FILED
2/13/2024 11:56 PM
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CIRCUIT CLERK
COOK COUNTY, IL
2024COEL000013

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

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.	)	

RESPONDENT/CANDIDATE DONALD J. TRUMP'S RESPONSE TO PETITIONERS/OBJECTORS' MOTION TO GRANT PETITION FOR JUDICIAL REVIEW

Petitioners seek to remove President Donald J. Trump's name from the March 19, 2024 Illinois presidential primary ballot. They allege that the Illinois nominating papers for Respondent/Candidate Trump (the "Candidate") are invalid, on the ground that (i) the papers include a verification that the Candidate is qualified for the office he seeks, but (ii) the Candidate's assertion was false because the Candidate allegedly "engaged in insurrection" in violation of Section Three of the Fourteenth Amendment to the U.S. Constitution.

Although 88 actions similar to Petitioners' objection have been filed in 45 states, no state has removed the Candidate's name from a primary ballot. Following oral argument on February 8, 2024, the U.S. Supreme Court is expected to decide *Trump v. Anderson*, U.S. No. 23-719, a case with identical Section 3 objections, within weeks, if not days.[1] The Candidate reiterates his previous contention that it is inefficient and imprudent for this Court to proceed ahead of the Supreme Court's ruling. Even the two jurisdictions (of 45) that have found President Trump to be ineligible pursuant to Section 3 of the Fourteenth Amendment (Colorado and Maine) have stayed their judgments pending the U.S. Supreme Court's review of the Colorado Case, and are currently printing primary ballots with President Trump's name on them. Notably, the State Board of Elections has

[1] In Colorado, the lead plaintiff was named Norma Anderson and the initial defendant was Colorado Secretary of State Jena Griswold. (President Trump subsequently intervened.) *See Anderson v. Griswold,* 2023 CO 63 (the "Colorado Case" or "Colorado Trial").

indicated that with just five weeks until Illinois' primary, it is already too late to print new Illinois ballots.

Nonetheless, Petitioners contend that the Board's decision could impact future similar challenges, and that the Board's decision will need to be reviewed no matter what the Supreme Court decides. This is mistaken both logically and practically. Logically, if the Supreme Court rules in favor of President Trump, it is highly likely that its ruling will also render Petitioners' merits arguments here unmeritorious. This case will be definitively resolved on federal-law grounds, and the resolution of alternative state-law issues will become a moot and academic point.

But even if the case were not mooted and Illinois election authorities could still take action, based on a hypothetical reversal of the Board's decision, *e.g.*, the Objectors suggested election authorities could take various steps "to suppress the [Trump] vote," "such as placing signs at . . . polling place[s]" announcing any Circuit Court decision reversing the Board (2/8/2024 Order Denying Motion to Stay at 4), any such actions—just weeks before the election—would violate the animating concerns of the *Purcell* Principle. Critically, the U.S. Supreme Court "has repeatedly emphasized that . . . courts should ordinarily not alter the election rules on the eve of an election." *Republican National Committee, et al. v. Democratic National Committee, et al.*, 140 S. Ct. 1205, 1207 (2020) (*per curiam*) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (*per curiam*); *Frank v. Walker*, 574 U.S. 929 (2014); *Veasey v. Perry*, 135 S. Ct. 9 (2014)). The purpose of this principle is to prevent confusion that may result in the disenfranchisement of voters; accordingly, courts must limit changes to election laws and procedures on the eve of an election.

And practically, even if Petitioners could and wanted to continue pressing their state-law issues at that point, the Supreme Court decision would drastically change the scale and tenor of this litigation. The Candidate, with ballot access assured, likely would not even need to participate anymore. The voluminous and politically-polarizing factual record, relevant only to President Trump's ultimate eligibility, would drop out of the case. If Petitioners really wanted to, and if this

Court determined that the case was not moot, Petitioners could litigate the remaining state-law issues against the other respondents, which include the Electoral Board and each of its eight members. The political spectacle would be gone, and the remaining questions of Illinois law could be resolved in a far more orderly fashion.

In all events, the eight members of the State Officers Electoral Board (four Democrats and four Republicans), the Board's General Counsel, and the judge appointed as the Board's Hearing Officer all unanimously agreed that Petitioners' objections should be overruled or dismissed. Accordingly, President Trump's name is on primary ballots throughout Illinois, which have already been printed. And overseas and early voting has already started in Illinois. That decision was correct, for both reasons adopted by the Board in its January 30, 2024 decision.

First, although the Board is authorized by statute to determine whether nominating papers are in the "proper form," were timely submitted, and are "valid," the Illinois Supreme Court has held in a closely related context that only a knowingly or intentionally false statement can make papers not "valid" for this purpose. Since Petitioners here failed to establish by a preponderance of the evidence that the Candidate knows or believes that he is not qualified, the Petitioners objections are meritless.

Second, the Board and Judge Erickson recognized that the Board has inadequate procedural tools at its disposal, so it is unsurprising that the Illinois Supreme Court has held that the Board does not have limitless authority to entertain any and every argument about whether a candidate is qualified. All parties acknowledge that, in considering a candidate's qualifications (or any other question properly before it), the Board lacks the power to decide whether a statute is unconstitutional. Here, Judge Erickson and the Board held that they also lack the power to decide novel and contested questions of federal Constitutional law.

Both of these holdings are correct applications of settled Illinois law to the unusual questions presented by this case. If the Court proceeds to decision, it should affirm on either or both of these bases.

If, however, the Court disagrees on these points of Illinois law—and if the U.S. Supreme Court has not ruled by the time this Court issues a decision—the Court should not decide any further issues in the case, but should remand to the Electoral Board with instructions to render a decision, once the U.S. Supreme Court rules, that would be consistent with the decisions of both this Court and the U.S. Supreme Court. That would be the most efficient and sensible path to a comprehensive resolution of this case in the event this Court disagrees with the Board's view of its authority under Illinois law.

If the Court is determined to address the very same federal constitutional arguments that are pending before the U.S. Supreme Court, this Court will have to decide a host of federal legal issues that are separate and independent grounds for upholding the Board's decision. They are as follows:

- As numerous courts around the country have held, the federal Constitution makes disputes over presidential qualifications "political questions" that must be decided by Congress and the electoral process—not by courts or administrative agencies.

- Under long-settled federal constitutional law, whether someone is qualified under Section Three of the Fourteenth Amendment, must be addressed according to procedures prescribed by Congress—not independent state procedures..

- Even if the Board and this Court could consider Section Three, that provision does not apply to President Trump for multiple reasons: (1) as a matter of federal constitutional law, Section Three bars only *holding* office, and states may not constitutionally transform it into a bar on *running for* office; (2) Section Three does not apply to President Trump, because he has not held an office that would cause him to fall within Section Three's prohibition; and (3) Section Three does not disqualify individuals from holding the Presidency.

- Even if Section Three applied here and even if the Board and Court had authority to apply it, Petitioners have not remotely proved a violation because (1) although the crimes and violence at the Capitol on January 6, 2021 were deplorable, Petitioners have not proved that the riot on January 6, 2021, constituted "insurrection;" and (2) Petitioners have not proven that President Trump "engaged in" the events at the Capitol on January 6.

For all these reasons, the Board's dismissal was correct. The Board's dismissal should be upheld and the Petition denied.

ARGUMENT

I. The Electoral Board Correctly Held That Petitioners' Objections Do Not State Grounds For Removal Of A Candidate From The Ballot Under Illinois Law.

"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). The Board's authority to assess nominating papers arises from 10 ILCS 5/10-10. When an objection is filed to a "certificate of nomination or nomination papers or proposed question of public policy, as the case may be," section 5/10-10 specifies "the question[s]" that the Electoral Board is statutorily authorized to decide:

> 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 r*epresents 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 . . . .

10 ILCS 5/10-10 (emphasis added). As with any statute, the four specifically enumerated areas of inquiry, *i.e.*, the form, timing, genuineness and accuracy of nomination papers, all of which involve questions of state law, are instructive as to the scope of the Board's authority to resolve the objections at issue here. *Goodman v. Ward*, 241 Ill. 2d 398, 411 (Ill. 2011) ("the scope of an election board's inquiry with respect to nominating papers [is] ascertaining whether those papers comply with the governing provisions of the Election Code"). When read holistically, the general language at the end of the authorization on which Objectors rely (*i.e.*, "in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are *valid*) cannot reasonably be construed to grant authority to resolve wholly different topics like eligibility that arise under federal Constitutional law. *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200,

216-17 (Ill. 2008) ("The statute should be evaluated as a whole, with each provision construed in connection with every other").

Critically, the Electoral Board has never considered a Section 3 challenge, or any similarly complex federal Constitutional challenge of a U.S. presidential candidate's qualifications. Even more significantly, neither the Illinois Supreme Court nor the Illinois Appellate Court has ever delved into whether (under federal Constitutional law) a U.S. presidential candidate is qualified to hold office. Thus, no binding precedent authorizes either the Board or this Court to grant the relief Petitioners seek.

Accordingly, the Board here reached two conclusions about the limited nature of its authority. First, the Board held that any candidate's nominating papers are not "valid," and therefore are grounds for removal from the ballot under Election Code Section 5/10-10, only when the candidate knew or believed a statement in the papers to be false. Second, the Board held that it lacks authority to engage in the type of federal "constitutional analysis" that Petitioners demand here, and would be required to fairly assess whether a presidential candidate was disqualified on account of Section 3.

These two holdings are logically related to each other. Here—and oftentimes in other cases—the concepts are in significant part two sides of the same coin. When objections to a candidate's qualifications depend on a disputed legal theory, it is highly unlikely that the candidate's attestation of qualification will have been knowingly or willfully false. Indeed, the existence of a disputed legal theory creates a very strong inference that the candidate has in good faith set forth his qualifications. Thus, both of these limitations on the Board's power will come into play at the same time, and for the same reason.

The Board's structure and limited role also supports this conclusion. For example, the Board lacks the procedural and jurisdictional tools to address and decide complex disputes. As the Hearing Officer noted (and the Board agreed), in proceedings before the Board, "hearings are handled in an expedited manner," "[t]he Rules provide for very little discovery," and the limited "subpoena procedure leaves little time to serve a person." (HO Rec. at 10-12.) The Hearing Office

spoke from experience when he said that trying to fit complex litigation into a Board proceeding results in "a mad scramble of motions, responses, and replies" with "no opportunity for meaningful discovery or subpoena of witnesses," and that "attempting to resolve a constitutional issue within the expedited schedule of an election board hearing is somewhat akin to scheduling at two-minute round between heavyweight boxers in a telephone booth." (*Id.* at 14.)

To be sure, the legislature retains authority to create procedures that *could* allow the Board to adjudicate complex constitutional cases, but it did not. And absent clear, unambiguous intent from the legislature, , the Illinois courts have frequently noted "the need to tread cautiously when construing statutory language which restricts the people's right to endorse and nominate the candidate of their choice." *Lucas v. Lakin*, 175 Ill. 2d 166, 176 (1997). Each of the Board's conclusions here was a correct application of these background principles.

A. The Board Correctly Applied A Knowing-Falsity Standard.

First, the Board correctly concluded that, under Illinois law, a candidate may not be removed from the ballot based merely on an allegation of a good-faith error in his or her nominating papers.

This case potentially implicates only one potential statutory grant of authority—whether the Candidate's nomination papers "are valid." Section 5/10-10 does not provide any guidance about what constitutes "valid" nomination papers.. But 10 ILCS 5/10-5, paragraph 3, does address validity. It requires that each nomination "statement … shall state that the candidate is qualified for the office specified and has filed (or will file before the close of the petition filing period) aa statement of economic interests as required by the Illinois Governmental Ethics Act." Later, the same paragraph specifies that "[n]omination papers filed under the Section *are not valid* if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act." *Id.* (emphasis added).

In *Welch v. Johnson*, 588 N.2d 119, 1124 (Ill. 1992), the Illinois Supreme Court construed this statutory provision. Specifically, the Court considered whether inadvertent or good-faith inaccuracies in the statement of economic interests statement required by the Election Code make

"nomination papers … invalid" under Section 5/10-10. The Court noted that the Ethics Act "merely require[s] the filing of such statements containing no willful or intentional falsehood," and contains no prohibition on or penalty for unintentional inaccuracies. *Id.* The Court also noted that the Election Code has a parallel provision: "[t]he requirement of subscribing and swearing to the statement of candidacy implicates the perjury provision of the Election Code, section 29-10," which prohibits only "a false statement, *material to the issue* or point in question, *which the maker does not believe to be true.*" *Id.* at 1124 (emphasis added). In recognizing "that access to a place on the ballot is a substantial right not lightly to be denied," the Supreme Court held that an economic interest statement is "valid," under Section 5/10-10, unless it violates one of these other statutory provisions by being knowingly or willfully false in some respect. *Id.*

In this case, at issue is the qualification statement that Section 5/10-10 also requires candidate to make—indeed, the qualification statement is required by the very same sentence of Section 5/10-10 that requires the candidate to certify the filing of an economic interests statement. Like the economic interests statement, this qualification statement is subject to section 29-10's penalty for knowing falsity.

None of Objectors' cases constitute binding authority authorizing a broad-ranging, fact-intensive inquiry into the federal Constitutional qualifications of a U.S. presidential candidate. Indeed, Objectors' authority involves the assessment of Illinois qualifications of a candidate for state office,[2] whether a referendum was authorized under state law,[3] or whether the refusal of Illinois election authorities to place someone who admitted they were under 35 years old violated

[2] *See, e.g., Goodman v. Ward*, 241 Ill. 2d 398, 414-15 (Ill. 2011) (challenge to residency of state judicial candidate); *Maksym v. Bd. of Election Comm'rs of City of Chicago*, 242 Ill. 2d 303, 306 (2011) (challenge to Illinois residency of candidate for Mayor of Chicago).

[3] *Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23; *Zurek v. Petersen*, 2015 IL App (1st) 150456, ¶¶ 33-35 (unpublished).

federal Constitutional rights.[4] Although two of Objectors' cases involved presidential candidates or delegates to a national nominating convention, both cases involved the compliance with Illinois Election Code requirements. Neither involved whether qualifications under the U.S. Constitution. *See, e.g., Nader v. Illinois State Board of Elections*, 354 Ill. App. 3d 335, 343 (2004) (examination of petition signatures); *Totten v. State Board of Elections*, 79 Ill. 2d 288, 293-94 (1980) (whether the preference of delegates was required to be listed on primary ballot).

The Supreme Court has twice invalidated nominating papers when candidates clearly knew they were not qualified at the time they filed their papers. *Goodman v. Ward,* 241 Ill. 2d 398, 408 (2011) (candidate admitted he was not qualified but argued that the law allowed him to become qualified later); *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 215 (2008), *as modified* (Apr. 23, 2008) (same). These decisions are consistent with the limited nature of the Board's review of easily-determined facts (such as age or residency) fully within the candidate's knowledge – unlike the complex, constitutional analysis involving Section Three.

At the General Counsel's recommendation, the Board here held that nominating papers are invalid only if the statement of qualification is knowingly or intentionally false. Specifically, the General Counsel concluded (and the Board agreed) that "not every incorrect statement sworn in connection with one's nomination papers is sufficient to implicate the Election Code's perjury provisions and invalidate the papers. Rather, a candidate's knowingly or willfully false statements that the maker does not believe to be true justify the sanction of removal from the ballot. (Rec. at 8.)

This conclusion is solidly grounded in the text of the statute, the logic of *Welch*, and the structure of the board. As a matter of statutory text, section 5/10-10 lists five types of "question[s]" that the Board is authorized to decide. Four items in this list involve clearly-defined issues regarding the form of the paperwork: the Board may assess the genuineness of the papers, whether they

[4] *Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 112-13 (N.D. Ill. 1972) (U.S. Constitution does not require the State of Illinois to place someone admittedly unqualified on the ballot as a presidential candidate).

were filed on time, and the like. At the end of the list, the statute allows the Board to decide whether paperwork is "valid," without defining what that means. But it is settled law that "words grouped in a [statutory] list should be given related meaning, pursuant to the doctrine of *noscitur a sociis.*" *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 2020 IL 125062, ¶ 22. Indeed, as the Illinois Supreme Court has noted, "[t]he canon of *noscitur a sociis* is particularly useful when construing one term in a [statutory] list, in order to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to legislative acts." *Corbett v. Cty. of Lake*, 2017 IL 121536, ¶ 32. So here. In Section 5/10-10 the Legislature expressly authorized the Board to conduct various ministerial inquiries into nominating papers. It is not likely that, by using the word "valid" at the end of the list, the Legislature intended to transform the Board's authority into an open-ended mandate to conduct unlimited fact-finding and legal analysis on every question of candidate eligibility, no matter how complex.

As described above, this conclusion also fits perfectly with the structure of the Board. As the Hearing Office explained, the Board is not well suited procedurally or institutionally to hear complex litigation. It is unlikely, then, that the Legislature would have ordered the Board to resolve complex legal issues by using a vague word like "valid."

All of that, indeed, was the logic of *Welch*, which the Board followed. No statutory basis or practical reason exists to conclude that the Board may find nominating papers "invalid," and remove a candidate from the ballot, whenever those papers contain any inaccuracy whatsoever, no matter how innocent, minor, or correctable it might be. Therefore, the courts look to other related provisions to determine when the Legislature has specified that inaccuracies in nominating papers should be penalized. *Welch* noted that, by statute, economic interests statements are punishable only when knowingly false. The requirement to file a statement of qualification comes from exactly the same sentence in the Election Code as the requirement to certify the filing of an economic interests statement, and the two are identically subject to the penalty of Section 29-10. The same willfulness requirement applies to each of their effects on the validity of nominating papers.

Petitioners' counterarguments are obviously wrong. They mistakenly suggest (Mtn. at 19) that *Welch* somehow had nothing to do with the Election Code. Simply reading *Welch* dispels that contention. *Welch* cites and refers to the Election Code literally dozens of times. And the *Welch* Court expressly held that "we do not construed section 10-5 of the [Election] Code, even in light of … the Ethics Act, as categorically requiring the filing of true, correct and complete economic interests statements." 588 N.E.2d at 1124-25.

Petitioners also incorrectly argue that a knowing-falsity standard contradicts previous Illinois decisions. Petitioners cite no decision, and we are aware of none, holding that an alleged inaccuracy in nomination papers is grounds for removal from the ballot, even if the candidate believed in good faith that the statement was correct. Indeed, Petitioners do not cite a case that even *involved* a good-faith statement. As noted above, *Goodman* and *Cinkus* involved candidates who admitted and knew they were *not* qualified for office at the time they certified that fact, but who argued that they were allowed to become qualified later. 241 Ill.2d at 408 ("Ward did not dispute that he was not, in fact, a resident of the 4th Subcircuit at the time he filed his petition. Rather, his contention was that he was not obligated to meet the residency requirement …."); 228 Ill.2d at 215 ("[T]he sole question presented" was whether a statute "applies to ineligibility to hold elective office, not ineligibility to run.") The Board's ruling relies on the same reasoning—here, President Trump has always correctly believed, and continues to believe, that he is qualified.[5] Similarly, *Gercone v. Cook County Officers Electoral Board* involved a candidate who knew and admitted that she had not been issued the certification of training that was required to run for sheriff. 2022 IL App (1st) 220724-U, ¶ 38. And in another case cited by Petitioners, *Muldrow v. Municipal Officers Electoral Board*, the Appellate Court held that a candidate *was qualified for office*, so obviously had no need to consider the possibility of a good-faith mistake about qualifications. *See generally* 2019 IL App (1st) 190345, ¶¶ 20-32.

[5] The Board did not rule on the Candidate's separate argument that Section Three's express terms do not bar running from office, and that the federal Constitution prohibits Illinois from applying it in that way. *Goodman* and *Cinkus* are not apposite to that argument because they considered only the timing of qualifications under Illinois law, not under the federal Constitution.

In sum, the Board correctly held that an inaccuracy in a candidate's nomination papers does not prevent the papers from being "valid," pursuant to Section 5/10-10, unless the inaccuracy is knowing or willful. Because Petitioners do not even allege that the purported inaccuracy in the Candidate's papers here was knowing or willful, the Board correctly dismissed their objections.

B. The Board Correctly Held That It Cannot Engage in Constitutional Analysis.

In addition, the Board held that even if it were to have the authority to look behind a candidate's good-faith statement of qualification and determine whether the candidate actually is qualified, the Board lacks jurisdiction when adjudication would require it to "enter[] the realm of constitutional analysis." (Hearing Officer Rec. at 9.) This conclusion is correct.

Start with first principles, the Illinois Supreme Court has definitively held that there are boundaries on what inquiries the Board may undertake in assessing whether nominating papers are not "valid" because they contain false statements, As the previous subsection described, the Board may investigate the factual accuracy of an economic interests statement (and likely other statements in the nominating papers) only for the purpose of determining whether is the statement is knowingly or willfully false. And the Board cannot assess whether a statute is constitutional, as Petitioners concede. The Board is limited even if adjudicating objections to a candidate's papers or qualifications would otherwise require constitutional analysis. *See Delgado*, 224 Ill.2d at 475; *Goodman*, 241 Ill.2d at 414-15. These limitations make perfect sense in light of relevant statutory text and the Board's structure.

Here, the Board agreed with the hearing officer's conclusion that it may not construe and analyze constitutional terms in order to invalidate a statute. Specifically, that Board held that it generally lacks authority to "enter[] the realm of constitutional analysis." (HO Rec. at 9.) And, since "[i]t is impossible" for the Board to "decid[e] whether Candidate Trump is disqualified by Section 3 without the Board engaging in significant and sophisticated constitutional analysis," the Board lacks the power to decide the objections. (*Id.*)

Again, this conclusion rests upon the statutory text, the logic of *Delgado* and *Goodman*, and the Board's procedures. As described above, Section 5/10-10 specifically authorizes the board

to determine questions like whether nominating papers are authentic and were filed on time. The vague statutory reference to "whether or not … the papers … are valid" does not dramatically expand the Board's authority to include decisions of far-reaching questions of constitutional law. That was exactly the logic of *Delgado* and *Goodman*—and again, it makes perfect sense in light of the abbreviated course of litigation before the Board, as the Hearing Officer expressly noted.

Once again, Petitioners' counterarguments are unavailing. First, Petitioners misconstrue the Board's decision as being that the Board can "never" enforce "candidacy requirements set out in the U.S. or Illinois Constitution." (Mtn. at 26.) But the Board did not say or suggest that. It held merely that it lacks authority to conduct *analysis* of Constitutional provisions. Where there is no genuine dispute about what a constitutional provision means, the Board regards itself as fully able to apply the provision.

The only cases Objectors identify that involved challenges to presidential candidate qualifications are Board of Elections decisions involving challenges to Barack Obama and Marco Rubio's citizenship. (Resp. at 9-10.) But in those cases, the Candidates never challenged the Board's authority, presumably because the Candidates believed it was easier to secure dismissal of these actions. In any event, those decisions could never serve as precedent supporting Objectors' arguments here, as those cases never reached either the Court of Appeals or Supreme Court. *See, e.g., Delgado*, 224 Ill. 2d at 488 (rejecting application of a Circuit Court decision because "[u]nder Illinois law, [even] the decisions of circuit courts have no precedential value").

Second, Petitioners cite cases recognizing that "that electoral boards" can "decide … if a *proposed referendum* is permitted by law, even where constitutional provisions are implicated." *Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 (emphasis added); *see Zurek v. Petersen*, 2015 IL App (1st) 150456.[6] Petitioners' problem is that this authority of the Board is explicitly rooted in a specific Illinois statute—one that deals only with referenda.

[6] Although *Zurek* is distinguishable, Petitioners' citation to *Zurek* is also improper and should be disregarded, as it is a non-precedential decision decided before 2021. *See* Ill. Sup. Ct. R. 23(e)(1).

As both of Petitioners' cited cases explained, 10 ILCS 5/28-1 specifically requires that "a referendum must be" either "authorized by statute or provided for in the Illinois Constitution." *Harned*, 2020 IL App (1st) 200314, ¶ 25; *Zurek*, 2015 IL App (1st) 150456, ¶ 35. The courts therefore treated this as specific authorization for the Board to consider whether a ballot question is indeed authorized by the Constitution—otherwise, the Board would rarely or never be able to enforce that statutory requirement at all.

But there is no similar statutory requirement that even arguably could apply to challenges to candidates appearing on the ballot. The Board resolves most such challenges without any need to analyze the Constitution: candidates can be, and often are, removed from the ballot as a result of failing to meet purely statutory criteria, or for failing to meet straightforward constitutional criteria (such as age) that normally can be applied without any legal analysis.[7] Therefore, it makes perfect sense for the Board to conclude, as it did here, that it lacks authority to decide disputed constitutional questions that affect candidate nominating papers.

Third, Petitioners unpersuasively argue that the Board normally conducts lengthy and complex litigation that involves voluminous fact-finding and extensive legal analysis. Of course, the Board knows the nature of its own proceedings far better than Petitioners do. And the Petitioners' examples show the obvious weakness of their position. Petitioners apparent best example of a "complex" factual dispute is whether Rahm Emanuel was a resident of Chicago during the time he served as President Obama's chief of staff. *See generally Maksym v. Bd. Of Election Comm'rs of City of Chicago*, 950 N.E.2d 1051 (2011). The universe of evidence was five facts, all of which were within the candidate's immediate possession: the candidate's house rental agreements, the

[7] Here again, it is possible that some other very different case—perhaps involving a former rebel general after a full-scale civil war—the Board could have determined that someone "engaged in insurrection" without the need to analyze the meaning of those terms under the Constitution. Again, there would be separate questions in such a case whether the Board had authority from Congress or the Illinois legislature to apply an "engaged in insurrection" bar. *See infra.* But the Board's lack of authority to analyze the constitutional phrase "engaged in insurrection" itself likely would not be one of them.

address on the candidate's driver's license and car and voter registrations, the location of the candidate's bank, what furniture the candidate had left in his Chicago house, and where the candidate filed tax returns. *Id.* at 328-29. This is indeed the kind of simple dispute that—can be readily accommodated in the truncated proceedings that occur before the Board. But the Board's ability to handle that kind of dispute does not remotely suggest that it can decide a mammoth factual dispute over whether a complex series of events involving hundreds of thousands of people, which took place hundreds of miles away and three years ago, and involved scores of federal agencies and thousands of federal officials, qualified as an "insurrection," or whether a sitting President's alleged proximity to those events qualified as "engagement."

None of Petitioners' cases justify the expansion of the scope of objections the Board can and should hear. Critically, factual disputes about federal eligibility criteria are unique, especially when they involve a nationwide office like the Presidency. As this case demonstrates, such disputes typically sprawl across the nation, implicating many witnesses and many pieces of documentary evidence that the Board lacks the ability to subpoena or otherwise compel. Moreover, resolving such disputes requires time and other evidentiary tools that are inconsistent with the statutory scheme and Board practice leading up to the March 19, 2024 primary election.

* * *

To sum up: the Board correctly concluded that it is an administrative agency charged mostly with checking paperwork, not a court authorized to engage in open-ended constitutional and factual inquiries. Its decision should be affirmed on that basis alone.

II. If This Court Were To Disagree With The Board On These Questions Of Illinois Law, It Can And Should Remand The Remainder Of The Case To The Board.

Even if this Court were to hold that the Electoral Board has the statutory authority to consider whether there was an "insurrection" on January 6, 2021 in which President Trump "engaged," as those terms are used in Section 3, there would be no basis in the existing factual record for this Court to consider these complex factual issues. Notably, Petitioners presented no live witnesses

and submitted no original evidence to either the hearing officer or the Electoral Board. Moreover, although the Candidate stipulated to the authenticity of certain Colorado Trial exhibits and that witness testimony from the Colorado Trial constituted "former testimony" under Illinois Evidence Rule 804(b)(1), the Candidate preserved all other objections the testimony and exhibits Petitioners presented, and neither the Hearing Officer nor the Board ever ruled on any of the Candidate's objections. Nor did the Hearing Officer or the Board rule on any of the Section 3 legal issues that are at the heart of Petitioners' objections.

Nonetheless, Petitioners asked the Electoral Board (over the Candidate's continuing objections) to simply adopt wholesale the findings from the Colorado Trial and the January 6 Report. The Electoral Board declined to do so. (*See* 1/30/2024 Decision, ¶ 10.G.) Inexplicably, after recommending that Petitioners' objection be denied, the hearing officer alternatively recommended that the Board find President Trump engaged in an insurrection. This alternative recommendation relied exclusively on factual findings from the Colorado Trial and in the January 6 Report, although the Electoral Board refused to accept the alternative recommendation or adopt any of the supposed facts upon which the recommendation was based. (*Id.*) Given these circumstances, there would be no factual basis, consistent with due process or common sense, for this Court, sitting as a court of review pursuant to Election Code Section 10-10.1, to fairly consider whether President Trump engaged in an insurrection. Nor is there a legal basis, given the Board's failure to decide any of the Section 3 legal issues. At best, given such circumstances and Section 10-10.1's limitation on this Court's jurisdiction, the Circuit Court would have to remand Petitioners' objection to the Electoral Board for factual findings, including consideration of and rulings on the Candidate's objections.

III. Presidential Qualification Disputes Are Non-Justiciable Political Questions.

Even if Illinois's mandamus and election statutes allowed these objections, the U.S. Constitution does not. Under the federal Constitution, "political questions" are "beyond the courts'

jurisdiction"—and likewise beyond the jurisdiction of state election boards—if they are "entrusted to one of the political branches or involve[] no judicially enforceable rights." *Rucho v. Common Cause*, 139 S. Ct. 2484, 2494 (2019).

When other plaintiffs have challenged President Trump's ballot access in other states, courts have observed 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." *Castro v Scanlan*, 2023 WL 7110390 at *9 (D. N.H. Oct 27, 2023); *accord LaBrant v. Benson*, 2023 WL 7347743, at *10-20 (Mich. Ct. Cl. Oct. 25, 2023). In previous Presidential election cycles, there were many other similar decisions involving John McCain, Barack Obama, Ted Cruz, and Kamala Harris: "the Constitution assigns to Congress, and not to … courts, the responsibility of determining whether a person is qualified to serve as President," so "whether [a candidate] may legitimately run for office … is a political question that the Court may not answer." *Grinols v. Electoral Coll.*, 2013 WL 2294885, at *6 (E.D. Cal. May 23, 2013). As one court explained:

> If a state court were to involve itself in the eligibility of a candidate to hold the office of President … it may involve itself in national political matters for which it is institutionally ill-suited and interfere with the constitutional authority of the Electoral College and Congress. Accordingly, the political question doctrine instructs this Court and other courts to refrain from superseding the judgments of the nation's voters and those federal government entities the Constitution designates as the proper forums to determine the eligibility of presidential candidates.

Strunk v. N.Y. State Bd. of Elections, 950 N.Y.S.2d 722 (NY Sup Ct 2012) *aff'd,* 126 AD3d 777 (NY App Div 2015). Many other courts agreed.[8] As these courts have observed, the Constitution

[8] *Taitz*, 2015 WL 11017373, at *20 (S.D. Miss. Mar 31, 2015) (presidential qualification questions "are entrusted to the care of the United States Congress, not this court"); *Robinson v. Bowen*, 567 F Supp 2d 1144, 1147 (N.D. Cal. 2008) ("Issues regarding qualifications for president are" political questions "committed under the Constitution to the electors and the legislative branch, at least in the first instance"); *Jordan v. Reed*, 2012 WL 4739216, at *2 (Wash. Super. Ct. Aug 29, 2012) ("The primacy of congress to resolve issues of a candidate's qualifications to serve as president is established in the U.S. Constitution."); *Kerchner v. Obama*, 669 F Supp 2d 477, 483 n. 5, (D.N.J.

contains a host of provisions specifying how electors for President are appointed (Art. II, Sec. 1), how the electoral votes are cast and counted (Am. XII, *see* 3 U.S.C. 15(d)(B)(ii) (Electoral Count Act), what happens if the result is an un-qualified President-elect (Am. XX), and how Congress may respond if the voters choose someone who may be disqualified under Section Three of the Fourteenth Amendment. Disputes about Presidential qualifications belong in these fora, not state election or judicial proceedings.

In response, Petitioners apparently contend that the Constitution's assignment of this responsibility is not as clear as they would prefer. (Mtn. at 42-43.) But they cite nothing suggesting that the assignment needs to be explicit. As the courts have repeatedly found, the text of the Constitution creates many processes for choosing who may be President, and for dealing with an ineligible President-elect. None of those processes involve state agencies or courts barring candidates from running as ineligible. The assignment of authority can be discerned from the Constitution's creation of those processes.

Petitioners themselves highlight this by pointing out that the Constitution assigns states the job of appointing presidential electors. (Mtn at 43.) That is true—but appointing electors is not the same as enforcing Section Three or making legally binding decisions about who is qualified to be President. In fact, the Constitutional structure recognizes this quite specifically: the whole purpose of the Twentieth Amendment is to recognize that the state-appointed electors may choose a President-elect who is not eligible, and to specify what happens if they do.

On top of that, presidential qualification disputes are not properly decided in state and local proceedings because of "the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Baker*, 369 US at 217. As the California Court of Appeal held, it would be

> truly absurd … to require each state's election official to investigate and determine whether the proffered candidate met eligibility criteria of the United States

2009) ("The Constitution commits the selection of the President to [specific and elaborate procedures] …. None of these provisions evidence an intention for judicial reviewability of these political choices.").

> Constitution, giving each [state official] the power to override a party's selection of a presidential candidate. The presidential nominating process is not subject to each of the 50 states' election officials independently deciding whether a presidential nominee is qualified, as this could lead to chaotic results…. [T]he result could be conflicting rulings and delayed transition of power in derogation of statutory and constitutional deadlines.

Keyes v. Bowen, 189 Cal App 4th 647, 660 (Cal. Ct. App. 2010)

Finally, a dispute may be rendered non-justiciable by "the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government" or "an unusual need for unquestioning adherence to a political decision already made." *Baker*, 369 US at 217. Here, Petitioners are asking the Board to re-visit a decision already expressly made by the United States Senate. The Articles of Impeachment brought against President Trump by the House of Representatives specifically and prominent invoked Section Three of the Fourteenth Amendment, 167 Cong. Rec. H165, and President Trump's alleged "incitement of insurrection" on January 6.[9] And the House trial managers specifically asked the Senate to "disqualify [President Trump] from future federal officeholding," *id.*—indeed, because President Trumps term in office had ended by that time, disqualification would have been the *only* consequence of a conviction.[10] But the Senate declined and acquitted President Trump. Now, Petitioners argue that the Board should have second-guessed and undone that decision—considering the same factual and legal theories as the Senate, but reaching the opposite conclusion. That cannot be done without "expressing lack of the respect due coordinate branches of government." *Baker*, 369 US at 217.

For all these reasons, the courts are right that presidential qualification disputes are political questions that belong in Congress and other constitutionally-prescribed processes—not here. On the other side, there are only two decisions from anywhere holding that a genuine dispute over a

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[9] House Trial Br. at 1, https://democrats-judiciary.house.gov/uploadedfiles/house_trial_brief_final.pdf.

[10] This was widely recognized at the time. *E.g.,* Bertrand, "Legal scholars, including at Federalist Society, say Trump can be convicted," Politico, Jan. 21, 2021, available at https://www.politico.com/news/2021/01/21/legal-scholars-federalist-society-trump-convict-461089.

qualification was *not* a political question. *Elliot v Cruz*, 137 A.3d 646 (Pa. Comm. Ct. 2016); *Anderson v. Griswold*, 2023 CO 63. These opinions are decisively outweighed by the numerous authorities to the contrary.

In sum, as the *Castro* court put it, the vast weight of authority *does* find this to be a non-justiciable political question. This Board should follow the same approach.

IV. Section Three Of The Fourteenth Amendment Can Be Enforced Only As Prescribed By Congress.

Petitioners argue that the Electoral Board should have determined that someone (President Trump) is disqualified from holding office under Section Three of the Fourteenth Amendment, by virtue of having engaged in insurrection against the United States. But just months after the Fourteenth Amendment was enacted, the Chief Justice of the United States held that this determination can be made only in proceedings prescribed by Congress. That holding was uniformly followed for the next century and a half. There is no warrant for departing from it here.

Just months after the Fourteenth Amendment was enacted, Chief Justice Salmon P. Chase construed it while riding circuit in Virginia. A man convicted in Virginia state court sought a writ of habeas corpus on the ground that the state judge had been disqualified from holding office by Section Three. *In re Griffin*, 11 F Cas 7 (C.C.D. Va. 1869) (Chase, C.J.). He argued Griffin argued that Section Three "acts *proprio vigore*, and without the aid of additional legislation to carry it into effect." *Id.* at 12. On appeal, Chief Justice Chase rejected that argument. He noted that Section Three "clearly requires legislation in order to give effect to it," because "it must be ascertained what particular individuals are embraced by" Section Three's disability, and "these [procedures] can only be provided for by congress." *Id.* at 26. Therefore, "the intention of the people of the United States, in adopting the fourteenth amendment, was to create a disability … to be made operative … by the legislation of congress in the ordinary course." *Id.*

And for 150 years after Section Three's enactment, that is exactly how it was enforced—only as prescribed by Congress. Even before Chief Justice Chase decided *Griffin*, Congress had expressly ordered six other southern States, as a condition of re-admission to the Union, to adopt

the substantive provisions of Section Three and then enforce those provisions against candidates for state office. 15 Stat 74 (June 26, 1868) ("[N]o person prohibited from holding office … by section three … shall be deemed eligible to any office in [the readmitted] states."). Shortly after *Griffin*, Congress passed implementing legislation that applied nationwide. One federal statute authorized U.S. Attorneys to bring expedited proceedings in federal district courts to remove from office anyone who was disqualified by Section Three. 16 Stat. Ch. 114, 143 (1870). Another provided for separate federal criminal prosecution of anyone who assumed office in violation of Section Three. *Id.* at 143-44. U.S. Attorneys used these prosecutorial powers widely (including against several members of the Tennessee Supreme Court[11]) until 1872, when Congress passed an Amnesty Act removing the section Three disability for most ex-Confederate officials. 17 Stat. 142 (1872). The Section Three enforcement statutes then went largely unused, until Congress finally repealed them in 1948. 62 Stat. 869, 993; 62 Stat. 683, 808.

After January 6, 2021, Congress expressly considered whether—but declined—to revive federal Section Three enforcement procedures. A bill was introduced in the House of Representatives "[t]o provide a cause of action to remove and bar from holding office certain individuals who engage in insurrection or rebellion against the United States." HR 1405 (117th Cong. 1st Sess.). Its procedures would have been similar to the old *quo warranto* proceedings: an expedited civil suit by the Attorney General in a three-judge U.S. District Court. *Id.* §§ 1(b), (d). But Congress has not enacted this proposal.

Petitioners' offer only one substantive criticism of *Griffin* (and that is being generous): they contend without support or explanation that its author, Chief Justice Chase, "was a presidential nominee for the then-segregationist Democratic Party." (Mtn. at 46.) That grossly mischaracterizes Chief Justice Chase's long and extraordinary career opposing slavery and defending the rights of former slaves. As a lawyer, Chase so frequently defended escapees from slavery that he was known as "the Attorney General for Fugitive Slaves." Barnett, *From Antislavery Lawyer to Chief Justice:*

[11] Sam D. Elliott, *When the United States Attorney Sued to Remove Half the Tennessee Supreme Court: The Quo Warranto Cases of 1870,* 49 TENN B.J. 20, at 24-26 (2013).

The Remarkable but Forgotten Career of Salmon P. Chase, 63 Case W. Rsrv. L. Rev. 653, 676 (2013). As a politician, Chase was a prominent "Radical Republican" who took a hard line *against* pro-slavery governments. *Id.* at 671. And as Chief Justice, Chase supported a broad, strong application of the Fourteenth Amendment, as demonstrated by his joinder in the dissent in the *Slaughter-House Cases*, 83 U.S. 36, 11 (1872) (Field, J., dissenting). In all events, the direct result of the *Griffin* decision was that southern officials' disqualifications under section Three were judged by U.S. Attorneys and federal district courts, rather than by state officials from the former Confederacy themselves. That result was not anti-Reconstruction or favorable to ex-Confederate officials.

In sum: months after the Fourteenth Amendment was enacted, the Chief Justice of the United States held, "[a]fter the most careful consideration," that it could be enforced only as prescribed by Congress. From the Fourteenth Amendment's enactment until January 6, 2021, there is no record of it ever being enforced any other way. But Congress has said nothing to require or authorize this Board to investigate whether anyone is disqualified under Section Three. Pursuant to long-settled law and practice, then, these objections must be dismissed as outside the Board's authority.

V. Section Three Does Not Apply Here.

If the Court were to reach the merits of the Objections—despite all the dispositive obstacle just described—it should nevertheless conclude they fail. As an initial matter, Section Three simply does not apply here. First, Section Three bars *holding* office, not *running* for office on a primary preference ballot. Second, Section Three by its terms does not apply to Presidents or the Presidency.

A. Section Three does Not Bar Running for Office.

By its plain language, a disqualification under Section Three of the Fourteenth Amendment prohibits an individual only from *holding office*—not from appearing on a ballot or being elected. To be sure, this distinction might not matter if Section Three created a disqualification from office that was permanent and unchangeable, so that a candidate who was disqualified at the time the

votes were cast would certainly be unable ever to take office. That was the situation in Petitioners' cited case *Hassan v. Colorado,* 495 F. App'x 947 (10th Cir. 2012), where the candidate admitted he was not a natural-born citizen. But Section Three does not create an unchangeable disqualification like that; instead, it expressly provides that any disability may be removed by Congress. In fact, immediately after the Fourteenth Amendment was adopted, disqualified individuals frequently ran for office, were elected, and ***afterwards*** asked Congress to remove the disability—and the courts expressly approved this practice.[12] No authority appears to have concluded that allowing such candidates to run, or placing their names on a ballot, was illegal.

Indeed, the Constitution *prohibits* States from accelerating qualifications for elected office to an earlier time than the Constitution specifies. For instance, 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. 215 F3d 1031, 1038 (9th Cir. 2000). But the Ninth Circuit held that this was an unconstitutional attempt by California to change the Constitutionally-prescribed qualification. *Id.* at 1038–39; *see 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.").

The same logic applies to Section Three. Both the text of the Constitution and historical practice show that Section Three (when it applies) bars a person from *holding* office, not *running for* or *being elected to* office.

For similar reasons, Petitioners' reliance on Illinois law in this regard (Mtn. at 42) is unavailing. For offices in the state government, Illinois is largely free to create whatever ballot-

[12] *Smith v. Moore*, 90 Ind. 294, 303 (1883) ("Under [Section Three] . . . it has been the constant practice of the Congress of the United States since the Rebellion, to admit persons to seats in that body who were ineligible at the date of the election, but whose disabilities had been subsequently removed."); *Privett v Bickford*, 26 Kan. 52, 58 (1881) (analogizing to Section Three and concluding that voters can vote for an ineligible candidate who can only take office once his disability is legally removed); *Sublett v Bedwell*, 47 Miss. 266, 274 (1872) ("The practical interpretation put upon [Section Three] has been, that it is a personal disability to 'hold office,' and if that be removed before the term begins, the election is made good, and the person may take the office.").

access requirements it wishes. But for federal positions like the Presidency or seats in Congress, *US Term Limits* makes clear that Illinois is bound by and limited to the qualification criteria in the federal constitution. It may not change or add to those qualifications, as Petitioners seek here.

Therefore, the Board is not authorized to investigate matters under Section Three for purposes of ballot placement in a presidential primary election.

B. Section Three does Not Apply to the President.

As relevant here, Section Three of the Fourteenth Amendment applies only to someone who has "previously taken an oath … as an officer of the United States … to support the Constitution." Therefore, Relators' claim that President Trump is disqualified depends upon him coming with the meaning of those terms. But reading this phrase in harmony with the rest of the Constitution makes quite clear that he does not.

1. The constitutional phrase "officers of the United States" excludes the President.

First, when it is used in the Constitution, the phrase "Officers of the United States" clearly and consistently ***excludes*** the President. Section Three lists many elected figures to whom it applies, such as members of Congress and state legislators. It does not similarly name the most prominent elected official in the entire country: the President. This suggests that Presidents are not included. It is not linguistically likely that the framers would have specifically named other elected positions, but then referred to the Presidency in Section Three's catch-all generic reference to "officers of the United States." Indeed, the Constitutional text strongly indicates that they did *not* do that.

The phrase "Officers of the United States" appears three times in the original Constitution—in three consecutive sections of Article II, dealing with the Executive Branch.[13] Each of these provisions clearly excludes the President. Article II, Section Two empowers the

[13] Article II uses the plural phrase "Officers of the United States," whereas Section Three includes the singular "officer of the United States." But neither Relators nor any authority has ever suggested that this difference is material.

President to "appoint [various listed officials] and all other Officers of the United States." Similarly, Article II, Section Three requires that the President "shall Commission all the Officers of the United States." But Presidents do not appoint or commission themselves or their successors, so these phrases "Officers of the United States" cannot include the President. Finally, Article II, Section 4 provides requirements for the impeachment of "[t]he President, Vice President and all civil Officers of the United States." Of course, if the President were one of the "Officers of the United States," this would be redundant.

Throughout our Nation's history, prominent commentators have noted that the constitutional term "officers of the United States" excludes the President. In the 1830s, Justice Story explained this at length in his magisterial *Commentaries on the Constitution of the United States*.[14] Less than twenty years after the Fourteenth Amendment was adopted, the U.S. Supreme Court observed that the "well established definition" of "an officer of the United States" requires that a person "hold[] his place by virtue of an appointment by the president, or of one of the courts of justice or heads of departments." *United States v. Mouat*, 124 US 303, 306, 8 S Ct 505, 506 (1888). In the 1870s a Senator stated that "the President is not an officer of the United States," and an influential treatise stated that "[i]t is obvious that … the President is not regarded as 'an officer of, or under, the United States.'"[15] And in more modern times, this same rule has been noted in three memoranda for the White House Office of Legal Counsel[16]—including by future Justices

[14] Story, *Commentaries* (Lonang Inst. 2005) Sec. 791 (the Appointments Clause "does not even affect to consider [the President and Vice President] officers of the United States").

[15] Josh Blackman & Seth Barrett Tillman, *Sweeping and Forcing the President into Section 3*, 28(2) Tex. Rev. L. & Pol. 350 (forthcoming 2024) (manuscript at 535), https://ssrn.com/abstract=4568771 (quoting *Congressional Record Containing the Proceedings of the Senate Sitting for the Trial of William W. Belknap*, at 145 (1876), and David A. McKnight, *The Electoral System of the United States* at 346 (1878)).

[16] *Officers of the United States Within the Meaning of the Appointments Clause*, at 116 (Apr. 16, 2007), https://www.justice.gov/file/451191/download#:~:text=The%20Appointments%20Clause%20provides%3A%20%5BThe%20President%5D%20shall%20nominate%2C,of%20Law%2C%20or%20in%20the%20Heads%20of%20Departments.

Rehnquist[17] and Scalia[18]—and the Supreme Court itself has noted that "[t]he people do not vote for the 'Officers of the United States.' They instead look to the President." *Free Enterprise Fund v. PCAOB*, 561 US 477, 498 (2010).

It does not help Petitioners to observe (Mtn. at 38-39) that the Constitution refers to the Presidency as an "office." The Constitution obviously uses the phrase "Officers of the United States" to mean something different from simple "Officers." For instances, Article I, Section 2 requires the House of Representatives to "chuse their Speaker and other Officers;" and Section 3 provides similarly for the Senate. But despite being "Officers" under the Constitution, these people plainly are not "*Officers of the United States*"—the President does not commission them, even though Article II, Section 3 requires presidential commissions for "all the Officers of the United States;" nor can they be impeached, even those Article II, Section IV allows impeachment of "all civil Officers or the United States."

2. Section Three's requirement of an "oath to support the Constitution" also excludes the President.

Section Three uses yet another phrase that, in the constitutional context, clearly excludes the President. It requires that the officer of the United States have taken an "oath … to support the Constitution of the United States." This is a direct reference to the oath "to support this Constitution" that Article VI requires many government officials to take. A noted constitutional treatise published the same year as the Fourteenth Amendment's adoption explained at length that Section Three refers to the Article VI oath.[19]

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[17] *Closing of Government Offices in Memory of Former President Eisenhower*, at 3, https://perma.cc/P229-BAKL

[18] *Applicability of 3 C.FR. Pt. 100 to the President and Vice President*, at 2, https://perma.cc/GQA4-PJNN

[19] George Washington Paschal, *The Constitution of the United States Defined and Carefully Annotated* xxxviii (1868) (the Article VI oath and Section 3 apply to "precisely the same class of officers"); *id.* at 250 n.242 (Section 3 is "based upon the higher obligation to obey th[e Article VI] oath"); *id.* at 494 (the "persons included in this [Section 3] disability are the same who had taken an official oath under clause 3 of Article VI").

But the President *does not take the Article VI oath.* Article II, Section 1 of the Constitution prescribes, word-for-word, a *different* oath for the President—which does not refer to "support" for the Constitution, but instead promises to "preserve, protect, and defend the Constitution." The President in inaugurated with that oath, not the Article VI oath.

* * *

So the Framers of the Fourteenth Amendment copied not one but *two* quite specific constitutional phrases—"officers of the United States" and "oath to support the Constitution"—that, elsewhere in the Constitution, clearly *exclude* the President. The textual evidence, then, is quite plain that Section Three also excludes the President. Since President Trump has never held any government office other than the Presidency, Section Three simply does not apply here.

C. Section Three does Not Bar Anyone from the Presidency.

Section Three prohibits only holding an office "under … the United States." So the Objections also depend on the Presidency coming within that definition. It does not.

Section Three includes a list of positions that disqualified persons may not hold. The list starts with Senators and proceeds, in decreasing level of importance, down to "office[s] … under the United States, or under any State." The list expressly includes three of the five offices created by the Constitution: Senator, Representative, and Presidential Elector. It does not expressly include the President or Vice President. The first draft of Section Three *did* include the President and Vice President at the beginning of the list—but Congress removed it. *See* 39 Cong. Globe 919 (1866). In both of these ways, the text of Section Three shows that it can bar people from holding many offices, but not the Presidency or Vice Presidency.

Other constitution references to an office "under the" United States exclude the Presidency. For instance, Article I, Section 6 prohibits sitting Senators and Representatives from being "appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased" during his or her term. Since the Presidency is not an appointed position, this clause obviously does not include it. Similarly, Article

I, Section 9 restricts the acceptance of foreign gifts by any "Person holding any Office … under" the United States, but this was not understood to cover the President: George Washington personally accepted a key to the Bastille and a portrait of Louis XVI from the French government, which remain in Mount Vernon to this day.

Moreover, contrary to Petitioners' objection (Mtn. at 37), excluding the Presidency from the Section Three bar makes practical and political sense. Section Three separately applies to presidential electors. Its framers reasonably chose to ensure loyalty in the Presidency in that way, rather than risking the constitutional crisis of a President-elect being chosen by loyal electors in a nationwide election, and then having his or her qualifications challenged.

VI. Petitioners Have Not Proved That President Trump Engaged In Insurrection.

Finally, the Objections must be dismissed because their core contention is wrong: President Trump did not engage in insurrection within the meaning of Section Three.

Almost all of Petitioners' purported proof on this point comes from a Congressional committee report on January 6. That committee drew repeated conclusions about President Trump's alleged state of mind, and especially about his alleged intent to support the individuals who were engaged in crimes or violence at the Capitol. But there is a fatal problem with Petitioners' reliance on that report: the Illinois Rules of Evidence expressly make "conclusions" in government reports inadmissible. Because their central evidence was not properly before the Board, Petitioners utterly failed to carry their burden of proof.

Even setting aside questions of admissibility, Petitioners simply did not prove their case; they have not proved that President Trump "engaged in insurrection" within the meaning of Section Three. Again, there are two reasons for this. First, although the riot at the Capitol on January 6, 2021 was awful and should never have happened, it did not reach the scale or scope of being an "insurrection." And second, President Trump himself did nothing to "engage in" the rioters' actions at the Capitol.

A. The January 6 Report is Inadmissible.

The January 6 Report falls squarely within the standard definition of hearsay: it is a series of statements made out of court, which Petitioners presented to the Board for the purpose of proving the truth of what they state. Although the hearing officer considered the report, he did so without ruling upon any of the Candidate's objections to its admissibility, including that the report fails to meet the standards for admissibility contained in Illinois Rule of Evidence 803(8). This rule provides an exception from the hearsay bar for "factual findings from a legally authorized investigation, but not findings containing expressions of opinions or the drawing of conclusions." (emphasis added).

There is a very good reason for the "opinions and conclusions" exception to this admissibility rule. No matter their party or ideology, government officials (and their allies) should not be able to shut down disagreement with their opinions or conclusions simply by publishing them in official reports, and then using the publication to establish those opinions or conclusions as "facts" in litigation against their political opponents. But the core of the hearing officer's alternative recommendation consisted of his wholesale adoption of public-record conclusions of exactly this forbidden type, again without ever ruling on any of the Candidate's objections the report.

The hearing officer's recommendation includes, at most, three paragraphs of recommended factual findings by the hearing officer himself. (Report, at 16-17, ¶¶ 5-7.) By contrast, the hearing officer recommends adopting, and re-prints in full, seventeen paragraphs of conclusions from the January 6 House Select Committee Report. (*See* Report, at 16, ¶¶ 19-20.) These seventeen paragraphs mostly list inferences drawn by the January 6 committee about President Trump's and others' state of mind. For instance, the hearing officer repeated the January 6 committee's conclusions that "Donald Trump purposely disseminated false allegations" that "provoked his supporters to violence on January 6," and that he "kn[ew] that" it "would be illegal" for Vice President Pence "to refuse to count electoral votes." (Id. at 18.) Most importantly, with respect to the hearing officer's "fan the flames" recommendation, the January 6 committee concluded that

President Trump "kn[ew] that" his tweet criticizing Vice President Pence "would incite further violence." (*Id.* at 19.) Indeed, it appears that the hearing officer's own recommended findings of fact also rely heavily, if not exclusively, on the conclusions and opinions in the January 6 Report. (*See id.* at 16-17.)

It is difficult to think of a better example of hearsay "opinions" or "conclusions" that are expressly inadmissible under Rule 803(8). These conclusions are not the result of any testimony or admissions by President Trump himself. Indeed, neither President Trump, nor his counsel was permitted to cross-examine or confront any witnesses who provided testimony before the January 6 Committee. Rather, they are inferences or conclusions that House Committee investigators purported to draw from their review of other materials. If state-of-mind conclusions of this kind were admissible, that would create a powerful temptation for government officials of all stripes to publish "reports" about their political opponents' culpable mental state, for purposes of establishing liability in proceedings like these ones.

And finally, the January 6 Report itself contained hearsay and unsupported opinion, as President Trump identified in his objection to its admissibility. Ex. 1, Colorado Trial, Intervenor Trump's Objections to Specific Findings Contained in January 6 Report (Ex. No. 78), October 28, 2023.[20] For instance, recorded interviews, such as those of Cassidy Hutchinson, Bill Barr, and Pat Cipollone, contain multi-level hearsay outside of any exception: the recording and underlying content of each interview constitutes hearsay because proper cross-examination was not permitted. *See People v. McCullough*, 2015 IL App (2d) 121364, ¶ 113; *see also United States v. Green*, 258 F. 3d 683, 690 (7th Cir. 2001). Nonetheless, the January 6 Committee found statements made by these witnesses went to President Trump's intent. For example, Cassidy Hutchinson stated that she overheard someone (unnamed) telling President Trump that some of his supporters at the Capitol were armed; Barr and Cipollone stated that President Trump did not want to do anything about the riots and that President Trump thought Vice-President Pence should be hanged. Colorado Trial,

[20] This exhibit was submitted to the Electoral Board as an exhibit to the Candidate's 1/29/2024 Exceptions to the Hearing Officer's Recommended Decision.

Petitioners' Reply to Trump's Motion in *Limine* to Exclude Petitioners' Exhibits, October 20, 2023, p. 12. This is the only type of testimony Petitioners in Colorado, and Objectors here, have offered to support the argument that President Trump had the specific intent to cause the riot – someone heard someone say something to President Trump. This is inadmissible hearsay.

B. The Riot of January 6 was Not an "Insurrection or Rebellion."

Section Three can be violated only if there was an "insurrection or rebellion." Petitioners did not prove one here, nor could they have.

The text and history of the Constitution confirm that "insurrection or rebellion" refer to warfare. Indeed, one of the primary models for Section Three's language appears to have been the original Constitution's Treason Clause, which defines "[t]reason against the United States" as "levying War against them, or … adhering to their Enemies, giving them Aid and Comfort." The other source was Section 2 of the Second Confiscation Act, enacted a few years before the Fourteenth Amendment, which punished anyone who "shall hereafter incite, set on foot, assist, or engage in any rebellion or insurrection against the authority of the United States … or give aid or comfort thereto. 12 Stat 589, 627 (1862); *see* 18 USC § 2383. The year after the Act became law, a prominent court decision explained that "engaging in a rebellion and giving it aid and comfort[] amounts to a levying of war." *United States v. Greathouse*, 2 F. Cas. 18, 21 (C.C.N.D. Cal. 1863). 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 arm*s* traitorously against the government."[21] Because Section Three was enacted to deal with the fallout of the Civil War, this definition only makes sense.

This means that there is a crucial difference between insurrections and political riots—even riots that disrupt government processes. To be sure, an "insurrection," for purposes of Section Three, may be more localized or less organized than a full-scale military campaign with organized opposing armies. But it must involve more than an attempt (even an organized, violent attempt) to

[21] A Law Dictionary, Adapted to the Constitution and Laws of the United States of America, and of the Several States of the American Union (12th ed. 1868).

disrupt government processes in protest at how they are being carried out. It must instead involve an effort to break away from or overthrow the government's very authority.

Petitioners argue in vain that this is a "concocted" definition of insurrection. (Mtn. at 31.) To the contrary, this is the ordinary English meaning of the term. People who resort to violent protests of government actions are committing crimes, but they are not "insurrectionists" even if their protests are intended to, and do, disrupt the government actions they dislike. The missing ingredient is a desire not just to stop one particular government act, but to supplant the government's very authority.

By contrast, it is Petitioners' purported definition of "insurrection" that is artificial and impossibly broad. They contend that "an 'insurrection' is any: (1) concerted, (2) use of force or violence, (3) to resist the government's authority to execute the law in some significant respect." (Mtn. at 30.) This would include almost any public, joint effort to obstruct federal law—transforming thousands of Americans, if not more, into "insurrectionists," and threatening to make future Section Three lawsuits a regular and toxic part of American politics. Petitioners' conclusory attempt to deny this (Mtn. at 31) is unsupported and unsupportable. Consider a protest of police killings that forcefully prevents the police from accessing their station or engaging in patrols. That is unquestionably concerted, forceful, and in resistance to the government authority to execute the law. Under Petitioners' definition, everyone in the crowd—and even politicians who were *not* in the crowd but spoke in support of its objections—are "insurrectionists."

There is a reason that Petitioners must stretch the definition of "insurrection" to this implausible extreme: anything less would defeat their claims. The events at the Capitol on January 6, 2021, included serious crimes and violence, with some level of organization. Rioters entered the Capitol, clashed with law enforcement, invaded restricted areas, damaged property, and interrupted Congress' proceedings. But after a few hours, they left, and Congress counted the electoral votes early the next morning. There is nothing even to suggest that the rioters were attempting to actually overthrow or break away from the government. Indeed, insurrection is a federal crime defined by statute, *see* 18 USC § 2383—but no one, including President Trump, has even been *charged* with

that crime, let alone convicted of it, in connection with January 6. In the impeachment proceedings, the Senate found President Trump *not guilty* of insurrection.

Petitioners therefore are left to insist that January 6 *must* have involved an insurrection because some people at the Capitol were trying to "prevent the peaceful transfer of power." (*E.g.,* Mtn. at 32.) But this phrase is artfully ambiguous. Petitioners have not remotely proved that the people in the Capitol on January 6 had some kind of plan to violently install a President by extra-Constitutional means—which, if it had happened, might indeed, have amounted to an insurrection. Rather, what Petitioners have argued is that people in the Capitol on January 6th were trying to disrupt the electoral count, *without* any understanding of or plan for what would happen next or instead. That places these events squarely in the territory of a political riot, albeit a serious one—not an insurrection.

C. President Trump did Not "Engage in" the January 6 Riot.

Whether or not the January 6 riot was an "insurrection" (it was not), Petitioner wholly failed to prove that President Trump "engaged in" it. The only conduct that Petitioners pointed to by President Trump is (i) unsuccessfully arguing that the announced result of the election was incorrect and should be changed, (ii) giving a speech on January 6 that repeated those arguments and asked the gathered crowd to "peacefully and patriotically make your voices heard," and (iii) watching television reports of the events at the Capitol before repeatedly asking the crowds for "peace" and to "go home." Both legally and factually, this does not amount to "engaging in" the January 6 riot.

1. Section Three does not prohibit pure speech.

Petitioners contend primarily that President Trump "engaged in" the January 6 riot by giving a speech, and engaging in other communication, before the riot began. This contention fails as a matter of law. Section Three has never been interpreted to apply broadly to anyone who was claimed to be associated in any way with an alleged insurrection. It refers to active assistance to an ongoing insurrection—not speech about an alleged future insurrection.

As explained above, Section Three was modeled partly on the Second Confiscation Act,

which provided penalties for anyone who "shall hereafter incite, set on foot, assist, or engage in any rebellion or insurrection." But the framers of the Fourteenth Amendment, enacted six years later, omitted any reference to inciting or setting on foot an insurrection. Instead, they limited Section Three to "engag[ing] in" insurrection—indicating that allegedly promoting a future insurrection is not covered.

Contemporaneous practice confirms that the framing generation understood Section Three that way. In the years immediately after enacting Section Three, the House of Representatives considered qualifications challenges to multiple Members-elect who, before the Civil War began, had given speeches or voted for resolutions in state legislatures advocating violence against the North. Congress rejected those challenges and found that Section Three disqualification did not apply.[22] By contrast, at nearly the same time, the House *did* disqualify a former member of a rebel government and army.[23]

Against this, Petitioners can offer only two obvious red herrings. First, Petitioners misleadingly truncate a quotation by a 19th-centruy attorney general, who in context was plainly addressing only incitement *by rebel government officials*:

> [O]fficers who, during the rebellion, discharged official duties not incident to war, but only such duties as belong to a state of peace, and were necessary to the preservation of order and the administration of law, are not to be considered as thereby engaging in rebellion or disqualified. Disloyal sentiments, opinions, or sympathies would not disqualify; but when a person has, by speech or by writing, incited others to engage in rebellion he must come under the disqualification.[24]

Second, Petitioners cite to an 1894 grand-jury charge about a statute *that expressed prohibited incitement of insurrection*. 62 F. 828, 829-30 (N.D. Ill. 1894). That obviously sheds no light on

[22] 41 Cong. Globe at 5443 (member voted for a pre-War resolution to "resist [any] invasion of the soil of the South at all hazards"); *Hinds' Precedents of the House of Representatives* at 477 (1907) (member gave a speech saying that Virginia should "if necessary, fight").

[23] *Hinds' Precedents* at 481, 486.

[24] 12 Op Att'y Gen at 205, https://www.google.com/books/edition/Official_Opinions_of_the_Attorneys_Gener/FGVJAQAAMAAJ?hl=en&gbpv=0.

whether incitement is covered by a provision that, like Section Three, omits that word. And that is it. Those two obvious irrelevancies are Petitioners' entire effort to convince the Court that, when the framers of the Fourteenth Amendment decided to drop the word "incite," they did not really mean it.

Finally, even if "engaging" under Section Three could include allegedly inciting a purported future insurrection, that legal standard would still be quite high. Courts have consistently and clearly defined incitement in the First Amendment context—and it would be very strange if speech that fell short of *inciting* insurrection under the First Amendment could still qualify as *engaging in* insurrection under the Fourteenth. Among other things, incitement under the First Amendment requires that a speaker "specifically advocate[] for listeners to take unlawful action," *Nwanguma v. Trump*, 903 F3d 604, 610, (6th Cir 2018), with "specific intent … equivalent to purpose or knowledge." *Counterman v. Colorado*, 600 U.S. 66, 81 (2023).

2. Under any legal standard, nothing President Trump did qualifies as "engaging in" the January 6 riot.

Whether or not Section 3 "engag[ing]" can include incitement or other speech, Petitioners failed to prove, and could not possibly have proved, that President Trump engaged in or incited the January 6 riot. Their allegations about President Trump's activities come under three broad heading: disputing an election outcome, giving a speech on January 6, and monitoring and Tweeting about the events at the Capitol as they occurred. None of these comes close to engaging in the riot.

First—Disputes over election outcomes are not new in our democracy. Most such disputes are contentious, and every one has a winner or a loser. But it is not in our constitutional tradition to treat the losers of those disputes as insurrectionists. That is the case with President Trump. After now-President Biden was announced as the winner of the 2020, Petitioners allege, President Trump made a series of public statements, and took a series of public actions, challenging the correctness of that outcome and advocating remedial actions. In particular, President Trump argued that Vice President Pence had authority under the Constitution to take certain actions that would result in

President Trump being certified as the winner of the election. Those arguments and efforts were unsuccessful, and Congress certified now-President Biden as the winner. Although President Trump continued to disagree with that result, he promptly promised—and deliver—an "orderly transition" of power.[25] This by itself cannot possibly implicate Section Three. Whatever else might qualify as "engag[ing] in insurrection," contesting an election outcome certainly does not.

Second—Petitioners argue that, on January 6, President Trump gave an impassioned speech to a large crowd gathered in Washington in support of his arguments that he should be certified the election winner. Petitioners apparently contend that this speech amounted to some sort of instruction to engage in violence or crimes. But there is nothing to support that contention. We are confident that the Board will a transcript of the speech itself.[26] The core of the President's speech did give instructions to the crowd—but they expressly told the crowd ***to be peaceful***:

> [W]e're going to walk down to the Capitol, and we're going to cheer on our brave senators and congressmen and -women, and 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. We have come to demand that Congress do the right thing and only count the electors who have been lawfully slated, lawfully slated. I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard.

And at the conclusion of his speech, President Trump instructed the crowd similarly:

> [W]e're going to walk down Pennsylvania Avenue, I love Pennsylvania Avenue, and we're going to the Capitol and we're going to try and give—the Democrats are hopeless. They're never voting for anything, not even one vote. 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. I want to thank you all. God bless you and God bless America. Thank you all for being here. This is incredible. Thank you very much. Thank you.

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[25] Statement of President Donald Trump, https://x.com/DanScavino/status/1347103015493361664?s=20; *see Trump agrees to 'orderly transition' of power*, Politico, Jan. 7, 2021, *available at* https://www.politico.com/news/2021/01/07/trump-transition-of-power-455721#:~:text=%E2%80%9CEven%20though%20I%20totally%20disagree,Trump%20said%20in%20a%20statement.

[26] *E.g.,* https://www.rev.com/blog/transcripts/donald-trump-speech-save-america-rally-transcript-january-6.

Not only did these remarks expressly call for the crowd to protest "peacefully," they also contradict any argument that President Trump intended or instructed any disruption to Congress' proceedings: he expressly contemplated Congress "voting" and "count[ing] the electors." As a D.C. Circuit judge remarked at argument in a recent case, "the President didn't say break in, didn't say assault members of Congress, assault Capitol Police, or anything like that." *Blassingame v. Trump*, No. 22-5069 (DC Cir Dec. 7, 2022) Arg. Tr. at 74:21-25 (Rogers, J.). This cannot possibly have been "engagement in" any violence.

Third—President Trump's alleged conduct *during* the January 6 riot cannot possibly amount to "engaging" in it. While rioters were in the Capitol, Petitioners have not argued that President Trump did anything affirmative to help them. They obviously wish that President Trum had managed to *stop* the riot sooner, but that cannot somehow be transformed into his *engaging in* it. Claims that the President has failed properly to execute the law are to be policed by Congress and the electorate, not the courts or state agencies. *United States v. Texas*, 599 US 670, 678–81, 685 (2023). This is especially true with Petitioners' attempted argument that President Trump should have "call[ed] for the National Guard," and that not doing so somehow amount to insurrection. (Mtn. at 34.) The President's decisions about the use of military force are *emphatically* outside the boundaries of legal review, *Martin v. Mott*, 25 US 19, 31–32 (1827), even in situations where an insurrection is undoubtedly occurring, *Luther v. Borden*, 48 US 1, 44–45 (1849). So in accord with ordinary English, Petitioners' allegations about President Trump's supposed *inaction* while rioters were in the Capitol certainly cannot qualify as allegations that he "engaged in" anything.

And the President's alleged affirmative actions did not remotely constitute engagement in the events at the Capitol. For a short while after the riot began, President Trump continued to articulate his criticisms of the announced election result and his arguments for changing it. But within minutes of Congress going into recess, President Trump tweeted that protesters should

"support our Capitol Police and Law Enforcement" and "Stay peaceful!"[27] From that moment on, the President's public statements were exclusively calls for peace and an end to the riot. Shortly thereafter, the President tweeted again, "asking for everyone at the U.S. Capitol to remain peaceful" and to "respect the Law" and calling for "No violence!"[28] The President released a minute-long video, which repeated his position that the announced election result was wrong but repeatedly told the rioters to "go home" and "[w]e have to have peace."[29] The President then tweeted again that the rioters should "[g]o home with love & in peace."[30] About two hours after that, Congress re-convened to certify now-President Biden as the winner of the election.

At best, then, Petitioners argue that President Trump could have been quicker in pivoting from calling for a change in the announced election result to calling for a stop to the crimes being committed at the Capitol. But that does not satisfy any plausible definition of "engaging in" those crimes.

* * *

Petitioners argue that President Trump unsuccessfully contested an election outcome. He gave an impassioned speech to a crowd, repeating his arguments and calling for peaceful protest in support of them. And after the protest turned violent, he repeatedly called for it to stop. This course of conduct met with the deep disapproval of many Americans. But neither the whole of it

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[27] @realDonaldTrump, TWITTER, (Jan. 6, 2021, 2:38pm), https://twitter.com/real-DonaldTrump/status/1346904110969315332.

[28] @realDonaldTrump, TWITTER (Jan. 6, 2021, 3:13pm), https://twitter.com/real-DonaldTrump/status/1346912780700577792.

[29] *President Trump Video Statement on Capitol Protesters*, https://www.c-span.org/video/?507774-1/president-trump-video-statement-capitol-protesters. A transcript can be found at: https://www.presi-dency.ucsb.edu/documents/videotaped-remarks-during-the-insurrection-the-united-states-capitol.

[30] Brooke Singman, *Trump says election was 'stolen' and 'these are the things and events that happen' tells people to 'go home,'* Fox News (Jan. 6, 2021, 6:44 PM EST) https://www.foxnews.com/politics/trump-tells-protesters-to-go-home-maintaining-that-the-election-was-stolen-amid-violence-at-the-capitol.

nor any part is included within any reasonable interpretation of the phrase "engaged in insurrection." Petitioners therefore have wholly failed to prove their case.

Dated: February 13, 2024

Respectfully submitted,

RESPONDENT-APPELLANT DONALD J. TRUMP

By: /s/ Adam P. Merrill
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CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that on February 13, 2024, I caused a true and correct copy of the foregoing RESPONDENT/CANDIDATE DONALD J. TRUMP'S RESPONSE TO PETITIONERS/OBJECTORS' MOTION TO GRANT PETITION FOR JUDICIAL REVIEW 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