

SUPREME COURT OF THE STATE OF NEW YORK  
ALBANY COUNTY

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BRAD HOYLMAN-SIGAL,  
SHEKAR KRISHNAN,  
and GETRUDE FITELSON,

*Petitioners,*

-against-

NEW YORK STATE BOARD OF ELECTIONS  
and DONALD JOHN TRUMP,

*Respondents.*  
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Index No.  
RJI No.

**VERIFIED PETITION**

**TO THE SUPREME COURT OF THE STATE OF NEW YORK:**

Petitioners Brad Hoylman-Sigal, Sekar Krishnan and Getrude Fitelson (“Petitioners”), by their attorney, Roger J. Bernstein, bring this Verified Petition under Article 16 of the New York State Election Law (hereinafter the “Election Law”) and, in the alternative, under Article 78 of the Civil Practice Law and Rules, and aver as follows:

Facts

1. This is a petition pursuant to Article 16, Section 102 of the Election Law to contest the designation of Donald J. Trump as a candidate for President of the United States in the New York Republican Presidential Primary Election to be held on April 2, 2024.
2. Petitioners are New York State voters registered to vote in the 2024 election for the office of President of the United States.
3. Respondent New York State Board of Elections (the “Board of Elections”) is charged with the lawful administration of the Election Law.
4. Respondent Donald John Trump (“Donald J. Trump”) is a candidate for President of the United States.

5. Pursuant to Election Law § 122-B[3][b], Respondent's request to appear on the presidential primary ballot of the Republican political party "shall be determined solely upon a joint recommendation by the commissioners of the state board of elections who have been appointed on the recommendation of such political party or the legislative leaders of such political party."

6. On February 6, 2024, the Republican commissioners of the Board of Elections determined that Donald J. Trump will appear on the Presidential Primary ballot of the Republican political party. Therefore, Respondent Donald J. Trump is now a designated candidate for President of the United States in the aforesaid Presidential Primary Election.

7. Petitioners have standing because they are New York State voters who have filed or will have filed general objections, as well as specifications for their general objections, to the decision of the Board of Elections to place Donald J. Trump on the Republican Presidential Primary ballot. Petitioners are commencing this proceeding now because of the tight deadlines for filing objections and instituting court proceedings.

8. Pursuant to Article 6, Section 122 of the Election Law, "[a] person shall not be designated or nominated for a public office or party position who (1) is not a citizen of the state of New York; (2) is ineligible to be elected to such office or position; or (3) who, if elected will not at the time of commencement of the term of such office or position, meet the constitutional or statutory qualifications."

9. The Fourteenth Amendment of the United States Constitution specifies in Section 3 that:

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.

10. On information and belief, Donald J. Trump is ineligible to hold the office of President pursuant to Section 3 of the 14<sup>th</sup> Amendment to the U.S. Constitution, in that:

- A. The President of the United States is an officer of the United States. Section 3 therefore encompasses the office of the President of the United States;
- B. On January 20, 2017, Donald J. Trump took an oath as an officer of the United States to support the Constitution of the United States. Petitioners incorporate herein as if fully alleged at this point Bernstein Affirmation dated February 6, 2024 (“Bernstein Aff.”), Exhibit 6, ¶¶ 153-158 for further allegations as to this oath;
- C. The events at the United States Capitol on January 6, 2021, including entry into the Capitol building by an armed mob for the purpose of stopping the counting of Electors’ ballots, constituted an insurrection. Petitioners incorporate herein as if fully alleged at this point Bernstein Aff., Exhibit 1, pp. 66-120, 129-73, and 184-230 for further allegations as to the conduct constituting an insurrection;
- D. Donald J. Trump engaged in that insurrection through his personal actions before and on January 6, 2021, including without limitation summoning a crowd to come to Washington D.C. on January 6<sup>th</sup> and telling the crowd, which he knew was armed, to march to the Capitol and “fight like hell” under “very different rules”. Bernstein Aff., Exhibit 6, at ¶¶ 213-214. For further allegations concerning Respondent’s participation in the January 6, 2021 insurrection, Petitioners incorporate herein as if fully alleged at this point Bernstein Aff., Exhibit 1, pp. 147-150,

257, 260-72 and 274-81; *id.*, Exhibit 2, pp. 11-130 and 210-278; and *id.*, Exhibit 6, ¶ 218;

- E. Donald J. Trump gave aid and comfort to the enemies of the Constitution of the United States, namely, the crowd engaged in the aforesaid insurrection, by condemning the actions of the constitutional officer responsible under the 12th Amendment for presiding over the counting of Electors' ballots, by failing to take care that federal laws forbidding assault on Members of Congress and trespassing on government property be faithfully executed so that the crowd could continue the insurrection, and by promising pardons to most of the participants in the insurrection. Petitioners incorporate herein as if fully alleged at this point Bernstein Aff., Exhibit 6, at ¶¶ 210-11, 215 & 218 for further allegations as to the conduct constituting the giving of aid and comfort to the enemies of the Constitution of the United States.

11. On December 19, 2023, the Colorado Supreme Court rendered a judgment determining the facts set forth in Paragraph 10, sub-paragraphs A. – D., above, and held that Donald J. Trump is disqualified from holding the office of President of the United States under U.S. Const. Amend. XIV, § 3. This judgment is submitted as Bernstein Affirmation, Exhibit 6, and the District Court decision referred to therein is submitted as Bernstein Affirmation, Exhibit 7. As a matter of law, Donald J. Trump is collaterally estopped to contest in this Court the determination and judgment of the Colorado Supreme Court that he is ineligible to serve as President of the United States.

12. Pursuant to Article IV of the U.S. Constitution, the courts of the State of New York must give full faith and credit to the judicial proceedings of the State of Colorado. Therefore, this Board is required to adopt the judgment of the Colorado Supreme Court that Donald J. Trump is ineligible to serve as President of the United States.

13. In addition, by reason of the foregoing, on January 20, 2025 Donald J. Trump will not meet the Constitutional requirements for the office of President of the United States.

14. The decision by the Board that Donald J. Trump is eligible to be placed on the ballot for the Republican Presidential Primary Election on April 2, 2024 as a candidate for the office of President of the United States is contrary to law and an error of law for the reasons set forth above, and is therefore subject to reversal pursuant to Section 7803[3] of the CPLR.

#### **Liberal Service Requirements**

15. In an Election Law proceeding such as this, commencement of the proceeding requires not only the filing of the Petition, but also service of the Order to Show Cause and Petition. Because of the highly compressed litigation schedule in the Election Law, request is made for the liberal service provisions that are routinely provided in these cases. These are reflected in the proposed Order to Show Cause. Furthermore, this matter has a preference over all other matters. Accordingly, it is requested that the annexed Order to Show Cause be signed and issued today.

#### **No Other Adequate Remedy**

16. Petitioners have no adequate remedy or source of relief in the premises other than that applied for herein.

#### **No Previous Application**

17. No previous application has been made for the relief sought herein and in the Order to Show Cause.

**WHEREFORE**, it is respectfully submitted that the Court should enter an order directing the Board of Elections not to list Donald J. Trump on the April 2,

2024 Republican Party Presidential Primary ballot as a candidate for the office of  
President of the United States.

Dated: New York, New York  
February 6, 2024

s/ Roger Bernstein  
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*Attorneys for Petitioners*

### Verification

Brad Hoylman-Sigal deposes and says: deponent is a petitioner herein; deponent has read the foregoing petition and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief or matters of law, and as to those matters deponent believes them to be true. I affirm this \_\_\_\_\_ day of February, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

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Brad Hoylman-Sigal

### Verification

Roger J. Bernstein, an attorney admitted to practice in the courts of New York State, hereby affirms as follows under penalties of perjury: I am the attorney of record for petitioner Getrude Fitelson. I have read the foregoing Petition and know the contents thereof and affirm that the same is true to my knowledge except as to the matters therein stated to be alleged on information and belief. This verification is made by affirmant and not by petitioner because affirmant maintains his offices in a county other than the address of petitioner.

Dated: New York, New York  
February 6, 2024

s/ Roger Bernstein  
Roger J. Bernstein



### Verification

Roger J. Bernstein, an attorney admitted to practice in the courts of New York State, hereby affirms as follows under penalties of perjury: I am the attorney of record for petitioner Sekar Krishnan. I have read the foregoing Petition and know the contents thereof and affirm that the same is true to my knowledge except as to the matters therein stated to be alleged on information and belief. This verification is made by affirmant and not by petitioner because affirmant maintains his offices in a county other than the address of petitioner.

Dated: New York, New York  
February 6, 2024

s/ Roger Bernstein  
Roger J. Bernstein