electors convened sham proceedings in seven targeted states where President-elect Biden had won a majority of the votes (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin) and cast fraudulent electoral ballots in favor of Trump.

80. Also on December 14, 2020, Attorney General Barr resigned as head of the Department of Justice ("DOJ") and Trump appointed Jeffrey Rosen as acting attorney general and Richard Donoghue as acting deputy attorney general.⁵¹

81. During Rosen's term, Trump requested that the DOJ file a lawsuit challenging the election before the U.S. Supreme Court as an exercise of its original jurisdiction.⁵²

82. The DOJ declined because it did not have legal authority to challenge state electoral procedures.⁵³

83. On December 18, 2020, at a meeting in the Oval Office which included Trump, Sidney Powell, Mike Flynn, Patrick Byrne, Rudy Giuliani, Mark Meadows, and other Trump advisors, Powell, Flynn, and Byrne attempted to persuade Trump to issue an executive order that

⁴⁹ Indictment at 13-14, *U.S. v. Trump*, Case No. 1:23-cr-00257-TSC, ECF No. 1 (D.D.C., Aug. 1, 2023), https://www.justice.gov/storage/US_v_Tump_23_cr_257.pdf [hereinafter August 1, 2023 Indictment].

⁵⁰ National Archives, *supra* note 6.

⁵¹ Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 1, 7 (June 23, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhrg49353/pdf/CHRG-117hhrg49353.pdf> [hereinafter Fifth Jan. 6 Hearing Transcript].

⁵² *Id.* at 8-9.

⁵³ *Id.*

would, among other things, direct the seizure of voting machines by either the Department of Homeland Security or the Department of Defense.

84. White House Counsel Pat Cipollone, Eric Herschmann (a lawyer in the White House Counsel's office and senior advisor to Trump), and Giuliani dissuaded Trump from ordering the seizure of voting machines using his official authority.

85. However, as the meeting continued, Giuliani and others stated in Trump's presence that they could instead obtain access to voting machines through "voluntary" means.⁵⁴

86. On December 31, 2020, Trump asked Rosen and Donoghue to direct the Department of Justice to seize voting machines.⁵⁵

87. Rosen and Donoghue rejected Trump's request, again for lack of authority.⁵⁶

88. Meanwhile, just as Giuliani and others had told Trump, teams coordinated by Powell, Giuliani, and other Trump advisors illegally accessed or attempted to illegally access voting machines in multiple battleground states. These included:

89. Fulton County, Pennsylvania (successfully breached Dec. 31, 2020);

90. Coffee County, Georgia (successfully breached Jan. 7, 2021); and

91. Cross County, Michigan (attempted breach Jan. 14, 2021).

⁵⁴ Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Derek Lyons, at 113-116 (Mar. 17, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000055541/pdf/GPO-J6-TRANSCRIPT-CTRL0000055541.pdf>; Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Deposition of Rudolph Giuliani, at 179-181 (May 20, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000083774/pdf/GPO-J6-TRANSCRIPT-CTRL0000083774.pdf>.

⁵⁵ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 23-24.

⁵⁶ *Id.*

92. A purpose of these illegal breaches or attempted breaches was to support Trump's efforts to overturn the 2020 election by generating supposed "proof" of "fraud," even (in the Coffee County, Georgia and Cross County, Michigan instances) after the violent January 6, 2021 attack.⁵⁷

93. Between December 23, 2020, and early January 2021, Trump attempted to speak with Rosen on the matter of purported election fraud nearly every day.⁵⁸

94. According to Rosen, "the President's entreaties became more urgent," and Trump "became more adamant that we weren't doing our job."⁵⁹

95. On December 25, 2020, Trump called Pence to wish him a Merry Christmas and to request that Pence reject the electoral votes on January 6, 2021.⁶⁰

96. Pence responded, "You know I don't think I have the authority to change the outcome."

97. On December 27, 2020, Rosen told Trump that "DOJ can't and won't snap its fingers and change the outcome of the election."⁶¹

98. Trump responded to Rosen along the lines of, "just say [the election] was corrupt and leave the rest to me [Trump] and the Republican Congressmen."⁶²

99. On January 2, 2021, Jeffrey Clark, the acting head of the Civil Division and head of the Environmental and Natural Resources Division at the DOJ, and who had met with Trump

⁵⁷ See, e.g., Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Christina Bobb, at 96-97 (Apr. 21, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000071088/pdf/GPO-J6-TRANSCRIPT-CTRL0000071088.pdf>.

⁵⁸ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 8-9.

⁵⁹ *Id.* at 10; see also Katie Benner, *Trump and Justice Dept. Lawyer Said to Have Plotted to Oust Acting Attorney General*, N.Y. TIMES (Jan. 22, 2021), <https://www.nytimes.com/2021/01/22/us/politics/jeffrey-clark-trump-justice-department-election.html>.

⁶⁰ August 1, 2023 Indictment, *supra* note 49, at 33.

⁶¹ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 13.

⁶² *Id.*

without prior authorization from the DOJ, told Rosen and Donoghue that Trump was prepared to fire them and to appoint Clark as the acting attorney general.⁶³

100. Clark asked Rosen and Donoghue if they would sign a draft letter to state officials recommending that the officials send an alternate slate of electors to Congress, and if they did so, then Clark would turn down Trump's offer and Rosen would remain in his position.⁶⁴

101. Rosen refused.⁶⁵

102. On January 3, 2021, Clark—again without authorization—met with Trump and accepted Trump's offer to become Acting Attorney General in light of Rosen and Donoghue's refusal to sign the draft letter.⁶⁶

103. That afternoon, Clark attempted to fire Rosen, but Rosen refused to be fired by a subordinate.⁶⁷

104. That evening, when told that Rosen's departure would result in mass resignations at the DOJ and his own White House Counsel, Trump relented on his plan to replace Rosen with Clark.⁶⁸

105. Trump's efforts to coerce public officials to assist in his scheme to unlawfully overturn the election were not limited to federal officials. Following his election loss, Trump publicly and privately pressured state officials in various states around the country to unlawfully overturn the election results. For example, on January 2, 2021, in a recorded telephone

⁶³ See January 6th Report, *supra* note 8, at 397 (Ex. H).

⁶⁴ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 28-29.

⁶⁵ *Id.*

⁶⁶ See January 6th Report, *supra* note 8, at 398 (Ex. H).

⁶⁷ Fifth Jan. 6 Hearing Transcript, *supra* note 51, at 28.

⁶⁸ Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Richard Peter Donoghue, at 125-27 (Oct. 1, 2021), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000034600/pdf/GPO-J6-TRANSCRIPT-CTRL0000034600.pdf>.

conversation, Trump pressured Georgia Secretary of State Brad Raffensperger to “find 11,780 votes” for him, and thereby fraudulently and unlawfully turn his electoral loss in Georgia to an electoral victory.

106. Trump’s relentless false claims about election fraud and his public pressure and condemnation of election officials resulted in threats of violence against election officials around the country.

107. Trump knew about the threats of violence that he was provoking and, in the face of pleas from public officials to denounce the violence, instead further encouraged it with inflammatory tweets.

108. During the weeks leading up to January 6, 2021, Trump oversaw, directed, and encouraged a “fake elector” scheme under which seven states that Trump lost would submit an “alternate” slate of electors as a pretext for Vice President Pence to decline to certify the actual electoral vote on January 6.

109. Trump’s efforts to unlawfully overturn the results of the 2020 presidential election are the subjects of criminal indictments pending against him in the United States District Court for the District of Columbia and in the State of Georgia.

110. On January 3, 2021, Trump again told Pence that Pence had the right to reject the electoral vote on January 6.⁶⁹

111. Pence again rejected Trump’s request.⁷⁰

112. On January 4, 2021, Trump and his then-attorney John Eastman met with then-Vice President Mike Pence and his attorney Greg Jacob to discuss Eastman’s legal theory that Pence

⁶⁹ August 1, 2023 Indictment, *supra* note 49, at 33.

⁷⁰ *Id.*

might either reject votes on January 6 during the certification process, or suspend the proceedings so that states could reexamine the results.⁷¹

113. Later, Trump admitted that the decision to continue seeking to overturn the election after the failure of legal challenges was his alone. On a September 17, 2023 broadcast of NBC's "Meet the Press," moderator Kristen Welker asked Trump: "The most senior lawyers in your own administration and on your campaign told you that after you lost more than 60 legal challenges that it was over. Why did you ignore them and decide to listen to a new outside group of attorneys?" Trump responded, "I didn't respect them as lawyers. . . . You know who I listen to? Myself."⁷² When Welker asked, "Were you calling the shots, though, Mr. President, ultimately?", Trump replied, "As to whether or not I believed it was rigged? Oh, sure. It was my decision."⁷³

114. On January 5, 2021, Eastman met privately with Jacob.⁷⁴

115. Eastman expressly requested that Pence reject the certification of election results.⁷⁵

116. During that meeting, Eastman acknowledged that what he was requesting that Pence do for Trump was clearly unlawful, stating that vice presidents both before and after Pence would not have the legal authority to do so under the Electoral Count Act, and that this purported legal theory would lose in the Supreme Court without a single justice in agreement.⁷⁶

⁷¹ Hearing Before the Select Comm. To Investigate the January 6th Attack on the United States Capitol, No. 117-4, at 17-18 (June 16, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hhrg49351/pdf/CHRG-117hhrg49351.pdf> [hereinafter Third Jan. 6 Hearing Transcript]; *see also* Order Re Privilege of Documents, *Eastman v. Thompson*, No. 8:22-cv-00099, ECF No. 260 at 7 (C.D. Cal. March 28, 2022).

⁷² Full transcript: Read Kristen Welker's interview with Trump, NBC NEWS (Sept. 17, 2023), <https://www.nbcnews.com/meet-the-press/transcripts/full-transcript-read-meet-the-press-kristen-welker-interview-trump-rcna104778>.

⁷³ *Id.*

⁷⁴ Third Jan. 6 Hearing Transcript, *supra* note 71, at 19-20.

⁷⁵ *Id.*

⁷⁶ *Id.* at 15-16, 21.

117. All the while, Trump continued to publicly and falsely maintain that the 2020 presidential election results were illegitimate due to fraud, and set the false expectation that Pence had the authority to overturn the election. For example:

- a. On December 4, 2020, Trump tweeted: “RIGGED ELECTION!”⁷⁷
- b. On December 10, 2020, Trump tweeted: “How can you give an election to someone who lost the election by hundreds of thousands of legal votes in each of the swing states. How can a country be run by an illegitimate president?”⁷⁸
- c. On December 15, 2020, Trump tweeted: “Tremendous evidence pouring in on voter fraud. There has never been anything like this in our Country!”⁷⁹
- d. On December 23, 2020, Trump retweeted a memo titled “Operation ‘PENCE’ CARD,” which falsely asserted that the Vice President could disqualify legitimate electors.⁸⁰
- e. On January 5, 2021, Trump tweeted: “The Vice President has the power to reject fraudulently chosen electors.”⁸¹

⁷⁷ See Trump Tweet Compilation, *supra* note 5, at 3 (Group Ex. E) (Dec. 4, 2020 at 8:55 AM ET), <https://twitter.com/realDonaldTrump/status/1334858852337070083>.

⁷⁸ *Id.* (Dec. 10, 2020 at 9:26 AM ET), <https://twitter.com/realDonaldTrump/status/1337040883988959232>.

⁷⁹ *Id.* at 5 (Dec. 15, 2020 at 10:41 AM ET), <https://twitter.com/realDonaldTrump/status/1338871862315667456>.

⁸⁰ Mike Pence, *Mike Pence: My Last Days With Donald Trump*, WALL STREET JOURNAL (Nov. 9, 2022) <https://www.wsj.com/articles/donald-trump-mike-pence-jan-6-president-rally-capitol-riot-protest-vote-count-so-help-me-god-stolen-election-11668018494?st=rna6xwlpmjmaoss>.

⁸¹ See Trump Tweet Compilation, *supra* note 5, at 7 (Group Ex. E) (Jan. 5, 2021 at 11:06 AM ET), <https://twitter.com/realDonaldTrump/status/1346488314157797389?s=20>.

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

118. On December 11, 2020, the Supreme Court rejected a lawsuit brought by the State of Texas alleging that election procedures in four states had resulted in illegitimate votes.⁸²

119. The next morning, on December 12, 2020, Trump tweeted that the Supreme Court order was “a great and disgraceful miscarriage of justice,” and “WE HAVE JUST BEGUN TO FIGHT!!!”⁸³

3. That same day, Ali Alexander of Stop the Steal, and Alex Jones and Owen Shroyer of Infowars led a march on the Supreme Court.⁸⁴

120. The crowd at the march chanted slogans such as “Stop the Steal!” “1776!” “Our revolution!” and Trump’s earlier tweet, “The fight has just begun!”⁸⁵

121. On that day, Trump tweeted: “Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn’t know about this, but I’ll be seeing them! #MAGA.”⁸⁶

122. Later that day, Trump flew over the crowd in Marine One.⁸⁷

123. On December 18, 2020, Trump tweeted: “.@senatemajldr and Republican Senators have to get tougher, or you won’t have a Republican Party anymore. We won the Presidential Election, by a lot. FIGHT FOR IT. Don’t let them take it away!”⁸⁸

⁸² *Texas v. Pennsylvania, et al.*, No. 22-155, Order (U.S. Sup. Ct., Dec. 11, 2020).

⁸³ See Trump Tweet Compilation, *supra* note 5, at 4, (Group Ex. E) (Dec 12, 2020 at 7:58 AM ET), <https://twitter.com/realDonaldTrump/status/1337743516294934529>; *id.* (Dec 12, 2020 at 8:47 AM ET), <https://twitter.com/realDonaldTrump/status/1337755964339081216>.

⁸⁴ See January 6th Report, *supra* note 8, at 505 (Ex. H).

⁸⁵ *Id.*

⁸⁶ See Trump Tweet Compilation, *supra* note 5, at 5 (Group Ex. E) (Dec. 12, 2020 at 9:59 AM ET), <https://twitter.com/realDonaldTrump/status/1337774011376340992>.

⁸⁷ See January 6th Report, *supra* note 8, at 506 (Ex. H).

⁸⁸ See Trump Tweet Compilation, *supra* note 5, at 6 (Group Ex. E) (Dec 18, 2020 at 9:14 AM ET), <http://www.twitter.com/realDonaldTrump/status/1339937091707351046>.

124. On December 19, 2020, Trump tweeted “Big protest in D.C. on January 6th. Be there, will be wild!”⁸⁹

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

125. In response to Trump’s “wild” tweet, Twitter’s Trust and Safety Policy team recorded a “‘fire hose’ of calls to overthrow the U.S. government.”⁹⁰

126. Other militarized extremist groups began organizing for January 6 after Trump’s “will be wild” tweet. These include the Oath Keepers, the Proud Boys, the Three Percenter militias, and others.⁹¹

127. An analyst at the National Capital Region Threat Intelligence Consortium observed that Trump’s tweet led to “a tenfold uptick in violent online rhetoric targeting Congress and law enforcement” and noticed “violent right-wing groups that had not previously been aligned had begun coordinating their efforts.”⁹²

128. For example:

- a. Kelly Meggs of the Oath Keepers Florida Chapter read Trump’s tweet and commented in a Facebook post: “Trump said It’s gonna be wild!!!!!! It’s gonna be wild!!!!!! He wants us to make it WILD that’s what he’s saying. He called us all to the Capitol and wants us to make it wild!!! Sir Yes Sir!!! Gentlemen we are heading to DC pack your shit!!”⁹³

⁸⁹ *Id.* (Dec. 19, 2020 at 1:42 AM ET), <https://twitter.com/realDonaldTrump/status/1340185773220515840>.

⁹⁰ See January 6th Report, *supra* note 8, at 499 (Ex. H).

⁹¹ See Day 5 Transcript, *supra* note 8, at 200:3-21, 200:5-202:22, 218:7-16 (Ex. M) (Heaphy Testimony).

⁹² See January 6th Report, *supra* note 8, at 694 (Ex. H).

⁹³ Third Superseding Indictment at ¶ 37, *United States v. Cowl et al.*, No. 1:21-cr-28, ECF No. 127 (D.D.C. Mar. 31, 2021); see also January 6th Report, *supra* note 8, at 515 (Ex. H).

- b. Meggs was later convicted by a federal jury for seditious conspiracy under 18 U.S.C. § 2384 after the January 6 attack, and sentenced to 12 years in prison.⁹⁴
- c. Oath Keepers from various states had established a “Quick Reaction Force” plan where they cached weapons for January 6, 2021 at hotels in Ballston and Vienna in Virginia.⁹⁵
- d. Henry “Enrique” Tarrio, a leader of the Proud Boys, sent encrypted messages to others that they should “storm the Capitol.”⁹⁶
- e. The Proud Boys received and had been in possession of a document titled “1776 Returns” where the initial authors divided their plan to overtake federal government buildings into five parts: “Infiltrate,” “Execution,” “[D]istract,” “Occupy,” and “Sit In.”⁹⁷
- f. Members of the Proud Boys were also convicted of seditious conspiracy after the January 6 attack.⁹⁸

⁹⁴ *United States v. Rhodes, III et al.*, No. 1:22-cr-00015, ECF No. 626 (D.D.C. Nov. 29, 2022).

⁹⁵ Superseding Indictment at ¶ 45, *United States v. Rhodes, III et al.*, No. 1:22-cr-15, ECF No. 167 (D.D.C. June 22, 2022); Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Frank Anthony Marchisella, at 34 (Apr. 29, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000071096/pdf/GPO-J6-TRANSCRIPT-CTRL0000071096.pdf>.

⁹⁶ Second Superseding Indictment at ¶ 50, *United States v. Nordean, et al.*, No. 1:21-cr-00175, ECF No. 305 (D.D.C. Mar. 7, 2022).

⁹⁷ Zachary Rehl’s Motion to Reopen Detention Hearing and Request for a Hearing, Ex. 1: “1776 Returns,” *United States v. Nordean, et al.*, No. 1:21-cr-00175-TJK, ECF No. 401-1 (D.D.C. June 15, 2022), <https://s3.documentcloud.org/documents/22060615/1776-returns.pdf>.

⁹⁸ *Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach*, U.S. DEP’T OF JUSTICE (May 4, 2023), <https://www.justice.gov/opa/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach>.

- g. Matt Bracken, a host for Infowars, a website specializing in disinformation and false election fraud theories, told viewers that it may be necessary to storm the Capitol, and that “we’re going to only be saved by millions of Americans . . . occupying the entire area, if—if necessary storming right into the Capitol. . . we know the rules of engagement. If you have enough people, you can push down any kind of a fence or a wall.”⁹⁹
- h. QAnon, an online false theory group, shared online a digital banner of “Operation Occupy the Capitol,” which depicted the U.S. Capitol being torn in two.¹⁰⁰
- i. The Three Percenter militias, a far-right, anti-government movement, tried to share online “#OccupyCongress” memes with text that say, “If they Won’t Hear Us” and “They Will Fear Us.”¹⁰¹

129. On January 1, 2021, a supporter tweeted to Trump that “The calvary [sic] is coming, Mr. President!”¹⁰²

130. Trump quoted that tweet and wrote back, “A great honor!”¹⁰³

131. Organizers planned two separate demonstrations for January 6, 2021.

⁹⁹ The Alex Jones Show, “January 6th Will Be a Turning Point in American History,” BANNED.VIDEO, at 16:29 (Dec. 31, 2020), <https://www.bitchute.com/video/XBllZYTRfalB/>; See January 6th Report, *supra* note 8, at 507 (Ex. H).

¹⁰⁰ Ben Collins & Brandy Zadrozny, *Extremists made little secret of ambitions to ‘occupy’ Capitol in weeks before attack*, NBC (Jan. 8, 2021), <https://www.nbcnews.com/tech/internet/extremists-made-little-secret-ambitions-occupy-capitalweeks-attack-n1253499>.

¹⁰¹ Criminal Complaint, Statement of Facts at 10-11, *United States v. Hazard*, No. 1:21-mj-00686, ECF No. 1-1 (D.D.C. Dec. 7, 2021).

¹⁰² See Trump Tweet Compilation, *supra* note 5, at 7 (Group Ex. E) (Jan. 1, 2021 at 3:34 PM ET), <https://twitter.com/realDonaldTrump/status/1345106078141394944>.

¹⁰³ *Id.*

- a. Kylie and Amy Kremer, a mother-daughter pair involved with Women for America First, planned a demonstration on the Ellipse (“Ellipse Demonstration”), a park south of the White House fence and north of Constitution Avenue and the National Mall in Washington, D.C.¹⁰⁴
- b. Ali Alexander, an extremist associated with the Stop the Steal, planned an assemblage immediately outside the Capitol, on the court side and the steps of the building.¹⁰⁵

132. On December 29, 2020, Alexander tweeted, “Coalition of us working on 25 new charter buses to bring people FOR FREE to #JAN6 #STOPTHESTEAL for President Trump. If you have money for more buses or have a company, let me know. We will list our buses sometime in the next 72 hours. STAND BACK & STAND BY!”¹⁰⁶

133. Meanwhile, by late December, Trump, his White House staff, and his campaign became directly involved in planning the Ellipse Demonstration. Trump personally helped select the speaker lineup, and his campaign and joint fundraising committees made direct payments of \$3.5 million to rally organizers.¹⁰⁷

¹⁰⁴ Women For America First Ellipse Public Gathering Permit, NAT’L PARK SERV. (Jan. 5, 2021), https://www.nps.gov/aboutus/foia/upload/21-0278-Women-for-America-First-Ellipse-permit_REDACTED.pdf.

¹⁰⁵ *President Trump Wants You in DC January 6*, WILDPROTEST.COM (2020), <https://web.archive.org/web/20201223062953/http://wildprotest.com/> (archived).

¹⁰⁶ See January 6th Report, *supra* note 8, at 532 (Ex. H).

¹⁰⁷ See January 6th Report, *supra* note 8, at 533-36 (Ex. H); Massoglia, *supra* note 9.

134. By December 29, 2020, Trump had formed and conveyed to allies a plan to order his supporters to march to the Capitol at the end of his speech.¹⁰⁸ His goal was to force Congress to stop the certification of electoral votes.¹⁰⁹

135. Between January 2 and 4, 2021, Kremer and other organizers of the Ellipse Demonstration became aware that Trump intended to “order [the crowd] to the [C]apitol at the end of his speech.” These organizers messaged each other that “POTUS is going to have us march there [the Supreme Court]/the Capitol,” and that the President was going to “call on everyone to march to the [C]apitol.”¹¹⁰

136. These organizers received this information from White House Chief of Staff Mark Meadows.¹¹¹

137. In early January 2021, Trump and extremists began publicly referring to January 6 using increasingly apocalyptic terminology. Some referred to a “1776” plan or option for January 6, suggesting by analogy to the American Revolution that their plans for the January 6 congressional certification of electoral votes included violent rebellion.¹¹²

138. On January 4, 2021, at a rally in Dalton, Georgia, Trump stated: “If you don’t fight to save your country with everything you have, you’re not going to have a country left.”¹¹³

¹⁰⁸ See January 6th Report, *supra* note 8, at 533 (Ex. H).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See, e.g., Day 2 Transcript, *supra* note 8, at 29:2-9, 54:13-55:12 (Ex. J) (Simi Testimony).

¹¹³ Bloomberg Quicktake, *LIVE: Trump Stumps for Georgia Republicans David Perdue, Kelly Loeffler Ahead of Senate Runoff*, YOUTUBE (Jan. 4, 2021), <https://www.youtube.com/watch?v=9HisWmJJ3oE>.

139. During the rally, Trump asserted that the transfer of power set for January 6, 2021 would not take place and insinuated that powerful events would later occur.¹¹⁴ For example, he stated:

- a. “If the liberal Democrats take the Senate and White House. . . . And they’re not taking this White House. We’re going to fight like hell, I’ll tell you right now.”
- b. “We’re going to take it back.”
- c. “There’s no way we lost Georgia. There’s no way. That was a rigged election, but we’re still fighting it and you’ll see what’s going to happen.”
- d. “We can’t let that happen. The damage they do will be permanent and will be irreversible. Can’t let it happen.”
- e. “We will never give in. We will never give up. We will never back down. We will never, ever surrender.”
- f. “We have to go all the way and that’s what’s happening. You watch what happens over the next couple of weeks. You watch what’s going to come out. Watch what’s going to be revealed. You watch.”

140. At the rally, the crowd chanted “Fight for Trump! Fight for Trump!” several times.¹¹⁵

141. By early January 2021, Trump anticipated that the crowd that was preparing to amass on January 6 at his behest would be large and violent.¹¹⁶

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Letter from Donald J. Trump to The Select Committee to Investigate the January 6th Attack on the U.S. Capitol, at 2-3 (Oct. 13, 2022), <https://s3.documentcloud.org/documents/23132276/830-am-final-january-6th-committee-letter14446.pdf>.

142. On January 5, 2021, several events were held across D.C. on behalf of Stop the Steal, an entity formed in early November 2020 to mobilize around Trump's claim that the election had been rigged.¹¹⁷ Speakers during these events made remarks about the event to be held at the Capitol the next day. For example:

- a. Ali Alexander from Stop the Steal said: "We must rebel We might make this 'Fort Trump' We're going to keep fighting for you, Mr. President." He stated further, "1776 is always an option. . . . These degenerates in the deep state are going to give us what we want, or we are going to shut this country down."¹¹⁸
- b. Roger Stone stated: "This is a fight for the future of Western Civilization as we know it. . . we dare not fail."¹¹⁹
- c. Several members of the Phoenix Project, a Three-Percenter-linked group, told the January 5 crowd, "We are at war," promising to "fight" and "bleed," and that they will "not return to our peaceful way of life until this election is made right."¹²⁰

143. On January 5, in response to these extremist demonstrations, Trump tweeted: "Our Country has had enough, they won't take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!"¹²¹

¹¹⁷ On information and belief, this "Stop the Steal" entity is distinct from an identically named organization founded in 2016 by Roger Stone.

¹¹⁸ See January 6th Report, *supra* note 8, at 537-38 (Ex. H).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Trump Tweet Compilation, *supra* note 5, at 8 (Group Ex. E) (Jan. 5, 2021 at 5:05 PM ET), <http://www.twitter.com/realDonaldTrump/status/1346578706437963777>.

144. That same evening, President Trump told White House staff that his supporters would be “fired up” and “angry” the next day.¹²²

145. Also on January 5, 2021, Trump met alone with Pence and again asked him to obstruct the certification.¹²³

146. Pence again informed Trump that he did not have the authority to unilaterally reject electoral votes and consequently would not do so.¹²⁴

147. Trump informed Pence that if he did not reject the votes, then Trump would publicly criticize Pence for it.¹²⁵

148. Later that night, Trump authorized his campaign to issue a false public statement that: “The Vice President and I are in total agreement that the Vice President has the power to act.”¹²⁶

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

149. Trump, his closest aides, the Secret Service, and the Federal Bureau of Investigations were all aware that Trump supporters—whom Trump had aroused with false claims of election fraud and veiled calls for violence—intended to commit violence at the Capitol on January 6 if the vote was certified.

¹²² See January 6th Report, *supra* note 8, at 539 (Ex. H).

¹²³ August 1, 2023 Indictment, *supra* note 49, at 36.

¹²⁴ Jim Acosta & Kaitlan Collins, *Pence informed Trump that he can’t block Biden’s win*, CNN (Jan. 5, 2021), <https://cnn.it/3FH4gx9>.

¹²⁵ August 1, 2023 Indictment, *supra* note 49, at 36.

¹²⁶ *Id.*

150. On December 24, 2020, the Secret Service received from a private intelligence group a list of responses to Trump's December 19 "will be wild" tweet.¹²⁷ Those responses included:

- a. "I read [the President's tweet] as armed."¹²⁸
- b. "[T]here is not enough cops in DC to stop what is coming."
- c. "[M]ake sure they know who to fear," and "[W]aiting for Trump to say the word."

151. On December 26, 2020, the Secret Service received a tip that the Proud Boys had plans to enter Washington, D.C. armed. The Secret Service forwarded this tip to the Capitol Police.¹²⁹

152. On December 29, 2020, the Secret Service again forwarded warnings that pro-Trump demonstrators were being urged to occupy the federal building.¹³⁰

153. On December 30, 2020, the Secret Service held a briefing that highlighted how the President's December 19 "will be wild!" tweet was found alongside hashtags such as #OccupyCapitols and #WeAreTheStorm.¹³¹

154. Also on December 30, 2020, Jason Miller—a senior advisor to Trump—texted White House Chief of Staff Mark Meadows a link to the donald.win website and stated, "I got the

¹²⁷ See January 6th Report, *supra* note 8, at 61, 695 (Ex. H).

¹²⁸ *Id.*

¹²⁹ *Id.* at 61-62.

¹³⁰ *Id.*

¹³¹ *Id.*

base FIRED UP.” The link was to a page with comments like “Gallows don’t require electricity” and “if the filthy commie maggots try to push their fraud through, there will be hell to pay.”¹³²

155. Federal Bureau of Investigation received many tips regarding the potential for violence on January 6. One tip said:

They think they will have a large enough group to march into D.C. armed and will outnumber the police so they can’t be stopped. . . . They believe that since the election was stolen, that it’s their constitutional right to overtake the government, and during this coup, no U.S. laws apply. Their plan is to literally kill. Please, please take this tip seriously and investigate further.¹³³

156. On January 5, 2021, an FBI office in Norfolk, Virginia issued an alert to law enforcement agencies titled, “Potential for Violence in Washington, D.C., Area in Connection with Planned ‘StopTheSteal’ Protest on 6 January 2021.”¹³⁴

157. Trump was personally informed of at least some of these plans for violent action.

158. Trump proceeded with his plans for January 6, 2021.

III. THE JANUARY 6, 2021 INSURRECTION.

A. The Two Demonstrations.

159. On the morning of January 6, 2021, before the joint session of Congress began to count the votes and certify the results, thousands of people began gathering around Washington, D.C. Many of these people headed to the Ellipse, near the White House, where then-President Trump and others were scheduled to speak. Others headed directly to the Capitol building.

160. By 11:00 AM (Eastern Time), the United States Capitol Police (“USCP”) reported “‘large crowd[s]’ around the Capitol building,” including approximately 200 members of the

¹³² *Id.* at 63.

¹³³ See Day 5 Transcript, *supra* note 8, at 218:7-16 (Ex M) (Heaphy Testimony).

¹³⁴ See January 6th Report, *supra* note 8, at 62 (Ex. H).

Proud Boys.¹³⁵ Some of the people gathering in Washington were “equip[ped] . . . with communication devices and donning reinforced vests, helmets, and goggles.”¹³⁶

B. Trump’s Preparations as the Demonstrations Began.

161. On January 6, at 1:00 AM, Trump tweeted: “If Vice President @Mike_Pence comes through for us, we will win the Presidency. . . . Mike can send it back!”¹³⁷

162. On the morning of January 6, at approximately 10:00 AM, White House Deputy Chief of Staff Tony Ornato briefed Chief of Staff Mark Meadows over concerns that members of the crowd were armed with weapons, such as knives and guns. Ornato confirmed with Meadows that he had spoken with Trump about this.¹³⁸

163. At approximately 10:30 AM, Trump edited a draft of his speech for that afternoon’s Ellipse Demonstration (also known as the Save America Rally).

164. Trump personally added the text, “[W]e will see whether Mike Pence enters history as a truly great and courageous leader. All he has to do is refer the illegally-submitted electoral votes back to the states that were given false and fraudulent information where they want to recertify.”¹³⁹

165. Before Trump edited the draft, it did not contain any mention of Pence.

¹³⁵ U.S. Senate Comm. On Homeland Security & Gov’t Affairs, *Examining The U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6 (Staff Report)*, at 22 (June 8, 2021), https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/HSGAC&RulesFullReport_Examining_U.S.CapitolAttack.pdf (alteration in original).

¹³⁶ *United States v. Caldwell*, 581 F. Supp. 3d 1, 8 (D.D.C. 2021).

¹³⁷ See Trump Tweet Compilation, *supra* note 5, at 8 (Group Ex. E) (Jan. 6, 2021 at 1:00 AM ET), <https://twitter.com/realDonaldTrump/status/1346698217304584192>.

¹³⁸ Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 8-9 (June 28, 2022), <https://www.govinfo.gov/content/pkg/CHRG-117hrg49354/pdf/CHRG-117hrg49354.pdf> [hereinafter Sixth Jan. 6 Hearing Transcript].

¹³⁹ January 6th Report *supra* note 8, at 581-82.

166. Eric Herschmann, a lawyer in the White House Counsel's office and senior advisor to Trump, had tried to remove the lines and advised against advancing Eastman's legal theory that Pence should reject electoral votes because, he stated, he "didn't concur with the legal analysis."¹⁴⁰

C. The Increasingly Apocalyptic Demonstration at the Ellipse.

167. At the Ellipse Demonstration, speakers preceding Trump exhorted the crowd to take forceful action to ensure that Congress and/or Pence rejected electoral votes for Biden. For example:

- a. Representative Mo Brooks of Alabama urged the crowd to "start taking down names and kicking ass" and 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."¹⁴¹
- b. Trump's lawyer Rudy Giuliani called for "trial by combat."¹⁴²
- c. Trump's lawyer John Eastman perpetuated claims of voter fraud and said: "all that we are demanding of Pence is this afternoon at 1 o'clock he let the legislators of the states look into this so we get to the bottom of it."¹⁴³

168. Trump and Meadows were aware of the line-up of speakers at the Ellipse Demonstration.¹⁴⁴

¹⁴⁰ *Id.*

¹⁴¹ The Hill, *supra* note 12.

¹⁴² Wash. Post, *supra* note 11.

¹⁴³ *Rally on Electoral College Vote Certification*, *supra* note 13, at 2:27:00.

¹⁴⁴ Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Deposition of Max Miller, at 81-83, 129-30 (Jan. 20, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000038857/pdf/GPO-J6-TRANSCRIPT-CTRL0000038857.pdf>; *see also* Select Comm. to Investigate the Jan. 6th Attack on the U.S. Capitol, Transcribed Interview of Katrina Pierson (Mar. 25, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000060756/pdf/GPO-J6-TRANSCRIPT-CTRL0000060756.pdf>.

169. Trump and Meadows were warned by aides against including known incendiary speakers, like Giuliani and Eastman, who would emphasize false claims of election fraud.

170. Trump and Meadows refused to remove Giuliani and Eastman.

171. Meadows himself explicitly directed that Giuliani and Eastman speak at the Demonstration before Trump.

172. Around 10:57 AM, the organizers of the demonstration played a two-minute pro-Trump video.¹⁴⁵ The video reflected flashing images of Joseph Biden and Nancy Pelosi while Trump voiced over, “For too long, a small group in our nation’s capital has reaped the rewards of government, while the people have borne the cost.” The video emphasized that the government had been compromised by sinister powers.

173. Around 11:39 AM, Trump left the White House by motorcade and drove to the Ellipse.¹⁴⁶

174. At the Ellipse, an estimated 25,000 people refused to walk through the magnetometers at the entrance.¹⁴⁷

175. White House Deputy Chief of Staff Tony Ornato informed Trump that these people were unwilling to pass through the monitors because they had weapons that they did not want confiscated by the Secret Service.¹⁴⁸

176. Trump became upset that his people were not being allowed to carry their weapons through the entrance.

177. Trump ordered his team to remove the magnetometers.

¹⁴⁵ Ryan Goodman, Trump Film Ellipse Jan. 6, 2021, VIMEO (Feb. 3, 2021), <https://vimeo.com/508134765>.

¹⁴⁶ Alemany, *supra* note 15.

¹⁴⁷ See January 6th Report, *supra* note 8, at 585 (Ex. H).

¹⁴⁸ *Id.*

178. He shouted at his advance team words to the effect of, “I don’t [fucking] care that they have weapons. They’re not here to hurt *me*. Take the [fucking] mags away. Let my people in. They can march to the Capitol from here. Take the [fucking] mags away.”¹⁴⁹

179. Around 11:57 AM, Trump took the stage at the Ellipse to give his speech.

D. Insurrectionists Prepared for Battle at the Capitol.

180. Even before Trump gave his speech at the Ellipse Demonstration, crowds had already begun swarming near the Capitol.

181. Around 11:30 AM, a large group of Proud Boys arrived at the Capitol, moving in loosely organized columns of five across. The crowd made way for them.¹⁵⁰

182. At the same time, Washington, D.C. police had to leave Capitol grounds to respond to reports of violence throughout the city, including a man with a rifle, and a vehicle loaded with weaponry.¹⁵¹ For example:

- a. Around 12:33 PM, police detained another individual with a rifle near the World War II Memorial, which was close to where Trump was speaking.
- b. Around 12:45 PM, various security agencies such as the Capitol Police and FBI responded to reports of a pipe bomb outside the Republican National Committee headquarters and suspicious packages found in or around other buildings near the Capitol, such as the Supreme Court and the Democratic National Committee headquarters.

183. On information and belief, Trump was personally informed about the escalating security situation at the Capitol before he began his speech.

¹⁴⁹ *Id.*

¹⁵⁰ Alemany, *supra* note 15.

¹⁵¹ *Id.*

E. Trump Directed Supporters to March on the Capitol and Intimidate Pence and Congress.

184. Around 11:57 AM, Trump began his speech at the Ellipse.¹⁵²

185. For the first 15 minutes of his speech, he falsely repeated that he had been defrauded of the presidency, which he had won “by a landslide,” and that “we will never give up, we will never concede. It doesn’t happen. You don’t concede when there’s theft involved.”¹⁵³

186. Throughout his speech, Trump repeatedly called out Vice President Pence by name, urging Pence to reject electoral votes from states Trump had lost.

187. As his speech continued, the mob became audibly and increasingly angry at Pence and Congress. During Trump’s speech, demonstrators shouted “Storm the Capitol!”, “Invade the Capitol Building!”, “Fight like Hell!”, “Fight for Trump!” and “Take the Capital Right Now!”.¹⁵⁴

188. Around 12:16 PM, Trump made his first call on demonstrators to head towards the Capitol: “After this, we’re going to walk down and I’ll be there with you. We’re going to walk down. We’re going to walk down any one you want, but I think right here. We’re going to walk down to the Capitol, and we’re going to cheer on our brave senators, and congressmen and women. We’re probably not going to be cheering so much for some of them because you’ll never take back our country with weakness. You have to show strength, and you have to be strong.”

¹⁵² *Id.*

¹⁵³ See *Rally on Electoral College Vote Certification*, *supra* note 13; *Donald Trump Speech*, *supra* note 13; Naylor, *supra* note 13.

¹⁵⁴ Dylan Stableford, *New video shows Trump rally crowd cheering call to ‘storm the Capitol’*, YAHOO NEWS (Jan. 25, 2021), https://news.yahoo.com/trump-jan-6-rally-crowd-storm-the-capitol-video-184828622.html?fr=sycsrp_catchall; *Thompson v. Trump*, 590 F. Supp. 3d 46, 100 (D.D.C. 2022).

189. Immediately after this remark, approximately 10,000-15,000 demonstrators began the roughly 30-minute march to the Capitol just as Trump had directed, where they joined a crowd of 300 members of the violent extremist group, the Proud Boys.¹⁵⁵

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

191. For the remainder of his speech, Trump asserted that Biden’s victory was illegitimate and that the process of transferring power to Biden could not take place. For example:

- a. “And then we’re stuck with a president who lost the election by a lot, and we have to live with that for four more years. We’re just not going to let that happen.”
- b. “We want to go back and we want to get this right because we’re going to have somebody in there that should not be in there and our country will be destroyed and we’re not going to stand for that.”
- c. “And we’re going to have to fight much harder.”
- d. “And you know what? If they do the wrong thing, we should never, ever forget that they did. Never forget. We should never ever forget.”
- e. “You will have an illegitimate president. That’s what you’ll have. And we can’t let that happen.”
- f. “And we fight. We fight like hell. And if you don’t fight like hell, you’re not going to have a country anymore.”

¹⁵⁵ Mendoza & Linderman, *supra* note 17.

- g. “When you catch somebody in a fraud, you’re allowed to go by very different rules.”

192. Around 1:00 PM, towards the end of his speech, Trump again directed the crowd to the Capitol: “After this, we’re going to walk down, and I’ll be there with you,” and “I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard.”

193. Knowing that many in the crowd were armed, Trump gave a final plea and urged that the crowd assemble near the Capitol:

- a. “So we’re going to, we’re going to walk down Pennsylvania Avenue. . . And we’re going to the Capitol, and we’re going to try and give.”
- b. “But we’re going to try and give our Republicans, the weak ones because the strong ones don’t need any of our help. We’re going to try and give them the kind of pride and boldness that they need to take back our country. So let’s walk down Pennsylvania Avenue.”

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

F. Trump Intended to March on the Capitol and Capitalize on the Unfolding Chaos.

195. On January 6, at approximately 1:17 PM, Trump was seated within his motorcade and asked to be transported to the Capitol.¹⁵⁶

196. When it was clear that Trump could not be taken to the Capitol for security reasons, Trump became irate with those who prevented him from going to the Capitol.¹⁵⁷

¹⁵⁶ See January 6th Report, *supra* note 8, at 587 (Ex. H); NBC News, *supra* note 72 (Trump stating, “I wanted to go down peacefully and patriotically to the Capitol.”).

¹⁵⁷ See January 6th Report, *supra* note 8, at 587-91 (Ex. H).

197. On the drive to the White House, Trump attempted to seize control of the steering wheel of the presidential limousine in hopes of driving to the Capitol.¹⁵⁸

198. Around approximately 1:19 PM, Trump arrived at the White House and sat in the private dining room to watch the news coverage unfold.¹⁵⁹

199. At around 1:25 PM, the Secret Service communicated internally that “[THE PRESIDENT] IS PLANNING ON HOLDING AT THE WHITE HOUSE FOR THE NEXT APPROXIMATE [sic] TWO HOURS, THEN MOVING TO THE CAPITOL.”¹⁶⁰

200. Around 1:55 PM, the motorcade finally disbanded on orders from the Secret Service that Trump’s plan to go to the Capitol had been nixed.¹⁶¹

G. Pro-Trump Insurrectionists Violently Attacked the Capitol.

201. Before Trump ended his speech at the Ellipse, attackers had already begun swarming the Capitol building.¹⁶²

202. The attackers, following directions from Trump and his allies, shared the common purpose of preventing Congress from certifying the electoral vote.¹⁶³ Many of them also expressed a desire to assassinate Vice President Pence, the Speaker of the House, and other Members of Congress.

¹⁵⁸ Sixth Jan. 6 Hearing Transcript, *supra* note 138, at 16.

¹⁵⁹ Alemany, *supra* note 15.

¹⁶⁰ See January 6th Report, *supra* note 8, at 592 (Ex. H).

¹⁶¹ *Id.*

¹⁶² See Day 1 Transcript, *supra* note 15, at 142:9-143:2, 144:11-23, 146:16-147:24 (Ex. I) (Swalwell Testimony); see also Day 1 Transcript, *supra* note 15, at 197:8-13; 199:8-200:8 (Ex. I) (Pigeon Testimony); Day 4 Transcript, *supra* note 15, at 192:10-195:24 (Ex. L) (Buck Testimony).

¹⁶³ See Rally on Electoral College Vote Certification, *supra* note 13; Donald Trump Speech, *supra* note 13; Naylor, *supra* note 13.

203. By 12:53 PM, attackers had breached the outer security perimeter that the Capitol Police (USCP) had established around the Capitol. Many were armed with weapons, pepper spray, and tasers. Some wore full body armor; others carried homemade shields. Many used flagpoles, signposts, or other weapons to attack police officers defending the Capitol.¹⁶⁴ Some moved through the crowd and entered the Capitol in a “stacked” formation, a single file configuration often used by special forces or infantry units during urban combat or close-quarters operations.

204. Following the initial breach, the crowd flooded into the Capitol West Front grounds. Attackers began climbing and scaling the Capitol building.

205. Around 12:55 PM, Capitol Police called on all available units to the Capitol to assist with the breach. Attackers clashed violently with police officers on the scene.¹⁶⁵

206. Around 1:03 PM, Capitol Police found an unoccupied vehicle containing weapons, ammunition, and components to make Molotov cocktails.¹⁶⁶

207. Inside the Capitol, Congress was in session to certify electoral votes in accordance with the Electoral Count Act and the Twelfth Amendment to the U.S. Constitution. At about 1:15 PM, the House and the Senate separated to debate objections to the certification of Arizona’s Electoral College votes.

208. Around 1:30 PM, law enforcement retreated as attackers scaled the walls of the Capitol.

¹⁶⁴ Alemany, *supra* note 15; *see also* Day 1 Transcript, *supra* note 15, at 74:4–10; 75:15–76:4, 105:25–106:24 (Ex. I) (Hodges Test); *id.* at 201:22–202:5, 220:23–221:2, 224:25–225:2 (Ex. I) (Pigeon Test).

¹⁶⁵ Alemany, *supra* note 15.

¹⁶⁶ *Id.*

209. Around 1:50 PM, the on-site D.C. Metropolitan Police Department incident commander officially declared a riot at the Capitol.¹⁶⁷

210. At that point, law enforcement still held the building, and Congress was still able to function. But that soon changed.

211. By 2:06 PM, attackers reached the Rotunda steps.

212. By 2:08 PM, attackers reached the House Plaza.

213. By 2:10 PM, the West Front and northwest side of the Capitol had been breached through the barricades. Attackers smashed the first floor windows, which were big enough to climb through. Two individuals kicked open a nearby door to let others into the Capitol.

214. Many attackers demanded the arrest or murder of various other elected officials who refused to participate in their attempted coup.¹⁶⁸

- a. Some chanted “hang Mike Pence” and threatened to kill Speaker Pelosi.¹⁶⁹
- b. Some taunted a Black police officer with racial slurs for pointing out that overturning the election would deprive him of his vote.¹⁷⁰
- c. Confederate flags and symbols of white supremacist movements were widespread.¹⁷¹

215. Throughout the roughly 187 minutes of the attack, police defending the Capitol were viciously attacked. For example:

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ H.R. REP. NO. 117-2, *supra* note 15, at 20-21.

¹⁷⁰ *Alemaný, supra* note 15.

¹⁷¹ *Id.*; *See Rules & Admin. Review, supra* note 15, at 28 (Ex. F).

- a. One police officer was crushed against a door, screaming in agony as the crowd chanted “Heave, ho!”¹⁷²
- b. An attacker ripped off the officer’s gas mask, beat his head against the door, took his baton, and hit his head with it.¹⁷³
- c. Another officer was pulled into a crowd, beaten and repeatedly tased by attackers.¹⁷⁴

216. While not all who stormed the Capitol personally used violence against law enforcement, the combined mass overwhelmed the police and prevented the execution of lawful authority.

H. The Fall of the United States Capitol.

217. Around 2:13 PM, Vice President Pence was removed from the Capitol by Secret Service, along with his family, for their physical safety.

218. Because of this, the Senate was forced to go into recess.

219. Senate staffers took the electoral college certificates with them when they were evacuated, ensuring they did not fall into the hands of the attackers.¹⁷⁵

220. Around 2:25 PM, attackers who had breached the east side of the Capitol entered the Rotunda.

221. At 2:29 PM, the House was forced to go into recess.

¹⁷² Smith & Caldwell, *supra* note 15.

¹⁷³ Hymes & McDonald, *supra* note 15.

¹⁷⁴ Michael Kaplan & Cassidy McDonald, *At least 17 police officers remain out of work with injuries from the Capitol attack*, CBS NEWS (June 4, 2021), <https://cbsn.ws/3eyXZr8>.

¹⁷⁵ Lisa Mascaro, et al., *Pro-Trump mob storms US Capitol in bid to overturn election*, ASSOCIATED PRESS (Jan. 5, 2021), <https://apnews.com/article/congress-confirm-joe-biden-78104aea082995bbd7412a6e6cd13818>.

222. Thus, by approximately 2:29 PM, the attack stopped the legal process for counting and certifying electoral votes.¹⁷⁶

223. Around 2:43 PM, attackers broke the glass of a door to the Speaker's lobby, which would give them direct access to the House chamber. There, officers barricaded themselves with furniture and weapons to prevent the attackers' entry.

224. Around ten minutes later, attackers successfully breached the Senate chamber.

225. By this point, both the House Chamber and Senate Chamber were under the control of the attackers.

226. Due to the ongoing assault, Congress was unable to function or exercise its constitutional obligations. The attack successfully obstructed Congress from certifying the votes, temporarily blocking the peaceful transition of power from one presidential administration to the next.

227. Throughout the attack, Senators, Representatives, and staffers were forced to flee the House chamber and seclude themselves as attackers rampaged through the building.

228. This was the first time in the nation's history that forces opposed to the continued functioning of the United States government were able to seize any government structures or institutions in the nation's Capitol and stop the functioning of the government. Even at the height of the Civil War, the Confederate Army never succeeded in taking control of the U.S. Capitol or any other portion of Washington, D.C., nor in preventing Congress from meeting to exercise its constitutional obligations.

¹⁷⁶ Alemany, *supra* note 15; *see also* Day 1 Transcript, *supra* note 15, at 141:3-143:2 (Ex. I) (Swalwell Testimony).

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

229. Early during the attack, by approximately 1:21 PM, Trump was informed by staffers in the White House that television broadcasts of his speech had been cut to instead show the violence at the Capitol.¹⁷⁷

230. After this, Trump immediately began watching the Capitol attack unfold on live news in the private dining room of the White House.¹⁷⁸

231. Shortly after, White House Acting Director of Communications Ben Williamson sent a text to Chief of Staff Mark Meadows recommending that Trump tweet about respecting Capitol Police.¹⁷⁹

232. At 2:24 PM, at the height of violence, Trump made his first public statement during the attack. Against the advisors' recommendation above, rather than make any effort to quell the riotous mob, he fanned the flames 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!"¹⁸⁰

233. Trump knew, consciously disregarded the risk, or specifically intended that this tweet would exacerbate the violence at the Capitol.

¹⁷⁷ See January 6th Report, *supra* note 8, at 592 (Ex. H).

¹⁷⁸ *Id.* at 593.

¹⁷⁹ *Id.* at 595.

¹⁸⁰ 2:24 PM-2:24 PM, *supra* note 19; see also Trump Tweet Compilation, *supra* note 5, at 9 (Group Ex. E) (Jan. 6, 2021 at 2:24 PM ET); January 6th Report, *supra* note 8, at 429 (Ex. H).

234. Trump's 2:24 PM tweet "immediately precipitated further violence at the Capitol." Immediately after it, "the crowds both inside and outside of the Capitol building violently surged forward."¹⁸¹

235. Thirty seconds after the tweet, attackers who were already inside the Capitol opened the East Rotunda door. And thirty seconds after that, attackers breached the crypt one floor below Vice President Pence.¹⁸²

236. At 2:25 PM, the Secret Service determined it needed to evacuate the Vice President to a more secure location. At one point during this process, attackers were within forty feet of him.¹⁸³

237. Shortly after Trump's tweet, Cassidy Hutchinson (assistant to White House Chief of Staff Mark Meadows) and Pat Cipollone (White House Counsel) expressed to Meadows their concern that the attack was getting out of hand and that Trump must act to stop it.

238. Meadows responded, "You heard him, Pat . . . He thinks Mike deserves it. He doesn't think they're doing anything wrong."¹⁸⁴

239. Around 2:26 PM, Trump made a call to Republican leaders trapped within the Capitol. He did not ask about their safety or the escalating situation but instead asked whether any objections had been cast against the electoral count.¹⁸⁵

¹⁸¹ See January 6th Report, *supra* note 8, at 86 (Ex. H); Day 1 Transcript, *supra* note 15, at 103:14-104:18 (Ex. I) (Hodges Testimony).

¹⁸² See January 6th Report, *supra* note 8, at 465 (Ex. H).

¹⁸³ *Id.* at 466.

¹⁸⁴ *Id.* at 596.

¹⁸⁵ *Id.* at 597-98.

240. Around the same time, Trump called House Leader Kevin McCarthy regarding any such objections. McCarthy urged Trump on the phone to make a statement and to instruct the attackers to cease and withdraw.

241. Trump declined to make a statement directing the attackers to withdraw.

242. Instead, Trump responded with words to the effect of, “Well, Kevin, I guess they’re just more upset about the election theft than you are.”¹⁸⁶

243. Within ten minutes after Trump’s tweet, thousands of attackers “overran the line on the west side of the Capitol that was being held by the Metropolitan Police Force’s Civil Disturbance Unit, the first time in history of the DC Metro Police that such a security line had ever been broken.”¹⁸⁷

244. Throughout the time Trump sat watching the attack unfold, multiple relatives, staffers, and officials tried to convince Trump to make a direct statement that the attackers must leave the Capitol. For example:

- a. House Minority Leader Kevin McCarthy on the phone told Trump he must make a public statement to end the attack.
- b. Ivanka Trump and Eric Herschmann entered the room where Trump sat watching the attack on television. They suggested he make a public statement about being peaceful.

245. At 2:38 PM, Trump tweeted: “Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!”¹⁸⁸

¹⁸⁶ *Id.* at 598.

¹⁸⁷ *Id.* at 86.

¹⁸⁸ See Trump Tweet Compilation, *supra* note 5, at 9 (Group Ex. E) (Jan 6, 2021 at 2:38 PM ET), <https://twitter.com/realDonaldTrump/status/1346904110969315332?lang=en>.

246. Many attackers saw this tweet but understood it *not* to be an instruction to withdraw from the Capitol.¹⁸⁹

247. The attack raged on.

248. Around 3:05 PM, Trump was informed that a Capitol Police officer fatally shot one Ashli Babbitt. Babbitt had been attempting to forcibly enter the Speaker's Lobby adjacent to the House chamber.¹⁹⁰

249. Around this time, Pence, Speaker Pelosi, and Senate leaders directly contacted senior law enforcement leaders and arranged for reinforcements.

250. Although the force and ferocity of the assault overwhelmed the U.S. Capitol Police, Trump did not himself order any additional federal military or law enforcement personnel to help retake the Capitol.¹⁹¹

251. After 3:00 PM, the Department of Homeland Security, the Bureau of Alcohol, Tobacco, Firearms, and Explosives and FBI agents, and police from Virginia and Maryland, joined Capitol Police to help regain control of the Capitol.¹⁹²

252. Shortly after 4:00 PM, President-elect Biden addressed the nation and said, "I call on President Trump to go on national television now, to fulfill his oath and defend the Constitution and demand an end to this siege. . . . It's not protest—it's insurrection."¹⁹³

¹⁸⁹ See, e.g., Day 2 Transcript, *supra* note 8, at 102:7-21 (Ex. J) (Simi Testimony).

¹⁹⁰ See January 6th Report, *supra* note 8, at 91 (Ex. H); Alemany, *supra* note 15.

¹⁹¹ See January 6th Report, *supra* note 8, at 6-7, 595 (Ex. H); see Trump Daily Diary, *supra* note 20 (Ex. G); READ: Transcript of CNN's town hall with former President Donald Trump, *supra* note 20.

¹⁹² Alemany, *supra* note 15.

¹⁹³ Biden condemns chaos at the Capitol: 'It's not protest, it's insurrection', NBC NEWS (Jan. 6, 2021), <https://www.nbcnews.com/video/biden-condemns-chaos-at-the-capitol-as-insurrection-98957381507>.

253. Throughout this period, Trump knew that if he issued a public statement directing the attackers to disperse, most or all would have heeded his instruction.

254. In fact, when he finally *did* issue such a statement, it had precisely that effect.

255. At 4:17 PM, nearly 187 minutes after attackers first broke into the Capitol, Trump released a video on Twitter directed to those currently at the Capitol. In this video, he stated: “I know your pain. I know your hurt. . . . We love you. You’re very special, you’ve seen what happens. You’ve seen the way others are treated. . . . I know how you feel, but go home, and go home in peace.”

256. Erich Herschmann offered a correction to the video and suggested that Trump make a more direct statement that attackers leave the Capitol.¹⁹⁴

257. Trump refused.¹⁹⁵

258. Immediately after Trump uploaded the video to Twitter, the attackers began to disperse from the Capitol and cease the attack.¹⁹⁶

259. Attackers were streaming the video. One attacker, Jacob Chansley, announced into a bullhorn, “I’m here delivering the president’s message: Donald Trump has asked everybody to

¹⁹⁴ Select Committee to Investigate the January 6th Attack on the United States Capitol, Deposition of Nicholas Luna, at 181-82 (Mar. 21, 2022), <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000060749/pdf/GPO-J6-TRANSCRIPT-CTRL0000060749.pdf> [hereinafter Luna Dep. Transcript]; *see also* Day 2 Transcript, *supra* note 8, at 121:19-24, 122:9-23, 220:21-221:4 (Ex. J) (Simi Testimony).

¹⁹⁵ Anumita Kaur, *Trump didn’t stick to script asking supporters to leave Capitol, Jan. 6 panel says*, L.A. TIMES (July 21, 2022), <https://www.latimes.com/politics/story/2022-07-21/jan-6-hearing-trump-rose-garden-video>; Luna Dep. Transcript, *supra* note 194, at 181-82.

¹⁹⁶ January 6th Comm., 07/21/22 *Select Committee Hearing*, at 1:58:30, YOUTUBE (July 21, 2022), <https://www.youtube.com/watch?v=pbRVqWbHGuo>. (testimony of Stephen Ayres) (“[A]s soon as that come [*sic*] out, everybody started talking about it and that’s—it seemed like it started to disperse.”).

go home.” Other attackers acknowledged, “That’s our order” or “He says go home. He says go home.”¹⁹⁷

260. Group leaders from the Proud Boys and members of the Oath Keepers texted about the message. An Oath Keeper texted other members of the group saying, “Gentleman [sic], Our Commander-in-Chief has just ordered us to go home.”¹⁹⁸

261. Around 5:20 PM, the D.C. National Guard began arriving.¹⁹⁹

262. This was not because Trump ordered the National Guard to the scene; he never did. Rather, Vice President Pence—who was not actually in the chain of command—ordered the National Guard to assist the beleaguered police and rescue those trapped at the Capitol.²⁰⁰

263. By 6:00 PM, the attackers had been removed from the Capitol, though some committed sporadic acts of violence through the night.²⁰¹

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

265. Vice President Pence was not able to reconvene Congress until 8:06 PM, nearly six hours after the process had been obstructed.²⁰²

266. Around 9:00 PM, Trump’s counsel John Eastman again argued to Pence’s counsel

¹⁹⁷ *Id.* at 1:58:42.

¹⁹⁸ See January 6th Report, *supra* note 8, at 579 (Ex. H).

¹⁹⁹ See Rules & Admin. Review, *supra* note 15, at 26 (Ex. F).

²⁰⁰ See January 6th Report, *supra* note 8, at 578, 724 (Ex. H).

²⁰¹ Alemany, *supra* note 15.

²⁰² *Id.*

via email that Pence should refuse to certify Biden's victory by not counting certain states.²⁰³

267. Pence's counsel ignored it.²⁰⁴

268. Congress was required under the Electoral Count Act to debate the objections filed by Senators and Members of Congress to electoral results from Arizona and Pennsylvania. Despite six Senators and 121 Representatives voting to reject Arizona's electoral results,²⁰⁵ and seven Senators and 138 Representatives voting to reject Pennsylvania's results,²⁰⁶ Biden's victory was ultimately certified at 3:24 AM, January 7, 2021.²⁰⁷

269. In total, five people died,²⁰⁸ and over 150 police officers suffered injuries, including broken bones, lacerations, and chemical burns.²⁰⁹ Four Capitol Police officers on-duty during January 6 have since died by suicide.²¹⁰

IV. MULTIPLE JUDGES AND GOVERNMENT OFFICIALS HAVE DETERMINED THAT JANUARY 6 WAS AN INSURRECTION AND THAT TRUMP WAS RESPONSIBLE.

270. Since the mob overtook the Capitol on January 6, 2021, government officials, judges, and other authorities have repeatedly and consistently characterized the event as an

²⁰³ *Id.*

²⁰⁴ *Id.*

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

²⁰⁶ *Id.* at H98.

²⁰⁷ Alemany, *supra* note 15; 167 Cong. Rec. H114–15.

²⁰⁸ Jack Healy, *These Are the 5 People Who Died in the Capitol Riot*, N.Y. TIMES (Jan. 11, 2021), <https://nyti.ms/3pTyN5q>.

²⁰⁹ Kaplan & McDonald, *supra* note 174; Michael S. Schmidt & Luke Broadwater, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. TIMES (Feb. 11, 2021), <https://nyti.ms/3eN31k2>.

²¹⁰ Luke Broadwater & Shaila Dewan, *Congress Honors Officers Who Responded to Jan. 6 Riot*, N.Y. TIMES (Aug. 3, 2021), <https://nyti.ms/3EURwlp>.

insurrection, including in evaluations of electoral challenges pursuant to Section 3 of the Fourteenth Amendment such as this one.

271. On December 19, 2023, the Colorado Supreme Court concluded that Donald Trump is disqualified from holding office under Section 3 of the Fourteenth Amendment. As part of its analysis, the court held that the January 6 attack constituted an “insurrection” under section 3 of the Fourteenth Amendment.²¹¹

272. Prior to that decision, scores of others also recognized the events of January 6, 2021 constituted an insurrection. For example, just days after the attack, the U.S. Department of Justice characterized the events of January 6 as “a violent insurrection that attempted to overthrow the United States Government” in *United States v. Chansley*.²¹²

273. A federal magistrate judge in Phoenix, Arizona agreed and ordered Chansley (also known as “QAnon Shaman”) to be detained pending trial for being “an active participant in a violent insurrection that attempted to overthrow the United States government,” and who thus posed a danger to the community and flight risk.²¹³

274. On January 13, 2021, bipartisan majorities of the House and Senate voted for articles of impeachment against Trump describing the attack as an “insurrection.”²¹⁴

275. On February 13, 2021, during Trump’s impeachment trial, Senate Majority Leader Mitch McConnell stated on the floor of the Senate that the people who entered the Capitol on

²¹¹ *Griswold*, 2023 WL 8770111, at *37-39 (Ex. A).

²¹² Government’s Br. in Supp. of Detention, *supra* note 3.

²¹³ Brad Health et al., *Judge Calls Capitol Siege ‘Violent Insurrection,’ orders man who wore horns held*, REUTERS (Jan. 15, 2021), <https://www.reuters.com/article/us-usa-trump-capitol-arrests/judge-calls-capitol-siege-violent-insurrection-orders-man-who-wore-horns-held-idUSKBN29K0K7>.

²¹⁴ 167 Cong. Rec. H191 (daily ed. Jan. 13, 2021), <https://www.congress.gov/117/crec/2021/01/13/167/8/CREC-2021-01-13-pt1-PgH165.pdf>; 167 Cong. Rec. S733.

January 6 had “attacked their own government.” He further stated that the attackers “used terrorism to try to stop a specific piece of domestic business they did not like. . . fellow Americans beat and bloodied our own police. They stormed the Senate floor. They tried to hunt down the Speaker of the House. They built gallows and chanted about murdering the Vice President.”

276. During the trial, Trump, through his defense lawyer, stated that “the question before us is not whether there was a violent insurrection of [sic] the Capitol. *On that point, everyone agrees.*”²¹⁵

277. On August 5, 2021, Congress passed Public Law 117-32, which granted four congressional gold medals to Capitol Police officers who defended the Capitol on that day. The law declared that “a mob of insurrectionists forced its way into the U.S. Capitol building and congressional office buildings and engaged in acts of vandalism, looting, and violently attacked Capitol Police officers.”²¹⁶

278. On September 6, 2022, Judge Francis J. Matthew of New Mexico’s First District permanently enjoined Otero County Commissioner and “Cowboys for Trump” founder Couy Griffin from holding office under Section 3 of the Fourteenth Amendment.²¹⁷ The court held that the January 6 attack constituted an “insurrection” under section 3 of the Fourteenth Amendment.²¹⁸

279. Since the January 6, 2021 attack on the Capitol, various judges have issued opinions describing it as an “insurrection.” For example:

- a. In *United States v. Little*, the judge held in a sentencing memorandum that “contrary to [defendant’s] Facebook post and the statements he made to the

²¹⁵ 167 Cong. Rec. S729 (emphasis added).

²¹⁶ Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322.

²¹⁷ *State ex rel. White v. Griffin*, 2022 WL 4295619, at *25.

²¹⁸ *Id.* at *17-19.

FBI, the riot was not ‘patriotic’ or a legitimate ‘protest,’ . . . it was an insurrection aimed at halting the functioning of our government.”²¹⁹

- b. In *United States v. Munchel*, the judge granted an application for access to exhibits and wrote, “defendants face criminal charges for participating in the unsuccessful insurrection at the Capitol on January 6, 2021.”²²⁰
- c. In *United States v. Bingert*, the judge denied a motion to dismiss indictment and again called it an “unsuccessful insurrection.”²²¹
- d. In *United States v. Brockhoff*, the judge issued an order denying a motion for pretrial release, stating that “[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021.”²²²
- e. In *United States v. Grider*, the judge denied a motion to dismiss indictment, stating that “[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021.”²²³
- f. In *United States v. Puma*, the judge characterized the January 6, 2021 attack as an “insurrection” repeatedly in an order denying a motion to dismiss the indictment.²²⁴

²¹⁹ 590 F. Supp. 3d 340, 344 (D.D.C. 2022).

²²⁰ 567 F. Supp. 3d 9, 13 (D.D.C. 2021).

²²¹ 605 F. Supp. 3d 111, 115-16 (D.D.C. 2022).

²²² 590 F. Supp. 3d 295, 298-99 (D.D.C. 2022).

²²³ 585 F. Supp. 3d 21, 24 (D.D.C. 2022).

²²⁴ 596 F. Supp. 3d 90 (D.D.C. 2022).

- g. In *United States v. Rivera*, the judge characterized the January 6, 2021 attack as an “insurrection” repeatedly in an opinion after bench trial.²²⁵
- h. In *United States v. DeGrave*, the judge characterized the January 6, 2021 attack as an “insurrection” repeatedly in an order on pretrial detention.²²⁶
- i. In *United States v. Randolph*, the judge characterized the January 6, 2021 attack as an “insurrection” repeatedly in an order on pretrial detention.²²⁷
- j. In the *Matter of Giuliani*, a state appellate court referred to “violence, insurrection and death on January 6, 2021, at the U.S. Capitol” in an order suspending Trump’s lawyer from the practice of law.²²⁸

280. Multiple leaders and members of the extremist groups that played key roles in the insurrection have also been convicted of seditious conspiracy under 18 U.S.C. § 2384, which requires the government to prove that two or more persons “conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof.”

²²⁵ 607 F. Supp. 3d 1 (D.D.C. 2022).

²²⁶ 539 F. Supp. 3d 184 (D.D.C. 2021).

²²⁷ 536 F. Supp. 3d 128 (E.D. Ky. 2021).

²²⁸ 197 A.D.3d 1, 25 (2021); *see also O'Rourke v. Dominion Voting Sys. Inc.*, 571 F. Supp. 3d 1190, 1202 (D. Colo. 2021); *United States v. Hunt*, 573 F. Supp. 3d 779, 807 (E.D.N.Y. 2021); *Rutenburg v. Twitter, Inc.*, No. 4:21-CV-00548-YGR, 2021 WL 1338958, at *1 (N.D. Cal. Apr. 9, 2021); *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1172, 1175-76 (N.D. Cal. 2022); *United States v. Munchel*, 991 F.3d 1273, 1275-79 (D.C. Cir. 2021).

281. The Department of Justice maintains a growing list of defendants charged in federal court in Washington, D.C. who took direction from Trump on January 6, 2021 and breached the U.S. Capitol.²²⁹

282. For example:

- a. In April 2022, an Oath Keepers member named Brian Ulrich pleaded guilty to seditious conspiracy.²³⁰
- b. In May of 2022, Oath Keepers member William Todd Wilson pleaded guilty to seditious conspiracy.²³¹
- c. In October 2022, former leader of the Proud Boys Jeremy Bertino pleaded guilty to seditious conspiracy.²³²
- d. On January 23, 2023, four Oath Keepers were found guilty of seditious conspiracy.²³³
- e. Around May 4, 2023, four members of the Proud Boys, including their former leader Enrique Tarrio, were convicted of seditious conspiracy.²³⁴

²²⁹ *Capitol Breach Cases*, DEP'T OF JUSTICE, <https://www.justice.gov/usao-dc/capitol-breach-cases>.

²³⁰ Ryan Lucas, *A second Oath Keeper pleaded guilty to seditious conspiracy in the Jan. 6 riot*, NPR (Apr. 29, 2022), <https://www.npr.org/2022/04/29/1095538077/a-second-oath-keeper-pleaded-guilty-to-seditious-conspiracy-in-the-jan-6-riot>.

²³¹ Michael Kunzelman, *Oath Keeper from North Carolina pleads guilty to seditious conspiracy during Jan. 6 insurrection*, PBS (May 4, 2022), <https://www.pbs.org/newshour/politics/oath-keeper-from-north-carolina-pleads-guilty-to-seditious-conspiracy-during-jan-6-insurrection>.

²³² *Former Leader of the Proud Boys Pleads Guilty to Seditious Conspiracy for Efforts to Stop Transfer of Power Following 2020 Presidential Election*, DEP'T. OF JUSTICE (Oct. 6, 2022), <https://www.justice.gov/opa/pr/former-leader-proud-boys-pleads-guilty-seditious-conspiracy-efforts-stop-transfer-power>.

²³³ Kyle Cheney, *4 more Oath Keepers found guilty of seditious conspiracy tied to Jan. 6 attack*, POLITICO (Jan. 23, 2023), <https://www.politico.com/news/2023/01/23/oath-keepers-guilty-seditious-conspiracy-jan-6-00079083>.

²³⁴ Alan Feuer, Zach Montague, *Four Proud Boys Convicted of Sedition in Key Jan 6. Case*, N.Y. TIMES (May 4, 2023), <https://www.nytimes.com/2023/05/04/us/politics/jan-6-proud-boys-sedition.html>.

- f. Both the Oath Keepers and the Proud Boys were instrumental in mobilizing in response to Trump's December 19 "will be wild!" tweet. Both acted as vanguards in the attack. And both withdrew after Trump belatedly ordered them to do so.

283. In a published opinion, one federal judge in the District of Columbia stated:

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

President Trump's January 6 Rally Speech was akin to telling an excited mob that corn-dealers starve the poor in front of the corn-dealer's home. He invited his supporters to Washington, D.C., after telling them for months that corrupt and spineless politicians were to blame for stealing an election *from them*; retold that narrative when thousands of them assembled on the Ellipse; and directed them to march on the Capitol building—the metaphorical corn-dealer's house—where those very politicians were at work to certify an election that he had lost. The Speech plausibly was, as [John Stuart] Mill put it, a "positive instigation of a mischievous act."²³⁵

284. On December 19, 2023, the Colorado Supreme Court held that Trump "engaged" in insurrection under Section 3 of the Fourteenth Amendment. *Griswold*, 2023 WL 8770111, at *37-44 (Ex. A).

²³⁵ *Thompson*, 590 F. Supp. 3d at 104, 118.

285. On December 28, 2023, the Maine Secretary of State, evaluating election challenges following an evidentiary hearing, determined that Trump “engaged in insurrection,” under Section 3 of the Fourteenth Amendment. Maine Sec. of State Ruling, Ex. C.

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

287. For example:

- a. “Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021.”²³⁶
- b. “The fact remains that [the defendant] and others were called to Washington, D.C. by an elected official; he was prompted to walk to the Capitol by an elected official. . . [the defendant was] told lies, fed falsehoods, and told that our election was stolen when it clearly was not.”²³⁷
- c. “The steady drumbeat that inspired defendant to take up arms has not faded away . . . not to mention, the near-daily fulminations of the former President.”²³⁸
- d. “Defendant’s promise to take action in the future cannot be dismissed as an unlikely occurrence given that his singular source of information, . . . (‘Trump’s the only big shot I trust right now’), continues to propagate the lie that inspired the attack on a near daily basis.”²³⁹

²³⁶ *Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1193 (C.D. Cal. 2022).

²³⁷ Tr. of Sentencing at 55, *United States v. Lolos*, No. 1:21-cr-00243 (D.D.C. Nov. 19, 2021).

²³⁸ Mem. Op. at 24, *United States v. Meredith, Jr.*, No. 1:21-cr-00159, ECF No. 41 (D.D.C. May 26, 2021).

²³⁹ *United States v. Dresch*, No. 1:21-cr-00071, 2021 WL 2453166, *8 (D.D.C. May 27, 2021).

- e. “At the end of the day the fact is that the defendant came to the Capitol because he placed his trust in someone [Donald Trump] who repaid that trust by lying to him.”²⁴⁰
- f. “And as for the incendiary statements at the rally detailed in the sentencing memo, which absolutely, quite clearly and deliberately, stoked the flames of fear and discontent and explicitly encouraged those at the rally to go to the Capitol and fight for one reason and one reason only, to make sure the certification did not happen, those may be a reason for what happened, they may have inspired what happened, but they are not an excuse or justification.”²⁴¹
- g. “[B]ut we know, looking at it now, that they were supporting the president who would not accept that he was defeated in an election.”²⁴²
- h. “And you say that you headed to the Capitol Building not with any intent to obstruct and impede congressional proceedings; but because the then-President, Trump, told protesters at the “stop the steal” rally -- and I quote: After this, we’re going to walk down; and I will be there with you. We’re going to walk down. We’re going to walk down. I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard. And you say that you wanted to show

²⁴⁰ Tr. of Plea and Sentence at 31, *United States v. Dresch*, No. 1:21-cr-00071 (D.D.C. Aug. 4, 2021).

²⁴¹ Tr. of Sentencing at 22, *United States v. Peterson*, No. 1:21-cr-00309, ECF No. 32 (D.D.C Dec. 1, 2021).

²⁴² *United States v. Tanios*, No. 1:21-mj-00027, ECF No. 30 at 107 (N.D.W. Va. Mar. 22, 2021).

your support for and join then-President Trump as he said he would be marching to the Capitol; but, of course, didn't."²⁴³

- i. "[A]t the 'Stop the Steal' rally, then-President Trump eponymously exhorted his supporters to, in fact, stop the steal by marching to the Capitol. . . [h]aving followed then-President Trump's instructions, which were in line with [the defendant's] stated desires, the Court therefore finds that Defendant intended her presence to be disruptive to Congressional business."²⁴⁴
- j. Moreover, four sentencing cases of January 6 defendants included statements by a judge that, "The events of January 6th involved the rather unprecedented confluence of events spurred by then President Trump. . ."²⁴⁵

V. TRUMP ACKNOWLEDGES THAT HE WAS IN COMMAND OF INSURRECTIONISTS AND CALLS THEM PATRIOTS.

288. On May 10, 2023, during a CNN town hall, Trump maintained his position that the 2020 presidential election was a "rigged election."

289. When CNN moderator Kaitlin Collins asserted that it was not a stolen election and offered Trump "a chance to acknowledge the results," Trump responded, "If you look at what happened in Pennsylvania, Philadelphia, if you look at what happened in Detroit, Michigan . . . all

²⁴³ Tr. of Sentencing at 36, *United States v. Gruppo*, No. 1:21-cr-00391 (D.D.C. Oct. 29, 2021).

²⁴⁴ Findings of Fact and Conclusions of Law at 15, *United States v. MacAndrew*, No. 1:21-cr-00730, ECF No. 59 (D.D.C. Jan. 17, 2023). https://storage.courtlistener.com/recap/gov.uscourts.dcd.238421/gov.uscourts.dcd.238421.59.0_2.pdf.

²⁴⁵ Tr. of Sentencing at 38, *United States v. Prado*, No. 1:21-cr-00403 (D.D.C. Feb. 7, 2022); Tr. of Sentencing at 28, *United States v. Barnard, et al.*, No. 1:21-cr-00235 (D.D.C. Feb. 4, 2022); Tr. of Sentencing at 68, *United States v. Stepakoff*, No. 1:21-cr-00096 (D.D.C. Jan. 20, 2022); Tr. of Sentencing at 28, *United States v. Williams*, No. 1:21-cr-00388 (D.D.C. Feb. 7, 2022).

you have to do is take a look at government cameras. You will see them, people going to 28 different voting booths to vote, to put in seven ballots apiece.”²⁴⁶

290. Collins asked Trump “Will you pardon the January 6th rioters who were convicted of federal offenses?” Trump responded, “I am inclined to pardon many of them. I can’t say for every single one because a couple of them, probably, they got out of control.”²⁴⁷

291. Collins asked Trump, “When it was clear [attackers] weren’t being peaceful, why did you wait three hours to tell them to leave the Capitol? They listen to you like no one else.” Trump responded, “They do. I agree with that.”²⁴⁸

292. Trump then asserted he thought it was Nancy Pelosi’s and the mayor’s “job” to do so. He also stated that the video he posted 187 minutes after the initial break-in “was a beautiful video.”²⁴⁹

293. When Collins mentioned Ashli Babbitt, who was shot by police while attempting to break into the Capitol, Trump praised her and responded, “That thug [the police officer] that killed her, there was no reason to shoot her at blank range. . . . And she was a good person. She was a patriot.”²⁵⁰

294. When Collins told Trump that Mike Pence “says that you endangered his life on that day,” Trump responded, “I don’t think he was in any danger.”²⁵¹

²⁴⁶ *READ: Transcript of CNN’s town hall with former President Donald Trump, supra* note 20.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

295. Trump said this notwithstanding violent chants among the crowd to “Hang Mike Pence!” and active tweets by Trump during the attack that Pence lacked courage to unlawfully reject certification of the election.

296. Collins then asked Trump if he feels that he owes Pence an apology. Trump replied, “No, because he did something wrong. He should have put the votes back to the state legislatures and I think we would have had a different outcome.”²⁵²

VI. TRUMP REMAINS UNREPENTANT AND WOULD DO IT AGAIN.

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

298. Trump has never expressed regret for any aspect whatsoever of his own conduct in the days leading up to January 6, 2021 or on January 6 itself.

299. Trump has not offered personal condolences to any of the law enforcement personnel or their families who were injured or died as a result of the January 6 attack.

300. Trump has not apologized to anyone, either on his own behalf or on behalf of his supporters, for the January 6 attack.

301. To the contrary, Trump has continued to defend and praise the attackers.

302. Around December 20, 2022, after the bi-partisan House committee voted to recommend that the Justice Department bring criminal charges against Trump, Trump posted on

²⁵² *Id.*

his website Truth Social: “these folks don’t get it that when they come after me, people who love freedom rally around me.”²⁵³

303. Trump has endorsed and appeared at multiple fundraisers for the “Patriot Freedom Project,” an organization that provides support for January 6 attackers.

304. As recently as November 2023, Trump decried the prison sentences January 6 attackers received for their criminal activity, stating they were “hostages.” At a 2024 presidential campaign event he stated: “I call them the J6 hostages, not prisoners. I call them the hostages, what’s happened. And it’s a shame.”²⁵⁴

305. Trump has not petitioned Congress for amnesty under Section 3 of the Fourteenth Amendment, nor has Congress granted it.

306. In fact, Trump has demonstrated that the purpose of Section 3 of the Fourteenth Amendment—to prevent insurrectionists from holding power *because of the danger they pose to the Republic*—applies with undiminished vigor.

307. For example, on December 3, 2022, Trump called for “termination of all rules, regulations, and articles, even those found in the Constitution.”²⁵⁵

308. And on September 22, 2023, Trump invoked execution as punishment and stated that General Mark Milley, Chairman of the Joint Chiefs of Staff, by making phone calls, explicitly authorized by officials in the administration, to reassure China following January 6 about a

²⁵³ Steve Peoples, *Republicans’ usual embrace of Trump muted following criminal referral*, PBS (Dec. 20, 2022), <https://www.pbs.org/newshour/politics/republicans-usual-embrace-of-trump-muted-following-criminal-referral>.

²⁵⁴ *Former President Trump Campaigns in Houston*, at 5:05, C-SPAN (Nov. 2, 2023), <https://www.c-span.org/video/?531400-1/president-trump-campaigns-houston>.

²⁵⁵ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Dec. 3, 2022, 6:44 AM), <https://truthsocial.com/@realDonaldTrump/posts/109449803240069864>.

threatened attack, had committed “an act so egregious that, in times gone by, the punishment would have been DEATH!”²⁵⁶

VII. THE CONSTITUTION DISQUALIFIES INSURRECTIONISTS FROM OFFICE.

309. Section 3 of the Fourteenth Amendment to the U.S. Constitution provides: “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 . . . 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.”

310. Persons who trigger this provision are disqualified from public office, just as those who fail to meet the age or citizenship requirements of Article I, section 2 of the Constitution are disqualified from the presidency. “*The oath to support the Constitution is the test.* The idea being that one who had taken an oath to support the Constitution and violated it, ought to be excluded from taking it again, until relieved by Congress.” *Worthy*, 63 N.C. at 204.

311. Under Section 3, to “engage” merely requires “a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from the insurrectionists’ perspective] termination”). *Powell*, 27 F. Cas. at 607; *Worthy*, 63 N.C. at 203 (in leading national precedent, defining “engage” under Section 3 to mean “[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary”).

312. Planning or helping plan an insurrection or rebellion satisfies the definition of “engag[ing]” under Section 3 of the Fourteenth Amendment. So does planning a demonstration or march upon a government building that the planner knows is substantially likely to (and does)

²⁵⁶ Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Sept. 22, 2023, 6:59 PM), <https://truthsocial.com/@realDonaldTrump/posts/111111513207332826>.

result in insurrection or rebellion, as it constitutes taking voluntary steps to contribute, “by personal service,” a “thing that was useful or necessary” to the insurrection or rebellion. And knowing that insurrection or rebellion was likely makes that aid voluntary.

VIII. TRUMP ENGAGED IN INSURRECTION OR REBELLION.

313. The allegations of all previous paragraphs are incorporated by reference.

314. On January 20, 2017, Trump took an oath to support the U.S. Constitution.

315. Trump took that oath as an “officer of the United States” within the meaning of Section 3 of the Fourteenth Amendment.

316. During his 2020 re-election campaign, and after the results made clear that he had lost the election, Trump inflamed his supporters with claims that the 2020 presidential election had been rigged.

317. Over the course of November and December 2020, and continuing into January 2021, Trump attempted a series of unlawful schemes to overturn the election. These schemes included pressuring state legislators to appoint pro-Trump electors in states he had lost; the submission of fake electoral certificates by pro-Trump electors in states he had lost; pressuring Pence to discard electoral votes from states he had lost; and seizing voting machines as a pretext for other unlawful means to retain power.

318. Trump’s lawyers and aids and Vice President Pence himself had repeatedly advised Trump that Pence had no lawful authority to reject electoral votes.

319. After various other schemes to overturn the 2020 election failed, Trump summoned his supporters to Washington, D.C., on January 6, 2021, telling them that it would be “wild.”

320. Trump knew that some of his supporters on January 6, 2021 were armed and had plans to commit violence on that day.

321. Still, Trump egged supporters on and insisted they must “fight” and reclaim the presidency from supposed theft.

322. After enraging his supporters further, telling them to “fight like hell” and that “you’re allowed to go by very different rules,” Trump sent them to the Capitol.

323. Trump’s supporters defeated civilian law enforcement, captured the United States Capitol, and prevented Congress from certifying the 2020 presidential election, just as Trump had intended.

324. Although they did not succeed, many of the attackers threatened to assassinate Vice President Pence, Speaker Pelosi, and other leaders whom Trump had urged them to target.

325. During the hours-long attack, and despite pleas from family and aides, Trump did not call off the attack. Nor did he use his presidential authority to order reinforcements for the beleaguered police. Instead, he goaded the attackers on.

326. As a result, the certification of the 2020 presidential election could not take place until the next day.

327. The events of January 6, 2021, constituted an insurrection or a rebellion under Section 3: a violent, coordinated effort to storm the Capitol to obstruct and prevent the Vice President of the United States and the United States Congress from fulfilling their constitutional roles by certifying President Biden’s victory, and to illegally extend then-President Trump’s tenure in office.

328. The effort to overthrow the results of the 2020 election by unlawful means, from on or about November 3, 2020, through at least January 6, 2021, constituted a rebellion under Section 3: an attempt to overturn or displace lawful government authority by unlawful means.

329. Trump knew of, consciously disregarded the risk of, or specifically intended the attackers' unlawful actions described in the preceding allegations.

330. Trump knew of, consciously disregarded the risk of, or specifically intended each of the following:

- a. Angry and armed supporters would amass in Washington, D.C., on January 6, 2021.
- b. These supporters would, at his command, march on the U.S. Capitol.
- c. These supporters would disrupt, delay, or obstruct Congress from certifying the electoral votes.
- d. His 2:24 PM tweet would goad and encourage his supporters to continue their attack.
- e. His refusal to issue a public statement directing the attackers to disperse would encourage the attackers to continue.
- f. His refusal to order federal law enforcement to the scene would enable the attackers to continue.

331. Trump summoned the attackers to Washington, D.C. to "be wild" on January 6; ensured that his armed and angry supporters were able to bring their weapons; incited them against Vice President Pence, Congress, the certification of electoral votes, and the peaceful transfer of power; instructed them to march on the Capitol for the purpose of preventing, obstructing, disrupting, or delaying the electoral vote count and peaceful transfer of power; encouraged them during their attack; used the attack as an opportunity to further pressure and intimidate the Vice President and Members of Congress; provided material support to the insurrection by refraining

from mobilizing federal law enforcement or National Guard assistance; and otherwise fomented, facilitated, encouraged, and aided the insurrection.

332. None of this conduct was undertaken in performance of Trump's official duties, in his official capacity, or under color of his office. Under Article II of the Constitution, the Twelfth Amendment, and statutes in effect then or now, the President is not involved in counting or certifying votes. Rather, Trump engaged in insurrection solely in his personal or campaign capacity. In fact, when he did contemplate the unlawful use of executive power to further his unlawful schemes (such as seizing voting machines), government aides and lawyers advised him that it would be illegal and/or refused his orders.

333. Despite having sworn an oath to support the Constitution of the United States, Trump "engaged in insurrection or rebellion against the same, or [gave] aid or comfort to the enemies thereof" within the meaning of section 3 of the Fourteenth Amendment.

IX. TRUMP GAVE "AID OR COMFORT TO THE ENEMIES OF" THE U.S. CONSTITUTION.

334. The allegations of all previous paragraphs are incorporated by reference.

335. In addition to disqualifying persons who violate their oath by engaging in insurrection or rebellion, Section 3 disqualifies persons who do so by giving "aid or comfort to enemies of" the Constitution. As used in Section 3, "enemies" applies to domestic, as well as foreign enemies of the Constitution. The concept of a "domestic" enemy became part of American constitutional thinking no later than 1862, when Congress enacted the Ironclad Oath to "support and defend the Constitution of the United States, against all *enemies, foreign and domestic*." Act of July 2, 1862, Ch. 128, 12 Stat. 502 (emphases added).

336. Aid or comfort to enemies of the Constitution includes indirect assistance such as supporting, encouraging, counseling, or promoting the enemy, even where such conduct might fall short of “engaging” in insurrection. *See* Baude & Paulsen, *supra* ¶ 20, at 67-68.

337. By his conduct described herein, beginning before January 6, 2021, and continuing to the present time, Trump gave aid and comfort to enemies of the Constitution by, among other things: encouraging and counseling the insurrectionists; deliberately failing to exercise his authority and responsibility as President to quell the insurrection; praising the insurrectionists, including calling them “very special,” “good persons,” and “patriots”; and promising or suggesting that he would pardon many of the insurrectionists if reelected to the presidency.

X. TRUMP IS DISQUALIFIED FROM PUBLIC OFFICE.

338. Trump is disqualified from holding “any office, civil or military, under the United States.”

339. Congress has not removed this disability from Trump.

340. The presidency of the United States is an “office . . . under the United States” within the meaning of Section 3 of the Fourteenth Amendment.

341. Consequently, Donald J. Trump is disqualified from, and ineligible to hold, the office of President of the United States. Accordingly, his nomination papers are invalid under Illinois law because when Trump swore that he is “qualified” for the presidential office, as required by 10 ILCS 5/7-10, he did so falsely.

WHEREFORE, Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate “Donald J. Trump” 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.

Submitted By:

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Charles J. Holley
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Jack L. Hickman
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Ralph E. Cintron
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Darryl Baker
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Signature Pages Follow

Prepared By:

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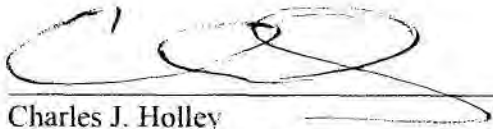
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A handwritten signature in cursive script, appearing to read "Steven Daniel Anderson", written in black ink.

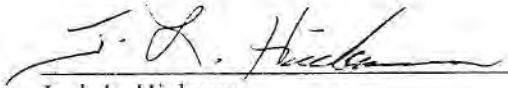
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Submitted by:

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Submitted by:

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Fairview Heights, Illinois 62208

Submitted by:



Ralph E. Cintron
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Submitted by:


Darryl P. Baker
401 S Maple Street
Colfax, Illinois 61728

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

**BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE STATE OFFICERS
ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR THE MARCH 19, 2024,
GENERAL PRIMARY**

IN THE MATTER OF OBJECTIONS BY)	
)	
Steven Daniel Anderson, Charles J. Holley,)	
Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker,)	
Objectors,)	
v.)	No. 24 SOEB GP 517
)	
Donald J. Trump,)	
Candidate.)	

DECISION

The State Board of Elections, sitting as the duly constituted State Officers Electoral Board, and having convened on January 30, 2024, at 69 W. Washington, Chicago, Illinois, and via videoconference at 2329 S. MacArthur Blvd., Springfield, Illinois and having heard and considered the objections filed in the above-titled matter, hereby determines and finds that:

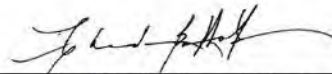
1. The State Board of Elections has been duly and legally constituted as the State Officers Electoral Board pursuant to Sections 10-9 and 10-10 of the Election Code (10 ILCS 5/10-9 and 5/10-10) for the purpose of hearing and passing upon the objections filed in this matter and as such, has jurisdiction in this matter, except as specifically noted in Paragraph 10 below.
2. On January 4, 2024, Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker, timely filed an objection to the nomination papers of Donald J. Trump, Republican Party candidate for the office of President of the United States.
3. A call for the hearing on said objection was duly issued and was served upon the Members of the Board, the Objectors, and the Candidate by registered mail as provided by statute unless waived.

4. On January 17, 2024, the State Officers Electoral Board voted to adopt the Rules of Procedure, and a hearing officer was assigned to consider arguments and evidence in this matter.
5. On January 19, 2024, Candidate filed a Motion to Dismiss Objectors' Petition ("Motion to Dismiss"). On January 23, 2024, Objectors filed a Response to Candidate's Motion to Dismiss Objectors' Petition. On January 25, 2024, Candidate filed a Reply in Support of his Motion to Dismiss.
6. On January 19, 2024, Objectors filed a Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment ("Motion for Summary Judgment"). On January 23, 2024, Candidate filed Candidate's Opposition to Objectors' Motion for Summary Judgment. On January 25, 2024, Objectors filed Objectors' Reply in Support of their Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment.
7. On January 24, 2024, a Stipulated Order Regarding Trial Transcripts and Exhibits ("Stipulated Order") was entered. Under this Stipulated Order, the parties stipulated to the authenticity of certain exhibits admitted in *Anderson v. Griswold*, District Court, City and County of Denver, No. 23CV32577, as well as transcripts in that proceeding.
8. On January 26, 2024, a hearing was held before the Hearing Officer. During the hearing, the parties utilized certain pieces of evidence encompassed by the Stipulated Order and made oral arguments to the Hearing Officer.
9. The Board's appointed Hearing Officer issued a recommended decision in this matter after reviewing all matters in the record, including arguments and/or evidence tendered by the parties.
10. Upon consideration of this matter, the Board adopts the findings of fact, conclusions of law, and recommendations of the Hearing Officer, except as set forth below, and adopts the conclusions of law and recommendations of the General Counsel and finds that:
 - A. Factual issues remain that preclude the Board from granting Objectors' Motion for Summary Judgment.
 - B. Paragraph 1 of this Decision is incorporated by reference.

- C. Objectors have not met their burden of proving by a preponderance of the evidence that Candidate's Statement of Candidacy is falsely sworn in violation of Section 7-10 of the Election Code, 10 ILCS 5/7-10, as alleged by their objection petition.
- D. In the alternative, and to the extent the Election Code authorizes the Board to consider whether Section 3 of the 14th Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois, under the Illinois Supreme Court's decisions in *Goodman v. Ward*, 241 Ill.2d 398 (2011), and *Delgado v. Board of Election Commissioners*, 224 Ill.2d 482 (2007), the Board lacks jurisdiction to perform the constitutional analysis necessary to render that decision.
- E. Candidate's Motion to Dismiss should be granted as to Candidate's argument that the Board lacks jurisdiction to decide whether Section 3 of the 14th Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois. The remaining grounds for dismissal argued in the Motion to Dismiss were not reached by the Board and are now moot.
- F. Candidate's nomination papers, including his Statement of Candidacy, are valid.
- G. No factual determinations were made regarding the events of January 6, 2021.

IT IS HEREBY ORDERED that Objector's Motion for Summary Judgment is DENIED, Candidate's Motion to Dismiss is GRANTED in part, and the objection of Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker, to the nomination papers of Donald J. Trump, Republican Party candidate for the office of President of the United States, is OVERRULED based on the findings contained in Paragraph 10 above, and the name of the Candidate, Donald J. Trump, SHALL be certified for the March 19, 2024, General Primary Election ballot.

DATED: 01/30/2024



Casandra B. Watson, Chair

CERTIFICATE OF SERVICE

The undersigned certifies that on January 30, 2024, the foregoing order was served upon the Objector(s) or their attorney(s) by:

- ☐ Via email to the address(es) listed below:

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- ☐ Hand delivery at:

- ☐ 2329 S. MacArthur Blvd., Springfield, IL 62704
☐ 69 W. Washington St, Chicago, IL 60602

And on January 30, 2024, served upon the Candidate(s) or their attorney(s) by:

- ☐ Via email to the address(es) indicated below:

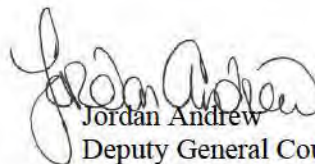
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Jordan Andrew
Deputy General Counsel
Illinois State Board of Elections

Supp. R. 95

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

FILED
1/30/2024 4:14 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000013
Calendar, 6

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 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,)

Respondents.)

PETITION FOR JUDICIAL REVIEW

Petitioners-Objectors Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker (“Objectors”) hereby file this Petition for Judicial Review pursuant to 10 ILCS 5/10-10.1, and, in support thereof, state as follows:

1. Objector Steven Daniel Anderson resides at 2857 Falling Waters Drive, Lindenhurst, Illinois 60046 and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

2. Objector Charles J. Holley resides at 7343 S Euclid Avenue, Chicago Illinois 60649, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

3. Objector Jack L. Hickman resides at 39 Wilshire Drive, Fairview Heights, Illinois 62208, and is a duly qualified, legal, and registered voter at this same address within the State of

Illinois.

4. Objector Ralph E. Cintron resides at 720 S Dearborn Street, Apt. 504, Chicago Illinois, 60605, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

5. Objector Darryl P. Baker resides at 401 S. Maple Street, Colfax, Illinois, and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

6. On January 4, 2024, Respondent-Candidate Donald J. Trump (“Candidate”) filed nomination papers to appear on the ballot in the March 19, 2024 General Primary Election as a candidate for the Republican Nomination for the Office of President of the United States.

7. That same day, Objectors timely filed their petition objecting to the validity of Candidate’s nomination papers on the basis that Candidate is disqualified from holding the Office of the President of the United States under Section 3 of the Fourteenth Amendment of the United States Constitution for having “engaged in insurrection or rebellion against the [United States Constitution], or given aid or comfort to the enemies thereof” after having sworn an oath to support the Constitution. *See* Exhibit 1 (Objectors’ Petition without Exhibits, which will be filed by the State Board of Elections with the Record).

8. Respondent Illinois State Board of Elections was duly called to convene as the State Officers Electoral Board (the “Electoral Board”) to hear Objectors’ petition objecting to Candidate’s nominating papers. The Electoral Board’s members were Cassandra B. Watson (Chair), Laura K. Donahue (Vice Chair), Jennifer M. Ballard Croft, Cristina D. Cray, Tonya L. Genovese, Catherine S. McCrory, Rick S. Tervin, Sr., and Jack Vrett.

9. On January 19, 2024, Candidate filed a motion to dismiss Objectors’ Petition (“Candidate’s Motion to Dismiss”) and Objectors filed a motion to grant their petition or, in the

alternative, for summary judgment (“Objectors’ Motion for Summary Judgment”). After briefing, the presentation of written evidence, and oral argument, Hearing Officer Judge Clark Erickson issued a Report and Recommended Decision on January 27, 2024, recommending that the Electoral Board deny Objectors’ Motion for Summary Judgment and grant Candidate’s Motion to Dismiss based on his finding that the Electoral Board does not have statutory authority to address issues that involve “constitutional analysis.” *See* Exhibit 2.

10. The Hearing Officer further recommended that if the Board were to decline the Hearing Officer’s recommendation to grant Candidate’s Motion to Dismiss, the Board should find that Candidate’s name *should not be printed* on the March 19, 2024 General Primary Election ballot as a candidate for the Republican Nomination for the Office of President of the United States because the preponderance of the evidence presented by the parties established that Candidate engaged in insurrection and is therefore disqualified from office under Section 3 of the Fourteenth Amendment. *See id.*

11. On January 29, 2024, General Counsel for the Electoral Board, Marni Malowitz, issued a recommendation that concurred with the Hearing Officer’s recommendation that Candidate’s Motion to Dismiss be granted but recommended that the Board dismiss the Objectors’ Petition on a different basis: that Candidate’s nominating papers were not invalid because, even if Candidate were unqualified for the presidency under Section 3 of the Fourteenth Amendment, his Statement of Candidacy attesting to his qualifications was not “knowingly false.”

12. On January 30, 2024, the Electoral Board voted to dismiss Objectors’ Petition, adopting the General Counsel’s conclusion that Candidate’s nominating papers were not invalid because his Statement of Candidacy was not “knowingly false” and adopting, in the alternative, the Hearing Officer’s conclusion that the Electoral Board lacks the authority to address issues

involving “constitutional analysis.”

13. The Electoral Board’s decision should be reversed because the General Counsel’s adoption of a scienter requirement for objections based on a candidate’s failure to meet the requisite qualifications for office has no statutory basis under the Illinois Election Code or other legal basis and is unworkable in practice. In addition, Illinois law clearly establishes that the Electoral Board is not only permitted, but is *required*, to evaluate objections like this one, which are based on whether a candidate meets the qualification for the office he or she is seeking as attested to in their statutorily required statement of candidacy. *See Goodman v. Ward*, 241 Ill.2d 398, 409-10 (2011). The conclusion that the Electoral Board is somehow precluded from addressing any issue involving “constitutional analysis” has no basis in law or logic, and indeed, the Electoral Board has addressed issues involving “constitutional analysis” in the past—to resolve objections based on a presidential candidate’s failure to satisfy the natural-born-citizenship or age requirements for office set forth in section 1 of Article II of the U.S. Constitution. *See, e.g., Graham v. Rubio*, No. 15 SOEB GP 528 (evaluating objection that candidate did not meet natural born citizen requirement of U.S. Constitution); *Graham v. Rubio*, No. 16 SOEB GP 528 (Feb. 1, 2016) (adoption by Electoral Board); *Freeman v. Obama*, No. 12 SOB 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); *see also Socialist Workers 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 other electoral board decisions that have required boards to *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.”).

14. Thus, the Court should reverse the Board’s dismissal of Objector’s petition and determine—as the Hearing Officer did, based on the voluminous evidence presented in the record—that Candidate is not qualified for the presidency and cannot be placed on the ballot because he is ineligible under Section 3 of the Fourteenth Amendment, for having engaged in insurrection having previously sworn an oath to uphold the U.S. Constitution. *See Phelan v. Cnty. Officers Electoral Bd.*, 240 Ill. App. 3d 368, 373, 608 N.E.2d 215, 218 (1st Dist. 1992) (upon review of Electoral Board, court may determine matters not considered by the Board where the record presented “permits a fair determination of such issues), *rev’d on other grounds sub nom. Bonaguro v. Cnty. Officers Electoral Bd.*, 158 Ill. 2d 391 (1994).

15. In the alternative, even if the Electoral Board did lack authority to determine whether a candidate meets the constitutional qualifications for office, this Court certainly does not lack that authority. *See id.* (“[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.”). Thus, even if this Court determines the Electoral Board lacked authority to address the merits of Objectors’ Petition, this Court should still proceed to address the issue and determine—as the Hearing Officer

did below—that Candidate is not qualified for the office he seeks and cannot be placed on the ballot because he is ineligible under Section 3 of the Fourteenth Amendment, for having engaged in insurrection having previously sworn an oath to uphold the U.S. Constitution.

16. Objectors request that the Electoral Board timely submit the record and evidence from the Electoral Board proceeding to this Court.

WHEREFORE, Objectors respectfully request that this Court overrule the decision of the Illinois State Board of Elections and find that Candidate’s nomination papers are not valid because Section 3 of the Fourteenth Amendment of the U.S. Constitution renders Candidate ineligible and thus not qualified for the office he seeks. Objectors further request that this Court issue an Order that Candidate Donald J. Trump’s name not appear on the ballot as a candidate for the Republican Nomination for the Office of President of the United States in the March 19, 2024 General Primary Election.

Dated: January 30, 2024

PETITIONERS-OBJECTORS

By: /s/ Ed Mullen
One of their Attorneys

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FILED

October 23, 2023

**OFFICE OF
APPELLATE COURTS**

State of Minnesota
In Supreme Court

Joan Growe, Paul Anderson, Thomas Beer, David Fisher,
Verna Hasbargen, David Thul, Thomas Welna, and Ellen Young,
Petitioners,

v.

Steve Simon, Minnesota Secretary of State,
Respondent,

v.

Republican Party of Minnesota,
Respondent.

PETITIONERS' REPLY BRIEF

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Kristen G. Marttila (#0346007)
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*Attorneys for Respondent Steve Simon, Minnesota
Secretary of State*

Supp. R. 102

Exhibit D

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requirements for office and will therefore not be subsequently disqualified, thereby causing the need for new elections”), *remanded as moot*, 52 F.4th 907 (11th Cir. 2022); *State ex rel. Sandlin v. Watkins*, 21 La. Ann. 631, 632 (1869) (“the State has obviously a great interest in” enforcing Section 3 “and a clear right to” do so). Likewise, this Court can decide whether Trump is eligible.⁶

4. *The possibility of conflicting decisions should be given no weight.*

Intervenor-Respondents assert this Court should dismiss this case because state courts may decide the issue differently. But *Baker* says nothing about courts deciding matters differently. The doctrine protects coordinate branches from each other. If the doctrine prevented resolution wherever sister courts may decide a matter differently, no case would ever be decided. That is why appellate courts exist. As a practical matter, if any state court decides Trump is disqualified, the U.S. Supreme Court can resolve the issue. The possibility that another court may decide this matter differently does not relieve this Court of its obligation to decide the case before it.

5. *The issues were not resolved by the Senate impeachment trial.*

Trump’s final argument invokes res-judicata-like principles to argue that the Senate’s failure to convict Trump forecloses this matter. To the extent the Senate impeachment vote has any relevance, it *supports* the conclusion that Trump engaged in insurrection and therefore is disqualified under Section 3. First, a clear bipartisan

⁶ For these reasons, and as more fully explained in Petitioners’ forthcoming supplemental brief, this Court’s unpublished dicta in *Oines v. Ritchie*, A12-1765 (Minn. 2012) that “under federal law it is Congress that decides challenges to the qualifications of an individual to serve as president” is erroneous and unpersuasive and provides no basis to deny the Petition in this case.

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

**ROBERT LaBRANT, ANDREW BRADWAY,
NORAH MURPHY, and WILLIAM NOWLING,**

Plaintiffs-Appellants,

Court of Appeals No. 368628
Court of Claims No. 23-000137-MZ

v

JOCELYN BENSON, in her official
capacity as Secretary of State,

Defendant-Appellee,

and

DONALD J. TRUMP,

Intervening Appellee.

<p style="text-align:center">THIS APPEAL INVOLVES AN URGENT ELECTION MATTER RELATED TO THE FEBRUARY 27, 2024 PRESIDENTIAL PRIMARY</p>
--

ROBERT DAVIS,

Plaintiff-Appellant,

Court of Appeals No. 368615
Circuit Court No. 23-012484-AW

v

WAYNE COUNTY ELECTION COMMISSION,

Defendant-Appellee.

BRIEF ON APPEAL OF PLAINTIFFS-APPELLANTS LaBRANT ET AL.

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in part on other grounds, 497 Mich 36; 859 NW2d 678 (2014). Compare, e g, Michigan’s constitutional prohibition on officeholding for former officials who have been convicted of certain felonies. See Const 1963, art XI, § 8. The governor could, in theory, pardon a convicted felon. See Const 1963, art V, § 14. But the mere theoretical possibility that a governor *might* do this does not mean that convicted felons may appear on ballots and run for office notwithstanding the prohibition. Likewise, the fanciful speculation that two-thirds of both houses might grant Trump amnesty does not prevent Michigan from exercising its plenary power to appoint electors in the manner directed by its legislature, which includes this challenge procedure.

Second, there is no “unusual need for unquestioning adherence to a political decision already made,” *Baker*, 369 US at 217, nor did the Court below explain how there could be at this stage. *After* electors have been appointed, such a need might arise. But this case arises nearly a year before the date set for the appointment of electors. No political decision has been made; nor is one expected any time soon.

Third, there is no “potentiality of embarrassment from multifarious pronouncements by various departments on one question.” *Id.* As a preliminary matter, if Michigan or any other state rules that Trump is disqualified under Section 3, he may appeal that decision to the United States Supreme Court, which can render a final decision. And crucially, “various departments” does not mean “various state courts.” State courts *regularly* rule on questions that could also be decided by courts in other states; no one would claim, for example, that Michigan courts cannot decide a First or Second Amendment question merely because California or Texas courts might rule differently. Rather, state courts interpret and apply the United States Constitution to their best ability, subject to appeal to the United States Supreme Court. The trial court’s suggestion that the United States Supreme Court is incapable of resolving a fast-track election dispute, *see* Opinion & Order, p 20

(Ex 1, p 21), is belied by the Court’s history of rapid decisions on contested constitutional election issues. *See, e g, Bush v Gore*, 531 US 98; 121 S Ct 525; 148 L Ed 2d 388 (2000) (argued December 11, 2000, and decided the next day).

* * *

This case involves the application of the Fourteenth Amendment to a specific set of facts. It involves weighty issues of nationwide interest, but so do many other cases considered by Michigan courts. Its resolution may have political consequences, but so do many other cases considered by Michigan courts. And as the United States Supreme Court explained, the political question doctrine “is one of ‘political questions,’ not one of ‘political cases.’” *Baker*, 369 US at 217. Article II of the United States Constitution grants Michigan the power to appoint its electors in the manner directed by the legislature; the legislature has empowered its courts to hear this challenge; nothing in the Constitution says otherwise. The case does not fall under the political question doctrine and the courts must decide it.

CONCLUSION AND RELIEF SOUGHT

For the reasons stated, Plaintiffs-Appellants ask that the Court:

1. Reverse the Court of Claims; and
2. Remand to the Court of Claims to conduct an evidentiary hearing on Trump’s eligibility under the Disqualification Clause to be placed on the Michigan presidential primary ballot.

IN THE SUPREME COURT FOR THE STATE OF OREGON

MARY LEE NELSON,
MICHAEL NELSON, JUDY HUFF,
SAMUEL JOHNSON, and
CHAD SULLIVAN, electors of
Oregon,

Plaintiffs-Relators,

v.

LAVONNE GRIFFIN-VALADE,
Secretary of State of Oregon,

Defendant.

SC S _____

**MANDAMUS
PROCEEDING:**

**MEMORANDUM IN
SUPPORT OF:**

**PETITION FOR
PEREMPTORY OR
ALTERNATIVE WRIT OF
MANDAMUS**

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to issue mandamus requiring the Secretary to limit the ballot to constitutionally qualified candidates would not preclude Congress from later removing Trump's Section 3 disability. Congress could remove the disability tomorrow, or after this or another court rules Trump ineligible to appear on the ballot, thereby enabling him to appear on the ballot despite his engagement in insurrection.

2. There is no "unusual need for unquestioning adherence to a political decision already made," *Baker*, 369 US at 217, nor could there be at this stage. *After* electors have been appointed, that need might arise. But appointment of electors is almost a year away. No political decision has been made, nor will be made any time soon.

3. There is no "potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Id.* If Oregon or another state rules that Trump is disqualified under Section 3, he may appeal that decision to the US Supreme Court, which can render a final decision. And "various departments" does not mean "various state courts." State courts *regularly* rule on questions that could also be decided by courts in other states; no one claims, e.g., that Oregon courts cannot decide a First or Second Amendment question merely because California or Texas courts might rule differently. Rather, state courts interpret and apply the Constitution to their best ability, subject to US Supreme Court review. And that Court can render rapid decisions on contested constitutional election issues. *See, e.g., Bush v.*

Gore, 531 US 98 (2000) (argued December 11, 2000, and decided the next day).

VII. CONCLUSION.

Trump is disqualified from the Oregon presidential primary and general election ballots under Section 3. For the reasons explained above and in the accompanying Petition for Peremptory or Alternative Writ of Mandamus and the accompanying Statement of Facts, this Court should (1) exercise its original mandamus jurisdiction under Article VII, section 2, of the Oregon Constitution and ORS 34.120, and (2) issue a peremptory writ of mandamus requiring the Secretary of State to disqualify Donald J. Trump from both the Oregon 2024 presidential primary election ballot and the Oregon 2024 general election ballot. Alternatively, if this Court does not immediately issue a peremptory writ, this Court should issue an alternative writ of mandamus directing the Secretary of State to show cause why she should not be required

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

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

Petitioners-Objectors,

v.

**DONALD J. TRUMP, the Candidate,
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,**

Respondent-Candidates.

2024 COEL 000013

Judge Tracie R. Porter

Calendar 9

MEMORANDUM OF JUDGMENT AND ORDER

This matter comes before the Court for Judicial Review of Petitioners-Objectors', Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker, ("Petitioners-Objectors"), Petition for Judicial Review ("Petition") and Motion to Grant Petition for Judicial Review, and their Reply Brief. The Respondent-Candidate, Donald J. Trump, ("Respondent-Candidate") filed his Response Brief in this matter.

This Court having considered the oral arguments on February 16, 2024 on Petitioners-Objectors' Motion to Grant Petition for Judicial Review, which lasted almost four hours, reviewed the voluminous motions and briefs of the parties (herein Petitioners-Objectors and Respondent-Candidate referred to as "Parties") with their accompanying exhibits, the Electoral Board's

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Common Law Record which consisted of 12 volumes and approximately 6,302 pages filed with the Circuit Court of Cook County, the 267 pages of transcripts of the Report of Proceedings of the Hearing Officer's hearing held on January 26, 2024 and for the hearing held by the Electoral Board on January 30, 2024 filed with the Circuit Court of Cook County, and other relevant case authority and exhibits presented by the Parties in support of their briefs, this Court's findings and conclusions are as follows:

Jurisdiction

On January 30, 2024, Petitioners-Objectors filed this appeal for judicial review to the Circuit Court of Cook County of the Electoral Board's denial of its objections and granting the Respondent-Candidate's motion to dismiss their Objection Petition. On February 5, 2024, the Electoral Board complied with the Illinois Election Code ("Election Code") by filing a record of its proceedings in twelve separate filings, totaling over 6,000 pages ("Record"). 10 ILCS 10-10.1(a); Court Record, Jan. 5, 2024.

Section 10 ILCS 10-10.1 of the Election Code provides that an "objector aggrieved by the decision of an electoral board may secure judicial review of such decision in the circuit court of the county in which the hearing of the electoral board was held."

There is no challenge or question that the Petitioners-Objectors timely filed their appeal for judicial review or that their Objection Petition does not comply with the Election Code. 10 ILCS 5/10-10.1, 5/10-8. Therefore, this Court will not go into a lengthy discussion of its jurisdiction in this matter. The Court finds based on the filings in the records of the Circuit Court of Cook County and the Electoral Board Record that the Petitioners-Objectors have complied with Section 10-10.1 of the Election Code. Thus, this matter is properly before this Court.

Relevant Legal and Secondary Authorities

There are several United States and Illinois Supreme Court cases, United States and Illinois constitutional provisions, Illinois Election Code provisions, common law from other jurisdictions, United States congressional records, and secondary sources cited to or relied upon in this case either in the Electoral Board's Record or pleadings that this Court considered and will discuss in this decision.

The Court sets forth the relevant provisions of these authorities, which are later referenced to support its legal analysis and application of the relevant and determinative factual findings under review in the Electoral Board's Record.

I. U.S. Constitution:

Fourteenth Amendment, Section 3, ("Disqualification Clause"):

"No person shall be a Senator or Representative in Congress, or elector (Electoral College) 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, [an oath] to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same [United States or any State], or given aid or comfort to the enemies thereof But Congress may by a vote of two-thirds of each House, remove such disability."

Article II, Section 1, Clause 2 ("Electors"):

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector."

Article II, Section 1, Clause 5, ("Qualifications Clause for President"):

"No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the

Age of thirty-five Years, and been fourteen Years a Resident within the United States.”

Article II, Section 1, Clause 8, (“Presidential Oath of Office”):

“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, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.”

Article IV, Section 1, (“Full Faith & Credit Clause”):

“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.”¹

II. U.S. Supreme Court Precedent:

United States v. United States Gypsum, 333 US 364 (1948).

Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173 (1979).

Burdick v. Takushi, 504 U.S. 428 (1992).

U.S. Term Limits v. Thornton, 514 U.S. 779 (1995).

III. Illinois Constitution:

Article III, Section 5, (“Board of Elections”):

“A State Board of Elections shall have general supervision over the administration of the registration and election laws throughout the State. The General Assembly by law shall determine the size, manner of selection and compensation of the Board. No political party shall have a majority of members of the Board.”

IV. Illinois Election Code:

10 ILCS 5/7-10, in relevant parts at issue in this case:

“Sec. 7-10. Form of petition for nomination. The name of no candidate for nomination, or State central committeeperson, or township committeeperson, or

¹ Constitution Annotated, at FN 5 (“The Clause also requires states to give Full Faith and Credit to the Records[] and judicial Proceedings of every other State.”), https://constitution.congress.gov/browse/essay/artIV-S1-1/ALDE_00013015/, (accessed Feb. 25, 2024).

• • •

...

Signed.....
(Official Character)
(Seal, if officer has one.)”

10 ILCS 5/10-10, in relevant parts at issue in this case:

“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. A copy of the decision shall be served upon the parties to the proceedings in open proceedings before the electoral board. If a party does not appear for receipt of the decision, the decision shall be deemed to have been served on the absent party on the date when a copy of the decision is personally delivered or on the date when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to each party affected by the decision or to such party's attorney of record, if any, at the address on record for such person in the files of the electoral board.”

...

The electoral board on the first day of its meeting shall adopt rules of procedure for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs by the parties to the objection or by other interested persons.”

V. Illinois Code of Civil Procedure:

735 ILCS 5/8-1003:

“Common law and statutes. Every court of this state shall take judicial notice of the common law and statutes of every state, territory, and other jurisdictions of the United States.”

VI. Illinois Precedent:

Goodman v. Ward, 241 Ill. 2d 398 (2011).

Cinkus v. Stickney Mun. Officers Electoral Bd., 228 Ill. 2d 200 (2008).

Delgado v. Bd. Of Election Comm'rs, 224 Ill. 2d 481 (2007).

City of Belvidere v. Illinois State Labor Relations Bd., 181 Ill. 2d 191 (1998).

Geer v. Kadera, 173 Ill. 2d 398 (1996).

Welch v. Johnson, 147 Ill. 2d 40 (1992).

Delay v. Bd. of Election Comm'rs of City of Chicago, 312 Ill. App. 3d 206 (1st Dist. 2000).²

Lawlor v. Municipal Officer Electoral Bd., 28 Ill. App. 3d 823 (5th Dist. 1975).

AFM Messenger Service, Inc. v. Dep't of Employment Security, 198 Ill. 2d 380 (2001).

Chicago Patrolmen Ass'n Dep't of Rev., 171 Ill. 2d 263 (1996).

VII. Illinois State Board of Elections Decisions:

Graham v. Rubio, 16 SOEB GP 528 (Feb. 1, 2016).

Freeman v. Obama, 12 SOEB GP 103 (Feb. 2, 2012).

Jackson v. Obama, 12 SOEB GP 104 (Feb. 2, 2012).

VIII. U.S. Congressional Authority:

H.R. Rep. No. 117-663 (12/22/2022).³

IX. Other Jurisdictional Authority:

Andrews v. Griswold, 2023 CO 63 (2023).

Andrews v. Griswold, 2023 CV 32577 (Dist. Ct. Nov. 17, 2023).

X. Secondary Authority:

Illinois Institute for Continuing Legal Education ("IICLE"), Election Law, Sec. 1.3 (2020 Edition).

² The Election Code does not authorize an electoral board to raise its own objections to nominating papers sua sponte. See *Delay v. Bd. of Election Comm'rs of City of Chicago*, 312 Ill. App. 3d 206 (1st Dist. 2000). The electoral board is there to adjudicate; it may not take on additional roles better suited to a party. *Id.*

³ This report was used as admissible evidence by the court. 2023 CO at 88, ¶162.

Procedural History of the Case

On January 4, 2024, Respondent-Candidate filed Nomination Papers and a Statement of Candidacy to appear on the ballot for the March 19, 2024, General Primary Election, as a candidate for the Republican Nomination for the office of President of the United States with the Illinois State Board of Elections. (Petition for Judicial Review, ¶5).

That same day, on January 4, 2024, Petitioners-Objectors filed their Petition to Remove the Candidate Donald J. Trump from the ballot for the office of the President of the United States, on the basis that the candidate was disqualified from holding the office he sought. (“Objection Petition”). (EB Record C-6706 V12; Hearing Officer Report and Recommended Decision, Case No. 24 SOEB GP 517, p. 1). Petitioners-Objectors’ basis for the Respondent-Candidate’s disqualification was that Section 3 of the Fourteenth Amendment of the United States Constitution disqualified him from holding the office of the President of the United States “for having ‘engaged in insurrection or rebellion against the [United States Constitution], or given aid or comfort to the enemies thereof’ after having sworn an oath to support the Constitution.” (Petition, ¶7). In their Petition, Petitioners-Objectors sought a hearing and determination as to whether the Respondent-Candidate’s Nomination Papers were legally and factually insufficient based on Section 3 of the Fourteenth Amendment of the United States Constitution and 10 ILCS 5/7-10 of the Illinois Election Code. *Id.*

The Electoral Board convened and appointed a Hearing Officer to hear the Petitioners-Objectors’ Objection Petition to the Respondent-Candidate’s Nominating Papers.⁴

⁴ The Electoral Board members consisted of Cassandra B. Watson (Chair), Laura K. Donahue (Vice-Chair), Jennifer M. Ballard Croft, Cristina D. Cray, Tonya Genovese, Catherine S. McCrory, Rick S. Tervin, Sr., Jack Vrett. The Hearing Officer appointed by the Electoral Board was Judge Clark Erickson (Ret.), respectively referred to as “Hearing Officer Judge Erickson.”

On January 19, 2024, Respondent-Candidate filed a Motion to Dismiss Petitioners-Objectors' Objection Petition. That same day, Petitioners-Objectors filed a Motion to Grant their Objection Petition or, in the alternative, for summary judgment. The parties filed briefs in support of their motions, presented written and audio evidence, and presented oral arguments before the Hearing Officer on January 26, 2024.

In lieu of live witnesses or presenting evidence outside of what the parties had presented in the Colorado District Court trial (that addressed the same issue before this Court), the Parties agreed to the entry of a Stipulated Order Regarding Trial Transcripts and Exhibits from the Colorado Action, dated January 24, 2024 ("Stipulated Order").⁵ The Stipulated Order sets forth "that because Petitioners-Objectors filed a motion for summary judgment, both parties "believe circumstances exist that make it desirable and in the interest of justice and efficiency to minimize unnecessary or duplicative testimony, streamline the process for presenting exhibits in support of or opposition to Objectors' motion for summary judgment, and avoid the need for any contested evidentiary hearing." *Id.* The Stipulated Order included trial witness testimony, and written and video exhibits.

The Stipulated Order in relevant parts agreed to the following evidence to be considered by the Hearing Officer in this case:

- " 1. Any transcripts containing trial witness testimony in the Colorado action⁶ constitutes former testimony and falls within the hearsay exception to hearsay rule set forth and Ill. Evid. R. 804(b)(a).
2. Except as specified herein, all trial exhibits admitted in the Colorado Action are authentic within the meaning of Ill. Evid. R. 901 and 902. This stipulation of authenticity, however, does not apply to Colorado trial exhibits Nos. P21, P92, P94, P109, and P166."

⁵ The Stipulated Order is in the Electoral Board Record, but is unsigned by the Hearing Officer. No party has disputed the unsigned Order. (Electoral Board Record, Index of Exhibits, C-361 V2).

⁶ Specifically, the Colorado case of Anderson v. Griswold, 2023 CV32577 (2023) before the district court. The testimony from witnesses in that case were from October 30, 2023 through November 2, 2023. (See Electoral Board Record, Vols. 5-7.),

(A copy of the Stipulated Order is attached to this Court's Decision as *Appendix A*).

The Parties further indicated in the Stipulated Order that all objections before the court in the Colorado Action were preserved. (Stipulated Order, p. 2).

On January 26, 2024, Hearing Officer Judge Erickson held the hearing on the parties' Motions. On January 27, 2024, Hearing Officer Judge Erickson issued a Hearing Officer Report and Recommended Decision⁷ ("Hearing Officer Decision") recommending that the Electoral Board deny Objectors' Motion for Summary Judgment because "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 Decision, p. 8). He also recommended that the Electoral Board grant Respondent-Candidate's Motion to Dismiss because the "Hearing Officer finds that there is a legal basis for granting the Candidate's Motion to Dismiss the Objectors' Petition." *Id.* at 15 (a copy of the Hearing Officer's Decision is attached to this Court's Decision as *Appendix B*).

Hearing Officer Judge Erickson concluded that "In the event the Board decides not to 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." (Hearing Officer Decision, p. 17).

⁷ The Decision is in the Electoral Board Record at page but is unsigned and undated by the Hearing Officer. No party has disputed the unsigned Decision. (Electoral Board Record, C-6537 V12).

On January 30, 2024, the Electoral Board held a hearing. The Electoral Board considered the written recommendations of the Hearing Officer and its General Counsel.⁸ In its January 30, 2024 written Decision, the Election Board ordered that: (a) Objectors' Motion for Summary Judgment be denied; (b) Candidate's Motion to Dismiss was granted in part⁹; (c) the Objection filed by the Objectors to the Nomination Papers of Donald J. Trump, Republican Party Candidate for the office of President of the United States was overruled based on findings contained in Paragraph 10(A)-(G) of its Decision; and (d) the name of the candidate, Donald J. Trump, shall be certified for the March 19, 2024, General Primary Election ballot. (Decision of Electoral Board, January 30, 2024); (a copy of the Electoral Board's Decision is attached to this Court's Decision as *Appendix C*).¹⁰

On January 30, 2024, Petitioners-Objectors filed their Petition for Judicial Review before this Court.

⁸ Objections are limited to the arguments raised in the Objection Petition. The General Counsel added a legal argument that Petitioners-Objectors did not raise in their Objection Petition. The legal argument was whether Respondent-Candidate had to "knowingly lie" when he filed his nomination papers and statement of candidacy, that he was not qualified for the office he sought. This Court finds that the General Counsel's recommendation is contrary to existing Illinois law, and that nothing in the Electoral Board's hearing transcript or Decision dated January 30, 2024, indicates that they relied upon or made a decision on this argument raised by the General Counsel. This Court further rejects the assertion that the *Welch v. Johnson* decision supports such an argument. 147 Ill. 2d 40, 56 (1992) (the court explicitly noted that "our decision is limited to the circumstances of this case," and the case involved statements of economic interest not statements of candidacy).

⁹ The "in part" was on the Candidate's ground that the Electoral Board lack jurisdiction to decide whether Section 3 of the Fourteenth Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois. The Electoral Board also stated at the January 30, 2024 hearing that: "But Section 10-10 simply does not give the Board the authority to weigh in to complicated federal constitutional issues." (Electoral Board Hearing Transcript, R-195, Lines 3-6).

¹⁰ The Hearing Officer set forth a summary of the arguments in the Candidates Motion to Dismiss and the Objectors' Motion for Summary Judgment in his Report and Recommended Decision. Those arguments have not been repeated in full in this decision.

PREAMBLE

This case is riddled with issues of state and federal statutory and constitutional questions of interpretation. It also presents a novel application and interpretation of Section 3 of the Fourteenth Amendment of the U.S. Constitution before the Electoral Board can determine the qualifications of a candidate for the office of President of the United States, beyond the previously prescribed requirements of age, citizenship, and natural-born qualifications under Article II of the U.S. Constitution.

There are just under 7,000 pages of written materials, of which some have been admitted into evidence, and at least 100 separate videos and images dating prior to and on January 6, 2021, including Twitter posts, as exhibits submitted by the parties directly to this Court. Despite this historical and mammoth size of the information, including a surge of pleadings, findings of facts, and recommendations, both from Hearing Officer Judge Erickson and the Electoral Board's own General Counsel, this Court cannot lose sight of the forest for the trees.

The Election Code under Section 10-10.1 limits this Court's judicial review to just the factual findings of the record before the Electoral Board. This Court does not to conduct its own fact-finding. 10 ILCS 5/10-10.1. This Court is aware that as a circuit court sitting as only one of three reviewing courts of the Electoral Board's Decision, that its decision could not be the ultimate outcome. Nonetheless, under Section 10-10.1 of the Election Code, this Court must review the Electoral Board's Decision, based on its Report of Proceedings, the Common Law Record (herein Report of Proceedings and Common Law Record as "Record") and the evidence therein to determine, if its decision should be upheld or reversed. Therefore, in order to determine whether the Electoral Board's Decision should be affirmed, overruled, or even remanded, this Court will

review the Electoral Board's Decision based on the factual findings and conclusions of law that led to its decision.

In conducting this review, this Court will first consider the objections filed by Petitioners-Objectors before the Electoral Board, and then will review the Electoral Board's basis for dismissing the Petitioners-Objectors' objections under the applicable standard of review.

QUESTIONS PRESENTED

In their Objection Petition filed on January 4, 2024, Petitioners-Objectors challenged the legal and factual sufficiency of the Nomination Papers of Respondent-Candidate as a candidate for the Republican Nomination for the office of President of the United States. (Objectors Petition, Jan. 4, 2024, EB Record C-274 V2, p. 1).

The basis of Petitioners-Objectors' challenge is that Section 3 of the Fourteenth Amendment of the U.S. Constitution disqualifies the Respondent-Candidate from being placed on the ballot because he engaged in insurrection on January 6, 2021 and, due to his disqualification, his name should not be placed on the ballot for the March 19, 2024, General Primary Election. (Objector's Petition, Jan. 4, 2024, EB Record C-274 V2, p. 2).

The Petitioners-Objectors further challenge the validity of Respondent-Candidate's Nomination Papers because they allege that he falsely swore in his Statement of Candidacy that he was "legally qualified" for the office of presidency, as required by 10 ILCS 5/7-10 (sic).¹¹ (Objector's Petition, dated January 4, 2024, EB Record C-274 V2, p. 2, ¶8).

¹¹ The Court takes notice that 10 ILCS 5/10-5 specifically governs the Statement of Candidacy, not 5/7-10 (covering Nominating Petitions). (Objector's Petition, dated January 4, 2024, EB Record C-274 V2, p. 2, ¶8)

This Court asserts that the imperative questions to consider in review of the Electoral Board's decision are as follows:¹²

1. Whether the Electoral Board's decision to effectively dismiss Petitioners-Objectors' Objection Petition, by granting Respondent-Candidate's Motion to Dismiss, was proper under the grounds that it lacked jurisdiction to conduct a constitutional analysis to determine if Respondent-Candidate was disqualified from being on the ballot was proper.
2. And if the Electoral Board's actions were not proper, whether Petitioners-Objectors have met their burden of proving by a preponderance of the evidence¹³ that Respondent-Candidate's Statement of Candidacy is falsely sworn in violation of Section 10 ILCS 5/7-10 of the Election Code, based on his disqualification under Section 3 of the Fourteenth Amendment, and thus not meeting the minimum requirements of Section 7-10.
3. Ultimately, whether Respondent-Candidate's name shall remain on or be removed from the ballot for the March 19, 2024, General Primary Election as a candidate for the Republican Nomination for the Office of President of the United States.

Before this Court can proceed on the questions presented, it must first determine the proper standard, or standards, of review, in which to review the Electoral Board's decision.

¹² The Court rejects the argument that the Board created a new "knowingly lied" standard that it must consider in determining if the candidate falsely swore in the Statement of Candidacy that the candidate is legally qualified. The Court comes to this conclusion based on reading the Electoral Board's Decision dated January 30, 2024, and the transcript of the Election Board's hearing in this matter on January 30, 2024 of which neither make reference that their decisions are based on a "knowingly lied" standard set forth in the parties' brief and argued before the Court on February 17, 2024. (EB Record C-6716 V12; EB Hearing on Jan. 30 2024 Transcript, R-167 through R-209). General Counsel may have recommended such a standard but there is no language or reference by the Electoral Board that a "knowingly lied" standard was a basis for their decision to either grant Respondent-Candidate's Motion to Dismiss or find Petitioners-Objectors had not met their burden of proving by a preponderance of the evidence that the Candidate's Statement of Candidacy was falsely sworn. (EB Decision, EB Record, C-6716-C6719 V12).

¹³ See Rules of Procedure Adopted by the State Board of Elections, dated January 17, 2024. (EB Record, II.(b) Argument at C-3582-83 V7).

STANDARD OF REVIEW

A reviewing court determines the standard of review by looking to the factual evidence and legal authority previously submitted in the record before and relied upon by the Electoral Board that governs the issues before this Court.¹⁴ As the Illinois Supreme Court has noted, the distinction between the standards of review is not always easy to determine until the Court determines what is at dispute—the facts, the law, or a mixed question of fact and law. *Goodman v. Ward*, 241 Ill. 2d 398, 405 hn5 (2011), citing *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 211 (2008) (“We acknowledge that the distinction between these three different standards of review has not always been apparent in our case law subsequent to *AFM Messenger*.”); see *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391-95 (2001).

The court reviews the Electoral Board’s decision as an administrative agency established by statute, pursuant to 10 ILCS 5/10-10.1. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d at 209. The Illinois Supreme Court in *City of Belvidere v. Illinois State Labor Relations Board*, identified three types of questions that a court may encounter on administrative review of an agency decision: questions of fact, questions of law, and mixed questions of fact and law. 181 Ill. 2d 191, 204-05 (1998).

As to questions of fact, an administrative agency’s findings and conclusions on questions of facts are deemed *prima facie* true and correct. *Cinkus*, at 210. In examining the Electoral Board’s factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the agency. *Id.* at 210. The reviewing court is, however, limited to ascertaining whether such

¹⁴ By giving a circuit court judicial review under Section 10 ILCS 5/10-10.1, the legislature did not intend to vest the circuit court with jurisdiction to conduct a de novo hearing into the validity of a candidate’s nomination papers. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d at 209.

findings of fact are against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Id.* at 211; *City of Belvidere*, 181 Ill. at 204.

In contrast, an agency's decision on a question of law is not binding on a reviewing court. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d at 210-11. The Electoral Board's interpretation of the meaning of the language of a statute constitutes a pure question of law, allowing the reviewing court to make an independent review without deference to the Electoral Board's decision. *Cinkus* at 210-11. Where the facts are undisputed and the legal result of those facts is purely a question of law, then the standard of review is de novo. *Id.* citing *Chicago Patrolmen's Ass'n v. Dept. of Rev.*, 171 Ill. 2d 263, 271 (1996).

The Illinois Supreme Court's analysis and holding in its *City of Belvidere* decision is instructive to determining the standard of review for a mixed question of fact and law. 181 Ill. 2d 191. In *City of Belvidere*, the Court found that the Board's finding was, in part, factual because it involved considering whether the facts in the case before it supported a finding that the City's decision affected employment hours, wages and working conditions. 181 Ill. 2d at 205. The Board's finding also concerned a question of law because the phrase "wages, hours and other conditions of employment" was a legal term that requires interpretation. *Id.* at 205. Consequently, when a case involves an examination of the legal effect of a given set of facts, it involves a mixed question of fact and law. *Id.* at 205.

Thus, when a Board's decision is of a mixed nature, the facts would be determined under the manifest weight of the evidence, and the legal question would be reviewed de novo, resulting in the application of a clearly erroneous standard of review as the appropriate standard to examine the Board's decision. *City of Belvidere*, 181 Ill. 2d at 205; *Goodman*, 241 Ill. 2d at 406; *Cinkus*, 228 Ill. 2d at 211; see also *AFM Messenger*, 198 Ill. 2d at 391-95 (An administrative agency

decision is deemed clearly erroneous when the reviewing court is left with the “definite and firm conviction that a mistake has been committed.”), (quoting, *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).¹⁵

In the instant case, this Court must review a mixed question of fact and law similar to the factual analysis in the *City of Belvidere* decision. *City of Belvidere*, 181 Ill. 2d at 205.

First, the Electoral Board’s decision is, in part, relied up factual basis because the issues involve considering whether the factual findings made by the Hearing Officer, and adopted by the Board,¹⁶ supported the Board’s conclusion that Petitioners-Objectors had not met their burden by a preponderance of the evidence that Respondent-Candidate falsely swore on his Statement of Candidacy that he was legally qualified to hold the office he was seeking. In *City of Belvedere*, the Board’s finding was also, in part, factual because it involved considering whether the facts in this case supported a finding that the City’s decision affected employment hours, wages and working conditions. *City of Belvidere*, 181 Ill. 2d at 205.

Second, the Electoral Board’s decision also concerns a question of law, particularly whether the interpretation of Section 3 of the Fourteenth Amendment of the U.S. Constitution applies to a former President of the United States who has taken an oath to “preserve, protect and defend the Constitution of the United States”,¹⁷ but who then engages in insurrection, which is a

¹⁵ The court has also described mixed questions of fact and law, as there exist questions in which (a) the historical facts are admitted or established, (b) the rule of law is undisputed, and (c) the issue is whether the facts satisfy the statutory standard. *Goodman*, 228 Ill. 2d at 210; citing *City of Belvidere*, 181 Ill. 2d at 205.

¹⁶ The Board made exceptions and did not adopt the Hearing Officer’s findings, conclusions and recommendations in Paragraph 10(A) “factual issues remain that preclude the Board from granting Objector’s Motion for Summary Judgment, and Paragraph 10(G) no factual determinations were made regarding the events of January 6, 2021. (EB Decision, C-6718 V12). While the Board did not make any factual determinations on this issue, the Hearing Officer did, and concluded from the evidence presented at the hearing on January 26, 2024 that the events of January 6, 2021 were an insurrection and that by a preponderance of the evidence the Candidate engaged in an insurrection. (HO Decision, Appendix B).

¹⁷ U.S. Constitution, Article II, Section 1, Clause 8.

conduct that disqualifies him from holding the office of President of the United States, and, thereby, prevents his name from being place on the primary election ballot. Because the Electoral Board in the case at-bar determined it lacked jurisdiction to make such a determination, the issue becomes a question of law related to whether it fulfilled its duties under the Election Code to qualify candidate for the presidency, because Section 3 of the Fourteenth Amendment requires some interpretation before it can be applied to the Respondent-Candidate in this case. In *City of Belvidere*, the Board's finding also concerned a question of law because the phrase "wages, hours and other conditions of employment" was a legal term requires interpretation. *Id.*

In the instant case, this Court examined the legally significant facts in the record before the Electoral Board, particularly the Stipulated Facts, including evidentiary testimony, and written and video exhibits. In examining the significant legal facts, the Court determines that both state statutory and federal constitutional legal interpretation is needed to determine the legal effects of from the facts asserted by Petitioners-Objectors which would potentially disqualify Respondent-Candidate from being placed on the upcoming general primary election ballot. Consequently, when a case involves an examination of the legal effect of a given set of facts, it involves a mixed question of fact and law. *Id.*

Thus, the Electoral Board's decision is a mixed question of law and facts and, as such, the Court determines that the clearly erroneous standard of review is the appropriate standard to examine the Electoral Board's decision in this case.

ANALYSIS

I. Constitutional Application of Section 3 of the Fourteenth Amendment as a Qualification Standard for the Office of President of the United States

Pursuant to Article II, Section 5 of the Illinois Constitution, the State Board of Elections, [also known as the Electoral Board], shall have general supervision over the administration of the registration and election laws throughout the State. This authority includes the Electoral Board oversight of the qualification of candidates for office. See *Goodman*, 241 Ill. 2d at 412. The Electoral Board's authority includes determining the qualification for candidates for the office of the President of the United States. See *Graham v. Rubio*, 16 SOEB GP 528 (Feb. 1, 2016) (EB Record, at C-602 V2); *Freeman v. Obama*, 12 SOEB GP 103 and *Jackson v. Obama*, 12 SOEB GP 104 (Feb. 2, 2012).

The U.S. Supreme Court has recognized that "voting is of the most fundamental significance under our constitutional structure." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 173 (1979); see IICLE Sec. 1.3. The rights of candidates and voters are inescapably intertwined because candidates have a fundamental right to associate with their political beliefs and voters have a right to be given the means to vote effectively. *Id.* It is both common sense as well as constitutional law that compels substantial regulation of elections if they are to be fair and honest, including limiting ballot access even if it affects which candidate one can vote for in the election. *Burdick v. Takushi*, 504 U.S. 428, 433, 440 n.10 (1974).

To that end, qualifications of candidates are governed by both state and federal statutory and constitutional law. These qualifications assure that candidates are well-suited for the office they seek and assure voters that only qualified candidates under the law will be placed on the ballot when they vote. See generally, *Id.*; see *Geer v. Kadera*, 173 Ill. 2d 398 (1996); *U.S. Term Limits*

v. Thorton, 514 U.S. 779, 837 (1995). When constitutional requirements are not met, voters are restricted from voting for whom they may wish. Term limits, age, natural-born citizenship, residency qualifications, and now, in the instant case, a disqualification assessment based on Section 3 of the Fourteenth Amendment is required by the Constitution, for the office of the President of the United States President that Respondent-Candidate seeks.

Under Article II, Section 1, Clause 5, also referred to as the Qualifications Clause, the language requires a candidate for President to be a natural-born citizen, at least thirty-five years of age, and a resident of the United States for at least fourteen years. This Electoral Board determined past cases involving natural-born citizenship. *Freeman v. Obama*, 12 SOEB GP 103 and *Jackson v. Obama*, 12 SOEB GP 104 (Feb. 2, 2012) (EB Record, at C-590 V2); *Graham v. Rubio*, 16 SOEB GP 528 (Feb. 1, 2016) (EB Record, at C-596 V2); (determining whether the candidate was natural born because his parents were immigrants). So while the Electoral Board can make and has made determinations of whether a candidate for the office of President of the United States has met the requirements under the Qualifications Clause, it has not done so without interpreting the language and applying that interpretation of law to the present facts proving or disproving whether the Candidate was qualified.

The Illinois Supreme Court made it unequivocal that the Electoral Board may not engage in statutory or constitutional interpretation. *Goodman*, 241 Ill. 2d at 412. It is the Electoral Board's reliance on this legal precedent that caused it to determine that it lacked jurisdiction to interpret Section 3 of the Fourteenth Amendment and could not proceed to review Petitioners-Objectors' disqualification objection as raised in their Objection Petition. (EB Record, EB Decision Jan. 30, 2024 at C-6716 V12, p. 3).

Therefore, this Court must consider whether the Electoral Board's decision to effectively dismiss Petitioners-Objectors' Objection Petition, by granting Respondent-Candidate's Motion to Dismiss, on the grounds that it lacked jurisdiction to conduct a constitutional analysis to determine if Respondent-Candidate was disqualified from being on the ballot was proper. Consequently, the Electoral Board could not reach the question of disqualification of Respondent-Candidate for the office of President of the United States without looking at the facts in the Common Law Record in relation to what conduct or activity would legally amount to disqualifying the Respondent-Candidate under Section 3 of the Fourteenth Amendment, without some interpretative analysis thereof.

Illinois Supreme Court authority provides the seminal holding that the Electoral Board is prohibited from conducting constitutional analysis. *Goodman*, 241 Ill. 2d at 411; *Delgado v. Bd. Of Election Comm'rs*, 224 Ill. 2d 481, 484-85 (2007). In *Goodman v. Ward*, the Supreme Court held that election boards are not entitled to assess the constitutionality of the Election Code when considering objections to nominating papers. 241 Ill. 2d at 410-11 (it actually disregarded the constitutional residency requirement and deemed the provision unconstitutional, without any analysis). When an objection is filed to a candidate's nominating papers, the Electoral Board determines whether state and federal constitutional requirements are met to overrule the objection. In *Goodman v. Ward*, the Illinois constitutional requirement for the candidate was based on residency. *Id.* This Court notes that residency, age, and natural-born citizenship requirements are readily provable with a proof of address or birth certificates, thus, requiring no constitutional analysis or interpretation by the Electoral Board, only verification.

In the instant case, factual findings and legally relevant statutory and constitutional provisions would require the Electoral Board to do more than just verify qualifications with

objective evidence, such as government issued documents proving age, citizenship or residency. The Electoral Board would have to engage in an analysis of statutory and/or constitutional construction principles to interpret the qualifications as well as whether the constitutional standard applies to the specific qualifications, such as Section 3 of the Fourteenth Amendment of the U.S. Constitution. It is undisputed that the Electoral Board cannot conduct this type of constitutional analysis, any more than it could declare a provision of the Election Code or Illinois Constitution unconstitutional. While the Electoral Board could not conduct constitutional analysis of Section 3 of the Fourteenth Amendment to determine whether Respondent-Candidate was disqualified for the office of President, this Court may do so.

Therefore, an interpretation of Section 3 of the Fourteenth Amendment is required to determine whether Respondent-Candidate is disqualified from the general primary election ballot. This Court finds that the question of law in this case is subject to contradictory and controversial interpretation,¹⁸ which is why the *Anderson v. Griswold* decision from the Colorado Supreme Court, in a 4-3 decision, is pending before the U.S. Supreme Court. *Anderson v. Griswold*, 2023 CO 63 (2023). The Colorado Supreme Court, however, is the only jurisdiction that has interpreted Section 3 of the Fourteenth Amendment to the qualification consideration of Respondent-Candidate for the office of President of the United States, and has disqualified him based on their interpretation of the U.S. Constitution. *Id.* Until the U.S. Supreme Court renders a decision in the *Anderson v. Griswold* case, now pending before it, reviewing courts are still under a constitutional

¹⁸ The proceeding before the Maine Secretary of State is not a court proceeding. Decided on December 28, 2023, the Secretary of State disqualified the Respondent-Candidate based on Section 3 of the Fourteenth Amendment. (Electoral Board Record, C552, V2). The Secretary of State found that the Respondent-Candidate engaged in insurrection and swore an oath to uphold the Constitution. It also found that the evidence demonstrated an attack on the Capital and government officials, and the rule of law, on January 6, 2021 that occurred “at the behest of, and with the knowledge and support of, the outgoing President.” That the Challengers had met their burden, and the primary petition of Mr. Trump is invalid.

obligation to apply and interpret the law, and especially, continue the momentum of the electoral process in light of the March general primary elections. *Trump v. Anderson, et al.*, U.S. Sup. Ct. – Docket No. 23-719 (Jan. 4, 2024) (oral arguments held on Feb. 8, 2024).

JUDICIAL NOTICE

The Colorado Supreme Court's ruling in *Anderson v. Griswold*, decided on December 23, 2024, is not binding precedent, but rather persuasive law. Thus, this Court may consider the *Anderson v. Griswold* decision as precedent on the issues under review by this Court, and may recognize or take into consideration its holding for the purpose of determining, whether Respondent-Candidate qualifies for the office of President of the United States under the U.S. constitutional requirements, and whether he should be placed on the general primary ballot in Illinois. See Section 735 ILCS 5/8-1003¹⁹; United States Constitution, Article IV, Section 1.²⁰

LEGAL INTERPRETATION

In *Anderson v. Griswold*, the Colorado Supreme Court was presented with the issue of whether former President Donald J. Trump may appear on the Colorado Republican presidential primary ballot in 2024. 2023 CO 63, 63 (Dec. 23, 2023). The issue in the instant case is similar, but not identical. The Colorado Supreme Court reviewed the District Court Judge's decision, not

¹⁹ 735 ILCS 5/8-1003, reads as follows: "Common law and statutes. Every court of this state shall take **judicial notice of the common law and statutes of every state**, territory, and other jurisdictions of the United States." (Emphasis added).

²⁰ United States Constitution, Article IV, Section 1, reads as follows:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." Constitution Annotated, FN 5 ("The Clause also requires states to give Full Faith and Credit to the Records[] and judicial Proceedings of every other State.") https://constitution.congress.gov/browse/essay/artIV-S1-1/ALDE_00013015/ (accessed Feb. 25, 2024).

an electoral board's decision. *Id.* In Colorado, electors initiated proceedings against the Secretary of State in the Denver District Court under Sections 1-4-1204(4), 1-1-113(1), 13-51-105, C.R.S. (2023), and C.R.C.P. 57(a) challenging its authority to list President Trump as a candidate on the 2023 Republican president primary election. *Id.* The basis for the objections in Colorado are the same as those in the instant case, which is based on the U.S. constitutional disqualification of Respondent-Candidate.

The Colorado District Court Judge could conduct a constitutional analysis of the objectors' claims that Section 3 of the Fourteenth Amendment disqualified the former president from the ballot because he engaged in insurrection of January 6, 2021, after swearing an oath as President to support the U.S. Constitution without factual findings and constitutional interpretation. *Id.* The Colorado District Court held that Respondent-Candidate had engaged in insurrection, but was not disqualified from the ballot under Section 3. The Colorado Supreme Court heard the case on appeal and conducted its own factual and legal analysis of this issue in reaching its decision.²¹

This Court will proceed with its analysis relying on the Colorado Supreme Court decision because this Court finds the majority's opinion well-articulated, rationale and established in historical context, and assessing the construction and meaning of legal principles, such the Section 3 of the Fourteenth Amendment. See generally, *Anderson v. Griswold*, 2023 CO 63 (2023).

First, this Court's consideration of the Electoral Board's decision to grant Respondent-Candidate's Motion to Dismiss, ultimately, dismissing the Petitioners-Objectors' request to

²¹ The Colorado District Court denied Respondent-Candidate's Fourteenth Amendment Motion to Dismiss in its case because, unlike the Illinois Electoral Board, it had original jurisdiction over the case by statute and, most importantly, could engage in a constitutional analysis of whether Section 3 was self-executing, applied to the former President, and whether he engaged in insurrection to determine if he would be disqualified from the ballot. 2023 CO at 13, ¶21. The Illinois Electoral Board only has original jurisdiction so its obligation stopped there when the unsettled constitutional questions arose.

disqualify the candidate and remove his name from the ballot requires a consideration of the language under the Fourteenth Amendment, Section 3 which states as follows:

“No person shall be a Senator or Representative in Congress, or elector (Electoral College) 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, [an oath] to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same [United States or any State], or given aid or comfort to the enemies thereof But Congress may by a vote of two-thirds of each House, remove such disability.”

This Court will consider pertinent applicable provisions of the Colorado Supreme Court’s decision and its factual findings²² for the purpose of interpreting and applying Section 3 of the Fourteenth Amendment to the instant case.

On appeal, the Colorado Supreme Court reviewed the District Court’s ruling²³ that Section 3 of the Fourteenth Amendment did not apply to Donald J. Trump. *Anderson v. Griswold*, 2023 CV 32577 (Nov. 17, 2023).²⁴ In its 4-3 decision, the Colorado Supreme Court reversed the District Court’s decision and held that “President Trump is disqualified from holding the office of President under Section 3, it would be a wrongful act under the Election Code for the Secretary [of State] to list President Trump as a candidate on the presidential primary ballot.” The Court then

²² This Court takes as judicial notice the Background facts related to the candidate, January 6, 2021 and other related facts relied upon by the Court in its determination, as set forth in the decision. *Anderson v. Griswold*, 2023 CO 63, at 9.

This Court does not need to restate the mountainous facts from the Colorado Supreme Court decision, the Colorado District Court Decision, the 6,000 plus pages of written evidentiary exhibits in the Electoral Board Record filed in 12 Volumes in this case, of which all factual findings are almost, if not completely, identical from this Court’s assessment.

²³ The Colorado Supreme Court reviewed the Colorado District Court’s decision de novo. 2023 CO 62, at 19. This reviewing court, however, is only review the Electoral Board’s decision and must do so under a mixed question of law as stated herein.

²⁴ The Colorado District Court held a 5 days trial and it is the trial testimony of that case that the parties agreed to the Stipulated Order entered into the Hearing Officer Judge Erickson in this case. *Anderson*, 2023 CO at 7.

stayed its ruling until January 4, 2024, and President Trump appealed the decision to the U.S. Supreme Court. *Anderson v. Griswold*, 2023 CO 63, ¶¶132-33 (Dec. 19, 2023).

First, as to the interpretation of Section 3 of the Fourteenth Amendment, this Court looked at the Colorado Supreme Court's factual determinations and the rationale that led it to the conclusion that former President Trump engaged in conduct disqualifying him from holding the office of President of the United States by engaging in insurrection. The Colorado Supreme Court goes through an exhaustive analysis of the factual and evidentiary records that the District Court considered during a 5-day evidentiary trial, and a substantial amount of those facts are also established as evidence in the instant case in the Electoral Board Record. This Court will not go through the exhaustive list of facts but refers to the Stipulated Order in the Record and the Colorado Supreme Court which relied on the factual determinations.

The District Court in *Anderson v. Griswold* found by clear and convincing evidence that President Trump engaged in insurrection as those terms are used in Section 3 of the Fourteenth Amendment. 2023 CO at 7. Based on that evidence, the Colorado Supreme Court also concluded that the former president engaged in insurrection on January 6, 2021. The Colorado Supreme Court also held that the District Court did not abuse its discretion in admitting portions of Congress' January 6 Report into evidence at trial. Congress's January 6 Report, fifteen sworn witness testimonies from the 5-day evidentiary trial, and 96 evidentiary exhibits both written, visual and auditory, are the same, or almost same, evidence this Court reviewed in determining if Section 3 when applied to evidence results in the Respondent-Candidate being disqualified from the Illinois ballot for the General Primary Election March 19, 2024. 2023 CO at 47, ¶84.

The burden of proof applied by the Colorado District Court was a clear and convincing evidence standard. 2023 CO at 14, ¶22. This is a higher standard than that applied by the Illinois

Electoral Board under its Rules of Procedures adopted by the Electoral Board on January 17, 2024, which only requires Objectors to prove “by a preponderance of the relevant and admissible evidence that the objections are true and that the petition is invalid.” EB Record at C-3583 V7. Considering the Hearing Officer’s factual findings from the January 6 Report, this Court concludes that the 17 paragraphs in the Hearing Officer’s summary of the January 6 Report attached to the Hearing Officer’s Decision are admissible. The Hearing Officer correctly considered in his conclusions and recommendations all the factual findings of the January 6 Report. This Court finds that the January 6 Report in the Electoral Board’s Common Law Record satisfies the public records hearsay exception under Illinois Supreme Court Rule 803(8), because the report was the result of a legally authorized investigation by the U.S. House of Representatives. Ill. Sup. Ct. Rule, 803(8) (2023). Even if the Electoral Board refused to make any factually findings about the event of January 6, 2021, the evidence before the Electoral Board cannot be ignored and, as such, affirms the Hearing Officer’s recommendations regarding the constitutional disqualification of Respondent-Candidate.

By just relying on the factual findings by the Hearing Officer and relying on the Colorado Supreme Court’s same factual findings that led it to its conclusion that the events of January 6, 2021 constituted an insurrection, and that President Trump engaged in that insurrection, and that Section 3 of the Fourteenth Amendment applies to and disqualifies him from being certified to the Illinois ballot, this Court finds that the Petitioners-Objectors have met their burden of proof by a preponderance of the evidence in the Electoral Board Record which the Electoral Board should have recognized and relied upon in its Decision.

This Court adopts the factual determinations before the Electoral Board in their totality, (which are very much the same ones that were presented as evidence before the Colorado District

Court), under the standard of review of clearly erroneous, with mixed questions of law and fact. In so doing, this Court applies those facts to the clearly erroneous standard of review and finds the facts in this Record before the Electoral Board would establish that Respondent-Candidate was disqualified by engaging in insurrection, and should not be placed on the ballot for the office President of the United States for the March 19, 2024, General Primary Election based on Section 3 of the Fourteenth Amendment.

Second, this Court considered the analysis of the Colorado Supreme Court's interpretation of Section 3 of the Fourteenth Amendment as applied to a former President now seeking to hold office for a second term. This Court takes judicial notice of Colorado Supreme Court's holding, and finds its rationale compelling that even as a former President of the United States, Respondent-Candidate is a covered person who engaged in insurrection under section 3 of the Fourteenth Amendment.

This Court finds it imperative to the interpretative analysis of Section 3 of the Fourteenth Amendment to consider the historical relevance of the Civil War and the Reconstruction Era, in relation to the ratification of Section 3 of the Fourteenth Amendment. The Colorado Supreme Court noted the concern of post-Civil War, "what to do with those individuals who held positions of political power before the [civil] war, fought on the side of the Confederacy, and then sought to return to those positions." 2023 CO at 16.²⁵ Looking historically as to whether the Fourteenth Amendment was self-executing without ancillary legislative action by Congress and, after an examination of the self-executing intent of the Thirteenth, Fourteenth, and Fifteenth Amendments,

²⁵ Respondent-Candidate argues violence by him was needed to "engage" in insurrection. (EB Record C-6689 V12). This Court rejects this argument. President Jefferson Davis did not actually fight in the Civil War because he was responsible for the political and administrative management of the war efforts, and he was still disqualified under Section 3 of the Fourteenth Amendment for engaging in insurrection. United States Senate, Jefferson Davis: A Featured Biography, <https://www.senate.gov/senators/FeaturedBios> (accessed last Feb. 9, 2024).

referred to as the “Reconstruction Amendments”, intended by the framers, the conclusion is that it is self-executing, and does not require an act of Congress, much like the Thirteenth and Fifteenth Amendments. 2023 CO at 50-54. Looking at acts passed by Congress like the Insurrection Act enacted prior to the Fourteenth Amendment, and the Amnesty Act enacted after passage of the Section 3 of the Fourteenth Amendment, Congress only act was to remove the disqualification, not pass legislation to activate it.

This Court notes that language of “shall” is present in all three Reconstruction Amendments, and based on the plain and ordinary meanings of all Reconstruction Amendments taken in relation to one another, how can just Section 3 of the Fourteenth Amendment be the only amendment that is treated as not being self-executing. See *Anderson v. Griswold*, 2023 CO at 54, ¶96, fn. 12. This Court also took note of the opposing arguments to the self-executing argument, but this Court finds the self-executing argument more compelling based on the purpose and circumstances in which the Section 3 was enacted, the other Reconstruction Amendments viewed in their totality, and the intended consequences for violation with a method to cure a disqualification by acts of Congress, under Section 3 itself or Section 5 of the Fourteenth Amendment.

In considering whether Section 3 applied to the Respondent-Candidate as former President of the United States, this Court applies that normal and ordinary usage of the phrases in Section 3, as did the Colorado Supreme Court, by using dictionaries from the time of the Fourteenth

Amendment, examining the meanings of the words “office,”²⁶ “officers,”²⁷ “insurrection,”²⁸ “engaged”²⁹ and “oath”³⁰ and, thereby, concludes that the plain language and plain meanings of Section 3, applies to the former president now seeking to hold office again as the President of the United States. See *Anderson v. Griswold*, 2023 CO at 79, ¶143; 84, ¶152; 87, ¶158.

In *U.S. Term Limits v. Thornton*, the U.S. Supreme Court stated that the U.S. Constitution’s “provisions governing elections reveal the Framers’ understanding that powers over the election of federal officers had to be delegated to, rather than reserved by, the states.” 514 U.S. at 804. The U.S. Supreme Court recognized that federal elections is one of the few areas in which the constitution expressly requires actions by the states, with respect to federal elections. *Id.* As previously identified, qualifications of candidates for federal offices are conducted by the states, not Congress, based on the U.S. constitution, and application of Section 3 of the Fourteenth Amendment should not be an exception.

Based on the comparable rationale for interpreting Section 3 of the Fourteenth Amendment and finding that it applies to Respondent-Candidate, as made by the Colorado Supreme Court, this

²⁶ The Colorado Supreme Court found that the U.S. Constitution refers to the Presidency as an “office” twenty-five times. *Anderson v. Griswold*, 2023 CO at 72, ¶133; *U.S. Term Limits v. Thornton*, 514 U.S. at 861 (“qualifications for the office of President” is stated twice by the High Court.

²⁷ See *U.S. Term Limits v. Thornton*, 514 U.S. 779, 803 (1995) (recognized that “Representatives and Senators are as much officers of the entire union as the President.”

²⁸ Justice Boatright, dissenting, drew the conclusion that a conviction was necessary for an insurrection, but this Court notes that there is no such language in Section 3. *Anderson v. Griswold*, 2023 CO at 11 (dissent).

²⁹ Respondent-Candidate cites to an “overt, voluntary act” being required. 12 Op. Att’y Gen. 141, 164 (1867). He then provides a dictionary meaning of “to be involved, or have contact, with someone or something.” (EB Record, C-6691 V12). He does not refute that he gave a speech on January 6 at the Ellipse Rally, that he sent out tweets entitled, “Stop the Steal”, Storm or Invade or Take the Capital, and to disburse or be peaceful (but only after violence had occurred almost 3 hours prior). These facts alone created by a preponderance of the evidence using the Respondent-Candidate’s own definition that by his conduct he engaged with the crowd, deemed to be engaging in insurrection. (EB Record C-6691 V12, C-6694 V12); Colorado Trial Exhibit Nos. 49, 68 and 148.

³⁰ Oath of the President of the United States effectively is language that can be interpreted as supporting the U.S. Constitution and the peaceful transfer of power. Art. II, Sec. 1, cl. 8 (“preserve, protect and defend”)

Court finds the historical perspectives and interpretation of the language compelling, the analytical reasonings used as language construction tools to be sound, and recognizes that a common sense approach that the President of the United States must be included in the language given the events of the Civil War era and, therefore, determines that Section 3 applies to a candidate for office of President of the United States.

This Court appreciated and shares the Colorado Supreme Court's goal to ascertain the legitimate operation of Section 3 and to effectuate the drafters' intent by looking to the "plain language giving its terms in their ordinary and popular meanings." *Anderson v. Griswold*, 2023 CO 63 (2023). This Court concludes that the goal of determining the meaning and application of Section 3 excludes from office as a punishment to leaders who swore an oath to protect, defend and uphold the constitution, that such provision is self-executing, and that Section 3 is a qualification requirement used to consider disqualify a candidate for the office of President of the United States.

This Court shares the Colorado Supreme Court's sentiments that did not reach its conclusions lightly. This Court also realizes the magnitude of this decision and its impact on the upcoming primary Illinois elections. See *Anderson v. Griswold*, 2023 CO 63 (2023).

This Court's final determination on this issue is that the Respondent-Candidate fails to meet the Section 3 of the Fourteenth Amendment's disqualification provision based on engaging in insurrection on January 6, 2021, and his name should be removed from the ballot.

II. Disqualification under the Illinois Election Code for falsely swearing candidate is legally qualified on the Statement of Candidacy accompanying the Nomination Papers

This Court now reviews the Electoral Board's dismissal of the Petitioners-Objectors' objection based on Petitioners-Objectors failure to meet their burden of proof by a preponderance of the evidence³¹ that Respondent-Candidate's Statement of Candidacy is falsely sworn in violation of sections 10 ILCS 5/7-10 and 5/10-5 of the Election Code the Respondent-Candidate was not legally qualified to hold the office of President of the United States.

Looking at the Election Code Section 5/7-10 is essential to the Court's review. The applicable relevant sections read as follows:

"The name of no candidate for nomination, or State central committeeperson, or township committeeperson, or precinct committeeperson, or ward committeeperson or candidate for delegate or alternate delegate to national nominating conventions, shall be printed upon the primary ballot unless a petition for nomination has been filed in his behalf as provided in this Article . . . Each sheet of the petition other than the statement of candidacy and candidate's statement . . ."

Section 5/10-5, reads in relevant parts:

1. The office or offices to which such candidate or candidates shall be nominated.

..

Such certificate of nomination or nomination papers in addition shall include as a part thereof, the oath required by Section 7-10.1 [referred to as the Loyalty Oath] of this Act and **must include a statement of candidacy** for each of the candidates named therein, . . .

...

State of Illinois)

) SS.

County of.....)

I,...., **being first duly sworn**, say that I reside at.... street, in the city (or village) of.... in the county of.... State of Illinois; and that I am a qualified voter therein; that I am a candidate for election to the office of.... to be voted upon at the election to be held on the.... day of.....; and that **I am legally qualified** to hold such office and that I have filed (or will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act, and I hereby request that my name be printed upon the official ballot for election to such office." (Emphasis added).

³¹ See Rules of Procedure Adopted by the State Board of Elections, dated January 17, 2024. (Electoral Board Record, II. Argument(b) at C-3582-83 V7).

The statutory requirement governing statements of candidacy and oaths are mandatory. *Goodman*, 241 Ill. 2d at 409, citing *Cinkus*, 228 Ill. 2d at 219. Therefore, Sections 7-10 and 10-5 require that if the candidate's statement of candidacy does not substantially comply with the statute, then the candidate is not entitled to have his or her name appear on the primary ballot. *Goodman*, 241 Ill. 2d at 409-10, (citing *Lawlor v. Municipal Officer Electoral Board*, 28 Ill. App. 3d 823, 829-30 (1975)).

In this case, Respondent-Candidate filed his Nomination Papers and Statement of Candidacy with the Illinois State Board of Elections on January 4, 2024. Petitioners-Objectors timely filed their objections to Respondent-Candidate's Nomination papers and statement of candidacy on January 4, 2024. Respondent-Candidate executed the sworn statement of candidacy in which he stated, "I, Donald J. Trump,I am legally qualified to hold the office of President of the United States." (a copy of Respondent-Candidate Sworn Statement of Candidacy is attached hereto as **Appendix D**). On December 23, 2023², the Colorado Supreme Court upheld the ruling of the Colorado District Court that Respondent-Candidate has engaged in insurrection on January 6, 2021 and was disqualified from the ballot for the office of President of the United States based on Section 3 of the Fourteenth Amendment. Therefore, Petitioners-Objectors objections allege that Respondent-Candidate falsely swore that he was legally qualified on his January 4, 2024 Statement of Candidacy because of the ruling by the Colorado Supreme Court that he was not qualified.

The interpretation of the "legally qualified" language of the statement of candidacy is well-established law in Illinois.³² In *Goodman v. Ward*, the Illinois Supreme Court addressed the very

³² As this Court previously referenced, the Electoral Board's 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, due to lack of legislative language and/or court precedent requiring scienter as under 5/7-10.

issue regarding the “I am legally qualified” language in a statement of candidacy. *Goodman*, 241 Ill. 2d at 407. In that case, the candidate sought office of Circuit Court judge in a judicial subcircuit which required candidates must be a resident of the subcircuit in which office is sought at the time he or she submits a petition for nomination to office and his or her Statement of Candidacy. 241 Ill. 2d at 400 (The Supreme Court’s analysis was made under the public interest exception which permits a court to reach the merits of a case which would otherwise be moot.) The candidate for Judge in the 4th subcircuit was not a resident of the district at the time he filed his Statement of Candidacy. *Id.* at 407-08.

In looking at the statutory requirement for petitions for nomination under 10 ILCS 5-10 and 5/7-10,³³ the Supreme Court employed the basic principles of statutory construction to the Election Code in construing the legislative intent of the statute. *Id.* at 408. The best indication of legislative intent is the plain and unambiguous language employed by the General Assembly, which must be given its plain and ordinary meaning, without resort to aids of statutory construction. *Id.* at 408.

The Illinois Supreme Court interpreted what constituted “legally qualified” when a candidate swore to a Statement of Candidacy. *Goodman*, at 407. Second, the Supreme Court analyzed when a candidate must be “legally qualified” at the time he or she files nomination petitions and statement of candidacy.

As to what “legally qualified” means, the Illinois Supreme Court found that the residency requirement was established under the Illinois Constitution, Section Art. VI, Section 11. Under the

³³ The Statement of Candidacy is filed with their nomination papers. *Goodman*, at 408. (“No principle of English grammar or statutory construction permits an interpretation of the law which would allow candidates to defer meeting the qualifications of the office until some later date.”); citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008.)

clear and unambiguous language in the constitution, a person must meet the residency requirement to hold office. At the time the candidate in *Goodman v. Ward* filed his Statement of Candidacy, he was not a resident of the subcircuit in which he sought office. Therefore, his statement that he was legally qualified was latently false, the objections were sustained, and the candidate's name was not printed on the ballot for the primary election. *Id.* 241 Ill. 2d at 410.

The Illinois Supreme Court, undertook a compelling analysis of both the words "is" and "am" preceding the words "legally qualified" in the sworn statement of candidacy required to be included with the candidate's nomination petition filed under Section 7-10 of the Election Code. In its analysis of the plain meaning of the words in relation to the sworn statement of candidacy, the Supreme Court held that is clear that under the Illinois Constitution a candidate for judicial office must meet the requirements for office, in that case residency, before the candidate's name may appear on the ballot for the primary election. *Id.*, 241 Ill. 2d at 408, 412 (both words "is" in the Illinois Constitution and "am" indicate a present tense in the statement of candidacy).³⁴ The legislature's use of the present tense of the words evinces an intent to require the candidates to meet the qualifications for the office they seek, not at a later date, but at the time they submit the nomination papers and statement of candidacy. *Id.*

This Court finds the analysis by the Illinois Supreme Court in the *Goodman v. Ward* case on point in determining the issues in this case about whether the Respondent-Candidate's Statement of Candidacy was falsely sworn.

Like the Illinois Supreme Court's ruling in *Goodman v. Ward*, where the Court found that the residency requirement had to be established at the time the candidate filed its statement of

³⁴ In Illinois, the statement of candidacy qualification must exist when it is filed, therefore, Respondent-Candidate's argument that "running for" and "holding" office is not consistent with Illinois law. See Candidate-Respondent's various filed pleadings.

candidacy, in this instant case, the Respondent-Candidate must be “legally qualified” at the time he signed his Statement of Candidacy based on the qualifications for candidate for the President of the United States. Historically, such a candidate only had to meet the Article II qualifications, including, the age, residency and citizenship requirements which the Electoral Board has assessed and ruled on in past cases. The instant case presents the novel issue for Illinois courts in that Petitioners-Objectors raise Section 3 of the Fourteenth Amendment as additional U.S. constitutional consideration, not as a qualification, but a disqualification of candidacy that if established makes the Respondent-Candidate’s sworn Statement of Candidacy invalid.

On January 4, 2024 when Respondent-Candidate filed his Statement of Candidacy in Illinois, he had been found to engage in insurrection³⁵ by the Colorado Supreme Court under Section 3 of the Fourteenth Amendment. He was to be removed from the ballot in Colorado even though the Colorado Supreme Court stayed its ruling until January 4, 2024 pending appeal to the U.S. Supreme Court. *Anderson v. Griswold*, 2023 CO at 8.

Given the conclusions by this Court that Section 3 disqualifies Respondent-Candidate, which are supported by the factual findings in the Electoral Board’s Record, this Court concludes that Respondent-Candidate falsely swore in his Statement of Candidacy filed on January 4, 2024 that he was “legally qualified” for the office he sought.³⁶

³⁵ Findings made by Colorado District Court on November 17, 2023. Findings by the Colorado Supreme Court on December 23, 2023 was based on clear and convincing evidence. The Colorado Supreme Court also relied on the January 6 Report by the U.S. House of Representatives as evidence to support its findings. Electoral Board Record, Vols. 1-12. Hearing Office Judge Erickson also determined and recommended to the Electoral Board that Respondent-Candidate has engaged in insurrection by a preponderance of the evidence presented at the hearing on January 26, 2024, and that he should have his name removed from the March, 2024 primary ballot in Illinois. See Electoral Board Record. Of note, the Electoral Board’s refusal to find any factual determinations regarding the events of January 6, 2021 was shocking given the evidentiary records; however, the members of the Electoral Board, in this Court’s summation, made it clear from the hearing transcript that they wanted to get as far away from this case as possible, likely given its notoriety. EB Hearing, R-167 to R-209.

³⁶ This Court also notes that while the Respondent-Candidate could have cured the disqualification under Section 3 of the Fourteenth Amendment, although highly improbable, between the time of the ruling by the

Therefore, this Court finds that the Electoral Board's Decision on January 30, 2024 that Respondent-Candidate shall remain on the ballot as a candidate for the office of President of the United States is overruled.

CONCLUSION

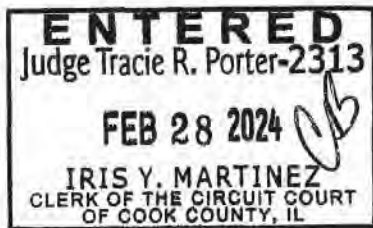
Wherefore, this Court finds and orders, after a review of the Electoral Board's Decision on January 30, 2024, that:


- a) The Petitioners-Objectors' Objections Petition should have been granted, as they have met their burden by preponderance of the evidence that Respondent-Candidate's name should be removed from the ballot for the March, 2024 general primary election.
- b) The Electoral Board's Decision was clearly erroneous in denying Petitioners-Objectors' Objection Petition, and their Motion for Summary Judgment, and in granting the Respondent-Candidate's Motion to Dismiss.
- c) The Electoral Board's Decision was clearly erroneous in finding that the Respondent-Candidate's Nominations Papers, including his Statement of Candidacy was valid.
- d) The Electoral Board's Decision that Respondent-Candidate, Donald J. Trump, as Republican Party candidate for the office of the President of the United States is reversed.

Colorado Supreme Court's decision on December 23, 2023 and by the time he filed his Statement of Candidacy on January 4, 2024 with the Electoral Board, but he has not provided support that the disqualification under the Section 3 was cured by congressional act. On October 17, 1978, President Jimmy Carter signed a bill presented by Congress that restored American citizenship to Jefferson David, former President of the Confederacy because President Jefferson David was not pardoned by the Amnesty Act of 1876. See S.J. Res. 16, Public Law 95-466, approved October 17, 1978.

- e) The Illinois State Board of Election shall remove Donald J. Trump from the ballot for the General Primary Election on March 19, 2024, or cause any votes cast for him to be suppressed, according to the procedures within their administrative authority.
- f) This Order is stayed until March 1, 2024 in anticipation of an appeal to the Illinois Appellate Court, First District, or the Illinois Supreme Court. This Order is further stayed if the United States Supreme Court in *Anderson v. Griswold* enters a decision inconsistent with this Order.

So Order, this 28th day of February, 2024.




The Honorable Tracie R. Porter
Circuit Court Judge

*The Court thanks and acknowledges Law Clerk Dana Jabri in the research and editing of this opinion.

APPENDIX A

Stipulated Order Regarding Trial Transcripts and Exhibits from the Colorado Action January 24, 2024

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

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

**STIPULATED ORDER REGARDING TRIAL TRANSCRIPTS
AND EXHIBITS FROM THE COLORADO ACTION**

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

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

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

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

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

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

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

Dated: January 24, 2024

SO STIPULATED:

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

DONALD J. TRUMP

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

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

Matthew Piers (2206161)
Caryn Lederer (ARDC: 6304495)
HUGHES SOCOL PIERS RESNIC & DYM, LTD.
70 W. Madison St., Ste. 4000
Chicago, IL 60602

Adam P. Merrill (6229850)
WATERSHED LAW LLC
55 W. Monroe, Suite 3200
Chicago, IL 60603

ENTERED:

Hearing Officer Clark Erickson

From: Adam Merrill
To: Caryn C. Lederer; Nicholas J. Nelson (Other)
Cc: clark_erickson; Alex Michael; Ron Fein; John Bonifaz; Ben Clements; Amira Mattar; Justin Tresnowski; Ed Mullen; Matthew J. Piers
Subject: RE: Anderson et al. v. Trump (24 SOEB GP 517) - Objectors' Exhibit List
Date: Wednesday, January 24, 2024 9:26:04 AM
Attachments: 2024.01.24-Anderson v Trump-Stipulated Order re CO Trial Trs. Exs-FINAL.pdf
image003.png
image004.png
image005.png

Judge Erickson,



The parties are pleased to report they have reached an agreement with respect to transcripts and admitted exhibits from the recently tried Colorado action involving similar objections. Given this stipulation, neither Objectors nor the Candidate will be calling live witnesses or presenting evidence (beyond what is already in the record) at tomorrow's hearing. Attached please find the stipulation, which the parties respectfully request be entered by Your Honor.

Adam P. Merrill
Watershed Law LLC
312.368.5932

From: Caryn C. Lederer <clederer@HSPLEGAL.COM>
Sent: Wednesday, January 24, 2024 8:39 AM
To: Adam Merrill <AMerrill@watershed-law.com>; Nicholas J. Nelson (Other) <nicholas.nelson@crosscastle.com>
Cc: clark_erickson <ceead48@icloud.com>; Alex Michael <amichaellaw1@gmail.com>; Ron Fein <rfein@freespeechforpeople.org>; John Bonifaz <jbonifaz@freespeechforpeople.org>; Ben Clements <bclements@freespeechforpeople.org>; Amira Mattar <amira@freespeechforpeople.org>; Justin Tresnowski <jtresnowski@HSPLEGAL.COM>; Ed Mullen <ed_mullen@mac.com>; Matthew J. Piers <MPiers@HSPLEGAL.COM>
Subject: Anderson et al. v. Trump (24 SOEB GP 517) - Objectors' Exhibit List

Dear Counsel,

Pursuant to Judge Erickson's January 17, 2024 order, I am attaching Objectors' Exhibit List and links to the corresponding files. As we have discussed, these materials are documents and videos that have been previously produced to the Candidate along with Objectors' filings and Objectors will not call witnesses at the hearing.

 [Objectors' Exhibit List & Documents.pdf](#)
 [Colorado Trial Video Exhibits](#)

Please let us know if you have any questions.

Thank you,
Caryn

Exhibit B

Supp. R. 153



HSPRD

Caryn C. Lederer, *Shareholder*

HUGHES SOCOL PIERS RESNICK & DYM, LTD.

70 W. Madison St., Suite 4000

Chicago, IL 60602

Dir: **312.604.2622** Fax: **312.604.2623**

Pronouns: she/her/hers

[Click to send me files.](#)

APPENDIX B

Hearing Officer Report and Recommended Decision January 27, 2024

**BEFORE THE ILLINOIS 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_deqdCAMAgg?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 (Col. 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 *Schaefer* 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.

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.

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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:

I. 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 Intervenor's 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 Trump's 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 Colorado 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

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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 capitol.

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.

* * *

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C-6677 V12

APPENDIX C

Electoral Board Decision
January 30, 2024

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

**BEFORE THE STATE BOARD OF ELECTIONS SITTING AS THE STATE OFFICERS
ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES FOR THE MARCH 19, 2024,
GENERAL PRIMARY**

IN THE MATTER OF OBJECTIONS BY

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

v.

Donald J. Trump,
Candidate.

No. 24 SOEB GP 517

DECISION

The State Board of Elections, sitting as the duly constituted State Officers Electoral Board, and having convened on January 30, 2024, at 69 W. Washington, Chicago, Illinois, and via videoconference at 2329 S. MacArthur Blvd., Springfield, Illinois and having heard and considered the objections filed in the above-titled matter, hereby determines and finds that:

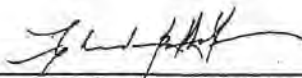
1. The State Board of Elections has been duly and legally constituted as the State Officers Electoral Board pursuant to Sections 10-9 and 10-10 of the Election Code (10 ILCS 5/10-9 and 5/10-10) for the purpose of hearing and passing upon the objections filed in this matter and as such, has jurisdiction in this matter, except as specifically noted in Paragraph 10 below.
2. On January 4, 2024, Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker, timely filed an objection to the nomination papers of Donald J. Trump, Republican Party candidate for the office of President of the United States.
3. A call for the hearing on said objection was duly issued and was served upon the Members of the Board, the Objectors, and the Candidate by registered mail as provided by statute unless waived.

4. On January 17, 2024, the State Officers Electoral Board voted to adopt the Rules of Procedure, and a hearing officer was assigned to consider arguments and evidence in this matter.
5. On January 19, 2024, Candidate filed a Motion to Dismiss Objectors' Petition ("Motion to Dismiss"). On January 23, 2024, Objectors filed a Response to Candidate's Motion to Dismiss Objectors' Petition. On January 25, 2024, Candidate filed a Reply in Support of his Motion to Dismiss.
6. On January 19, 2024, Objectors filed a Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment ("Motion for Summary Judgment"). On January 23, 2024, Candidate filed Candidate's Opposition to Objectors' Motion for Summary Judgment. On January 25, 2024, Objectors filed Objectors' Reply in Support of their Motion to Grant Objectors' Petition or, in the Alternative, for Summary Judgment.
7. On January 24, 2024, a Stipulated Order Regarding Trial Transcripts and Exhibits ("Stipulated Order") was entered. Under this Stipulated Order, the parties stipulated to the authenticity of certain exhibits admitted in *Anderson v. Griswold*, District Court, City and County of Denver, No. 23CV32577, as well as transcripts in that proceeding.
8. On January 26, 2024, a hearing was held before the Hearing Officer. During the hearing, the parties utilized certain pieces of evidence encompassed by the Stipulated Order and made oral arguments to the Hearing Officer.
9. The Board's appointed Hearing Officer issued a recommended decision in this matter after reviewing all matters in the record, including arguments and/or evidence tendered by the parties.
10. Upon consideration of this matter, the Board adopts the findings of fact, conclusions of law, and recommendations of the Hearing Officer, except as set forth below, and adopts the conclusions of law and recommendations of the General Counsel and finds that:
 - A. Factual issues remain that preclude the Board from granting Objectors' Motion for Summary Judgment.
 - B. Paragraph 1 of this Decision is incorporated by reference.

- C. Objectors have not met their burden of proving by a preponderance of the evidence that Candidate's Statement of Candidacy is falsely sworn in violation of Section 7-10 of the Election Code, 10 ILCS 5/7-10, as alleged by their objection petition.
- D. In the alternative, and to the extent the Election Code authorizes the Board to consider whether Section 3 of the 14th Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois, under the Illinois Supreme Court's decisions in *Goodman v. Ward*, 241 Ill.2d 398 (2011), and *Delgado v. Board of Election Commissioners*, 224 Ill.2d 482 (2007), the Board lacks jurisdiction to perform the constitutional analysis necessary to render that decision.
- E. Candidate's Motion to Dismiss should be granted as to Candidate's argument that the Board lacks jurisdiction to decide whether Section 3 of the 14th Amendment to the U.S. Constitution operates to bar Candidate from the ballot in Illinois. The remaining grounds for dismissal argued in the Motion to Dismiss were not reached by the Board and are now moot.
- F. Candidate's nomination papers, including his Statement of Candidacy, are valid.
- G. No factual determinations were made regarding the events of January 6, 2021.

IT IS HEREBY ORDERED that Objector's Motion for Summary Judgment is DENIED, Candidate's Motion to Dismiss is GRANTED in part, and the objection of Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker, to the nomination papers of Donald J. Trump, Republican Party candidate for the office of President of the United States, is OVERRULED based on the findings contained in Paragraph 10 above, and the name of the Candidate, Donald J. Trump, SHALL be certified for the March 19, 2024, General Primary Election ballot.

DATED: 01/30/2024



Casandra B. Watson, Chair

CERTIFICATE OF SERVICE

The undersigned certifies that on January 30, 2024, the foregoing order was served upon the Objector(s) or their attorney(s) by:

- ☐ Via email to the address(es) listed below:

Caryn C. Lederer
clederer@hsplegal.com

Matthew J. Piers
mpiers@hsplegal.com

Margaret E. Truesdale
mtruesdale@hsplegal.com

Justin M. Tresnowski
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John Bonifaz
jbbonifaz@freespeechforpeople.org

Ben T. Clements
bclements@freespeechforpeople.org
ben@clementslaw.org

Anna Mattar
amira@freespeechforpeople.org

- ☐ Hand delivery at:

- ☐ 2329 S. MacArthur Blvd., Springfield, IL 62704
☐ 69 W. Washington St, Chicago, IL 60602

And on January 30, 2024, served upon the Candidate(s) or their attorney(s) by:

- ☐ Via email to the address(es) indicated below:

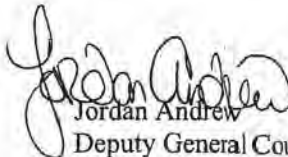
Adam P. Merrill
amichaellaw1@gmail.com

Scott Gessler
sgessler@gesslerblue.com

Nicholas J. Nelson
nicholas.nelson@crosscastle.com

- ☐ Hand delivery at:

- ☐ 2329 S. MacArthur Blvd., Springfield, IL 62704
☐ 69 W. Washington St, Chicago, IL 60602


Jordan Andrew

Deputy General Counsel
Illinois State Board of Elections

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APPENDIX D

Statement of Candidacy,
Donald J. Trump
December 13, 2023

STATEMENT OF CANDIDACY

NAME: DONALD J. TRUMP	OFFICE: PRESIDENT OF THE UNITED STATES OF AMERICA
ADDRESS - ZIP CODE: 1100 S. OCEAN BOULEVARD PALM BEACH, FLORIDA 33480	A Full Term is sought, unless an unexpired term is stated here: _____ year unexpired term
	DISTRICT: N/A
	PARTY: REPUBLICAN

If required pursuant to 10 ILCS 5/7-10.2, 8-8.1 or 10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

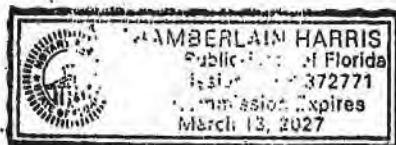
STATE OF FLORIDA)
ILINOIS)
County of PALM BEACH) SS.

I, DONALD J. TRUMP (Name of Candidate) being first duly sworn (or affirmed), say that I reside at 1100 S. OCEAN BOULEVARD, in the City, Village, Unincorporated Area of PALM BEACH (if unincorporated, list municipality that provides postal service) Zip Code 33480, in the County of PALM BEACH, State of FL; that I am a qualified voter therein and am a qualified Primary voter of the REPUBLICAN Party; that I am a candidate for Nomination Election to the office of PRESIDENT OF THE UNITED STATES OF AMERICA in the N/A District, to be voted upon at the primary election to be held on MARCH 19, 2024 (date of election) and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official REPUBLICAN (Name of Party) Primary ballot for Nomination/Election for such office.

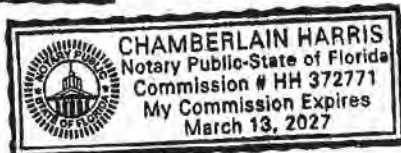
STATE BOARD OF ELECTIONS
Springfield, Illinois
FILED January 4, 2024 8:00 AM

(Signature of Candidate)

Signed and sworn to (or affirmed) by Donald J. Trump before me, on December 13, 2023
(Name of Candidate) (Insert month, day, year)



(SEAL)



(Notary Public's Signature)

FILED
2/28/2024 11:53 PM
Iris Y. Martinez
CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000013

APPEAL TO THE APPELLATE COURT OF ILLINOIS FOR THE FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

STEVEN DANIEL ANDERSON, CHARLES J.)
HOLLEY, JACK L. HICKMAN, RALPH E.)
CINTRON, and DARRYL P. BAKER,)
)
Petitioners,)
)
v.)
)
DONALD J. TRUMP, 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,)
)
Respondents.)

Case No. 2024 COEL 13

Hon. Tracie R. Porter

Calendar 9

NOTICE OF APPEAL

Pursuant to Illinois Supreme Court Rule 303, Respondent-Appellant Donald J. Trump hereby appeals to the Appellate Court of Illinois for the First District from the Circuit Court’s February 28, 2024 Memorandum of Judgment and Order (the “Judgment”), which reversed the January 30, 2024 decision of the Illinois State Board of Elections, sitting as the duly constituted State Officers Electoral Board (the “Electoral Board Decision”) and ordered the Illinois State Board of Elections to remove Respondent-Appellant Donald J. Trump “from the ballot for the General Primary Election on March 19, 2024, or cause any votes cast for him to be suppressed.”

By this appeal, Respondent-Appellant respectfully requests that the Appellate Court: (a) reverse and vacate the Judgment; (b) affirm and reinstate the Election Board Decision, which overruled and dismissed Petitioners-Appellees' January 4, 2024 objection to the nomination papers of Donald J. Trump, Republican Party primary candidate for the office of President of the United States; (c) stay the effect of the Judgment pending resolution of this appeal; and (d) grant such other relief as the Appellate Court deems just and proper.

Dated: February 28, 2024

Respectfully submitted,

RESPONDENT-APPELLANT DONALD J. TRUMP

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

Scott E. Gessler
GESSLER BLUE LLC
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Nicholas J. Nelson (pro hac vice)
CROSS CASTLE PLLC
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STE 300-9078
Minneapolis, MN 55401
612.429.8100
nicholas.nelson@crosscastle.com

CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that on February 28, 2024, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be served upon all parties/ counsel of record via the Court's Electronic Filing System.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this certificate of service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Adam P. Merrill

Adam P. Merrill

1 ILLINOIS STATE OFFICERS ELECTORAL BOARD MEETING

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State Officers Electoral Board Meeting
held, pursuant to notice, on January 30, 2024, at
the hour of 9:37 AM, held at 69 West Washington
Street, 22nd Floor, Chicago, Illinois.

TRANSCRIPT OF PROCEEDINGS

Julie Walsh, CSR

License No. 084-004032

1 BOARD MEMBERS PRESENT:

2
3 CASANDRA V. WATSON, Chair

4 LAURA K. DONAHUE, Vice Chair

5 JENNIFER M. BALLARD-CROFT, Member

6 CRISTINA D. CRAY, Member

7 TONYA L. GENOVESE, Member

8 CATHERINE S. McCRORY, Member

9 RICK S. TERVEN, SR., Member

10 JACK VRETT, Member

11
12 ALSO PRESENT:

13 BERNADETTE M. MATTHEWS, Executive Director

14 MARNI MALOWITZ, General Counsel

15 AMY L. CALVIN, Board Liaison

16 JEREMY KIRK, Assistant Executive Director

17 ANDY NAUMAN, Campaign Disclosure Deputy

18 Director

1 (Whereupon the following
2 proceedings were had in the
3 State Officers Electoral
4 Board Meeting at 9:37 a.m.)

5 CHAIR WATSON: Madam General Counsel.

6 MS. MALOWITZ: Thank you. Before we proceed
7 into our cases I would like to give everyone a
8 little bit of background and logistics for this
9 morning.

10 I would like to thank everyone for
11 being here today. I'm Marni Malowitz, General
12 Counsel for the Board. Today the Board will be
13 hearing objections to the nomination papers of
14 candidates seeking to appear on the ballot for
15 the general primary election on March 19th of
16 this year as established party special judicial
17 for presidential candidate.

18 For each case called I will read a
19 brief summary of the objection, recommendation of
20 the Hearing Officer and my recommendation on the
21 disposition of the matter.

22 We ask that the parties keep their
23 arguments relatively brief with the objector
24 going first and the candidate going second. The

1 Board may grant more time for argument if they
2 wish, but under Rule of Procedure 11 they have
3 the ultimate authority to decide what oral
4 arguments may proceed.

5 The Board has a number of cases to
6 hear today and the parties have already been
7 given an opportunity to present evidence and
8 argument to their Hearing Officer. The Board has
9 been given copies of all of the objections,
10 motions, briefs, Hearing Officer recommendations
11 and exceptions to Hearing Officer recommendations
12 to consider so there is no need to reconsider or
13 reiterate every argument your side has advanced.
14 Please also remember that no new evidence is to
15 be presented here today. This is an opportunity
16 to make a legal argument and explain your
17 positions to the Board.

18 Once the Board has voted on your case,
19 you can pick up a copy of your Board order from
20 Andy Nauman in Chicago who is waving his hand
21 over there or from Jordan Andrew in the
22 Springfield office. Hopefully Jordan is waving
23 her hand.

24 And I would like to give a thank you

1 to the Board staff and especially the legal staff
2 for all the effort you have put into these
3 Electoral Board matters.

4 I will proceed to call the first case.
5 It's agenda item 3a, the special judicial
6 candidate nominating petition for the March 19,
7 2024, general primary election. So item 3a,
8 Overturf versus Hopkins, 24 SOEBGP 115.

9 Objector Overturf who is represented
10 by attorney John Fogarty filed an objection to
11 the nomination paper of Candidate Hopkins who is
12 represented by attorney Anthony Schuering. The
13 candidate seeks ballot access for the Republican
14 Party candidate for the Office of Circuit Judge
15 for the 2nd Judicial Circuit, Tedeschi vacancy.

16 The objectors argue the objection
17 should be sustained and candidate removed from
18 the ballot because he is not a resident of the
19 unit that would select him as required by Article
20 6, Section 11, of the Illinois Constitution and
21 his statement of candidacy is invalid because he
22 falsely represents that he lives in Franklin
23 County even though he has not abandoned his
24 residence in Williamson County.

1 The candidate filed a motion to strike
2 and dismiss arguing the objections as
3 insufficient facts in his petition and the motion
4 is fully briefed. Both sides in this matter
5 offered a number of records into evidence in this
6 case including voter registration records,
7 driver's licenses, other public records, social
8 media postings and candidate testified on his own
9 behalf at the evidentiary hearing. The Hearing
10 Officer found certain portions of that testimony
11 to be not credible.

12 The parties agree on the applicable
13 facts for residency and the objector bears the
14 burden of proof. For legal purposes residency is
15 determined by physical presence and an intent to
16 remain. Once a residency is established it is
17 presumed to continue unless or until it has been
18 abandoned.

19 Here the Hearing Officer recommends
20 finding that candidate established residence in
21 Williamson County when he left his marital
22 residence in connection with his dissolution of
23 marriage proceedings in 2001 or 2021, I
24 apologize. The candidate has resided in

1 Williamson County since that time. The candidate
2 initiated a lease of a property within the
3 judicial district in Franklin County in October
4 2023, but that the facts demonstrate candidate
5 has not abandoned his residence in Williamson
6 County.

7 The Hearing Officer recommends finding
8 that because he does not reside in the unit that
9 elects him as required by the Illinois
10 Constitution, the candidate does not meet the
11 Illinois Constitution requirement that he reside
12 in the unit which elects him and that he filed a
13 false statement of candidacy in violation of
14 Section 7-10 of the Election Code.

15 The candidate filed an exception to
16 the Hearing Officer's recommendation arguing
17 among other things that the Hearing Officer
18 should not have independently researched
19 candidate's divorce records. I agree with the
20 candidate on that point. But that said, the
21 Hearing Officer located no records, so none was
22 considered and no harm was resulted.

23 The Hearing Officer recommends and I
24 agree that the candidate's motion should be

1 denied because the objection petition was
2 properly pled. The objectors's objection should
3 be sustained and Candidate Hopkins' name should
4 not be certified for the March general primary
5 ballot as a Republican Party candidate for the
6 Office of Circuit Judge for the 2nd Judicial
7 Circuit.

8 CHAIR WATSON: Attorney Fogarty.

9 MR. FOGARTY: Yes, John Fogarty on behalf of
10 the objector. We would ask that you accept the
11 recommendation of the Hearing Officer and the
12 general counsel. I'm happy to answer questions.

13 The test for residency I think all the
14 parties agree on physical presence and intent to
15 remain. I would suggest that the Hearing Officer
16 is the person who is best able to judge the
17 credibility of the witness and in this case the
18 candidate and determine whether his actions told
19 a different story than his words and I think that
20 was the case here.

21 The candidate here purchased a house
22 in October of 2023 in Williamson County and had
23 set up a rental agreement in Franklin County at
24 about the time this vacancy opened. The evidence

1 showed that he was at this rental property a very
2 scant amount of time. Only a handful of times
3 would he have stayed there.

4 Further evidence demonstrated that
5 this candidate spent the holidays and had his
6 children at his Williamson County residence and
7 it was fully furnished and full of all of his
8 personal effects.

9 So the overall result is that the
10 candidate established his residency in Williamson
11 County and by his actions did not demonstrate
12 that he relinquished that residency and for that
13 reason I think that the Hearing Officer's
14 conclusion is correct and we'd ask you to adopt
15 it. Thank you.

16 CHAIR WATSON: Would you state your name,
17 please. I don't want to butcher it.

18 MR. SCHUERING: Yes, ma'am. Good morning.
19 My name is Anthony Schuering.

20 CHAIR WATSON: Schuering.

21 MR. SCHUERING: Yes, ma'am. Thank you very
22 much. Good morning and thank you for the
23 opportunity to present. We, the candidate, would
24 ask that the Board reject the Hearing Officer's

1 recommendation and overrule the objection to his
2 candidacy.

3 I want to start first with the point
4 of the Hearing Officer doing independent
5 research. Your general counsel agreed that that
6 was improper. There was a comment made in page
7 -- on page 11 of the candidate's or, excuse me,
8 the Hearing Officer's recommendation that I just
9 want to read this to you so you can get the full
10 context.

11 The Hearing Officer was unable to
12 locate a 2021 divorce case in Franklin County
13 involving candidate, and then it goes on to say
14 that representation weighs heavily against the
15 candidate's argument in this matter.

16 So what we have the Hearing Officer
17 saying in this instance is he did independent
18 research because there was no evidence presented
19 in the hearing regarding the divorce. It was
20 accepted by both sides and, of course, took place
21 in 2021. The Hearing Officer did his own
22 independent research on an issue that was not in
23 dispute, could not locate the reference and then
24 stated that -- that the -- that his inability to

1 find those records weighs heavily against the
2 candidate's argument.

3 So respectfully I disagree with the
4 general counsel that there is no harm done here.
5 There was substantial harm done here because the
6 Hearing Officer himself says that there was --
7 that it weighs heavily against his argument.

8 And that's not the only, frankly,
9 legal issue that we argue that the Hearing
10 Officer either misapplied the law or
11 misunderstood the law. We also argue in our
12 exceptions that the Hearing Officer conflated
13 residency with domicile. And I think that's best
14 shown -- there is a portion of the recommendation
15 where the Hearing Officer says that -- and he
16 asks it rhetorically, this begs the question of
17 where the candidate resided from 2021 to 2023 and
18 then presents the 3 options as the Williamson
19 County residence, the Franklin County residence
20 that he rented or his law office.

21 And just as a matter of law that's
22 incorrect. If you're picking a domicile, those
23 aren't all the options. There is a fourth
24 option, no residency. Because he was physically

1 present in a particular area for a period of
2 time, but he did not intend to remain there. And
3 we cite the law for that proposition in our
4 exception. But the fact that the Hearing Officer
5 did not understand that that was an additional
6 option demonstrates that he's conflating
7 residency with domicile which, again, cuts
8 against the candidate in this case. His
9 misapplication, misunderstanding of the law cuts
10 against the candidate in this case.

11 The third issue that we raise with
12 respect to misapplication of the law is the
13 Hearing Officer's apparent misunderstanding of
14 the Dissolution of Marriage Act. Just at the
15 outset I have to say I never thought family law
16 would come into an election law case, but here we
17 are.

18 He states that the candidate stated in
19 his testimony that the reason that he -- that he
20 initially started living in his Williamson County
21 house was to -- he was very blunt about it
22 frankly, to obtain a taxable advantage in the
23 divorce. He thought that living closer to his
24 children's school would give him an advantage

1 when they were trying to figure out custody and
2 parenting time. He said that he intended to live
3 there for two years because after two years, the
4 burden for reopening a divorce case becomes
5 significantly higher.

6 The Hearing Officer stated in his
7 recommendation that the ability to modify
8 parenting time at any point cuts against the
9 legal argument that the candidate was making
10 which is just incorrect as a matter of law. I
11 mean, after parenting time is established in a
12 divorce decree and that two years passes so the
13 divorce decree cannot be reopened absent relating
14 to exception circumstances, the burden shifts to
15 being on the moving parent to be able to show
16 substantial change in circumstances. And at that
17 point moving is not a substantial change in
18 circumstances.

19 In fact, we cite a case in our
20 exceptions. It's I believe a Third District case
21 where the parent was moving from Illinois to
22 Germany and that was not a substantial change in
23 circumstances. And so as a result I think it
24 kind of logically follows that him moving from

1 Williamson County to Franklin County at that
2 point would not work against him the way that the
3 Hearing Officer believed that it would. And so
4 as a result we think that -- and we argue in our
5 exceptions that the Hearing Officer's
6 misunderstanding of the operation of the
7 Dissolution of Marriage Act again cut against the
8 candidate and led to this conclusion.

9 And, finally, we believe that the
10 Hearing Officer considered improper impeachment
11 evidence as a part of his recommendation. There
12 were several instances where counsel for the
13 objector asks the candidate about statements that
14 were made in affidavits from third parties. The
15 candidate submitted seven affidavits in support
16 of his efforts to stay on the ballot. They
17 included his realtor, his legal assistant, his
18 contractor, his brother, and, you know, his
19 neighbor at the Franklin County residence all of
20 whom said that they had had discussions with the
21 candidate about his intents to return to Franklin
22 County and that his -- his -- basically his
23 living in Williamson County was temporary. It
24 was always intended to be temporary. He always

1 wanted to move home to Franklin County.

2 The objector as an example the
3 candidate's landlord in the Franklin County
4 property said that he had driven by the property
5 multiple times and seen the candidate's car
6 outside the house.

7 Counsel for the objector asked the
8 candidate how many times that the landlord had
9 been in the home with or been at the property
10 with the candidate and his response was only
11 once. And that answer was used to undercut the
12 veracity of the declaration. That's problematic
13 because the candidate would have no way of
14 knowing how often, how frequently the landlord
15 was driving through that part of Franklin County
16 and saw his house there.

17 So it truly doesn't undercut either
18 testimony. Both can be true. And the fact that
19 that testimony was used to undercut the
20 candidate's credibility and the affidavit's
21 credibility is improper. It's improper
22 impeachment evidence. And we have cited multiple
23 cases in our exceptions where that just simply
24 can't be done. You can't use the writing of a

1 third party to undercut a person's testimony and
2 vice versa. You can't use a person's testimony
3 to undercut a third-party's writing. And so the
4 fact that that was done is another reason why the
5 Hearing Officer misapplied the law.

6 On top of that, you know, we have
7 issues with the representations of some of the
8 evidence that was submitted. I mean, as an
9 example the Hearing Officer states in his
10 recommendation that the candidate never paid rent
11 for the Franklin County property. That's just
12 not accurate. That's not what the testimony was.

13 The transcript will show that the
14 candidate paid rent in legal services. That he
15 did legal work for the landlord, the landlord
16 owed him money and that -- that the amount that
17 was owed was discounted based on the rent itself.
18 So it's just simply not accurate that no rent was
19 paid.

20 So, you know, for all of those reasons
21 we believe the recommendation is incorrect and we
22 believe that we have presented evidence and we
23 establish in our closing argument, I'm not going
24 to just repeat that to you, but we believe that

1 we have established both elements of residency
2 through the Franklin County property. Physical
3 presence, the candidate testified that he stays
4 regularly at the Franklin County property. And
5 he signed a one year lease. That lease requires
6 him to either pay all of the rent if he leaves
7 early without notifying the landlord or if he
8 does notify the landlord, to pay something like,
9 you know, four -- I think about four or five
10 times what his monthly rent was. That's
11 indicative of a reason to remain.

12 And so since we have established both
13 of those even if the Hearing Officer is correct
14 that residency in Franklin County was abandoned
15 when he moved to Williamson County, we believe
16 that the evidence has shown that he has
17 reestablished his residency in Franklin County.
18 So I know I've just thrown a lot at you. So I'm
19 happy to answer any questions that you have.

20 CHAIR WATSON: Mr. Fogarty, do you want to
21 respond before we proceed with questions?

22 MR. FOGARTY: Yes, please. A couple -- a
23 couple points. With regard to impeachment
24 evidence, there is no attempt to impeach

1 certainly the testimony of the candidate. It is
2 just that the candidate's testimony contradicted
3 what was included in some of the affidavits
4 offered by the candidate.

5 The, again, the Hearing Officer was
6 best situated to determine whether or not what
7 was being testified to by the candidate, you
8 know, really was truthful. His credibility was
9 measured by the Hearing Officer. And so we would
10 ask that the Hearing Officer's assessment of that
11 credibility stand.

12 With regard to the rent paid at this
13 new Franklin County home, you know, very
14 conveniently, you know, we asked for any evidence
15 of rent paid and none was given. Certainly it is
16 possible that the gentleman candidate did perform
17 legal services for the landlord and he did say
18 that he was a longtime client. That is true.
19 But it's a very, very convenient arrangement for
20 someone who is at the last minute rushing to
21 reestablish themselves in Franklin County.

22 This landlord also who the affidavit
23 said that he drove by several times, he lives in
24 Georgia. He lives in Georgia. It's just one

1 idiosyncratic fact after another.

2 The candidate rented his nice home in
3 Williamson County and ended up buying that home
4 just in October and then purported to put it back
5 on the market in the middle of October after the
6 statements he was announced. No for sale sign in
7 the yard. No listing. You look at Redfin. You
8 look at Zillow. You look at Realtor.com. His
9 home is not on the market. So if someone wants
10 to sell a home, you market it. No -- nothing.
11 Nothing has been done.

12 So at the end of the day these are a
13 lot of facts that were put together in order to
14 try to at the very last minute reestablish in
15 Franklin County. The Hearing Officer saw through
16 it and his judgment should be respected. It
17 should stand. And I will answer questions as
18 well.

19 CHAIR WATSON: Questions.

20 MEMBER McCRORY: Mr. Schuering.

21 MR. SCHUERING: Yes, ma'am.

22 MEMBER McCRORY: Your client changed his
23 driver's license and his voter registration card
24 to Williamson County, correct? And his statement

1 that it was inadvertent seems a bit disingenuous.
2 How about we just speak loudly.

3 MR. SCHUERING: I can do that.

4 MEMBER McCRORY: Yes.

5 MR. SCHUERING: Yes, ma'am. He -- to
6 respond to your question, he did update his
7 driver's license at that time. He did not --
8 there was no evidence presented that he did
9 update his voter registration. There was
10 testimony that he was uncertain as to whether or
11 not his voter registration had been updated and
12 so as a result he reregistered in Franklin County
13 out of an abundance of caution.

14 His basis for registering his driver's
15 license at that address as he explained in his
16 testimony was that he was under the belief that
17 his driver's license could only list that
18 specific address because at that time that is
19 where -- that was before he rented the Franklin
20 County property.

21 And so after that was done, after he
22 rented the Franklin County property and once he
23 understood that he -- he apparently found
24 authority that he could list his law office which

1 is where he gets all of his other mail, so he
2 reupdated his driver's license out of an
3 abundance of caution to list that address.

4 I agree with you that, you know, the
5 -- in a perfect world for a perfect story to hold
6 together perfectly, he would not have done that.
7 But it does not change the fact that there was no
8 contradictory testimony that was put on by the
9 objector to undercut that.

10 MEMBER McCRORY: How would -- how would one
11 go about doing that? Put some testimony on to
12 undercut the fact that he made a concerted effort
13 to change the license -- his address on his
14 driver's license?

15 MR. SCHUERING: The objector could have
16 found testimony from a third party who discussed
17 the updating of his driver's license with him
18 around the time that he did it. I don't know. I
19 think there are multiple different ways that you
20 could go about directly undercutting that, but
21 ultimately it's not the candidate's burden to
22 prove what his intent was. It's the objector's
23 to disprove it.

24 And since there was no testimony put

1 on by the objector, I agree with you that, I'll
2 just be really honest, that's a bad fact for us.
3 But it does not change the fact that there was no
4 testimony put on to undercut the stated intent by
5 the candidate. And since there was none, that
6 needs to be respected and accepted as true
7 because there is no reason -- there has been no
8 evidence put on to call it into question.

9 MR. FOGARTY: May I respond on that point?

10 CHAIR WATSON: I think -- you want him to
11 respond? We need to get to the other --

12 MEMBER McCORRY: I know. I think we're --

13 CHAIR WATSON: Anyone else have any other
14 questions? Any questions in Springfield?

15 MEMBER GENOVESE: No, ma'am.

16 MEMBER VRETT: I would like to make a
17 motion. First of all, I think that there does
18 not need to be any reference to the individual
19 investigation done by the Hearing Officer in this
20 case. I think that the record established by the
21 Hearing Officer otherwise is sufficient to
22 support the conclusion that the objector met
23 their burden and, therefore, with that caveat in
24 mind I move that we accept the recommendations of

1 the general counsel modifying the recommendations
2 of the Hearing Officer and accept the objection.

3 MS. MALOWITZ: And deny the motion to
4 dismiss.

5 MR. VRETT: Deny the motion to dismiss.

6 MEMBER McCrory: Second.

7 CHAIR WATSON: Rollcall, please.

8 MS. CALVIN: Ms. Ballard-Croft.

9 MEMBER BALLARD-CROFT: Yes.

10 MS. CALVIN: Ms. Cray.

11 MEMBER CRAY: Yes.

12 MS. CALVIN: Ms. Genovese.

13 MEMBER GENOVESE: Yes.

14 MS. CALVIN: Ms. McCrory.

15 MEMBER McCRORY: Yes.

16 MS. CALVIN: Mr. Terven.

17 MEMBER TERVEN: Yes.

18 MS. CALVIN: Mr. Terven.

19 MEMBER TERVEN: Yes.

20 MS. CALVIN: Mr. Vrett.

21 MEMBER VRETT: Yes.

22 MS. CALVIN: Vice Chair Donahue.

23 VICE CHAIR DONAHUE: Yes.

24 MS. CALVIN: Chair Watson.

1 CHAIR WATSON: Yes.

2 MS. CALVIN: Motion passes.

3 CHAIR WATSON: Thank you.

4 MS. MALOWITZ: And if I could note briefly
5 to Jordan in Springfield if you could ensure that
6 order is updated to reflect the exclusion of the
7 Hearing Officer's research into the divorce
8 proceeding, I would appreciate that.

9 CHAIR WATSON: Madam General Counsel.

10 MS. MALOWITZ: Thank you. The next matter
11 agenda item 3b, Overturf versus Minson-Minor, 24
12 SOEBGP 119.

13 Objector Overturf represented by
14 attorney John Fogarty filed an objection to the
15 nomination papers of candidate Minson-Minor who
16 seeks ballot access as a Republican Party
17 candidate for the Office of Circuit Judge for the
18 2nd Judicial Circuit, Tedeschi vacancy.

19 Objector's petition argues candidate
20 nomination papers are invalid because she
21 gathered signatures under the name Vanessa Minson
22 M-Minor whereas her name is Vanessa Minson. And
23 that candidate created a new hyphenated surname
24 that violates Section 7-10.2 of the Election

1 Code.

2 Objector further alleges that
3 candidate filed a false statement of candidacy
4 because there is no voter named Vanessa
5 Minson-Minor registered to vote at the given
6 address. Candidate filed a motion to strike
7 which was fully briefed in the hearing. And in
8 the briefing candidate says Minson is her married
9 name. Minor is her surname at birth. And
10 because she is going through dissolution of
11 marriage proceedings and because she wants to
12 make it easier for Franklin County voters to
13 identify her by including her birth name, the
14 name on her statement of candidacy complies with
15 the law.

16 The objector offered exhibits showing
17 various records for different names for the
18 candidate including Vanessa Minson, Vanessa
19 Minson-Minor, Vanessa Minor-Minson and Vanessa
20 Brielle Minson.

21 The Hearing Officer relies on the
22 Oberholtzer case, O-b-e-r-h-o-l-t-z-e-r, and the
23 Shannon-DiCianni case, S-h-a-n-n-o-n, hyphen,
24 D-i-C-i-a-n-n-i, cases that are cited in your

1 summary sheets in your packet. And the Hearing
2 Officer recommends finding the candidate's name
3 on her statement of candidacy violates Election
4 Code Section 10.2 -- excuse me, 7-10.2 by
5 creating an impermissible double surname
6 invalidating her nomination papers.

7 The relevant portion of that statute
8 reads, quote, in the designation of the name of a
9 candidate on a petition for nomination for
10 certificate of nomination, the candidate's given
11 name or names, initial or initials, a nickname by
12 which the candidate is commonly known or a
13 combination thereof may be used in addition to
14 the candidate's surname.

15 Because the Hearing Officer recommends
16 sustaining the objection and removing candidate
17 from the ballot, he recommends finding objector's
18 argument that candidate filed a false statement
19 of candidacy moot and he specifically finds that
20 she had no intent to deceive in using Vanessa
21 Minson-Minor on her statement of candidacy.

22 The candidate could not be here today.
23 She has court hearings, but she did file
24 exceptions to the Hearing Officer's

1 recommendation; but I did not find any of them to
2 be persuasive.

3 The Hearing Officer recommends and I
4 agree that the candidate's motion to strike
5 should be denied, that the objection should be
6 sustained and that Candidate Minson-Minor's name
7 should not be certified for the March general
8 primary ballot as a Republican Party candidate
9 for the Office of Circuit Judge for the 2nd
10 Judicial Circuit.

11 VICE CHAIR DONAHUE: Since she isn't here to
12 defend, can I just make a motion that we accept
13 the general counsel's recommendation?

14 CHAIR WATSON: Sure.

15 VICE CHAIR DONAHUE: I would move that we
16 accept the general counsel's recommendation in
17 regard to 3b.

18 CHAIR WATSON: Is there a second?

19 MEMBER VRETT: Second.

20 CHAIR WATSON: Rollcall, please.

21 MS. CALVIN: Ms. Ballard-Croft.

22 MEMBER BALLARD-CROFT: Yes.

23 MS. CALVIN: Ms. Cray.

24 MEMBER CRAY: Yes.

1 MS. CALVIN: Ms. Genovese.

2 MEMBER GENOVESE: Yes.

3 MS. CALVIN: Ms. McCrory.

4 MEMBER McCRORY: Yes.

5 MS. CALVIN: Mr. Terven.

6 MEMBER TERVEN: Yes.

7 MS. CALVIN: Mr. Vrett.

8 MEMBER VRETT: Yes.

9 MS. CALVIN: Vice Chair Donahue.

10 VICE CHAIR DONAHUE: Yes.

11 MS. CALVIN: Chair Watson.

12 CHAIR WATSON: Yes.

13 MS. CALVIN: Motion passes.

14 CHAIR WATSON: Thank you. Thank you, Amy.

15 There is something wrong with my microphone now.

16 Madam General Counsel, I think we are going to

17 take a brief break before we begin with the

18 Presidential candidates. So what is the time

19 now? 10:07. Okay. So 10 minutes, 10:17. Well,

20 let's do 10:20. 10:20. Recess until 10:20.

21 Thank you.

22 (Whereupon a recess was taken.)

23 CHAIR WATSON: Madam General Counsel, I

24 understand that we are shuffling the agenda

1 somewhat.

2 MS. MALOWITZ: Yes, we are.

3 CHAIR WATSON: And we are going to be
4 starting with C.

5 MS. MALOWITZ: Sure. So, yes, we are going
6 to consider objections to establish presidential
7 preference and delegate candidate nominating
8 petitions for the March 19th, 2024, general
9 primary election. We are shuffling the agenda as
10 the Chair has decided and starting with agenda
11 item 4c. Anderson, Holley, Hickman, Cintron and
12 Baker versus Trump, 24 SOEBGP 517.

13 Objectors Anderson, Holley, Hickman,
14 Cintron and Baker filed an objection to the
15 nomination papers of Candidate Donald J. Trump to
16 seek ballot access for Republican Party candidate
17 for the Office of President of the United States.

18 The objectors are represented by
19 attorneys Lederer, Piers, Truesdale, Tresnowski,
20 Fein and Mullen and Candidate is represented by
21 attorneys Merrill, Gessler and Nelson.

22 Objectors allege the candidate's
23 statement of candidacy contains a false swearing
24 in violation of Section 7-10 of the Election Code

1 that he is qualified for the office when they
2 argue candidate is disqualified from holding the
3 Office of President under Section 3 of the 14th
4 Amendment to the U.S. Constitution, which I will
5 call Section 3 throughout our conversation today,
6 because candidate previously swore on oath to
7 support the Constitution of the United States,
8 but had engaged in insurrection or rebellion
9 against the same or given aid or comfort to the
10 enemies thereof.

11 Objectors allege that the events
12 leading up to and on January 6, 2021, when the
13 United States Capitol was breached by rioters
14 constitute an insurrection or rebellion and the
15 candidate's involvement in those events amounts
16 to engaging in the insurrection.

17 Both sides filed dispositive motions
18 which were fully briefed and provided in your
19 packets. I am not going to explain every
20 argument made by each side in the nearly 250
21 pages of briefing, but I will list a few for you
22 to be aware of:

23 Objectors' papers argue there was a
24 scheme to overturn the government and prevent the

1 peaceful transition of power which included
2 violence and constitutes an insurrection;

3 That the word engaging in an
4 insurrection includes providing any voluntary
5 assistance;

6 And candidate's effort to prevent the
7 certification of the 2020 election results, his
8 Ellipse speech that allegedly instigated violence
9 and his social media posts constitute engaging in
10 insurrection;

11 The deciding question under Section 3
12 is within the jurisdiction of the Board under
13 Section 10- -- under the Election Code. Yes,
14 within 10-10 of the Election Code;

15 Section 3 applies to the Office of
16 President;

17 And that the Colorado Supreme Court
18 recently correctly determined that the candidate
19 was disqualified from the Presidency under
20 article -- under Section 3 in Anderson versus
21 Griswold as the Hearing Officer recommends. And
22 the cite for Anderson versus Griswold are in your
23 summary sheets. That decision was rendered on
24 December 29th, 2023.

1 Candidate's papers argue this Board
2 lacks jurisdiction to decide the Section 3, 14th
3 Amendment question. This case presents a
4 non-justiciable political question.
5 Disqualification under Section 3 can only be
6 addressed through procedures prescribed by the
7 United States Congress. That Section 3 does not
8 apply to the Office of President. That objectors
9 have not adequately alleged the candidate engaged
10 in insurrection, and the facts alleged by
11 objectors cannot establish he did so as a matter
12 of law. And that genuine issues of material fact
13 prevent the grants of summary judgment.

14 The parties entered as a stipulation
15 to enter in the record in this matter most but
16 not all of the exhibits and transcripts from
17 Anderson versus Griswold. The hearing was held
18 before the Hearing Officer on January 26th, 2024,
19 at which both sides made arguments and presented
20 evidence that was subject to their previous
21 stipulation.

22 The Hearing Officer issued a written
23 recommendation in this matter. The Hearing
24 Officer recommends granting the candidate's

1 motion to dismiss because the Board is unable to
2 decide whether a candidate is disqualified by
3 Section 3 without embarking upon Constitutional
4 analysis. He finds the Board is not permitted to
5 engage in such analysis.

6 In making this recommendation the
7 Hearing Officer noted that the objection process
8 in Illinois is much shorter in time than it was
9 in Colorado in Anderson lasting less than two
10 weeks in this case. And that leaves no time for
11 meaningful discovery or subpoenaing of witnesses
12 needed to adjudicate the factual claims.

13 Further, the Illinois Supreme Court in
14 Goodman versus Ward and Delgado versus Board of
15 Election Commissioners has prohibited the Board
16 from addressing issues involved in Constitutional
17 analysis.

18 If the motion to dismiss is granted
19 for lack of jurisdiction, the Hearing Officer
20 implies but does not state that the objection
21 should be overruled and Candidate Donald J.
22 Trump's name should not be placed -- oh, excuse
23 me. Should be placed on the ballot for President
24 of the United States.

1 However, the Hearing Officer
2 recommends that if the Board declines to grant
3 candidate's motion to dismiss, the evidence
4 presented at the hearing proves by a
5 preponderance of the evidence that candidate in
6 fact engaged in insurrection within the meaning
7 of Section 3 specifically referencing a social
8 media post regarding former Vice President Pence
9 during the breach of the Capitol.

10 As a result should the Board decide it
11 has jurisdiction to decide the Section 3 question
12 and it should deny the motion to dismiss, the
13 Hearing Officer recommends that candidate Donald
14 J. Trump's name should not be placed on the
15 ballot for President of the United States. Both
16 sides filed exceptions to the recommendation.

17 So if candidate's motion to dismiss is
18 granted as recommended by the Hearing Officer, I
19 concur in the ultimate result which is to
20 overrule the objector's petition and certify
21 candidate's name to the March 19th, 2024, general
22 primary ballot.

23 However, to ensure that a reviewing
24 court has sufficient reasons to affirm the

1 Board's decision in this matter, I am offering
2 several different options for the Board to
3 discuss as possible resolutions of this case. My
4 goal is to reduce the possibility that a
5 reviewing court remands the matter back to the
6 Board for further proceedings.

7 First, I would like to clarify for the
8 Board that even if the Board does not have
9 jurisdiction to engage in a constitutional
10 analysis of Section 3, the Board does have
11 statutory jurisdiction to pass upon objections to
12 nomination papers filed for the Office of
13 President under Section 10-10 of the Election
14 Code.

15 I read the Hearing Officer's
16 jurisdictional recommendation to presume that
17 this Board must actually decide whether candidate
18 is disqualified under Section 3 in order to
19 assess the validity of the nomination papers
20 under Illinois law and that it is the
21 constitutional analysis needed to reach that
22 specific decision that the Board cannot perform
23 in his opinion.

24 Putting aside the Section 3 question,

1 the Board unquestionably has a statutory mandate
2 to rule upon objections filed and determine the
3 validity of nomination papers objected to. And
4 this Board sits as the State Officers Electoral
5 Board solely for that purpose.

6 The Board could consider a way to rule
7 upon this matter solely based upon state law
8 which avoids the question of the Board's
9 jurisdiction over the federal constitutional
10 issue. I will call this option number one.

11 The objectors allege the candidate
12 filed a false statement of candidacy when he
13 swore under penalty of perjury that he was
14 legally qualified to hold the Office of
15 President. However, the candidate has argued
16 throughout this proceeding that he is qualified
17 to hold office and that he is not disqualified by
18 Section 3.

19 My recommendation in option number one
20 is to find that following the evidentiary hearing
21 in this matter there has not been sufficient
22 evidence presented to demonstrate the candidate
23 was untruthful on his statement of candidacy in
24 violation of Section 7-10 of the Election Code.

1 Legal qualifications for Illinois
2 offices generally involve the application of
3 Illinois law to facts personal to the candidate
4 like whether they live in the district, have
5 lived in the district for a long enough period of
6 time or whether they hold the correct
7 professional qualification.

8 To the extent the candidate swearing
9 he is legally qualified for office must mean he
10 is not disqualified under Section 3, this
11 involves an analysis of complex facts as well as
12 law many of which involve actions by others at
13 the Capitol on January 6 for which he was not
14 physically present making it more difficult for
15 him to know whether in fact he is legally
16 qualified.

17 Illinois law favors ballot access
18 which is a substantial right and absent some
19 evidence that the candidate has some awareness
20 that the statement of candidacy is false, I do
21 not believe that alone is sufficient to
22 invalidate his nomination papers. I am not
23 advocating for adoption of a criminal law perjury
24 standard in a noncriminal matter. And this case

1 is determined on a preponderance of the evidence
2 standard, but not just any alleged mistake on a
3 candidate should be sufficient to deny ballot
4 access to a candidate.

5 In the case of Illinois candidates
6 running for Illinois offices, other requirements
7 of the Illinois Compiled Statutes and the
8 Illinois Constitution work together with the
9 Election Code to ensure that only qualified
10 candidates obtain access to the ballot. But as
11 to federal candidates the only statutory
12 authority Illinois law is to prevent a federal
13 candidate's ballot access is if the candidate's
14 nomination papers are not in compliance with the
15 Illinois Election Code.

16 And the singular way this Board's
17 process touches a federal candidate's substantive
18 qualifications for office is if the candidate
19 falsely states they're qualified to hold the
20 office and they duly file an objection to sustain
21 for that reason. And I am not convinced here
22 that the candidate has filed a false statement.

23 To the extent that Illinois law does
24 require the candidate actually meet all of the

1 qualifications for office, state and federal, in
2 order to have valid nomination papers, then I
3 recommend adopting the Hearing Officer's argument
4 that the Board lacks jurisdiction to engage in
5 the constitutional analysis necessary to decide
6 whether Section 3 disqualifies a candidate from
7 holding office.

8 Even if the Board believes it has
9 jurisdiction to analyze and decide the Section 3
10 question, I discourage the Board from doing so
11 today. A number of legal questions must be
12 decided including whether Section 3 applies to
13 the Office of President before it would be
14 appropriate to determine the candidate did or did
15 not engage in insurrection.

16 The Hearing Officer's recommendation
17 does not make recommendations on certain
18 preliminary legal questions. So if the Board
19 considers those facts without first evaluating
20 these legal questions, this could result in a
21 reversal by the courts and possible remand to
22 this Board for further proceedings.

23 I think it's in the interest of
24 everyone the Board's decision after today proceed

1 up through the court system towards a resolution.

2 I would like to further understand
3 which direction the Board is headed in this
4 ruling before we talk to specifically about
5 ruling on the dispositive motions filed by each
6 side. But in any event, I recommend finding that
7 the objection should be overruled and candidate's
8 name, Donald J. Trump, should be certified to the
9 March general primary ballot as a Republican
10 Party candidate for the Office of President.

11 Now, I understand that we're asking
12 the parties to limit their arguments to 15
13 minutes each. If the objectors can begin.

14 CHAIR WATSON: That's correct. Counsel for
15 the objectors.

16 MR. PIERS: Thank you, Madam Chairwoman,
17 Madam Vice Chair, Members of this honorable
18 Board, Counsel for the Candidate, Mr. Trump, and
19 Madam General Counsel.

20 I'm Matthew Piers and along with my
21 colleagues in array to the left and one I hope
22 Zooming in, we represent the petitioner objectors
23 in this matter and it's an honor to do so.

24 As the general counsel has told you

1 and as I'm sure probably the weightlifting that
2 you have engaged in from the paper unless you
3 have it all electronically has shown you it's a
4 rich record. A lot of legal argument in writing,
5 a lot of evidentiary material presented to you.
6 And I think without being modest the lawyers on
7 both sides did a good job. This has been well
8 submitted to you and while I am passing out
9 introductory compliments, the Hearing Officer did
10 a remarkable job in a very short period of time
11 consuming a small mountain of legal argument and
12 evidence and issuing a very thoughtful ruling.

13 He received an extensive record that
14 included our objection which was a fulsome
15 document with argument and citation to authority.
16 The trial transcript of the Colorado case in the
17 Anderson litigation. The factual findings, not
18 the conclusory comments, but the factual findings
19 of the January 6 Congressional Committee. Very
20 extensive evidentiary material in addition to
21 that plus tweets, public statements by the
22 President, largely undisputed those facts. And
23 detailed motions, dispositive motions, from both
24 sides. Motion to dismiss from Mr. Trump's

1 counsel and a petition for a ruling in our favor
2 either on the evidentiary record or in summary
3 judgment for the objectors.

4 Judge Erickson recommended as the
5 general counsel has just indicated that our
6 objection, our petition, be denied on the basis
7 of one of the grounds alleged in the motion to
8 dismiss alleged by the candidate and that is that
9 this Board lacks the legal authority to determine
10 complex constitutional questions like this that
11 require both legal determinations and factual
12 determinations.

13 As a second ruling or a recommended
14 ruling, I'm sorry, Judge Erickson, the Hearing
15 Officer, said that if instead this Board finds
16 that it does have jurisdiction, it should based
17 on the record adduced, the factual record
18 adduced, and the law presented find in favor of
19 the objector petitioners and rule that Donald
20 Trump may not appear on the Presidential primary
21 ballot because he has in fact engaged in an
22 insurrection in violation of Section 3 of the
23 14th Amendment of the United States Constitution.

24 In so doing by the way, the Hearing

1 Officer recommended denial of our petition for
2 summary judgment. That is, the secondary ruling
3 that he recommended should you find authority to
4 act is one based on the evidentiary record and
5 determinations of evidence not on summary
6 judgment and lack of -- lack of facts in dispute.

7 And, secondly, implicit in his ruling
8 I think it is fair to say he found the other
9 grounds alleged in the motion to dismiss to be
10 without merit.

11 Thereafter, your general counsel
12 recommended for the first time only yesterday and
13 again reiterated today that you should dismiss
14 this objection on purely state law grounds based
15 on a novel interpretation of the Illinois
16 Election Code which I must emphasize is
17 completely unsupported by its text.

18 Counsel's proposal would add a
19 scienter, an intent element to the provisions of
20 certification of qualification for office that is
21 simply not there in the code. It would be a
22 determination of the mandatory certification
23 requirements so that the requirement of accurate
24 certification which is I think undisputed that is

1 what the requirement is under the law that it be
2 accurate, would be complied with regardless of
3 the truth if what a potential -- if when a
4 potential candidate certifies that it's true,
5 he's not knowingly lying. I submit to you that
6 is not the law under the Election Code and that
7 is not the law under any case that has ever been
8 cited in the State of Illinois.

9 Now, we first heard this
10 interpretation not from the pleadings of the
11 candidate, but in your general counsel's
12 recommendation which we received late yesterday.
13 With all due respect to the general counsel and I
14 mean that sincerely and to this Board, the
15 suggestion is not lawful and it should be
16 rejected.

17 There is no, quote, unquote, knowing
18 violation exception to the mandatory requirements
19 of the Illinois Election Code of certification by
20 each candidate that they meet the qualifications
21 for the office they seek. If they do not meet
22 those qualifications, they may not be on the
23 ballot regardless of the good intent.

24 We have heard some cases this morning

1 about residency and about name changes. And
2 certainly in the case of the residency case, it
3 is quite possible that the judicial candidate in
4 that case thought that by renting an apartment in
5 I think it was Franklin County. Don't hold me to
6 that. Yes, Franklin County. That he or she was
7 in compliance with the law. You found he or she
8 was not. I apologize. I don't remember the
9 gender of the judicial candidate. And you didn't
10 find out -- you didn't find that based on what
11 the candidate thought was legal compliance, but
12 rather on legal compliance.

13 I want to add parenthetically that
14 while it would not help Donald Trump here in any
15 event for the evidence clearly establishes that
16 certification that he made at the time he made it
17 was false, he was certainly well aware that his
18 conduct in seeking to prevent the certification
19 of the results of the presidential election was
20 unlawful and was illegal. He had been told so
21 repeatedly by his own lawyers, by the Attorney
22 General of the United States, by other high-level
23 officials in the United States Department of
24 Justice and by his own campaign staff as well as

1 the Vice President of the United States. I
2 submit to you that's a fairly fulsome record upon
3 which to presume he knew that trying to prevent a
4 peaceful transfer of power was illegal.

5 He was well aware undisputed of the
6 invasion and seizure of the Capitol and indeed
7 has acknowledged that it was an insurrection
8 under the meaning of the 3rd Section of the 14th
9 Amendment of our Constitution. That it was an
10 insurrection was found overwhelmingly by both
11 Houses of the United States Congress in the most
12 significant bipartisan vote in years. And was
13 admitted by counsel for Mr. Trump on the floor of
14 the House during his impeachment in this case.

15 So I think you could find knowingly
16 violation of the law quite easily in this record,
17 but the truth is there is no such scienter
18 requirements in the Illinois Election Code.

19 This Board is what is inartfully
20 called by lawyers a creature of statute and only
21 has those powers that you are given by statute
22 and required to undertake under the Constitutions
23 of the State of Illinois and the United States.

24 I pause and note every governmental

1 entity must comply with those two Constitutions
2 regardless of what their statutory mandate is.
3 Think about that. There is no dispute and no
4 unclarity. What you may not do is draft new
5 elements, new requirements onto the clear
6 language of the Illinois Election Code.

7 On behalf of the petitioner objectors,
8 we request that you grant our objection, adopt
9 the recommended factual findings presented to you
10 by Judge Erickson as Hearing Officer and deny the
11 motion to dismiss in its entirety.

12 A few comments and then I shall pass
13 the microphone to learned counsel for Mr. Trump.
14 There is no question under the law, no legitimate
15 question under the law, that this Board not only
16 has the authority to determine an objection based
17 on the United States Constitution; but indeed you
18 have the clear mandatory duty to do so.

19 You signed up for this job. This
20 burden came with you signing up for this job.
21 You may not have anticipated a case of this
22 complexity or of this degree of controversy, but
23 that does not change your statutory and
24 constitutional authority.

1 This Board has a long history of
2 having applied constitutional challenges to
3 statements of candidacy in the past including in
4 the case of candidate Marco Rubio. Including in
5 the face of challenges that this Board had no
6 such authority to make such a determination.
7 Accordingly, Judge Erickson's and the general
8 counsel's recommendations as to the motion to
9 dismiss should be denied.

10 There is no complicated or
11 controversial or constitutional limitation on
12 your powers. You must do your duty under the
13 Election Code or as found elsewhere.

14 There had been a misrepresentation of
15 Ward v Goodman the leading Illinois Supreme Court
16 case in this area. A misrepresentation that in
17 some way the Supreme Court said that this Board
18 could not consider constitutional questions.
19 That is not what the Illinois Supreme Court said
20 in that case. Indeed, it made it quite clear
21 that this Board must apply constitutional
22 considerations in this case.

23 What Ward v Goodman said is really not
24 a very controversial provision at all. It said

1 that this honorable body, and indeed it's true
2 for all administrative bodies everywhere in this
3 country, may not declare statutes to be
4 unconstitutional. Under our tripartite system of
5 government, administrative bodies don't have that
6 power. Only courts have that power.

7 But administrative bodies, this one
8 and every other one, must obey the Constitution.
9 And to the extent that constitutional provisions
10 dictate or impact the outcomes of the proceedings
11 before you, you must obey the Constitution just
12 as I must obey the Constitution and everybody in
13 this room must. But you to a higher level
14 because you're the government.

15 The factual record that was found and
16 recommended by Judge Erickson should be adopted
17 by this Board. On the basis of that record this
18 Board should grant the objection. That record
19 shows to more than a preponderance of the
20 evidence that the candidate, Mr. Trump, knowingly
21 and voluntarily engaged in insurrection to
22 prevent the peaceful transfer of power for the
23 Office of the Presidency which transfer is
24 provided for in the United States Constitution.

1 The only proceedings to reach the
2 merits on this question are unanimous on this
3 point that that is in fact what happened and he
4 did indeed violate the law.

5 It is also clear from this record that
6 in an effort to prevent that peaceful transfer of
7 power, Mr. Trump -- this isn't a secret. As the
8 sitting President he made it clear that that was
9 what he intended to do. He intended to stay in
10 office because he, with no factual or legal basis
11 whatsoever after having lost 60-some legal
12 challenges around the country, he claimed that
13 the election was somehow stolen with no facts and
14 no legal authority. And based on that continued
15 allegation he took a leading role in organizing,
16 facilitating, supporting, directing and
17 protecting a concerted, armed and violent
18 invasion, seizure and disruption of the United
19 States Congress on January 6.

20 As the members of that body were
21 gathered to fulfill their constitutional duty of
22 certifying the electoral votes, the target was to
23 disrupt that process under our Constitution which
24 is indeed the peaceful transfer of power.

1 This record is not only well
2 established before you. It is unrebutted by any
3 affidavit from the candidate. He stands silent
4 before this court. Because of that largely
5 unrebutted conduct, the candidate is disqualified
6 to run for the Office of President under Section
7 3 of the 14th Amendment to the United States
8 Constitution. Accordingly, we submit the
9 petitioners' objection should be granted.

10 Miss Malowitz has stated in her
11 recommendations to this body that in order to,
12 quote, ensure that a reviewing court has
13 sufficient reason to affirm this Board's decision
14 in this matter, closed quote, she offers
15 different options to the Board as she has
16 discussed and as her recommendation clearly
17 presents. Different options which she says the
18 goal of which is to reduce the possibility that a
19 reviewing court remand this matter back to this
20 Board for further proceedings.

21 While we may disagree with some
22 aspects in the general counsel's recommendation,
23 we wholeheartedly agree in that goal. We think
24 that this honorable Board should make a

1 determination with regard to the matters pending
2 in such a way that the Appellate Courts and there
3 will be Appellate Courts. This is no secret. We
4 -- no disagreement among counsel on that point.
5 So the Appellate Courts have the ability to make
6 a full and final determination without sending it
7 back down here for more.

8 While we fully believe that only the
9 granting of our objection will be affirmed, we
10 share the goal of this Board making a record that
11 will not be remanded for further proceedings.
12 The proceedings before this Board have been
13 extensive and very thorough. There is a full
14 legal and factual record which should be adopted
15 by this Board so as to present the complete
16 record on which the courts will make a final
17 determination in this most important matter.

18 With those remarks I am happy to
19 answer any questions and I will concede the mic
20 over to counsel for Mr. Trump if there are no
21 questions.

22 CHAIR WATSON: Do we want to take questions
23 now or do we want to allow the other counsel to
24 proceed at this time? Counsel, please.

1 MR. MERRILL: Members of the Board and
2 Counsel and staff, good morning. My name is Adam
3 Merrill. I represent the candidate Donald J.
4 Trump. My co-counsel, Scott Gessler, who
5 couldn't be here today, but is admitted in
6 Illinois and was present at the hearing last
7 Friday is present via Zoom.

8 Mr. Trump did not engage in
9 insurrection as that term is used in the
10 Constitution. It is a complicated legal term
11 that has been rarely interpreted and it wasn't
12 even articulated correctly by the Hearing Officer
13 in this case. And, frankly, never should have
14 reached it because there -- of the lack of
15 evidence and because of the lack of jurisdiction.

16 Mr. Trump has denied ever
17 participating in an insurrection. In fact, Judge
18 Erickson, the Hearing Officer, found that he
19 didn't intend for there to be any violence. He
20 never advocated violence. There is nothing in
21 the record that suggested he did and he always
22 said all of his public statements and tweets on
23 January 6 were to be peaceful.

24 Now, there has been a lot of

1 discussion. We believe that the general
2 counsel's recommendation makes a lot of sense and
3 should be adopted. Because you can't find an
4 affidavit to be false without actual evidence
5 that they knew of -- the candidate knew of
6 falsity when he submitted the affidavit and
7 statement of candidacy. In this case that didn't
8 happen.

9 Let me talk for just a moment about
10 the evidence and if there is questions about the
11 evidence, Mr. Gessler spent five days in a
12 Colorado courtroom. He's much more familiar with
13 it and can speak to that.

14 But in terms of the evidence in this
15 case, there was none. The parties stipulated
16 with respect to two things. And that was that
17 the -- some of the exhibits from the Colorado
18 trial could be considered by the Hearing Officer,
19 but there were -- all of the other objections
20 concerning those exhibits were preserved. One of
21 those main exhibits was the January 6th Report.

22 The January 6th Report was a partisan
23 report. It was done only by -- the only Congress
24 people that participated were people who had

1 already voted to impeach President Trump and
2 under those circumstances Illinois Rules of
3 Evidence, Rule 803(8), doesn't permit the
4 conclusions in that report to be submitted. We
5 objected on that basis. We said we don't dispute
6 its authenticity, but that was the limit of the
7 stipulation and we objected to it being
8 considered for any other purposes.

9 And within the report is what the
10 lawyers like to call hearsay within hearsay. It
11 is simply not something that can be considered by
12 the Hearing Officer and it wasn't considered by
13 the Hearing Officer and it certainly is not
14 something that can be considered by this Board as
15 proof of what the report suggests happened.

16 In terms of the trial testimony, that
17 was simply the parties stipulated it could be
18 considered as former testimony which is an
19 exception to the hearsay rule. But what's not
20 admissible under the hearsay rule are any
21 findings that contain expressions of opinion or
22 the drawing of conclusions. And that is what the
23 alternative recommendation of the Hearing Officer
24 did.

1 In addition to the lack of factual
2 evidence in this record that's admissible before
3 the Hearing Officer and before this Board, the
4 Hearing Officer never reached a number of key
5 legal issues. And those issues included that
6 this is a political question that is not capable
7 of adjudication by the Board or really a court.

8 The 14th Amendment, the 3rd Section of
9 the 14th Amendment, was meant to be enforced by
10 Congress. Section 3 bars holding office not
11 running for office. And the President is not an
12 officer of the United States as that term is used
13 in the Constitution. Therefore, Section 3 does
14 not apply to the Office of President. There was
15 no finding or ruling by Judge Erickson on any of
16 those legal questions.

17 So under the circumstances, given the
18 lack of evidence, given the lack of legal issues,
19 we think that what makes the most sense is to
20 follow the recommendation of the general counsel
21 and say that the Board doesn't have sufficient
22 evidence to find that statement of candidacy was
23 inaccurate or false and, therefore, overrule the
24 objection.

1 If the Board is not inclined to do
2 that then, you know, it's always an awkward thing
3 to argue to a Board that the Board doesn't have
4 authority. But Section 10-10 simply does not
5 give the Board the authority to weigh in to
6 complicated federal constitutional issues.

7 The language of the statute, it talks
8 in terms of nomination papers being in their
9 proper form. Whether they were submitted on time
10 and under conditions required by law and whether
11 they are genuine. It does not speak in terms
12 beyond that.

13 And to the couple of examples
14 involving presidential qualifications, they make
15 sense if you adopt Miss Malowitz's approach, the
16 general counsel's approach, that because those
17 were clearcut situations involving former
18 President Obama and Senator Rubio where a birth
19 certificate, for example, could be provided and
20 that was enough for the Board to be able to
21 conclude whether they were qualified to run for
22 President of the United States.

23 This is far different. This is a --
24 an alleged disqualification for running -- for

1 holding office. Not even running for office.
2 And it's inappropriate and not within the Board's
3 authority to do that and no Illinois court has
4 ever suggested that the Board has this authority.

5 So with that we would recommend that
6 -- and urge the Board to not weigh into this.
7 Mr. Piers suggests you have to weigh in. We
8 disagree. Nothing -- there's no precedent of any
9 court in Illinois or other where -- anywhere else
10 that suggests that this Board has to weigh in on
11 this issue.

12 Most of the states that -- where
13 objections like this have been made, have
14 declined. And only two places, Colorado and
15 Maine, have agreed to -- have concluded that they
16 have the jurisdiction to hear this issue and to
17 determine that Mr. Trump shouldn't be on the
18 ballot in those states.

19 And the Colorado case is now before
20 the U.S. Supreme Court and it really under all of
21 these circumstances makes no sense for the Board
22 to weigh in and deprive Trump of -- and the
23 voters of Illinois to the ballot access that
24 Illinois law favors and as the general counsel

1 pointed out.

2 So with that, unless the Board has any
3 questions I'm available and Mr. Gessler in
4 particular if there is any factual questions is
5 available to discuss this issue further. But we
6 would urge the Board to overrule the objection
7 and allow Mr. Trump's name to appear on the
8 primary ballot.

9 CHAIR WATSON: Do you wish to add anything
10 else?

11 MR. PIERS: Very briefly, Madam Chairwoman.
12 And I mean really briefly not lawyer's briefly.

13 CHAIR WATSON: Yeah, really, really briefly.

14 MR. PIERS: It is simply untrue that the
15 Hearing Officer found that Mr. Trump didn't
16 contend violence. Let me read to you the
17 language from the Hearing Officer's
18 recommendation in that regard.

19 This is at paragraph 7 I think of his
20 numbered paragraphs. Quote -- I'm sorry. I'm
21 not going to do that intro again. Quote, even
22 though the candidate may not have intended for
23 violence to break out on January 6th, 2021, he
24 does not dispute that he received reports that

1 violence was a likely possibility on January 6th,
2 2021. Candidate does not dispute that he knew
3 violence was occurring at the Capitol, end of
4 quote. That's a far cry from finding that Mr.
5 Trump did not intend violence. He certainly
6 watched it and did nothing to stop it.

7 I am happy to respond to the other
8 issues raised in the motion to dismiss if you
9 have questions. I think we have handled all of
10 that fully in our briefing. I know you've got a
11 busy morning so I will add just one more sort of
12 reiterative.

13 When we used the January 6th Report in
14 this proceeding, we did not use the conclusions
15 of that report but only the factual findings. We
16 do not seek for this court -- for this Board,
17 excuse me, to consider those conclusions. We
18 haven't introduced those conclusions. Only the
19 factual findings.

20 And, lastly, look at the Supreme
21 Court's guidance in Goodman. It is other than
22 what has been represented. With all due respect
23 you are obligated to rule in this matter. And
24 with that I answer any questions or we stand

1 down.

2 MR. MERRILL: If Mr. Gessler may just be
3 permitted to respond to some of the factual
4 issues.

5 CHAIR WATSON: Mr. Gessler.

6 MR. GESSLER: Thank you, Madam Chair. And I
7 also want to thank the Board for its courtesy in
8 allowing me to appear by Zoom. I would just like
9 to clarify a couple things very briefly.

10 CHAIR WATSON: Five minutes, Mr. Gessler.

11 MR. GESSLER: With respect --

12 CHAIR WATSON: Five minutes, Mr. Gessler.

13 MR. GESSLER: A slight misstatement by my
14 co-counsel. There is one court in the entire
15 United States that's Colorado that has sought to
16 adjudicate and exercise jurisdiction over these
17 issues. Every other court has rejected it.

18 In Maine it is the Secretary of State
19 who chose to go forward with this and she sought
20 the endorsement from the courts who have in Maine
21 ordered her to stay any decision she has pending
22 an outcome from the United States Supreme Court.

23 So the Maine courts themselves have,
24 both the superior court and the law court that's

1 the Supreme Court of Maine, have exercised
2 discretion and chosen not to weigh into these
3 issues and properly so. So the vast weight of
4 discretion and authority across the country is to
5 -- is to not adjudicate these issues.

6 I would note a few things. The
7 January 6th Report has multiple opinions and
8 legal conclusions in there that are intertwined
9 with facts. For example, with respect to
10 President Trump. Furthermore, to the extent that
11 the objectors rely on some of the factual
12 findings, those are unclear at best and President
13 Trump has never had an opportunity to
14 cross-examine or to develop witnesses to rebut
15 any of that because of the procedural
16 deficiencies we have faced in other states.

17 And this Board I think has a sense of
18 those procedural challenges which Judge Erickson
19 properly pointed out to determine whether or not
20 there was an insurrection against the United
21 States occurring a year-and-a-half-ago 800 or
22 1,000 miles away by this particular -- by the
23 Board when President Trump has never been
24 afforded any opportunity for discovery and

1 whatnot.

2 So, for example, I mean, in several --
3 several comments that the objectors have made I
4 think are simply not supported by the record.
5 For example, he says and I believe Judge Erickson
6 said that President Trump made false claims about
7 the election. Yet, at the hearing in Colorado
8 Representative Swalwell in eyewitness testimony,
9 a political opponent of President Trump and one
10 who was fighting him in court in several areas,
11 specifically testified that he and his Democratic
12 colleagues believe that President Trump held
13 sincere beliefs about his position with respect
14 to the election. That was eyewitness testimony
15 as opposed to through these amorphous statements
16 which we have not been able to test because they
17 are derived from the January 6th Report.

18 Objectors have claimed that Congress
19 overwhelmingly voted that there was an
20 insurrection. That simply isn't true. In the
21 House of Representatives it was mostly a partisan
22 vote, 54 percent voted that President Trump had
23 incited insurrection and 46 voted against that.
24 And, yet, the January 6 Committee was comprised

1 entirely of committee members who had viewed and
2 this is from testimony from the Colorado hearing
3 that it was an obvious fact their belief with
4 respect to President Trump's participation and
5 their claim that it was an insurrection. And
6 that was the basis in which the January 6 Report
7 came about. And so we dispute very strongly not
8 only that, but also many of the facts derived
9 from the January 6 Report.

10 At the Colorado hearing representative
11 Ken Buck spent 28 years as a prosecutor. He
12 actually served as a staffer in the Iran Contra
13 Hearings. So he's familiar with controversial
14 reports. He viewed the January 6th report as
15 akin to him showing up in court as a prosecutor
16 and prosecuting a case without the defense or
17 defense counsel ever being present. And in --
18 and that's how unfair we believe it was and that
19 we think many of the facts show.

20 There was never an admission and there
21 never has been an admission by President Trump
22 anything near that January 6 was an insurrection.

23 Objectors statements stem from a
24 statement by President Trump's counsel on the

1 floor who said we are not here today to determine
2 whether or not an insurrection occurred on that
3 point everyone agrees. And when he said on that
4 point everyone agrees, he was pointing out the
5 fact that everyone agreed that the issue that he
6 was talking about at that moment was not
7 insurrection. The point was not that he or
8 anyone from -- in President Trump's camp or he as
9 an agent of President Trump had agreed that
10 January 6 was an insurrection.

11 And, in fact, that interpretation is
12 proper because it's grammatically correct and
13 consistent with everything President Trump has
14 said for the last year-and-a-half.

15 CHAIR WATSON: I'm sorry, Mr. -- Attorney
16 Gessler.

17 MR. GESSLER: Yes, ma'am.

18 CHAIR WATSON: We will have to cut this off
19 at this time.

20 MR. GESSLER: Okay. I'm sorry, could you
21 repeat that, your Honor. My connection may not
22 have picked that up.

23 CHAIR WATSON: I said I'm sorry, we'll have
24 to cut this off at this time.

1 MR. GESSLER: No problem.

2 CHAIR WATSON: Thank you, Mr. Gessler.

3 MR. GESSLER: Thank you for your indulgence.

4 If you have questions and want to wade into these
5 factual issues, I'm fully prepared to do that.

6 But we believe -- we believe that this court does
7 not need to reach those issues. Thank you.

8 CHAIR WATSON: Okay. Do we have any
9 questions in Springfield from the members there?
10 Member Genovese. Member Cray.

11 MEMBER CRAY: Not at this time. Thank you.

12 CHAIR WATSON: Do we have any questions here
13 in Chicago from any of -- any questions? No.
14 Okay. Do we have a motion at this time?

15 MEMBER VRETT: Brief discussion first before
16 a motion. Is that alright? I have a motion.

17 CHAIR WATSON: Please.

18 MEMBER VRETT: Thank you. It is a -- thank
19 you very much. It is a phrase in the law or an
20 axiom that hard cases make bad law. And think I
21 we can all agree that that applies to this case
22 and the situation that lays before us.

23 I think that the general counsel has
24 made a good job and tremendous effort in

1 protecting the jurisdiction of this court,
2 protecting our authority and making sure that
3 there is a record sufficient for the parties to
4 fully litigate this matter upwards on appeal as
5 both have said that they intend to do regardless
6 of the outcome today. So I commend the general
7 counsel for that.

8 The general counsel advises us that if
9 we pass on the constitutional question, we would
10 be exceeding our authority under the Election
11 Code. And I think it's important to reflect on
12 what that would mean for this Board specifically
13 if we were to do so. If we exceeded our
14 authority and went beyond the documents and the
15 nominating petitions and looked at the underlying
16 conduct that was alleged in this case, what I
17 believe we would see is an opening of a floodgate
18 of litigation not necessarily for this Board but
19 before all of the Electoral Boards that look to
20 us for guidance on all the different election
21 matters across the state.

22 The fact is that this Board sets the
23 standards, the legal standard and the procedural
24 standard, for all the other Electoral Boards

1 across the state. We're talking about the county
2 elections, the village boards, school boards and
3 the like. And if we allowed them and gave them
4 authority to say don't just look at the papers,
5 but actually look at underlying allegations of
6 misconduct, that would open up a floodgate.

7 One of the things we've seen over the
8 years in this Board is that challenges in these
9 local elections often are the fiercest of any
10 contested case far so or more so than at the
11 Presidential level. And I think that what we
12 would see if we exceeded our authority is every
13 possible school board candidate would seek to
14 challenge the qualifications based on some sort
15 of alleged criminal misconduct and this Board and
16 the other electoral boards are certainly not
17 constituted to do so.

18 There was wisdom I believe in the
19 legislature when they created the Election Code
20 and said what our authority was and by that what
21 our authority wasn't. And when we all took an
22 oath to serve in this role, we would be violating
23 that oath if we exceeded our authority and
24 weighed into the constitutional question against

1 the recommendation of the Hearing Officer and
2 against the recommendation of the general
3 counsel.

4 I would also note that in addition so
5 that the record is clear, I think that the -- the
6 relief that objectors are seeking is one of
7 ballot forfeiture and under our statute they
8 simply haven't presented a case for ballot
9 forfeiture as well.

10 So with all of those caveats in mind,
11 that's the rationale in my mind. Maybe others
12 have others, but I would move that we accept the
13 general counsel's recommendation that the
14 candidate did not file a false statement of
15 candidacy. Insofar that there is some sort of
16 statement necessary, I think that we do not have
17 jurisdiction to weigh into the constitutional
18 issue and to decide the question of whether the
19 candidate engaged in an insurrection in violation
20 of Section 3.

21 Therefore, I further move that we deny
22 the motion for summary judgment, grant the motion
23 to dismiss for lack of jurisdiction and,
24 therefore, overrule the objection.

1 MS. MALOWITZ: Can I ask one question about
2 the motion? So is the Board or is the motion
3 suggesting that Illinois law does in fact require
4 a candidate to not be disqualified by Section 3
5 in order to appear on the ballot or is this sort
6 of an alternative that if -- if the --

7 MEMBER VRETT: It's an alt -- it's in the
8 alternative.

9 MS. MALOWITZ: It's in the alternative.
10 Okay. Okay.

11 CHAIR WATSON: Is there a second?

12 MEMBER TERVEN: Second that motion.

13 CHAIR WATSON: Rollcall.

14 MS. CALVIN: Ms. Ballard-Croft.

15 MEMBER BALLARD-CROFT: Yes.

16 MS. CALVIN: Ms. Cray.

17 MEMBER CRAY: Yes.

18 MS. CALVIN: Ms. Genovese.

19 MEMBER GENOVESE: Yes.

20 MS. CALVIN: Ms. McCrory.

21 MEMBER McCRORY: I would like to make a
22 statement before I rule on this. I want it to be
23 clear that this Republican believes that there
24 was an insurrection on January 6th. There is no

1 doubt in my mind that he manipulated, instigated,
2 aided and abetted an insurrection on January 6th.

3 However, having said that, it is not
4 my place to rule on that today. So I will say
5 yes to the motion as far as not having
6 jurisdiction to rule on that fact today.

7 MS. CALVIN: Mr. Terven.

8 MEMBER TERVEN: Yes.

9 MS. CALVIN: Mr. Vrett.

10 MEMBER VRETT: Yes.

11 MS. CALVIN: Vice Chair Donahue.

12 VICE CHAIR DONAHUE: Yes.

13 MS. CALVIN: Chair Watson.

14 CHAIR WATSON: Yes.

15 MS. CALVIN: Motion passes.

16 CHAIR WATSON: Thank you. Thank you,
17 Counsel.

18 MS. MALOWITZ: Madam Chair, can we take a
19 ten-minute break?

20 CHAIR WATSON: Yes, let's take a ten-minute
21 break.

22 MS. MALOWITZ: Thank you.

23 CHAIR WATSON: The time now is 11:06.

24 11:15.

1 (Whereupon a recess was taken.)

2 CHAIR WATSON: Okay. So we are all back
3 from recess. Everybody ready in Springfield?

4 MS. CALVIN: Yes, ma'am.

5 CHAIR WATSON: Madam General Counsel, do you
6 want to proceed?

7 MS. MALOWITZ: Thank you. We're moving back
8 to Agenda item 4a, Smith and Conrad versus Biden,
9 24 SOEBGP 118.

10 Objectors Smith and Conrad have filed
11 an objection to the nomination papers of
12 Candidate Joseph R. Biden, Jr., who seeks ballot
13 access as a Democratic Party candidate for the
14 Office of President of the United States.
15 Candidate is represented by attorney James
16 Morpew, Kevin Morpew and Michael Kasper.

17 The objectors' petition alleges that
18 the candidate's statement of candidacy was
19 notarized by a notary public commissioned in the
20 District of Columbia which they claim does not
21 meet the requirement of Election Code Section
22 10-5.

23 Candidate filed a motion to dismiss
24 objectors' petition and motion for summary

1 judgment. Candidate argued among other things
2 that the objectors cite to the wrong article and
3 section of the Election Code. The candidate's
4 nomination papers were filed pursuant to Section
5 7-10 governing candidates seeking nomination by
6 established political parties not under Section
7 10-5.

8 Additionally, under the Uniform
9 Recognition of Acknowledgements Act and Oath and
10 Affirmation Act read together, Illinois
11 recognizes out-of-state notarizations performed
12 by notaries licensed in the relevant jurisdiction
13 citing to Frost versus Cook County Electoral
14 Board where the court affirmed the dismissal of
15 an objection to nomination papers based upon a
16 non-Illinois notary public performing a notary
17 function outside the State of Illinois in the
18 state of licensing.

19 And candidate also argues that the
20 State Board Presidential Preference and Delegate
21 Guide indicates that use of a local notary
22 outside of Illinois is permissible for candidates
23 for President.

24 The objectors responded relying on the

1 case of Knobeloch versus Electoral Board for the
2 City of Granite City in which a Missouri notary
3 notarized a statement of candidacy for an
4 Illinois candidate in the State of Illinois and
5 the nomination papers were invalidated as a
6 result.

7 Candidate filed a reply and a hearing
8 was held, but no evidence was taken. The
9 statement of candidacy was attached to the
10 objectors' petition.

11 The Hearing Officer recommends
12 granting the candidate's motion in its entirety
13 adopting the reasoning in the Frost case and
14 distinguishing the Knobeloch case. Knobeloch is,
15 K-n-o-b-e-l-o-c-h.

16 If the Board wants its ruling to be
17 even more specific, it can find that the motion
18 is granted as a motion to dismiss as opposed to a
19 motion for summary judgment because this
20 objection raises the question of law that
21 required no evidence outside the statement of
22 candidacy.

23 Interestingly this Board ruled on a
24 case like this in 2020 in Boutte, B-o-u-t-t-e,

1 versus West, case number 20 SOEBGP 508. The
2 objector filed -- challenged a statement of
3 candidacy of candidate Kanye West whose
4 notarization had occurred in Florida by a Florida
5 notary. This Board overruled the objection
6 expressly finding that executing the statement of
7 candidacy before a Florida notary while in
8 Florida satisfied the Election Code requirements.

9 The Hearing Officer recommends and I
10 agree the objection should be overruled and
11 candidate's name, Joseph R. Biden, Jr., should be
12 certified for the March general primary ballot as
13 a Democratic Party candidate for the Office of
14 President of the United States.

15 Now, I see that objector Conrad is
16 here. Is objector Smith present?

17 MR. CONRAD: She is down in Springfield to
18 the best of my knowledge.

19 MS. MALOWITZ: Springfield can you confirm
20 objector Smith is down there?

21 MS. CALVIN: Yes.

22 MS. MALOWITZ: Okay. Great. Thank you.
23 Well, I will turn it over to the parties.

24 MR. CONRAD: It's still morning, right?

1 Good morning. I am Timothy Conrad, objector pro
2 se. Beth Findley Smith is in Springfield present
3 via teleconference.

4 I will be brief about this because my
5 main exception to this whole thing is that the
6 state's interest in the notaries that if we
7 needed to subpoena this notary for whatever
8 reason, that we could not because it's out of
9 state. And if we were -- you know, not being
10 able to do that it creates a conflict because the
11 state does not have regional borders.

12 In this case specifically if, for
13 example, if we were to try to get a hold of this
14 notary and ask if this candidate was competent or
15 capable of swearing the oath that -- or refined
16 to what he was refined to in the statement
17 candidacy, we could not do this. And it strikes
18 me really strange that this individual who
19 supposedly notarized this document could not come
20 here to this state and commit that act, but could
21 do it elsewhere. And that being said I will rest
22 and defer to my co-objector if she has anything
23 to say.

24 CHAIR WATSON: Is the other objector

1 available in Springfield to make a statement at
2 this time?

3 MS. MALOWITZ: If you could give her a
4 microphone. We are having trouble hearing.

5 MS. FINDLEY SMITH: I have nothing further
6 to add.

7 CHAIR WATSON: We still can't hear you.

8 MS. FINDLEY SMITH: I have nothing further
9 to add.

10 MS. MALOWITZ: She said nothing further.

11 CHAIR WATSON: Oh, nothing further.

12 MR. CONRAD: She said nothing further, Madam
13 Chair.

14 CHAIR WATSON: Counsel for candidate, you
15 may proceed.

16 MR. KASPER: Thank you, Madam Chair -- wait,
17 oh, no, I'm green now. Michael Kasper.

18 MR. MORPHEW: Kevin Morphey.

19 MR. KASPER: For the candidate President
20 Biden. When we first got this case my immediate
21 reaction was, oh, this is -- this is easy. This
22 is the same case that I represented President
23 Clinton for 18 years ago when he was running for
24 election. Exactly the same. District of

1 Columbia notary in the District of Columbia.

2 And so then I went through my files
3 and I found it and I realized it wasn't 18 years
4 ago. It was 28 years ago. Which I'm still
5 wrapping my brain around the fact that I'm
6 sitting here for 30 years.

7 But we think that the Hearing
8 Officer's recommendation and the recommendation
9 of the general counsel should be accepted. The
10 Uniform Recognition Act applies on all fours
11 here. That case was in 1996. The case is called
12 Burny versus Clinton, B-u-r-n-y, for the court
13 reporter. And this Board unanimously rejected
14 the objection and obviously sustained President
15 Clinton's candidacy for reelection and he was
16 reelected. I believe it happened again to
17 perhaps a better known candidate even, Kanye
18 West, but we would ask that you accept the
19 recommendation of the Hearing Officer.

20 MS. MALOWITZ: So the recommendation is to
21 grant the motion to dismiss, that the objection
22 be overruled and that candidate's name should be
23 certified to the ballot.

24 MEMBER VRETT: So moved.

1 MEMBER TERVEN: Second.
2 CHAIR WATSON: Rollcall please, Amy.
3 MS. CALVIN: Ms. Ballard-Croft.
4 MEMBER BALLARD-CROFT: Yes.
5 MS. CALVIN: Ms. Ballard-Croft.
6 MEMBER BALLARD-CROFT: Yes.
7 MS. CALVIN: Miss Cray.
8 MEMBER CRAY: Yes.
9 MS. CALVIN: Ms. Genovese.
10 MEMBER GENOVESE: Yes.
11 MS. CALVIN: Ms. McCrory.
12 MEMBER McCRORY: Yes.
13 MS. CALVIN: Mr. Terven.
14 MEMBER TERVEN: Yes.
15 MS. CALVIN: Mr. Terven.
16 MEMBER TERVEN: Yes.
17 MS. CALVIN: Mr. Vrett.
18 MEMBER VRETT: Yes.
19 MS. CALVIN: Vice Chair Donahue.
20 VICE CHAIR DONAHUE: Yes.
21 MS. CALVIN: Chair Watson.
22 CHAIR WATSON: Yes.
23 MS. CALVIN: Motion passes.
24 CHAIR WATSON: Thank you. Thank you,

1 gentlemen. Madam General Counsel.

2 MS. MALOWITZ: Moving on to the next case.
3 Agenda item 4b, Bouvet, Conrad, Newsome and
4 Hubbard versus Biden, 24 SOEBGP 119.

5 I just want to confirm that we have
6 all objectors present either in Springfield or in
7 Chicago. Gentlemen, if you don't mind stating
8 your names.

9 MR. NEWSOME: Terry Newsome, N-e-w-s-o-m-e.

10 MR. CONRAD: Timothy Conrad, C-o-n-r-a-d.

11 MS. MALOWITZ: And are objectors Bouvet and
12 Hubbard present here or in Springfield?

13 MS. CALVIN: No.

14 MS. MALOWITZ: Okay. Then it will be an
15 option for the Board to hold those two objectors
16 in default for not arriving in this proceeding.

17 All right. So objectors filed an
18 objection to the nomination papers of candidate
19 Joseph R. Biden, Jr., who seeks ballot access as
20 a Democratic Party candidate for the Office of
21 President of the United States.

22 The candidate is represented by
23 attorneys James Morpew, Kevin Morpew and
24 Michael Kasper. Objectors' petition alleges that

1 candidate's statement of candidacy falsely swore
2 under Election Code Section 7-10 that he is
3 qualified to hold the Office of President.

4 Objectors claim candidate is not
5 qualified for the office based on Section 3 of
6 the 14th Amendment to the U.S. Constitution
7 because candidate previously took an oath to
8 support the Constitution of the United States and
9 objectors allege that he has given aid or comfort
10 to enemies of the United States through various
11 immigration and foreign policies with which they
12 disagree.

13 The candidate filed a motion to
14 dismiss which was fully briefed and a hearing was
15 held at which the objectors requested that the
16 Hearing Officer take, quote, judicial notice of
17 certain records.

18 The Hearing Officer's recommendation
19 is that the Board does not have jurisdiction to
20 determine the issue of qualification requirements
21 of Section 3 of the 14th Amendment relying on the
22 Illinois Supreme Court cases of Delgado versus
23 Board of Election Commissioners and Goodman
24 versus Ward which are cited on your summary

1 sheets and which we have discussed at length
2 today.

3 Here I fully agree with the Hearing
4 Officer's next recommendation which is to grant
5 the motion to dismiss because the petition fails
6 to factually and legally state a viable basis for
7 an objection. That the allegations made involve
8 candidate's official immigration and foreign
9 policies which do not equate to personally
10 providing aid or comfort to enemies of the United
11 States and nomination papers cannot be
12 invalidated over policy disagreements.

13 I note that I believe the Board has
14 jurisdiction to grant the motion to dismiss for
15 this reason because under Section 10-10 of the
16 Election Code this Board possesses, quote,
17 jurisdiction as well as a duty to pass upon
18 objections to nomination papers filed by
19 candidates and this objection is so inadequate
20 both legally and factually it cannot be said to
21 adequately plead a cause of action for
22 disqualification under Section 3 of the 14th
23 Amendment. So I do not believe the
24 jurisdictional issue needs to be reached in this

1 matter.

2 However, I do not recommend dismissing
3 based upon the issue of whether Section 3 of the
4 14th Amendment applies to the Office of President
5 as the Hearing Officer recommends. That it is
6 unnecessary to reach this issue given the
7 recommendation to dismiss based on the legal and
8 factual deficiency of the pleading and it's also
9 a controversial issue that the Board does not
10 need to tread into in my opinion.

11 The objectors filed exceptions to the
12 recommendation arguing the Hearing Officer should
13 have taken judicial notice of public documents
14 they wish to offer as evidence and made other
15 evidentiary arguments that should have been made
16 in their favor. They also disagree that this is
17 a policy dispute.

18 The cure the Hearing Officer
19 recommends, and I agree to the extent previously
20 stated, that the motion to dismiss should be
21 granted. Candidate has submitted valid
22 nomination papers. The objection should be
23 overruled and the candidate's name, Joseph R.
24 Biden, Jr., should be certified for the March

1 general primary ballot as a Democratic Party
2 candidate for the Office of President of the
3 United States.

4 CHAIR WATSON: Counsel for the objectors.

5 MR. CONRAD: Objector is pro se here. We
6 are not attorneys so we make the distinction.

7 CHAIR WATSON: Just state your full name for
8 the record.

9 MR. CONRAD: Timothy Conrad, sorry. And we
10 do come here as citizens of the State of Illinois
11 and these concerns. That being said we have
12 asked for notice of certain things including the
13 text of the 14th Amendment and all sorts of
14 documentation in support of our argument that the
15 Hearing Officer similarly rejected.

16 We take exception that the Hearing
17 Officer did not accept any evidence that we had
18 offered despite that being publicly accessible
19 and clearly authenticatable as they are taken
20 from the White House press release, Department of
21 Homeland Security statistics and reports as well
22 as border security statistics and reports as
23 well. So I reiterate we do take exception to the
24 Hearing Officer's inadmittance of evidence.

1 That being said you cannot grant the
2 motion to dismiss because we have clearly stated
3 our basis of our argument and the legal nature
4 and even submitted evidence and support thereof
5 which were rejected by the Hearing Officer.

6 As to the merits of the case, opposing
7 counsel and I had discussed that the 4th
8 Amendment is moot and probably could have
9 rendered it to the courts for further decisions
10 as opposed to this Board. Anything you would
11 like to say, Terry?

12 MR. NEWSOME: Hi. Terry Newsome pro se as
13 well. And as the prior counsel in the Trump case
14 made a statement that, you know, he heard other
15 cases, you know, mentioned earlier today before
16 he spoke as well did I and when he spoke.

17 And I find it interesting that, you
18 know, we're being alleged that our information is
19 not factual, hearsay. It's political partisan
20 motivated while at the same time we had to listen
21 that Trump should be off the ballot for
22 insurrection that was falsely claimed by the
23 highly partisan J6 Committee. It's identical as
24 to what's, you know, being alleged here. Except

1 the difference is with respect to our claims we
2 know that Biden ignored the Supreme Court remain
3 in Mexico. He ignored that. That's not
4 partisan. He ignored that himself.

5 We also know that Biden -- this is not
6 hearsay. Biden left \$8 billion in military
7 equipment and weapons in Afghanistan in the hands
8 of the Taliban. And now we know that those
9 weapons are being used against our men and women
10 in Iraq including one of my relatives that are
11 out there. So that's not hearsay. It's not
12 partisan. That's a fact.

13 We also know that Joe Biden went to
14 the Supreme Court to try to force Texas to keep
15 them from protecting their own borders from
16 invasions of illegals, drug smugglers, Chinese
17 that he knows are coming in including over 300
18 terrorists that are entering our country and
19 being infiltrated especially into Chicago. I
20 think we all know that and we're all experiencing
21 that. None of that is hearsay. It's all
22 factual.

23 So I guess that, you know, that's all
24 I have to say because I, you know, with respect

1 to the insurrection, there was no insurrection.
2 That's false. There was no weapons there.
3 Nobody went to overthrow the government. No one
4 tried -- listened to Trump. And if that's going
5 to be a valid response from the other counsel
6 then, you know, that's highly partisan. These
7 things that I mentioned are not highly partisan.

8 MR. MORPHEW: Thank you. Kevin Morpew on
9 behalf of President Biden. And briefly to the
10 motion to dismiss, the objectors' petition fails
11 to allege plausible facts that would entitle the
12 objectors to relief. And that failure to fully
13 state the nature of the objections is not
14 satisfied here. So the motion to dismiss
15 shouldn't be granted.

16 The objector questions the candidate's
17 policy. His policy disagreement and then they
18 make the conclusion that those policies amounted
19 to aid and comfort for the enemies. And that
20 conclusion of law is not entitled to any
21 presumption of truth for the purposes of the
22 motion.

23 In entertaining objections like this
24 where we don't agree with the policy of a

1 candidate is very dangerous and would set a
2 terrible precedent. And the candidate's
3 objection should be dismissed on those grounds.

4 Even if they do determine that this
5 policy -- this pleading standard was met, the
6 objectors present no reliable evidence of any
7 kind that the policies presented aid or comfort
8 to the enemies in the United States on behalf of
9 the candidate.

10 They -- their submissions and exhibits
11 that they offer are inadmissible hearsay. They
12 cannot be truthfully relied upon for what they
13 purport to be. They did not admit any public
14 records. And the standards of judicial notice if
15 applied to the documents that they submitted,
16 they do not meet those levels. These are not
17 readily ascertainable facts.

18 And so we ask that the motion to
19 dismiss be granted and that the objectors'
20 petition be overruled and that the name of Joseph
21 R. Biden, Jr., be -- appear on the ballot of the
22 March 19th, 2024, general primary election.

23 CHAIR WATSON: Any questions in Springfield?

24 MS. CALVIN: No, thank you.

1 CHAIR WATSON: Any questions of the Board
2 here? Is there a motion?

3 MEMBER BALLARD-CROFT: Yes, I move to accept
4 general counsel's recommendation granting the
5 candidate's motion to dismiss based on legal and
6 factual insufficiency of the pleadings and
7 overrule the objection certifying Joseph Biden,
8 Jr., to the March 19th, 2024, general primary
9 ballot.

10 MS. MALOWITZ: May I ask one question about
11 the motion? Are we wanting to default objectors
12 Bouvet and Hubbard who did not show up?

13 CHAIR WATSON: We should amend to default.

14 MEMBER BALLARD-CROFT: Amend the motion to
15 add and to hold the objectors Bouvet and Hubbard
16 in default for not appearing.

17 MS. MALOWITZ: Thank you.

18 CHAIR WATSON: Second.

19 VICE CHAIR DONAHUE: Yes, second.

20 CHAIR WATSON: Rollcall, please.

21 MS. CALVIN: Ms. Ballard-Croft.

22 MEMBER BALLARD-CROFT: Yes.

23 MS. CALVIN: Ms. Cray.

24 MEMBER CRAY: Yes.

1 MS. CALVIN: Ms. Genovese.

2 MEMBER GENOVESE: Yes.

3 MS. CALVIN: Ms. McCrory.

4 MEMBER McCRORY: Yes.

5 MS. CALVIN: Mr. Terven.

6 MEMBER TERVEN: Yes.

7 MS. CALVIN: Mr. Vrett.

8 MEMBER VRETT: Yes.

9 MS. CALVIN: Vice Chair Donahue.

10 VICE CHAIR DONAHUE: Yes.

11 MS. CALVIN: Chair Watson.

12 CHAIR WATSON: Yes.

13 MS. CALVIN: Motion passes.

14 CHAIR WATSON: Thank you.

15 MR. CONRAD: Thank you, Madam Chairman.

16 CHAIR WATSON: Thank you. Madam General
17 Counsel, we are on D now, right?

18 MS. MALOWITZ: Yes. So agenda item 4d,
19 Jones, Johanson, Sutterland, Johnson & Smith
20 versus Biden 24 SOEBGP 522.

21 Is there anyone present in Chicago or
22 in Springfield on behalf of any of the objectors?

23 CHAIR WATSON: Do we have any objectors
24 present Jones, Johanson, Sutterland, Johnson and

1 Smith? Is anyone in Springfield?

2 MS. CALVIN: Not in Springfield.

3 MS. MALOWITZ: Seeing none here in Chicago
4 we have --

5 VICE CHAIR DONAHUE: I would move to --
6 what's the proper term?

7 MS. MALOWITZ: To enter a default order.

8 VICE CHAIR DONAHUE: I would move that we
9 enter a default order in regard to 4d; Jones,
10 Johanson, Sutterland, Johnson and Smith versus
11 Biden.

12 MS. MALOWITZ: And, therefore, the objection
13 should be overruled and the candidate's name
14 should be certified to the ballot; is that
15 correct?

16 VICE CHAIR DONAHUE: Absolutely.

17 CHAIR WATSON: Is there a second?

18 MR. VRETT: Second.

19 CHAIR WATSON: Rollcall.

20 MS. CALVIN: Ms. Ballard-Croft.

21 MEMBER BALLARD-CROFT: Yes.

22 MS. CALVIN: Ms. Cray.

23 MEMBER CRAY: Yes.

24 MS. CALVIN: Mr. Genovese.

1 MEMBER GENOVESE: Yes.

2 MS. CALVIN: Ms. McCrory.

3 MEMBER McCRORY: Yes.

4 MS. CALVIN: Mr. Terven.

5 MEMBER TERVEN: Yes.

6 MS. CALVIN: Mr. Vrett.

7 MEMBER VRETT: Yes.

8 MS. CALVIN: Vice Chair Donahue.

9 VICE CHAIR DONAHUE: Yes.

10 MS. CALVIN: Chair Watson.

11 CHAIR WATSON: Yes.

12 MS. CALVIN: Motion passes.

13 MS. MALOWITZ: And, counsel, I do not have a
14 default order handy in front of me. So you can
15 either wait for it or I can e-mail it to you
16 later, whatever you prefer.

17 MR. MORPHEW: You can send it by e-mail.
18 Thank you.

19 MR. KASPER: Thank you, Madam Chair,
20 Members of the Board.

21 CHAIR WATSON: Madam General Counsel, we are
22 not doing objections/candidates withdrawn; is
23 that correct?

24 MS. MALOWITZ: That's correct. Agenda --

1 CHAIR WATSON: Excuse me. Please have your
2 conversations outside. Our board meeting is
3 continuing. Thank you. Madam General Counsel.

4 MS. MALOWITZ: Thank you, Madam Chair.
5 Agenda item 5a through 5f consists of matters in
6 which either the objector withdrew the objection
7 or the candidate withdrew their candidacy. So I
8 ask that the Board make a motion to accept these
9 withdrawals.

10 VICE CHAIR DONAHUE: So moved.

11 MEMBER VRETT: Second.

12 CHAIR WATSON: Rollcall.

13 MS. CALVIN: Ms. Ballard-Croft.

14 MEMBER BALLARD-CROFT: Yes.

15 MS. CALVIN: Ms. Ballard-Croft.

16 MEMBER BALLARD-CROFT: Yes.

17 MS. CALVIN: Ms. Cray.

18 MEMBER CRAY: Yes.

19 MS. CALVIN: Ms. Genovese.

20 MEMBER GENOVESE: Yes.

21 MS. CALVIN: Ms. McCrory.

22 MEMBER McCRORY: Yes.

23 MS. CALVIN: Mr. Terven.

24 MEMBER TERVEN: Yes.

1 MS. CALVIN: Mr. Vrett.

2 MEMBER VRETT: Yes.

3 MS. CALVIN: Vice Chair Donahue.

4 VICE CHAIR DONAHUE: Yes.

5 MS. CALVIN: Chair Watson.

6 CHAIR WATSON: Yes.

7 MS. CALVIN: Motion passes.

8 CHAIR WATSON: Thank you. So that's 5a, b,
9 c, d, e and f; is that correct?

10 MS. MALOWITZ: Correct.

11 CHAIR WATSON: Thank you. Is there a motion
12 to recess the State Officers Electoral Board and
13 reconvene as the State Board of Elections.

14 VICE CHAIR DONAHUE: So moved.

15 MEMBER McCRORY: Second.

16 MEMBER VRETT: Second.

17 CHAIR WATSON: Rollcall please.

18 MS. CALVIN: I didn't catch who motioned the
19 second.

20 MEMBER McCRORY: Mr. Vrett.

21 CHAIR WATSON: The motion was to recess the
22 State Officers Electoral Board and reconvene as
23 the State Board of Elections.

24 MS. CALVIN: We didn't catch who made the

1 motion and who seconded the motion.

2 VICE CHAIR DONAHUE: I made the motion and
3 Member Vrett seconded it.

4 MS. CALVIN: Ms. Ballard-Croft.

5 MEMBER BALLARD-CROFT: Yes.

6 MS. CALVIN: Ms. Cray.

7 MEMBER CRAY: Yes.

8 MS. CALVIN: Ms. Genovese.

9 MEMBER GENOVESE: Yes.

10 MS. CALVIN: Ms. McCrory.

11 MEMBER MCCRORY: Yes.

12 MS. CALVIN: Mr. Terven.

13 MEMBER TERVEN: Yes.

14 MS. CALVIN: Mr. Vrett.

15 MEMBER VRETT: Yes.

16 MS. CALVIN: Vice Chair Donahue.

17 VICE CHAIR DONAHUE: Yes.

18 MS. CALVIN: Chair Watson.

19 CHAIR WATSON: Yes.

20 MS. CALVIN: Motion passes.

21 (Whereupon the State Officers
22 Electoral Board meeting
23 adjourned at 11:45 a.m.)
24

1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF L A K E)
4

5 I, JULIE WALSH, being first duly
6 sworn, on oath says that she is a licensed
7 Certified Shorthand Reporter and Notary
8 Public doing business in the City of Chicago and
9 for the County of Cook and State of Illinois.

10 That she reported the proceedings had
11 at the foregoing State Officers Electoral Board
12 meeting and that the foregoing is a true and
13 correct transcript of the reported proceedings so
14 taken as aforesaid and contains all the
15 proceedings had at said meeting.

16
17 
18

Julie Walsh, CSR

License No. 084-004032

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& 90:19	1996 78:11	35:18,24 36:18	69 1:9
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

FILED
3/8/2024 3:59 PM
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COOK COUNTY, IL
2024COEL000013

STEVEN DANIEL ANDERSON, et al.,)	
)	
Petitioners/Objectors,)	Case No. 2024 COEL 13
)	
v.)	Hon. Tracie R. Porter
)	
DONALD J. TRUMP, et al.,)	Calendar 9
)	
Respondents.)	

NOTICE OF FILING OF HEARING TRANSCRIPT

To: HUGHES SOCOL PIERS RESNICK & DYM, LTD. Matthew Piers Caryn Lederer 70 W. Madison St., Ste. 4000 Chicago, IL 60602 Matthew J. Piers MPiers@hsplegal.com clederer@hsplegal.com	FREE SPEECH FOR PEOPLE Ronald Fein (pro hac vice) Amira Mattar (pro hac vice) Courtney Hostetler (pro hac vice) John Bonifaz (pro hac vice) Ben Clements (pro hac vice) 1320 Centre St. #405 Newton, MA 02459 rfein@freespeechforpeople.org amira@freespeechforpeople.org chostetler@freespeechforpeople.org jbbonifaz@freespeechforpeople.org bclements@freespeechforpeople.org
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PLEASE TAKE NOTICE that on March 8, 2024, the undersigned filed this NOTICE OF FILING OF HEARING TRANSCRIPT, which includes a true and correct copy of the transcript from the hearing this Court held on February 16, 2024 and correspondence from the Court

Reporter certifying the accuracy and completeness of the transcript, with the Clerk of the Circuit

Court, via the Court's Electronic Filing System, a copy of which is hereby served upon you.

Dated: March 8, 2024

Respectfully submitted,

RESPONDENT/CANDIDATE DONALD J. TRUMP

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

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March 5, 2024

Adam P. Merrill
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Re: Hearing of 2/16/2024
Case: Steven Daniel Anderson; et al. v. Donald J. Trump; et al.

Dear Mr. Merrill:

Pursuant to Illinois Supreme Court Rule 323(b) entitled Report of Proceedings/Certification and Filing, we are providing written notification that the following transcript of proceedings has been filed via the Cook County eAppeals website on March 5, 2024:

- 02.16.2024 hearing held before the Honorable Tracie R. Porter

The transcript is complete, and what has been filed is an accurate transcript.

Sincerely,

Isabella Tenerelli
Isabella Tenerelli
Royal Reporting Services

No. 38450

cc: Matthew Piers, Caryn Lederer, Justin Tresnowski, Margaret Truesdale, Ronald Fein, Amira Mattar, Courtney Hostetler, John Bonifaz, Ben Clements, Sarah Newman, Nicholas Nelson, Ed Mullen III, Scott Gessler

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Supp. R. 318



Clerk of the Circuit Court of Cook County

Your session will expire in: 3587 seconds.

Clerk of the Circuit Court of Cook County Record of Appeals Submission Receipt

Case Information

Case Number

2024COEL000013

Reviewing Court Case Number

1-24-0437

Division

CIVIL

Location of Appeals Preparation

CIVILAPPEALS

Case Type

Elections/Administrative Review

Date Filed

01/30/2024

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Court for case #2024COEL000013 on
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S = Document is for a Supplemental Record

Title/Description	Type of Document	Date of Proceeding
02.16.2024 Steven Daniel Anderson, et al. v. Donald J. Trump, et al. - Hearing	ROP	2/16/2024

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**Transcript of Proceedings had in
Steven Anderson; et al. v. Donald Trump; et al.**

Taken On: February 16, 2024

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

STEVEN DANIEL ANDERSON, et al.,)	
)	
Petitioners-Objectors,)	
)	
vs.)	No. 2024 COEL 000013
)	
DONALD J. TRUMP, et al.,)	
)	
Respondents.)	

REPORT OF PROCEEDINGS had at the hearing
in the above-entitled cause before the HONORABLE
TRACIE R. PORTER, Judge of said Court, at Richard J.
Daley Center, 50 West Washington Street, Courtroom 1703,
Chicago, Illinois, commencing at 10:00 a.m. on
February 16th, 2024.

1 APPEARANCES:
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9 On behalf of the Respondents.

10 ALSO PRESENT: Michael Dierkes

11
12 * * * * *

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1 (Whereupon, the following
2 proceedings were had before the
3 Honorable Tracie R. Porter,
4 Room 1703.)

5 THE COURT: My deputy has already informed you about
6 the no-cell-phone policy; however, I have some additional
7 admonishments. No laptops or electronic pads of similar
8 nature are allowed. You're only allowed to use them for
9 note-taking purposes. Please disable camera and audio or
10 visual-recording features on your laptops or electronic
11 pads. There is no recording or photographing in the
12 courtroom during these proceedings at all.

13 If you need to use your cell phone, please
14 step out of the courtroom to use them. At this time,
15 please put them on silent mode or turn them off. And my
16 deputies will be enforcing my admonishments.

17 Okay. Is everyone ready to proceed?

18 MS. LEDERER: Yes, Your Honor.

19 THE COURT: Madam Clerk, please call the case.

20 THE CLERK: 2024 COEL 13.

21 THE COURT: Good morning, Counsels.

22 Let's get everyone's appearance stated for the
23 record, starting with the petitioner and objectors.

24 MS. LEDERER: Good morning, Your Honor. Caryn

1 Lederer for the objectors.

2 MR. PIERS: Good morning, Your Honor. Matthew Piers
3 also for the objectors.

4 MR. MULLEN: Good morning, Your Honor. Ed Mullen on
5 behalf of the petitioner/objectors as well.

6 MS. TRUESDALE: Good morning, Your Honor. Margaret
7 Truesdale for the objectors.

8 MR. TRESNOWSKI: Good morning, Your Honor. Justin
9 Tresnowski for the objectors.

10 THE COURT: Thank you, Counsels. Who will be
11 speaking primarily throughout this proceeding?

12 MS. LEDERER: I will, Your Honor.

13 THE COURT: Counsel Lederer?

14 MS. LEDERER: Lederer, yes. Thank you.

15 THE COURT: Counsels for the respondent candidate,
16 would you please state your appearances.

17 MR. MERRILL: Yes. Good morning, Your Honor, I'm
18 Adam Merrill on behalf of the candidate, Donald J. Trump.

19 MR. NELSON: Good morning, Your Honor. Nicholas
20 Nelson, also for the candidate.

21 MR. GESSLER: Scott Gessler also on behalf of
22 President Trump.

23 MR. DIERKES: Good morning, Your Honor. I'm Michael
24 Dierkes from the Illinois State Board of Elections.

1 THE COURT: Who will be speaking primarily on behalf
2 of the respondent candidate?

3 MR. MERRILL: Your Honor, it kind of depends on what
4 the objectors' presentation is. We are all prepared to
5 speak to specific issues. We won't be covering the same
6 ground. I will be covering issues of Illinois law.
7 Mr. Nelson will be covering some of the federal issues to
8 the extent -- legal issues to the extent those come up.
9 And Mr. Gessler is prepared to address all of those
10 things but primarily the facts because he was counsel in
11 Colorado with respect to that case as well.

12 THE COURT: Thank you. For purposes of the record
13 as well, whoever is presenting at that time, please
14 identify who you are so that we don't get confused about
15 who's speaking. Thank you.

16 MR. MERRILL: Thank you.

17 THE COURT: And then, Counsel, I know you fell right
18 behind them, but let's get you separate on the record.

19 MR. DIERKES: Sure. It's Michael Dierkes on behalf
20 of the Illinois State Board of Elections. That's
21 D-I-E-R-K-E-S.

22 THE COURT: Thank you, Counsel.

23 Okay. No other appearances?

24 Counsel, are you ready to proceed?

1 MS. LEDERER: We are.

2 THE COURT: Counsel for the petitioner/objector, you
3 may proceed when you are ready.

4 MS. LEDERER: Thank you, Your Honor.

5 Good morning. We are before the Court today
6 on objectors' motion to grant the petition for judicial
7 review. Our appeal of the Illinois State Officers
8 Electoral Board's decision on candidate Donald J. Trump's
9 disqualifications as a candidate in the upcoming Illinois
10 presidential primary.

11 Objectors bring this petition under Illinois
12 election law and Section 3 of the Fourteenth Amendment.
13 We are here, first and foremost, because Donald J. Trump
14 encouraged, facilitated, incited, and failed to take
15 action to stop the January 6th violent attack on the
16 U.S. Capitol. As a result, he is disqualified from the
17 presidency under Section 3 of the Fourteenth Amendment.

18 That event and Candidate Trump's extremist
19 conduct is one of the defining events of our nation's
20 history. It was an attempt by a sitting president to
21 undermine democracy itself by preventing the peaceful
22 transfer of power in an illegal effort to remain in
23 office after losing the election. The candidate has been
24 indicted by a federal grand jury for his actions and is

1 awaiting trial on those charges. It was a day that will
2 live in infamy in the history of our democracy.

3 But we are also here because of critical
4 issues of Illinois law. They not only govern this case
5 but also, absent your intervention, will govern and
6 disrupt many future Illinois elections. When faced with
7 evaluating whether Candidate Trump is disqualified from
8 the presidency under Illinois law and the
9 U.S. Constitution, the electoral board passed on the
10 question, leaving it for judicial determination. In so
11 doing, it issued a decision that included two profound
12 and clear misinterpretations of the Illinois Election
13 Code.

14 In the first of those decisions, they held
15 that electoral boards cannot bar even an unqualified
16 candidate from the ballot unless the objectors prove that
17 the candidate knowingly lied when attesting to their
18 qualifications for office. In other words, candidates
19 who do not meet the qualification for the office can
20 remain on the ballot so long as it is not proven that
21 they knowingly lied about their lack of qualifications.
22 Applying that fraud standard, the board determined that
23 because Candidate Trump raised legal arguments that he
24 was not barred from the ballot, the electoral board could

1 not remove him.

2 But whether someone is qualified to serve in
3 public office is not a matter of opinion or the ignorance
4 of the candidate but rather whether they actually meet
5 the qualifications for the office. Under this improper
6 standard, even if the U.S. Supreme Court determines that
7 Candidate Trump is constitutionally disqualified under
8 Section 3, he would have to remain on the Illinois
9 ballot.

10 The board also determined that Illinois
11 electoral boards cannot engage in constitutional analysis
12 to fulfill their duties under the election code. That,
13 too, contravenes Illinois law and must be overruled.
14 Without this Court's intervention, these decisions have
15 the potential to fundamentally undermine the statutorily
16 prescribed role of Illinois electoral boards. They will
17 no longer be able to serve as gatekeepers to keep
18 unqualified candidates off Illinois ballots. These
19 misinterpretations of law must be reversed.

20 Objectors' appeal of the electoral board's
21 decision has a clear straightforward goal, to resolve the
22 issues in this case as quickly as possible before the
23 March 19th primary in order to preserve election
24 integrity, ensure ballot accuracy, preclude voter

1 disenfranchisement, and prevent confusion in last-minute
2 scrambling by election officials.

3 With this case and these goals before this
4 Court, as Illinois stares down the March 19th primary
5 date, Candidate Trump has tried tactic after tactic to
6 prevent the court from issuing a decision. He asked this
7 Court for a stay of all proceedings. He filed an
8 emergency motion from the Appellate Court seeking a stay.
9 He has argued that moving forward will create voter
10 confusion and upend Illinois elections. Most recently,
11 Trump argued to this Court that it also is not equipped
12 to decide the issues and contends that you should remand
13 the case back to the electoral board, who Trump
14 previously and recently, in the last filing, argued is
15 not capable of deciding the issues.

16 This Court has already recognized, in denying
17 the stay, the importance of promptly resolving the
18 time-sensitive issues in this case and how important it
19 is to do so with as much lead time before the primary as
20 possible. The Appellate Court has also acted in
21 accordance, denying Trump's motion to stay and directing
22 these proceedings to continue. Before the electoral
23 board, there was one prevailing principle that everyone,
24 including the electoral board, agreed upon: This matter

1 should be resolved by the courts.

2 We are now here, and this Court, Your Honor,
3 should move forward and make a decision on the merits.
4 This Court is empowered to decide the issue. As we laid
5 out in our brief, controlling Illinois law provides that,
6 in circumstances like this one, when an agency's decision
7 reaches the reviewing Court with a full record, the
8 Court's jurisdiction encompasses all questions of both
9 law and fact. Here, despite Candidate Trump's
10 characterization, the record is robust.

11 Judge, as you recognized in your recent order,
12 this case should be fully teed up for appeal for
13 resolution before the Illinois Supreme Court. Objectors
14 press forward to avoid confusion, not as Candidate Trump
15 has suggested, create confusion. The best way to protect
16 election integrity in Illinois is to decide the issues;
17 however, a sensible and practical way to proceed is, if
18 you agree with us, to enter your decision but stay its
19 effect, pending resolution by the Illinois Supreme Court.

20 That results in a case that's ripe for
21 resolution and puts the State of Illinois in the best
22 position to effectively move forward with the March 19th
23 primary. That outcome, one that objectors fully support,
24 serves the overlapping goals that this case requires of

1 speedy resolution, minimizing voter confusion, and
2 protecting ballot integrity.

3 I'd like to further address the issues of
4 Illinois law. So the electoral board made two
5 fundamental errors in its interpretation of the mandate
6 and the election code to evaluate candidate
7 qualifications. The first, I'll call the knowing lie
8 requirement; and the second, I'll call the constitutional
9 analysis prohibition.

10 As to the knowing lie requirement, they held
11 electoral boards cannot bar a candidate from the ballot
12 for being unqualified for office unless an objector
13 proves the candidate knowingly lied when attesting to
14 their qualifications for office.

15 That means that any candidate who incorrectly
16 believes that they meet residency requirements, judicial
17 bar requirements, that they are not barred from an office
18 based on a felony conviction or any other requirements
19 that require application of the law, they cannot be
20 removed from the ballot.

21 This knowing lie standard has never before
22 been articulated or applied by the electoral board, and
23 it does not appear in either of the Illinois Election
24 Code or any decision of any court or any electoral board

1 of the state that we've been able to find. In addition
2 to a complete lack of legal support, this new standard
3 would be impossible to fairly apply in many cases and
4 would allow ignorance of the law to be an excuse for
5 compliance with the law.

6 To give you an example of how unworkable this
7 standard would be, in her discussion of its application,
8 the electoral board's general counsel suggested that
9 objectors could have subpoenaed the notary public who
10 witnessed Trump's signing of his statement of candidacy
11 to seek evidence of any admissions he may have made when
12 he signed that could have indicated his state of mind,
13 and that might have helped us meet the standard.

14 This is all extremely problematic for Illinois
15 election. But in this case, it also has an unworkable
16 impact. Regardless of the U.S. Supreme Court's decision
17 on Section 3, without a ruling from this Court, Donald
18 Trump will remain on the Illinois ballot because the
19 electoral board found that objectors failed to prove he
20 knowingly lied when he swore he was qualified for office.

21 The second misinterpretation of Illinois law
22 the electoral board made, its rule against constitutional
23 analysis is equally incorrect and problematic. They
24 determined that electoral boards do not have statutory

1 authority to interpret and apply constitutional
2 requirements. More specifically, they found that
3 electoral boards simply cannot engage in constitutional
4 analysis at all. That would mean that electoral boards
5 would have no ability to ever apply standards from the
6 Illinois or U.S. Constitution.

7 That indisputably impacts our cases. This
8 cannot be true because, as we know, electoral boards are
9 charged with enforcing all applicable law within the
10 scope of their duties, including the law set out in the
11 Constitution. The Illinois Supreme Court made that clear
12 in Goodman v. Ward.

13 These two issues are profoundly problematic
14 misinterpretations of controlling Illinois law. If left
15 in place, these review standards will undermine electoral
16 board functioning and election integrity by eliminating
17 checks on keeping unqualified candidates off the ballot.
18 And stepping back for a moment, there's a few important
19 things to keep in mind about these decisions.

20 First, while Candidate Trump has doubled down
21 on the electoral board's decision, the Illinois State
22 Board of Elections and its members, despite being parties
23 to this appeal and represented by the Attorney General of
24 Illinois, have not defended these new standards. They

1 have not submitted a brief or any other explanation in
2 support of them.

3 Second, Candidate Trump has tried to
4 characterize the scope of the Election Code without
5 incorporating clear direction from the Illinois Supreme
6 Court and other Illinois appellate courts.
7 Goodman v. Ward makes clear that review of a statement of
8 candidacy includes mandatory, substantive evaluation of
9 candidate qualifications. The Illinois Supreme Court and
10 appellate courts have recognized that the clear purpose
11 of this statement of candidacy is to create a check on
12 candidate qualifications so only qualified candidates
13 appear on the ballot. It is not a check on a subjective
14 candidate's honesty but rather on objective
15 qualifications for office.

16 The knowing lie standard is so far afield that
17 Candidate Trump didn't even raise it in the electoral
18 board proceedings. The hearing officer, Judge Erickson,
19 didn't even suggest it. The electoral board's general
20 counsel opposed it for the first time in the entire case.
21 And from what we can tell from our extensive review of
22 Illinois election jurisprudence, for the first time in
23 the history of Illinois election law, late in the day on
24 the eve of the electoral board vote, the general counsel

1 candidly stated -- and this is on Page 7 of the
2 recommendation, that the purpose of the newly created
3 standard was to create a way to avoid a remand and
4 permanently take this case off the electoral board's
5 cases.

6 Of course, Candidate Trump has now seized on
7 this new and improper standard and begun arguing it must
8 be right. In attempt to support it, he's taken
9 significant liberties with the Welch decision to attempt
10 to twist it into supporting the knowing lie requirement.
11 It doesn't.

12 As explained in detail in our reply brief,
13 Welch dealt very specifically with distinct requirements
14 in a different statute, the Ethics Act, dealing with
15 statements of economic interest. The Election Code
16 requires a statement of economic interest that meets the
17 Ethics Act requirements, but it does not otherwise import
18 any part of the Ethics Act into Section 5/7-10 of the
19 Election Code, the section which specifies that
20 candidates make the attestation that they are qualified
21 for the office specified.

22 Candidate Trump's brief bends over backwards
23 to characterize our position as punishing candidates for
24 good faith, innocent, minor, or correctable errors in

1 their nomination papers, but that's not an accurate
2 description. Candidates must meet the qualifications for
3 office. The Election Code in controlling the Illinois
4 Supreme Court precedent, including Goodman, requires the
5 electoral board to determine if candidates meet the
6 qualifications for office. If they don't, their
7 statement of candidacy is invalid.

8 Candidate Trump has made several
9 characterizations about the electoral board in an effort
10 to push his fraud argument forward. And this is where
11 his erroneous positions about the two issues of Illinois
12 law in this case converge. It simply cannot be true that
13 electoral boards cannot apply the Constitution, because
14 all government entities are required to act in compliance
15 with the supreme laws of the state of the nation.

16 For that reason, the electoral board has
17 repeatedly applied the U.S. Constitution in making
18 determinations of candidate qualifications. They even
19 have explicitly evaluated whether they have the authority
20 to do so when they applied the natural born citizen
21 requirement in Article 2 of the U.S. Constitution in
22 Graham v. Rubio, an objection to Marco Rubio's
23 presidential candidacy. That's discussed in our opening
24 brief on Page 24.

1 But to support this proposition and the
2 knowing lie standard, Trump has repeatedly taken the
3 position that electoral boards simply cannot engage in
4 complex fact-finding and are ill-equipped to resolve
5 disputed facts. That is simply not true. Electoral
6 boards frequently and successfully hold complex factual
7 hearings, including in a case that was called just before
8 this very election challenge, at the January 30th
9 electoral board hearing. That case was the overturned
10 case which we discussed in our brief on Page 19 through
11 20.

12 Candidate Trump himself highlights the flaw of
13 his arguments. Certain constitutional questions are
14 defined, but complex constitutional questions are not.
15 This is an impossible line drawn standard to apply
16 because it does not have any clear and applicable
17 meaning. Many questions cannot be slotted as simple or
18 complex.

19 I'd like to turn back now to how the issues of
20 Illinois law and constitutional law come together to
21 guide the Court's next steps.

22 Candidate Trump attempts to conflate arguments
23 about the electoral board's ability to hear this case and
24 complex cases and argue that this Court doesn't have the

1 capacity to make a decision. As I referenced earlier, he
2 inexplicably argues that the electoral board is
3 ill-equipped to handle such a complicated decision but,
4 also, that this Court too cannot, and should send the
5 matter back to the ill-equipped board. He bypasses the
6 Court's clear authority to reach the decisions based on
7 this case -- this case's robust record and inexplicably
8 claims that there's no basis in the record to do so.

9 Trump has gone to extreme lengths to keep this
10 Court from reviewing the facts about January 6th and what
11 they irrefutably show, that he engaged in insurrection by
12 encouraging, facilitating, inciting, and failing to take
13 action to stop the violent January 6th attack on the
14 Capitol.

15 This Court must decide these issues. Because
16 the electoral board adopted the erroneous objection
17 review standards, they did not reach the merits of
18 hearing officer, Judge Erickson's, recommended factual
19 findings regarding this case. The board did not disagree
20 with Judge Erickson's careful finding that a
21 preponderance of the evidence showed that Candidate Trump
22 is disqualified from the presidency for engaging in
23 insurrection, nor did the board's decision diminish the
24 substantial record that the parties established during

1 the proceedings below in which Judge Erickson reviewed.

2 And now this Court has reached the merit stage
3 that both Judge Erickson and the electoral board agreed
4 should be determined by the Court. And the merits are
5 clear. Donald Trump engaged in insurrection under
6 Section 3 of the Fourteenth Amendment and must be
7 disqualified.

8 To provide visual context to our argument,
9 we'd like to play a brief video of events involved in the
10 January 6th insurrection as a demonstrative exhibit. The
11 video, which we played at the hearing before
12 Judge Erickson, below was prepared by the House of
13 Representatives' January 6th investigative committee and
14 has a minor edit to add a screen of one of the
15 candidate's tweets and removed a short clip of a member
16 of the crowd because it had an erroneous time stamp.

17 If it's okay with Your Honor to proceed, I
18 would like --

19 THE COURT: You may proceed with the video.

20 MR. MERRILL: Your Honor, we'd just like to note for
21 the record that this was one of the exhibits that I
22 believe we objected to on authenticity grounds because it
23 was altered. It's not simply footage. It was edited and
24 compiled, we believe, inappropriately. So we don't

1 object to it being shown, but we want it to be noted that
2 there was never any finding that this was admissible, and
3 we reserve all of our objections to that --

4 THE COURT: So the hearing officer never ruled on
5 whether this was admissible evidence he considered?

6 MR. MERRILL: That's correct.

7 MS. LEDERER: We played this as a demonstrative
8 exhibit below, and we are offering it for the same
9 purpose.

10 THE COURT: Demonstrative video. Thank you.

11 MR. MERRILL: We understand. We just want to make
12 sure the objection is clear.

13 THE COURT: You may proceed, Counsel.

14 (Whereupon, a video is being played.)

15 MS. LEDERER: This was not, as someone said, a
16 legitimate protest. These were not tourists. And this
17 was more than a much -- than a mere political riot.
18 Regardless of political perspectives and allegiances, it
19 is undeniable that what occurred on January 6th, 2021,
20 was the storming of the seat of our democracy by
21 thousands of violent attackers, many of them armed, in an
22 effort to block the constitutionally mandated peaceful
23 transfer of power.

24 Candidate Trump has said a number of things

1 about January 6th. Objectors urge caution when
2 considering them. Objectors have carefully laid out both
3 the facts and the law in our briefs before this Court in
4 the record below, heavily cited, well-documented, and
5 thoroughly supported.

6 The candidate has responded with red herrings,
7 obfuscations, and misstatements of fact and the law. In
8 legal filings here and in other Section 3 challenges,
9 Trump has claimed that January 6 was not an insurrection.
10 In this proceeding, through counsel in the hearing below,
11 actually said it was mainly walking, talking, and
12 listening to the song YMCA.

13 He has taken the erroneous position that
14 January 6 was just akin to a political protest. He has
15 even tried to compare January 6 to protests against
16 police brutality, arguing that they would fall within the
17 objectors' definition of insurrection, clearly ignoring
18 the requirement under Section 3 that an insurrection be
19 against the U.S. Constitution, something that happens in
20 the rarest of circumstances.

21 But Trump also has admitted that January 6 was
22 an insurrection in other circumstances. He did this
23 through counsel during his impeachment trial, where he
24 admitted. The question before us is not whether there

1 was a violent insurrection of the Capitol. On that
2 point, everyone agrees. Just last week at a February 8th
3 press conference at Mar-a-Lago, Trump personally admitted
4 that January 6th was an insurrection but accompanied that
5 admission with a bizarre and false claim that the
6 insurrection was somehow caused by then Speaker of the
7 House of Representatives, Nancy Pelosi. And that's cited
8 in our reply brief at Page 8.

9 Trump has also --

10 MR. MERRILL: Your Honor, I apologize for
11 interrupting, but that press conference from last week is
12 not on the record. It's not in the evidence. It's not
13 on review. And we object to it being presented or
14 considered.

15 THE COURT: So noted.

16 MS. LEDERER: It's our view that you could take
17 judicial notice of it because it's a recording of the
18 candidate at the press conference.

19 Trump has also taken the position that the
20 January 6th report is inadmissible. That is not true.
21 But, nonetheless, much of the evidence in this case is a
22 matter of public record or comes from Trump himself.
23 This is particularly important because Candidate Trump
24 has failed to testify or even submit an affidavit in this

1 case or any other Section 3 challenge that has reached
2 the merits and evaluated evidence. He's argued that this
3 Court has no record to evaluate because no live witnesses
4 testified before the electoral board. There is no record
5 of live testimony before that body since, by agreement of
6 the parties, the parties did not bring live witnesses to
7 testify.

8 And this fully glosses over the substantial
9 evidence in the record from Trump himself and the public
10 record, all of which is supplemented by voluminous
11 testimony and exhibits from the Colorado trial. This all
12 boils down to Trump asserting that the extensive evidence
13 objectors presented either does not state a proper legal
14 objection or otherwise does not establish to a
15 preponderance of the evidence that the candidate engaged
16 in insurrection in violation of the Constitution.

17 I don't want to take the time to repeat or
18 even completely summarize the very thoroughly briefed
19 reasons why the candidate must be disqualified, but I do
20 want to briefly address some of the legal arguments that
21 the parties originally briefed for Trump's motion to
22 dismiss and renewed in the briefing before this Court.

23 Trump makes several arguments to try to take
24 the presidency outside of Section 3. And, again, these

1 are all voluminously briefed and sourced, and I direct
2 you to our briefing below on the candidate's motion to
3 dismiss as well as our opening brief here.

4 As we describe in detail there, Trump's
5 strained attempts to interpret Section 3 to exclude the
6 presidency or the president and to make the presidential
7 oath to preserve, protect, and defend the Constitution
8 mean something other than support the Constitution failed
9 under the weight of their own lack of luck against the
10 board.

11 The text itself and historical record, for
12 example, dictate clearly that the presidency is an
13 office, and the president is an officer under the United
14 States. The oath to preserve, protect, and defend the
15 Constitution under any interpretation is an oath to
16 support the Constitution.

17 As to the distinction Trump tries to draw
18 between Section 3's applicability to running for office
19 and holding office, it makes no sense that someone who is
20 disqualified from holding office would nonetheless be
21 allowed to seek that office. If that were the case,
22 Section 3 would be applied only to trigger a
23 constitutional crisis of somehow disqualifying a winning
24 candidate from the presidency.

1 But in Illinois, this issue is resolved by the
2 fact that state law requires that persons who are not
3 qualified to serve may not appear on the ballot. That
4 does not create, as Trump argues, a new qualification of
5 candidacy but is merely the application of a lawful state
6 ballot protection law and constitutionally specified
7 qualification for office. In Illinois, a candidate
8 cannot run for office it cannot lawfully hold.

9 Trump also attempts to invoke the rarely
10 applied, extremely narrow, political question doctrine
11 and argue also that Section 3 of the Fourteenth
12 Amendment, unlike the Fourteenth Amendment's other
13 provisions and contrary to its clear text, requires a
14 special implementing legislation from Congress. Your
15 Honor, these arguments are extensively discussed in our
16 briefs with the other legal arguments, but I can say, in
17 sum, they are fully without merit.

18 Candidate Trump continues to invoke the
19 U.S. Supreme Court's evaluation of these questions, and
20 the U.S. Supreme Court may reach a decision that
21 ultimately impacts the Illinois Supreme Court's
22 resolution of this matter. But the critical role of this
23 Court, Your Honor, is to fulfill its duty to shore up the
24 record for review, examine the evidence in the record,

1 and make a decision on the merits that is ready for
2 appellate evaluation.

3 As for what the record shows and whether this
4 Court should now do what the electoral board left for it
5 to decide, we respectfully urge you to adopt
6 Judge Erickson's determination that Candidate Trump
7 engaged in insurrection and is barred from appearing on
8 the Illinois ballot. That conclusion is overwhelmingly
9 supported by the clear factual record, which establishes
10 the following decisive and undeniable facts, not only to
11 a preponderance of the evidence, but beyond any
12 reasonable doubt.

13 These facts alone, although only a small part
14 of a much fuller and richer record, underpin
15 Judge Erickson's finding that Trump engaged in
16 insurrection requiring his disqualification.

17 First, the candidate, Donald Trump, took an
18 oath to uphold the U.S. Constitution on January 20th,
19 2017. Candidate Trump ran for reelection in 2020 and
20 lost that election. Both after and even before the
21 election was even held, Candidate Trump stated repeatedly
22 that the only way he could possibly lose the election was
23 if there was voter fraud.

24 Aides and advisors close to Trump investigated

1 his election fraud claim and repeatedly informed him that
2 his allegations of fraud were unfounded. Despite knowing
3 there was no evidence of voter fraud, Trump continues to
4 refuse to accept his electoral loss and tried to overturn
5 the election in courts, through meritless lawsuits, by
6 directing Department of Justice officials to seize state
7 voting machines, and by pressuring state and local
8 officials, like when he told the Georgia Secretary of
9 State that he needed to find votes for Trump to win.

10 Trump directed a fake elector scheme under
11 which seven states Trump lost would submit alternate
12 voters as a pretext for Vice President Pence to decline
13 to certify the actual electoral votes on January 6, 2021.
14 Trump knew, because he had been told repeatedly, there
15 was no legal basis for Pence to decline to certify the
16 actual electoral vote and knew that Pence also had
17 concluded that he had no authority to do so.

18 Trump knew there was no evidence of fraud and
19 no basis to reject the certification of the vote. But as
20 Judge Erickson found, Trump understood and exploited the
21 divided political climate in the United States to garner
22 further political support for his own benefit by
23 inflaming the emotions of his supporters to convince them
24 that the election had been stolen from him and that

1 American democracy was being undermined, a direct quote
2 from Judge Erickson.

3 Trump urged his supporters via Twitter on no
4 less than 12 occasions to assemble in Washington, D.C.,
5 on January 6, the day of the electoral vote
6 certification. On December 19th, 2020, Trump tweeted to
7 his supporters, "Big protest in D.C. on January 6th. Be
8 there. Will be wild. Mobilizing extremist groups like
9 the Oath Keepers, the Proud Boys, and the Three Percenter
10 militias."

11 Trump and his staff became directly involved
12 in the planning of a demonstration on January 6 at the
13 Ellipse. The speakers were approved by Trump and
14 included Trump. As Judge Erickson found and the
15 undisputed record shows, Trump had received reports that
16 violence was likely on January 6, but despite the
17 expectation of violence, Trump never altered his plans.

18 Speakers at the Ellipse engaged in incendiary
19 rhetoric, including Rudy Giuliani, who was one of Trump's
20 election lawyers at the time, called for the crowd to
21 engage in trial by combat.

22 Representative Mo Brooks urged the crowd to
23 start taking down names and kicking ass and be prepared
24 to sacrifice their blood and their lives and do whatever

1 it takes to fight for America by carrying the message to
2 Capitol Hill because the fight begins today.

3 Numerous members of the crowd at the Ellipse
4 were armed, and Trump knew it. When he was informed that
5 people were not being allowed through the metal detectors
6 because they were carrying weapons, Trump instructed his
7 staff to remove the metal detectors.

8 During Trump's speech at the Ellipse, Trump
9 repeatedly called out Vice President Pence by name,
10 urging him to reject electoral votes from states Trump
11 had lost. He told the armed and angry crowd that they
12 were going to have to fight much harder than Republicans
13 had previously fought, and they were going to need to
14 fight like hell. "And if you don't fight like hell,
15 you're not going to have a country anymore." And he
16 directed them to March to the Capitol.

17 Thousands of Trump supporters marched on the
18 Capitol, overwhelmed the police security officers, and
19 stormed and seized control of the building. By
20 2:13 p.m., Vice President Pence and congressional leaders
21 were evacuated to secure locations for their own physical
22 safety, eventually forcing the House and Senate into
23 recess, halting the constitutionally mandated process for
24 counting and certifying the electoral votes.

1 Attackers breached the chambers of both houses
2 of Congress, forcing elected representatives and staffers
3 to flee. By 2:30 p.m., the attack had succeeded in
4 stopping the legal process for counting and certifying
5 the electoral votes.

6 Trump began watching the Capitol attack unfold
7 live on television. At the height of the violence, at
8 2:24 p.m., Trump made his first public statement during
9 the attack, further encouraging and provoking the crowd
10 by tweeting, "Mike Pence didn't have the courage to do
11 what should have been done to protect our country and our
12 Constitution."

13 As Judge Erickson recognized, Trump made this
14 tweet while knowing that an attack was occurring on the
15 Capitol, quote, because the attackers believed the
16 election was stolen, end quote. The only possible
17 purpose of that tweet, Judge Erickson found, was, quote,
18 to fan the flames, unquote, of the attack.

19 During the attack and invasion, Trump made no
20 public statements to ask the insurrectionists to cease
21 their illegal activities until over three hours, 187 full
22 minutes, after the violence interrupted. When, after
23 three long, bloody hours, at 4:17, he finally tweeted out
24 a video of the insurrectionists saying, "I know your

1 pain. I know you're hurt. We love you. You're very
2 special. You've seen what happens. You've seen the way
3 others are treated. I know how you feel. But go home.
4 Go home at peace."

5 That was a wake-up call for his troops to
6 retreat by a proud general of the insurrection rather
7 than a demand to stand down or condemnation that one
8 would have expected from the nation's commander in chief.

9 At 6:01 p.m., Trump issued his final tweet of
10 the day, which stated, "These are the things at events
11 that happen when a secret landslide election victory is
12 so unceremoniously and viciously stripped away from great
13 patriots who have been badly and unfairly treated for so
14 long. Go home with love and in peace. Remember this day
15 forever," exclamation mark.

16 Vice President Pence was not able to reconvene
17 Congress until 8:06 p.m., nearly six hours after the
18 process had been obstructed. Biden's election victory
19 finally was certified at 3:32 in the morning on
20 January 7th, 2021.

21 In total, more than 250 law enforcement
22 officers were injured as a result of the January 6
23 attacks, and five police officers died in the days
24 following the riot. Many of the insurrectionists shared

1 the common purpose of preventing Congress from certifying
2 the electoral votes.

3 To this day, Trump has never expressed regret
4 that his supporters violently attacked the U.S. Capitol,
5 threatened to assassinate the Vice President and other
6 key leaders, and obstructed congressional certification
7 of electoral votes. Instead, Trump has continued to
8 defend and praise the attackers.

9 Just recently, at a 2024 presidential campaign
10 event, he stated, "I call them the 'J-6 hostages,' not
11 prisoners. I call them the hostages, what's happened.
12 And it's a shame."

13 These facts, facts which cannot be meaningfully
14 disputed, by themselves form a sufficient basis to
15 establish that Donald Trump engaged in insurrection aimed
16 at disrupting the constitutional election certification
17 process, in violation of his oath of office and should,
18 accordingly, be barred from the primary ballot.

19 Objectors have established these facts without
20 even relying on the testimony from the Colorado
21 litigation. Trump's core conduct, his lies about
22 election fraud, his tweets summoning his enraged
23 supporters to Washington on that day of the electoral
24 certification, his exhortations to the angry crowd to

1 fight and march on the Capitol, his tweet about Mike
2 Pence's lack of courage, and his failure to issue any
3 statement ending the attack while it was ongoing is all
4 evidence without even considering this January 6th
5 special committee factual finding, though that admissible
6 evidence also is available to the Court for
7 consideration. And I note that our responses to various
8 evidentiary objection raised by Candidate Trump are very
9 thoroughly set out in the exhibit chart to our summary
10 judgment reply below.

11 You'll hear from Candidate Trump next. And
12 through his counsel, he will make many claims about his
13 conduct leading up to and during January 6th and why this
14 Court should disregard well-established legal standards
15 that objectors have laid out in their voluminous briefs.

16 In closing, I'd like to share some words from
17 Judge Royce Lamberth from the U.S. District Court for the
18 District of Columbia from a January 25th, 2024 decision
19 that objectors respectfully request that you keep in mind
20 as you consider the arguments and evidence highlighted by
21 both parties.

22 Discussing January 6, Justice Lamberth wrote,
23 "In my 37 years on the bench, I cannot recall a time when
24 such meritless justifications of criminal activity have

1 gone mainstream. I have been dismayed to see distortions
2 and outright falsehoods seep into the public
3 consciousness. I have been shocked to watch some public
4 figures try to rewrite history, claiming rioters behaved
5 in an orderly fashion, like ordinary tourists, or
6 martyrizing convicted January 6 defendants as 'political
7 prisoners' or even, incredibly, 'hostages.' That is all
8 preposterous. But the Court fears that such destructive,
9 misguided rhetoric could presage further danger to our
10 country."

11 Your Honor, you have the record, the law, and
12 the authority to make a decision. We respectfully ask
13 that you grant objectors' petition for judicial review,
14 overrule the decision of the electoral board, and hold
15 that they erred by imposing the knowing lie standard in
16 determining that electoral boards can never engage in
17 constitutional analysis.

18 Adopt the findings of the hearing officer that
19 Trump violated Section 3 of the Fourteenth Amendment,
20 order that Candidate Trump's name shall not be printed on
21 the official ballot for the candidate for the Republican
22 nomination for the Office of President of the United
23 States for the March 19th, 2024 general primary election
24 or the November 5th, 2024 general election and stay

1 enforcement of that order pending appeal to the Illinois
2 Supreme Court.

3 Thank you.

4 THE COURT: Thank you, Counsel.

5 MS. LEDERER: Do you have any questions?

6 THE COURT: I will ask questions at the end.

7 MS. LEDERER: Thank you.

8 MR. MERRILL: Good morning, Your Honor. I am Adam
9 Merrill. I represent Candidate Donald J. Trump.

10 I would like to point out what this case is
11 about. It's about ballot access. As some of the law is
12 provided to this Court, it indicates that access to a
13 place on the ballot is a substantial right not to be
14 lightly denied. This case is not about the events of
15 January 6th, 2021. It's not about whether there was
16 insurrection or whether President Trump engaged in an
17 insurrection. He denied there was an insurrection, as
18 that term is used in the Fourteenth Amendment of
19 Section 3. And he has denied that he engaged in
20 insurrection, again, as that term is used in the
21 Constitution.

22 And the Supreme Court is considering issues
23 relating to that, undoubtedly, will have an impact on
24 this case and how it's resolved. What this case is --

1 and, by the way, in terms of the video, we object to that
2 video. And one of the reasons we object to that video is
3 President Trump wasn't there at the Capitol, but it was
4 spliced together, and his voice was imposed in a way that
5 suggests that he was there and that he was -- He was
6 speaking, before the events at the Capitol, at the
7 Ellipse, which was several miles away.

8 And when you watch those, it's not hard to
9 conclude what happened and what was -- some of the things
10 were depicted, although we think they were unfairly
11 depicted. But those events were deplorable, shameful.
12 They were clearly evidence of crimes and violence, some
13 of them very serious and repugnant. But that's not what
14 we're here to figure out today. This is not a
15 congressional committee, and it is not the place to
16 litigate what happened on January 6th and whether it
17 constituted an insurrection and whether President Trump
18 somehow participated in one even though he wasn't there.

19 What this case is about is whether those who
20 disagree with a candidate's policies and with a
21 candidate's politics can use and, we would say, to some
22 extent abuse the Election Code of Illinois to knock a
23 candidate, who has otherwise complied with the Election
24 Code, off the ballot and prevent millions of supporters

1 within Illinois from voting for President Trump as part
2 of the Republican primary set to take place on
3 March 19th.

4 What is specifically before this Court is a
5 decision of the electoral board from January 30th, 2024.
6 It's three pages. It's not long. And the question is,
7 is whether there were errors committed based on the
8 standards of review and whether there's a basis for this
9 Court, sitting as a reviewing Court, to reverse that
10 order. And we would submit there's not.

11 There's really two main reasons why the
12 electoral board denied and overruled the objectors'
13 petition below to disqualify President Trump from being
14 on the ballot.

15 No. 1, the board -- the first issue is whether
16 the board's finding that there was no evidence of
17 President -- that President Trump falsely swore was
18 against the manifest weight of the evidence. And the
19 reason why -- and manifest weight of the evidence is a
20 very difficult standard to prove. It really -- this
21 Court, we would submit, according to the law, has to
22 basically presume that any findings of the electoral
23 board were, prima facie, true, and that is a tough burden
24 to meet.

1 In fact, as this Court is reviewing the
2 decision by the administrative board, there's three
3 levels of review and the most deferential of any findings
4 of fact, and that's the manifest weight of evidence.
5 There's also -- if there's a mixed question of fact in
6 law, the standard review is clearly erroneous, which is
7 also quite difficult to dispute at this stage. And it's
8 only with respect to conclusions of law that you could
9 arguably take a fresh look at them. But even in those
10 cases, one of the cases that has been cited in the briefs
11 indicates that even if in that situation, a board's
12 interpretation of its legal obligations, legal authority
13 isn't also entitled to deference by this Court.

14 But the first part of what we are dealing with
15 here is from the board's order -- decision from
16 January 30th. It's paragraph 10-C. And the board found
17 objectors have not met their burden of proving, by a
18 preponderance of the evidence, that candidate's statement
19 of candidacy is falsely sworn in violation of
20 Section 7-10 of the legal code as alleged by their
21 objection petition.

22 Now, in noting that -- at the hearing and also
23 in the decision, they note that the objectors submitted
24 thousands of pages of documents, dozens of videos and

1 photos. And what they noted is that none of that
2 contained evidence of a key issue in this case, and that
3 is whether President Trump falsely swore when he said he
4 was qualified to -- as a candidate for president in the
5 Republican primary. And that is entitled to -- this
6 Court really has to assume that that's prima facie
7 correct unless it's convinced that it's against the
8 manifest weight of the evidence.

9 Critically, in 10-G of the board's decision,
10 it said no factual determinations were made regarding the
11 events of January 6th, 2021. It did not purport; it did
12 not attempt; it did not, in fact, find any facts with
13 respect to January 6th, 2021.

14 Because what the board determined is that,
15 under the Election Code as interpreted by the Illinois
16 Supreme Court's decision in the Welch case, is that in
17 order to establish that someone falsely swore in a
18 statement of candidacy or otherwise in papers submitted
19 to the board, that you have to establish that they
20 violated Section 29-10 start start of the Election Code,
21 which is the perjury provision. And that provision makes
22 it a Class 3 felony to commit perjury with respect to
23 submissions -- papers that are submitted to the board.

24 And because it's a Class 3 felony, you have to

1 have -- that has to be knowing. You cannot determine and
2 conclude that someone has falsely sworn, which is the
3 entire basis for for the petitioners' objection below
4 unless you can establish that they knew that statement
5 was false. And here, they looked at the record. They
6 noted that President Trump has denied that this was an
7 insurrection, denied that he engaged in it.

8 And they combed through the thousands of pages
9 of evidence that petitioners submitted and said there is
10 no evidence to the contrary. And on that basis they
11 denied that aspect of their petition below, their
12 objection to President Trump being on the ballot. And
13 the only way for this Court, sitting as a review Court --
14 reviewing Court to reverse that is if the Court found
15 that that factual finding was against the manifest weight
16 of the evidence, and this Court would have to comb
17 through the record and find the evidence that isn't there
18 that President Trump knew when he signed this affidavit
19 that it was knowingly false.

20 Now, you've heard a lot from the petitioners
21 about how this is a new standard; it is a different
22 standard; it's never been applied before. That is just
23 not the case. You can look at the Welch case. It's an
24 Illinois Supreme Court decision from 1992. They suggest

1 it doesn't have anything to do with the electoral code.
2 It clearly does. It mentions the Election Code dozens of
3 times. And it points out that the specific alleged false
4 statement came from an affidavit or statement of economic
5 interests, which is required initially by the Ethics Act.

6 But the electoral code, in the same provision
7 that requires candidates to indicate whether they are
8 qualified -- it requires them to submit their statement
9 of economic interests. And the Welch Court, Illinois
10 Supreme Court, in Welch, applied -- looked at
11 Section 29-10 and said that you can't disqualify someone
12 from -- a candidate, under the Election Code, from being
13 on the ballot unless you can establish that the statement
14 of candidacy or the -- well, the statements submitted to
15 the electoral board were -- for purposes of getting on
16 the ballot, unless you can establish that those
17 statements were willfully false.

18 And so this is not new. This is not
19 different. This is not some -- this is not going to
20 jeopardize candidates in the future. The electoral board
21 is a bipartisan board. There's four Democrats and four
22 Republicans. They were fully advised, and they all voted
23 unanimously to deny and overrule the objection below, and
24 there's no basis before this Court to do it.

1 Now, as a practical matter, the petitioners
2 suggest, oh, this is going to enable candidates to say
3 things that they believe on their statements -- say
4 they're qualified when they really aren't qualified. And
5 we would just submit that there's no real danger of that
6 happening.

7 There are -- most of the cases on this topic
8 that have been cited to this Court involve the electoral
9 board or a Court concluding that a candidate did falsely
10 swear. And there are things like when they say "I meet
11 the qualifications," but one of the qualifications is
12 being a resident of a district.

13 Now, those Courts and the electoral board
14 didn't spend a lot of time trying to figure out, well,
15 that was knowingly false. It was just simply asked,
16 "Where do you live or where did you live when you filled
17 out this statement of candidacy?" And if the candidate
18 said, "Well, I lived someplace else; it was not in the
19 district," they determine that, reasonably, that that is
20 evidence of a willfully false statement. And we don't
21 have to call it a willfully false statement. It's false,
22 and they admit it's false.

23 And in that circumstance with respect to where
24 someone lived, with respect to whether somebody had

1 completed training required to be a sheriff and had a
2 certificate indicating they were a sheriff or had
3 completed that training and with respect to whether
4 someone is actually a lawyer, these are not the types of
5 things that -- also, whether someone was a citizen of the
6 United States, which happened with respect to
7 President Obama in his candidacy and also with respect to
8 Senator Rubio.

9 Those are things that are easily established.
10 They were either admitted, or there's a piece of paper
11 that the board can look at and say, "Well, given this
12 piece of paper, then, obviously, that statement of
13 candidacy that said you're qualified was false." And so
14 they didn't have to delve into whether it was willfully
15 false.

16 But we would suggest that those things are
17 evidence of willful falsity if you can establish
18 someone -- and there's no new standard here, and this
19 Court would have to overrule the Welch case from the
20 Illinois Supreme Court which has been on the books for
21 over 20 years. And there's just no basis to do it.

22 Now, alternatively, if you look at the Court's
23 decision -- or the Board's decision below, in Paragraph
24 10-D, it indicated in the alternative and to the extent

1 that the Election Code somehow authorizes the board to
2 look at these issues under the Fourteenth Amendment,
3 Section 3. It concluded that the Supreme Court's
4 decisions in Goodman v. Ward and Delgado v. Board of
5 Election Commissioners precluded the board from engaging
6 in the type of analysis that would be required to
7 determine whether this -- the events of January 6
8 disqualified President Trump from being on the Republican
9 primary ballot.

10 And we would submit that those -- look, no
11 Court in Illinois that we're aware of has ever delved
12 into presidential -- U.S. presidential candidates'
13 qualifications. The board has done it a couple of times
14 with respect to citizenship issues alleged with respect
15 to candidates, that they resolved it based on birth
16 certificates, and those cases went away.

17 But the board's decisions are not
18 precedential. And as you know, only the appellate court
19 or the Supreme Court's decisions in this area serve as
20 precedent. We're not aware of any Illinois appellate
21 court or Illinois Supreme Court case evaluating the
22 qualifications of a U.S. presidential -- a candidate for
23 U.S. president.

24 But even if you assume that the analysis of

1 Goodman and Delgado, which dealt with State candidates or
2 local candidates, Illinois candidates -- even if you
3 assume that that analysis applied, what they have told
4 the board is, "Your job is to look at the provisions of
5 the Election Code and tell us whether or not this
6 candidate's filings to get on the ballot complied with
7 that."

8 And the main issue here is Section 10-10. And
9 10- -- Section 10-10 of the Election Code is the
10 provision that gives the board the ability to resolve
11 objections, but it doesn't give them unlimited authority
12 to delve into any complaint any voter may have about a
13 candidate, including about their policies, their past
14 conduct, what they might do in the future, anything like
15 that.

16 What it says is -- and it lists very specific
17 things -- that the electoral board shall take up the
18 question as to whether or not the certificate of
19 nomination or nomination papers are, one, in proper
20 form -- that's the first thing they look at -- and, two,
21 they can look at whether they were filed within the time
22 and under the conditions required by law; three, whether
23 they are genuine nomination papers; and four is really
24 not applicable. That has to do with whether the papers

1 represent accurately the decision of a caucus or
2 convention issuing it. That's not an issue in this case
3 because these were submitted directly by the candidate.

4 And then those are the four things that are
5 specified. And then at the end of the Section 10-10, it
6 indicates that the electoral -- you know, and in general
7 shall decide whether or not these nominating papers are
8 valid or whether the objections thereto should be
9 sustained and the decision -- and then it goes on from
10 there.

11 So petitioners have not made clear which of
12 these they believe gives the board authority to, you
13 know, determine whether there was an insurrection,
14 whether President Trump participated in insurrection, and
15 whether that gives the board the authority to knock him
16 off the ballot.

17 I presume it's the last part, which indicates
18 whether these are valid. They're saying because he's
19 certified and qualified and because of these Supreme
20 Court -- Illinois Supreme Court cases in Delgado and
21 Goodman that said you can look into qualifications under
22 10-10, that that's the basis for doing it. But it
23 doesn't give them open-ended authority to look into any
24 issue that might affect the candidate. And that's what

1 they recognize. That's what they determined. That's a
2 legal decision.

3 But we would submit that it's entitled to
4 deference because it's how the board interprets their
5 concern about how this precedent -- if the objection were
6 to be sustained, how it would impact local boards of
7 election which look to the State Board of Elections to
8 determine how to resolve similar issues and that you're
9 going to have a situation where local candidates have
10 people that disagree with them come out of the woodwork
11 and say, "Oh, well, this person is disqualified for this
12 reason"; "This person is disqualified for that reason."

13 And you end up with local boards of election
14 having to have mini trials on these sorts of things. And
15 you can look at the record in the transcript of the board
16 meeting on January 30th. That was specifically
17 highlighted right before the motion was made to deny this
18 objection and unanimously adopted by the board.

19 So that's what's before this Court. This
20 Court does not have the ability -- this Court is
21 generally a court of general jurisdiction, as I
22 understand it. But in this context, this Court is
23 reviewing the board's decision, and so this is not a
24 merits hearing. And this is, frankly, not the Court that

1 anyone below indicated should resolve these issues. The
2 board did not suggest -- contrary to what petitioners
3 have argued this morning, did not suggest that, "Hey, we
4 don't have jurisdiction, but we think somebody else --
5 whoever takes this up, you know, another Court that
6 considers this above us, should somehow weigh in on
7 this."

8 This Court's job is to determine whether the
9 board acted reasonably, whether it's finding that no
10 evidence was against the manifest weight of the evidence,
11 and whether, as a matter of law, it should be -- its view
12 of its authority should be disregarded.

13 So we would -- just because of the
14 wide-ranging nature of the presentation, my colleagues,
15 Mr. Nelson and Mr. Gessler, are going to speak to some of
16 the other issues. But we would just submit that, as a
17 matter of law, Illinois law, there's no basis for the
18 board of elections to sustain this objection. It
19 properly overruled it, and this Court should affirm.

20 Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. NELSON: Good morning, Your Honor. Nicholas
23 Nelson also for the candidate.

24 THE COURT: Good morning.

1 MR. NELSON: I'm here to talk about the federal law
2 basis for dismissing the objections.

3 These are things that I think the parties
4 agreed that Your Honor would have to decide in order to
5 do what the petitioners are asking you to do. But as you
6 heard from the petitioners' presentation, they would
7 prefer not to dwell on them. I'm here to talk about
8 them.

9 We heard a lot from the petitioners about the
10 Illinois law issues and then basically within a short
11 detour into federal law, went straight to the facts of
12 the record and what they believe the record shows.

13 I think the parties agree, there is no way,
14 procedurally or logically, for the Court to go from
15 Illinois law to the factual inquiry without first
16 addressing and deciding all these issues of federal law,
17 which would require the complaint -- or I'm sorry -- the
18 objections to be dismissed.

19 We put five of them in our briefs. They're
20 all independent grounds for dismissing the objections.
21 So if the board or the Court were to agree with the
22 candidate on any one of these five issues, that would end
23 the case. It's separate and apart from the questions of
24 Illinois law that Mr. Merrill just argued.

1 On the other side of the coin, the objectors,
2 the petitioners, would have to go five for five on these
3 before the Court would get to the questions of the record
4 that were presented. They would have to win all of them.
5 We did preserve and brief these at every stage below. We
6 briefed them before the hearing officer. When we got his
7 recommendation, we were a little bit surprised. We, of
8 course, agreed with what the hearing officer recommended
9 primarily about Illinois law.

10 But then the hearing officer jumped straight
11 from that to saying, "Well, board, if you disagree with
12 me about Illinois law, I recommend that you sustain the
13 objections based on this analysis of the record," did not
14 address or discuss any of these independent federal law
15 grounds for dismissing the objections.

16 The general counsel and the board had no need
17 to do that because they agreed on Illinois law that
18 things should be dismissed. But we did file exceptions
19 before the board to the hearing officer's alternative
20 recommendation. We said, "Wait a minute. You know, you
21 can't get to this record analysis before you look at the
22 federal law issues," so we've also briefed them here.

23 There are five of them. I would like to talk
24 about each of them, but I will just list them at the

1 outset so we all know what we're talking about.

2 First, there's the reality that the
3 U.S. Constitution makes disputes over presidential
4 qualifications of political question that don't get
5 decided in the courts.

6 Second, there's the issue that Section 3 of
7 the Fourteenth Amendment can be enforced only in the way
8 that Congress sets. And Congress has not authorized
9 these proceedings, so there's no cause of action in
10 Illinois under Illinois law to enforce this.

11 Third, there's the point that Section 3 of the
12 Fourteenth Amendment was quite specifically drafted not
13 to apply to former presidents.

14 Fourth, there's the point that Section 3 does
15 not bar -- even when it applies, Section 3 does not bar
16 anyone from becoming the president.

17 And fifth, there's the point that Section 3,
18 by its terms, bars only holding office. And very settled
19 federal constitutional law prevents states from applying
20 a bar like that to prevent someone from running for
21 office or being elected to office.

22 So to go into each of these in a little more
23 detail, first is the political question point. It's very
24 well established that there is a political question

1 doctrine that the U.S. Constitution can assign certain
2 questions of federal law and say, "Here's how this is
3 going to get decided." And if it assigned them to a
4 place that's not the courts or state agencies, for that
5 matter, then the Courts don't have jurisdiction to decide
6 those issues. That's how it is with questions about who
7 should be the president.

8 There are more constitutional provisions
9 addressing that issue and how we decide that issue than
10 just about anything else in the Constitution. And none
11 of those provisions say, "And we want the courts to
12 decide this." So that's -- you know, many, many courts
13 throughout the country, when they've looked at this
14 issue -- and it didn't start with President Trump. It
15 started back a decade ago -- started saying, "Yeah, this
16 looks like a political question. We don't think it's our
17 business to decide whether someone is qualified to be
18 president."

19 That has continued in the current wave of
20 Section 3 litigation over President Trump, though many
21 courts throughout the country have said this is a
22 political question we should not be deciding. We cite
23 those in our briefing.

24 There's been an objection made. I'm not sure

1 if in this case but in some others -- I think in this
2 case as well -- that, "Well the Constitution doesn't
3 specifically say the words, 'You know, the courts should
4 be the ones who decide this' or the Constitution says,
5 'You know, here's who should decide presidential
6 qualifications.'"

7 That's not generally the way the political
8 question doctrine works. There are many things that are
9 recognized under the Constitution to be political
10 questions: foreign affairs, military affairs, other
11 things like that where the Constitution doesn't say only
12 such-and-such person can decide this. It's inferred from
13 constitutional structure from the fact that the
14 Constitution creates other ways to decide it, so that's
15 what our political question argument is here.

16 Second point, Section 3 can be enforced only
17 as prescribed by Congress. So we have, on this point,
18 just about the most persuasive and weighty historical
19 evidence that you can possibly have.

20 The Fourteenth Amendment was adopted just
21 after the Civil War. And only ten months after its
22 adoption, we had a decision from the sitting chief
23 justice of the United States saying, yes, Congress has to
24 be the one to say how this gets enforced, Section 3 of

1 the Fourteenth Amendment specifically.

2 The sitting chief justice was
3 Chief Justice Salmon Chase. Not just any chief justice.
4 He had been a radical Republican in Congress. He had
5 been a cabinet member in the Lincoln administration who
6 was really helping to prosecute the Civil War effort.
7 Later, in the Slaughter-House cases, he adopted a broad
8 and expansive view of how the Fourteenth Amendment should
9 be interpreted and applied. So this was not someone who
10 was generally hostile to reconstruction or to the
11 Fourteenth Amendment.

12 What he said, he came up, while he was riding
13 circuit in Richmond, Virginia, the former Capitol of the
14 Confederacy, and the case came before him, where someone
15 argued Section 3 has been enacted; therefore, anyone,
16 anywhere in the South who had been in office, taken an
17 oath to support the Constitution, and then participated
18 in the Confederacy is automatically disqualified from
19 office. You know, ask anybody -- present this to any
20 government official in any proceeding. They're
21 disqualified.

22 The chief justice looked around and
23 realized -- he said this in his opinion -- it looks like
24 a majority of the current members of the southern state

1 governments are maybe disqualified under Section 3. "We
2 can't just -- we have to have some procedures for sorting
3 out who's who, for figuring out how to do this."

4 One of the very practical realities here is
5 that it would not have made any sense at all if state
6 proceedings could have been used to allow those
7 ex-confederate officials to decide for themselves whether
8 they were qualified. It would have been obvious to
9 anybody, that's not the way we need to do this. We need
10 to have some other procedure that doesn't just put it
11 right back in their own hand.

12 And that's exactly what Chief Justice Chase
13 said in the Griffin's Case. He said Congress needs to be
14 the one to create the procedures to say how we decide
15 whether someone engaged in insurrection and whether they
16 can be removed from office.

17 Now, Congress did exactly that. It actually
18 started doing this even before the Griffin's Case, even
19 before Chief Justice Chase's decision. When Congress
20 enacted -- when it readmitted six southern states to the
21 union, it said, "Okay. You reconstituted your
22 governments. You know, we trust these governments to be
23 loyal, and so we're not just giving you permission to
24 enforce Section 3. We're requiring you to enforce

1 Section 3 against candidates for state office or people
2 in your state offices."

3 Arguably, Congress didn't even need to do that
4 because it was for state office, and states can create
5 whatever qualifications they want for their own offices.
6 But Congress said, "You have to do it."

7 Decisions at the time, the Louisiana Supreme
8 Court -- you know, someone argued, "Hey, you have to have
9 congressional permission to do this." And the Louisiana
10 Supreme Court said, "Well, we're not sure about that,
11 but, look, we do. Congress told us to do it. Here's
12 this statute admitting us."

13 So that was the very earliest. But that was
14 even before the Griffin's Case. Immediately after
15 Chief Justice Chase decided this, within a year or two,
16 Congress passed federal legislation that applied
17 nationwide. It gave U.S. attorneys authorization to sue
18 in federal court, to remove people from office who had
19 taken office in violation of Section 3.

20 There was also -- right around the same time,
21 I think, again, actually before the Fourteenth Amendment,
22 there were criminal provisions put in place for engaging
23 in insurrection. The penalty includes disqualification
24 from office.

1 That was the unbroken practice for the next
2 150 years. That was how Section 3 was enforced. There
3 were no independent State proceedings not authorized by
4 Congress to remove federal officials from office or,
5 really, any officials from office without congressional
6 okay under Section 3. There was some congressional
7 enforcement when people would be elected to Congress.
8 And there were questions: Did you engage in
9 insurrection? Congress used its own authority to seek
10 members to vote; you know, can this person be seated or
11 not. But that was the only other way it was done.

12 Some of the enforcement provisions, like the
13 congressional authorization to remove people from office,
14 was repealed in the mid-20th century. The criminal
15 provision for insurrection is still on the books. And as
16 far as we know, no one has been convicted or even charged
17 with that in connection with January 6th.

18 After the events of January 6th, Congress
19 actually thought about, "Hmm, maybe we should reauthorize
20 something like this." There was a bill proposed in
21 Congress to say, "Let's reauthorize the old provision
22 where people can sue in federal court to remove folks
23 from office who engaged in insurrection." That bill
24 didn't pass. So we're still in the same place we were,

1 where the only arguable congressional authorization for
2 this is a criminal prosecution for insurrection, which
3 has not been brought.

4 There's no argument, I don't believe,
5 petitioners would argue that there is any congressional
6 statute that authorizes these proceedings. So if Your
7 Honor agrees with this legal point, that ends the case.

8 Third, we have the fact that Section 3 was
9 drafted rather specifically not to apply to former
10 presidents. There's actually two reinforcing and quite
11 clear cues in the text of Section 3 that show this.

12 The first is its use of the phrase "Officer of
13 the United States," and the second is its use of the
14 phrase "Oath to support the Constitution." Both of these
15 describe who Section 3 applies to. Section 3 applies to
16 people -- this is the predicate -- people who, as an
17 officer of the United States, took an oath to support the
18 Constitution.

19 Neither of those phrases applies to the
20 president as it shows up in the rest of the Constitution.
21 If you look at the first phrase, "Officer of the United
22 States," it applies to -- it appears three times in the
23 Constitution other than in Section 3. It's all in
24 Section 2, describing the powers of the presidency.

1 Each of those provisions, very clearly,
2 excludes the president. You have the impeachment clause,
3 which says, "The president, vice president, and all other
4 officers of the United States can be removed from office
5 by impeachment." You wouldn't need to list the president
6 and vice president if they were included in "all other
7 officers."

8 You have the appointments clause which says
9 the president shall appoint all officers of the United
10 States. Well, presidents don't appoint themselves,
11 right? So, therefore, you know, all officers of the
12 United States does not include the president.

13 The other provision is the oath to support the
14 Constitution. This also specifically refers to not the
15 president, right? It's almost a direct quote of language
16 that already appeared in Article 6 of the Constitution,
17 which requires officers of the United States to take an
18 oath to support the Constitution. Well, the president
19 does not take that oath. Section 2 of the Constitution
20 provides a different oath for the president. It's to
21 uphold and defend, something like that, the Constitution.

22 The petitioners have argued, "Oh, well, they
23 mean essentially the same thing." Whether or not that's
24 true, that's not the way the interpretation of legal text

1 works, right? This isn't specific to the Constitution.
2 If Your honor were faced with a contract or statute or
3 anything, where the drafters, you know, created two
4 different sections using different languages, even if
5 they were addressing a relatively similar subject matter,
6 if a later provision of the contract or the statute or
7 whatever it is copies the language of one of those
8 provisions and not the other one, that's going to be
9 interpreted as a reference only to the provision that
10 it's copying the language of. That's the case with this
11 language, "Oath to support the Constitution."

12 So we think either of those by itself would be
13 enough. But, together, they really reinforce the point.
14 The people who drafted Section 3 use these two very
15 specific phrases that are obviously deliberately copied
16 from elsewhere in the Constitution. And the other places
17 in the Constitution where they show up very clearly
18 exclude the president. It's difficult, as a textural
19 matter, to think how you could make more clear an intent
20 to exclude the president other than by just saying,
21 "Leave the president out of this."

22 Third -- I'm sorry. Fourth point, that
23 Section 3, when it applies, does not bar anyone from
24 being president, I won't dwell on this. It's in our

1 briefs. Section 3, when it applies, says that people who
2 are -- people who are barred aren't barred from being
3 officers under the United States. Our brief explains why
4 the best interpretation of officers under the United
5 States does not include the president or the vice
6 president.

7 Fifth and finally, Section 3 bars only holding
8 office. That's just plain from the text of Section 3,
9 that you can't be an officer under the United States. So
10 it's well established -- I'm sorry. So Section 3, by its
11 text, does not prevent someone from running for office.
12 It does not prevent someone from being elected to office.

13 In fact, we have a long constitutional
14 tradition of people who are arguably barred by Section 3
15 running for office and being elected to office. This
16 happened regularly after the Civil War. Nobody
17 suggested, "Oh, you can't run. You can't be elected."

18 What happened when people did that was, if
19 there was at least an argument that someone was barred by
20 Section 3, that representative elect or senator elect or
21 whoever it was had to go to Congress and had to ask
22 Congress, "Hey, pursuant to Section 3, you can make a
23 two-thirds vote to remove this disability from me. Will
24 you do it?" If Congress did, the person could be seated.

1 Or if Congress ultimately determined the person actually
2 isn't barred, of course they could be seated as well.
3 So this is what -- even if this disability applied, it's
4 something that can be removed. It's something that can
5 be defeated, can be taken away.

6 That puts us squarely into settled
7 constitutional law, where if there's a disability that
8 would apply at the time a person takes office but we
9 don't know whether it certainly will apply -- it may be
10 removed or it may not -- the states cannot then move that
11 forward in time and use it to bar someone from running
12 for office, bar someone from being elected into office.

13 The law is really clear -- we've cited this in
14 our briefs -- that this applies to something like a
15 residency requirement. The states cannot say, "Hmm,
16 you're running for senate"; "You're running for the
17 U.S. House"; "You don't live in our state now" or "You
18 don't live in your district now," or whatever the
19 requirement is, "therefore we're not going to let you
20 run."

21 The Constitution doesn't allow that. The
22 Constitution says you have to be a resident of your state
23 when you are elected. And the courts have said that's
24 the time that it applies. So it's very established for

1 that purpose. We don't see any logical difference
2 between that and any other qualification that may or may
3 not apply or not apply by the time a person takes office.

4 Those are the five grounds for the motion to
5 dismiss. I'm happy to take Your Honor's questions on
6 those; otherwise, I would just point out a couple of
7 things about the legal standards that apply to
8 insurrection and engaging in insurrection.

9 Specifically with respect to the definition of
10 "insurrection" under the Constitution, the petitioners
11 want insurrection to be any attempt -- any organized
12 attempt to prevent -- sorry -- organized violent attempt
13 to prevent the execution of the laws. We think that's
14 overbroad for the reason we've explained in our brief.
15 It's difficult to see -- well, you know, what about a
16 gang of people who get together to even, you know, attack
17 the mailman or something. I mean, that would seem to be
18 an organized violent attempt to prevent the execution of
19 the laws.

20 The obvious rejoinder is that January 6th was
21 more than that. There's no dispute there that this was a
22 serious political riot, not a minor one. But that's a
23 quantitative difference, I would say, not a qualitative
24 difference. Here's the missing ingredient: What we

1 would say is that an attempt -- a violent attempt to
2 protest how a law is being carried out is a riot. What's
3 required to make it an insurrection is the additional
4 ingredient of the people involved have to have their own
5 plan for what the law should be for how they're going to
6 make things happen.

7 That's what we think is missing from
8 January 6th. There's no indication that anybody had any
9 sort of plan beyond disrupting one particular government
10 function, albeit a very important one. But there was no
11 plan for, well, what's the substitute? Just wasn't
12 there. There's no evidence that there was any plan there
13 to do anything else. And that's the crucial difference
14 under the law between a riot and an insurrection.

15 We didn't hear much about the definition of
16 "engaging in insurrection," so I will just reiterate what
17 we've said in our briefs. The drafters of Section 3 of
18 the Fourteenth Amendment were using a model that talked
19 about -- there was a statute that prohibited a long list
20 of things: inciting, setting on foot, encouraging. I'm
21 not remembering exactly but something like that, or
22 engaging in insurrection, right?

23 And the drafters of Section 3 pared out most
24 of those and just said engaging in insurrection. So now

1 petitioners are, to a certain degree, trying to bring
2 inciting insurrection back within the meaning of
3 Section 3. We don't think that's proper under the text,
4 but we would add that if -- even if it were, it would
5 seem necessary to refer to First Amendment principles to
6 determine what that means because there's a long history
7 of incitement of crime is not protected under the
8 First Amendment, but anything that's not incitement is
9 protected. We think it would be very strange if
10 something could be engaging in insurrection under
11 Section 3 even though it wasn't even inciting
12 insurrection under the First Amendment.

13 We don't think that what President Trump did
14 qualified there. I won't speak to that because that goes
15 to the record. And I'll give the podium to Mr. Gessler
16 to do that unless the Court has any questions about these
17 matters.

18 THE COURT: The Court will reserve her questions
19 until after the arguments.

20 MR. NELSON: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 THE court: You may proceed.

23 MR. GESSLER: Thank you, Your Honor. My name is
24 Scott Gessler, the last in the trio to speak on behalf of

1 President Trump.

2 So I'm here to speak primarily about the
3 factual record. And I'd like to begin with sort of
4 reiterating or rephrasing what Mr. Merrill said. He said
5 that this Court should not engage in factual findings.
6 It should not -- to use the objectors' words -- shore up
7 the record for a few reasons.

8 The State Board of Elections specifically,
9 explicitly said they made no factual findings. And the
10 statutory structure that Illinois has created provides
11 the State Board of Elections the opportunity to make
12 those factual findings. So even to the extent that this
13 Court agrees with anything involving factual findings
14 presented by the objectors, at the most, it should remand
15 to the State Board of Elections.

16 THE COURT: Counsel, you're referring to the
17 decision of the electoral board in paragraph 10-G?

18 MR. GESSLER: Yes, ma'am.

19 THE COURT: It says, "No factual determinations were
20 made regarding the event of January 6, 2021." Are you
21 saying there's no factual finding at all here? You
22 didn't qualify your statement.

23 MR. GESSLER: I should have qualified, yes.

24 THE COURT: I want to be sure.

1 MR. GESSLER: Yes, certainly with respect to the
2 events of January 6th. They certainly said, with respect
3 to the preponderance of the evidence standard, and the
4 knowing -- the knowing false standard, so there is a bit
5 of an ambiguity within that, and I don't mean to
6 mischaracterize that.

7 But I would also note that before the State
8 Board of Election's precedent, counsel was afforded about
9 five minutes to discuss the facts, not a lot of time.
10 And that's consistent with the election board's
11 jurisdictional ruling and their lack of factual findings
12 with respect to January 6th events.

13 Here, we are presented with this video as a
14 demonstrative exhibit, as well as statements. And we
15 contest that some of the statements made by the objectors
16 in their argument before you find no place within the
17 factual record and beyond, that have never been presented
18 within Colorado or in Illinois until today for the very
19 first time.

20 Let me divide my presentation up into a couple
21 pieces.

22 First, with respect to the Colorado findings,
23 the objectors would ask that the board of elections,
24 which has declined their invitation, and now this Court

1 simply imports the Colorado findings, the conclusions and
2 the findings there. This is improper for a few points.

3 So there are very sharp disagreements between
4 ourselves and the objectors with respect to the
5 admissibility and the characterization of facts to the
6 point where, you know, opposing counsel has allegedly
7 lied to the Court. I think that's indicative of the
8 sharp disagreements before this Court with respect to the
9 evidence.

10 With respect to the admissibility, so the
11 January 6th report was admitted in Colorado under a
12 different set of standards than Illinois uses. So, for
13 example, under Rule 803(8) Rule of Evidence, government
14 reports may be admitted, but under no circumstances --
15 and this does not find a place in Colorado law, but it
16 does find a place in Illinois law -- findings containing
17 expressions of opinion or legal conclusions.

18 And, in fact, the January 6th report was rife
19 with expressions of opinion and legal conclusions, such
20 as legal conclusions about insurrection or engagement
21 through President Trump's intent. And none of that finds
22 a place to -- in Illinois law to import a governmental
23 report into evidence here and to be able to rely on it.

24 And, in fact, there were very sharp

1 disagreements about the underlying biases of the
2 January 6 committee, the politicalization of that, the
3 hearsay within hearsay. We agree with respect to the
4 former testimony that was provided in Colorado as
5 admissibility of testimony, but there are sharp
6 disagreements as to whether the emphasis should be placed
7 on that.

8 These are all discussions that need to be made
9 by the board of elections if, in fact, it's going to
10 engage in fact-findings there. Likewise, there was an
11 expert report. There were sharp disagreements -- there
12 remain sharp disagreements about the admissibility of
13 that, as well as the procedural infirmities.

14 So, for example -- which may or may not fly in
15 Illinois -- the prohibition on deposing an expert prior
16 to the hearing, the accelerated time frame that
17 essentially prohibited President Trump from being able to
18 obtain a rebuttal expert, as well as, sort of, the
19 reliability and the methodology employed by that expert
20 who, in that instance, was a sociologist.

21 In this case as well, the parties agreed not
22 to introduce live testimony, but there are also
23 affidavits of two additional witnesses that were not in
24 evidence in Colorado here, that this -- that the

1 factfinder should have and can look at.

2 So those are all sort of procedural issues,
3 admissibility, emphasis characterizations, that lower --
4 I don't want to say "lower court" -- that the board of
5 elections did not engage in. And if there are going to
6 be any factual findings, that has to be done.

7 There are sharp disagreements, and Mr. Nelson
8 alluded to some of those, with respect to the standards
9 that govern the factual findings. So with respect to the
10 insurrection, we argued and submit that the Colorado
11 Court basically made those standards up. They created
12 them out of whole cloth. And the Illinois standard for
13 what may or may not constitute an insurrection -- maybe
14 it's the same; maybe it's different, but there needs to
15 be a determination in order to resolve this, sort of,
16 mixed question of fact and law as to what constitutes
17 insurrection.

18 I will note that, certainly, before the United
19 States Supreme Court, there were some questions from
20 justices concerned about a multiplicity of standards and
21 the difficulty of creating a standard. And that, of
22 course, fits within and supports the political question
23 issue that there are not governmental standards. And it
24 also supports the emphasis on the Griffin's Case that it

1 requires Congress to create sort of a uniform standard of
2 what constitutes insurrection rather than having each
3 state make it up on their own and then, eventually,
4 trying to resolve that with multiplicity standards,
5 especially when it involves such an important issue of
6 national importance, which, if anything, requires a sense
7 of national uniformity and application process and how
8 states apply these issues.

9 When one looks at insurrection, there are a
10 number of, sort of, factual issues which are not
11 resolved: the duration of the event, the goal, the
12 armaments used. For example, here, the objectors said
13 the crowd was armed. There were never any firearms.
14 There's no evidence of that. In fact, there's evidence
15 that no one was able to find firearms. And there's
16 evidence of one person having a knife that was never
17 used, that was never brandished. And, in fact, that
18 person was helped to his feet by the Capitol police and
19 returned to the crowd, and the knife was never even
20 confiscated in that instance. The geographical scope,
21 whether or not the insurrection is capable of turning
22 into a rebellion.

23 So these are all issues and sort of factors,
24 none of which were considered or resolved by the -- of

1 course, by the State Board of Elections. And those all
2 have to be resolved. The same with respect to
3 engagement, what that legal standard is. Mr. Nelson
4 referred to a previous legislation by Congress. That was
5 the 1862 Insurrection Act. What that act said was it was
6 illegal to engage in or incite or set foot upon or assist
7 activities that would be considered insurrection. That
8 was from 1862.

9 And then when Congress, in 1866, debated what
10 became Section 3, they excluded -- they did not include
11 incite, set foot upon, assist. They only used the word
12 "engage." That's very strong evidence that incitement is
13 not part of the engagement. That's an issue that needs
14 to be resolved in Illinois here.

15 And then I would also note that even under the
16 incitement standard, even if engagement were to include
17 incitement, there's an extensive body of case law set
18 forth -- started and launched by Brandenburg vs. Ohio.
19 That's a United States Supreme Court case. That case
20 specifically uses the word "incitement." So that
21 defined -- that case defined what -- the parameters of
22 what is incitement. We're not saying the First Amendment
23 overruled the Fourteenth or vice versa. We're saying
24 that the Brandenburg standards defined what constituted

1 incitement. That's a mixed question of fact and law.

2 First, we have the standards; and then, of
3 course, we have the factual -- the characterization of
4 the facts. Before I jump to those -- and this will be my
5 last part -- I do want to point out to two other things
6 with respect to, sort of, procedural.

7 First of all, the Colorado Court findings,
8 they do not constitute res judicata, a collateral
9 estoppel in any fashion whatsoever. The same parties
10 were not there. There was not privity. Most
11 importantly, what Colorado law itself makes very clear is
12 that when an issue is on appeal, as this one is -- it was
13 recently heard in the United States Supreme Court last
14 week -- the case cannot be used for res judicata
15 purposes. And that make sense because there's no final
16 determination by a Court. So the legal matter, it's
17 inappropriate to do so of a wholesale importation.

18 And then I would finally submit that the
19 wholesale importation of Colorado's reasoning is not
20 justified by time elements or a rush to judgment here.
21 Obviously, we ask the Court for a stay. But at the same
22 time, this Court rejected the framework of a super
23 expedited proceeding, us moving forward according to
24 Illinois statute. And it should continue to follow that

1 framework rather than create a false sense of urgency not
2 justified by the statute itself. And that does not --
3 that sort of what we would consider a false sense of
4 urgency or artificial manner does not justify altering
5 any procedural rules and requiring some wholesale
6 importation of Colorado in a Court like yourself, which
7 serves in an appellate function.

8 Let me talk a little bit about some of our
9 disagreements with respect to the factual findings. let
10 me first -- or facts, I guess, factual characterization.

11 Let me first start with respect to the video.
12 I know the objectors have sought to introduce this as a
13 demonstrative exhibit. In this context, I'm not sure
14 what that means. They have certainly asked this Court to
15 consider it, and we don't think the Court should for a
16 couple of reasons.

17 First of all, it's demonstrative. It's not
18 actual evidence. This video was never introduced in
19 Colorado. Even the Colorado Court was unwilling to rely
20 upon this or use it as evidence. It's highly edited.
21 There's an overlap. The audio and video don't match up.
22 There's splicing of events that are not necessarily at
23 all in chronological order.

24 And, in fact, the Colorado Court showed there

1 was substantial evidence that this video here was
2 produced for the very purposes of television and to
3 support the hypothesis that President Trump engaged in
4 insurrection. It was not a compassionate, analytical
5 analysis. The timelines are inaccurate. Various items
6 are spliced together.

7 The objectors noted there was an excised
8 portion. Well, what happened there is, there was a
9 portion of the video where someone is speaking into a
10 megaphone. And that was included in the video as a way
11 to show or imply, you know, incitement of the crowd
12 brought through President Trump's tweets.

13 That portion resulted in a lawsuit, a
14 defamation lawsuit, because the person who appeared in it
15 with the megaphone -- and, in fact, you have before you
16 in the record the affidavit from that person -- has said,
17 "Look, that's not what happened. I didn't speak at that
18 time. And I was repeating President Trump's tweets for
19 peacefulness, and then the crowd began to disperse as
20 soon as I did that, so that defamed me." And that's why
21 that was excised from this particular video.

22 And I think that's evidence to show that this
23 video is very untrustworthy. It is not reliable at all.
24 It excludes comments from President Trump, his tweets and

1 the part of his speech in which he said --
2 acknowledged -- he didn't direct people to march. He
3 acknowledged that they would be marching peacefully and
4 patriotically, his multiple tweets of peacefully and
5 patriotically. It completely excludes that.

6 Then, of course, the -- and I was just quickly
7 taking notes -- the comment where President Trump said to
8 the crowd about peaceful and full of love, along those
9 lines, he was referring to the Ellipse. That's the only
10 crowd he was at. He was never at the Capitol. And there
11 was ample, a plethora of evidence within the Colorado
12 record from eyewitnesses who appeared at those rallies --
13 at the rally at the Ellipse, saying there was no
14 violence. There was evidence of people singing and
15 dancing to the Village Boys' YMCA song and other things
16 along those lines. So this is a highly misleading and, I
17 would submit, sort of a video submitted for political
18 purposes.

19 This Court should decline the invitation to
20 take judicial notice of the facts presented in the
21 closing argument or the argument before you by the
22 objectors. She's asking you to take judicial notice of
23 President Trump's comments from a few weeks ago. It's
24 difficult for me to argue those because I'm not exactly

1 sure what she's referring to.

2 But I don't think the Court should simply take
3 judicial notice of facts to, quote, shore up the record.
4 That's not the job -- certainly not the job of an
5 appellate court and not the job of any Court to shore up
6 the record.

7 Much of the presentation and the argument and,
8 sort of, the factual presentation that you heard,
9 frankly, is not in the record or I would submit
10 substantially mischaracterizes what did occur in the
11 record. I just alluded to the statements from a few
12 weeks ago, at Mar-a-Largo.

13 You know, one of the points that was made is
14 that President Trump knew he was making false statements.
15 Well, I would submit that at trial in Colorado, there was
16 a Congressman Swalwell, a Democratic member, in that
17 case, who was called by petitioners, who said he and his
18 colleagues believed that President Trump sincerely
19 believed in what he was saying. That's what he testified
20 to. So a claim of willful falsity of lying is simply not
21 supported, not supported by the record.

22 The record shows that President Trump
23 excised -- did not want to have people like Rudy Giuliani
24 speaking at the Ellipse and others, yet somehow they got

1 in there. We have eyewitness testimony of that and
2 meetings within from Katrina Pierson. She was an
3 eyewitness testimony at the Colorado trial.

4 There was no evidence -- I'm sorry. The
5 evidence that they point to an incendiary speech by
6 Giuliani and Brooks was never admitted to the Colorado
7 trial. It is not in evidence. Of course, I would note
8 the obvious fact that it was not President Trump's speech
9 therein. And, in fact, the evidence shows he did not
10 endorse those speakers at all.

11 It's a mischaracterization for the
12 magnetometers -- it took me a while to properly pronounce
13 that word, the metal detectors used at the Ellipse.
14 There's no evidence that President Trump knew people were
15 armed and therefore he didn't want the magnetometers. He
16 said the magnetometers were not necessary because people
17 were peaceful. And, in fact, the magnetometers stayed in
18 place and were never moved. And the magnetometers never
19 found a gun at all.

20 I would submit that many people who attended
21 probably bring guns when they go grocery shopping, and
22 there were none at the Capitol, none at the Ellipse that
23 were found at all that day. In fact, along the lines of
24 that, there was a police officer who testified in the

1 Colorado trial that the gun recovery unit was looking for
2 people who either had guns or were likely to have guns
3 and also admitted on the stand that no gun was ever
4 found. So that's another mischaracterization with
5 respect to the crowd being armed.

6 The characterization that the crowd was angry
7 at the Ellipse, that may have been some at the Capitol.
8 We certainly saw anger among elements of the crowd, which
9 was absolutely improper conduct, but not certainly at the
10 Ellipse, where President Trump was and where he gave a
11 speech.

12 And, of course, the overwhelming evidence from
13 that day is that President Trump, at the speech at
14 Ellipse, said, "I know you will be marching." He
15 acknowledged people will be marching peacefully and
16 patriotically. He did not direct people to engage in
17 violence.

18 The tweet at 2:24, I understand they make a
19 big issue out of that. There's no evidence that that
20 was, quote, the height of the violence. And that tweet,
21 on its face, did not ask for an incitement. It was
22 followed 14 minutes later by another tweet encouraging
23 people to stay peaceful. That was followed about a half
24 hour, 40 minutes later, by another tweet urging people to

1 remain peaceful. That was followed by about an hour
2 later, telling people to be peaceful and go home.

3 So the vast majority of those comments are
4 characterized as not engaging and not inciting violence;
5 if anything, the opposite.

6 There's also evidence, for example, that
7 President Trump made efforts to ensure that the National
8 Guard was mobilized in the days before in overwhelming
9 numbers to prevent violence. There were two eyewitnesses
10 in Colorado. There was a tweet that was introduced by
11 the petitioners recognizing at those two meetings
12 President Trump wanted National Guard there.

13 There's evidence showing that the Chief of
14 Staff, the Secretary of the Army -- and the Secretary of
15 Army went to both the Capitol police and to the
16 D.C. police -- those are two separate police
17 organizations -- offering additional National Guard.

18 There's evidence that the mayor of D.C., in
19 fact, wrote a letter basically telling Trump, "Don't you
20 dare give us any more National Guard." That was on
21 January 5th, the day before. We submit the evidence
22 shows that President Trump was one of the few officials
23 that wanted an overwhelming presence of the National
24 Guard in order to prevent violence. We have eyewitness

1 testimony to that from the Colorado case.

2 I think, you know, when you are invited to
3 look at President Trump's recent statements, I think
4 that's inviting you also to engage and to become part of
5 what's, frankly, a very polarized political debate. And
6 the goal is not to punish President Trump for his recent
7 statements but rather to apply the law as factually.

8 Now, I want to ask you, to the extent -- of
9 course, we're not saying you should look at this, but to
10 the extent you do, I would urge you to look at
11 Congressman Ken Buck's testimony. He was not a witness
12 at the Colorado trial. You may not have ever heard of
13 his name. He's a congressman from Colorado.

14 He is not a fan of President Trump. He has
15 clashed with President Trump repeatedly. He sharply
16 disagreed with President Trump about whether the election
17 was stolen. So he's not a person who is sort of -- what
18 people pejoratively refer to others as an election
19 denier. Okay?

20 He has been severely criticized by
21 President Trump. In fact, the day before he testified,
22 he announced that he would not run for reelection. And
23 then President Trump severely criticized him. That was
24 the day before he testified. I guess law school has

1 never prepared him for that type of factual situation.

2 But he testified, anyway. And my point is, he
3 is not someone who has sort of drunk the proverbial
4 Kool-Aid. In fact, he has defended the convictions of
5 the people who were convicted for participating in the
6 events of January 6th. He's defended those convictions.

7 And he, in fact, was at the Capitol, and he
8 testified about the evacuation on the House floor on
9 January 6th. He was there. He has spent 28 years as a
10 prosecutor before becoming a congressman. And prior to
11 that, he was a staffer on the Iranian-Contra
12 investigation -- I guess I'm old enough where I remember
13 that -- which itself was a very contentious investigation
14 into presidential behavior.

15 So he's a person who, by many measurements,
16 sharply disagrees with and, in some ways, has been viewed
17 as antagonistic to President Trump; yet, at the same
18 time, he testified that the events of January 6th were
19 not insurrection. He voted against the article of
20 impeachment, and the article of impeachment said that
21 President Trump incited insurrection. He voted against
22 that, despite his disagreements.

23 He viewed the January 6th committee as
24 exceptionally political and biased and provided the

1 details for that. And he agreed that President Trump did
2 not engage in insurrection in any way.

3 So why do I bring him up so much? This is --
4 obviously, I have a very politically polarized issue that
5 we have to recap. And Representative Buck, he is sort of
6 in the middle of it in the political debates in many
7 ways.

8 In fact, he agreed with some of the premises
9 that the objectors have stated that, you know, people who
10 participated in the January 6th riots were properly
11 prosecuted. He agrees with that. He agrees there was no
12 election fraud, that -- oh, that was sufficient to
13 overturn the election. He agrees with those, and, yet,
14 he still agrees there was not insurrection on the date of
15 insurrection.

16 So that shows that he is certainly capable of
17 sort of a discernment and analysis in applying law to the
18 facts outside of our politically polarized environment in
19 respect to the legal framework and the democratic
20 process. So I urge, to the extent this Court is going to
21 look at these factual issues, to adopt that perspective.

22 The good news I would submit is that the vast
23 majority of Courts and officials, election officials, who
24 have looked into these issues, have, in fact, not been

1 swayed by the politically polarized events and debates
2 and that they have applied the law.

3 So there have been -- in 46 jurisdictions,
4 President Trump has been challenged under Section -- his
5 candidacy has been challenged under Section 3 grounds.
6 That's 46 jurisdictions, 45 states plus Washington, D.C.
7 That is something the Court can take judicial notice on.

8 In those 46 jurisdictions, there have been
9 62 original actions, either an original action arising in
10 federal court or state court or a state election
11 official, which normally is the Secretary of State.
12 62 original actions.

13 Of those 62, 60 Courts or election officials
14 have rejected, in treatise, to engage in this type of
15 political factual analysis, and, instead, confine
16 themselves to the law. The Colorado Supreme Court,
17 through their 4-to-3 majority, which overturned the lower
18 District Court, is the only court in the country that has
19 ever gone that far. It's been only one.

20 Maine was the Secretary of State who made that
21 decision. The Superior Court in Maine -- that's the
22 equivalent of the Circuit Court in Illinois -- ordered --
23 remanded the issue and ordered the Maine Secretary of
24 State to reconsider the issue pending the outcome from

1 the United States Supreme Court.

2 And then there have been an additional 34 --
3 I'm not absolutely sure about that number -- of courts of
4 appeals that have considered this. And so we've seen
5 instances -- and I'll refer to Secretary of State and
6 many states which, sort of, perform the same function as
7 the State Board of Elections here, who have rejected, in
8 treatise, to engage in these types of factual findings.
9 And their actions and attitudes have been consistent with
10 the State Board of Elections.

11 So that includes, for example, on the West
12 Coast, Oregon and California. It includes Wyoming, New
13 Mexico, for example. It includes Massachusettes and New
14 Hampshire. That's just sort of a survey of states.
15 Before the United States Supreme Court, there was, in
16 fact, an amicus brief signed by 21 Secretaries of State
17 who served as the chief election official in their state,
18 saying that whatever the Supreme Court does, the
19 Secretaries of State are not equipped, those election
20 officials, and should not be viewed as having
21 jurisdiction over Section 3 claims, whatever the outcome
22 of the federal issues.

23 And then there was another Secretary of State
24 from Michigan. She had also declined to engage in this

1 type of factual analysis and legal definitions of
2 insurrection, allegiances, and federal issues. She also
3 declined -- she submitted an amicus brief saying,
4 "Whatever the Court does, we need clarity."

5 That's substantial evidence that the large
6 weight of authority here is that -- is absolutely
7 consistent with what the State Board of Elections did
8 here, which was not engage in these types of factual
9 determinations to confine itself to the jurisdictional
10 issues and properly find that the State's ballot access
11 laws do not provide an adequate or proper vehicle to make
12 these Section 3 -- to adjudicate these Section 3 claims
13 and certainly not to engage in these factual findings.

14 So, Your Honor, that's my portion of the
15 presentation. I, of course, welcome questions. I want
16 to be responsive to your concerns, as do, I'm sure, my
17 colleagues and I'm sure the objectors to do as well. So
18 if you want me to sit down, stand up, whatever the
19 Court --

20 THE COURT: I'll ask my questions at the conclusion
21 of all the arguments, so thank you, Counsel.

22 MR. GESSLER: Thank you, Your Honor.

23 THE COURT: The time is now 12:03. I know my court
24 reporter needs a break, and some of you may as well. So

1 why don't we recess until 12:35 for a little bit of
2 lunch, if people possibly need to get a little something
3 to eat and drink. Is a half an hour enough time, or --
4 so we can continue on, and then we'll have the
5 petitioner/objector rebuttal argument. Then the Court
6 will entertain questions.

7 Okay. Until then, court is going to be in
8 recess until about 12:35.

9 (A short break was had.)

10 THE COURT: For anyone who might be new to our
11 gallery, I will remind them of the admonishments I gave
12 earlier.

13 Laptops and electronic pads of a similar
14 nature are not allowed except for note-taking purposes
15 only. You're allowed to have electronic pads of a
16 similar nature but must have the camera and visual-
17 and/or audio-recording features disabled. No recordings
18 or photographs are allowed at any time during these
19 proceedings. Use of cell phones during these proceedings
20 are not allowed. Please turn your cell phones off or on
21 silent at this time. My deputies are in the courtroom to
22 enforce these admonishments.

23 All right. Counsels, are we ready to proceed?

24 MS. LEDERER: Yes, Your Honor.

1 THE COURT: Okay. Counsel for
2 petitioners/objectors, you may proceed with your
3 rebuttal.

4 MS. LEDERER: Thank you, Your Honor.

5 I just have a brief rebuttal to address a few
6 key points.

7 First, this case is not about politics. This case
8 is about candidate qualifications. We are talking about
9 a relatively small -- very important but small set of
10 criteria that form the basis for whether or not
11 candidates can be on the ballot and run for office.
12 There aren't that many of them, but Section 3 of the
13 Fourteenth Amendment is one of them, just like the age
14 requirement, the natural born citizenship requirement,
15 and the requirement that a president cannot serve for
16 more than two terms.

17 This is not an investigation into policy
18 decisions or anything like that. This case is not. It
19 is about the constitutionally mandated requirement set
20 out in Section 3 of the Fourteenth Amendment.

21 The most important point that I want to make
22 coming back up here, is that, Your Honor, you have and
23 must engage in de novo review of the electoral board's
24 decision and the review of the factual record. We have

1 appealed a legal issue, the knowing lie standard that the
2 board said governed the objection.

3 The question is what legal standard applies to
4 the objection. That is the first thing that you must
5 decide. And because of that, de novo review governs the
6 entirety of this appeal, including your decision on the
7 very extensive factual record. Controlling law holds
8 that you have de novo review. And that's laid out in our
9 opening brief at Pages 15 through 16. And another
10 citation I can direct you to that was not included there
11 is a Board of Education v. Pollastrini, 2013 Ill. App. 2d
12 120460.

13 I'd like to make just one brief point about
14 the knowing lie standard and the Welch decision. We
15 have, obviously, as Mr. Gessler pointed to, among other
16 things, our sharp disagreements about the meaning of that
17 case. But those are well documented in our brief. I'd
18 just like to point out, Welch was decided over 20 years
19 ago. No Court has relied on it since for the proposition
20 that there's a knowing lie requirement for candidate
21 qualifications. Certainly, if this extremely important
22 scienter standard was part of the electoral board
23 objection review standard, somebody would have mentioned
24 it sometime. That just hasn't happened.

1 The candidate went through a number of the
2 legal issues that they believe require Your Honor to
3 dispose of this case. We stringently disagree with them
4 that they have any merit. But rather than stand here and
5 go through them in particular, because quite a lot of it
6 has to do with heavily documented evidence from the
7 1800s, which is laid out in detail in our briefs, I just
8 want to, again, direct you to our -- both our opening
9 brief which gets into some of that and then, in more
10 detail, our response to Candidate Trump's motion to
11 dismiss below.

12 I would also just make the point that the
13 Colorado Supreme Court, really persuasively, addressed
14 these arguments, in particular the application -- or
15 rather the nonapplication of the narrow political
16 question doctrine and the argument that Section 3
17 requires specific execution legislation from Congress.

18 Not only do we provide very detailed sourcing
19 for why those two things are not appropriate to dispose
20 of this case in our briefs, but the Colorado Supreme
21 Court found them fully unpersuasive and spent quite a
22 big -- quite a bit of time in its analysis of those two
23 issues.

24 On that note and going to the import of the

1 Colorado Supreme Court and whether or not it is, as
2 Candidate Trump has described, somewhat of an outlier
3 decision among 88 cases or 60 cases -- I'm not quite sure
4 what the number was that delved into Section 3 issues --
5 it's just not true that there are these scores of cases
6 that have looked at the merits of Section 3 challenges.

7 The vast -- it is accurate that challenges
8 have been brought, but the vast majority of those cases
9 have been brought in situations that have closed them off
10 before the merits even became an issue. Many of them
11 have been brought by pro se plaintiffs; some of them
12 serial pro se plaintiffs, often brought in federal courts
13 who held that they didn't have Article 3 jurisdiction.
14 Some of them did not utilize the proper ballot challenge
15 procedures for whatever state they were in. And some of
16 them have been decided on substantive state law grounds.

17 Each state has its own ballot objection
18 procedure and, as we've been discussing today, its own
19 law governing how ballot challenges are applied. And
20 there are some that just don't apply to ballot challenges
21 in Illinois. But there are cases that have gotten to the
22 merits, specifically before the Maine Secretary of State,
23 where an actual hearing was held and evidence was
24 reviewed.

1 And the Maine Secretary of State, like the
2 Colorado Supreme Court, found that Trump engaged in
3 insurrection and should be barred from the Maine ballot,
4 and it's accurate that that case is now pending further
5 discussion, but -- or pending further review rather. But
6 the merits were evaluated, and that was the decision that
7 was reached.

8 And in Colorado, there was a very lengthy
9 five-day trial, and then, as we know, appellate review by
10 the highest court in the state. These are the forums
11 where the merits have been evaluated, and they are
12 consistent.

13 And that brings me to the importance of the
14 Colorado Supreme Court decision. Candidate Trump has
15 stated several times that we are asking this Court to
16 import the Colorado decision, and that's just not what
17 we're doing, Your Honor. But it is really important, and
18 that's because it's a highly persuasive case. It is a
19 thoroughly reasoned opinion on a Section 3 ballot
20 challenge that relies on virtually the same evidence.
21 And so it provides a roadmap to looking at a number of
22 these issues.

23 We don't want to import the Colorado decision.
24 We are asking you, quite clearly, to engage in de novo

1 review. But we do think that you should take it into
2 account because it's very helpful and very useful and
3 persuasive.

4 ` You know, Mr. Gessler has highlighted a
5 number of facts that he characterized, I believe, as us
6 having sharp disagreements on. And I don't think it's a
7 productive use of Your Honor's time for me to go through
8 and try to give my view of each of those. But I do want
9 to, again, direct you to our papers and, in particular,
10 our opening brief because we have laid out, in great
11 detail, the facts that we believe are critical for this
12 case. We have sourced them and cited to the record as --
13 to document where those facts are being pulled from.

14 And, again, I want to direct you -- if you
15 have questions about any of the objections that
16 Mr. Gessler has made reference to, we have evaluated
17 those and responded to those in great detail in a chart
18 that's appended as Exhibit 1 to our summary judgment
19 reply.

20 But most of the facts that are actually relied
21 on, that objectors actually relied on -- again, which are
22 laid out in our opening brief -- just aren't subject to
23 these types of objections. As to the January 6th report,
24 it is -- what we rely on in the January 6th report is

1 clearly admissible under Illinois Rule of Evidence
2 803(8), and there's a reason for that, despite any
3 difference between Illinois rule and the Colorado rule.

4 We are familiar with Illinois Rule of Evidence
5 803(8) and took great care to only rely on factual
6 findings in the January 6th report. We did not import
7 the report wholesale. We utilized it for certain factual
8 findings, which is permitted under Rule 803(8), but we
9 did not rely on any conclusions.

10 There is one statement that I do want to make
11 specific reference to, that the people were not armed.
12 You know, we've cited in our brief to information about
13 the weapons that were used at the attack on the Capitol.
14 The January 6th factual findings lay out hundreds of
15 weapons that were confiscated. I believe there was
16 something like 269 knives alone that were confiscated and
17 documented in that report.

18 There were 28,000 people who wouldn't even go
19 through the metal detectors. And while we certainly
20 don't know whether or not all of them were armed, they
21 refused to go through. What we do know -- and that was
22 just at the Ellipse. You know, people who actually broke
23 into the Capitol and overtook the Capitol, we'll never
24 know the full extent of weapons that they brought with

1 them other than what's been documented from the many
2 attacks on the Capitol police and the many convictions
3 that have occurred thus far and continue to occur from
4 people who participated in the attacks.

5 What we do know is that several of them have
6 been convicted of having firearms. I'm not sure why
7 opposing counsel is trying to direct the Court to believe
8 that there weren't weapons on January 6. It doesn't make
9 sense to me, but it's not true.

10 There are a number of things that are critical
11 in this case that are just based on objective facts.
12 There are no disputes about them. And, again, I direct
13 you to our briefs, which we've taken great care again to
14 make sure are well supported with facts and law.

15 THE COURT: Thank you, Counsel.

16 MS. LEDERER: Your Honor, should I stay for
17 questioning?

18 THE COURT: You should stay.

19 MS. LEDERER: Okay.

20 THE COURT: I'll explain while I make my notes.

21 So the way the Court is going to proceed at
22 this point is I'm going to ask some questions of
23 petitioner/objector, and I'll give the
24 candidate/respondent an opportunity. We'll go back to

1 petitioner/objector, back to you with the final set of
2 questions. And then I will give you both an opportunity,
3 five to seven minutes, for summation. Okay?

4 MS. LEDERER: Thank you.

5 THE COURT: In regard to the knowingly lie standard
6 that the general counsel of the election board
7 recommended, can you explain, based upon the authority
8 and that information you stated in your brief, how that
9 standard can be implied from a legislative intent in
10 regard to the Election Code? So how -- looking at the
11 legislative intent, this knowingly lie standard, is that
12 supported by what the Illinois legislature intended when
13 they adopted the candidacy statement, Section 5/7(8)?

14 MS. LEDERER: No, Your Honor, it's not. And this is
15 laid out in our briefs as well. The legislature was
16 clear that the purpose of the candidacy statement and
17 having a candidate attest that they're qualified for
18 office is to make sure that a candidate is qualified for
19 office, not that they aren't going to lie about being
20 qualified for office. There's an obvious -- it's
21 important to have candidate qualifications in office.
22 And what you'll see -- and I believe that it's the
23 Muldrow case and the Geer case, perhaps.

24 But there's -- the statement of legislative

1 intent is to have qualified candidates on the ballot.
2 And then in Goodman, which also expresses the intent of
3 the legislature in their analysis, made really clear that
4 looking at the validity of the candidate's statement
5 includes examination of candidate qualifications.

6 THE COURT: You mentioned that the Welch case has
7 not been cited to or used in over 20 years, but aren't
8 the events related to this particular case and the
9 underlying events on January 6th, 2021, also historical
10 and it hadn't happened in over a hundred years. Why
11 hasn't -- why do you think Welch hasn't come up again in
12 the last 20 years?

13 MS. LEDERER: I think that Welch hasn't come up,
14 Your Honor, because the standard that Welch deals with
15 for the Ethics Act and economic interest statements just
16 doesn't apply to evaluations of candidate qualifications.
17 We cited a number of decisions in our briefs. And in our
18 reply, in particular, there's a series of bullet-pointed
19 cases where the electoral board or Courts reviewing
20 electoral board decisions have looked at situations where
21 candidates have sought office, and the electoral board
22 has removed them from the ballot because they weren't
23 qualified for office. They didn't look at whether or not
24 there was any question about whether or not they

1 believed -- you know, they lied about being qualified.
2 They looked at the core issue, whether or not,
3 objectively, they were qualified.

4 And so, you know, it's not that Welch has
5 never been cited. I can't speak to whether or not it has
6 been -- it hasn't been cited for this principle.

7 THE COURT: Exactly.

8 So how does Illinois law relate to this
9 knowingly lie standard in regard to who can run for
10 office? Is the purpose of the knowingly lie standard to
11 stop people from running for office, or is it to make
12 sure them justify that they're legally qualified to run
13 for office?

14 MS. LEDERER: Candidly, Your Honor, I'm not quite
15 sure how to answer that question because, to my
16 knowledge, the first time the knowingly lie standard was
17 ever used was in this case. You know, my understanding
18 of what the statement of candidacy purpose is is to make
19 sure that candidates are establishing their
20 qualifications and then electoral boards have the basis
21 to evaluate whether or not that's accurate if there's a
22 problem.

23 THE COURT: What burden would applying this
24 knowingly lie standard put on the election process in

1 Illinois?

2 MS. LEDERER: Our view is that it's a tremendous
3 burden because it would change the nature of what
4 electoral board proceedings are comprised of. Instead of
5 looking at objective facts, like a candidate's
6 qualifications, it would then devolve into questions
7 about what a candidate knew, what was their state of
8 mind, what happened.

9 And, you know, one of the things we've alluded
10 to and, well, really, said directly in our briefs is that
11 even analysis of these objective qualifications like
12 residency can be extremely heated and complicated. In
13 the Overturf case, for example, there was a lengthy
14 hearing where there were a number -- there was testimony
15 about the candidate's divorce and his kids and what his
16 intentions were with living in various places, all of
17 these things.

18 That was a lot to figure out whether or not he
19 met the residency requirements. And that's quite
20 frequent, as I understand. And to try to get in
21 somebody's state of mind, like, for example, the general
22 counsel's recommendation that perhaps it would be
23 appropriate to subpoena a notary to see if there were
24 admissions made to the notary, it's just unworkable.

1 THE COURT: What is your perspective as to whether
2 the general counsel of the electoral board overstepped
3 their authority in advising the electoral board about
4 that recommendation to add the knowingly lie?

5 MS. LEDERER: I think that the general counsel
6 recommendation was incorrect. I think it's the general
7 counsel's role to make recommendations and weigh in on
8 hearing officers' statements. I think this one was
9 manifestly wrong.

10 THE COURT: Thank you, Counsel.

11 MS. LEDERER: Thank you, Your Honor.

12 THE COURT: I'm not sure -- this is going to be the
13 State law issues, so I don't know if one or two of you
14 want to come up. I'm not sure who is responsible for
15 that aspect.

16 MR. MERRILL: We'll tag team it, Your Honor, if it
17 makes sense to have someone else come up.

18 THE COURT: All right. Thank you, Counsel.

19 If the Welch case deals with the statement of
20 economic interests and it also dealt with the
21 perspective from that view, does it also apply to the
22 statement of candidacy language about qualification?

23 MR. MERRILL: From our perspective, it does, Your
24 Honor. And Welch was dealing with a slightly different

1 provision in the Election Code 10-5, which also requires
2 a statement of candidacy. The statement of candidacy
3 here for President Trump in the primary is 7-10. But I
4 believe that language is similar, if not identical, in
5 terms of the statement of candidacy is required.

6 So the Election Code statute requires a
7 statement of candidacy and then, either the very
8 preceding sentence or the next one, it says, "And also
9 the statement of economic interests." Now, for
10 presidential candidates, they don't have to submit the
11 statement of economic interests, but it stems from the
12 same provision in the Election Code.

13 And if I might just kind of spawn to the issue
14 that you just raised with petitioners in terms of where
15 does this come from, well, the Election Code now requires
16 a statement of candidacy and a statement of economic
17 interests. But there was an allegation in Welch that
18 that -- there was a false statement in the statement of
19 economic interests. And what they did is they said let's
20 look at the provision of the Election Code regarding
21 perjury, which is 29-10, and say what type of perjury
22 provisions are there. Because it's a Class 3 felony, you
23 can't have perjury with -- that's a felony -- without
24 some sort of intent. And so we have to read some sort of

1 intent into this.

2 And, ultimately, what Welch said is that the
3 remedy that the objectors in that case sought was drastic
4 and absent a clearer statement by the legislature that
5 intended, you know, removal from the ballot as a sanction
6 for an omission that was not knowing, not willful. Then
7 we decline to construe the Election Code in the manner
8 advocated by plaintiffs.

9 So it's not simply -- it's -- if you look at
10 the requirement of the statement of candidacy, you look
11 at Section 10-10, which gives the board jurisdiction, and
12 you look at the provision regarding perjury and,
13 holistically, looking at the Election Code, it doesn't
14 make sense to have candidates removed from the ballot for
15 inadvertent or unproven statements, just statements that
16 turn out to be false if there was not an intent to
17 mislead. And we think that's clear from the language of
18 the statute.

19 THE COURT: So what is the ramification to a
20 candidate if they know -- relative word -- if they know
21 they are not legally qualified to run for the office of
22 which they're seeking, particularly on the statement of
23 candidacy? The example is, they know they don't live in
24 Chicago, but they're running for a seat in Chicago. What

1 has the implication in the election laws been to that
2 kind of candidate that knows they don't qualify?

3 MR. MERRILL: Yeah, so, I mean, those have been
4 relatively easy to resolve. I mean, sometimes they have
5 to have the factual hearing on -- if the question is
6 residency, right, since that is a more complicated
7 question that requires where you live and where you
8 intend to remain, and so sometimes there needs to be
9 factual, you know, evidentiary hearings regarding that.

10 But if it's simply a question of the only
11 house that they had is outside the district and what they
12 say is, "Well, I plan to move to the district" -- this
13 is, I believe, the Goodman case, where its a judicial
14 district. And they just said the issue was -- are we
15 going to look at that as of the statement of candidacy or
16 as the future intent when the election happens.

17 And for purposes of State law, they said it's
18 the statement of candidacy. Since there's no dispute,
19 then we're going to find that that statement of candidacy
20 was incorrect and that you don't meet the qualifications.
21 But it wasn't really about the false swearing. It was
22 more about -- they delve right into the qualification and
23 were able to establish the person was qualified.

24 In this case, obviously, there's no -- there's

1 no way, absent like a conviction for insurrection, which
2 is a federal crime, that Mr. Trump has never been charged
3 with.

4 THE COURT: Do you have to be convicted of a crime
5 to be -- to engage in -- Section 3 language of the
6 Fourteenth Amendment, to engage in insurrection? Is
7 "conviction" in that language?

8 MR. MERRILL: No. What I'm suggesting is that in
9 order for the electoral board to easily look at -- like,
10 if you had a conviction -- and one of the cases that we
11 cited talks about, you know, conviction -- those are --
12 that's provable, right? Here's the crime you were
13 charged with, insurrection, which is under the -- and
14 here's a conviction. And it would be much more difficult
15 for us, if that had happened, for a candidate to defend
16 that they were still, nonetheless, qualified if there
17 were that sort of conviction.

18 Here, you don't have that. And here, you
19 have, you know, a partisan committee that made some
20 findings, a Colorado Court that -- where they didn't
21 really have a full record. It was meant to be
22 abbreviated procedures, but they, nonetheless, went
23 through the process. And that's simply not sufficient
24 here, when you had no evidentiary hearing in the court

1 below. They're simply trying to promote asking this
2 Court to look at the factual findings from the House
3 report as well as from the Colorado trial to determine
4 that those -- and determine that those have been found.
5 Well, none of those witnesses testified before the board
6 or certainly before this Court, and it's just
7 inappropriate to do that.

8 THE COURT: What burden would putting a knowingly
9 false standard on the Election Code create for the
10 electoral process in Illinois? Maybe it won't create a
11 burden.

12 MR. MERRILL: I don't think -- I mean, creating a
13 burden -- I mean, we disagree it's creating a burden
14 because it's always been there, right? Every candidate
15 that reads the Election Code and certainly has counsel
16 advising them, counsel would have been telling them for
17 years, based on 29-10, that don't certify things that are
18 false, right? You don't want to say things in your
19 statement of candidacy or your statement of economic
20 interests that are knowingly false because you can be
21 prosecuted for perjury. So that's always been there.

22 THE COURT: But not a knowingly lie standard.

23 MR. MERRILL: Well, that is -- knowingly lied is the
24 standard for perjury. And I think that's what -- if you

1 look at the general counsel's recommendation, they
2 didn't -- they weren't suggesting -- notwithstanding what
3 petitioner continues to argue, that this was made up.
4 They were saying that 29-10 -- and they quote from the
5 Welch court which said, 20 years ago, in establishing
6 scienter as an element for false statements subject
7 thereto, Section 29-10 strongly intimates that merely
8 innocently or inadvertently false statements shall not be
9 the cause for the imposition of any sanction thereafter.
10 That's in the Welch opinion at 52.

11 So it has all been the law that knowing --
12 that if you're going to be prosecuted for a false
13 statement to the board of elections under the Election
14 Code, it would have to be based on some sort of scienter
15 which would be knowingly or willfully lying. That is
16 just not new. And we continue to disagree with
17 petitioners' assertion this is somehow a new standard.

18 THE COURT: Because there is indicated in the
19 election board's decision, under Paragraph 10, Section G,
20 that there's -- no factual determinations were made
21 regarding the events of January 6th, 2021, what would
22 you -- do you need to get your copy?

23 MR. MERRILL: Yes. I'm just grabbing my copy, Your
24 Honor.

1 THE COURT: Since there's been no determination as
2 to that and that ties into this knowingly lied scenario
3 because it involves former President Trump being
4 disqualified because of an insurrection, what standard or
5 what review -- or what review standard do you believe
6 this Court needs to follow? Because the board has not
7 accepted that, how do you think the Court should proceed,
8 and what evidence that was admitted should the Court look
9 at?

10 MR. MERRILL: So I think that G is an accurate
11 summary of what the board said regarding the events of
12 January 6th. But if you look at C in terms of evaluating
13 whether the statement of candidacy was false under the
14 Election Code as interpreted by Welch, what the board
15 found is that the objectors have not met their burden of
16 proving, by a preponderance of the evidence, the
17 candidate statement of candidacy is falsely sworn.

18 And what they said in the general counsel's
19 recommendation is -- she said there are thousands of
20 pages of documents, right? And there is no evidence
21 anywhere in the record to support the assertion that
22 President Trump knowingly lied on his statement of
23 candidacy. In order to establish that -- and they keep
24 giving the example -- it was up to them to prove that.

1 They had to prove that it was a knowing lie. That was
2 their obligation under Section 29-10, and they didn't do
3 it. And so the GC just said there had -- if they really
4 thought this was possible, then there's ways they
5 probably could have proved it, but they haven't.

6 And so that's the factual finding, the absence
7 of evidence, and this ginormous -- enormous record is a
8 factual finding. And under the Gercone case, which is a
9 case they cite from the First District, they make clear
10 that if you're dealing with factual findings -- this is
11 in Paragraph 24. It says the Court deems an electoral
12 board's findings and conclusions on questions of fact to
13 be, prima facie, true and correct, and we will not
14 overturn such findings on appeal unless they're against
15 the manifest weight of the evidence. So --

16 THE COURT: But didn't the hearing officer find that
17 the candidate had engaged in insurrection, was
18 representing that to the board; the board just didn't
19 accept it as part of their findings?

20 MR. MERRILL: He was recommending that, as an
21 alternative, if they found -- he said motion to dismiss
22 should be denied -- or should be granted because the
23 board didn't have jurisdiction. And then he said the
24 motion for summary judgment -- their motion for summary

1 judgment should be denied because there's disputed facts.
2 And then he went on to have this alternative finding,
3 which the board -- I presume they read it. It wasn't
4 discussed at the board meeting. The general counsel
5 didn't recommend it. It was a little bit like the one
6 Republican on the board who, when she voted, said, "Hey,
7 I just want you to know this Republican thinks there was
8 an insurrection, but I don't believe we" -- I mean, it
9 was kind of, "Hey, I want to just air this and get this
10 off my chest."

11 It wasn't, in our view, a real recommendation.
12 And the hearing officer is appointed by the board. And
13 so it's the board's decision, not the hearing officer's,
14 you know, alternative recommendation that's at issue and
15 on appeal. So there is that language in the hearing
16 officer's recommendation. We think there's no support
17 for it, and the Court obviously didn't even discuss it
18 and didn't make any of the same factual findings to
19 recommendations.

20 THE COURT: Thank you, Counsel.

21 Counsel for petitioner/objectors.

22 So the issue that is before the Court is that
23 the electoral board did not make a decision in this case
24 because of the constitutional issue involved, which is

1 Section 3's interpretation under the Fourteenth
2 Amendment. I've heard arguments, and I've heard
3 statements that the electoral board is allowed to apply
4 the standards in the Constitution for presidential
5 elections, citizenship, age, et cetera, but not to
6 conduct analysis.

7 What analysis was -- did the board have to
8 conduct an analysis to determine whether Section 3 was
9 something they can easily deem as an objective
10 qualification and not make a determination of whether it
11 was insurrection or if it was interpreted correctly?

12 MS. LEDERER: If I understand your question, Your
13 Honor, hearing -- electoral boards are empowered to
14 engage in applying constitutional standards. So to the
15 extent that constitutional analysis requires them to
16 apply facts to a constitutional standard as opposed to
17 saying this constitutional standard can't be applied
18 because it just doesn't -- "we don't like it" or a
19 statute is unconstitutional, for sure, an electoral board
20 cannot say a statute is unconstitutional, so we refuse to
21 apply the facts based on our decision that a statute is
22 unconstitutional.

23 But for a statute or a constitutional standard,
24 they are allowed to apply the standard to the facts. And

1 so they're -- some of them -- some of those standards,
2 such as the age requirement or the
3 natural-born-citizenship requirement, sometimes may not
4 require analysis or application, if you will. And, for
5 example, Mr. Merrill gave the example of somebody who has
6 been convicted of ins- -- of the crime of insurrection or
7 somebody who admits they don't meet the age requirement.

8 But it's not always that straightforward. And
9 while those issues haven't necessarily been presented
10 directly to electoral boards, there are a number of
11 instances where an electoral board may have to apply
12 constitutional standards relating to presidential
13 qualifications.

14 For example, the natural-born-citizenship
15 requirement is not always straightforward. There are
16 circumstances where decisions have to be assessed about
17 where people have been born; for example, somebody born
18 in another state to U.S. citizen parents or noncitizen
19 parents. And there are a number of different things that
20 could be -- questions that have to be assessed. If
21 somebody is going to begin a race at the age of 34 and
22 transition to the age of 35 by the end, that is something
23 that may have to be applied. And we know that electoral
24 boards often engage in analysis of the -- of statutory

1 analysis and of the Illinois Constitution.

2 So as to whether or not Section 3 of the
3 Fourteenth Amendment requires an electoral board to apply
4 facts that are presented through the evidentiary process
5 to a legal standard, that is part of what they do
6 frequently, albeit often through questions like residency
7 or a candidate qualification like the certification in
8 the Gercone case.

9 THE COURT: Section 3 of the Fourteenth Amendment is
10 something that, as we know, has been upheld in the
11 U.S. Supreme Court in regard to how it's to be
12 interpreted. So was the election board right in not
13 trying to make that determination, especially given the
14 uncertainty of how Section 3 of the Fourteenth Amendment
15 is to be interpreted and they shouldn't have been doing
16 that?

17 MS. LEDERER: Our view, Your Honor, is that they
18 were not right in doing that, and there's a reason for
19 that, because the electoral board, lower courts often are
20 in situations where challenging questions are posed to
21 them, and then the outcome is appealed. But that doesn't
22 mean that they don't have authority to decide the
23 question.

24 So in a situation like this one, the proper

1 path would be for the electoral board to decide the issue
2 as they did when they were presented with challenges to
3 Barack Obama's presidency, to Marco Rubio's candidacy.
4 And if they got it wrong, then we would go through the
5 appeal process, perhaps all the way up to the Illinois
6 Supreme Court. But they still have to decide the
7 question just as Courts have to decide questions that are
8 within their jurisdiction.

9 THE COURT: So given that this Court has
10 jurisdiction over this case now, if I were to remand it
11 back down to the electoral board to make a decision or
12 analysis on constitutional issues, would that be proper
13 in your perspective?

14 MS. LEDERER: No, Your Honor, we don't think that
15 that's proper. But not because they don't have authority
16 under Illinois -- under the Election Code to do it, but
17 for a number of other reasons.

18 First and foremost is the timing. And as Your
19 Honor has recognized, the March 19th primary is just
20 around the corner. It's one of -- we have been
21 proceeding with the understanding that this case will
22 probably require resolution by the Illinois Supreme
23 Court. There's simply no -- there's simply no good
24 reason to turn this case back to the electoral board.

1 First, you, Your Honor, have jurisdiction over
2 it and the authority and the requirement of engaging in
3 de novo review. And so you're both empowered and
4 equipped to do it, to do that. And that puts this case
5 in the position to get teed up to go to the Illinois
6 Supreme Court for the quickest resolution possible, given
7 the March 19th primary deadline.

8 THE COURT: Thank you, Counsel.

9 MR. NELSON: Your Honor, Nicholas Nelson for the
10 candidate. Based on the questions, we decided I'd be up
11 here for this round.

12 THE COURT: Thank you.

13 So the question that is pertinent to the
14 state court's analysis of whether a candidate is
15 qualified would be, is Section 3 of the Fourteenth
16 Amendment self-executing by the State such that an
17 election board could make a determination of whether
18 someone has engaged in an insurrection?

19 MR. NELSON: Mostly, yes. The phrase
20 "self-executing" gets used. We think the more precise
21 way to say it is, can Section 3 be enforced in
22 proceedings that were not authorized by Congress. But on
23 that --

24 THE COURT: Or could it be self-activated? If

1 somebody is deemed to have engaged in insurrection by
2 some independent assessment, would Section 3 be one of
3 those qualifications that an election board can say, "We
4 have to consider this now, especially for certain
5 offices."

6 MR. NELSON: If I understand what Your Honor is
7 saying, two separate questions, right? One is, does
8 Section 3 allow itself to be enforced outside of what
9 Congress said is okay? But then the other question is,
10 even if that is true, does Illinois law allow the board
11 to do this?

12 THE COURT: Yes.

13 MR. NELSON: So, yeah, you would have to answer both
14 of those questions in the affirmative in order to get to
15 the merits, along with many other questions that we have
16 discussed.

17 THE COURT: Okay. Why? Why is your answer yes?

18 MR. NELSON: Our answer is, I think, no on both
19 scores, right, that Section 3, you know, can be enforced
20 only as prescribed by Congress. Congress has not allowed
21 it here, so, no, the board can't do it. Also, the
22 Illinois agencies only have the authority that the
23 legislature has given them. Illinois legislature has not
24 given the board the authority to construe Section 3 of

1 the Fourteenth Amendment, so, no, it can't do it for that
2 reason either.

3 THE COURT: Section 3 of the Fourteenth Amendment
4 doesn't require a conviction. The language indicates
5 that the designated individuals, officer of the court and
6 the president not included, directly in the language, to
7 have engaged in an insurrection. Would that argument
8 that he would need to be convicted or somehow deemed to
9 have engaged in an insurrection be required for Section 3
10 of Fourteenth Amendment to kick in?

11 MR. NELSON: Not as a matter of constitutional law,
12 but as a matter of the way the statutes are right now, we
13 would say yes. So Section 3 would allow Congress, in our
14 view, to create whatever enforcement proceedings it sees
15 fit. And Congress did this right after the Civil War.
16 They allowed for civil actions to remove disqualified
17 people from office. So that wasn't a criminal
18 conviction. That was the U.S. Attorney filing a civil
19 lawsuit in district court and removing a person from
20 office based on Section 3 for that reason. It happened a
21 lot of times, actually, after the civil law.

22 THE COURT: Did they have to file an action in every
23 case, or did the Amnesty Act of, I think, 1869 kick in,
24 and everyone didn't have to go to trial?

1 MR. NELSON: It stopped with the Amnesty Act. I
2 mean, the first Amnesty Act covered most people, but not
3 everyone. And then there was another one in 1890, by
4 which time most Civil War veterans were getting pretty
5 long in the tooth, anyway. That took it out -- that
6 meant no more at all.

7 So that -- so Congress could authorize that,
8 which wouldn't require a criminal proceeding. On our
9 view, you know, Griffin's Case says Congress has to
10 authorize some proceedings to determine whether someone
11 engaged in insurrection under Section 3. And probably
12 the only way to do that, the only statute on the books
13 that Congress has enacted right now, would be the
14 criminal proceedings. So as the law stands, yes, a
15 criminal conviction would be required. Under the
16 Constitution, Congress could do something else. They
17 just have not.

18 THE COURT: So the Illinois electoral board would
19 have to wait until Congress enacted something so that
20 they could enforce the disqualification based on
21 insurrection in Section 3 of the Fourteenth Amendment?

22 MR. NELSON: If the Illinois electoral board were to
23 be able to enforce the disqualification, they would have
24 to wait for Congress to give permission for that,

1 specifically. You know, Congress could authorize some
2 other proceeding, right? And then, you know, there would
3 be a matter of, well, would there be, you know,
4 res judicata or something? How would that get enforced
5 in Illinois about ballot access and other things? That
6 would be separate questions. But if the Illinois board
7 were to be going to make this decision itself, did a
8 person engage in insurrection, they would need
9 authorization from Congress.

10 THE COURT: Did Congress, in some way, with the
11 January 6th report, do just that, do an investigation as
12 to whether or not the January 6 activities constituted an
13 insurrection?

14 MR. NELSON: No, for a few reasons. I mean, one is
15 that Congress has to authorize things by statute, right?
16 The January 6 report is not a statute. It was a few
17 members of the House chosen, you know, in ways that were
18 kind of out -- not in keeping with precedent, right? It
19 was chosen by the speaker alone, and there wasn't -- the
20 minority party was not represented in the way they
21 customarily are. None of that really matters because it
22 was a committee, and congressional committees don't pass
23 laws.

24 THE COURT: Is there authority, including U.S. Term

1 Limits case, that actually makes reference to president
2 as an officer of the United States?

3 MR. NELSON: I think -- I mean, this has been
4 briefed in different cases around the country and a
5 little bit here too. So it certainly is -- it happens
6 that when people use the words "Officer of the United
7 States" to refer to the president, I mean, English
8 speakers know what that means.

9 THE COURT: I'm talking about the Supreme Court.

10 MR. NELSON: Yeah, yeah. So, certainly, you could
11 look through -- you can, you know, do a Google Books
12 search or whatever, and that phrase comes up referring to
13 the president. Rarely does it come up in the
14 constitutional context, right?

15 When we're talking about what does that phrase
16 mean when it shows up in the Constitution, what we have
17 is a very different history. We have -- and this has
18 mostly been briefed. But we have just a story maybe
19 20 years before the Fourteenth Amendment saying, you
20 know, I think this means -- you know, just -- not the
21 president, right? Other people.

22 We have a Supreme court, you know, a few years
23 after the Fourteenth Amendment was enacted saying the
24 same thing. They had a case before that was about a

1 statute, but they referred to the Appointments Clause in
2 the Constitution. And they said, no, you have to -- it
3 doesn't include the president. And that history
4 continues throughout the 20th century. We have memos
5 from future Justice Scalia, Future Justice Rehnquist, et
6 cetera.

7 THE COURT: The last question, I'm not sure if this
8 is more geared to your colleague who talked about factual
9 findings.

10 And, if so, you can step up.

11 So when we look at what I believe your
12 colleague coined as a riot versus an insurrectional riot,
13 is it important to understand the underlying reason why
14 this mob of people came together and what they were
15 actually trying to do, not just coming together to have a
16 fight or to just invade the Capitol for some arbitrary
17 reason? They were actually going there to try to stop
18 the electoral college vote and that certification by
19 Congress, which ties in to whether or not they were
20 trying to do something to stop the Democratic process of
21 the country.

22 MR. NELSON: I'll let Mr. Gessler speak to the facts
23 of this to the extent they're relevant, but I think this
24 gets to the legal distinction that I was discussing an

1 hour or so ago before lunch. The reason matters. And
2 why the reason matters is because it's not enough that a
3 riot would happen for political reasons or because the
4 rioters were angry about what political action was going
5 to be taken or even because the rioters wanted to stop a
6 particular political action that was going to be taken.

7 What the difference between a political riot
8 and an insurrection is is that there's an additional
9 element of the insurrection, where it's not just, "We
10 don't like this law"; "We don't like this political
11 action," but that "We are going to substitute our own";
12 "We're going to do things our own way"; "We have our own
13 plan for how this it is going to go."

14 This is what historical insurrections involve,
15 right? You had the whiskey -- most people call it the
16 Whiskey Rebellion, but petitioners here want to call it
17 the whiskey insurrection, for obvious reasons. There
18 were people who didn't want to pay a tax on whiskey,
19 right? So now they had independence flags and other
20 things, lots of indicia of even rebellion that were not
21 present here.

22 But the key element that takes it across the
23 legal line is that they were basically trying to, you
24 know, blue pencil a law or a whole set of laws right out

1 of the books: We're going to have a different tax code
2 in our jurisdiction than Western Pennsylvania and the
3 different areas here, and it's not going to include
4 whiskey taxes. We're going to have an entirely different
5 tax regime, and federal tax politicians who want to do
6 anything different are not going to be allowed to do
7 that.

8 Here, we have a protest, a riot, involving
9 violence and crimes, but it was about one government act.
10 And there's no indication that the rioters had any plan
11 for how they were going to substitute their own version
12 of the government act. They were just angry. They were
13 just rioting. They were committing crimes, but there was
14 no -- the evidence shows no end game, you know, no
15 alternative.

16 THE COURT: All right. Thank you, Counsel.

17 I'll give counsel a few moments, and you can
18 have closing remarks.

19 MR. GESSLER: Your Honor, may I briefly supplement
20 that comment?

21 THE COURT: You may.

22 MR. GESSLER: Your Honor, Scott Gessler on behalf of
23 President Trump. I apologize for the multi-headed --

24 THE COURT: You're just fine, Counsel.

1 MR. GESSLER: With respect to the intent issue, we
2 believe, yes, intent is an element of what constitutes
3 insurrection. When you look at the case law, we talked
4 about goals, geographical scope and intent, and
5 organization is another one.

6 The problem with, I think, both the Colorado
7 definition and the one asserted by the objectors is they
8 essentially conflate what is essentially obstruction with
9 insurrection. And I think my cocounsel sort of properly
10 identified that an insurrection -- and generally
11 understood the time -- contained an element of -- and we
12 don't have specific definitions -- of nullification of
13 governmental authority across a wide swath of
14 governmental actions, entirely removing that governmental
15 authority, not obstructing the execution of one or more
16 specific laws, but rather the entire -- the entirety of
17 governmental authority.

18 And if you look at sort of the historical
19 record, you know, during the Civil War, you had the
20 New York draft riots. Those were major riots obstructing
21 the ability of the United States government as a union to
22 be able to draft people into the Union armies. They
23 required Union Army intervention. It lasted two days.
24 120 people were killed. That was never viewed as an

1 insurrection. It was certainly obstruction. It was
2 certainly a riot. It was certainly illegal.

3 But even that's a historical example of the
4 difference between an obstructive intent and
5 nullification of governmental authority over a wide swath
6 of territory for an extended duration that can then
7 become a rebellion.

8 So that does talk about the legal standards,
9 but it's a mixed question of law and fact.

10 THE COURT: Thank you, Counsel.

11 MR. GESSLER: Thank you, Your Honor.

12 THE COURT: So in closing remarks, because it is the
13 objector/petitioners' petition for judicial review and
14 the motion to enforce that petition for judicial review,
15 I'm going to give you the last word.

16 So counsels for the candidate/respondent, if
17 you need to take a moment, you may. You may have your
18 final remarks.

19 MR. MERRILL: Thank you, Your Honor. Adam Merrill
20 again on behalf of the candidate.

21 We appreciate the Court's attention. This is
22 a vast record. It had an unusual proceeding, and we
23 understand that a lot of people are very interested in
24 this process. And the Court didn't even know this

1 problem existed or this appeal existed a couple weeks
2 ago, and we appreciate the Court's willingness to wade
3 through all this and give us all a chance to participate
4 and share in our thoughts and arguments with the court
5 today.

6 In terms -- on behalf of the candidate, we
7 just would like to kind of remind the Court of where we
8 are in the process, the electoral process. We're less
9 than five weeks away from the voting in the Illinois
10 primary. And when you go -- when a voter goes to their
11 polling place, they can pick a Republican ballot or they
12 can pick a Democratic ballot.

13 If they pick the Republican ballot, those
14 ballots -- all the ballots, as we understand it, have
15 been printed. And all of those ballots have two things
16 on them with respect to the president. They have what's
17 called a "presidential preference primary." And that's
18 President Trump. You have Nikki Haley. There's some
19 other candidates that have since withdrawn, but they're
20 also on the ballot because they complied with and
21 completed the requirements under the Election Code to be
22 on the ballot.

23 And then there's delegates. And as I
24 understand it, for the Republican primary, those

1 delegates are listed -- their specific names are listed.
2 And, frankly, I'm not even sure whether they are
3 identified with Trump. And I think they must have like a
4 parenthesis or something after that. And it's by
5 congressional district, so in every congressional
6 district, voters will have: Here's some Trump delegates;
7 here's some Haley delegates. And they will be able to
8 vote not only for the president but for those delegates.

9 Those ballots are printed. And, regardless,
10 the objectors never objected to the delegates, to
11 President Trump's delegates. There's been no suggestion
12 that those are improper. So they're going to be on the
13 ballot regardless of what decision this Court makes. And
14 there's approximately 60, maybe 63 or so, delegates to
15 the Republican National Convention that are going to come
16 out of this election. Well, at least 50 of those are
17 going to get awarded based on these congressional
18 districts. Nothing this Court does is going to affect
19 that.

20 So what the presidential preference vote
21 determines is how the at-large delegates will be awarded.
22 Most of the public doesn't even understand this. Most of
23 the public is going to show up, and they're going to say,
24 "I get to vote for the president. I don't understand all

1 these delegate things over here."

2 But the board of elections has told us -- and
3 we asked about a week ago, "If this Court or another
4 Court were to say what he did was improper and
5 President Trump should be removed from the ballot, can
6 that be done?" And we were told it is too late in the
7 process for those ballots to be changed.

8 So it's not going to happen. And so we
9 understand there's some legal issues that objectors are
10 intent on appealing, including, it sounds like, beyond
11 this Court depending on what the Court's decision is.
12 And so we think, under those circumstances, there's a
13 number of things the Court could do.

14 It could wait for the Supreme Court to
15 determine how to rule. I think the Court has already
16 indicated that that's -- it's not inclined to do that,
17 which is why we're having the hearing today.

18 But if you decide on the Illinois law issues
19 and you agree with the board resolution of those, then
20 you simply affirm. And it sounds like the objectors may
21 want to take that up with another court in Illinois.

22 If you disagree with us on Illinois law,
23 that's all you need to do. Well, disagree with us,
24 reverse, and remand to the board. And you could

1 suggest -- and they may decide to wait for the Supreme
2 Court or not. And you could indicate to them that they
3 could wait for the Supreme Court.

4 That's what's happened in Maine. The Maine
5 courts have sent it back to the Secretary of State with
6 instructions to wait until the Supreme Court rules and
7 then decide how to proceed. But as in Illinois, in Maine
8 and Colorado, President Trump is on the ballot in both of
9 those states. So those elections are going to happen
10 with him on the ballot. And there will be, perhaps, an
11 issue later on, do we count those votes or not for
12 purposes of the Republican primary?

13 If you want to decide more than just the
14 Illinois issues and you agree with any one of the federal
15 issues Mr. Nelson went through, then you would affirm on
16 an alternative ground. They can't establish that this is
17 a provision that can be enforced in this way, anyway.

18 But if you disagree with us on all of the
19 federal legal issues as well as the Illinois issues, then
20 it would still be necessary to remand it to the board for
21 fact-finding, because, as you see in the last paragraph
22 of their order, they have not -- they did not engage in
23 any fact-finding with respect to that.

24 So given these circumstances, we just think

1 there's -- it's practically impossible to change things
2 for the primary election when it's less than five weeks
3 away. And it just -- what makes the most sense is to
4 wait for the U.S. Supreme Court to rule and then proceed.
5 But we don't believe even if it goes to the Illinois
6 appellate court or Supreme Court, there's going to be --
7 that they're going to be able to do anything differently
8 based on the precedent and how they usually resolve these
9 things.

10 Let me just conclude, Your Honor, by saying
11 that we understand that people have strong feelings about
12 January 6, 2021. Given the footage that all of us have
13 seen, it's not surprising that they do. It was obviously
14 a very dramatic event, and we understand that.

15 And I think the existence and nature of this
16 proceeding -- we've got five lawyers and three lawyers.
17 This is very unusual for an Illinois election contest in
18 my experience. A lot of attention has been paid to it.
19 A lot of effort has been put into it. But the reality
20 is, the Illinois Board of Elections is not the place to
21 determine whether January 6, 2021, constituted an
22 insurrection or whether President Trump engaged in an
23 insurrection.

24 And similar to the other jurisdictions, all

1 but 2 -- the other 45 -- I guess 43 states, plus the
2 District of Columbia, we believe that the Illinois Board
3 of Elections was correct when it determined it didn't
4 have the power under these circumstances and on this
5 record to keep President Trump off the ballot, which is a
6 substantial right and shouldn't be lightly trifled with.

7 And we believe that nothing in the objectors'
8 petition or the briefs that have been submitted to this
9 Court or, frankly, the entire record, if the Court really
10 decides to go through all of that, indicates that the
11 board erred in its factual finding of no evidence that he
12 substantially -- that he knowingly lied on his statement
13 of candidacy and no legal error, which we believe, again,
14 is entitled to some deference -- that there's no
15 indication -- they haven't established there was a legal
16 error when they determined it didn't have the power to
17 reach these complicated constitutional issues. And we
18 would ask on both of those bases that the Court affirm
19 the Board of Elections. Thank you.

20 THE COURT: Thank you, Counsel.

21 Counsel for petitioner/objectors.

22 MS. LEDERER: Thank you, Your Honor.

23 Our democracy was attacked on January 6th.
24 There is no serious dispute that Candidate Trump's effort

1 while president to stop the transfer of power was the
2 reason. Even under the standard that the candidate is
3 proposing for what an insurrection means, January 6
4 qualifies because the attackers at the Capitol were
5 trying to keep Trump in power. They were trying to
6 disrupt the transfer of power and keep him as president.
7 They ultimately did not succeed, but they had that goal.
8 We do not believe that the standard that Candidate Trump
9 has advanced is the right one. But even under his
10 standard, January 6 meets it.

11 That clearly falls within Section 3 of the
12 Fourteenth Amendment, which is a qualification or a
13 disqualification for the presidency, that the Board of
14 Elections had the authority and had the duty to evaluate.
15 And in deciding how to proceed in the underlying
16 objection, they made two errors.

17 They implemented the knowing lie standard,
18 which has not appeared in any point in time, any other
19 place, in any other way. And to that point, I'd just
20 like to make one observation about the Welch case. The
21 Welch case looked at the Ethics Act, which explicitly had
22 a scienter standard for the economic interests statement.
23 It was in the text. It said that, under the Ethics Act,
24 if there is -- it required, if you will, the knowing lie

1 in speaking to the economic interests statement. That is
2 not part of the Election Code for a candidate statement
3 of interests.

4 And, indeed, the electoral board frequently
5 declares that candidate statements of interests are
6 improper and kicks candidates off the ballot without
7 finding that they engaged in perjury or looking at
8 whether or not there was any intent to the misstatement
9 of qualification.

10 Judge Erickson, as the hearing officer,
11 carefully weighed the record. He went through the
12 record. He issued a decision on the legal arguments and
13 the facts. I believe it's 20 or 30 pages long. He went
14 through it. And while his factual finding that Donald
15 Trump engaged in insurrection and should be removed from
16 the ballot is not afforded the same weight that the
17 electoral board's decision on that point would be, it is
18 persuasive and important because he reviewed the issues
19 and the evidence here and carefully and thoughtfully
20 evaluated them, and it should be adopted by the Court.

21 We take issue with the point that candidate's
22 counsel has made that there's just nothing that can be
23 done as far as the election. We speak to this point in
24 our reply brief with, again, appropriate citations. But

1 the board of elections doesn't throw up its hands when
2 there's a late-breaking decision about a candidate's
3 ability to remain on the ballot.

4 The standard procedure for when a Court
5 decides or an electoral board decides that a candidate
6 cannot be on the ballot after ballots have been printed
7 and it's too late for the ballots to be reprinted is to
8 try to notify the voters of the decision so they are
9 informed and can make decisions about their votes based
10 on the Court order. And then if, as necessary, votes
11 will not be counted.

12 But it's not that the board of elections
13 throws up its hands and says, "Oh, it's too late to
14 reprint the ballots. There's nothing that can be done."
15 They perform their duties to tell voters what has -- what
16 has happened so voters are aware and can cast their vote
17 with an understanding of how it will be counted;
18 otherwise, voters would be disenfranchised.

19 And that's the standard procedure. And late
20 decisions about candidates on the ballot happen with some
21 frequency, and that's why it is standard. So it's not an
22 appropriate course of action to just say, "It's five
23 weeks away. There's nothing that we can do."

24 That being said, we also -- as we spoke to

1 earlier and laid out in our reply brief -- do believe
2 that it's extremely important for this case to get
3 resolved quickly and with a degree of finality, which
4 means that, Your Honor, as we've discussed extensively
5 today, it's so important for you to utilize your
6 authority and your duty to give the record and the
7 questions before you de novo review and then make a
8 decision on the questions that are before you; and then,
9 if necessary, the Illinois Supreme Court can weigh in
10 with the case fully ripe for resolution.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 MS. LEDERER: We also very, very much appreciate the
14 time effort and energy that you've given to this most
15 important case. Thank you.

16 THE COURT: Thank you. Thank you as well.

17 The Court will take this matter under
18 advisement. I will endeavor to get a decision in by next
19 week. Counsels, I can e-mail you and possibly set up a
20 time for you to appear on Zoom on maybe Thursday or
21 Friday next week. Is that acceptable?

22 MR. MERRILL: That's acceptable from candidate.

23 MS. LEDERER: Yes, Your Honor.

24 THE COURT: So that would probably be the best thing

1 to do instead of setting a time right now, just in case
2 I'm not ready. But I appreciate your arguments. I
3 appreciate your time and commitment, and it's been my
4 pleasure to make the time to deal with this very
5 important case.

6 MS. LEDERER: Thank you, very much.

7 MR. MERRILL: Thank you, Your Honor.

8 THE COURT: Thank you all for your arguments.

9 (The hearing concluded at 1:52 p.m.)

10 (Which were all the proceedings had
11 in the above-entitled cause on this
12 date.)

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)

4 Tina M. Hickey, being first duly sworn, on oath
5 says that she is a Certified Shorthand Reporter
6 doing business in the City of Chicago, County of Cook and
7 the State of Illinois;

8 That she reported in shorthand the proceedings
9 had at the foregoing hearing;

10 And that the foregoing is a true and correct
11 transcript of her shorthand notes so taken as aforesaid
12 and contains all the proceedings had at the said hearing.

13 Witness my official signature as a Certified
14 Shorthand Reporter in the State of Illinois on
15 February 23rd, 2024.

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23 CSR No. 084-003858

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CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that on March 8, 2024, I caused a true and correct copy of the foregoing **NOTICE OF FILING OF HEARING TRANSCRIPT** to be served upon all parties/counsel of record via the Court's Electronic Filing System, and upon the following via electronic mail message:

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CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that on March 8, 2024, I caused a true and correct copy of the foregoing RESPONDENT-APPELLANT DONALD J. TRUMP'S RULE 328 SUPPORTING RECORD to be served upon all parties/ counsel of record via the Court's Electronic Filing System.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this certificate of service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Adam P. Merrill

Adam P. Merrill