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No. 1-24-0437

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STEVEN DANIEL ANDERSON *et al.*,	)	Appeal from the Circuit Court of the
	)	Cook County, County Department,
Petitioners-Appellees,	)	County Division, Illinois
	)	
v.	)	
	)	
DONALD J. TRUMP,	)	
	)	
Respondent-Appellant,	)	No. 24 COEL 000013
	)	
and	)	
	)	
The ILLINOIS STATE BOARD OF ELECTIONS, sitting as the State Officers Electoral Board, *et al.*,	)	
	)	The Honorable
	)	TRACIE R. PORTER,
Respondents.	)	Judge Presiding.

(full caption on following page)

BRIEF OF RESPONDANTS THE ILLINOIS STATE BOARD OF ELECTIONS AND ITS MEMBERS

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, and DARRYL P. BAKER, 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, Respondents.	)	Appeal from the Circuit Court of the Cook County, County Department, County Division, Illinois No. 24 COEL 000013 The Honorable TRACIE R. PORTER, Judge Presiding.

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NATURE OF THE ACTION

This is an action for administrative review of the final administrative decision of the Illinois State Board of Elections, by its members Casandra B. Watson, Laura K. Donahue, Jennifer M. Ballard Croft, Cristina D. Cray, Tonya L. Genovese, Catherine S. McCrory, Rick S. Terven, Sr., and Jack Vrett (collectively, "Board"). The Board's decision overruled the objection by Petitioners-Appellees Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker to the nomination papers filed by Donald J. Trump to be a candidate for the President of the United States.

Petitioners claimed that Trump was disqualified from running for office under Section 3 of the Fourteenth Amendment to the United States Constitution. U.S. Const. amend. XIV, § 3. The Board granted Trump's motion to dismiss, holding that it did not have subject matter jurisdiction under Illinois law to determine whether a candidate is disqualified under Section 3. Alternately, the Board ruled that petitioners had failed to prove that Trump's statement that he was qualified for office was "falsely sworn," and therefore failed to prove that Trump violated section 7-10 of the Election Code, 10 ILCS 5/7-10 (2022).

On administrative review, the circuit court held that Trump was disqualified under Section 3, reversed the Board decision, and ordered that Trump be removed from the ballot for the Illinois presidential primary on

March 19, 2024. After Trump appealed, the United States Supreme Court held in a similar case that the States have no power to enforce Section 3 against federal candidates. This court then vacated the circuit court's judgment insofar as it had held that Trump was disqualified under Section 3, but the court ordered Trump and petitioners to brief any remaining state law issues. Trump filed a brief arguing that no state law issues remained, and petitioners responded that this court should review the Board's alternate holding — that petitioners had failed to prove that Trump's statement of candidacy was "knowingly false" — under the public interest exception to mootness. After Trump declined to reply, this court ordered the Board to respond to petitioners' arguments. No issues are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether this case is now moot and the public interest exception does not apply because petitioners' proposed state law issue is unlikely to recur, and no authoritative decision on the issue is needed, given the uniquely complex nature of proving disqualification under Section 3.

2. Alternatively, even if the public interest exception applied, whether the Board and the circuit court did not have subject matter jurisdiction to address the merits of petitioners' Section 3 objection.

JURISDICTION

On January 30, 2024, the Board issued a final administrative decision overruling petitioners' Section 3 objection to Trump's nomination papers. SR102-05.[1] That same day, petitioners timely filed a petition for administrative review. SR106-11; *see* 10 ILCS 5/10-10.1 (2022) (five-day deadline). On February 28, 2024, the circuit court entered an order and final judgment reversing the Board's decision, granting petitioners' Section 3 objection, and ordering the Board to remove Trump from the primary ballot. SR122-59. On the same day, Trump timely filed a notice of appeal. SR195-97; *see* Ill. Sup. Ct. R. 303(a). Therefore, this court had jurisdiction over this appeal under Ill. Sup. Ct. R. 301. For the reasons set forth in Section II.A *infra*, however, this appeal is moot and the public interest exception to mootness does not apply and, for the reasons set forth in Section II.B *infra*, neither the Board nor the court has subject matter jurisdiction to decide any issue other than that they lack authority to enforce petitioners' Section 3 objection against Trump.

[1] Because the common law record on appeal was never filed, this brief cites the agreed supporting record filed by Trump as "SR__," Trump's brief as "AT Br. __," and petitioners' brief as "AE Br.__."

STATEMENT OF FACTS

This is an administrative review action arising from petitioners' objection to Trump's candidacy to run for the Republican nomination for the Office of the President of the United States. Petitioners filed their objection with the Board in January 2024, challenging Trump's nomination papers under section 7-10 of the Election Code, 10 ILCS 5/7-10 (2022). SR8-10. Petitioners claimed that Trump had "falsely" sworn that he was qualified to hold office because he was disqualified under Section 3 for having "'engaged in insurrection or rebellion'" on January 6, 2021. *Id*. (quoting U.S. Const. amend. XIV, § 3). In support, petitioners relied in part on the decision by the Colorado Supreme Court — in a "case presenting nearly identical legal and factual issues as this challenge" — concluding that Trump was disqualified from holding office under Section 3. SR10-11 (citing *Anderson v. Griswold*, 2023 CO 63 (Colo. Dec. 19, 2023), *rev'd*, *Trump v. Anderson*, 601 U.S. 100 (2024) (*per curiam*)); *see* SR20, 68-69, 73.

The Board Proceeding

Trump and petitioners initially filed and briefed, respectively, Trump's motion to dismiss the objection and petitioners' motion for summary judgment. SR167. After the parties presented argument, a hearing officer issued a report recommending that the Board grant Trump's motion to dismiss because Illinois law did not provide the Board with authority to engage in the constitutional analysis necessary to resolve petitioners' Section 3 claim.

SR173-80. In the event the Board rejected the recommendation that it grant the motion to dismiss, the hearing officer also provided alternative recommended findings that Trump engaged in an insurrection within the meaning of Section 3. S180-82.

The Board issued a decision adopting the hearing officer's recommendation that it grant Trump's motion to dismiss because the Board "lacks jurisdiction to decide whether Section 3 of the 14th Amendment" barred Trump from the ballot. SR104. Alternately, the Board adopted a recommendation of its general counsel and found that petitioners had not met their burden of proving that Trump's statement of candidacy was "falsely sworn in violation of Section 7-10 of the Election Code." SR103-04; *see* SR92-101 (general counsel's recommendations). In a written recommendation, the general counsel had recommended that the Board also find that petitioners had failed to prove that Trump's statement of candidacy was "knowingly false," in violation of section 7-10 of the Election Code. SR98-100. The general counsel explained that, in contrast to other qualifications to hold office, such as age or residency, disqualification under Section 3 "is not a simple question of fact readily known to the candidate," SR99, and that petitioners had failed to present evidence that Trump knowingly made a false statement in his certification that he was qualified for office, SR100. Finally, the Board clarified that it had made no factual determinations regarding the events of January 6, 2021, granted the motion to dismiss, and overruled

petitioners' objection. SR104.

The Administrative Review Action

Petitioners filed a petition for administrative review of the Board's decision with the circuit court. SR106-111. After briefing and a hearing, the circuit court entered a memorandum judgment and order reversing the Board and granting petitioners' objection. SR122-59. While the circuit court agreed with the Board that the Board did not have authority under Illinois law to engage in the constitutional analysis necessary to adjudicate petitioners' Section 3 claim, the court noted that a court could adjudicate the claim. SR141-43. The court did not read the Board's decision to have relied on the general counsel's recommended alternate holding. SR132 n.8, 135 n.12. But the court also stated that the general counsel's recommendation with respect to the "knowingly lied" standard was contrary to Illinois law. SR132 n.8, 154 n.32.

Relying in substantial part on the Colorado Supreme Court's decision in *Griswold*, 2023 CO 63, the circuit court held that petitioners proved that Trump had engaged in an insurrection within the meaning of Section 3, Trump was disqualified from holding office of the Presidency under that provision, and Trump should be removed from the primary ballot. SR144-52. Based on its holding that Trump was disqualified under Section 3, the court also ruled that Trump falsely swore that he was "legally qualified" to hold the office that he sought in violation of sections 7-10 and 10-5 of the Election Code.

SR152-58. In doing so, the court noted that the case presented "the novel issue" whether a statement of candidacy was invalid based on "a disqualification of candidacy" under the Fourteenth Amendment. SR157. The court reversed the Board's decision and ordered the Board to remove Trump from the primary ballot. SR158-59. After Trump appealed, SR195, the circuit court issued an order clarifying that its judgment was stayed pending resolution of the appeal, SR194.

Shortly thereafter, the Supreme Court decided *Trump v. Anderson*, 601 U.S. 100, holding that the "States have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency." *Id.* at 110. The Court thus determined the Colorado Supreme Court had erred in ordering Trump excluded from Colorado's primary ballot, and it reversed *Griswold*, 2023 CO 63. *Id.* at 108, 110, 117. Trump then moved in this court to summarily vacate the circuit court's judgment and to instruct the circuit court to dismiss the administrative review action "without further action." Trump's Mot. to Vacate Based on U.S. Sup. Ct. Decision at 1-6. Although petitioners opposed Trump's motion, they conceded that the Supreme Court had "determined that the relief requested by Petitioners, removing Trump from the ballot, could not be granted." Appellees' Obj. & Resp. to Mot. to Vacate at 3. Instead, they argued, this court should remand the matter to the circuit court to reconsider its decision in light of *Trump*, *id*. at 1-2, and that the circuit court's statement rejecting the Board's alternative reasoning should

be "preserved," *id*. at 4.

This court granted Trump's motion in part, reversing and vacating the circuit court's judgment "as it relates to and in light of *Trump*." SR198. But the court denied Trump's request that it instruct the circuit court "to dismiss without further action," and ordered the parties to file briefs "regarding any remaining state law issues." *Id*. Trump then filed his opening brief, arguing that the Supreme Court's decision in *Trump* barred petitioners' requested relief and left no state law issues for resolution. AT Br. 1, 4-5. He requested that this court issue a mandate vacating the circuit court's judgment and instructing the circuit court to dismiss the administrative review action. *Id*. at 6.

Petitioners responded that the Board erred in applying a "knowingly false" standard to their Section 3 objection and that this court should address the merits of the Board's alternate reasoning under the public interest exception to mootness. AE Br. 1-3, 7-8. With respect to the merits of that reasoning, petitioners argued that a candidate who is not qualified to hold the office for which he seeks to run is ineligible under section 7-10 of the Election Code for a false statement of candidacy regardless of whether the candidate's certification was "knowingly false." *Id*. at 8-13. Petitioners requested that this court rule on that state law question, not vacate "the remainder" of the circuit court's decision, and overrule the "Board's decision on the state law issues." *Id*. at 14.

On appeal, after Trump filed no reply, this court ordered the Board to respond to petitioners' brief.

ARGUMENT

The court should not address the merits of petitioners' arguments regarding the Board's decision overruling their Section 3 objection because, as petitioners concede, this case is now moot. Contrary to petitioners' contention, however, the public interest exception to mootness does not apply because petitioners have not shown that their proposed state law question is likely to recur or that an authoritative decision is necessary. Therefore, the appropriate disposition is to vacate the Board's decision and circuit court's judgment on review, and remand with directions to dismiss petitioners' objection and the subsequent administrative review action.

But even if the public interest exception applied, this court should not address the merits of petitioners' objection because, under *Trump*, neither the Board nor a court has subject matter jurisdiction to decide claims seeking to disqualify federal candidates under Section 3. Therefore, the Board and the circuit court were limited to considering whether they had jurisdiction to consider petitioners' Section 3 objection, and, on concluding they did not, to dismissing the objection and administrative review action, respectively. In turn, this court's review is limited to deciding whether the Board and the circuit court had subject matter jurisdiction to decide petitioners' objection, and to correcting any action that exceeded that jurisdiction. Because *Trump*

established that the Board and the circuit court lacked jurisdiction to decide petitioners' Section 3 objection, this court should vacate the Board's decision and the circuit court's judgment, and remand with directions to dismiss petitioners' objection and the subsequent administrative review action.

Contrary to petitioners' suggestion, *see* AE Br. 10, the Board's decision not to file a brief in this administrative review action did not reflect a position on the merits of petitioners' arguments. The Board is an adjudicative entity. Although as a nominal party it has standing to participate in litigation challenging the correctness of its decisions on administrative review, the Board's usual practice is to preserve its impartial role as an adjudicator by taking no position in such challenges. *Cf. Bendell v. Educ. Officers Electoral Bd. for Sch. Dist. 148*, 338 Ill. App. 3d 458, 460 (1st Dist. 2003) ("to assume the role of advocate would compromise the Board's required duty of impartiality").

I. The standard of review

Whether an appeal should be dismissed as moot is a question of law reviewed *de novo*. *In re Alfred H.H.*, 233 Ill. 2d 345, 350 (2009). Whether an administrative agency and the circuit court had jurisdiction are also questions of law reviewed *de novo*. *Modrytzkji v. City of Chi.*, 2015 IL App (1st) 141874, ¶ 9.

II. Because *Trump* resolved petitioners' sole objection, no state law issues remained.

Petitioners do not dispute that *Trump v. Anderson*, 601 U.S. 100, resolved their Section 3 objection. *See* AE Br. 1-3. Under that decision, "States have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency." *Trump*, 601 U.S. at 110; *accord id.* at 112 (no constitutional provision "authorize[s] the States to enforce Section 3 against federal officeholders and candidates"). Instead, the Supreme Court explained, "the Constitution makes Congress, rather than the States, responsible for enforcing Section 3 against federal officeholders and candidates." *Id*. at 106; *see id*. at 109-10 ("[t]he Constitution empowers Congress to prescribe how those determinations [that Section 3 applies to a particular person] should be made"). Because "responsibility for enforcing Section 3 against federal officeholders and candidates rests with Congress and not the States," the Court reversed the Colorado Supreme Court's judgment removing Trump from Colorado's ballot based on a nearly identical objection to petitioners'. *Id*. at 117. Consequently, after *Trump*, this court cannot afford petitioners any effectual relief, making this appeal moot. In addition, *Trump* established that the Board and circuit court lacked jurisdiction to adjudicate the merits of petitioners' Section 3 objection. For either or both of these reasons, this court should vacate the Board's decision and circuit court's judgment and remand with instructions to dismiss petitioners' objection and the subsequent administrative review action.

A. This case is now moot, and the public interest exception does not apply.

A case is moot when intervening events render it impossible for the reviewing court to grant effectual relief or otherwise leave no actual controversy between the parties. *Commonwealth Edison Co. v. Ill. Com. Comm'n*, 2016 IL 118129, ¶ 10; *see, e.g.*, *Felzak v. Hruby*, 225 Ill. 2d 382, 392 (2007) (appeal is moot where reviewing court cannot "grant effectual relief to the complaining party"); *Richardson v. Rock I. Cnty. Officers Election Bd.*, 179 Ill. 2d 252, 256 (1997) (appeal moot where "issues involved in the trial court no longer exist because intervening events" render it impossible to grant effectual relief) (cleaned up).

Here, the Supreme Court's decision in *Trump* mooted this action by making it impossible for this court to grant petitioners any relief requested. *Trump* held that "States have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency." 601 U.S. at 110. Accordingly, this court vacated the circuit court's judgment purporting to enforce Section 3 against Trump. SR198. Petitioners do not (and cannot) argue that vacatur was inappropriate, or that there is any relief this court can now order to remedy their Section 3 claim. Thus, no actual controversy remains between the parties, and this court cannot grant petitioners any effectual relief.

In these circumstances, any further decision by this court would be an improper advisory opinion. *Commonwealth Edison*, 2016 IL 118129, ¶ 10

("When a decision on the merits would not result in appropriate relief, such a decision would essentially be an advisory opinion."). But appellate courts do "not review cases merely to establish precedent or guide future litigation." *Id.* (internal quotation marks omitted). Indeed, because "[t]he existence of a real controversy is a prerequisite to the exercise of [appellate] jurisdiction," the mootness of an appeal "is no mere technicality." *In re Adoption of Walgreen*, 186 Ill. 2d 362, 365 (1999); *see also People v. Hill*, 2011 IL 110928, ¶ 6 (dismissing moot appeal as "an actual controversy is an essential requisite to [court's] jurisdiction").

Thus, the "appropriate disposition" here is to vacate the Board's decision and circuit court's judgment with instructions to dismiss petitioners' objection and the subsequent administrative review action. *See Felzak*, 226 Ill. 2d at 391-92, 394 (after finding matter moot, vacating appellate and circuit court judgments with instructions to dismiss circuit court action); *accord Commonwealth Edison*, 2016 IL 118129, ¶ 27 (vacating appellate court judgment because appeal was moot); *Walgreen*, 186 Ill. 2d at 366-67 (vacating trial court judgment with instruction to dismiss action because appeal was moot); *see also United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950) ("established practice" when case becomes moot on appeal "is to reverse or vacate the judgment below and remand with a direction to dismiss").

For their part, petitioners do not dispute that their action is moot but instead argue that this court should consider their proposed state law issue

under the public interest exception to mootness. *See* AE Br. 7-8. But the public interest exception is "invoked only on rare occasions when there is an extraordinary degree of public interest and concern." *Commonwealth Edison*, 2016 IL 118129, ¶ 13. To that end, the exception is "narrowly construed" and requires a "clear showing" that each of three criteria are satisfied: (1) the question is "of a public nature," (2) "an authoritative determination of the question is desirable for the future guidance of public officers," and (3) "the question is likely to recur." *Id*. at ¶¶ 12-13. A party must satisfy each criterion to invoke the exception. *Id*. at ¶ 13. Petitioners have not made this showing.

Most notably, petitioners cannot satisfy the third criterion because they have not clearly shown that any issue regarding the application of section 7-10 of the Election Code to a Section 3 objection is likely to recur. Under *Trump*, the Board may not enforce any future Section 3 objections against a federal candidate. 601 U.S. at 110-17. As a result, any question regarding section 7-10 in the context of a Section 3 objection to a federal candidate cannot recur. Nor have petitioners clearly shown that there is a "substantial likelihood" that a Section 3 objection will be asserted against a future state candidate. *See Commonwealth Edison*, 2016 IL 118129, ¶ 20 (finding third criterion not met where there was no "substantial likelihood" question would recur). In fact, any assertion that a Section 3 objection will be filed against a future, unknown state candidate who could be found to have engaged in an insurrection against

the United States after holding government office would be entirely speculative, which is insufficient to satisfy the third criterion. *Id.*; *see also* *Felzak*, 226 Ill. 2d at 394 (public interest exception did not apply it was "unclear . . . to what extent the issue raised in this case are likely to recur").

Insofar as petitioners suggest that the section 7-10 issue may recur in the context of other, non-Section 3 objections, *see* AE Br. 7-8, they have not demonstrated a likelihood that candidates subject to such objections can or will argue that their certifications were not "knowingly false." And even if a candidate raised such a defense, as explained in the general counsel's recommendation, SR99-100, the Board's finding that petitioners had failed to show that Trump's certification was "falsely sworn," SR104, was based on the unique complexities associated with proving disqualification under Section 3, *see* SR157 (circuit court's recognition that issue was "novel"). Thus, by adopting the general counsel's recommendation, the Board did not indicate that a similar argument could be made in the context of other objections. *See* SR98-100. Accordingly, petitioners' proposed state law issue is unlikely to recur, and this court therefore should decline petitioners' invitation to invoke the public interest exception to mootness. *See Hill*, 2011 IL 110928, ¶ 8 (declining to apply public interest exception because issue mooted by statutory change was unlikely to recur); *Richardson*, 179 Ill. 2d at 256-57 (same).

Petitioners also cannot establish the second criterion for the public interest exception. As to this criterion, petitioners failed to demonstrate that

an authoritative determination on their proposed state law issue is necessary to provide future guidance. When assessing this factor, the court "looks to whether the law is in disarray or conflicting precedent exists." *Commonwealth Edison*, 2016 IL 118129, ¶ 16. And "[w]hen a case presents an issue of first impression, no conflict or disarray in the law exists." *Id*. Petitioners identified no such conflict or disarray concerning the application of section 7-10 to a Section 3 objection. *See* AE Br. 7-13. Nor could they do so: the Board resolved this issue as a matter of first impression. *See* SR157 (noting "novel issue" raised by petitioners' Section 3 objection); *see also Griswold*, 2023 CO 63, ¶ 7 (Section 3 objection under Colorado election law was "uncharted territory" presenting "several issues of first impression").

Finally, as to the first criterion, while issues involving election law are often a "matter of public concern," *see Goodman v. Ward*, 241 Ill. 2d 398, 406 (2011), questions regarding the application of section 7-10 to Section 3 objections to federal candidates will not recur absent a congressional enactment delegating the power to enforce Section 3, *see Trump*, 601 U.S. at 109-10, 114-15. Therefore, any public concern raised by petitioners' proposed state law issue is substantially diminished. In any event, the public interest exception does not apply unless petitioners satisfy all three criteria, which they have not done. *Commonwealth Edison*, 2016 IL 118129, ¶ 13.

Because this case is moot and the public interest exception does not apply, this court should vacate the Board's decision and the circuit court's

judgment, and remand with instructions to dismiss petitioners' objection and subsequent administrative review action.

B. Mootness aside, this court's authority is limited to vacating the decisions below because neither the Board nor a court has authority to enforce petitioners' Section 3 objection.

As explained, the Supreme Court held in *Trump* that "States have no power under the Constitution to enforce Section 3 with respect to federal offices." 601 U.S. at 110; *accord id.* at 111-12 ("nothing in the Constitution delegates to the States any power to enforce Section 3 against federal officeholders and candidates"). Although the Court did not use the term "jurisdiction," it follows that because the Board and the circuit court lacked power to enforce Section 3 against Trump, they lacked subject matter jurisdiction to adjudicate the merits of petitioners' Section 3 objection. *See Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002) (subject matter jurisdiction "refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs"); *In re A.H.*, 195 Ill. 2d 408, 415 (2001) ("Subject matter jurisdiction refers to a court's power both to adjudicate the general question involved and to grant the particular relief requested."). Thus, when deciding the merits of petitioners' Section 3 objection, the Board and the circuit court exceeded their authority and their decisions should be vacated as void.

To begin, while the General Assembly has authorized the Board to determine whether statements of candidacy are false, 10 ILCS 5/10-10 (2022),

the legislature could not empower the Board to decide Section 3 objections against federal candidates, *see Trump*, 601 U.S. at 110-17; *see also Siddens v. Indus. Comm'n*, 304 Ill. App. 3d 506, 510 (4th Dist. 1999) (agency "possesses only those powers granted to it by the legislature"). As a result, the Board should not have addressed the merits of petitioners' Section 3 objection, and to the extent its decision — in the alternate reasoning — did so, that decision is void. *See Bus. & Pro. People for the Pub. Inter. v. Ill. Com. Comm'n*, 136 Ill. 2d 192, 244 (1989) (where agency "lacks the statutory power to enter" its decision, decision is "void"); *Modrytzkji*, 2015 IL App (1st) 141874, ¶ 14 ("A decision of an administrative agency that does not have authority from the enabling statute is void."); *Siddens*, 304 Ill. App. 3d at 511 (order is "void where it is entered by a court or agency which lacks . . . subject-matter jurisdiction").

In turn, the circuit court's jurisdiction on administrative review was limited to addressing whether the Board acted within its authority. On administrative review, circuit courts exercise only "limited jurisdiction." *In re Est. of Gebis*, 186 Ill. 2d 188, 192 (1999). Where an agency did not have authority to issue a decision, a circuit court on administrative review is "limited to reviewing the [agency]'s decision for whether the decision was void." *Modrytzkji*, 2015 IL App (1st) 141874, ¶ 15. And once a court determines that the agency's decision is void, the court has no authority to consider the merits of the agency decision. *Id*. Instead, the court must vacate

the agency decision. *See id*. at ¶¶ 15-16; *see also Delgado v. Bd. of Elections Comm'rs of City of Chi.*, 224 Ill. 2d 481, 486 (2007) (circuit court should have vacated election board order issued outside of its authority).

The appellate court likewise "[is] limited on [administrative] review to considering whether the [agency] had authority to act." *Modrytzkji*, 2015 IL App (1st) 141874, ¶ 15. Generally, if a circuit court issues an order for which it lacked subject matter jurisdiction, "the appellate court is limited to considering the issue of jurisdiction below," and should not address the merits of the decision. *People v. Bailey*, 2014 IL 115459, ¶¶ 28-29; *accord Modrytzkji*, 2015 IL App (1st) 141874, ¶ 16 (appellate court on administrative review "cannot hear the substantive arguments regarding the propriety" of agency decisions entered without jurisdiction). Instead, the appellate court may only "correct any action that exceeded the trial court's jurisdiction" by vacating the judgment and dismissing the action. *Bailey*, 2014 IL 115459, ¶ 29.

Here, because the Board lacked authority to enforce petitioners' Section 3 objection after *Trump*, and the circuit court was limited to holding that the Board's decision was void, this court should vacate the Board's decision and the circuit court's judgment, and remand with instructions to dismiss the objection and subsequent administrative review action. *See Modrytzkji*, 2015 IL App (1st) 141874, ¶¶ 16-18 (where agency lacked jurisdiction, vacating agency and circuit court decisions with instructions to dismiss administrative

review action); *see also Bailey*, 2014 IL 115459, ¶¶ 28-29 (instructing appellate court to vacate circuit court judgment and dismiss motion to vacate plea).

In opposing Trump's motion to vacate, petitioners argued that the circuit court's subject matter jurisdiction is conferred by the Illinois Constitution and "does not depend on federal law." Appellees' Obj. & Resp. to Mot. to Vacate at 3. But federal law, including the United States Constitution, is "the supreme law of the land" notwithstanding "anything in the Constitution or laws of any State to the contrary." U.S. Const. art. VI, cl. 2. Accordingly, like federal statutes, the United States Constitution can deprive state courts of subject matter jurisdiction to determine claims even where those courts would otherwise have jurisdiction under state law. *See Cohen v. Salata*, 303 Ill. App. 3d 1060, 1063-65 (1st Dist. 1999) (dismissing state law malpractice claim for lack of subject matter jurisdiction because claim was preempted by United States Bankruptcy Code); *see also, e.g.*, *Cohen v. McDonald's Corp*., 347 Ill. App. 3d 627, 632-38 (1st Dist. 2004) (dismissing state law fraud claims that were preempted by federal statute); *Little Tex., Inc. v. Buchen*, 319 Ill. App. 3d 78, 81-82 (3d Dist. 2001) (same for state law contract claim); *Young v. Caterpillar, Inc.*, 258 Ill. App. 3d 792, 797-98 (3d Dist. 1994) (same for state law employment contract claim); *Cassidy v. Kentner*, 235 Ill. App. 3d 114, 115 (3d Dist. 1992) (same for state law contract claim).

Here, as the Supreme Court held in *Trump*, the States — including the Board and Illinois courts — lack the power to enforce Section 3 objections against federal candidates like Trump. As the Court explained, "[t]he Constitution empowers Congress to prescribe how those determinations ['that Section 3 applies to a particular person'] should be made." *Trump*, 601 U.S. at 109-10. Thus, unless Congress enacts legislation authorizing States to enforce Section 3, including by "prescrib[ing] how those determinations should be made," States cannot authorize state tribunals to decide claims seeking to disqualify federal candidates under Section 3. *See id*. In these circumstances, neither the Board nor the circuit court had subject matter jurisdiction to address the merits of petitioners' Section 3 objection. Thus, setting mootness to the side, this court should vacate the Board's decision and the circuit court's judgment and remand with instructions to dismiss the objection and subsequent administrative review action.

CONCLUSION

For these reasons, this court should vacate the Board's decision and the circuit court's judgment, and remand with instructions to dismiss the objection and subsequent administrative review action.

Respectfully submitted,

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August 22, 2024

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 4,998 words.

CERTIFICATE OF FILING AND SERVICE

I certify that on August 22, 2024, I electronically filed the foregoing Brief of Respondents the Illinois State Board of Elections and its Members with the Clerk of the Court for the Illinois Appellate Court, First Judicial District, by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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