STATE BOARD OF ELECTIONS

STATE OF ILLINOIS

2329 S. MacArthur Blvd.
Springfield, Illinois 62704
217/782-4141
Fax: 217/782-5959

69 W. Washington St., Pedway LL-08
Chicago, Illinois 60602
312/814-6440
Fax: 312/814-6485

AGENDA
STATE BOARD OF ELECTIONS
Sitting as the Duly Authorized
State Officers Electoral Board
Tuesday, January 30, 2024
9:30 a.m.

69 W. Washington St.
22nd Floor – Conference Room A
Chicago, Illinois
and
2329 S. MacArthur Blvd.
Springfield, Illinois

Pledge of Allegiance.
Roll call.

1. **Lack of apparent conformity of petitions;**
   a. **Rhian Fazzini, Alternate Delegate to Ron DeSantis – 6th Congressional District. (pgs.1-3)**

2. **Recess the State Board of Elections and reconvene as the State Officers Electoral Board.**

3. **Consideration of objections to established party special judicial candidate nominating petitions for the March 19, 2024 General Primary Election;**
   a. ***Overturf v. Hopkins,* 24SOEBGP115; (pgs.4-60)**
   b. ***Overturf v. Minson-Minor,* 24SOEBGP116. (pgs.61-105)**

4. **Consideration of objections to established party presidential preference and delegate candidate nominating petitions for the March 19, 2024 General Primary Election;**
   a. ***Smith & Conrad v. Biden,* 24SOEBGP118; (pgs.106-152)**
   b. ***Bouvet, Conrad, Newsome & Hubbard v. Biden,* 24SOEBGP119; (pgs.153-352)**
   c. ***Anderson, Holley, Hickman, Cintron & Baker v. Trump,* 24SOEBGP517; (pgs.353-711 & summary sheet separate cover)**
   d. ***Jones, Johanson, Sutterland, Johnson & Smith v. Biden,* 24SOEBGP522. (pgs.712-734)**

5. **Objections/Candidates withdrawn;**
   a. ***Overturf v. Cockrum,* 24SOEBGP117 – objection withdrawn;**
   b. ***Cho v. McConchie, D., Beaudoin, Steinberg, McConchie, M., Peterson & Shiner,* 24SOEBGP518 – objection withdrawn;**
   c. ***Woodard, v. Diekelman, Johnson, Vaubel, Langlois & Gilonske,* 24SOEBGP519 – objection withdrawn;**
   d. ***Jochum v. Smiddy, Kelly, Svenson, Edwards, Robins & O'Donnell,* 24SOEBGP520 – objection withdrawn;**
   e. ***Clausen v. Dodge, Bonk, Sehnert & Coughlin,* 24SOEBGP521 – objection withdrawn;**

f. ***Meyer v. Haley,*** **24SOEBGP523 – objection withdrawn.**

6. Recess the State Officers Electoral Board and reconvene as the State Board of Elections.

7. Other business.

8. Comments from the general public.

9. Adjourn until February 21, 2024 at 10:30 a.m. or until call of the Chair, whichever occurs first.

STATE BOARD OF ELECTIONS

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January 16, 2024

Rhian Fazzini
269 Walnut
Elmhurst, IL 60126

RE: Lack of Apparent Conformity of your Petition for the office of Alternate Delegate to Ron DeSantis

Dear Mr. Fazzini:

Please allow this correspondence to supplement that dated January 5, 2024, from me. A copy of the January 5th correspondence is also enclosed with this letter.

The previous correspondence from me indicated an incorrect date. Please know if you wish to dispute the preliminary finding regarding the sufficiency and apparent conformity of the nomination papers filed by you for office of Alternate Delegate for Ron DeSantis, you may appear at the **January 30, 2024,** meeting of the State Board of Elections. This meeting will be held at 9:30AM and in both offices of the State Board of Elections. Should you have questions, please contact me at the phone number below.

Thank you and please accept my sincerest apologies for any confusion or inconvenience these letters may have caused.

Sincerely,

Jordan Andrew
Deputy General Counsel
Illinois State Board of Elections
p. 217-785-4003

Enclosure

STATE BOARD OF ELECTIONS

STATE OF ILLINOIS

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Springfield, Illinois 62704
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69 W. Washington St., Pedway LL-08
Chicago, Illinois 60602
312/814-6440
Fax: 312/814-6485

January 5, 2024

Rhian Fazzini
269 Walnut
Elmhurst, IL 60126

RE: Lack of Apparent Conformity of your Petition for the office of Alternate Delegate to Ron DeSantis

Dear Mr. Fazzini:

Upon review of your filed candidate petition for the office of Alternate Delegate to Ron DeSantis, your petition has been identified by the staff of the State Board of Elections as not being in apparent conformity with State election law due to:

> The Statement of Candidacy being unsigned by you, the candidate pursuant to 10 ILCS 5/7-10.3 and 7-10.

If your petition is found not to be in apparent conformity with State law when presented to the State Board of Elections, your name will not be included in the March 19, 2024, General Primary Election ballot. If you dispute this preliminary finding, you may appear at the meeting of the State Board of Elections, to be held on January 17, 2024, at 9:30 a.m. to defend your filings before the Board makes a final decision to accept or reject the petition on the basis of non-conformity.

Sincerely,

COPY

Jordan Andrew
Deputy General Counsel
Illinois State Board of Elections

ATTACH TO PETITION

10 ILCS 5/7-10, 7-10.2, 7-10.3

Suggested
Revised July, 2007
SBE No. P-1J

STATEMENT OF CANDIDACY

DELEGATE AND ALTERNATE DELEGATE

NAME	ADDRESS-ZIP CODE	OFFICE	DISTRICT	PARTY
Rhian Fazzini	269 Walnut 60126	Alternate Delegate for RonDesantis in the 6th Con. District	IL-6th	Republican

If required pursuant to 10 ILCS 5/7-10.2, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ (List all names during last 3 years) UNTIL NAME CHANGED ON _____ (List date of each name change)

STATE OF ILLINOIS)
) SS.
County of DuPage)

STATE BOARD OF ELECTIONS
Springfield, Illinois
FILED January 4, 2024 8:00 AM

I, Rhian Fazzini being first duly sworn (or affirmed), say that I reside at 269 Walnut, in the (City) Village, Unincorporated Area (circle one) of Elmhurst (if unincorporated, list municipality that provides postal service) Zip Code 60126, in the County of DuPage, State of Illinois; that I am a qualified voter therein and am a qualified Primary voter of the Republican Party; that I am a candidate for election to the office of Alternate Delegate to RonDesantis in the 6th District, to be voted upon at the primary election to be held on March 19 2024 (date of election) and that I am legally qualified to hold such office and I hereby request that my name be printed upon the official Republican (Name of Party) Primary ballot for election for such office.

☒ prefer RonDeSantis for President of the United States.

☐ declare that I am uncommitted as to preference for President of the United States.

_____
(Signature of Candidate)

Signed and sworn to (or affirmed) by RHIAN FAZZINI (Name of Candidate) before me, on 11/16/23 (insert month, day, year).

Official Seal
Tonia J Khouri
Notary Public State of Illinois
My Commission Expires 02/03/2025

_____
(Notary Public's Signature)

Overturf v. Hopkins
24 SOEB GP 115

Candidate: Aaron Michael Hopkins

Office: Circuit Judge for the 2nd Judicial Circuit (Thomas J. Tedeschi Vacancy)

Party: Republican

Objector: John Overturf

Attorney for Objector: John G. Fogarty, Jr.

Attorney for Candidate: Anthony D. Schuering

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Candidate does not reside at the Franklin County address listed on the Statement of Candidacy; rather, Candidate's residence is in Williamson County, outside the 2nd Judicial Circuit, and he has not abandoned this residence. Accordingly, Candidate is not a resident of the unit that would select him, as is required by Article VI, Section 11 of the Illinois Constitution, and his Statement of Candidacy falsely states his residency.

Dispositive Motions: Candidate's Motion to Strike and Dismiss, filed January 16, 2024. Candidate argues that the objection should be stricken and dismissed for failing to "state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question," as required by Section 10-8 of the Election Code, 10 ILCS 5/10-8. Candidate argues that the burden is on Objector to make a *prima facie* case that Candidate is ineligible to be on the ballot, citing *Watson v. Electoral Board of Village of Bradley*, 2013 IL App (3d) 130142. Candidate further argues that Objector has a duty to show a good-faith basis for the objection under *Daniel v. Daly*, 2015 IL App (1st) 150544, and has not fulfilled that duty, as the objection petition contains no factual allegations which tend to suggest that the Objector has a good-faith basis for alleging the Candidate falsified his residency.

Objector's Response to Motion to Dismiss, filed January 18, 2024. Objector argues that the objection meets the requirements of Section 10-8 of the Election Code because it fully states the nature of the objections, namely that Candidate does not reside in Franklin County. Objector relies on *Siegel v. Lake County Officers Electoral Board*, 385 Ill.App.3d 452 (2d Dist. 2008), and *Cunningham v. Schaeflein*, 2012 IL App (1st) 120529, to argue that exacting precision is not required, only an adequate notice of the objections made to the petitions so that the candidate may prepare a defense. Objector notes that Candidate has been defending against the allegations in the

objection and has made substantive filings, which suggests that the objection was sufficiently pled. Objector argues that *Daniel* is distinguishable because that objector had objected to the vast majority of the nomination petition signatures without having actually examined them. Objector, citing *Ferguson v. New England Mutual Life Insurance Co*., 196 Ill.App.3d 766 (1st Dist. 1990), notes that the adjudication of a motion to dismiss requires that all well-pleaded facts must be read in the way most favorable to the Objector because Objector is the nonmoving party. Objector has pleaded that Candidate does not reside at the Franklin County address listed in his Statement of Candidacy and that Candidate lives at his home in Williamson County instead.

Reply in Support of Candidate's Motion to Strike and Dismiss, filed January 19, 2024. Candidate asserts that Illinois is a fact-pleading and not a notice-pleading jurisdiction, as articulated by a line of cases, including *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662. Therefore, Candidate argues that Objector has a higher burden than merely putting Candidate on notice of the general charges and has not met that burden. Candidate further argues that the plain language of Section 10-8 requires Objector to "state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question" and not merely, as Objector claims, to "adequately apprise a candidate of the general charge." Candidate also argues that Objector's petition fails because it does not allege facts stating the elements of the cause of action, and instead makes conclusory statements.

Record Exam Necessary: No

Hearing Officer: Joe Craven

Hearing Officer Findings and Recommendations: The Hearing Officer recommends denying Candidate's Motion to Strike and Dismiss, reasoning that, even under the most demanding fact pleading standard, Objector's petition satisfies Section 10-8 of the Election Code because it alleges facts sufficient to state a claim, namely that Candidate does not reside at the Franklin County address listed in the Statement of Candidacy, but rather at an address in Williamson County.

Following an evidentiary hearing to determine Candidate's residence, the Hearing Officer applied the paradigm set forth in *Maksym v. Board of Election Commissioners of City of Chicago*, 242 Ill. 2d 303, 319 (2011), to determine the residency of Candidate. Under *Maksym*, "residency" is determined by "physical presence" and an "intent to remain." *Id*. Further, once a residency is established, it is presumed to continue unless or until it has been abandoned. Here, Candidate and Objector stipulate that Candidate resided at his marital home in Franklin County until September 2021. The Hearing Officer finds that Objector has met the burden of proving that Candidate abandoned the Franklin County residence and established a new residence in Williamson County in September 2021. The Hearing Officer is not persuaded by Candidate's argument that he did not establish a new residency in Williamson County. Relevant facts presented at the evidentiary hearing include Candidate's representations during divorce proceedings that Candidate resides at the Williamson County property, the updates of Candidate's Driver's License and Voter Registration to reflect the Williamson County address; Candidate's purchasing of the Williamson County property, fully furnishing it, and spending the majority of his nights there since September 2021, as well as Candidate's failure to move his personal effects to the new Franklin County residence, which he began renting in October 2023. Rather, the Hearing Officer determines

Candidate intended to established residence in Williamson County, Candidate has not abandoned it, and Candidate has not established a new residence in Franklin County. The Hearing Officer did not find Candidate's characterization of the facts persuasive, but instead unreliable, primarily because Candidate testified he represented he had a Williamson County residence to the divorce court to gain a "tactical advantage" in those proceedings. Applying *Dillavou v. County Officer's Electoral Board of Sangamon County*, 260 Ill.App.3d 127, 133 (4th Dist. 1994), the Hearing Officer finds that the totality of the facts demonstrate that Candidate resides in Williamson County.

The Hearing Officer concludes by finding that the facts demonstrate: (1) that Candidate resided at his marital home in Franklin County until September 2021; (2) that Objector has carried the burden of proving Candidate abandoned his marital home and established residency in Williamson County; and (3) that Candidate has not demonstrated an abandonment of Candidate's Williamson County residence. As such, the Hearing Officer recommends that the Board find that Candidate's Statement of Candidacy falsely states that Candidate resides in Franklin County, invalidating his nomination papers, and recommends that Candidate Aaron Michael Hopkins not be placed on the ballot for the Circuit Court Judge for the 2nd Judicial Circuit (Thomas J. Tedeschi Vacancy).

Recommendation of the General Counsel: The General Counsel concurs in the Hearing Officer's recommendation and recommends not certifying Candidate's name to the March 19, 2024, General Primary ballot.

EFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF RESIDENT CIRCUIT COURT JUDGE FOR FRANKLIN COUNTY, TO FILL THE VACANCY OF THE HONORABLE THOMAS JOSEPH TEDESCHI, SECOND JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS

John Overturf Petitioner-Objector,	)	
vs.	)	Case No. 2024 SOEB GP 115
Aaron Michael Hopkins, Respondent-Candidate.	)	

RECOMMENDATION

TO: John Overturf
c/o John G. Fogarty, Jr.
4043 N. Ravenswood, Suite 226
Chicago, IL 60613
fogartyjr@gmail.com

Aaron Michael Hopkins
c/o Anthony D. Schuering
Brown, Hay, & Stephens, LLP
205 S Fifth Street, Suite 1000
Springfield, IL 62705
aschuering@bhslaw.com

General Counsel
Illinois State Board of Elections
GeneralCounsel@elections.il.gov

THIS MATTER COMING ON for recommendations on the Objector's Petition and Candidate's Motion to Strike, the Hearing Officer states as follows:

PROCEDURAL HISTORY

Objector's Petition was filed on January 3, 2024. The Petition objects to the nomination papers of Aaron Michael Hopkins as candidate for the Office of Resident Circuit Court Judge for Franklin County, to fill the Vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial Circuit of the State of Illinois. The Petition alleges the Nomination Papers must be stricken in their entirety because Candidate is not a resident of Franklin County, as required by Article VI, Section 11 of the Illinois Constitution, and is therefore ineligible for office.

Throughout these proceedings, the Parties referred to a number of properties by a

designated name, by address, or by city. For ease of reference, the Hearing Officer refers to those various properties throughout this Recommendation as follows:

1) Candidate's Marital Property: 511 N Horrell Avenue, West Frankfort, Illinois 62896
2) Candidate's Law Office: 402 E Main St, West Frankfort, Illinois 62896
3) Williamson County Property: 404 W Clark Trail, Herrin, Illinois 62948
4) West Frankfort Property: 309 W Elm Street, West Frankfort, Illinois 62896

After an Initial Case Management Conference, the Parties jointly stipulated that the Candidate's residency was the principal legal issue raised in this cause, in addition to the legal arguments raised by Candidate in a Motion to Strike and Dismiss.

The Parties exchanged exhibits prior to an Evidentiary Hearing, and Objector submitted a request for two subpoenas. This Hearing Officer submitted a Recommendation on these Subpoena Requests, which is incorporated herein by reference. The Candidate had no objection to the requested subpoena for all voter registration materials of Aaron Michael Hopkins with the Franklin County Clerk's Office. It was issued, and those responsive documents were introduced at the Evidentiary Hearing held on January 23, 2024. The other request seeking a subpoena to compel the appearance of Paris Dunk – a Franklin County Clerk's Office employee – was issued over the objection of Candidate. However, the Objector ultimately did not call Mr. Dunk at the Evidentiary Hearing. The Parties both appeared through counsel at the Evidentiary Hearing on January 23, 2024, and were granted leave to file written closing summations on January 24, 2024.

A. Motion to Strike and Dismiss

On January 16, 2024, Candidate filed a Motion to Strike and Dismiss arguing Objector's Petition should be stricken and dismissed for failing to comply with 10 ILCS 5/10-8. Specifically, Candidate argued Objector's Petition "provides nothing beyond conclusory statements" and

"provides no factual allegations to support his claims against the Candidate." Motion at ¶ 4. Further, Candidate alleged "Objector fails to demonstrate "a good-faith basis to ascertain the truth of his objections prior to filing his petition." *Id.* (citing *Daniel v. Daly*, 2015 IL App (1st) 150544, ¶ 34). Candidate also articulated, with citation to applicable caselaw, that Objector bears the ultimate burden of proof in this case. Mot. at ¶ 3, *citing Watson v. Electoral Bd. of Vill. of Bradley*, 2013 IL App (3d) 130142, ¶ 41.

The Objector filed a Response and the Candidate filed a Reply, where the Parties each respectively cited numerous cases arguing which "pleading standard" is required by an Objector under 10 ILCS 5/10-8. This Hearing Officer provides no opinion on which standard is applicable because it is evident that the Objector's Petition survives even if the more stringent "fact-pleading" standard advocated for by the Candidate applies.

Candidate states in his Motion that the Objection "provides no factual allegations," and repeats in his Reply that "the Objection does not allege specific facts." Motion at ¶ 4, Reply at Pg. 4. A review of the Petition demonstrates these assertions are false.

Objector's Petition alleges: "the Candidate does not in fact reside at 309 West Elm Street, West Frankfurt, Illinois, 62896, in Franklin County," and "[t]he Candidate truly resides at his home in Williamson County." Objection at ¶¶ 7-8. The Hearing Officer finds these factual allegations sufficient to state a claim, and therefore recommends the Candidate's Motion to Strike and Dismiss be **DENIED**.

B. Evidentiary Hearing

On January 23, 2024, an Evidentiary Hearing was held on Objector's Petition. The only witness called was the Candidate, Aaron Michael Hopkins. Various exhibits were introduced by both Parties, including:

1) Candidate's Voter Registration Materials;

2) Candidate's Driver's License;

3) Candidate's Vehicle Registration and Insurance Cards;

4) Candidate's lease for the West Frankfort Property;

5) Candidate's agreement with Kristen Anastasi to market the Williamson County Property;

6) 7 Signed Affidavits;

7) Rent Checks from Candidate for the Williamson County Property;

8) Utility Bills for the Williamson County Property;

9) Various Posts from Candidate's Facebook account from December 2023-January 2024;

10) Google Map Street View Pictures of Candidate's Law Office, the Williamson County Property, and the West Frankfurt Property; and

11) Redfin, Zillow, and Realtor.com descriptions of the Williamson County Property.

In his testimony, the Candidate testified that he resided at his Marital Property until approximately September 2021. At that time, he moved to the Williamson County Property – just prior to his divorce. His stated reason for moving to the Williamson County Property was "for tactical litigation purposes." More specifically, he stated he "wanted a residence" near his children's private school as a "tactical advantage" in what he anticipated to be a difficult divorce case involving visitation rights.

The Candidate rented the Williamson County Property from Katie Baker for $1,500 per month, plus a $1,500 security deposit. She provided an affidavit, which stated the Candidate informed her "he would be residing in the Williamson County Property primarily when he had custody of his children." Baker Aff. at ¶ 4. The property was completely unfurnished at the time Candidate moved in. As such, he furnished the property "in full," with what he described as

approximately 98% new furnishings. These included furnishings for each of the three bedrooms for him and his two children. The Candidate testified he received little to no mail at the Williamson County Property, but that he has been responsible for all utility bills which have been mailed there.

The Candidate testified that from approximately September 2021 through October 2023, he slept at the Williamson County Property "all but a few nights a month." Because of this, during the school year, he has been able to drive his children to school almost every morning. The other nights during this time frame were spent on a couch at the Candidate's Law Office, or an occasional night away at a female acquaintance's home. The Candidate testified he slept at his Law Office "once or twice a month," but that it has no bed, bedroom, or shower. Rather, he sleeps on a couch on occasion. The Candidate testified that he also occasionally slept at a female acquaintance's home approximately once a week beginning in July 2022.

The Candidate testified that he rented the Williamson County Property with the intention of remaining there "temporarily." He specifically testified that he "never intended to live there permanently." He also provided various affidavits where affiants testified to the effect that they knew Candidate always wanted to return to Franklin County due to his family's deep roots. When asked about how long this "temporary" timeframe would be, the Candidate stated that he anticipated moving back to Franklin County in October 2023, when the October 2021 divorce proceedings would be two years old, and allegedly no longer subject to being re-opened.

Despite these stated intentions, the Candidate updated his Driver's License and Voter Registration to reflect his address as the Williamson County Property. However, records reflect he never voted in Williamson County.

Photographs were introduced from the Candidate's Facebook account demonstrating the Williamson County Property was a "well-lived in home" as recently as December 2023, with

photographs depicting, among other things: a living room and family room furnished with a television, couch, table, Christmas tree, artwork, several family photographs, and workout equipment; a dining room furnished with a dining table and chairs, a China cabinet fully stocked with glassware, artwork, and house plants; a kitchen furnished with an apron, kitchen cleaning supplies, snacks, and various artwork and décor. Noticeably absent in any photograph is any moving box or packing materials.

After two years of exclusively living in the Williamson County Property, on October 1, 2023, the Candidate signed a lease agreement with Minerva Holdings, LLC for the West Frankfort Property. The Lease has an initial term for one year (October 1, 2023 through September 30, 2024), and is fully furnished. The Candidate testified that none of the furnishings in the West Frankfort Property are owned by the Candidate, that no one else lives at the Property, nor has anyone else ever stayed at that Property. The Candidate clarified that his children have never been inside the Property.

The Candidate testified that while the lease calls for $750 per month payment, he has never paid rent. The landlord has supposedly taken no action against Candidate due to Candidate's prior legal work for the landlord and their relative, where an outstanding legal bill (or bills) exist(s). According to the Candidate, this arrangement was "done in trade."

Various affidavits were introduced concerning the Candidate's use of the West Frankfort Property. Ronald Perry (a manager of Minerva Holdings, LLC, the landlord) provided an affidavit testifying that he has "driven by the West Frankfort Property on several occasions and seen [the Candidate's] car parked in the driveway or on the street in front of the property." However, the Candidate testified Mr. Perry lives in Georgia, and has only visited West Frankfort once shortly after Candidate signed the lease in October 2023. Bradley Wilson signed an affidavit that he resides

across the street from the West Frankfort Property, and has observed the Candidate "move personal property into the West Frankfort Property," and that he and his children "routinely spend time together at this West Frankfort Property." However, the Candidate admitted he has not provided any personal furnishings for the West Frankfort Property, and his children have only ever been inside his vehicle *on* the property, but have never been inside the property. Lastly, the Candidate's brother, Sean Hopkins, signed an affidavit stating he has "regularly visited" the Candidate at the West Frankfort Property and knows the Candidate keeps personal belongings there, but the Candidate testified Sean has only visited the West Frankfort Property "once, maybe twice" when the lease was initially signed, and was only there to receive a tour of the Property.

In late October 2023, the Candidate also purchased the Williamson County Property from Katie Baker. The Candidate stated that he viewed this as an investment opportunity to either rent or 'flip' the Property. As such, he entered into a Right to Sell Listing Agreement with House 2 House Realty on November 16, 2023. According to Candidate, this was a few days after learning of the vacant Office of Resident Circuit Court Judge of Franklin County. To date, the Williamson County Property has never had a "For Sale" sign in the yard, has never been posted on any websites as being for sale, and no tours to prospective buyers have been scheduled. The Candidate testified that the reason for this is because various repairs have become necessary to maximize his profit on any future sale – some of which were discovered after the realty agreement was signed, some of which the Candidate knew about prior to the realty agreement being signed.

Since October 1, 2023, the Candidate testified that he has slept primarily at the Williamson County Property; and only slept at the West Frankfort Property approximately 6-7 nights in October 2023, 5-6 times each in November and December 2023, and 4 times thus far in January 2024.

In December 2023, the Candidate updated his voter registration card and driver's license (which had reflected the Williamson County address up until that time) to reflect his Law Office address. He testified that he never considered listing the West Frankfort Property on his Driver's License, and further testified he has no intention of ever living at the West Frankfort Property permanently. The Candidate introduced testimony that he has hired a Realtor to find him his "long term home" somewhere in Franklin County, and will not consider purchasing a home outside of Franklin County.

On December 22, 2023, Candidate signed his Statement of Candidacy, swearing that he resided at the West Frankfort Property.

ANALYSIS

The primary issue in this case is the Candidate's residency. The Parties agree that "residency" is determined by "physical presence and an intent to remain," as set forth in *Maksym v. Bd. Of Election Com'rs of City of Chicago*, 242 Ill. 2d 303, 319 (2011). This Hearing Officer agrees *Maksym* sets forth the applicable standard for determining "residency." The Parties also agree that the Objector bears the burden of proof on his Objection to establish the Candidate does not reside where he states he resides in his Statement of Candidacy. This Hearing Officer agrees. The last item the parties agree on is that until September 2021, the Candidate resided at his Martial Property in Franklin County, Illinois.

That stipulation is significant. Once a residency is established, it is presumed to continue unless or until the challenging party proves it has been abandoned. Because the Candidate's residency at the Marital Property is established, the applicable test in analyzing the Candidate's residency "is no longer physical presence but rather abandonment. Indeed, once a person has *established* residence, he or she can be physically absent from that residence for months or even

years without having abandoned it." *Maksym*, 242 Ill. 2d at 319 (emphasis in original). In other words, "a residence is not lost 'by temporary removal with the intention to return, or even with a conditional intention of acquiring a new residence, but when one abandons his home and takes up residence in another county or election district.'" *Id.* The principal question in determining both establishment and abandonment of residency is the individual's intent, that intent is "gathered primarily from the acts of a person" and the individual's "testimony is not necessarily conclusive." *Id.* (internal citations omitted).

Here, the relevant inquiry is where did the Candidate reside at the time he signed his Statement of Candidacy on December 22, 2023 swearing that he resides at the West Frankfort Property? The Candidate argues he resides at the West Frankfort Property. The Objector argues the Candidate truly resides in the Williamson County Property. This Hearing Officer agrees with the Objector.

Because the Parties agree that the Candidate resided at the Marital Property until September 2021, the burden is placed on the Objector to establish abandonment of the Marital Property. The Candidate does not appear to argue that he abandoned that Marital Property, rather, he argues he never established residency at the Williamson County Property because of his lack of intent to remain there permanently. However, as has been recognized in caselaw cited by Candidate in his Closing Summation; "[a] person can acquire a domicile if he is personally present in a place and elects that as his home *even if* he never intends to remain in that physical structure on a permanent basis." *Dillavou v. County Officer's Electoral Bd. Of Sangamon County*, 260 Ill. App. 3d 127, 133 (4th Dist. 1994).

Thus, while Candidate testified that he had no intentions of permanently residing at the Williamson County Property, the Hearing Officer believes the other evidence presented

demonstrates the Objector has proven by a preponderance of the evidence that the Candidate did in fact intend to establish the Williamson County Property as his residence. These facts include: the Candidate's representation in the course of his divorce proceedings that he resided in the Williamson County Property; his change in Driver's License and Voter Registration to reflect his Williamson County Property address; his purchasing of the Williamson County Property; that he has spent the overwhelming majority of his nights at the Williamson County Property since September 2021; and that he fully furnished the Williamson County Property with his personal belongings in September 2021 and has shown no intention on moving those belongings out from the Property. In short, the Candidate has a physical presence at the Williamson County Property, and has shown an intent to remain there.

While the Candidate introduced evidence attempting to justify these facts that collectively weigh against him, to which the Hearing Officer has given due weight and consideration, they are not persuasive. For example, the Candidate testified he "inadvertently" changed his Driver's License and Voter Registration to reflect the Williamson County Property as his residence. However, to change an address on one's driver's license the Secretary of State requires documentation establishing residency. 92 Ill. Adm. Code 1030 App. B. As such, one must take specific steps and make specific representations to the Secretary of State in order to accomplish this task. While the Candidate testified that "upon further reflection he would have preferred" to have listed his Law Office address, it appears evident that the Candidate intentionally represented to the Secretary of State that he resided at the Williamson County Property to effectuate the change of his address on his Driver's License.

The Candidate also argues the facts surrounding his purchase of the Williamson County Property and the fact that he has not yet sold it may be justified by the theoretical profit he may

make upon selling it, and that such profit will not be as substantial if necessary repairs are not made. While these facts may be true, they do not explain why the Candidate has kept all of his personal belongings at the Williamson County Property or why he still spends the overwhelming majority of his time there if, as he has sworn, that he resides at the West Frankfort Property and intends to move into a different Franklin County "long term" home.

Perhaps of biggest concern, the Candidate testified the most significant factor behind his leasing of the Williamson County Property was to gain a "tactical advantage" in what he anticipated to be a difficult divorce proceeding. The Candidate stated he leased this property "as a residence" close to his children's school so that representation could be made to the Court when disputing visitation rights. The Candidate went as far as testifying that he intended to leave this Property after two years so the judgment in his divorce case could no longer be challenged. The Hearing Officer was unable to locate a 2021 divorce case in Franklin County involving Candidate but gathers from the testimony of Candidate that he represented his residency as Williamson County in the course of dissolution proceedings, either to a Court and/or an opposing side. That representation weighs heavily against Candidate's arguments in this matter.

Further on this point, even if no such representation was made, the legal justification asserted does not logically comport with the Candidate's factual assertions. Specifically, the Candidate says he always intended to move away from the Williamson County Property after two years so the divorce decree would no longer be subject to challenge. However, his stated factual justification for leasing the Williamson County Property was to acquire an advantage in a visitation dispute. Even if the marriage dissolution may no longer be challenged after two years (as Candidate represents), surely the custody and visitation schedule remain subject to change as long as the children are minors. The Candidate later testified that he has no intention of removing his still

minor children from their current school, which means the purchasing of a "long term home" in Franklin County (even after two years) would nullify the Candidate's stated "tactical advantage" of being able to say he resides within three minutes of the children's school in a custody dispute. As such, as a whole, the Hearing Officer does not find the Candidate's arguments on this point persuasive.

Other facts that demonstrate a lack of intent to reside at the West Frankfort Property include the Candidate switching his Driver's License and Voter Registration to his *Law Office* in December 2023 (two months after leasing the West Frankfort Property and a few weeks before signing his Statement of Candidacy). The Candidate testified that he never considered listing the West Frankfort Property as his address, yet swore on his Statement of Candidacy that that is where he resides.

As a whole, the Hearing Officer believes the Candidate's argument regarding permanent intent ultimately cuts against him. While he argues he never established residency at the Williamson County Property because he never intended to permanently reside there, he also testified he never intends to permanently reside at the West Frankfort Property either. As a result of Candidate's testimony that he never intends to permanently reside at the West Frankfort Property, the analysis of this matter could end there. Using the Candidate's logic, the Candidate has, in effect, stated that his Statement of Candidacy is false because he admits he has never established residency there. Whether he ever established residency in Williamson County would become irrelevant.

The logic articulated by Candidate further begs the question: If the Candidate's position is that he never resided at the Williamson County Property, where did the Candidate reside between September 2021 (when he abandoned the Marital Property) and October 2023 (when he allegedly

established residency in the West Frankfort Property)? The only option other than the Williamson County Property is his Law Office, which the Candidate has never argued he resided in – nor could he establish based off the evidence provided in this Hearing Officer's opinion.

Candidate's Closing remarks cite *Dillavou* and a number of other cases, that, in essence, argue no one fact is dispositive of a Candidate's intent. For example, the Candidate argues that neither the fact that he spends his nights at the Williamson County Property, that he spends his time with his children there, and that he has no intention of moving them to the West Frankfort Property are individually dispositive in analyzing the Candidate's intended permanent residency. This Hearing Officer agrees – but disagrees with the Candidate's suggested outcome. While not individually dispositive, the Hearing Officer believes the totality of the evidence introduced demonstrates the Candidate does not reside at the West Frankfort Property, and that he does reside at the Williamson County Property.

In short, this Hearing Officer believes the facts demonstrate the Candidate resided at his Marital Property until September 2021. At that time, the Objector has carried its burden of proving the Candidate abandoned the Marital Property and established residency at the Williamson County Property. To date, this Hearing Officer does not believe the facts demonstrate the Candidate has abandoned the Williamson County Property as his residence. As such, in the Hearing Officer's opinion, the Candidate is ineligible for the Office of Resident Circuit Court Judge of Franklin County, and the December 2023 Statement of Candidacy falsely states the Candidate resides at the West Frankfort Property.

RECOMMENDED FINDING OF FACTS

1. The Candidate lived at his Marital Property until September 2021.
2. In late September 2021, the Candidate moved into the Williamson County Property.

3. The Candidate fully furnished the Williamson County Property.
4. The Candidate represented to others in the course of legal proceedings that he resided at the Williamson County Property.
5. The Candidate updated his Driver's License and Voter Registration to reflect he resided at the Williamson County Property.
6. From September 2021 through September 2023, the Candidate spent every night at the Williamson County Property, except for an occasional night away.
7. The Candidate signed a lease for the West Frankfort Property in October 2023.
8. From October 2023 through present, the Candidate has spent a majority of his nights at the Williamson County Property, and an occasional night at the West Frankfort Property.
9. When he has custody of his children, the Candidate's children have only ever stayed at the Williamson County Property from September 2021 through present.
10. The Candidate's children have never stepped foot inside the West Frankfort Property.
11. In October 2023, the Candidate purchased the Williamson County Property.
12. In November 2023, the Candidate signed a realty listing agreement for the Williamson County Property to be marketed as "For Sale."
13. The Candidate updated his Driver's License and Voter Registration in December 2023 to reflect his Law Office address.
14. The Candidate's personal furnishings remain at the Williamson County Property.
15. The Candidate has not demonstrated an intent to move out of the Williamson County Property.
16. The Candidate has not demonstrated any intent to move into the West Frankfort Property.
17. The Candidate signed and swore a Statement of Candidacy in December 2023 attesting to

his residency being the West Frankfort Property.

RECOMMENDED CONCLUSIONS OF LAW

1. No person shall be eligible for the Office of Resident Circuit Court Judge for Franklin County unless he or she is a resident of Franklin County. Article VI, Section 11 of the Illinois Constitution.
2. The Candidate abandoned his Marital Property in September 2021.
3. The Candidate established his residency at the Williamson County Property in September 2021 by having a physical presence there and an intent to permanently remain.
4. The Candidate has not abandoned the Williamson County Property.
5. At the time of signing his Statement of Candidacy, the Candidate did not reside at the West Frankfort Property.
6. The Candidate is not eligible for the Office of Resident Circuit Court Judge for Franklin County.
7. The Candidate signed a false statement of candidacy.

RECOMMENDATION

Because Candidate **IS NOT** a resident of Franklin County and is therefore ineligible for the Office of Resident Circuit Court Judge, and because Candidate signed a false Statement of Candidacy swearing that he resided at the West Frankfort Property, this Hearing Officer recommends the Candidate's name **NOT BE PLACED** on the ballot.

DATED: January 26, 2024

/s/ Joseph A. Craven
Joseph A. Craven, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned certifies that on this Friday, January 26, 2024, service of the foregoing document was made by electronic transmission from the office of the undersigned to the following individuals:

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BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD

IN THE MATTER OF OBJECTIONS BY:

JOHN OVERTURF,

Objector,

vs. Case No. 24-SOEB-GP-115

AARON MICHAEL HOPKINS,

Candidate.

CANDIDATE'S CLOSING ARGUMENT

AARON MICHAEL HOPKINS ("Candidate"), by his attorneys, BROWN, HAY & STEPHENS, LLP, for his Closing Argument, states:

INTRODUCTION

1. On December 22, 2023, the Candidate filed his nomination papers to be placed upon the ballot as a Republican candidate for Franklin County Resident Circuit Court Judge ("Nomination Papers"). In his Nomination Papers, the Candidate listed his residence as 309 West Elm Street, in West Frankfort ("West Frankfort Property").

2. On January 3, 2024, Objector filed a Petition objecting to the Candidate's nomination papers ("Objection"), alleging that the Candidate does not actually reside at the West Frankfort Property, and that the West Frankfort Property was being used "strictly for the sham purpose of attempting to falsely establish residency . . . ." Objection, ¶ 7. The Objector then claims that the Candidate "truly resides" in Williamson County. *Id.* at ¶ 8.

3. On January 23, 2024, the Board, acting by and through its Hearing Officer, held an evidentiary hearing on the above matter ("Hearing"). At the start of the Hearing, the Parties stipulated that, before September 2021, the Candidate resided in Franklin County, Illinois, with his then-wife at their marital home. The Parties also agreed that the legal issue presented was

whether the Candidate was a resident of Franklin County, Illinois.

4. During the Hearing, only one witness testified—the Candidate.

5. During the Hearing, the Objector produced nine exhibits. Exhibit A was a copy of the Candidate's voter information from Franklin County, Illinois. Exhibit B was a group exhibit of records produced by the Candidate as part of a Rule 237 notice issued by the Objector, totaling 31 pages. Exhibits C-1 and C-2, which were printouts from the Candidate's personal Facebook page. Exhibits D–F were Google Streetview photos of (1) the Candidate's law office (Ex. D); (2) a house located at 404 West Clark Trail in Herrin ("Williamson County Property") (Ex. E); and the Candidate's current residence at the West Frankfort Property (Ex. F). Exhibits G–I are printouts from Redfin (Ex. G), Zillow (Ex. H), and Realtor.com (Ex. I), of listings for the Williamson County Property.

6. During the Hearing, the Candidate produced 11 exhibits. Exhibit 1 was a copy of the Candidate's Driver's License. Exhibit 2 was a copy of the Candidate's voter registration card. Exhibit 3 was a copy of the Candidate's lease for the West Frankfort Property. Exhibit 4 was a listing agreement between the Candidate and a realtor agreeing to list the Williamson County Property for sale. Exhibits 5–11 were affidavits completed by the Candidate's Realtor, Kristen Anastasi (Ex. 5); the former owner of the Williamson County Property, Katie Baker (Ex. 6); Sean Hopkins (Ex. 7); the Candidate's current landlord, Ronald Perry (Ex. 8); the Candidate's friend and legal assistant, Christina Roach (Ex. 9); the Candidate's hired contractor, Scott Turner (Ex. 10); and the Candidate's neighbor at the West Frankfort Property, Bradley Wilson (Ex. 11).

7. Beyond these exhibits, the Candidate testified during the Objector's case-in-chief. His testimony will be incorporated throughout the argument.

LEGAL STANDARD

Under Illinois law, a candidate has a right to a place on the ballot, and that right is "entitled

to protection" because it is "intertwined with the rights of voters." *McGuire v. Nogaj*, 146 Ill. App. 3d 280, 285 (1st Dist. 1986) (quoting *Lubin v. Panish*, 415 U.S. 709 (1974)). As a result, "access to a place on the ballot is a substantial right not lightly to be denied." *Welch v. Johnson*, 147 Ill. 2d 40, 56 (1992). In the residency context, that means that all that is needed to establish residency is physical presence and an intent to remain. *Maksym v. Bd. of Election Com'rs of City of Chicago*, 242 Ill. 2d 303, 319 (2011) (cleaned up);[1] *accord Wallace v. Cockrum*, No. 19-SOEB-GP-100, Decision, at 2 (State Officers Electoral Bd. Jan. 9, 2020) (applying *Maksym* and *Dillavou v. Cnty. Officers Electoral Bd. of Sangamon Cnty.*, 260 Ill. App. 3d 127, 134 (4th Dist. 1994), concluding that a candidate for Resident Circuit Judge in the Second Judicial Circuit was a resident of the appropriate county). Residency does not require that "'permanence' attach to any particular physical structure." *Dillavou*, 260 Ill. App. 3d at 134. Indeed, "[o]ne does not lose a residence by temporary removal with the intention to return, or even with a conditional intention of acquiring a new residence . . . ." *Clark v. Quick*, 377 Ill. 424, 427 (1941). The location of family members and personal effects are "not of controlling importance[,]" either. *Behrensmeyer v. Kreitz*, 135 Ill. 591, 624 (1891); *see also Dillavou*, 260 Ill. App. 3d at 130–31 (candidate held to reside at an address that the candidate admitted was "temporary," and one which his family never intended to move into.).

Finally, since a candidate's nomination papers are valid until proven otherwise, *see* 10 ILCS 5/10–8, the burden is on the Objector to disprove residency. *Watson v. Electoral Bd. of Vill.*

[1] The parenthetical "(cleaned up)" signifies that the author "has removed extraneous, non-substantive material like brackets, quotation marks, ellipses, footnote reference numbers, and internal citations; may have changed capitalization without using brackets to indicate that change; and affirmatively represents that the alterations were made solely to enhance readability and that the quotation otherwise faithfully reproduces the quoted text." Jack Metzler, *Cleaning Up Quotations*, 18 J. App. Prac. & Process 143, 154 (2017).

of Bradley, 2013 IL App (3d) 130142, ¶ 41; *accord* SOEB Rule 11(b). To satisfy this burden, the Objector must present proof that is "at least sufficient to render the [non-residency] probable" to overcome the presumption of residency. *Dorsey v. Brigham*, 177 Ill. 250, 262 (1898).

ARGUMENT

Put simply, the Objector has not met his burden, and the evidence aptly demonstrates that the Candidate resides at the West Frankfort Property, in Franklin County, Illinois. As explained below, the Candidate does not have "sufficient [evidence]" to make it "probable," *Dorsey*, 177 Ill. at 262, that the Candidate "truly resides" in Williamson County. Objection, ¶ 8. This is borne out by the exhibits introduced by both parties at the evidentiary hearing on this matter, and the testimony from the Objector's only witness—the Candidate.

I. The documents produced by the Candidate do not support the Objector's theory that the Candidate is a Williamson County resident.

Between Candidate's Exhibit 1 and Objector's Exhibit B, there have been copies of the Candidate's driver's license (Ex. 1 and Ex. B, p. 0031), his voter registration card (Ex. 2 and Ex. B, p. 0032), his car registration (Ex. B, p. 0026), his car insurance (Ex. B, pp. 0027–29), and his car title (Ex. B, p. 0030). Each of those documents lists the mailing address of 402 East Main Street, in West Frankfort. *See* Ex. 1, Ex. 2, and Ex. B, pp. 0026–32). As a result, none of those documents support the Objector's claim that the Candidate "truly resides" in Williamson County. Objection, ¶ 8. The Objector will likely highlight the Candidate's testimony that, at one point when he renewed his driver's license, he had the address for the Williamson County Property listed.

That said, the Candidate's testimony about his driver's license address is not probative of the Candidate's intent for several reasons. First, the Candidate explained why that address was listed—it was an error based on his understanding of license address requirements, not any intent

to permanently reside in Williamson County. Second, the Candidate testified that he has since corrected the address on his license. That corrected address matches the mailing address used by the Candidate on all other documents. *Compare* Ex. 1 and Ex. B, p. 0031 *with* Ex. B, pp. 0026, 0030. This correction also aligns with the Candidate's testimony that his practice is to have all mail, of whatever kind, be sent to his law office in West Frankfort. Finally, as discussed below, there are many other pieces of evidence that more clearly demonstrate the Candidate's had no intent to reside permanently in Williamson County.

II. The Candidate's lease of the West Frankfort Property establishes both elements required of residency.

The Candidate testified that he leased the West Frankfort Property in October 2023, before he knew that there would be a vacancy for this judgeship, and copies of the Candidate's lease for the West Frankfort Property were included in the record. *See* Ex. 3 and Ex. B, pp. 0001–0015. The lease is for $750/month, and the duration is for one year beginning October 1, 2023, after which it converts to month-to-month. *See* Ex. 3, p. 2, § II; III(a). As the Candidate explained during his testimony, the lease includes a clause that requires him to pay the entire years' worth of rent if he vacates the West Frankfort Property without written notice to the landlord.

And even if the Candidate does provide the landlord written notice, he is required to pay an "early termination fee" of $2,150 **before** he can vacate the property. *Id.* at II(a). Plus, as discussed more below, the Candidate's leasing of the West Frankfort Property coincided with the expiration of the two-year period following his divorce decree, in which the Candidate's ex-wife could not now attempt to modify the decree.

Each of these facts severely undercut the Objector's argument that this is a "sham" being perpetrated by the Candidate. Objection, ¶ 7. A year's worth of rent for the West Frankfort Property is $9,000. Getting out of that lease early would cost the Candidate $2,150. The

Objector's theory collapses when one considers the financial commitment that the Candidate would be making.

Lastly, the Candidate's lease for the West Frankfort Property grievously wounds the Objector's theory because, under binding Fourth District precedent, the Candidate would not have to enter into this type of lease to establish residency in Franklin County anyway. In *Dillavou v. Cnty. Officers Electoral Bd. of Sangamon Cnty.*, the candidate was running in a redistricting year, so he rented a duplex that was about 3 miles from his marital home, in the same city. *See* 260 Ill. App. 3d at 129 (1040 Woodland Avenue in Springfield to 2272 Concord, also in Springfield). The candidate rented the duplex days before the residency requirement deadline, rented the duplex month-to-month, never signed a lease, and made no security deposit. *See id.* at 130. Moreover, the candidate's wife and three children stayed in the marital home, and openly stated that they never intended to spend a night in the duplex. *Id.* On top of that, the Candidate explained that he was still spending "40% to 50% of his time with his family" at the marital home, which he still sued for some "residential purposes." *Id.* Even so, the Fourth District affirmed the Electoral Board's decision rejecting a residency challenge based on the candidate's use of the duplex. *See id.* at 133.

The "lease" in *Dillavou* is far more suggestive of a "sham"[2] than the lease for the West Frankfort Property. Unlike in *Dillavou*, this case involves a written lease that lasts for one year and includes significant financial penalties for early termination. Since *Dillavou* holds that an oral, month-to-month lease can be sufficient to establish physical presence and intent to remain, *see* 260 Ill. App. 3d at 133, then the lease for the West Frankfort Property easily clears the same threshold, especially in light of the extended term of the lease and the substantial financial penalties for early

[2] Objection, ¶ 6.

termination. *See* Ex. 3, §§ II, III.

For those reasons, the lease for the West Frankfort Property severely undercuts the Objector's case-in-chief, and shows that the Candidate resided at the West Frankfort Property at the time he filed his Nomination Papers. That, in turn, bolsters the ultimate conclusion—that the Candidate does reside at the West Frankfort Property, and therefore the Objection should be overruled.

III. The Candidate's continued ownership (and use) of the Williamson County Property does not alter the correct outcome.

The Candidate testified that he began renting the Williamson County Property around the time he filed for divorce in September 2021, and that he rented the Williamson County Property because he believed that it would provide him with a tactical advantage in any custody dispute, should his divorce became acrimonious. The Candidate also testified that he intended to reside in the residence for two years after his divorce decree was entered, since his ex-wife would be unable to reopen the divorce after two years.[3] The Candidate explained that he used the Williamson County Property during that two-year period when he had custody of his children. While the Objector's counsel asked questions about some of this testimony (discussed below), the Objector did not offer any evidence that this testimony was somehow misleading or incorrect, nor did he offer any rebuttal evidence.

a. The Candidate offered unrebutted testimony that he purchased the Williamson County Property solely as an investment.

In October 2021, the Candidate bought the Williamson County Property for approximately $150,000, without the use of a mortgage. This testimony is materially consistent with Objector's Exhibit G, which notes that the Williamson County Property "last sold on November 01, 2023 for

[3] During the Candidate's testimony, he noted that a substantial portion of his current practice is in family litigation, which includes divorces.

$154,667." Ex. G, p. 2. Under questioning by the Objector's counsel, the Candidate explained that he bought the home solely as an investment, because he believed that he could either resell the Williamson County Property for a profit, or eventually rent it to a tenant, and that the Candidate always intended to return to Franklin County. This testimony tracks affidavits from the Candidate's Realtor, his brother, his contractor, and the person he bought the Williamson County Property from. Katie Baker, the former owner of the Williamson County Property, submitted an affidavit stating that she recalls the Candidate "explaining that he wanted to purchase the Williamson County Property as an investment . . . ." Ex. 6, ¶ 7. The Candidate's Realtor, Kristen Anastasi, submitted an affidavit that aligns with Ms. Baker's testimony, saying that the Candidate also told her that he intended to buy the Williamson County Property as an investment. Ex. 5, ¶ 7. The Candidate's contractor, Scott Turner, also submitted an affidavit stating that the Candidate has, on multiple occasions, explained that his intent is to either sell the Williamson County Property for a profit, or to rent it out to a tenant. Ex. 10, ¶¶ 8–9. Finally, the Candidate's brother, Sean Hopkins, testifies to having substantially similar conversations with the Candidate. *See* Ex. 7, ¶¶ 8–9.

Importantly, the Objector offered no evidence to rebut this testimony. He had no evidence which would suggest that the Candidate did not purchase the Williamson County Property as an investment, or that those conversations did not occur. The most that the Objector was able to identify was minor differences between the Candidate's personal memory and the substance of the affidavits. Those cannot serve as a basis for attacking the Candidate's credibility or the affiant's credibility because those do not qualify as inconsistent statements under the Illinois Rules of Evidence, so it would be improper impeachment. *See* Ill. R. Evid. 613 (Prior Statements of Witnesses), Ill. R. Evid. 806 (Attacking and Supporting Credibility of Declarant).

Moreover, the Objector's own exhibits demonstrate that, in fact, the Candidate has made a prudent investment. Three websites utilized by the Objector—Redfin, Zillow, and Realtor.com—value the Williamson County Property somewhere between $194,000 and $210,000. *See* Ex. G, p. 2; Ex. H, p. 1; Ex. I, p. 2. When asked about this by Objector's counsel, Objector stated that his carrying costs on the Williamson County Property were low and, thus far, he has not had to invest disproportionately large amounts of money into the property; as a result, he believed he would turn a profit.

Again, the Objector offered no rebuttal testimony to this point. And, to the extent that the Objector will argue that the Candidate is not a resident of the West Frankfort Property based upon his investment in the Williamson County Property, that argument has been explicitly rejected by the Illinois Supreme Court. In *Behrensmeyer v. Kreitz*, the Illinois Supreme Court concluded that a voter had not lost his residency even though he had spent the prior two years investing his time and resources into a rented farm in Missouri. 135 Ill. 591, 624 (1891).

The Court went on to explain that it did not matter that "his lease in Missouri had not expired, that he left considerable property there which he did not dispose of until in January following, and that some of his household goods were not moved over to Illinois until February . . . ." *Id.* at 624. Those facts were "not irreconcilable with the theory he came to Illinois in October, 1885, with the purpose of remaining here." *Id.* Just as the farmer in *Behrensmeyer*, it does not matter that the Candidate left furniture and personal effects in the Williamson County Property. What matters is what his intended purpose was in owning the property. *See Behrensmeyer*, 135 Ill. at 624. And the Candidate's unrebutted testimony is that he intended to purchase the Williamson County Property strictly as an investment. As a result, the Objector has no valid basis for arguing that it continued to be his residence.

b. The Candidate's continued use of the Williamson County Property with his children is not enough for the Board to conclude that he intends to reside there.

During the Candidate's testimony, he was asked about Objectors Exhibit C-1 C-2, both of which are printouts of the Candidate's personal Facebook page. Specifically, the Candidate was asked about photos of his son and daughter, which were posted by the Candidate and which were taken at the Williamson County Property. The Candidate answered truthfully regarding when those photos were taken. While the Objector will likely argue that this is a significant fact because it shows that the Candidate still utilizes the Williamson County Property with his children. The reality is that this is not probative of the Candidate's intended residency. For example, the candidate in *Dillavou* admitted to spending as much as 50% of his time with his family at the marital home (that he, alone, moved out of) to obtain residency in an apartment. 260 Ill. App. 3d at 130.

The *Dillavou* court concluded that the candidate was still a resident of the apartment that he moved to, notwithstanding the fact that he continued to utilize his marital home up to 50% of the time. *Id.* at 131–32. As a result, it does not matter that the Candidate spends time with his children at the Williamson County Property (or that, as the Candidate testified, he has no intention of moving them to the West Frankfort Property). Both of those facts were addressed in *Dillavou,* and neither fact can wholly support the Objector's theory that the Candidate does not currently reside at the West Frankfort Property.

c. The Candidate's listing agreement for the Williamson County Property is indicative of intent to remain at the West Frankfort Property.

During the Objector's questioning of the Candidate, the Objector's counsel highlighted the fact that the Candidate signed a listing agreement with a Realtor for the Williamson County Property in November, but that the house is not being actively marketed for sale. The Candidate anticipates that the Objector will argue that this is evidence of the Candidate's residence being at

the Williamson County Property. For two reasons, this argument fails.

First, the Candidate explained that, after the listing agreement was signed, a leak developed in a half-bathroom that (i) has required some time to fix, and (ii) would affect the projected sale price of the Williamson County Property. The Candidate explained that, as a result of that repair and a few other minor repairs, he had not been marketing the Williamson County Property for sale as expeditiously as possible. The Objector offered no rebuttal evidence on this point, and this testimony is consistent with the Candidate's stated intent of viewing the Williamson County Property as an investment. The Candidate also stated that he was attempting to do a cost/benefit analysis of the repairs to determine how extensive they should be. This, too, is consistent with the Candidate's stated view of the Williamson County Property as an investment. It is also consistent with the affidavit signed by the Candidate's contractor, Scott Turner, who explains that these types of considerations affect the scope of work that he must complete, and that the Candidate has explained, on multiple occasions, that the Williamson County Property is an investment property. Ex. 10, ¶¶ 7–9.

Second, the *Dillavou* Court, amazingly, addressed this fact as well. The candidate in *Dillavou* executed a listing agreement with a realtor for his marital home, but "did not permit a 'For Sale' sign to be placed on the property[,]" did not have the home placed on the MLS, and "the home was never shown to prospective buyers . . . ." 260 Ill. App. 3d at 131. The Fourth District, again, concluded that this was not evidence of intent to reside at the marital home, and that it was not an abuse of discretion to conclude that the candidate's residence was, in fact, an apartment a few miles away from the home that his wife and children were living in.

The facts presented in this case are even more understandable than those presented in *Dillavou*. Here, there is a perfectly legitimate reason why the Williamson County Property has

not been actively marketed yet—it still needs some repairs, including repairs from damage that occurred **after the listing agreement was signed.** Moreover, the Candidate's explanation for why he has not yet started actively marketing the Williamson County Property aligns with his stated goal—to maximize the potential profit he can realize from the eventual sale. For those reasons, any argument about the fact that the Candidate signed a listing agreement but has not yet started marketing the property, is not a basis for concluding that the Candidate resides at the Williamson County House.

IV. The Candidate's unrebutted testimony is that he resides at the West Frankfort Property.

Both the Candidate's testimony and the Objector's exhibits support the conclusion that the Candidate is a resident at the West Frankfort Property. First, the Candidate's unrebutted testimony during the Hearing was that he has only ever voted in Franklin County, Illinois. This is supported by his voting records, which the Objector obtained and made part of the record as Objector's Exhibit A. The Candidate's voter file shows (i) that he became a registered voter in Franklin County in August 1993, (ii) that he voted in every election from 2008–2020, and (iii) that the West Frankfort Property is identified as the "[a]ddress where [the Candidate] live[s]" on the Election Authority's records. *See* Ex. A, pp. 1, 3–4. This is unrebutted evidence that the Objector independently obtained via subpoena. The fact that the Election Authority identified the West Frankfort Property as the address where the Candidate lives is, all alone, a highly relevant fact that is deeply damaging to the Objector's "sham" theory.

The Election Authority's records are further bolstered by the Candidate's neighbor at the West Frankfort Property, Bradley Wilson, who submitted an affidavit stating that he "regularly" sees the Candidate's car at the West Frankfort Property. This aligns with the affidavit submitted by the landlord of the West Frankfort Property, Ronald Perry, who stated that when he has driven

by the West Frankfort Property, he too has regularly seen the Candidate's car parked there. Ex. 8, ¶ 6. Mr. Perry also stated that he has been in the West Frankfort Property with the Candidate, and knows from that experience that the Candidate keeps personal effects in the West Frankfort Property. *Id.* Yet again, the Objector offered no evidence to rebut this testimony. He made no objection on the record to the admission of this affidavit (or any other affidavit), and as explained above, he cannot use the Candidate's testimony to attack the credibility of the affiant, nor can he use the affiant's statements to attack the credibility of the Candidate's testimony—both are improper impeachments under Illinois law. *See* Ill. R. Evid. 613 (Prior Statements of Witnesses), Ill. R. Evid. 806 (Attacking and Supporting Credibility of Declarant).

CONCLUSION

For the reasons explained above, the Objector has fallen far short of carrying his burden. He has failed to provide competent evidence "at least sufficient to render [non-residency] probable" in this case. *Dorsey*, 177 Ill. at 262. Conversely, the Candidate has produced seven affidavits, his driver's license, his voter registration card, his car insurance information, his car title, the lease for the West Frankfort Property, the listing agreement with his realtor for the Williamson County Property, and his power bill. None of those records show an intent to permanently reside in Williamson County. In fact, when coupled with the Candidate's unrebutted testimony, they all support the Candidate's explanation for why he moved in the first place—as a tactical decision in anticipation of an acrimonious divorce that was never intended to be permanent. At most, this is the type of "conditional intention of acquiring a new residence" mentioned in *Clark v. Quick*, 377 Ill. 424, 427 (1941). Since the Objector has not carried his burden, the presumption of validity afforded the Candidate's Nomination Papers still applies, and the Objection should be overruled.

Respectfully submitted,
AARON MICHAEL HOPKINS, Candidate

Dated: January 24, 2024 By: /s/ Anthony D. Schuering
One of his Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2024, before 7:00pm, I caused the above document to be served on the following identified persons via email to the corresponding email addresses:

Mr. Joseph Craven, Hearing Officer **email: jcraven@cravenlawoffice.com**

Mr. John Fogarty, Attorney for Objector **email: fogartyjr@gmail.com**

Illinois State Board of Elections **email: generalcounsel@elections.il.gov**

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/ Anthony D. Schuering

4BX6950

BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD

IN THE MATTER OF OBJECTIONS BY:

JOHN OVERTURF,
Objector,

vs. Case No. 24-SOEB-GP-115

AARON HOPKINS,
Candidate.

OBJECTOR'S SUMMATION

Now comes the Objector and for his Summation following the evidentiary hearing in this matter, states as follows:

Introduction

1. The Candidate is running for the Republican Party nomination for the office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois ("the Office").

2. The Objector has filed an Objection alleging that the Candidate is not eligible for the Office because he does not reside in Franklin County. Article VI, Section 11 of the Illinois Constitution states:

> SECTION 11. ELIGIBILITY FOR OFFICE
>
> No person shall be eligible to be a Judge or Associate Judge unless he is a United States citizen, a licensed attorney-at-law of this State, and a resident of the unit which selects him. No change in the boundaries of a unit shall affect the tenure in office of a Judge or Associate Judge incumbent at the time of such change.

IL. CONST. ART. VI, Sec. 11.

3. The Illinois Supreme Court in *Maksym v. Bd. Of Election Commissioners of the City of Chicago*, 242 Ill.2d 303, 950 N.E.2d 1051 (2011) reaffirmed the principles that govern the question of what constitutes residency for the purposes of running for office. First, two

elements are required to establish residency: (1) a physical presence in a place and (2) an intent to remain in that place as a permanent home. *Id.* at 1060. Second, "once residency is established, the question no longer turns on physical presence but rather abandonment of that residency. *Id*. Third, whether residency is established or abandoned is principally a question of intent. Id. Finally, once residency has been established, it is presumed to continue, and the party contesting residency has the burden of showing that residency has been abandoned. *Id*. at 1061.

4. Whether a candidate has abandoned a former residence in favor of a new residence is a question of intent, which may be inferred from facts. *Walsh v. County Officers Electoral Board of Cook County*, 267 Ill.App.3d 972, 642 N.E.2d 843 (1st Dist. 1994). "[A]cts and surrounding circumstances are more persuasive" than mere declarations in resolving the factual question of intent. *Stein v. County Board of School Trustees of DuPage County*, 85 Ill.App.2d 251, 229 N.E.2d 165, 168 (2nd Dist. 1967), *aff'd*, 40 Ill.2d 477 (1968). Thus, residency challenges such as the one presented in this case are necessarily fact-specific.

5. In this case, the Objector does not contest that the Candidate established his residency in Franklin County prior to moving to Williamson County in September of 2021. However, Objector contends that the evidence demonstrates that the Candidate abandoned his Franklin County residency by establishing a new residency in Williamson County. Further, the evidence does not support the Candidate's claim that he has, in turn, abandoned his Williamson County residency in favor of a return to Franklin County.

The Candidate Abandoned His Franklin County Residency By Establishing His Residency in Williamson County, Beginning in September 2021.

6. There is no dispute that the Candidate resided in Franklin County with his then-wife until September of 2021. The evidence adduced at hearing demonstrates, however, that the Candidate abandoned his Franklin County residency by establishing a residency in Williamson

County at his home at 404 West Clark Trail, in Herrin, Illinois. ("the Williamson County Property").

7. The Candidate testified that his major motivation in moving to the Williamson County Property was to be closer to his children's school, which is only minutes away. It is undisputed that the Candidate began renting the Williamson County Property in 2021 and that he eventually purchased the Williamson County Property in October of 2023. The Objector submits that by moving, renting, and then taking the affirmative step of purchasing the Williamson County Property, the Candidate's actions constitute evidence that the Candidate has abandoned his Franklin County residency.

8. The Candidate has amply demonstrated his physical presence at the Williamson County Property. He testified that he has slept at the Williamson County Property consistently since September of 2021. Between September 2021 and September 2023, he has spent every night there, except for occasional nights at his law firm office, or at the home of a love interest.

9. The Candidate's recent Facebook posts also depict a well-lived-in home, in which his children and their belongings are prominent. (See Objector's Exhibits C-1 and C-2.) As can be seen in his posts, the refrigerator at the Williamson County Property is covered with personal effects, art is on the walls, and the kitchen counters are full. The Williamson County Property certainly appeared to be, in all healthy ways, a home in which the Candidate and his children live. Physical presence at the Williamson County Property cannot be denied. And, the original impetus for the Candidate's move to Williamson County – to be near his children's school – remains, as the Candidate's children are going to continue attending their school that is three minutes from the Williamson County Property.

10. The Candidate has now purchased the home in which he and his children live. While the Candidate asserts that his purchase of the Williamson County Property was simply for investment purposes, this assertion is self-serving and disproven by facts. The Candidate attempts to bolster this argument by claiming that he is now trying to sell the Williamson County Property. For support, he claims that he has listed the Williamson County Property for sale with a realtor. (See Defendant's Exhibit 4.) The facts demonstrate that this supposed effort is merely an attempt to obscure his Williamson County residency. First, the Candidate admitted that the sale contract was entered into a few days *after* the Candidate became aware of the impending Tedeschi vacancy. Further, even though the contract was signed on November 17, there has been absolutely nothing done to sell the Williamson County Property. No listings, no showings, no sign in the yard. Websites that track real estate, such as RedFin, Zillow and Realtor.com all show the Williamson County Property is "off the market." (See Objector's Exhibit G, H and I.)

11. The Candidate attempts to blunt these facts by asserting that there are numerous material repairs that must be made before he is able to sell the Williamson County Property. However, if this is really the case, why would one even enter into a contract to sell the property? The Candidate's claim defies logic. Moreover, having lived in the Williamson County Property for two years, the lionshare of the claimed material repairs were not a surprise to the Candidate. The only plausible explanation for entering into the listing agreement was to try to generate evidence to support a Franklin County residency. The lack of any progress in even listing the house for over two months demonstrates the Candidate's true intent in selling the Williamson County Property.

12. The Candidate asserts that the listing agreement constitutes evidence that the Candidate (a) intended to reside in Franklin County or (b) intended to abandon his Williamson

County residency. However, the totality of the facts demonstrate that the listing agreement for the Williamson County Property was merely a strategic move to try to head off an objection based on residency that the Candidate knew would be coming.

13. The Candidate further demonstrated his relinquishment of his Franklin County residency by renewing his drivers license using his Williamson County Property address after moving in in September 2021. This renewal also caused the Candidate's voter registration to change from his former West Frankfort address to his address in Williamson County. The Candidate did not change his voter registration away from Williamson County until December 5, 2023, after he had determined to run for the Office. While the Candidate, in hindsight, wishes he had used his office address when renewing his drivers license, he admitted that he had a choice as to what address to provide the Secretary of State, and that he provided his Williamson County Property address. This admission demonstrates that he considered the Williamson County Property to be his residence.

14. The Candidate testified of course, that he only intended to reside in Williamson County temporarily. However, such testimony can only be considered to be self-serving here, and disproven by the Candidate's actions. In sum, the preponderance of the evidence demonstrates that the Candidate abandoned his Franklin County residence by establishing his residency at the Williamson County Property.

The Candidate Has Not Demonstrated That He Has Abandoned His Williamson County Residency In Favor Of Franklin County.

15. Having established residency in Williamson County, the Candidate bears the burden of demonstrating that he has abandoned Williamson County. The Candidate fails to meet this burden. The Candidate's principal piece of evidence to support his abandonment of Williamson County is his lease of a house at 309 West Elm Street, in West Frankfort. ("the West

Frankfort Property") The evidence adduced at hearing demonstrates that the Candidate has very little to do with the West Frankfort Property, and certainly not enough to demonstrate that he has abandoned the Williamson County Property.

16. The Candidate claims to have signed the lease for the West Frankfort Property on Sunday, October 1, 2023, the day the lease was to begin. However, the Candidate has made no rent payments on the West Frankfort Property, despite a lease that calls for $750 monthly payments. While the Candidate has claimed to be bartering legal services for rent, such a claim is very conveniently self-serving and unverifiable.

17. What's most remarkable is how little time the Candidate confesses that he spends at the West Frankfort Property. He testified that he spent six (6) or seven (7) nights there in October, approximately five (5) nights in November, five (5) nights in December and thus far four (4) nights in January. His children have never stayed at the West Frankfort Property.

18. At the same time, the Candidate testified that he spends much more time at the Williamson County Property, even at this point in time, where he claims to have abandoned the Williamson County Property. Based on his custody schedule, he spends approximately twelve (12) nights a month with his kids at the Williamson County Property. He testified to spending even more time at the Williamson County Property in November and December, due the holiday schedules. By his own testimony, for all intents and purposes, the Candidate still resides at the Williamson County Property.

19. In order to run for the Office, the Candidate updated his drivers license, but not until December 14, 2023, and even then with his office address, rather than the address of the West Frankfort Property. If he intended the West Frankfort Property to be his new home, as he now claims, certainly he would have used that address for his drivers license. The Candidate

updated his voter registration, but not until December 5, 2023, even after claiming to have begun living at the West Frankfort Property in October.

20. Taken as a whole, the evidence does not show that the Candidate has abandoned his Williamson County residency.

21. To support his case, the Candidate offers a number of affidavits purporting to establish his intent to reside only temporarily in Williamson County and/or to re-establish his residency in Franklin County. These affidavits, containing the Candidate's claimed declarations, while admissible, are self-serving and are not as compelling evidence of the Candidate's actions. Further, certain of the affidavits were contradicted by the Candidate's testimony, casting doubt on their truthfulness. For instance, in the affidavit of Sean Hopkins, Sean Hopkins alleges to have "regularly visited" the Candidate at the West Frankfort Property, and makes a statement "based on my visits to the West Frankfort Property . . ." (See Defendant's Exhibit 7, ¶¶ 10, 11.) The Candidate testified that he had Sean Hopkins (his twin brother) over to the West Frankfort Property only once.

Conclusion

Since September 2021, has been living in Williamson County, where, as the evidence shows, he is still living today. Under *Maksym* and cases following, he established a residency at the Williamson County Property by purchasing the property, sleeping there regularly, having his children stay there, obtaining a drivers license there, being registered to vote there. His establishment of residency in Williamson County demonstrates his abandonment of his former Franklin County residency. While the Candidate claims that his purchase of the Williamson County Property is just for investment purposes, his factual support for that claim is incredibly thin.

WHEREFORE, for these reasons, the Objector prays this Honorable Electoral Board sustain the Objector's Petition.

Respectfully submitted,

/s/ *John G. Fogarty, Jr.*
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Counsel for Objector

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BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD

IN THE MATTER OF OBJECTIONS BY:

JOHN OVERTURF,

Objector,

vs. Case No. 24-SOEB-GP-115

AARON MICHAEL HOPKINS,

Candidate.

CANDIDATE'S MOTION TO STRIKE AND DISMISS

AARON MICHAEL HOPKINS ("Candidate"), by his attorneys, BROWN, HAY & STEPHENS, LLP, under Rule 7(c) of the State Officers Electoral Board Rules of Procedure, moves to strike and dismiss the Objector's Petition. In support, the Candidate states:

1. On December 22, 2023, the Candidate filed his nomination papers to be placed upon the ballot as a Republican candidate for Franklin County Resident Circuit Court Judge.

2. On January 3, 2024, Objector filed a Petition objecting to the Candidate's nomination papers ("Objection"), alleging that the Candidate does not actually reside at the address listed and that the address was "strictly for the sham purpose of attempting to falsely establish residency . . . ." Objection, ¶ 7.

3. Under Illinois law, the Objector must "state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question . . . ." 10 ILCS 5/10–8. This places the burden on the Objector to make (and ultimately prove) a *prima facie* case that the Candidate is ineligible to be on the ballot. *See Watson v. Electoral Bd. of Vill. of Bradley,* 2013 IL App (3d) 130142, ¶ 41 (*citing Hagen v. Stone,* 277 Ill.App.3d 388, 390 (1st Dist. 1995), *Carlasare v. Will Cnty. Officers Electoral Bd.,* 2012 IL App (3d) 120699, ¶ 15). That burden, in turn, imposes a duty on the Objector to show a good-faith basis for his objection. See *Daniel v. Daly,* 2015 IL

App (1st) 150544, ¶¶ 33–34. Failure to make a credible showing that there is a good-faith basis for the filed objection justifies summary dismissal. *Id.*; *accord* SOEB Rule 9(d).

4. Here, the Objector provides nothing beyond conclusory statements. He provides no factual allegations to support his claims against the Candidate, nor any allegations that demonstrate that "there was a good-faith basis to ascertain the truth of his objections prior to filing his petition." *Id.* at ¶ 34. As a result, the Objection contains no factual allegations which tend to suggest that the Objector has a good-faith basis for alleging that the Candidate has done anything "strictly for the sham purpose of attempting to falsely establish residency . . . ." Objection, ¶ 7.

5. For that reason, the Objection should be stricken and dismissed for failing to comply with 10 ILCS 5/10–8.

WHEREFORE, Candidate prays that the State Officers Electoral Board strike and dismiss the Objection.

Respectfully submitted,
AARON MICHAEL HOPKINS, Candidate

Dated: January 16, 2024 By: /s/ Anthony D. Schuering
One of his Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, before 5:00pm, I caused the above document to be served on the following identified persons via email to the corresponding email addresses:

Mr. Joseph Craven, Hearing Officer **email: jcraven@cravenlawoffice.com**

Mr. John Fogarty, Attorney for Objector **email: fogartyjr@gmail.com**

Illinois State Board of Elections **email: generalcounsel@elections.il.gov**

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/ Anthony D. Schuering

4BW2404

BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD

IN THE MATTER OF OBJECTIONS BY:

JOHN OVERTURF,
Objector,

vs. Case No. 24-SOEB-GP-115

AARON HOPKINS,
Candidate.

RESPONSE TO MOTION TO DISMISS

Now comes the Objector and for his Response to the Candidate's Motion to Dismiss the Objectors' Petition, states as follows:

Introduction

The Candidate is running for the Republican Party nomination for the office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois ("the Office"). The Objector has filed an Objection alleging that the Candidate is not eligible for the Office because he does not reside in Franklin County. Rather, the Objector has alleged that the Candidate resides at his home in Williamson County, rather than at a sham address in Franklin County. (Obj. ¶¶ 7, 8.)

The Candidate has now moved to dismiss on the grounds that the Objector has not complied with §10-8 of the Election Code because it "provides nothing beyond conclusory statements" and does not demonstrate a "good faith basis to ascertain the truth." The Candidate's Motion should be denied because the Objector has easily met the requisites of Section 10-8 of the Election Code.

The Objector's Petition Meets The Requisites Of Section 10-8 Of The Election Code, And The Motion Should Therefore Be Denied

The Objector's Petition fully complies with Section 10-8 of the Election Code, which requires, in relevant part, that an Objector state fully the nature of the objections to a candidate's nomination papers. 10 ILCS 5/10-8. Exacting precision is not required under Section 10-8. Rather, an objector's petition must simply adequately apprise a candidate of the general charge made to their nomination papers so that the candidate may prepare his or her defense. *Siegel v. Lake County Officers Electoral Board*, 385 Ill.App.3d 452 (2nd Dist. 2008); *Cunningham v. Schaeflein*, 2012 IL App (1st) 120529; 969 N.E.2d 861 (1st Dist. 2012).

Here, the Objector easily meets the requisites of § 10-8 by fully and precisely apprising the Candidate of his objection – that the Candidate is not eligible because he does not reside in Franklin County -- and has obviously made the Candidate's evaluation of the Objection possible.

Indeed, the Candidate's own filings in this matter betray his position here. In the Joint Case Management Report, the Candidate himself concedes that following his divorce in September 2021, he rented a home at 404 West Clark Trail in Herrin, Illinois (in Williamson County), and not until October 2023 did the Candidate rent a house at 309 West Elm Street, in West Frankfort. Not only does these purported factual statements demonstrate that the Objector's Petition meets the requisites of § 10-8 by apprising the Candidate of the charges against him, these purported statements demonstrate the existence of a good faith basis for the Objector's Petition.

To support his Motion, the Candidate cites to the decision in *Daniel v. Daly*, 2015 IL App (1st) 150544. However, *Daniel* has no application here, as the facts involved in *Daniel* are nothing like this case. In *Daniel*, the Objector filed a "shot gun" objection, objecting under oath to 240 of the candidate's 262 petition signatures, but it was shown that the objector had not

examined any signature at the office of the election authority. *Id*. Under these particular circumstances (an obvious shotgun objection where the objector had not participated in the examination of any signatures), the *Daniel* Court saw nothing that prohibited an electoral board from requiring the objector to appear and make a credible showing that the objector's petition was brought in good faith. *Id*. at ¶ 29. Here, there is no objection to any of the Candidate's signatures. *Daniel* is therefore inapt.

In evaluating a motion to dismiss, "all well-pleaded facts must be taken as true, as well as all reasonable inferences favorable to the non-moving party which may be drawn from the facts." *Ferguson v. New England Mut. Life Ins. Co*., 196 Ill.App.3d 766 (1st Dist. 1990). Here, the reasonable inference drawn from the facts pled in the Objectors' Petition *that is most favorable to the Objector*, which is the standard upon which this Motion must be evaluated, is that the Candidate does not reside at 309 West Elm Street, West Frankfort, Illinois, 62896, as stated in his Statement of Candidacy, and rather, lives in his home in Williamson County. (Obj. ¶¶ 7, 8.) Notably, the Candidate in his Motion has not offered any affirmative matter that would negate the allegations contained in the Objector's Petition. Viewing this Motion in the light most favorable to the Objector, it must be denied.

Conclusion

The Objector's Petition provided factual allegations that more than adequately apprise the Candidate of the nature of the Objection, and has allowed him to evaluate and present his defense. Because the Objector's Petition fully complies with § 10-8, the Candidate's Motion to Dismiss should be denied.

WHEREFORE, for these reasons, the Objector prays this Honorable Electoral Board deny the Candidate's Motion to Dismiss.

Respectfully submitted,

/s/ *John G. Fogarty, Jr.*
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Counsel for Objector

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BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD

IN THE MATTER OF OBJECTIONS BY:

JOHN OVERTURF,

Objector,

vs. Case No. 24-SOEB-GP-115

AARON MICHAEL HOPKINS,

Candidate.

REPLY IN SUPPORT OF CANDIDATE'S MOTION TO STRIKE AND DISMISS

AARON MICHAEL HOPKINS ("Candidate"), by his attorneys, BROWN, HAY & STEPHENS, LLP, for his Reply in Support of his Motion to Strike and Dismiss, states:

1. On December 22, 2023, the Candidate filed his nomination papers to be placed upon the ballot as a Republican candidate for Franklin County Resident Circuit Court Judge.

2. On January 3, 2024, Objector filed a Petition objecting to the Candidate's nomination papers ("Objection"), alleging that the Candidate does not actually reside at the address listed and that the address was "strictly for the sham purpose of attempting to falsely establish residency . . . ." Objection, ¶ 7.

3. On January 16, 2024, the Candidate moved to strike and dismiss the Objection, explaining that the Objection violated Section 10–8 of the Election Code. On January 18, 2024, the Objector filed a response ("Response").

4. The Response makes two arguments against dismissal. The first argument is that the Objection complies with Section 10–8 because it "adequately apprise[d]" the Candidate of "the general charge made to [his] nomination papers" such that the Candidate could prepare a defense. Response, p. 2 (citing *Siegel v. Lake Cnty. Officers Electoral Bd.*, 385 Ill. App. 3d 452 (2d Dist. 2008) and *Cunningham v. Schaeflein*, 2012 IL App (1st) 120529). Second, the Objector argues

that the Objection was sufficient because "[i]n evaluating a motion to dismiss, 'all well-pleaded facts must be taken as true, as well as all reasonable inferences favorable to the non-moving party which may be drawn from the facts.'" Response, p. 3 (quoting *Ferguson v. New England Mut. Life Ins. Co*., 196 Ill.App.3d 766 (1st Dist. 1990)). Neither of these arguments saves the Objection, so it must be dismissed.

I. The Response incorrectly applies a notice-pleading standard to objections under Section 10–8, which is utterly foreign to Illinois pleading standards.

As to the first argument, neither *Siegel* nor *Cunningham* holds that the standard for an objection under Section 10–8 is the one put forth by the Objector. In fact, the *Siegel* Court notes that "the Election Code does not address the degree of precision" in an objection "that constitutes compliance" with Section 10–8. 385 Ill. App. 3d at 457. There, the Court held that the objection did comply with Section 10–8 because "respondents claimed that the District Committee meeting was never properly assembled and never occurred at all." *Id.* In *Cunningham*, the only reference to Section 10–8 is the Court's general recounting of precedent, which holds that it is the "unique province of the objector to raise issues and objections to the certificate of nomination or nominating papers." 2012 IL App (1st) 120529, at ¶ 31 (quoting *Mitchell v. Cook Cnty. Officers Electoral Bd.,* 399 Ill.App.3d 18, 27 (1st Dist. 2010)). *Cunningham* does not hold that there is a specific standard of pleading for Section 10–8; it simply holds that the Electoral Board cannot seek out errors in nomination papers that are not pleaded by the Objector. 2012 IL App (1st) 120529, at ¶ 31.

And the standard advanced by the Objector—that an "adequate[] appris[al]" of the "general charge" of his basis for objection, Response, p. 2, contradicts general pleading standards in Illinois. Illinois is a fact-pleading jurisdiction. *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 26. This standard imposes a higher burden on the Objector than the notice-pleading standard he is

attempting to have the Board apply. *See People ex rel. Madigan v. Tang*, 346 Ill. App. 3d 277, 286 (1st Dist. 2004) (noting the difference between federal notice-pleading standards and Illinois' fact-pleading standard, and recognizing that the burden is heavier on a pleader under Illinois' standard). It does not matter if the Candidate was generally put on notice of the Objector's claim by the Objection; what matters is whether the Objection conforms to the standards required under Illinois law. *See Rodriguez v. Illinois Prisoner Review Bd.*, 376 Ill. App. 3d 429, 434 (5th Dist. 2007) (Even liberal construction of pleadings "will not allow a litigant to resort to notice pleading, and conclusions of fact will not suffice to state a cause of action regardless of whether they generally inform the defendant of the nature of the claim against him."). The only standard that can be applied is Illinois' fact-pleading standard, not the notice-pleading standard the Objector is attempting to apply.

And with Illinois' fact-pleading standard in mind, the plain language of Section 10–8 makes the Objector's burden unambiguous. *See Manago by and through Pritchett v. Cnty. of Cook*, 2017 IL 121078, ¶ 10 ("Whenever possible, courts must enforce clear and unambiguous statutory language as written, without reading in unstated exceptions, conditions, or limitations."); *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 216 (2008) ("The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature. The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning.") (cleaned up). 10–8 requires the Objector to "state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question[,]"10 ILCS 5/10–8, not simply "adequately apprise a candidate of the general charge . . . ." Response, p. 2. Since the Objector failed to meet this standard, his Objection must be dismissed for failing to state a claim.

II. The Objector is not entitled to the presumption of truth for the allegations in the Objection because, as explained in the Motion, those allegations are conclusory.

The Objector's second argument, that the factual allegations in his Objection are presumed true under Illinois law, is also flawed. While the Objector is correct that "all well-pleaded facts must be taken as true," Response, p. 3, the operative word is "well-pleaded." Under Illinois' pleading standard, "a party must allege facts stating the elements of the cause of action; allegations of legal conclusions are simply not enough." *Safeway Ins. Co. v. Daddono*, 334 Ill. App. 3d 215, 222 (1st Dist. 2002). This standard does not require the Objector to "set forth evidence" in his Objection; it simply requires him to allege specific facts that are "sufficient to bring a claim within a legally recognized cause of action . . . ." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429–30 (2006). And if the Objector does allege "conclusions of fact or law that are not supported by allegations of specific fact," they are not accepted as true, as Objector claims; they are "disregard[ed]" at the motion-to-dismiss stage. *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 20.

As explained in the Motion to Dismiss, the Objection does not allege specific facts—it provides nothing beyond conclusory statements. The Objector provides no factual allegations to support his claims against the Candidate beyond his conclusory belief that the "Candidate resides at [a] home in Williamson County, rather than at a sham address in Franklin County. Response, p. 1 (citing Objection, ¶¶ 7–8). Objector's belief is not entitled to the presumption of truth at the motion to dismiss stage because they are not "supported by allegations of specific fact[.]" *Biffar*, 2014 IL App (5th) 130543, at ¶ 20. As a result, the Objector's conclusory statements must be "disregard[ed]," *id.*, and his Objection must be dismissed.

CONCLUSION

WHEREFORE, Candidate prays that the State Officers Electoral Board strike and dismiss

the Objection.

Respectfully submitted,
AARON MICHAEL HOPKINS, Candidate

Dated: January 19, 2024 By: /s/ Anthony D. Schuering
One of his Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2024, before 5:00pm, I caused the above document to be served on the following identified persons via email to the corresponding email addresses:

Mr. Joseph Craven, Hearing Officer **email: jcraven@cravenlawoffice.com**

Mr. John Fogarty, Attorney for Objector **email: fogartyjr@gmail.com**

Illinois State Board of Elections **email: generalcounsel@elections.il.gov**

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/ Anthony D. Schuering

4BX1171

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS FOR CANDIDATES FOR THE OFFICE OF RESIDENT CIRCUIT COURT JUDGE FOR FRANKLIN COUNTY, TO FILL THE VACANCY OF THE HONORABLE THOMAS JOSEPH TEDESCHI, SECOND JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS

John Overturf,	)
	)
Petitioner-Objector,	)
	)
vs.	)
	)
Aaron Michael Hopkins,	)
	)
Respondent-Candidate.	)

OBJECTOR'S PETITION

Now comes John Overturf (hereinafter referred to as the "Objector"), and states as follows:

1. John Overturf resides at 216 North Commercial Street, Benton, Illinois 62812, in the County of Franklin, in the Second Judicial Circuit of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objection is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a candidate for nomination to the office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

2. Your Objector makes the following objection to the nomination papers ("the Nomination Papers") of Aaron Michael Hopkins ("the Candidate") as a candidate for nomination of the Republican Party to the office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois ("the Office") and files the same herewith, and states that the said Nomination Papers are insufficient in law and in fact for the following reasons:

3. Your Objector states that said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise be executed in the form and manner required by law.

4. Your Objector states that the laws pertaining to the securing of ballot access require that certain requirements be met as established by law. Filings made contrary to such requirements must be voided, being in violation of the statutes in such cases made and provided.

5. The Candidate's Nomination Papers must be stricken in their entirety because the Candidate is not a resident of the unit that would select him, as is required by Article VI, Section 11 of the Illinois Constitution, and therefore the Candidate is not eligible for the Office.

6. In the Candidate's Statement of Candidacy, he swears that he resides at 309 West Elm Street, West Frankfort, Illinois, 62896, in Franklin County. The Candidate's nominating petitions likewise purport to nominate the Candidate at that address.

7. However, the Candidate does not in fact reside at 309 West Elm Street, West Frankfort, Illinois, 62896, in Franklin County. Rather, this address is being used by the Candidate strictly for the sham purpose of attempting to falsely establish residency for the Office.

8. The Candidate truly resides at his home in Williamson County. The Candidate has not abandoned his Williamson County residence. The Candidate's true residence in Williamson County is outside of the bounds of the unit that would select him, and he is therefore not eligible for the Office.

9. Because the Candidate resides outside of the bounds of the unit that would select him, his Statement of Candidacy, wherein he swears that he is "legally qualified" to hold the Office, is therefore false.

WHEREFORE, your Objector prays that the purported Nomination Papers of Aaron Michael Hopkins as a candidate of the Republican Party for nomination to the Office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois be declared by this Honorable Electoral Board to be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the name of Aaron Michael Hopkins as a candidate of the Republican Party for nomination to the Office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois BE NOT PRINTED on the OFFICIAL BALLOT of the Republican Party at the General Primary Election to be held on March 19, 2024.

Respectfully submitted,

OBJECTOR
John Overturf
216 North Commercial Street
Benton, Illinois 62812

County of Franklin)
) ss.
State of Illinois)

Subscribed to and Sworn before me, a Notary Public, by John Overturf, the Objector, on this the 3 day of January, 2024, at Benton, Illinois.

Amy Clark (SEAL)
NOTARY PUBLIC

My Commission expires: Dec. 15th 2025

AMY CLARK
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires
December 15, 2025

Overturf v. Minson-Minor
24 SOEB GP 116

Candidate: Vanessa Minson-Minor

Office: Circuit Court Judge for the 2nd Judicial Circuit (Thomas J. Tedeschi Vacancy)

Party: Republican

Objector: John Overturf

Attorney for Objector: John G. Fogarty, Jr.

Attorney for Candidate: N/A; *pro se*

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Invalid Statement of Candidacy and Petition Sheets. Nomination papers are invalid because Candidate gathered signatures under the name Vanessa Minson-Minor, whereas her name is Vanessa Minson. Statement of Candidacy is false because, although it identifies the candidate as residing on Main Street in Benton, no such voter by the name of "Vanessa Minson-Minor" is registered to vote at that address. Candidate has created a new, hyphenated surname on the nomination papers in violation of Election Code Section 7-10.2, 10 ILCS 5/7-10.2.

Dispositive Motions: Candidate's Motion to Strike Objection for Lack of Basis in Law and Fact, filed January 15, 2024. Candidate argues that the use of her married surname followed by an "em dash," then her maiden name complies with the AP and APA literary style rules to connote "in addition to," and serves as a substitute for the use of parentheses. Candidate states that the dash is a literary and stylistic choice for the use of both her married and maiden name (in that order) on the ballot. Candidate asserts that the dash is not intended to, and will not, mislead or confuse voters, but instead is used to clarify to voters the identity of the Candidate. Candidate asserts that she has not undergone a name change governed by Sections 7-17 and 8-8.1; rather, Candidate argues that the use of a nickname or any combination of given names or surnames is allowed under those Sections.

Candidate distinguishes *Marszalek vs. Kelenson*, 212 Ill. App. 3d 836; *Oberholtzer v. Cook County Officers Electoral Board,* 2020 IL App (1st) 200218-U; *Ruffin v. Feller,* 2022 IL App (1st) 220692; and *Shannon-DiCianni v. DuPage County Officers Electoral Board*, 2020 IL App (2d) 200027, arguing that in none of the cited cases did the candidate attempt to use a combination of legal married surname – em dash – maiden name, as Candidate did in this instance. Specifically, Candidate argues that *Oberholtzer* is inapplicable because the candidate in that case, unlike

Candidate, had not used her maiden name professionally or personally following her marriage, and the statement of candidacy used only the candidate's maiden name. Candidate argues that *Shannon-DiCianni* is inapplicable because the candidate in that case used a hyphen between a nickname and a surname to give the impression that the candidate was of a certain ethnic background, while this Candidate is connecting a current and a former surname to aid voters in identifying Candidate.

Candidate further argues that, to the extent they apply to bar her from the ballot, Sections 7-17 and 8-8.1 violate the Equal Protection Clause of the U.S. Constitution, as they affect only women who have name changes caused by marriage and divorce.

Candidate relies on *Havens v Miller*, 102 Ill. App. 3d 558, to argue that, because the objection was filed on January 3, 2024, under Section 10-10, a hearing should have been held by January 10, 2024, at the latest.

Candidate argues that Objector's petition should be dismissed because Objector may have a personal vendetta against Candidate's family. Further, Candidate claims that Objector does not have standing because Objector is not a member of the Republican Party and is a strawman acting on behalf of another judicial candidate.

Objector's Response to Motion to Strike Objection for Lack of Basis in Law and Fact, filed January 18, 2024. Objector notes that although Candidate practices law, is registered to vote, and drives a car under the name "Vanessa Minson," Candidate's Statement of Candidacy names Candidate as "Vanessa Minson-Minor." Objector argues that this is not permitted under Section 7-10.2, which provides, "In the designation of the name of a candidate on a petition for nomination, the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname." Objector contends that this case is analogous to *Oberholtzer*, 2020 IL App (1st) 200218-U, in which the court held that Section 7-10.2 requires that a statement of candidacy use the candidate's legal surname. Objector also cites *Shannon-DiCianni*, 2020 IL App (2d) 200027, in which a candidate was barred from the ballot for adding another name to her surname using a hyphen for the purpose of running for office. Objector argues that, although Candidate is permitted to add other names or nicknames to her given names in her nominating petitions, doing so through the use of a hyphen constitutes an impermissible creation of a surname different from Candidate's legal last name.

Objector disputes that Sections 7-17 and 8-8.1 are in issue, and argues that, even if they are, and even if the Board had the authority to adjudicate such claims, they are not unconstitutional under the Equal Protection Clause. Concerning the timeliness of the hearing, Objector, citing *Maske v. Kane County Officers Electoral Board*, 234 Ill.App.3d 508 (2d Dist. 1992), and other cases, argues that even if the hearing was not timely set, such a violation is not grounds to dismiss the objection.

Further, Objector asserts that an objector's motivations for filing an objection are irrelevant, relying on *Nader v. Illinois State Board of Elections*, 354 Ill.App.3d 335 (1st Dist. 2004). That case held that an electoral board is not required or empowered to investigate how an objector's petition is compiled or why it was filed. Further, Objector argues that Section 10-8 does not require

that Objector be of a particular political party, only that an objector be a legal voter of the political subdivision.

Candidate Reply to Objector's Response to Motion to Strike, filed January 22, 2024. Candidate reiterates her arguments that the case law cited by Objector is misapplied and that Sections 7-17, 8-8.1, and 7-10.2 violate the Equal Protection Clause to the extent that they apply to bar her from the ballot. Candidate also argues that the Board should investigate Objector's motivation in filing the objection petition and the fees paid to Objector's attorney, because, Candidate alleges, the objection petition does not contain a statement related to the interest of Objector.

Record Exam Necessary: No

Hearing Officer: Joe Craven

Hearing Officer Findings and Recommendations: The Hearing Officer recommends denying Candidate's Motion to Strike in its entirety. Regarding Candidate's argument related to the use of an em dash, the Motion should be denied because it requires the Hearing Officer to make factual determinations related to Candidate's arguments. The Hearing Officer further recommends denying Candidate's Motion as it relates to arguments under the Equal Protection Clause of the U.S. Constitution because the Board has no authority to assess the constitutionality of Election Code requirements, only "the courts may do so on judicial review." *Goodman v. Ward*, 241 Ill. 2d 398, 410-11 (2011). The Hearing Officer relies upon *Maske*, 234 Ill.App.3d 508 (2d Dist. 1992), to recommend denying the portion of the Motion arguing that the hearing was untimely held one day late because Candidate did not plead that she suffered any prejudice related to the alleged untimeliness of the hearing. With respect to the motivations of Objector, the Hearing Officer relies on *Havens* and *Nader* to recommend limiting the inquiry to the validity of the objection. The Hearing Officer recommends denying the portion of the Motion concerning Objector's qualifications to file an objection, relying on the language of Section 10-8 of the Election Code, which allows any legal voter of the political subdivision to file an objection and does not restrict objector qualifications by party affiliation. The Hearing Officer recommends denying the portion of Candidate's Motion concerning objections by proxy, relying on *Nader* to hold that such allegations are "simply not relevant to the issues of whether Candidate's nominating papers satisfied the formal requirements," and notes that Objector's petition contains a statement of interest that satisfies the requirements of Section 10-8.

The Hearing Officer notes that the evidence submitted, including Candidate's testimony at the January 23, 2024 hearing, establishes that Candidate's legal name is Vanessa Minson, and that Candidate has never professionally used the name "Vanessa Minson-Minor."

The Hearing Officer finds Section 7-10.2 of the Election Code dispositive. That Section provides that "the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname." The Hearing Officer opines that *Marszalek* and *Ruffin* are not controlling because they do not address Section 7-10.2. The Hearing Officer notes that both sides cite *Oberholtzer* and *Shannon-DiCianni* and finds these cases relevant. In *Oberholtzer*, the court emphasized that a candidate must use his or her surname on the nomination papers, "the family name automatically

bestowed at birth, acquired by marriage or adopted by choice." Similar to *Oberholtzer*, Candidate does not use the name appearing in her nomination papers on her voter registration card, driver's license, or ARDC registration. Because the only use of the name "Minson-Minor" appears to be on a Facebook account created in October 2023, the Hearing Officer recommends a finding that Candidate has violated Section 7-10.2. While the Hearing Officer believes that Candidate did not intend to deceive voters, Candidate has indicated that she has two surnames, and, under *Shannon-DiCianni*, recommends a finding that the nomination papers do not comply with Section 7-10.2. Finally, to the extent the Candidate is arguing the use of an em dash rather than a hyphen results in the creation of something other than a double-surname, the Hearing Officer says it is a distinction without a difference.

The Hearing Officer concludes that Candiate's legal surname is "Minson" and not "Minson-Minor," and that Candidate has failed to list her surname as required by Section 7-10.2. The Hearing Officer further determines that, because the matter may be decided on the basis of Section 7-10.2, it is not necessary to decide the allegation that Candidate has sworn a false statement of candidacy by swearing "Vanessa Minson-Minor" is a registered voter, when her voter registration displays "Vanessa Minson," and considers the issue moot. As a result, the Hearing Officer recommends that Candidate Vanessa Minson-Minor not be placed on the ballot for the Circuit Court Judge for the 2nd Judicial Circuit (Thomas J. Tedeschi Vacancy).

Recommendation of the General Counsel: The General Counsel concurs in the Hearing Officer's recommendation, with one exception, and recommends <u>not</u> certifying Candidate's name to the March 19, 2024 General Primary ballot. I recommend that the Board's order reflect that Finding of Fact #2 on page 12 of the recommendation should indicate the Statement of Candidacy uses the name Vanessa Minson-Minor, not Vanessa Brielle Minson-Minor.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF RESIDENT CIRCUIT COURT JUDGE FOR FRANKLIN COUNTY, TO FILL THE VACANCY OF THE HONORABLE THOMAS JOSEPH TEDESCHI, SECOND JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS

John Overturf Petitioner-Objector,	)	
vs.	)	Case No. 2024 SOEB GP 116
Vanessa Minson-Minor, Respondent-Candidate.	)	

RECOMMENDATION

TO: John Overturf
c/o John G. Fogarty, Jr.
4043 N. Ravenswood, Suite 226
Chicago, IL 60613
fogartyjr@gmail.com

Vanessa Minson
1009 S Main St
Benton, IL 62812
vminson5@gmail.com

General Counsel
Illinois State Board of Elections
GeneralCounsel@elections.il.gov

THIS MATTER COMING ON for recommendations on the Objector's Petition and Candidate's Motion to Strike, the Hearing Officer states as follows:

PROCEDURAL HISTORY

Objector's Petition was filed on January 3, 2024. The Petition objects to the nomination papers of Vanessa Minson-Minor as candidate for the Office of Resident Circuit Court Judge for Franklin County, to fill the Vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial Circuit of the State of Illinois. The Petition alleges the Nomination Papers are insufficient in law and fact due to the Candidate's Nomination Papers identifying the Candidate as "Vanessa Minson-Minor" rather than her alleged actual name, "Vanessa Minson," and therefore asks for Candidate's name to be stricken.

Specifically, Objector alleges:

1) The Candidate's nomination petitions "improperly hyphenate her surname to add an additional name in an apparent attempt to gain vote recognition in violation of Section 7-10.2 of the Election Code," and
2) Candidate has sworn a false statement of candidacy by swearing "Vanessa Minson-Minor" is a registered voter, when her voter registration displays only "Vanessa Minson."

After an Initial Case Management Conference, the Parties jointly stipulated that the Candidate's legal name is "Vanessa Brielle Minson" and her maiden name was "Vanessa Brielle Minor." The Candidate also filed a supplemental Case Management Report, identifying Additional Legal Issues that she expanded upon in a Motion to Strike.

A. Subpoena Requests

The Parties each submitted subpoena requests in this matter. Objector requested a subpoena be issued to the Franklin County Clerk for voter registration materials of "Vanessa Minson." This request was granted. Candidate sought a subpoena to be issued to John Fogarty (Objector's Counsel) for receipts of attorney's fee payments related to this proceeding, and communications between Mr. Fogarty and non-parties. This request was denied.

This Hearing Officer submitted a Recommendation on these Subpoena Requests on January 18, 2024 that is incorporated by reference.

B. Motion to Strike

On January 15, 2024, Candidate filed a Motion to Strike arguing Objector's Petition should be stricken as it "is without proper support in fact and law and as such becomes an abuse of process against the Candidate," (¶ 30 of Motion to Strike), because:

1) The Objection lacks caselaw support and Candidate's use of "double surnames" with an "em dash" is legally acceptable;
2) 10 ILCS 5/7-17 and 10 ILCS 5/8-8.1 of the Electoral Code are unconstitutional by violating the Equal Protection Clause of the United States Constitution;
3) The Board's Hearing on Objector's Petition was Untimely;
4) Objector's Motivations are Improper;
5) Objector's Qualifications are Improper; and
6) Objector filed an Objection by Proxy.

The Objector filed a Response to Candidate's Motion addressing each of the above-listed arguments raised. The Candidate filed a Reply that expanded upon the "Equal Protection Clause" and "Objector by Proxy" claims initially raised in her Motion to Strike. This Hearing Officer addresses each of these arguments individually below. In totality, it is this Hearing Officer's Recommendation that the Board **DENY** Candidate's Motion to Strike.

1. Legal Sufficiency of Objection and "Em Dash" Usage

The Candidate's Motion to Strike argues the Objector's Petition lacks support from case law by arguing no applicable case law supports the Objection. The Candidate later argues that the usage of an "em dash" (as opposed to a hyphen) establishes that her Nomination Papers are legally valid. As these arguments ask the Hearing Officer to decide factual issues and rule on the ultimate legal merits of the case (as opposed to asserting some other deficiency), it is this Hearing Officer's Recommendation Candidate's Motion to Strike be denied on these grounds.

2. Equal Protection Clause

Candidate's Motion and Reply collectively assert that 10 ILCS 5/7-17, 10 ILCS 5/8-8.1, and 10 ILCS 5/7-10.2 are unconstitutional in that said Sections violate the Equal Protection clause

of the United States Constitution. Candidate's Motion cites to *Frontiero v Richardson*, 411 U.S. 677 (1973) and *People ex rel. Rago v Lipsky*, 63 N.E.2d 642 in support of her arguments.

Objector's Response disputes the merits of this argument, but also asserts that "this forum does not have authority to adjudicate such claims."

The Hearing Officer agrees that the Election Board has no authority to assess the constitutionality of Election Code requirements, but rather only "the courts may do so on judicial review." *Goodman v. Ward*, 241 Ill. 2d 398, 410-11 (2011). As such, the Hearing Officer recommends this portion of the Candidate's Motion to Strike be denied.

3. Timeliness of Objection

Candidate next asserts Objector's Petition should be stricken because of the Board failing to timely set the objection for hearing. Candidate relies on 10 ILCS 5/10-10, which provides for the Board to hold a meeting upon receipt of an objection "not less than 3 nor more than 5 days after the receipt" of the objection or nomination papers. Candidate alleges that the Board's failure to meet within the three to five days following receipt of the Objection by the Chair of the Electoral Board necessitates that the objection be stricken as a matter of law. The Candidate cites *Havens v Miller*, 102 Ill. App. 3d 558 in support of this proposition. However, the court in *Havens* simply held the meeting in that factual scenario was timely held. *Id.* at 563. Thus, this Hearing Officer does not consider it controlling authority on whether the present objection must be struck.

As Objector points out, *Maske v. Kane County Officers Electoral Bd.*, did analyze this exact argument raised by Candidate. The *Maske* Court, similar to in *Havens*, provided the analysis one uses to answer the question of whether a statute prescribing the performance of an act by a public body is a mandatory or directory statute. 234 Ill.App.3d 508, 517-20. Similar to Objector, that Court cited *Havens* and *Shipley v. Stephenson County Officers Electoral Board*, 130 Ill. App. 3d

900 (2nd Dist. 1985) for the proposition that:

> "[i]f the provision merely directs a manner of conduct for the guidance of the officials or is designed to secure order, system and dispatch in proceedings, it is generally directory, absent negative language denying the performance if the acts required are not done in the manner designated. If, however, the conduct is prescribed in order to safeguard a person's rights, which may be injuriously affected by failure to act in the manner specified, the statute is mandatory."
>
> *Shipley*, 130 Ill.App.3d at 903.

As applied to the language of Section 5/10-10 at issue, the *Maske* court held the legislature's failure to include a stated consequence for the Board's failure to timely convene indicates it was merely a "directive" statute, and therefore such failure would not automatically nullify any action taken by the Board on an untimely heard objection. *Maske,* 234 Ill. App. 3d at 517-20. However, the court did recognize in certain situations how a "candidate's rights may be adversely affected when the Electoral Board schedules its hearing well outside the time limits or fails to convene at all." *Id.* at 519.

Here, the Candidate argues the Board should have met on or before January 10, 2024 (as opposed to January 11, 2024). But, the Candidate has not plead or asserted any sort of prejudice as a result of the Board's alleged failure. As such, this Hearing Officer recommends this portion of the Candidate's Motion to Strike be denied.

4. Objector's Motivations

The Candidate's Motion next raises various assertions that the factual history and relationship between the Objector and Candidate's families should result in the Objection being struck. Objector cites to *Havens* and *Nader v. Illinois State Board of Elections*, 354 Ill. App. 3d 335, (1st Dist. 2004) to argue the Board's inquiry, pursuant to the limited statutory authority it has been granted, "is limited to the validity of [the] objections." *Nader,* 354 Ill. App. 3d at 356. The *Nader* court expanded that how those objections were compiled "is simply not relevant to the

issues of whether Candidates' nominating papers satisfied the formal requirements" in the Election Code. *Id.* This Hearing Officer agrees the authority cited by the Objector is controlling authority, and recommends this portion of the Candidate's Motion to Strike be denied.

5. Objector's Qualifications

Candidate next asserts Objector Overturf, a registered Democrat, is not qualified to file an objection against Candidate, a Republican judicial candidate. Objector's Response cites to 10 ILCS 5/10-8 to establish "*[a]ny* legal voter of the political subdivision . . ." may file an objection, and an objector's party affiliation is irrelevant. (emphasis added). This Hearing Officer agrees with Objector, and recommends this portion of the Candidate's Motion to Strike be denied.

6. Objection By Proxy

Candidate's Motion to Strike lastly asserts Objector's Objection is one filed "by proxy" and must be struck. Candidate's Motion cites to various Judicial Code of Ethics Canons to argue "*if*" certain facts exist, such as others paying the Objector's attorney, that violations of those ethical canons may exist. (emphasis added). Objector's Response adamantly denies the factual assertions alleged in Candidate's Motion. Candidate's Reply argues the Objections' Packet available on the Board's website requiring the Objector to state their "interest" allows the issues of an Objector's funding or motivations to be put at issue.

The Hearing Officer disagrees with Candidate's assertions. First, as stated above regarding Objector's motivations, how objections were compiled "is simply not relevant to the issues of whether Candidates' nominating papers satisfied the formal requirements" in the Election Code. *Nader,* 354 Ill. App. 3d at 356. Secondly, to the extent Candidate has alleged Objector failed to comply with 10 ILCS 5/10-8 by not stating his interest, this Hearing Officer disagrees. The Objection plainly states "[Objector's] interest in filing the following objection is that of a citizen

desirous of seeing to it that the laws governing the filing of nomination papers for a candidate for [office] are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office." Objection at ¶ 1. As such, this Hearing Officer recommends this portion of the Candidate's Motion to Strike be denied.

C. Evidentiary Hearing

On January 23, 2024, an Evidentiary Hearing was held on Objector's Petition. The only witness called was the Candidate, Vanessa Minson. Various exhibits were introduced by both Parties, including:

1) Candidate's Voter Registration Materials;
2) Candidate's Driver's License;
3) Candidate's Birth Certificate;
4) Candidate's Marriage Application and License;
5) Screenshots from Candidate's Social Media Pages;
6) Candidate's ARDC Listing;
7) Candidate's Campaign Literature;
8) Docket Screenshots from Franklin County Cause 2023-DC-41;
9) A total of 15 Affidavits from Franklin County residents;
10) A news article concerning Objector;
11) Email correspondence between Objector's Counsel and Candidate;
12) A website printout concerning Objector's Counsel; and
13) The Notice to Candidates and Objector's Packet (as made available from the State Board of Elections website).

In her testimony, the Candidate confirmed her full name at birth was "Vanessa Brielle

Minor." In June 2016, the Candidate married Earl Roy Minson III. At that time, she legally changed her name to "Vanessa Brielle Minson."

The Candidate testified that she "feels that 'Vanessa Minson' is her legal name" and acknowledged that her voter registration card, driver's license, and ARDC listing all display the name "Vanessa Minson." Candidate also testified that because she was admitted to practice law in 2014, she was required to petition the Illinois Supreme Court to change her name after her June 2016 marriage to "Vanessa Brielle Minson." She testified that she has professionally never gone by the surname "Minson-Minor," but did introduce evidence that she opened a Facebook page in the Fall of 2023 where her name is listed as "Vanessa Minson-Minor." She also testified she has never gone by the inverse surname, "Minor-Minson," and testified that campaign literature introduced as evidence referring to her as "Vanessa Minor-Minson" was typed that way by a family friend in error.

The Candidate further testified that she is in the middle of an ongoing divorce, but as of the date of the hearing (January 23, 2024), the Candidate was still unsure what name she would go by upon divorce. As Candidate expanded on in her Motion to Strike, she acknowledged the reason for her present uncertainty is due the fact that she does not desire to have a different name from her children upon divorce, but also wants to return to her maiden name.

Candidate also introduced fifteen (15) affidavits into evidence whereby each affiant testified they believe:

> "[T]hat the name of Vanessa Minson-Minor should be placed on the ballot in that format because I am more readily able to recognize Vanessa Minson by the use of her maiden name in conjunction with her married name because this is a name she is commonly recognize [*sic*] by myself and others in the community.
>
> Further, I believe this name aids in identification of Vanessa Minson on the ballot because many people would recognize her by her maiden surname and identify her with her family members in the community of the same surname."

The Parties provided Closing Remarks at the conclusion of the hearing, whereby Objector referenced its belief this matter would be different had Candidate included "Minor" parenthetically elsewhere in her Nomination Papers rather than hyphenating her surname to represent "double surnames." The Candidate articulated that the choice to include the name "Minson-Minor" on her nomination papers was intentional, but in no way was intended to deceive or confuse voters. Rather, Candidate's position, as supported by her affidavits, is that listing both surnames adds clarity – not confusion.

ANALYSIS

The primary issue in this objection revolves around 10 ILCS 5/7-10.2 of the Election Code. In pertinent part, the statute reads: "In the designation of the name of a candidate on a petition for nomination or certificate of nomination the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname."

The Candidate's briefing on the caselaw argues *Marszalek v Kelenson*, 212 Ill. App. 3d 836 and *Ruffin v. Feller*, 2022 IL App (1st) 220692 are factually and legally distinguishable. The *Ruffin* court explicitly stated "we reject the argument that section 7-10.2 governs the outcome of this case." Similarly, the *Marszalek* court failed to analyze Section 7-10.2. Here, the Parties explicitly agreed the principal issue to be decided is whether Candidate complied with Section 7-10.2 of the Election Code. *See* Joint Status Management Report at "Legal Issues." As such, this Hearing Officer finds neither case controlling.

Both parties cite to *Oberholtzer v. Cook County Electoral Board*, et al, 2020 IL App (1st) 200218-U, and *Shannon-Dicianni v. Du Page Cty. Officers Electoral Bd*., 2020 IL App (2d) 200027, but disagree on their authority and application. This Hearing Officer finds them both relevant and,

while one is an unpublished opinion, controlling.

In *Oberholtzer* the candidate at issue listed her name on her nomination papers as "Caroline Patricia Jamieson." *Id.* at ¶ 4. The candidate was born "Caroline Patricia Jamieson." *Id.* at ¶ 8. She was later married, and ceased using her maiden name. *Id.* at ¶ 7. From that point forward, she went by "Caroline Patricia Golden." *Id.* at ¶¶ 5-7. On her ARDC and Bar Certificates, and as a School Board Trustee, the candidate's surname was "Golden." ¶ 5. The court provided detailed analysis interpreting Section 7-10.2, and emphasized how the language at issue requires a candidate "must" use his or her surname. *Id.* at ¶ 25. In giving the statute's words their plain meaning, the court cited Black's Law Dictionary to hold a "given name," as used in Section 7-10.2 means "an individual's name or names given at birth, *as distinguished from a family name*," and "surname" as synonymous with "family name," to mean "the family name automatically bestowed at birth, acquired by marriage or adopted by choice." *Id.* at ¶ 25 (emphasis in original) (internal citations omitted). There, the court held the candidate's "given name" was "Caroline Patricia" and, at birth, her "surname" was "Jamieson." *Id.* at ¶ 26. However, after marriage, she voluntarily adopted the surname "Golden." *Id.* In applying those facts to Section 7-10.2, the court held "the Candidate was required to list her given name as "Caroline Patricia" and her surname as "Golden." The Candidate's failure to do so violated the terms of section 7-10.2 of the Election Code, which invalidates her nomination papers, necessitating her removal from the ballot." *Id.* at ¶ 28.

Here, the Candidate's "given name" at birth is "Vanessa Brielle." Her surname at birth was "Minor." Upon marriage, she voluntarily adopted the surname "Minson." She has used the surname "Minson" on her voter registration card, driver's license, and ARDC registration. She admits her only usage of "Minson-Minor" as a surname is on a Facebook page opened in October 2023. As a result, this Hearing Officer believes a violation of 7-10.2 has occurred, invaliding the

Candidate's nomination papers.

The *Shannon-DiCianni* case further illustrates how Candidate in this case did not use her legal "surname" as required by Section 7-10.2. There, the candidate at issue listed her name as "Natalie Rose Shannon-DiCianni." 2020 IL App (2nd) 200027 at ¶ 4. The Candidate's full legal name was "Natalie Rose DiCianni" and went by "Shannon" as a nickname. *Id.* at ¶ 5. The Court analyzed that by using a hyphen to identify herself as "Shannon-DiCianni," the candidate was indicating she had two surnames. *Id.* at ¶ 15. As such, the Court held this violation in and of itself, regardless of whether the candidate's listing was done to appeal to voters, mandated that the Board remove her from the ballot. *Id.* at ¶ 21.

Here, the Candidate agrees her legal surname is only "Minson." By hyphenating her surname to state "Minson-Minor" on her nomination papers, she has violated the strict terms of section 7-10.2, regardless of whether she intended to improperly appeal to voters or not.

To be abundantly clear, this Hearing Officer found the Candidate's uncontroverted testimony that she in no way utilized the name "Minson-Minor" to deceive voters in any way, shape, or form as credible. It does not appear any fraudulent misrepresentation, deceit, or manipulation was intended or even contemplated. The Hearing Officer found the Candidate's testimony that she was simply unsure (and still is) about what surname to adopt as a result of her ongoing divorce proceedings as credible testimony. However, as the Hearing Officer believes the precedent on the lone statutory provision at issue to be clear, similar to in *Shannon-DiCianni*, regardless of whether voter manipulation was intended, he must recommend the Candidate's name be removed from the ballot due to the Candidate not listing her true "surname."

Lastly, while Candidate's Motion to Strike argues "Minson" and "Minor" are not hyphenated, but are rather joined by an "em dash" to argue the "em dash" is the equivalent of

parenthesis (and therefore indicating non-double-surnames), the Motion also refers to how the Candidate "intentionally kept the order of the *surnames* on the ballot as "Vanessa Minson—Minor." (emphasis added). As such, to the extent the Candidate is arguing the use of an em dash rather than a hyphen results in the creation of something other than a double-surname, this Hearing Officer finds it to be a distinction without a difference.

RECOMMENDED FINDING OF FACTS

1. Candidate's Statement of Candidacy provides the Candidate's name is "Vanessa Brielle Minson-Minor."
2. The Candidate's given name is "Vanessa Brielle."
3. The Candidate's surname is "Minson."
4. The Candidate's listing of "Minson-Minor" indicates a "double surname."

RECOMMENDED CONCLUSIONS OF LAW

1. "In the designation of the name of a candidate on a petition for nomination or certificate of nomination the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname." 10 ILCS 5/7-10.2.
2. A candidate's failure to list their surname in violation of 10 ILCS 5/7-10.2 invalidates their nomination papers and necessitates the removal of their name from the ballot. *Oberholtzer*, 2020 IL App (1st) 200218-U at ¶ 28.
3. Candidate did not list her surname on her nomination papers.
4. Candidate improperly listed a "double surname" on her nomination papers.

RECOMMENDATION

Because Candidate **DID NOT** comply with 10 ILCS 5/7-10.2, this Hearing Officer

recommends the Candidate's name **NOT BE PLACED** on the ballot.

Because this Hearing Officer recommends the Candidate's name not be placed on the ballot for the violation of 10 ILCS 5/7-10.2, the Hearing Officer does not reach the issue alleged in the Objection that Candidate has sworn a false statement of candidacy by swearing "Vanessa Minson-Minor" is a registered voter, when her voter registration displays "Vanessa Minson" and considers the issue moot.

DATED: January 26, 2024

/s/ Joseph A. Craven
Joseph A. Craven, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned certifies that on this Friday, January 26, 2024, service of the foregoing document was made by electronic transmission from the office of the undersigned to the following individuals:

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ILLINOIS STATE BOARD OF ELECTIONS

John Overturf,

Objector,

v. 24 SOEB GP 116

Vanessa Minson-Minor,

Candidate.

Candidate's Motion to Strike Objection for Lack of Basis in Law and Fact

Now comes Vanessa Minson—Minor, Candidate for Residential Circuit Judge of the Second Judicial Circuit, Franklin County, Illinois, appearing *pro se* and in her personal capacity, in response to the Objection moves to strike the Objection for Lack of Basis in Law and Fact for the reasons set forth below:

Pertinent Facts

1. The Candidate, Vanessa Brielle Minor adopted the surname "Minson" at the time of her marriage in Williamson County, Illinois on June 18, 2016. (See Candidate's Exhibit 1, Marriage Certificate, as attached and incorporated herein for reference.)
2. The Candidate has professionally used the surname Vanessa Minson since June 18, 2016.
3. The Candidate was born "Vanessa Brielle Minor" and raised in the rural part of the small town of Benton, Illinois—population under 7,000—and her family has lived in Franklin County, Illinois for over 100 years. (See Candidate's Exhibit 2, Birth Certificate, as attached and incorporated herein for reference.)
4. The Candidate is known and recognized by many in her community by her maiden surname "Minor" and her mother's maiden surname "Skobel." As many people recognize her or know her through her family and parents Lindell "Ray" Minor or Angela Skobel.
5. The Candidate has often been identified by members in her community by her family relations, with such comments such as: "Oh— you are Ray Minor's daughter or Norma Minor's granddaughter! …. I've known you since you were a baby" or "Oh, you're Angela Skobel's daughter or Mary Skobel's granddaughter— I remember when you were born."
6. The Candidate has not used her maiden surname and married surname hyphenated professionally.
7. The Candidate submits that the use of her married surname is followed by an "em dash" pursuant to the AP literary rules and then is followed by her maiden surname (to connote

"in addition too" and to substitute the use of parenthesis. The dash is a literary and stylistic choice for use of both her married and maiden name (in that order) on the ballot. The dash is not intended to, and will not, mislead or confuse voters, but instead is used to clarify to voters the identity of the Candidate.

8. The Candidate is registered to vote in Franklin County as Vanessa Minson.

9. The Candidate specifically and intentionally kept the order of the surnames names on the ballot "Vanessa Minson-Minor" with legal name first and adding her maiden name after the dash— for clarification since she is legally and professionally Vanessa Minson, but in addition is better identified by her maiden surname "Minor" by those in her community unaware of her work or marriages. (See Candidate's Group Exhibit 3, Affidavits of Community Members and Signatories of Vanessa Minson—Minor Nomination Papers, as attached and incorporated herein for reference.)

10. The Candidate has used the double surnames on her public Facebook page where she has joined groups, such as the BCHS Class of 2004 group, and was readily identified and added to that group using her maiden name since the Candidate graduated from Benton Consolidated High School as "Vanessa Minor."

11. The Candidate has added and accepted five hundred-forty (540) "profile friends" in her community by use the combination of her maiden and married names for easy identification. (See Candidate's Exhibit 4, Vanessa Minson-Minor Facebook Profile, as attached and incorporated herein for reference.)

12. The Candidate has used the double surname previously, in the same format also on her public Instagram page created in January 2013, where she was more readily identified by friends because use of her maiden name and first married name (Knepp- Minor) again both surnames used for easy identification. (See Candidate's Exhibit 5, Vanessa Knepp-Minor Instagram Profile, as attached and incorporated herein for reference.)

13. Further, many people in the community know the Candidate her by her maiden name, due to the two different name changes from two previous marriages and recognition by her maiden name is easier for the community due to these name changes.

14. The Candidate is currently involved in a pending a divorce in Franklin County, filed by Candidate on July 13, 2023, Franklin County Cause: 2023DC41. (See Candidate's Exhibits 6a and 6b, Judici Reports from Franklin County Cause: 2023C41 as attached and incorporated herein for reference.)

15. The Candidate has not yet decided whether she will keep her married name or return to her maiden name and this decision is an ongoing family issue that she is struggling with. An attack on how the Candidate is identified publicly is an attack she finds deeply personal because of the ongoing litigation. Candidate does not want to have a different name than her children but also wants to return to her maiden name. Again, the Candidate has not yet made a legal decision on this subject.

16. The Candidate submits that such an attack on the use of her married name and maiden name in combination is an attempt by the Objector or his Proxy to improperly harass and

intimidate Candidate by drawing attention to the personal life of this Candidate, including her pending divorce

17. The issue of the Candidate's surnames and failed marriages are being flaunted on the public record as an improper personal attack meant to intimidate the Candidate into withdrawal of her petitions to be placed on the ballot.

Applicable Statutory and Caselaw

18. There is no applicable case law to support the Objection.

19. The following cases are all factually and legally distinguishable from the case at bar:

Marszalek vs. Kelenson, 212 Ill. App. 3d 836;

Oberholtzer v. Cook Cty. Officers Electoral Bd., 2020 IL App (1st) 200218-U;

Ruffin v. Feller, 2022 IL App (1st) 220692, and

Shannon-Dicianni v. Du Page Cty. Officers Electoral Bd., 2020 IL App (2d) 200027.

20. *Marszalek vs. Kelenson* is not applicable here and is factually distinguished because that case involved the requirement to register a name change where the candidate was circulating petitions under a maiden name only and was at the time of circulating petitions registered to vote under her married name. The candidate registered to vote under her maiden name prior to filing the circulated petitions and the court held the candidate was a registered voter when she filed the nominating petitions, and she should not be prevented from participating as a candidate. Here, the Candidate is using both her married name and her maiden name.

21. The Candidate here has not undergone a name change that requires registration or triggers the three year look back period for name changes under sections 10 ILCS 5/7-17 and 10 ILCS 5/8-8.1. The Candidate has listed both her married and maiden name to aid in clear identification of the Candidate and to avoid confusion.

22. The use of a nickname or any combination of given names or surnames is allowed under sections 10 ILCS 5/7-17 and 10 ILCS 5/8-8.1.

23. *Oberholtzer v. Cook Cty. Officers Electoral Bd.* is not applicable and is factually distinguished because the female judicial candidate in that case filed her nomination papers under her maiden name ***only*** and left off her professional, publicly used, married name. Further, the candidate in this case "provided no evidence that she had used her maiden surname personally or professionally since her marriage and there was not evidence that she intended to use her maiden name for 'anything other than the current election.'"

24. The Candidate here has included both her maiden and married surname and has provided evidence of public use of the combination of her married surname and hyphenated maiden surname in various settings (such as Instagram and Facebook) and is also undergoing a pending divorce where the intention of the Candidate to resume use of her maiden name is at issue.

25. *Ruffin v. Feller* is not applicable and is factually distinguished because the candidate in that case used ***only*** her maiden name "Ruffin" on her nominating papers, while she was

still legally identified and registered to vote under her married surname "Stanford" following a divorce. Following the divorce, the candidate did not update or change her married name back to her maiden name, and her nominating papers only listed her maiden name, and not the name included on her voter registry.

26. The Candidate here has not undergone a name change that requires her to register a new name under 10 ILCS, 5/6–54. The Candidate in this pending cause has included her name as it appears on her voter registry (Vanessa Minson) and included her maiden surname as well. The Candidate in this cause has a pending divorce unlike the finalized divorce and name change at issue in *Ruffin.*

27. *Shannon-Dicianni v. Du Page Cty. Officers Electoral Bd*., is not applicable and is factually distinguished because the candidate in that case used a hyphen between a nickname and a surname and the court found this to indicate a double surname. The board reasoned that the surname is the most significant part of the candidates name and it is the one thing that must be right and that the use of "Shannon" which was not a given surname but a nickname of the Candidate in conjunction with her given surname gave a false impression of multiple heritages in that Shannon was an Irish sounding name and using this nickname hyphenated with her given surname mislead voters as to her actual heritage and she was not allowed to hyphenate her nickname with her surname.

28. The Candidate here is not misleading or hiding her heritage by using a false nickname as a surname, but is instead listing a birth-given surname (preceded by her married surname) so that voters may more readily recognize her. Both "Minson" and" Minor" are given or acquired surnames of the Candidate and are properly included on the petitions and nominating papers and aid in reducing confusion about the identity of the Candidate.

29. "Illinois courts view the right of a citizen to hold political office as a valuable one, not to be prohibited or curtailed except by plain provisions of the law." *Marszalek vs. Kelenson,* 212 Ill. App. 3d 836, citing *McGuire v. Noga,j* 146 Ill. App. 3d 280 (1986).

30. The Objector's Motion is without support in fact and law and as such becomes an abuse of process against the Candidate. This issue is addressed in sections below.

31. The Candidate's use of her maiden surname and married surname is allowed under the law: 10 ILCS 5/7-17 (b): "In the designation of the name of a candidate on the primary ballot the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname."

32. The Candidate's use of her maiden surname and married surname is allowed under the law: See also 10 ILCS 5/8-8.1: "In the designation of the name of a candidate on a petition for nomination, the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname."

33. The purpose of this law is to prevent fraudulent misrepresentation of candidates identity or misleading the voters by deception.. This Candidate's use of both her married surname and her maiden surname does exactly opposite by aiding the voter in properly identifying the Candidate.

Violation of Equal Protection Clause

34. Candidate submits the Electoral Code statute, specifically sections 10 ILCS 5/7-17 and 10 ILCS 5/8-8.1 are unconstitutional in effect (or when applied), in that that said sections violate the Equal Protection clause of the U.S Constitution by, through application, causing prejudice and discrimination to the protected class of women, while said constitutional protection prohibits discrimination based on sex.

35. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; … nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amendment XIV, Section 1.

36. Sections 10 ILCS 5/7-17 and 10 ILCS 5/8-8.1, are unconstitutional both in effect, and on their face, where rulings by the State Board of Electors under these two sections disparately and negatively impact only women who have taken married surnames or who are divorced and seeking to resume use of a given maiden name. Further, the impact of the rulings by the Board or upon judicial review, results in the drastic remedy that the female candidate(s) be stricken from the ballot as seen in the applicable case law cited above.

37. In *Frontiero v Richardson*, 411 U.S. 677 (1973), the United States Supreme Court acknowledged that "classifications based upon sex, like classifications based upon race, alienage, and national origin, are inherently suspect and must therefore be subjected to close judicial scrutiny."

38. 10 ILCS 5/7-17 (b) provides, "In the designation of the name of a candidate on the primary ballot the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname."

39. See also 10 ILCS 5/8-8.1: "In the designation of the name of a candidate on a petition for nomination, the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname."

40. These two sections as drafted provide that "any surname or given name or combination thereof can be used" but in effect when females apply or petition to be on the ballot and follow the plain language of this statute find themselves facing an improper objection when defending their choice and/or order of surnames or combination of given names or surnames used.

41. The result of strictly applying these statutory sections cause only married women who take on a marital or different surname to face being stricken from the ballot and the result is extremely prejudicial in an area where women are easily identified as the minority in seeking elected office compared to their male counterparts.

Timeliness of Hearing on Objection

42. Candidate contends this cause must be stricken by law, in that the Board did not set a timely hearing pursuant to law, being within five (5) days of the Board's receipt of the objection filed January 3, 2024 at 2:51 p.m., which five days from this date, even excluding the date

the objection was received and absent weekends pursuant to the Statute on Statutes, would be January 10, 2024 at 2:51 p.m.

43. 10 ILCS 5/10-10 provides "The day of the meeting shall not be less than 3 nor more than 5 days after the receipt of the certificate of nomination or nomination papers and the objector's petition by the chairman of the electoral board."

44. *Havens v. Miller*, 102 Ill. App. 3d 558, further provides legal support for this dismissal in that failure to schedule a timely hearing on the objection should result in dismissal of the objection.

Literary Usage of the "em Dash"

45. As stated above, Candidate specially and intentionally kept the order of the surnames on the ballot "Vanessa Minson—Minor" with legal name first and adding on her maiden name after the dash— for clarification since she is legally and professionally Vanessa Minson, but in addition may be better identified by her maiden surname "Minor" by those in her community unaware of her work or marriages.

46. According to Purdue Owl, APA literary style indicates that "Dashes (—) can be used to indicate an interruption, particularly in transcribed speech; … can also be used as a substitute for "it is, "they are," or similar expressions; … and can also be used as substitutes for parentheses. (See https://owl.purdue.edu/owl/multilingual/multilingual_students/punctuation/hyphens_and_dashes.html).

47. The em dash is longer, named after the width of the letter "m." (See https://academicguides.waldenu.edu/writingcenter/punctuation/dashes#s-lg-box-2931997).

Motivations of Objector

48. Candidate submits the factual history and relationship Mr. Overturf has with Candidate's family and within the community is relevant and is publicly available material that the Hearing Officer should consider and weigh in determining the facts and issues presented.

49. Factual history and community history of the objector that is found in the public forum is relevant and pertinent to consider in relation to this specific objection filed against Candidate.

50. Just as malicious prosecution and abuse of process are legal remedies for inappropriate use of the legal system as a form of harassment, so the Objector's motivation is relevant to determine and support such legal remedies that would result in the Candidate being stricken from the ballot.

51. Objector was criminally charged with sexual offenses and arrested by the Franklin County Sheriff's Department in 2002, a place where Candidate's father, Ray Minor, previously worked and had professional connections, though Candidate's father was not the arresting officer.

52. Further, it has came to Candidate's attention that her late maternal-grandmother, Mary Skobel, was very close to Mr. Overturf's wife (Judy Overturf) during the time Overturf was criminally charged and they were at one point friends and neighbors. Based on this relationship, Candidate's believes this objection may be motivated by the Objector having negative feelings toward the Candidate's family and submits this objection to be a malicious attack especially in light of the lack of caselaw supporting this objection (as discussed above).

    (See Candidate's Exhibit 7, News Article related to Objector found at https://thesouthern.com/news/former-jailer-speaks-out-about-sex-abuse-charges/article_642b3ab3-c145-5d00-a090-477019f2a8e3.html)

Qualifications of Objector

53. Objector, John Overturf, is a registered voter for the Democratic Party has not once pulled a Republican primary ballot since 1988.

54. As such, the qualification of said objector to be able and willing to file objections against three Republican judicial candidates, including this named Candidate, is a violation of the rights of the Candidate and the Republican Party nominees, by potentially denying ballot access to Republican nominees, caused by an adverse political party affiliate.

Question of Objector By Proxy

55. Candidate is entitled to know whether another judicial candidate in this race has paid for the attorney fees of the Objector to be able to properly defend and answer the objection.

56. Candidate has a right to know whether another judicial candidate is the Objector by Proxy, and states that the article listed above in Candidate's Exhibit 7 shows Mr. Overturf was represented by judicial candidate Bryan Drew's law firm (or that of his family) in those matters.

57. On January 11, 2024, Candidate asked Mr. Fogarty, counsel for Objector Overturf, about who paid the attorney fees and was told by Attorney Fogarty that he would not disclose his client or their information.

58. Candidate asks for permission to determine whether Mr. Fogarty is hired by Mr. Overturf or if his paid client is in fact Bryan Drew. The Candidate questions whether these are proper campaign tactics where, as stated above that this objection is without basis in law, seeks to flaunt the Candidate's marital history, name changes, and pending divorce on the public record as an attack against her character and dignity and completely unrelated to her competency and qualifications as a judicial candidate.

59. Further, Candidate posed these questions in an email to Council for Objector to which Mr. Fogarty has improperly and egregiously questioned the integrity and ethics of this Candidate by saying Candidate should not be allowed to or was inappropriate to ask relevant and pertinent questions about the Objector and/or the Objector's Proxy, to be able to properly defend and answer the Objection filed. (See Candidate's Exhibit 8, being emails dated January 13, 2024, as attached and incorporated herein for reference.)

60. Candidate submits said emails discussed above (Candidate's Exhibit 8) were an attempt to bring to light information in a non-public forum (email) to ask the hearing officer to consider and determine whether such information was appropriate for review and consideration in the pending cause. As such, Candidate expected the email would not be filed as a public record and thereby felt posing the material to the Hearing Officer and General Counsel was highly appropriate in that particular forum. Just as a judge can consider and weigh the facts that they deem appropriate and relevant, so can General Counsel and the Hearing Officer in this matter—Just as a criminal attorney would take a side-bar during a jury trial to not taint the jury, Candidate sent the materials via email instead of bringing it up on the record so that determinations of relevance and materiality could be made before placing the material in the public record. Candidate's incorporation of said emails into this filing is based solely on the allegation by Attorney Fogarty that such actions by Candidate were unethical or inappropriate. As such, Candidate includes and incorporates all said communications into this filing to be made of public record.

61. Candidate submits the inquiry about payment of attorney fees being made by another judicial candidate or judicial candidate committee is pertinent and relevant for multiple reasons.

62. The Judicial Code of Ethics, includes campaign ethics, and indicates in Cannon 1: "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety in all of the judges activities." For a judicial candidate to use a proxy Objector to attack other candidates is a form of deceit, lacks transparency in the judicial race and is in violation of ethical Canons.

63. Further, if the Objector's attorney fees have been paid for by the political committee campaign funds of Bryan Drew, this would be in violation of judicial rule 4.1E(2) which provides, "A judicial candidate shall not: use or permit the use of campaign contributions for the private benefit of the candidate or others."

64. Counsel Fogarty is listed as "Advisory Council to the Republican Party" (See Candidate's Exhibit 9).

65. Illinois requires there be no pre-primary candidate support by a political party.

66. Attorney Fogarty's position as Advisory Counsel to the Illinois Republican Party places him in a direct conflict of interest in his role as counsel for the Illinois Republican Party to be representing a client, Objector, or more-so an Objector by Proxy—on behalf of a

particular judicial candidate, by providing support to this particular candidate prior to the primary election.

67. Further, if the Objector's attorney fees have been paid for by the Republican Party of Illinois or have been paid for by the Republican Party of Franklin County this would be in violation of the rule to not support candidates prior to the primary election.

68. Further, such blatant attack on Republican Party Candidates by party members or candidates, by proxy, would be in violation of the need for transparency in the political process and the ethics of fair campaign practices.

Based on all the aforesaid the Candidate asks for the Objection of John Overturf to be stricken, denied and dismissed as insufficient and baseless in law and fact.

Respectfully Submitted,

Vanessa Minson, Candidate
(In her personal capacity)

10 ILCS 5/7-17) (from Ch. 46, par. 7-17)

Sec. 7-17. Candidate ballot name procedures.

(a) Each election authority in each county shall cause to be printed upon the general primary ballot of each party for each precinct in his jurisdiction the name of each candidate whose petition for nomination or for committeeman has been filed in the office of the county clerk, as herein provided; and also the name of each candidate whose name has been certified to his office by the State Board of Elections, and in the order so certified, except as hereinafter provided.

It shall be the duty of the election authority to cause to be printed upon the consolidated primary ballot of each political party for each precinct in his jurisdiction the name of each candidate whose name has been certified to him, as herein provided and which is to be voted for in such precinct.

(b) In the designation of the name of a candidate on the primary ballot the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname. If a candidate has changed his or her name, whether by a statutory or common law procedure in Illinois or any other jurisdiction, within 3 years before the last day for filing the petition for nomination, nomination papers, or certificate of nomination for that office, whichever is applicable, then (i) the candidate's name on the primary ballot must be followed by "formerly known as (list all prior names during the 3-year period) until name changed on (list date of each such name change)" and (ii) the petition, papers, or certificate must be accompanied by the candidate's affidavit stating the candidate's previous names during the period specified in (i) and the date or dates each of those names was changed; failure to meet these requirements shall be grounds for denying certification of the candidate's name for the ballot or removing the candidate's name from the ballot, as appropriate, but these requirements do not apply to name changes resulting from adoption to assume an adoptive parent's or parents' surname, marriage to assume a spouse's surname, or dissolution of marriage or declaration of invalidity of marriage to assume a former surname. No other designation such as a political slogan, title, or degree, or nickname suggesting or implying possession of a title, degree or professional status, or similar information may be used in connection with the candidate's surname. For purposes of this Section, a "political slogan" is defined as any word or words expressing or connoting a position, opinion, or belief that the candidate may espouse, including but not limited to, any word or words conveying any meaning other than that of the personal identity of the candidate. A candidate may not use a political slogan as part of his or her name on the ballot, notwithstanding that the political slogan may be part of the candidate's name.

(10 ILCS 5/8-8.1) (from Ch. 46, par. 8-8.1)

Sec. 8-8.1. In the designation of the name of a candidate on a petition for nomination, the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname. If a candidate has changed his or her name, whether by a statutory or common law procedure in Illinois or any other jurisdiction, within 3 years before the last day for filing the petition for that office, then (i) the candidate's name on the petition must be followed by "formerly known as (list all prior names during the 3-year period) until name changed on (list date of each such name change)" and (ii) the petition must be accompanied by the candidate's affidavit stating the candidate's previous names during the period specified in (i) and the date or dates each of those names was changed; failure to meet these requirements shall be grounds for denying certification of the candidate's name for the ballot or removing the candidate's name from the ballot, as appropriate, but these requirements do not apply to name changes resulting from adoption to assume an adoptive parent's or parents' surname, marriage or civil union to assume a spouse's surname, or dissolution of marriage or civil union or declaration of invalidity of marriage or civil union to assume a former surname or a name change that conforms the candidate's name to his or her gender identity. No other designation such as a political slogan, title, or degree, or nickname suggesting or implying possession of a title, degree or professional status, or similar information may be used in connection with the candidate's surname. (Source: P.A. 102-15, eff. 6-17-21.)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD

Overturf,	)	
	)	
Petitioner-Objector,	)	
	)	
vs.	)	**No. 24 SOEBGP 116**
	)	
Minson-Minor,	)	
	)	
Respondent-Candidate.	)	

OBJECTOR'S RESPONSE TO CANDIDATE'S MOTION TO STRIKE OBJECTION FOR LACK OF BASIS IN LAW OR FACT

Now comes John Overturf (hereinafter referred to as the "Objector"), and for his Response to the Candidate's Motion to Strike Objection for Lack of Basis in Law or Fact ("the Motion") states as follows:

Introduction

The Candidate is running for the office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois ("the Office"). She has submitted Nomination Papers in which she purports to run for the Office under the name "Vanessa Minson-Minor." However, the Candidate freely concedes that her name is actually "Vanessa Minson," having adopted the surname "Minson" at the time of her marriage in 2016. The Candidate practices law, is registered to vote, and drives a car under the name "Vanessa Minson."

The Objector has alleged in his Objector's Petition that the Candidate's failure to use her surname -- and instead to use a hyphenated last name that is not her surname -- on her Nomination Papers is violative of § 7-10.2 of the Election Code. Section 7-10.2 requires that:

> "In the designation of the name of a candidate on a petition for nomination, the candidate's given name or names, initial or initials, a nickname by which the

candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname."

10 ILCS 5/7-10.2

The Candidate has filed a Motion to Strike ("the Motion") making a number of irrelevant arguments and points, but all the while failing to save her Nomination Papers. For the reasons that follow, the Motion should be denied, and the Objector's Petition should be granted.

I. The Candidate's Use Of "Minson-Minor" As Her Ballot Name Is Not Permissible Under § 7-10.2 Of The Election Code

In her Motion and before this body, the Candidate has conceded that she adopted the surname "Minson" when she got married in 2016. She has provided numerous documents to this body demonstrating that she goes exclusively by the name "Vanessa Minson" in her personal life and professional life. The Candidate is registered with the ARDC and practices law under the name "Vanessa Minson." See Exhibit A, attached hereto and made part hereof. While the Candidate now, for political purposes, wants to use the name "Minson-Minor" as her ballot name, the Candidate herself concedes that she "has not used her maiden surname and married surname hyphenated professionally." Mot. ¶ 6. Unfortunately for the Candidate, her use of a hyphenated surname that she has never used before, rather than her surname, is not permissible under § 7-10.2 of the Election Code. Caselaw construing § 7-10.2 make this clear.

Particularly instructive is the case of *Oberholtzer v. Cook Cty. Officers Electoral Bd*, 2020 IL App (1st) 200218-U. There, a candidate for judge ran as "Caroline Patricia Jamieson" whereas her legal name was "Caroline Patricia Golden." The candidate in *Oberholtzer* ceased using her maiden name, "Jamieson," when she got married, and functioned in every way, including practicing law for years using her married name, "Golden." In *Oberholtzer*, there was no evidence that the candidate had used her maiden name as her surname, either personally or

professionally, since her marriage, and the evidence demonstrated that she only intended to use her maiden name in connection with her candidacy. An objection was filed to Golden's candidacy, claiming that her ballot name violated § 7-10.2. The candidate claimed that under § 7-10.2, she was permitted to use her maiden name, which she claimed was her "given name," as her ballot name.

The *Oberholtzer* Court applied the facts before it to the requirement in § 7-10.2 that:

> In the designation of the name of a candidate on a petition for nomination, the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname.

10 ILCS 5/7-10.2.

The *Oberholtzer* Court first looked to Black's Law Dictionary for the definition of a "given name," and found that a "given name" is "an individual's name or names given at birth, *as distinguished from a family name*." *Id.* A family name, in turn, is synonymous with a surname, and is a name that is "automatically bestowed at birth, acquired by marriage, or adopted by choice." *Id*. Thus, the candidate's "given name" in *Oberholtzer* was "Caroline Patricia," but her surname was Jamieson, until she got married, at which point she adopted the new surname of "Golden." *Id*. According to the *Oberholtzer* Court, the candidate's failure to use her surname was "the vital factor" in finding that her ballot name did not comport with § 7-10.2. *Id* at ¶ 26.

The *Oberholtzer* Court reasoned that the candidate there was not required to take on her husband's surname upon marriage, but she did so, taking affirmative steps to petition the Supreme Court to practice law under that new surname, practicing law for over a decade using that new surname, registering to vote using that new surname, and adopting that new surname with numerous government agencies. Finding that that the candidate complied with § 7-10.2

would require "turning a blind eye" to the overwhelming factual record before them, and the *Oberholtzer* Court held that the candidate could not appear on the ballot.

The instant case presents facts almost identical to those in *Oberholtzer*. Here, the Candidate has adopted the surname of "Minson" upon marriage, has practiced law for nearly eight years under the surname "Minson," votes and drives under the surname "Minson," and currently uses "Minson" in all aspects of her life. As in *Oberholtzer*, the evidence is overwhelming that "Minson" is the Candidate's surname. While the Candidate desires her ballot name to be "Minson-Minor," she admits that she has not ever used a hyphenated surname professionally. Only in this run for office has the Candidate sought to use a new, hyphenated surname. Like the candidate in *Oberholtzer*, the Candidate here has taken affirmative steps in her personal and professional life to adopt "Minson" and to abandon her maiden surname of "Minor." Permitting the Candidate to use a new, hyphenated surname, adding the name she has affirmatively abandoned would require this body to turn "a blind eye" to the facts here and the requirements of § 7-10.2.

Also instructive is the decision in *Shannon-DiCianni v. DuPage County Officers Electoral Board*, 2020 IL App (2d) 200027. There, a candidate attempted to do what the Candidate is attempting to do here: add another name to her surname using a hyphen for the purpose of running for office. In *Shannon-DiCianni*, the record was clear that the candidate's surname was "DiCianni," her nickname was "Shannon," and her nomination papers used the hyphenated name "Shannon-DiCianni," indicating a double surname. *Id*. at ¶ 5. The *Shannon-DiCianni* Court applied § 7-10.2, and found that the candidate's use of a hyphen to join her nickname and her surname rendered her nomination papers invalid. According to the *Shannon-DiCianni* Court, "[a]lthough a candidate may combine her given name with her initials or

nickname in her nominating papers, any combination of names must be "in addition to" her surname. Thus, under the plain and unambiguous language of the statute, petitioner was not permitted to combine her nickname with her surname by using a hyphen." *Id*. at ¶ 17.

Like in *Shannon-DiCianni*, the Candidate has sought to hyphenate her surname for political advantage, in order to run for office. The Candidate therefore has likewise invalidated her Nomination Papers by using a hyphen to combine another name (even her maiden name) with her surname. The Candidate could have used a combination of names, or nicknames by which she was commonly known, but that combination of names must be "in addition to" her surname. That the surname be listed accurately is paramount and legally dispositive.

The Candidate argues that the hyphen in her surname is really just an "em dash," that functions the same as would parentheses. While this explanation is creative, it does not hold up under scrutiny. First, a hyphenated surname in *Shannon-DiCianni* "indicated a double surname." *Id*. at ¶ 5. The Candidate cites AP literary rules, but such is obviously not legal authority. Even so, the AP literary rules (if they even had any application here) do not support the Candidate's claim. The Purdue Owl, cited by the Candidate for her "em dash" argument, explains that the AP rules hold that in order to indicate a married name and a maiden name *a hyphen* is used. According to The Owl, "some married people use hyphens to combine their last name with their spouse's." An "em dash," on the other hand is used like parentheses in a sentence such as:

> "Mr. Lee is suited for the job—he has more experience than everybody else in the department—but he has been having some difficulties at home recently, and probably would not be available."

Even under the AP literary rules, the Candidate here has used a hyphen, and not an "em dash." The Candidate's argument, although creative, must be rejected.

In sum, the plain language of § 7-10.2 and prevailing caselaw make clear that the Candidate's use of a hyphenated surname, rather than her legal surname, invalidates her Nomination Papers.

II. The Candidate's Equal Protection Argument Is Without Merit.

The Candidate argues that §§ 7-17 and 8-8.1 are unconstitutional as applied under the Equal Protection Clause. To be clear, neither § 7-17 nor § 8-8.1 are at issue in this case. To the extent the Candidate challenges the constitutionality of § 7-10.2, this forum does not have authority to adjudicate such claims. Even if it did, the Objector contends that § 7-10.2 has equal application to all citizens and candidates, not just women who have taken married surnames. The taking of a surname is a choice, as explained by the Oberholtzer Court. And, there is nothing preventing men from adopting a spouse's surname. Indeed, same sex marriage has long been the law in Illinois. For at least these reasons, the Candidate's equal protection argument is without merit.

III. The Candidate's Argument As To The Timeliness Of The Objection Hearing Is Without Merit.

The Candidate further argues that the Objection must be stricken because this Board did not set a timely hearing. This exact argument was raised and disposed of in *Maske v. Kane County Officers Electoral Board*, 234 Ill.App.3d 508 (2nd Dist. 1992). Simply put, even if the Candidate is correct, such a transgression could never suffice to cause an Objection to be dismissed, nor to rob an electoral board of jurisdiction over an objector's petition. As also discussed in cases such as *Shipley v. Stephenson County Officers Electoral Board*, 130 Ill.App.3d 900 (2nd Dist. 1985), and *Havens v. Miller*, 102 Ill.App.3d 558 (1st Dist. 1981), the question of whether a statute prescribing the performance of an act by a public body is mandatory or directory depends upon the statute's purpose. *Shipley*, 130 Ill.App.3d at 902-03.

As the court noted in *Shipley*,

> "[i]f the provision merely directs a manner of conduct for the guidance of the officials or is designed to secure order, system and dispatch in proceedings, it is generally directory, absent negative language denying the performance if the acts required are not done in the manner designated. If, however, the conduct is prescribed in order to safeguard a person's rights, which may be injuriously affected by failure to act in the manner specified, the statute is mandatory."
>
> *Shipley*, 130 Ill.App.3d at 903.

The holdings in *Maske*, *Shipley* and *Havens* are dispositive of the Candidate;s argument. The manner of conduct of an objection proceeding requires substantial compliance on the part of the electoral board, which has unquestionably occurred here. For the reasons stated in *Maske*, *Shipley* and *Havens*, the Candidate's timeliness argument must be rrejected.

IV. The Candidate's Claims That The Motivations Of The Objector Require This Objection Be Dismissed Are Utterly Without Legal Or Factual Support.

The Candidate complains about the motivations of the Objector and in her Motion "submits the factual history and relationship Mr. Overturf has with Candidate's family . . . is relevant . . ." Mot. ¶ 48. She further asserts that "Candidate's (sic) believes this objection may be motivated by the Objector having negative feelings toward the Candidate's family . . ." Mot ¶ 52. As evidence, she asserts that the Objector "was criminally charged with sexual offenses" and arrested by the Frankin County Sherriff's Department *in 2002*, and while her father was not the arresting officer, he "previously worked and professional connections" with that office. Mot ¶ 52. As further evidence the Candidate writes that "it has come to her attention" that her late grandmother was very close to the Objector's wife "during the time Mr. Overturf was criminally charged . . ." Mot. ¶ 52.

The Candidate's charge here of an arrest over 20 years ago and charge of "sexual offenses" is little more than a disgusting attempt to smear of the Objector before this body. Her

so-called evidence of the Objector's motivation in this matter is absurd, and complete self-serving conjecture. She has offered literally *no evidence* to support her smear. At a minimum, this body may take judicial notice of the two other objections lodged by Mr. Overturf against candidates running for the Office as evidence that he has not particularly targeted the Candidate for any reason.

Regardless, as a legal matter, the motivation of an objector is not relevant in an objection proceeding. As set forth in the Objector's response to the Candidate's request for subpoena, tt is well settled that an Objector's motive in filing an objection is not relevant to proceedings under Section 10-8 of the Election Code. *Havens v. Miller*, 102 Ill.App.3d 558, 429 N.E.2d 1292 (1st Dist. 1981). The Court in *Nader v. Illinois State Board of Elections*, 354 Ill.App.3d 335, 819 N.E.2d 1148 (1st Dist. 2004), held that the electoral board was correct to deny the issuance of subpoenas requested by the Candidate to determine how the objector there had assembled his objector's petition. The *Nader* Court found that an electoral board is not required *or empowered* to conduct an investigation into how an objector's petition is compiled or why it was filed. Rather, an electoral board's authority consists solely of determining whether a candidate's nomination papers satisfy the requirements of the Election Code.

In sum, the Candidate's argument regarding the Objector's motivations is without factual support or legal support and must be denied.

V. The Candidate's Claim Regarding The "Qualifications" Of The Objector Is Meritless. The Objector Satisfies Section 10-8 Of The Election Code.

The Candidate next complains that because the Objector has not pulled a Republican ballot since 1988, he may not object to her Nomination Papers. This claim is easily defeated by reading § 10-8 of the Election Code, which requires only that an objector be "[a]ny legal voter of the political subdivision . . ." 10 ILCS 5/10-8. Party affiliation does not matter legally, nor

should it on a rational basis. The Objector satisfies the requisites of § 10-8, and the Candidate's argument, such as it is, must be rejected.

VI. The Candidate's Claims Regarding "Objector By Proxy" Are Meritless And Nonsensical.

Finally, the Candidate complains that the Objection in her case is an objection "by proxy." In this section of her Motion, she makes a number of meritless charges, none of which have a legal bearing on the validity of the Objection here. The Candidate claims to be entitled to know whether another candidate has paid the Objector's counsel's attorneys fees. The Candidate is grievously mistaken if she believes that any information regarding any fees charged by Objector's counsel are for her, or the public's, consumption. For all of the reasons set forth above, the Objector's motivation in bringing this Objection is irrelevant. Even more irrelevant would be the relationship between the Objector and his counsel, or anything to do with counsel's fees. The Objector is certain that the Candidate is familiar with the concept of attorney-client privilege, and would understand that that privilege would preclude any inquiry that the Candidate would like to make here.

Finally, the Candidate claims that "Counsel Fogarty is listed as 'Advisory Council to the Republican Party'" and because "Illinois requires there be no pre-primary candidate support by a political party" the Objection is somehow improper. Mot. ¶¶ 64, 65. This claim is nonsensical, and completely lacking in any legal support whatsoever. All of the allegations contained in paragraphs 55 through 68 of the Candidate's Motion are without merit, and should be ignored.

Conclusion

For all of these reasons, the Objector prays the Candidate's Motion be denied, and the Objector's Petition be granted.

Respectfully submitted,

OBJECTOR
John Overturf

By: /s/ *John G. Fogarty, Jr.*
One of his Attorneys

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ILLINOIS STATE OFFICERS ELECTORAL BOARD

IN THE MATTER OF OBJECTIONS BY	)	
	)	
John Overturf	)	
Petitioner(s)-Objector(s),	)	No. 24 SOEB GP 116
v.	)	
	)	
Vanessa Minson—Minor	)	
Respondent(s)-Candidate(s).	)	

Candidate Reply to Objector's Response to Motion to Strike

Caselaw: *Oberholtzer* and *Shannon-DiCianni*

1. Objector's application of the case law is flawed because the cases are factually and legally distinguishable from the cause at hand for reasons stated in Candidate's Motion to Strike.

Equal Protection Clause

2. The Candidate persists that §§ 7-17 and 8-8.1 are both unconstitutional as applied under the Equal Protection Clause and this language is exactly the same as 10 ILCS 5/7-10.2.

3. To be clarify the record of Candidate's argument and provide a further offer of proof, this candidate persists that section §§ 7–10.2, 7-17 and 8-8.1 are at issue in this case and are all unconstitutional under the Equal Protection Clause when applied for the reasons previously stated in the Candidate's Motion to Strike.

4. "In the designation of the name of a candidate on a petition for nomination, the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname." 10 ILCS 5/7-10.2.

5. Further, this candidate persists that there is a cultural, religious, and social expectation that married women adopt a married surname from the male spouse, this expectation arises from many false and persistent modern patriarchal ideologies and implicit bias that continue to permeate modern culture including the practice of law.

6. Further, while same sex marriage is authorized by law, and even the possibility of a male adopting a female surname from a spouse is possible, these are rare exceptions, and fall outside the social constructs that serve to oppress the equality and advancement of women in our society.

7. This Candidate states her choice to take the married surname of her spouse in 2016 was a choice made within the social constructs developed by a society that has only granted allowed women the right to vote since 1920.

8. As recently as 1945, Illinois Courts, upon reviewing the Illinois Election Code discussed the law that women ***were required*** to take their husbands surnames and that registration under the married surname was required or the right to suffrage would be lost: See *People ex rel. Rago v. Lipsky*, 63 N.E.2d 642: "[T]he courts have under varying facts and circumstances consistently held that by custom and authority a woman, upon her marriage, takes her husband's surname. There is nothing, however, in any of the Illinois cases which indicates any lack of adherence by Illinois courts to the established principles of the long and well-settled common law. In fact, the very statute now under consideration supports defendants' position that upon marriage and by the fact of marriage alone a woman changes her name so that her maiden name is lost and her new name consists of her own given name and her husband's surname. The statute declares that any registered voter who changes his or her name *by marriage* or otherwise shall be required to register anew. The provision is general and includes all changes of name whether by court decree or by voluntary adoption. It expressly recognizes a change of name by marriage, and since it is only in the case of married women that there is any recognized custom or rule of law whereby marriage effects a change of name it must logically follow that when the legislature expressly referred to the fact that the name of a registered voter might be changed by marriage it had in mind the long-established custom, policy and rule of the common law among English speaking peoples whereby a woman's name is changed by marriage and her husband's surname becomes as a matter of law her surname."

9. This Candidate states that the application of the law found in 10 ILCS 5/7-10.2 and also sections 7-17 and 8-8.1 are unequally and prejudicial applied to strike women from the ballot.

10. The plain language of this statute creates an ambiguity and unfair hardship to women that limits their ability to run for elected office.

Objector By Proxy

11. The Objector inaccurately states in his response: "The Candidate is grievously mistaken if she believes that any information regarding any fees charged by Objector's counsel are for her, or the public's, consumption.

12. The State Board of Elections has cited on their website in the Notice to Candidates and Objectors packet the following: " **OBJECTIONS** Objections to nominating petitions may be filed either in the Springfield or Chicago office of the State Board of Elections. An objector's petition shall give the objector's name and residence address, and shall state fully the nature of objections to the petitions in question, ***and shall state the interest of the objector*** and shall state what relief is requested of the electoral board. (Emphasis Added. (See Notice, attached as candidates Exhibit A, as attached and incorporated herein for reference.

13. The objection filed by John Overturf in this cost is lacking any sort of statement related to the interest of the objector or the objector by proxy, and the candidates argument regarding the objector by proxy, is directly related to the interest of the objector, which is required to be included in an objection before the State Board of Elections.

14. Further, while it seems apparent this Candidate feels it must be pointed out that the "means" or "wherewithal" by which an objection is *complied* has been determined irrelevant by the Hearing Officer as supported by caselaw but- this in entirely different than what the Candidate is seeking which is the "motivation" of the objector or his proxy and/ "the interests" that a party (here the objector or the objector by proxy) has in the filing of an objection.

Respectfully submitted,

/s Vanessa Minson
Vanessa Minson
(In her personal capacity)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS FOR CANDIDATES FOR THE OFFICE OF RESIDENT CIRCUIT COURT JUDGE FOR FRANKLIN COUNTY, TO FILL THE VACANCY OF THE HONORABLE THOMAS JOSEPH TEDESCHI, SECOND JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS

John Overturf,	)
	)
Petitioner-Objector,	)
	)
vs.	)
	)
Vanessa Minson-Minor,	)
	)
Respondent-Candidate.	)

OBJECTOR'S PETITION

Now comes John Overturf (hereinafter referred to as the "Objector"), and states as follows:

1. John Overturf resides at 216 North Commercial Street, Benton, Illinois 62812, in the County of Franklin, in the Second Judicial Circuit of the State of Illinois; that he is duly qualified, registered and a legal voter at such address; that his interest in filing the following objection is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for a candidate for nomination to the office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

2. Your Objector makes the following objection to the nomination papers ("the Nomination Papers") of the candidate purporting to run for office as "Vanessa Minson-Minor" ("the Candidate") as a candidate for nomination of the Republican Party to the office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois and files the same herewith, and states that the said Nomination Papers are insufficient in law and in fact for the following reasons:

3. Your Objector states that said Nomination Papers must truthfully allege the qualifications of the candidate, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise be executed in the form and manner required by law.

4. Your Objector states that the laws pertaining to the securing of ballot access require that certain requirements be met as established by law. Filings made contrary to such requirements must be voided, being in violation of the statutes in such cases made and provided.

5. The Candidate's Nomination Papers must be stricken in their entirety because the Candidate has gathered signatures under the name of "Vanessa Minson-Minor" whereas her actual name is "Vanessa Minson." In the heading of each of her nominating petitions, the Candidate has improperly hyphenated her surname to add an additional name in an apparent attempt to gain voter recognition or appeal in violation of Section 7-10.2 of the Election Code.

6. Section 7-10.2 of the Election Code states that "[i]n the designation of the name of a candidate on a petition for nomination or certificate of nomination the candidate's given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate's surname." 10 ILCS 5/7-10.2. The use of a name that does not comport with Section 7-10.2 is not permitted.

7. The Candidate has likewise sworn a false Statement of Candidacy, insofar as she has sworn that "Vanessa Minson-Minor" is a registered voter and qualified primary voter at her residence address. There is no registered voter at the address set forth in the Candidate's Statement of Candidacy or in the heading of the Candidate's nominating petitions named "Vanessa Minson-Minor." Rather, the Candidate is apparently registered to vote as "Vanessa Minson."

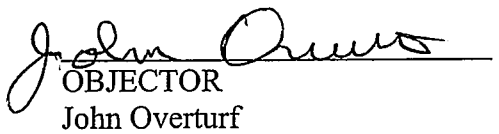
8. The Objector is not aware of any public record associated with the Candidate that identifies her as "Vanessa Minson-Minor."

9. In the event the Candidate has changed her name to "Vanessa Minson-Minor" within the last three years, she would have been required to disclose this fact on her nominating petitions and to include an appropriate affidavit upon filing those petitions. 10 ILCS 5/7-10.2. No such indication on the Candidate's petitions has been made.

10. Because the Candidate has not used her surname in identifying herself in her Nomination Papers, her Nomination Papers are legally insufficient and must be stricken.

WHEREFORE, your Objector prays that the purported Nomination Papers of Vanessa Minson-Minor as a candidate of the Republican Party for nomination to the Office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois be declared by this Honorable Electoral Board to be insufficient and not in compliance with the laws of the State of Illinois and that the Candidate's name be stricken and that this Honorable Electoral Board enter its decision declaring that the name of Vanessa Minson-Minor as a candidate of the Republican Party for nomination to the Office of Resident Circuit Court Judge for Franklin County, to fill the vacancy of the Honorable Thomas Joseph Tedeschi, Second Judicial District of the State of Illinois BE NOT PRINTED on the OFFICIAL BALLOT of the Republican Party at the General Primary Election to be held on March 19, 2024.

Respectfully submitted,



OBJECTOR
John Overturf
216 North Commercial Street
Benton, Illinois 62812

County of Franklin)
) ss.
State of Illinois)

Subscribed to and Sworn before me, a Notary Public, by John Overturf, the Objector, on this the 3 day of January, 2024, at Benton, Illinois.

Amy Clark (SEAL)
NOTARY PUBLIC

My Commission expires: Dec. 15th 2025

AMY CLARK
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires
December 15, 2025

Smith and Conrad v. Biden, Jr.
24 SOEB GP 118

Candidate: Joseph R. Biden, Jr.

Office: President of the United States

Party: Democratic

Objectors: Beth Findley Smith and Timothy Conrad

Attorney for Objectors: N/A – *pro se*

Attorneys for Candidate: James Morphew and Kevin Morphew

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Candidate's Statement of Candidacy was notarized by a Notary Public, commissioned in the District of Columbia, which does not meet the requirements of Election Code Section 10-5, 10 ILCS 5/10-5, and, therefore, invalidates the entirety of Candidate's nomination papers (citing *Knobeloch v. Electoral Board for the City of Granite City*, 337 Ill.App.3d 1137 (5th Dist. 2003)).

Dispositive Motions: Candidate's Motion to Dismiss Objectors' Petition and Motion for Summary Judgment filed January 19, 2024. Candidate moves to dismiss Objectors' objection petition and for summary judgment on the bases that Objectors' petition fails to state a legal basis for invalidating Candidate's nomination papers. In so moving, Candidate first notes Objectors incorrectly cite a violation of Sections 10-4 and 10-5 of the Election Code, which govern the making of nominations in certain other cases, as opposed to Article 7 of the Election Code, which governs the making of nominations by political parties.

Further, Candidate relies on Section 2 of the Uniform Recognition of Acknowledgements Act, which states, "Notarial Acts may be performed outside this State for use in this State with the same effect as if performed by a notary public of this State by the following persons…[including] a notary public authorized to perform notarial acts in the place in which the act is performed." 765 ILCS 30/2. The notary public who notarized Candidate's statement of candidacy, Candidate argues, indisputably is authorized to perform notarial acts within the District of Columbia. Candidate also cites Section 6 of the Oaths and Affirmations Act, which provides that a document notarized by an out-of-state notary with a seal "shall be received as prima facie evidence without further proof of his authority to administer oaths." 5 ILCS 255/6.

Candidate cites primarily to *Frost v. Cook County Officers Electoral Board*, 258 Ill.App.3d 286 (1st Dist. 1996), where the Court affirmed the dismissal of an objection with the same facts present here, for his assertion electoral boards and Illinois courts recognize the notary requirement in Section 7-10 of the Election Code can be performed by a non-Illinois notary public for use in connection with the filing of Illinois nomination papers, including a statement of candidacy.

Candidate distinguishes *Knobeloch*, cited by Objectors in their objection petition, as factually distinct from this matter because the notary in *Knobeloch* was commissioned by Missouri and performed notarial acts within the State of Illinois, where she was not commissioned.

Finally, Candidate argues the 2024 Presidential Preference & Delegates Guide issued by the State Board of Elections recognizes the Uniform Recognition of Acknowledgements Act and states therein that documents notarized by an out of state notary with proper authority to administer such will meet the requirements of the Election Code.

In reliance on the above, Candidate states he asserts facts in support of summary judgment which are not contradicted by the party opposing the motion must be taken as true for purposes of that motion. Candidate requests that the objection petition should be dismissed in full, or in the alternative, he is entitled to judgment as a matter of law in his favor.

Objectors' Response to Candidate's "Motion to Dismiss Objectors' Petition" filed January 23, 2024. In Objectors' Response, they contend that the language of Section 10-5 of the Election Code requires any notarial act on a statement of candidacy to "explicitly be performed by 'some officer authorized to take acknowledgment of deeds in this State.'" Objectors argue Section 2-101 of the Illinois Notary Public Act requires officers described in the Election Code to either reside or have a place of business in Illinois. 5 ILCS 312/2-101.

The language of Section 10-5, Objectors argue, is distinguishable from the authority relied on by Candidate in the Uniform Recognition of Acknowledgments Act, 765 ILCS 30/2, and the Oaths and Affirmations Act, 765 ILCS 30/2, which govern the acts of notary publics generally; however, Section 10-5 of the Election Code mandates the notarial act for a Statement of Candidacy be performed by an officer authorized to take acknowledgements and deeds in the State of Illinois, which necessarily requires an officer commissioned in this State. In support of their contention, Objectors argue the phrase "some officer authorized to take acknowledgements of deeds in this state" is rare language in the Illinois Compiled Statutes, only appearing in the Election Code and the Library Code.

Objectors then argue that *Knobeloch* is the current state of the law, as it was decided after the *Frost* case cited by Candidate. Objectors argue *Knobeloch* relies on *DeFabio v. Gummersheimer*, 192 Ill.2d 63 (2000), which held that notary provisions are mandatory, not directory. Objectors further argue that the Uniform Recognition of Acknowledgements Act, Illinois Notary Public Act, and Oaths and Affirmations Act were all law at the time *Knobeloch* was decided, and therefore Candidate's notary was similarly situated to the notary in *Knobeloch*, not commissioned in the State of Illinois, and that is fatal to Candidate's nomination papers.

Lastly, Objectors argue the 2024 Presidential Preference and Delegates Guide, issued by the State Board, is not authoritative and not a substitute for mandatory provisions supported by case law.

Candidate's Reply to Objectors' Response to Candidate's Motion to Dismiss and Motion for Summary Judgment filed January 25, 2024. In his Reply, Candidate first argues Objectors' written response regarding the notarization of Candidate's Statement of Candidacy amount to an amendment to their objection petition. In reliance on *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69 (2d Dist. 1994), and the Rules of Procedure 7(a)(1), Candidate argues these arguments and any evidence related thereto must be stricken.

Second, Candidate argues a notary public commissioned by a state other than the State of Illinois may acknowledge an Illinois deed, citing the Conveyances Act, 765 ILCS 5/20(2), as well as the Uniform Recognition of Acknowledgements Act and Oaths and Affirmations Act as detailed in his Motion to Dismiss. As such, the notarization contained within Candidate's Statement of Candidacy, as performed by a notary public commissioned in the District of Columbia, is authorized to take acknowledgements of deeds in this State, and thus, qualifies as an officer authorized to do such under the Election Code.

Third, Candidate argues Objectors cite to the incorrect provision of the Election Code (Section 10-5 instead of the applicable 7-10), and also ignore the plain language of both Section 2 of the Uniform Recognition of Acknowledgements Act and Section 6 of the Oaths and Affirmations Act, both of which permit the administration of oaths and notarial acts conducted by officers authorized by the laws of other states. Candidate argues Objectors "urge the Board to ignore" legislative intent in enacting these statues. He further argues, citing *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200 (2008), and *Knolls Condominium Association v. Harms*, 202 Ill.2d 450 (2002), a court will presume the General Assembly intended that two of more laws which relate to the same subject are to be operative and harmonious, reconciling them so as to give effect to all of the provisions of each if possible. As such, the language of the Election Code ought to be construed in harmony and giving effect to each of the cited provisions of the Uniform Recognition of Acknowledgements Act and the Oaths and Affirmations Act.

Fourth, Candidate argues Objectors' reliance on *Knobeloch* is misplaced because the notary public in that case was not authorized to perform notarial acts in Illinois. Had the notarial acts at issue in *Knobeloch* occurred in Missouri, the state where the notary was commissioned, the *Knobeloch* candidate's nomination papers would have been valid.

Finally, Candidate argues there are strong public policy arguments behind the enactment of the Uniform Recognition of Acknowledgements and Oaths and Affirmation Acts which void the need for these candidates to travel to multiple states to appear before a notary public in each state to lawfully complete the nomination process. To emphasize this, Candidate requests the Hearing Officer and Board take official notice of the fact that following the statements of candidacy for President of the United States were all notarized by a notary public commissioned in a jurisdiction other than the State of Illinois: Donald J. Trump, Dean Phillips, Nikki Haley, Chris Christie, Ryan L. Binkley, and Marianne Williamson.

Record Exam Necessary: No

Hearing Officer: David Herman

Hearing Officer Findings and Recommendations: Following a January 24, 2024 hearing in this matter, the Hearing Officer recommends finding: (1) Objectors' petition alleges violations of the Election Code inapplicable to Candidate; (2) Candidate's Statement of Candidacy was notarized by a notary public commissioned in the District of Columbia, concluding the Statement of Candidacy is valid under Section 7-10. As such, the Hearing Officer recommends granting Candidate's Motions to Dismiss Objectors' Petition and for Summary Judgment, as the issue raised by Objectors' petition and the Candidate's Motion are strictly legal issues, there are no questions of material fact, and the analysis applies for both a Motion to Dismiss and a Motion for Summary Judgment because the legal basis of Objectors' petition is not supported by law.

In so recommending, the Hearing Officer explains Objectors' petition alleges Candidate's Statement of Candidacy violates Sections 10-4 and 10-5 of the Election Code. Article 10, including Section 10-4 and 10-5, does not govern the nomination papers for established political party candidates. Here, Candidate is a Democratic candidate, and his nomination papers are governed by Article 7 of the Election Code.

Second, the Hearing Officer supports his finding and recommendation regarding the legal sufficiency of Candidate's Statement of Candidacy, notarized by a notary public commissioned in D.C., with the plain language of Section 7-10. Section 7-10 requires the Statement of Candidacy be "subscribed and sworn to … before some officer authorized to take acknowledgements of deeds in this State." A notary public is authorized to take acknowledgements of deeds in this State. 765 ILCS 5/20. The Hearing Officer finds *Frost* persuasive, as it addressed the exact issue presented in the present matter, and there the court found the notarization on the *Frost* candidate's nomination papers compliant with the Election Code based on Section 2 of the Uniform Recognition of Acknowledgements Act, which acknowledges notarial acts authorized in the place where the act is performed. *Frost*, 285 Ill.App.3d at 287, citing 765 ILCS 30/2. The *Frost* court further cites Section 6 of the Oaths and Affirmations Act, which provides:

> When any oath authorized or required by law to be made is made out of the state, it may be administered by any officer authorized by the laws of the state in which it is so administered, and if such officer have a seal, his certificate under his official seal shall be received as prima facie evidence without further proof of his authority to administer oaths.

5 ILCS 255/6. The Hearing Officer then recommends distinguishing *Knobeloch* from the present matter because *Knobeloch* involved a notary act performed outside the jurisdiction where the notary was commissioned to perform acts – facts not present in this matter before the Board. Therefore, the Hearing Officer recommends the objection be overruled and recommends certifying the name of Joseph R. Biden, Jr. to the March 19 General Primary ballot as a Democratic candidate for the office of President of the United States.

Recommendation of the General Counsel: The General Counsel concurs in the Hearing Officer's recommendation and recommends certifying Candidate's name to the March 19, 2024 General Primary ballot. If the Board prefers a narrower ruling on the Candidate's Motion, it can be granted as one to dismiss, not for summary judgment, because this case presents a pure issue of law and requires no consideration of facts beyond the Objector's petition and the Statement of Candidacy, which is incorporated as Exhibit A to the petition.

Of interest, in 2020 SOEB GE 508, in *Boutte v. West*, in ruling on an objection filed to nomination papers of a candidate for President of the United States, this Board ruled: "The Candidate executing the Statement of Candidacy before a Florida notary while in the State of Florida satisfies Section 10-5 of the Election Code." 8/21/20 Order.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATING PAPERS FOR CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE UNITED STATES FOR THE DEMOCRATIC PARTY OF THE STATE OF ILLINOIS, FOR THE MARCH 19, 2024 PRIMARY ELECTION

Beth Findley Smith, Timothy Conrad Petitioners-Objectors, vs. Joseph R. Biden, Jr. Respondent-Candidate.	)))))))	Case No. 24-SOEB-GP-118

RECOMMENDATION

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This matter coming on for recommendation on Objectors' Petition in this matter and the Hearing Officer states as follows:

PROCEDURAL HISTORY

This matter commenced when Objectors Beth Findley Smith and Timothy Conrad filed an "Objectors' Petition" with the State Board of Elections. Objectors alleged the nominating papers of Joseph R. Biden, Jr. as a candidate for the Democratic Nomination for the Office of the President of the United States were insufficient in law and in fact for the following reasons:

> Candidate failed to comply with the requirements of 10 ILCS 5/10-5 because Candidate's Statement of Candidacy was not notarized by a notary public commissioned by the State of Illinois or by a party otherwise authorized to take acknowledgements of deeds in this State.

Candidate's Statement of Candidacy was attached as an exhibit to Objectors' Petition.

An Initial Case Management Conference was conducted on January 17, 2024, and the Parties were provided an Initial Case Management Order.

On January 19, 2024, Candidate filed a Motion to Dismiss Objectors' Petition and Motion for Summary Judgment ("Motion"). The Motion argues Objectors' Petition alleged violations of Article 10 of the Election Code that are not applicable to the Presidential Nomination of an Established Party and did not allege any violations of Article 7 of the Election Code, which is the portion of the Election Code that governs Candidate's filing. The Motion also argues the Statement of Candidacy was properly notarized under Illinois law and cited Section 2 of the Uniform Recognition of Acknowledgments Act (765 ILCS 30/2) and Section 6 of the Oath and Affirmations Act (5 ILCS 255/6) as support. The Motion also cites to *Glazier v. Yates*, 93-COEB-RC-8 and *Frost v. Cook County Officers Electoral Board*, 258 Ill.App.3d 286 (1st Dist. 1996) to support Candidate's position that his Statement of Candidacy is validly notarized by a non-Illinois notary public. The Motion argues the decision in *Knobeloch v. Electoral Board for the City of Granite City*, 337 Ill.App.3d 1137 (5th Dist. 2003), cited in Objectors' Petition, is distinguishable from this case and therefore not applicable. Finally, the Motion cites the 2024 Presidential Preference and Delegates Guide, issued by the State Board of Elections, as additional support for the proposition a Statement of Candidacy notarized by an out of state notary public with authority to perform notarial acts in the place in which the notarial act was performed satisfies the requirements of the Election Code.

On January 23, 2024, Objectors filed their Response to Candidate's Motion to Dismiss ("Response"). The Response argues that for a notary to qualify as an officer authorized to take acknowledgements of deeds in this state, one must be commissioned in this state, as required in 10-5 of the Election Code. The Response states that because Candidate's Statement of Candidacy appears to be notarized by a notary commissioned by the District of Columbia, the notary is not an officer authorized to take acknowledgements of deeds in this state. The Response further argues that according to 5 ILCS 312/2-101, Candidate's Statement of Candidacy must be completed before "some officer authorized to take acknowledgements of deeds in this State" and the officer described in this statute is someone who must either reside in Illinois or have a place of business in Illinois and this is done to protect Illinois' special interests in its elections. Finally, the Response maintains *Knobeloch v. Electoral Board for the City of Granite City*, 337 Ill. App. 3d 1137 (5th Dist. 2003) is the current state of law and relies on the Illinois Supreme Court's ruling in *DeFabio v. Gummersheimer*, 192 Ill. 2d 63, 733 N.E.2d 1241 (2000), in finding that the notary provisions of Illinois election law are mandatory and not directory. The Response claims Candidate relies upon 2 cases that predate *Gummersheimer* and *Knobelauch* and the cases allow for "substantial compliance", which under *Gummersheimer* and *Knobeloch* is not allowed as to specific requirements of Illinois Election Law. The Response argues the State Board of Elections

does not have the authority to supersede the ruling of the Court and must adhere to the ruling of that decision.

On January 23, 2024, Candidate filed a Case Management Status Report. Candidate's Status Report stated, (1) the legal issues were summarized and argued in Candidate's Motion to Dismiss the Objectors' Petition and Motion for Summary Judgment; and (2) the parties were unable to enter into any factual stipulations unless otherwise admitted in the filings of the parties. Objectors did not file a Status Report as required by the Initial Case Management Order.

A hearing was held on Wednesday, January 24, 2024, at the State Board offices in Chicago and Springfield starting at approximately 2:00 p.m. The Hearing Officer, court reporter, and both Objectors were present in Springfield. Candidate, through his counsel, was present in Chicago and appeared by video. Oral argument was heard from both parties as to the Pending Objection, Motion to Dismiss, and Motion for Summary Judgment. Candidate moved for, and Objectors consented to the admission of two exhibits into evidence: Objectors' Petition and Candidate's Nominating Papers. No further evidence was admitted, and no oral testimony was taken.

On January 25, 2024, Candidate filed his Reply to Objectors' Response to Candidate's Motion to Dismiss and Motion for Summary Judgment. First, the Reply argues Objectors admit Candidate's Statement of Candidacy was notarized by a notary public commissioned in the District of Columbia and have waived any argument to the contrary. Objectors' statement in their Response to Candidate's Motion to Dismiss regarding that Candidate's Statement of Candidacy was not notarized or that the notary was not commissioned by the District of Columbia must be excluded because this argument was not presented in Objectors' Petition and an objector's petition cannot be amended once filed. Second, Candidate cites the Conveyances Act to reiterate that an out of state notary, like David E. Kalbaugh who is a notary public commissioned in the District of Columbia, is authorized to take acknowledgements of deeds in this state and therefore he qualifies as an officer who is authorized to notarize Candidate's Statement of Candidacy. Third, Candidate argues Objectors incorrectly assert that the only notary public authorized to notarize nomination papers under the Election Code is one who is commissioned by the State of Illinois. Candidate states Objectors ignore the plain language of Section 2 of the Uniform Recognition of Acknowledgements Act which states in part: "Notarial Acts may be performed outside of this State for use in this State with the same effect as if performed by a notary public of this State…." 765 ILCS 30/2. Candidate claims Objectors also disregard Section 6 of the Oath and Affirmations Act, which in part states: "When any oath authorized or required by law to be made is made out of state, it may be administered by any officer authorized by the laws of the state in which it is so administered…." 5 ILCS 255/6. Fourth, Candidate argues Objectors reliance on *Knobeloch v. Electoral Board for the City of Granite City*, 337 Ill.App.3d 1137 (5th Dist. 2003) is improper because that specific case dealt with a notary public acting in Illinois that was only authorized to perform notarial acts in Missouri and not Illinois, and therefore, the Acknowledgements Act and the Affirmation Act were not relevant. Candidate again cites *Frost v. Cook County Officers Electoral Board*, 258 Ill.App.3d 286 (1st Dist. 1996) and claims the case is directly on point. In *Frost*, the court dismissed an objection to the validity of a Statement of Candidacy that was notarized by a notary public commissioned in the District of Columbia based on Section 2 of the Uniform Recognition of Acknowledgments Act and Section 6 of the Oath

and Affirmations Act, and therefore, the Hearing Officer and the Board are urged to follow the holding in *Frost*.

ANALYSIS

Objectors' Petition Alleges Violations of the Election Code that are not Applicable.

The statutory requirements governing nomination papers for Candidate Biden are set forth in Article 7 of the Election Code entitled "The Making of Nominations By Political Parties". See 10 ILCS 5/7-1. Objectors fail to allege any violation of Article 7 of the Election Code in their Objection Petition. Instead, Objectors allege violations of Sections 10-4 and 10-5 as a basis for their objection to Candidate's Statement of Candidacy. However, Article 10 of the Election Code entitled "Making of Nominations in Certain Other Cases" does not govern. Accordingly, because Objectors' Petition fails to allege any violations of Section 7 of the Election Code governing this matter, the Objection fails to state a valid objection and should be dismissed.

Candidate's Statement of Candidacy is Properly Notarized

As stated, Objectors' Petition alleges that Candidate's Statement of Candidacy (*Exhibit A* to this Order) is invalid because it was notarized by a notary public commissioned in the District of Columbia. Candidate responds that Candidate's signature on the Statement of Candidacy was properly notarized.

Section 7-10 of the Election Code provides that a candidate's name will not be printed on the primary ballot unless they have filed a petition for nomination. 10 ILCS 5/7-10. Section 7-10 requires that the candidate's Statement of Candidacy "shall be subscribed and sworn to by such candidate before some officer authorized to take acknowledgments of deeds in this State" and provides the form of the sworn statement which includes a place for the candidate to sign and for the officer who witnessed the candidate sign and swear to the statement to sign and apply their seal if they have one. 10 ILCS 5/7-10. A notary public is authorized to take acknowledgement of deeds in this State. See 765 ILCS 5/20.

As alleged by Objectors, Candidate's Statement of Candidacy was notarized by David E. Kalbaugh, a notary public commissioned in the District of Columbia. See *Exhibit A*. The sole basis for Objectors' argument that Candidate's Statement of Candidacy is invalid is that Candidate's signature was not notarized by a notary public commissioned by the State of Illinois, but was instead notarized by a notary public commissioned in the District of Columbia.

This exact issue was addressed in *Frost v. County Officer's Electoral Board*, 285 Ill. App. 3d 286 (1st Dist. 1996). In *Frost*, the petitioner's sole objection asserted that the nomination papers were insufficient because the signature of the candidate on the statement of candidacy was witnessed by a notary public commissioned in the District of Columbia rather

than by the State of Illinois. *Frost*, 285 Ill. App. 3d at 287. The court in *Frost* cited Section 2 of the Uniform Recognition of Acknowledgments Act which provides that "[n]otarial acts may be performed outside this State for use in this State with the same effect as if performed by a notary public of this State by * * * a notary public authorized to perform notarial acts in the place in which the act is performed." *Frost*, 285 Ill. App. 3d at 287, citing 765 ILCS 30/2. The court also cited Section 6 of the Oaths and Affirmations Act, which provides:

> "When any oath authorized or required by law to be made is made out of the state, it may be administered by any officer authorized by the laws of the state in which it is so administered, and if such officer have a seal, his certificate under his official seal shall be received as *prima facie* evidence without further proof of his authority to administer oaths." 5 ILCS 255/6.

Frost, 285 Ill. App. 3d at 287, citing 5 ILCS 255/6. Finally, the court noted that the Statute on Statutes defines "State" to include the District of Columbia. *Frost*, 285 Ill. App. 3d at 287.

Ultimately, the court concluded that "[b]ased upon the statutory provisions cited above, we hold that an oath taken before a notary public who had received his or her commission from a state other than Illinois or from the District of Columbia is legally sufficient for the oath required on a statement of candidacy under section 7–10 of the Election Code. *Frost*, 285 Ill. App. 3d at 287–88. Thus, under *Frost* and the statutes cited therein, the notarization of Candidate's Statement of Candidacy was valid.

While Objectors' Petition here quotes the *Knobeloch* holding which states that "because the statement of candidacy and nearly all of the petitions do not comply with the mandatory provisions in sections 10–4 and 10–5 of the Code because they were not sworn to before an appropriate officer, they must be ruled invalid" (337 Ill. App. 3d 1140-41), this case is distinguishable.

In *Knobeloch*, the notary public was commissioned by the State of Missouri, but was not commissioned by the State of Illinois, which was the state where the papers were signed and the oath sworn. *Knobeloch*, 337 Ill. App. 3d at 1138. The fact the papers were signed and the oath sworn in a state that the notary public was not authorized to perform notarial acts distinguishes *Knobeloch* from both *Frost* and the case *sub judice*. This is because Section 2 of the Uniform Recognition of Acknowledgments Act (which requires that the notary public be authorized to perform notarial acts in the place in which the act is performed (765 ILCS 30/2)) and Section 6 of the Oaths and Affirmations Act (which requires the oath be administered by any officer authorized by the laws of the state in which it is so administered (5 ILCS 255/6)) do not apply to the facts in *Knobeloch* where the notary public was not authorized to perform notarial acts or administer oaths in Illinois which was where those acts occurred. Here, the Objection was based solely on the allegation that the Statement of Candidacy was notarized by a notary public commissioned in the District of Columbia. The Objection did not contain any allegations the Statement of Candidacy was not signed and sworn to in the District of Columbia. In other words, no facts or argument have been made that the required acts did not occur in a place where the

notary public was authorized to perform those acts.[1] Thus, *Knobeloch* does not apply to the facts of this case and *Frost* is controlling. As such Candidate's Motions to Dismiss and For Summary Judgment should be granted.

Conclusions

It is recommended Candidate's Motion to Dismiss and Motion for Summary Judgment be granted, and Objectors' Petition be denied. The issue raised by the Objectors' Petition and the Motion are strictly legal issues, there are no questions of material fact, and the analysis applies to both a Motion to Dismiss and a Motion for Summary Judgment because the legal basis for Objectors' Petition is not supported by law.

Because Candidate **HAS** submitted a valid Statement of Candidacy as set forth in the Election Code, the Hearing Officer recommends that Candidate's name **BE PLACED** on the ballot as a candidate for the Democratic Nomination for the Office of the President of the United States.

DATED: January 26, 2024

/s/ David A. Herman
David A. Herman, Hearing Officer

[1] Objectors argue in their Response they "do not concede that Candidate's Statement of Candidacy was in fact notarized as appears on the face of the document . . . . ". However, their Objection does not contain any such allegations and it cannot be amended once filed. Moreover, their Objection affirmatively alleges in paragraph 5 that "Biden's Statement of Candidacy was notarized by David E. Kalbaugh a Notary Public commissioned in the District of Columbia."

CERTIFICATE OF SERVICE

The undersigned certifies that on this 26th day of January, 2024, service of the foregoing document was made by electronic transmission from the office of the undersigned to the following individuals:

Beth Findley Smith
270 Easy Street
Somonauk, IL 60552
Southottawa8@gmail.com

Timothy Conrad
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Joseph R. Biden, Jr.
c/o James Morphew
Kevin Morphew
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General Counsel
Illinois State Board of Elections
GeneralCounsel@elections.il.gov

/s/ Mikie E. Ray
Mikie E. Ray, Paralegal
GIFFIN, WINNING, COHEN & BODEWES, P.C.
900 Community Drive
Springfield, Illinois 62703
Phone: (217) 525-1571

STATEMENT OF CANDIDACY

NAME	ADDRESS	OFFICE	DISTRICT	PARTY
JOSEPH R BIDEN JR	**1209 BARLEY MILL ROAD WILMINGTON, DELAWARE 19807**	**PRESIDENT OF THE UNITED STATES**	**STATEWIDE**	**DEMOCRATIC**

DISTRICT OF COLUMBIA) SS.

I, Joseph R Biden Jr, being first duly sworn (or affirmed), say that I reside at 1209 Barley Mill Road, in the City of Wilmington, Zip Code 19807, in the County of New Castle, State of Delaware; that I am a qualified voter therein and am a qualified primary voter of the Democratic Party; that I am a candidate for nomination to the office of President of the United States, to be voted upon at the primary election to be held on the 19th day of March, 2024; that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office I seek the nomination for) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act, and I hereby request that my name be printed upon the official Democratic Party primary ballot for nomination for such office.

Signature of Candidate

Subscribed and sworn to (or affirmed) before me by Joseph R Biden Jr, who is to me personally known, on this 22nd day of December, 2023.

NOTARY PUBLIC

DAVID E. KALBAUGH NOTARY PUBLIC DISTRICT OF COLUMBIA (SEAL) EXP 9-30-26

STATE BOARD OF ELECTIONS
Springfield, Illinois
FILED January 4, 2024 8:00 AM

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATING PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE UNITED STATES FOR THE DEMOCRATIC PARTY OF THE STATE OF ILLINOIS, FOR THE MARCH 19, 2024 PRIMARY ELECTION

Beth Findley Smith,	)	
Timothy Conrad,	)	
	)	
Petitioners-Objectors,	)	
	)	
v.	)	**Case No. 24 SOEB GP118**
	)	
Joseph R. Biden, Jr.,	)	
	)	
Respondent-Candidate.	)	

NOTICE OF FILING

TO: Beth Findley Smith
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Hearing Officer David Herman
dherman@gwcblaw.com

PLEASE TAKE NOTICE that on January 19, 2024, I filed with the State Officers Electoral Board the attached Motion to Dismiss Objectors' Petition and Motion for Summary Judgment, a copy of which is hereby served upon you.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Motion to Dismiss Objectors' Petition and Motion for Summary Judgment was served upon the persons referenced above via e-mail before 5:00 p.m. on January 19, 2024.

/s/ James M. Morphew

Kevin M. Morphew
James M. Morphew
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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATING PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE UNITED STATES FOR THE DEMOCRATIC PARTY OF THE STATE OF ILLINOIS, FOR THE MARCH 19, 2024 PRIMARY ELECTION

Beth Findley Smith,	)	
Timothy Conrad,	)	
	)	
Petitioners-Objectors,	)	
	)	
v.	)	**Case No. 24 SOEB GP118**
	)	
Joseph R. Biden, Jr.,	)	
	)	
Respondent-Candidate.	)	

MOTION TO DISMISS OBJECTORS' PETITION AND MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent-Candidate Joseph R Biden Jr (hereinafter "Candidate"), by and through his attorneys, Kevin M. Morphew and James M. Morphew, and for his Motion to Dismiss the Objectors' Petition and Motion for Summary Judgment, states as follows:

A. The Objectors' Petition Fails to State a Legal Basis for Invalidating Candidate's Nomination Papers

On January 4, 2024, the Candidate filed nomination papers to appear on the March 19, 2024 general primary election ballot as a candidate for the Democratic nomination to the Office of President of the United States. Included in this filing was the Candidate's statement of candidacy, which was notarized by a notary public authorized to perform notarial acts in the District of Columbia. The only allegation contained in the Objectors' Petition is that the Candidate's statement of candidacy "was not notarized by a Notary Public commissioned by the State of Illinois or by a party authorized to take acknowledgement of deeds in this State…" (Objectors' Petition, par. 6).

Although the statutory requirements governing nomination papers filed by the Candidate, including his statement of candidacy, are set forth in Article 7 of the Election Code (The Making of Nominations by Political Parties), the Objectors incorrectly cite a violation of Sections 10-4 and 10-5 as the basis for a ruling that that the Candidate's statement of candidacy is invalid. *Id.* Article 10 of the Election Code governs the "Making of Nominations in Certain Other Cases."

As demonstrated below, the Candidate's statement of candidacy was properly notarized under Illinois statutory law and case law, as well as established policy of the State Board of Elections. For these reasons, the Candidate's Motion to Dismiss and Motion for Summary Judgment should be granted, and the objections set forth in the Objectors' Petition should be overruled.

B. Candidate's Statement of Candidacy Was Properly Notarized Under Illinois Law

As demonstrated below, electoral boards and Illinois courts have repeatedly held that an out of state notary public may perform notarial acts with the same effect as if the notarial act was performed by an Illinois notary as long as the out of state notary public is authorized to perform the notarial act in the place where the act was performed.

a. Illinois has enacted the Uniform Recognition of Acknowledgements Act.

Section 2 of the Uniform Recognition of Acknowledgments Act (hereinafter "Act") states in pertinent part:

> For the purposes of this Act, "notarial acts" means acts which the laws and regulations of this State authorize notaries public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. **Notarial Acts may be performed outside this State for use in this State with the same effect as if performed by a notary public of this State by the following persons**

authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this State:

(1) **a notary public authorized to perform notarial acts in the place in which the act is performed**;

* * * *

(5) any other person authorized to perform notarial acts in the place where the act is performed.

(emphasis added) 765 ILCS 30/2 (West 2024)

The Objectors' Petition admits that the Candidate's statement of candidacy was "notarized by David E. Kalbaugh a Notary Public commissioned in the District of Columbia." (Objectors' Petition, par. 5). Section 2(1) of the Act recognizes for use in Illinois a notarial act performed by "a notary public authorized to perform notarial acts in the place in which the act was performed." It is undisputed that Kalbaugh is authorized to perform notarial acts in the District of Columbia, and that the Candidate's statement of candidacy was notarized in the District of Columbia. Therefore, the Candidate's statement of candidacy was properly notarized for use in connection with the Candidate's nomination papers filed in Illinois.

A statute that recognizes the notarial acts performed outside of the State in which the notarized document will be used is sound public policy. In the context of candidates for national office, without the Act, these candidates would be required to visit multiple states to appear before a notary public to lawfully execute his or her nomination papers. Such is the consequence of ruling in favor of the Objectors in this case.

Further, the Candidate's position is bolstered by Section 6 of the Oath and Affirmations Act, which states:

When any oath authorized or required by law to be made is made out of the state, it may be administered by any officer authorized by the laws of the state in which it is so administered, and if such officer have a seal, his certificate under his

official seal shall be received as prima facie evidence without further proof of his authority to administer oaths.

5 ILCS 255/6 (West 2024)

Thus, both the Uniform Recognition of Acknowledgments Act and the Oath and Affirmation Act support the authority of an out of state notary public to lawfully notarize the Candidate's statement of candidacy.

b. Electoral boards and Illinois courts have recognized the validity of notarial acts performed by out of state notaries public for use in Illinois

In two separate election cycles, the late Congressman Sidney Yates had his statement of candidacy challenged, alleging that the document was improperly notarized by a non-Illinois notary. In both cases, the validity of the notarial act and thus the validity of the statement of candidacy was upheld.

In *Glazier v. Yates*, the Cook County Officers Electoral Board overruled objections to the candidate's statement of candidacy. There, as here, the objection asserted that the candidate's statement of candidacy was invalid because it was signed before a non-Illinois notary public in Washington DC. (No. 93-COEB-RC-8).

Then in 1996, Yates once again faced a challenge to his nominating petitions based on the fact that his signature on the statement of candidacy was witnessed by a notary public commissioned by the District of Columbia instead of an Illinois notary public as required by Section 7-10 of the Election Code. (10 ILCS 5/7-10). The Cook County Officers Electoral Board dismissed the objection, which was affirmed by the Cook County Circuit Court on judicial review. The petitioner appealed, and in *Frost v. Cook County Officers Electoral Board*, 258 Ill.App. 3d 286, 673 N.E.2d 443 (1st Dist. 1996), the Court affirmed dismissal of the objection,

citing Section 2 of the Uniform Recognition of Acknowledgements Act and Section 6 of the Oath and Affirmations Act.

Thus, when faced with facts identical to those alleged in the instant case, electoral boards and Illinois courts have recognized that the notary requirement in Section 7-10 of the Election Code can be performed by a non-Illinois notary public for use in connection with the filing of Illinois nomination papers.

c. The *Knobeloch* decision cited by the Objectors is distinguishable

Objectors cite the case of *Knobeloch v. Electoral Board for the City of Granite City*, 337 Ill.App.3d 1137, 788 N.E.2d 130 (5th Dist. 2003). In this case, a candidate for local office filed a statement of candidacy and petition sheets that were notarized by Kathlyn Moore, a notary public commissioned by the State of Missouri. However, Moore was not a notary commissioned by the State of Illinois, "**the state where the papers were signed and the oath was sworn**". *Id.* at 1138. The electoral board overruled the objection, which was affirmed on judicial review. However, the Appellate Court reversed. The Court rejected the argument proffered by the candidate that he substantially complied with the notary requirement when he thought he was taking the oath before a notary public authorized to perform notarial acts in the state of Illinois.

Knobeloch is easily distinguishable from the instant case. In *Knobeloch*, the Missouri notary was not authorized to perform notarial acts outside the state of Missouri. Her notarial acts performed while physically located in the State of Illinois were without legal effect. In the case at bar, Kalbaugh is authorized to perform notarial acts in the District of Columbia. Therefore, unlike the notary in *Knobeloch*, Kalbaugh's notarial act complied with Section 2(1) of the Uniform Recognition of Acknowledgements Act in that he notarized the Candidate's statement of candidacy in a place where he was authorized to perform a notarial act. The notarial acts

performed in *Knobeloch* could not have been saved by Section 2(1) of the Act because the notary was not authorized to perform notarial acts in Illinois—the place where the nomination papers were signed and the oath sworn.

d. The 2024 Presidential Preference & Delegates Guide issued by the State Board of Elections recognizes the validity of notarial acts performed as provided in the Uniform Recognition of Acknowledgements Act.

The 2024 Presidential Preference & Delegates Guide issued by the State Board of Elections provides answers to commonly asked questions. (Guide, p. 22) Under questions and answers related to notarization, the following question and answer are provided:

> **Question:** Must a notary reside in Illinois....?
>
> **Answer:** Under the provisions of the Uniform Recognition of Acknowledgements Act (765 ILCS 30/1 et seq.), notarial acts may be performed outside of Illinois for use in Illinois.

Thus, the State Board of Elections recognizes that nomination papers, including the statement of candidacy, will meet the requirements of the Election Code if the documents are notarized by an out of state notary with the authority to perform a notarial act in the place in which the act was performed.

C. The Candidate is entitled to Summary Judgement on the Pleadings

Summary judgment should be granted "if no genuine issue of material fact exists and the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c), 2-615(e); *Gillen v. State Farm Mutual Automobile Insurance Co.*, 830 N.E.2d 575 (Ill. App. 2005). Facts in support of summary judgment which are not contradicted by the party opposing the motion must be taken as true for purposes of the motion. *U.S. Bank, Nat. Ass'n v. Avdic*, 10 N.E.2d 339 (Ill. App. 2017). Here, there can be no dispute that the Candidate's statement of candidacy was

notarized by a commissioned notary public, authorized to take oaths in the District of Columbia, and that the notarial act itself took place in the District of Columbia. As detailed extensively in this Motion, the Candidate's signature on the statement of candidacy was properly notarized pursuant to the holding of *Frost*, the Uniform Recognition of Acknowledgments Act, the Oath and Affirmation Act, and the State Board of Elections' own guidance provided in the 2024 Presidential Preference & Delegates Guide. For those reasons, the Candidate is entitled to judgment as a matter of law.

D. Conclusion

For the reasons stated above, the Candidate requests that the Board grant the Motion to Dismiss, overrule the Objection, or in the alternative, grant the Motion for Summary Judgment and overrule the Objectors' Petition.

WHEREFORE, for the foregoing reasons, the Candidate respectfully prays that the Motion to Dismiss be GRANTED in full, or in the alternative, the Candidate's Motion for Summary Judgment be GRANTED, and that the Objectors' Petition be OVERRULED and that the name of Joseph R Biden Jr be printed on the Democratic ballot for the Office of President of the United States, to be voted upon at the General Primary Election to be held on March 19, 2024.

Respectfully submitted,
JOSEPH R BIDEN JR, Candidate

BY: /s/ Kevin M. Morphew

Kevin M. Morphew
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BEFORE THE DULY CONSTITUTED STATE ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS

IN THE MATTER OF OBJECTIONS BY:	)	
	)	
Beth Findley Smith,	)	
Timothy Conrad	)	No. 24-SOEBGP-118
Petitioners-Objectors	)	
	)	
V.	)	
	)	
Joseph R Biden, Jr.	)	
Respondent-Candidate	)	

NOTICE OF FILING

TO:

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James M Morphew
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Counsel General
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GeneralCounsel@elections.il.gov

David Herman
Hearing Officer
DHerman@gwcblaw.com

CC:

Beth Findley Smith, Objector
Southottawa8@gmail.com

PLEASE TAKE NOTICE that on the 23rd of January, 2024, I filed with the State Officers Electoral Board the attached response to Cadidate's "Motion to Dismiss Objectors' Petition", a copy of which is hereby served upon you.

The undersigned certifies that a copy of this response was served upon the persons referenced above via email before 5 o'clock p.m. on 23rd of January, 2024.

Timothy Conrad, Objector *pro se*
24516 W Emyvale, Plainfield, Illinois
1017pm@gmail.com

BEFORE THE DULY CONSTITUTED STATE ELECTORAL BOARD

IN THE MATTER OF OBJECTIONS BY:	)	
	)	
Beth Findley Smith,	)	
Timothy Conrad,	)	No. 24-SOEBGP-118
Petitioners-Objectors	)	
	)	
V.	)	
	)	
Joseph R Biden, Jr.	)	
Respondent-Candidate	)	

Objectors' Response to Candidate's "Motion To Dismiss Objectors' Petition"

NOW COMES Objectors Beth Findley Smith and Timothy Conrad (hereafter "Objectors"), in their response to Candidate Joseph R Biden, Jr. (hereafter "Candidate")'s "Motion to Dismiss Objectors' Petition and Motion for Summary Judgement," and state as follows:

"Candidate claims the Objector's Petition Failed to "State a Legal Basis for Invalidating Candidate's Nomination Papers."

The Objectors clearly stated the legal nature of their objection as required by 10 ILCS 5/10-8 in consideration of the requirements of the Candidate's filing. Statute provides no presumption that a Candidate's nomination papers are *bona fide* (Daly v Stratton, 215 F. Supp. 244 (N.D. Ill. 1963)). This would, under law, entitle Objectors' petition to hearing on its merits in good faith.

The Illinois Supreme Court has held that a mandatory provision of the Election Code must be enforced even where parties agree there is no knowledge or evidence of fraud or corruption. (*DeFabio v. Gummersheimer* 733 N.E.2d 1241 (2000)):

Illinois Statute is explicit in its mandatory provisions of law, of which Objectors allege were not strictly adhered to by the Candidate.

Objectors acknowledge the existence of Section 2 the Uniform Recognition of Acknowledgments Act (765 ILCS 30/2), but dispute its applicability because the provisions of the election code do not "authorize a notary to perform an act," but requires the notarial act to explicitly be performed by "some officer authorized to take acknowledgements of deeds in this State." (10 ILCS 5/10-5, emphasis added).

Objectors acknowledge the existence of Section 6 the Oath and Affirmation Act (765 ILCS 30/2), but dispute its applicability because the provisions of the election code, independent of the Oath and Affirmation Act, requires the notarial act to explicitly be by "some officer authorized to take acknowledgements of deeds in this State." (10 ILCS performed 5/10-5, emphasis added).

The phrase "some officer authorized to take acknowledgements of deeds in this State" is rare language in Illinois Compiled Statutes. A Westlaw search returned only two specific instances. In the Election Code and the Library Code. (Exhibit A, return of Westlaw search).

For a notary to qualify as an officer authorized to take acknowledgements of deeds in this State, one must be commissioned in this State.

The face of Candidate's Statement of Candidacy ***appears*** to be notarized by David E. Kalbaugh, a notary apparently commissioned by the District of Columbia. If this statement is correct, Mr. Kalbaugh is not an officer authorized to take acknowledgements of deeds in this State.[1]

[1] For reasons that will become clear, Objectors do not concede that Candidate's Statement of Candidacy was in fact notarized as appears on the face of the document, only that the document makes that representation.

Candidate submits a public policy argument as to the acceptance of out of state notaries for election documents: "candidates for national office ... would be required to visit multiple states..." Of course, Illinois election law is not promulgated for the convenience of candidates, but rather to protect the integrity of Illinois elections.

In regards to the requirement that a Statement of Candidacy be done before "some officer authorized to take acknowledgements of deeds in this State" this requirement acts to protect Illinois' special interests in its elections. The officer described by this statute is someone who must either reside in Illinois or have a place of business in Illinois. 5 ILCS 312/2-101

This is a critical distinction. Such officer is subject to subpoena and service within the boundaries of the state of Illinois by the authority of the Illinois State Board of Elections. Objectors are unaware of this Board's authority to serve witnesses and compel their appearance when such witnesses are beyond the borders of Illinois.

The provisions in the election code regarding those authorized to authorized to take acknowledgements of deeds in this State guarantees that in the event of an election contest or, as in this case, an objection to a statement of candidacy,[2] the witness to the document in question will be subject to a subpoena issued by relevant electoral authority or appropriate court and their testimony can be compelled.

The legislature has used such language in very limited circumstances as demonstrated by Exhibit A.[3] This electoral board and the courts are to give effect to the plain language of a statute and this language is quite clear. For the electoral board to find otherwise would be to declare the

[2] The alleged notary of Candidate's statement, being out of state, is beyond the authority of the election board to compel his appearance. Thus Objectors are unable to compel the appearance of the alleged notary, demonstrating the purpose of Illinois Election Law and why Objectors concede only as to what the statement of candidacy says on its face, not that the statements are true.

[3] While not at issue here, the language may give Illinois notaries extraterritorial authority to witness particular statutorily described documents, meaning they could travel to the candidates, thus doing away with Candidate's public policy argument while protecting Illinois' interest in access to the witnessing officer.

specific language of the statute requiring a *specific type of witness* for a valid statement of candidacy as superfluous.

The Uniform Recognition of Acknowledgments Act, nor the Illinois Notary Public Act, nor the Oath and Affirmation Act, do not prescribe conduct which must be followed by a notary with regard to the requirements of the election code, but are merely a statement regarding scope of notary's authority to administer oaths (*Shipley v. Stephenson County Electoral Bd.*, 130 Ill. App. 3d 900, 474 N.E.2d 905 (1985))

As for the prescribed conduct of the notarial acts in the relevant clauses of the election code, the linguistic preposition "in" is locative, referring to the location from which the authority to commit such notarial performed under statute. ("The specific place or position of a person or thing." Black's Law Dictionary, 11th Ed.) The Candidate's alleged notary would not be authorized "to take acknowledgements of deeds in this State" if not physically located in this State for the notarial act unless explicitly commissioned by the Illinois to do so pursuant to state statute.

Knobeloch v. Electoral Board for the City of Granite City, 337 Ill.App3d 1137, 788 N.E.2d 130 (5th Dist. 2003) is the current state of the law.

Knobeloch relies on the Illinois Supreme Court's ruling in *DeFabio v. Gummersheimer* 192 Ill.2d 63 (2000) in finding that the notary provisions of Illinois election law are mandatory and not directory. While Candidate relies heavily upon two cases involving the late Congressman Sidney Yates, both matters predate the *Gummersheimer* and *Knobelauch*, and the Yates matters appear to have allowed for "substantial compliance",[4] which under *Gummersheimer* and

[4] Of note, the candidate in *Knobeloch* apparently thought he was before a proper notary and the court found this was of no consequence that the provision was mandatory. Thus, it is equally of no consequence if Candidate Biden thought he was before an officer authorized to take acknowledgements of deeds in Illinois.

Knobeloch is not allowed as to specific requirements of Illinois election law, including the officers designated by Election Law to witness Statements of Candidacy.[5]

The Uniform Recognition of Acknowledgments Act, the Illinois Notary Public Act, and the Oath and Affirmation Act all were law at the time of *Knobeloch* was decided. Candidate Biden's alleged notary, just as the notary in *Knobeloch*, is not a notary commissioned by the State of Illinois "to take acknowledgements of deeds in this State," and are indistinguishable on this fact.

The State Board of Elections does not have the authority to supersede the ruling of The Court and must adhere to the ruling of that decision. Mandatory provisions of law with regard to the strict requirements of notaries, as such requiring more than substantial compliance, have been recently upheld by this board through this cycle (*i.*e. *Light V. Niemerg*, 23 SOEB GP 107)

The 2024 Presidential Preference & Delegates Guide issued by the State Board of Elections, as incorrectly claimed by the Candidate to be authoritative, is not a substitute for the mandatory provisions in the statute supported by case law.[6]

The Candidate is not "entitled to Summary Judgement" because Objectors have raised a genuine issue of material fact.

Because Candidate fails to provide a positive refutation of the Candidate's disqualification based on the law, as alleged in Objectors' Petition, Candidate's Motion to Dismiss cannot be granted and these matters must be determined on their merits.

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[5] Candidate cites no case decided on this issue decided after *Gummersheimer* and *Knobelauch.*
[6] The notary in *Knobelauch* apparently testified that she had consulted the Electoral Board as to her authority to notarize Illinois election documents and received counsel from the board she was so authorized. This improper advice of the board did not serve to save the improperly notarized documents.

WHEREFORE the Objectors pray that this Electoral Board deny Candidate's "Motion to Dismiss Objectors' Petition and Motion for Summary Judgement," grant the relief requested in the Objectors' Petition, and any further relief that is equitable and just.

Respectfully submitted,

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1. 60/2.Statement for incorporation; filing

IL ST CH 75 § 60/2 **West's Smith-Hurd Illinois Compiled Statutes Annotated**

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 75. Libraries
Act 60. Library Incorporation Act

...make, sign and acknowledge before any officer authorized to take **acknowledgments of deeds in this state**, and file in the office of the Secretary of State...

2. 5/10-5.Forms for petitions for nomination; statement of economic interest

IL ST CH 10 § 5/10-5 **West's Smith-Hurd Illinois Compiled Statutes Annotated**

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 10. Elections
Act 5. Election Code
Article 10. Making of Nominations in Certain Other Cases

...to by such candidate before some officer authorized to take **acknowledgments of deeds in this State**, and may be in substantially the following form: State of...

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATING PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE UNITED STATES FOR THE DEMOCRATIC PARTY OF THE STATE OF ILLINOIS, FOR THE MARCH 19, 2024 PRIMARY ELECTION

Beth Findley Smith,	)	
Timothy Conrad,	)	
	)	
Petitioners-Objectors,	)	
	)	
v.	)	**Case No. 24 SOEB GP118**
	)	
Joseph R. Biden, Jr.,	)	
	)	
Respondent-Candidate.	)	

NOTICE OF FILING

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Hearing Officer David Herman
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PLEASE TAKE NOTICE that on January 25, 2024, I filed with the State Officers Electoral Board the attached Candidate's Reply to Objectors' Response to Candidate's Motion to Dismiss Objectors' Petition and Motion for Summary Judgment, a copy of which is hereby served upon you.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Candidate's Reply to Objectors' Response to Candidate's Motion to Dismiss Objectors' Petition and Motion for Summary Judgment was served upon the persons referenced above via e-mail before 5:00 p.m. on January 25, 2024.

/s/ James M. Morphew

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James M. Morphew
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P.O. Box 5131
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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATING PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE UNITED STATES FOR THE DEMOCRATIC PARTY OF THE STATE OF ILLINOIS, FOR THE MARCH 19, 2024 PRIMARY ELECTION

Beth Findley Smith,	)	
Timothy Conrad,	)	
	)	
Petitioners-Objectors,	)	
	)	
v.	)	**Case No. 24 SOEB GP118**
	)	
Joseph R. Biden, Jr.,	)	
	)	
Respondent-Candidate.	)	

CANDIDATE'S REPLY TO OBJECTORS' RESPONSE TO CANDIDATE'S MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent-Candidate Joseph R Biden Jr, by and through his attorneys, Kevin M. Morphew and James M. Morphew, and for his Reply to Objectors' Response to Candidate's Motion to Dismiss and Motion for Summary Judgment, states as follows:

A. Objectors have admitted that the Candidate's Statement of Candidacy was notarized by a notary public commissioned in the District of Columbia and have waived any argument to the contrary.

The Objectors' Petition states that the Candidate's "Statement of Candidacy was notarized by David E. Kalbaugh a Notary Public commissioned in the District of Columbia." (Objectors' Petition, par. 5). In their response to Candidate's Motion to Dismiss, the Objectors argue that the "face of Candidate's Statement of Candidacy **appears** to be notarized by David E. Kalbaugh, a notary apparently commissioned by the District of Columbia." (Objectors' Response, p. 2, original emphasis). Moreover, in footnote 1, Objectors state that they do not concede that the Statement of Candidacy was notarized as it appears on the face of the document.

The proper time to question whether the statement of candidacy was in fact notarized, or that Kalbaugh was not a notary commissioned by the District of Columbia, was with well-pled facts in the Objectors' Petition. The above-referenced assertions by the Objectors in their Response amount to an amendment to their Objectors' Petition, which, when filed, alleged the Candidate's statement of candidacy was notarized by a notary public commissioned in the District of Columbia.

It is well settled that an objector's petition cannot be amended once it is filed. *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3rd 69, 202 Ill.Dec. 914, vacated in part, 265 Ill.App.3rd 69 (2nd Dist. 1994); SOEB, Rules of Procedure, Rule 7(a)(1). Therefore, the Hearing Officer and the Board must exclude any evidence or argument beyond that which is pled in the Objectors' Petition. As noted, Paragraph 5 of the Objectors' Petition admits that the Candidate's Statement of Candidacy was notarized by a notary public commissioned in the District of Columbia. The only question before the Hearing Officer and the Board is the legal effect of that notarization. All other questions of law or fact have been waived.

B. A notary public commissioned by a state other than the State of Illinois may acknowledge an Illinois deed.

The sole objection to the validity of Candidate's statement of candidacy is that the document was notarized by a notary public commissioned in the District of Columbia, but that the Election Code requires the notarial act to be performed by "some officer authorized to take acknowledgments of deeds in this State." (Objectors' Petition, par. 6; Objectors' Response, p. 2).

The Candidate has argued that his statement of candidacy was properly notarized under both the Uniform Recognition of Acknowledgments Act and the Oath and Affirmations Act. In addition, the Illinois Conveyances Act allows for deeds and other types of writings relating to a

sale, conveyance, or other disposition of real estate, to be acknowledged or proved outside of Illinois. (765 ILCS 5/20(2) (West 2024). This statute states in pertinent part:

> "**Deeds**. . . or other writings of or relating to the sale, conveyance, or other disposition of real estate. . . **may be acknowledged**. . . before some one of the following courts or officers, namely:
>
> * * *
>
> (2) When **acknowledged**. . . **outside of this State** and within the United States. . . or the District of Columbia, before a. . . **notary public**. . . of any of the states, territories or dependencies of the United States." *Id.*

This provision of the Conveyances Act clearly authorizes an out of state notary to acknowledge deeds in this State – which falls squarely within the language from the Election Code cited by Objectors. David E. Kalbaugh, as a notary public commissioned in the District of Columbia, is authorized pursuant to the Illinois Conveyances Act to take acknowledgments of deeds in this State. Therefore, he qualifies as an officer who is authorized to notarize Candidate's statement of candidacy.

C. The Uniform Recognition of Acknowledgments Act and the Oath and Affirmation Act must be construed in pari materia with the notary requirement of Section 7-10 of the Election Code.

In their Response, Objectors acknowledge "the existence" of both of the above referenced Acts, but dispute their applicability to the oath requirement of Section 7-10 of the Election Code (Objectors' Response, p. 2). The Objectors again incorrectly assert that the only notary public authorized to notarize nomination papers under the Election Code is one who is commissioned by the State of Illinois. *Id.*

While acknowledging their existence, the Objectors ignore the plain language of Section 2 of the Uniform Recognition of Acknowledgments Act, which states in part: "Notarial Acts may be performed outside of this State for use in this State with the same effect as if

performed by a notary public of this State…." 765 ILCS 30/2 (West 2024). Also disregarded by Objectors is Section 6 of the Oath and Affirmations Act, which states in part: "When any oath authorized or required by law to be made is made out of state, it may be administered by any officer authorized by the laws of the state in which it is so administered…." 5 ILCS 255/6 (West 2024).

The Objectors urge the Board to ignore the Legislature's intent in enacting these statutes. However, a court presumes that the General Assembly intended that two or more laws "which relate to the same subject are to be operative and harmonious." *Cinkus v. The Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 319 Ill.Dec. 887 (2008). Faced with reconciling two statutes relating to the same subject, the Court must compare and "construe them with reference to each other, so as to give effect to all of the provisions of each if possible." *Knolls Condominium Association v. Harms*, 202 Ill.2d 450, 459, 269 Ill.Dec. 464 (2002).

In this case, Objectors, contrary to *Cinkus* and *Knolls*, completely disregard the application of the Uniform Recognition of Acknowledgments Act and the Oath and Affirmation Act to oaths that are required by the Election Code. These Acts and the Election Code must be "construe(d)…with reference to each other…to give effect to all of the provisions of each…." *Id.* Both the Uniform Recognition of Acknowledgments Act and the Oath and Affirmations Act specifically allow a notarial act performed outside of Illinois for use in Illinois as long as the notary was commissioned in the state in which the oath was administered. Adoption of the Objectors' argument is tantamount to repeal of both Acts. The Candidate's statement of candidacy was lawfully notarized by a notary public commissioned by the District of Columbia for use in Illinois.

D. Objectors' reliance on *Knobeloch* is misplaced because the notary public was not authorized to perform notarial acts in Illinois

Objectors place heavy reliance on *Knobeloch v. Electoral Board for the City of Granite City,* 337 Ill.App.3d 1137, 788 N.E.2d 130 (5th Dist. 2003), which is distinguishable. In *Knobeloch*, the notarial acts performed by a Missouri notary public were declared invalid by the Appellate Court because the notary public performed those acts in Illinois. Had the nomination papers been notarized in the State of Missouri, they would have been properly notarized and the objections would have been overruled.

For this reason, presumably, neither the Uniform Recognition of Acknowledgments Act nor the Oath and Affirmations Act were raised by the candidate or the Court in *Knobeloch.* The reason is simple—the notary public in *Knobeloch* was only authorized to administer oaths in Missouri, but she had no authority to perform notarial acts while she was physically present in Illinois. *Knobeloch*, 337 Ill.App.3d at 1138. Thus, her notarial acts did not comply with the requirements of either the Acknowledgements Act or the Affirmation Act; therefore, these statutes were irrelevant in *Knobeloch.*

However, directly on point is *Frost v. Cook County Officers Electoral Board*, 258 Ill.App.3d 286, 673 N.E.2d 443 (1st Dist. 1996), where the Court affirmed dismissal of an objection to the validity of an Illinois Congressman's statement of candidacy that was notarized by a notary public commissioned in the District of Columbia. In *Frost*, the Court relied upon Section 2 of the Uniform Recognition of Acknowledgments Act and Section 6 of the Oath and Affirmations Act. The Hearing Officer and the Board are urged to follow the holding in *Frost.*

E. There are strong public policy arguments behind the enactment of the Uniform Recognition of Acknowledgments Act and the Oath and Affirmations Act.

The Candidate argues in his Motion to Dismiss that recognizing notarial acts performed outside the state in which the notarized document will be used is sound public policy. Application of the of the Uniform Recognition of Acknowledgments Act and the Oath and Affirmations Act to the nomination papers of national candidates avoids the need for these candidates to travel to multiple states to appear before a notary public in each state to lawfully complete the nomination papers. Objectors summarily dismiss this policy argument, and contend that notaries public could travel to the candidate and notarize the nomination papers. (See Objectors' Response, footnote 3.)

As noted in *Knobeloch*, the remedy proffered by Objectors, in addition to being inefficient, would result in a lawful notarial act only if the notary public was commissioned by the state in which the nomination papers are notarized. Thus, in this case, an Illinois-commissioned notary public would have no authority to notarize Candidate's statement of candidacy in the District of Columbia or in any jurisdiction other than Illinois.

To emphasize the public policy behind application of the Uniform Recognition of Acknowledgments Act and the Oath and Affirmations Act to oaths required by the Election Code, the Candidate respectfully requests that the Hearing Officer and the Board take official notice of the fact that the statement of candidacy of the following candidates for the Office of President of the United States at the March 19, 2024 general primary election, was notarized by a notary public who is commissioned in a jurisdiction other than the State of Illinois: Donald J. Trump, Dean Phillips, Nikki Haley, Chris Christie, Ryan L. Binkley, and Marianne Williamson. (See Group Exhibit A.)[1]

[1] The original statements of candidacy are in the possession of the State Board of Elections.

Under the Objectors' theory, none of these notarial acts would comply with the Election Code. These notarial acts are only valid pursuant to either the Uniform Recognition of Acknowledgments Act or the Oath and Affirmations Act, which the Objectors argue are inapplicable to notarial acts required by the Election Code.

WHEREFORE, for the foregoing reasons, Candidate respectfully prays that Candidate's Motion to Dismiss be GRANTED in full, or in the alternative, that Candidate's Motion for Summary Judgment be GRANTED, and that the Objectors' Petition be OVERRULED and that the name of Joseph R Biden Jr be printed on the Democratic ballot for the Office of President of the United States, to be voted upon at the General Primary Election to be held on March 19, 2024.

Respectfully submitted,
JOSEPH R BIDEN JR, Candidate

BY: /s/ Kevin M. Morphew

Kevin M. Morphew
James M. Morphew
SORLING NORTHRUP
121 West Wacker Drive, Suite 1108
Chicago, IL 60601
1 North Old State Capitol Plaza, Suite 200
Springfield, IL 62701
Telephone: 217/544-1144
Email: kmmorphew@sorlinglaw.com
jmmorphew@sorlinglaw.com

GROUP EXHIBIT A

10 ILCS 5/7-10

ATTACH TO PETITION

Suggested
Revised March 2020
SBE No. P-1

STATEMENT OF CANDIDACY

NAME: DONALD J. TRUMP	OFFICE: PRESIDENT OF THE UNITED STATES OF AMERICA
ADDRESS – ZIP CODE: 1100 S. OCEAN BOULEVARD PALM BEACH, FLORIDA 33480	A Full Term is sought, unless an unexpired term is stated here: _____ year unexpired term
	DISTRICT: N/A
	PARTY: REPUBLICAN

If required pursuant to 10 ILCS 5/7-10.2, 8-8.1 or 10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ (List all names during last 3 years) UNTIL NAME CHANGED ON _____ (List date of each name change)

STATE OF ~~ILLINOIS~~ FLORIDA)
) SS.
County of PALM BEACH)

I, DONALD J. TRUMP (Name of Candidate) being first duly sworn (or affirmed), say that I reside at 1100 S. OCEAN BOULEVARD, in the City, Village, Unincorporated Area of PALM BEACH (if unincorporated, list municipality that provides postal service) Zip Code 33480, in the County of PALM BEACH, State of FL; that I am a qualified voter therein and am a qualified Primary voter of the REPUBLICAN Party; that I am a candidate for (Nomination)/Election to the office of PRESIDENT OF THE UNITED STATES OF AMERICA in the N/A District, to be voted upon at the primary election to be held on MARCH 19, 2024 (date of election) and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official REPUBLICAN (Name of Party) Primary ballot for Nomination/Election for such office.

STATE BOARD OF ELECTIONS
Springfield, Illinois
FILED January 4, 2024 8:00 AM

_____
(Signature of Candidate)

Signed and sworn to (or affirmed) by Donald J. Trump (Name of Candidate) before me, on December 13, 2023 (insert month, day, year)

CHAMBERLAIN HARRIS
Public ... of Florida
... 372771
... Expires
March 13, 2027

(SEAL)

_____
(Notary Public's Signature)

CHAMBERLAIN HARRIS
Notary Public-State of Florida
Commission # HH 372771
My Commission Expires
March 13, 2027

10 ILCS 5/7-10 ATTACH TO PETITION

Suggested
Revised March 2020
SBE No. P-1

STATEMENT OF CANDIDACY

NAME: DEAN PHILLIPS	OFFICE: PRESIDENT OF THE UNITED STATES
ADDRESS – ZIP CODE: 405 BLACK OAKS LANE WAYZATA, MN 55391	A Full Term is sought, unless an unexpired term is stated here: _____ year unexpired term
	DISTRICT: Statewide
	PARTY: Democratic Party

If required pursuant to 10 ILCS 5/7-10.2, 8-8.1 or 10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ (List all names during last 3 years) UNTIL NAME CHANGED ON _____ (List date of each name change)

STATE OF Colorado)
) SS.
County of Pitkin)

I, DEAN PHILLIPS (Name of Candidate) being first duly sworn (or affirmed), say that I reside at 405 BLACK OAKS LANE, in the City, Village, Unincorporated Area of WAYZATA (if unincorporated, list municipality that provides postal service) Zip Code 55391, in the County of HENNEPIN, State of MN; that I am a qualified voter therein and am a qualified Primary voter of the Democratic Party; that I am a candidate for Nomination/Election to the office of PRESIDENT OF THE UNITED STATES in the Statewide District, to be voted upon at the primary election to be held on March 19, 2024 (date of election) and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official Democratic (Name of Party) Primary ballot for Nomination/Election for such office.

_____
(Signature of Candidate)

Signed and sworn to (or affirmed) by DEAN PHILLIPS (Name of Candidate) before me, on 12·28·2023 (insert month, day, year)

MICHAEL KENDRICK
NOTARY PUBLIC - STATE OF COLORADO
Notary ID #20184041049
My Commission Expires 10/19/2026

(SEAL)

_____
(Notary Public's Signature)

2024 JAN -4 AM 9:13
PRINCIPAL OFFICE
STATE BOARD OF ELECTI

035

ATTACH TO PETITION

10 ILCS 5/7-10

Suggested
Revised July 2007
SBE No. P-1

STATEMENT OF CANDIDACY

NAME	ADDRESS-ZIP CODE	OFFICE	DISTRICT	PARTY
Nikki Haley	**259 Cord Grass Court Kiawah Island, SC 29455**	**President of the United States of America**	**Statewide**	**Republican**

STATE OF SOUTH CAROLINA)
) SS
COUNTY OF Charleston)

I, **Nikki Haley**, being first duly sworn (or affirmed), say that I reside at **259 Cord Grass Court**, in the Town of **Kiawah Island**, Zip Code 29455, in the County of **Charleston**, State of South Carolina; that I am a qualified voter therein and am a qualified Primary voter of the **Republican** Party; that I am a candidate for Nomination to the office of **President of the United States of America**, to be voted upon at the Primary Election to be held on **March 19, 2024**, and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and I hereby request that my name be printed upon the official **Republican** Primary ballot for Nomination for such office.

(Signature of Candidate)

Signed and Sworn to (or affirmed) by **Nikki Haley** before me, on December 22, 2023.
(insert day)

STATE BOARD OF ELECTIONS
Springfield, Illinois
FILED January 4, 2024 8:00 AM

(SEAL)

(Signature of Notary Public)

Celeste K. Marceca
Commission expires 9/29/26

CELESTE K. MARCECA
NOTARY PUBLIC
SOUTH CAROLINA

10 ILCS 5/7-10 _____ATTACH TO PETITION_____ Suggested Revised March 2020 SBE No. P-1

STATEMENT OF CANDIDACY

NAME: Chris Christie	OFFICE: President of the United States
ADDRESS – ZIP CODE: 46 Corey Lane Mendham, NJ 07945	A Full Term is sought, unless an unexpired term is stated here: _____ year unexpired term
	DISTRICT: N / A
	PARTY: Republican

If required pursuant to 10 ILCS 5/7-10.2, 8-8.1 or 10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ (List all names during last 3 years) UNTIL NAME CHANGED ON _____ (List date of each name change)

STATE OF ILLINOIS)
) SS.
County of _____)

I, Chris Christie (Name of Candidate) being first duly sworn (or affirmed), say that I reside at 46 Corey Lane, in the City, Village, Unincorporated Area of Mendham (if unincorporated, list municipality that provides postal service) Zip Code 07945, in the County of Morris State of New Jersey; that I am a qualified voter therein and am a qualified Primary voter of the Republican Party; that I am a candidate for Nomination/Election to the office of President of the United States in the N / A District, to be voted upon at the primary election to be held on March 19, 2024 (date of election) and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official Republican (Name of Party) Primary ballot for Nomination/Election for such office.

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS
2024 JAN -5 PM 1:55

(Signature of Candidate)

Signed and sworn to (or affirmed) by CHRIS CHRISTIE (Name of Candidate) before me, on 1/9/2023 (insert month, day, year)

(SEAL)

SHARON MICHELLE NORWOOD
NOTARY PUBLIC
REG. #7857702
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES SEPTEMBER 30, 2024

(Notary Public's Signature)

10 ILCS 5/7-10

ATTACH TO PETITION

Suggested
Revised March 2020
SBE No. P-1

STATEMENT OF CANDIDACY

NAME: Ryan L Binkley	**OFFICE:** President A Full Term is sought, unless an unexpired term is stated here: _____ year unexpired term
ADDRESS – ZIP CODE: 5523 Walnut Hill Lane, Dallas TX 75229	**DISTRICT:**
	PARTY: Republican

If required pursuant to 10 ILCS 5/7-10.2, 8-8.1 or 10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ (List all names during last 3 years) UNTIL NAME CHANGED ON _____ (List date of each name change)

STATE OF ILLINOIS)
) SS.
County of _____)

I, Ryan L. Binkley (Name of Candidate) being first duly sworn (or affirmed), say that I reside at 5523 Walnut Hill Lane, in the City, Village, Unincorporated Area of Dallas (if unincorporated, list municipality that provides postal service) Zip Code 75229, in the County of Dallas, State of TX; that I am a qualified voter therein and am a qualified Primary voter of the Republican Party; that I am a candidate for Nomination/Election to the office of President of the United States in the _____ District, to be voted upon at the primary election to be held on March 19, 2024 (date of election) and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official REPUBLICAN (Name of Party) Primary ballot for Nomination/Election for such office.

Ryan L. Binkley
(Signature of Candidate)

Signed and sworn to (or affirmed) by RYAN L. BINKLEY (Name of Candidate) before me, on January 3, 2024 (insert month, day, year)

SHALINI MURUGESAMOORTHI
Notary Public, State of Texas
Comm. Expires 10-18-2026
Notary ID 134022396

(SEAL)

(Notary Public's Signature)

STATE BOARD OF ELECTIONS
Springfield, Illinois
FILED January 4, 2024 8:00 AM

10 ILCS 5/7-10

ATTACH TO PETITION

Suggested
Revised March 2020
SBE No. P-1

STATEMENT OF CANDIDACY

NAME:	OFFICE:
Marianne Williamson	President of the United States
ADDRESS – ZIP CODE: Marianne Williamson 3311 South Lucille Lane Lafayette, CA 94549	A Full Term is sought, unless an unexpired term is stated here: _____ year unexpired term
	DISTRICT: Statewide
	PARTY: Democratic Party

If required pursuant to 10 ILCS 5/7-10.2, 8-8.1 or 10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ (List all names during last 3 years) UNTIL NAME CHANGED ON _____ (List date of each name change)

STATE OF ILLINOIS)
) SS.
County of Not applicable)

I, Marianne Williamson (Name of Candidate) being first duly sworn (or affirmed), say that I reside at 1110 23rd St NW, in the City, Village, Unincorporated Area of Washington, DC (if unincorporated, list municipality that provides postal service) Zip Code 20037, in the County of Not Applicable, State of Illinois; that I am a qualified voter therein and am a qualified Primary voter of the Not Applicable Party; that I am a candidate for Nomination/Election to the office of President of the United States in the N/A District, to be voted upon at the primary election to be held on March 19, 2024 (date of election) and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official Democratic Party (Name of Party) Primary ballot for Nomination/Election for such office.

2024 JAN -4 AM 9:08
STATE BOARD OF ELECTIONS
SPRINGFIELD, ILLINOIS

Marianne Williamson
(Signature of Candidate)

Signed and sworn to (or affirmed) by Marianne Williamson (Name of Candidate) before me, on December 29, 2023 (insert month, day, year)

(SEAL)

Kimberly C. Brown-Quarles
NOTARY PUBLIC
Exp. - 03/31/2027
DISTRICT OF COLUMBIA

Kimberly C. Brown-Quarles
(Notary Public's Signature)

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATING PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE PRESIDENT OF THE UNITED STATES FOR THE DEMOCRATIC PARTY OF THE STATE OF ILLINOIS, FOR THE MARCH 19, 2024 PRIMARY ELECTION

Beth Findley Smith, Timothy Conrad Petitioners-Objectors, V Joseph R. Biden, Jr. Respondent-Candidate.	)))))))))	ORIGINAL ON FILE AT STATE BD OF ELECTIONS ORIGINAL TIME STAMPED AT 1/12/2024 4:32 PM Case No.

OBJECTORS' PETITION

Petitioners-Objectors Beth Findley Smith and Timothy Conrad ("Objectors") hereby file this Objectors' Petition pursuant to Article 10 of the Illinois Election Code (10 ILCS 5/10-5) challenging the legal sufficiency of the nomination papers of Respondent-Candidate Joseph R. Biden, Jr. ("Candidate" or "Biden") as a candidate for the Democratic Nomination for the Office of the President of the United States, and in support of their Petition state the following:

OBJECTORS

1. Beth Findley Smith resides at 270 Easy Street, Somonauk, IL 60552, in the state of Illinois, and is a duly qualified, registered and legal voter at that address.

2. Timothy Conrad resides at 24516 W. Emyvale in Plainfield, IL 60586, in the state of Illinois, and is a duly qualified, registered and legal voter at that address.

3. The Objectors' interest in filing this petition is that of citizens desirous of seeing that the laws governing the filing of nominating petitions for the Democratic Party nomination in the State of Illinois to the Office of President of the United States are properly complied with and that only qualified candidates have their names appear upon the ballot as candidates for said office.

OBJECTION

The Objectors makes the following objection to the purported nomination papers of Joseph R. Biden, Jr., and state as follows:

4. Joseph R. Biden, Jr. filed timely Nomination Papers including a Statement of Candidacy, Nomination Petition sheets, and a Loyalty Oath for nomination to the Office of President of the United States to appear upon the Democratic Party primary ballot on March 19, 2024 for such office.

5. Biden's Statement of Candidacy was notarized by David E. Kalbaugh a Notary Public commissioned in the District of Columbia. (Exhibit A)

6. This Notarial Event is invalid because Biden's Statement of Candidacy was not notarized by a Notary Public commissioned by the State of Illinois or by a party otherwise authorized to take acknowledgments of deeds in this State:

"Each such statement ...shall request that the candidate's name be placed upon the official ballot and shall be subscribed and sworn to by such candidate before some authorized to take acknowledgments of deeds in this State..." (10 ILCS 5/10-5)

"Accordingly, because the statement of candidacy ...do *(does)* not comply with the mandatory provisions in sections 10-4 and 10-5 of the Code because they were not sworn to before an appropriate officer, they must be ruled invalid." (Knobeloch v Granite City Electoral Board. 337 Ill. App. 3d 1137, 2003)

RELIEF

WHEREFORE, the Objectors request:

(a) a hearing on the objection set forth herein;

(b) a determination that the purported Statement of Candidacy and Nomination Papers of Candidate are legally and factually insufficient and not in compliance with the laws of the State of Illinois; and

(c) a decision that the name of Joseph R. Biden, Jr. shall not be printed upon the official ballot as a candidate for the Democrat Party nomination to the Office of the President

of the United States for the March 19, 2024 General Primary Election or upon the November 5, 2024 General Election ballot.

Beth Findley Smith

Timothy Conrad

Beth Findley Smith, *Pro Se*
270 Easy Street
Somonauk, IL 60552
815-508-3717
southottawa8@gmail.com

Timothy Conrad, *Pro Se*
24516 W. Emyvale
Plainfield, IL 60586
815-546-4477
1017pm@gmail.com

Bouvet, Conrad, Newsome, and Hubbard v. Biden, Jr.
24 SOEB GP 119

Candidate: Joseph R. Biden, Jr.

Office: President of the United States

Party: Democratic

Objectors: Shane Bouvet, Timothy Conrad, Terry Newsome, and Peggy Hubbard

Attorney for Objectors: N/A – *pro se*

Attorneys for Candidate: James Morphew, Kevin Morphew, and Michael Kasper

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Candidate's Statement of Candidacy falsely swore he is qualified for the office of President of the United States under Election Code Section 7-10, 10 ILCS 5/7-10. Candidate is not qualified for the office sought based on Section 3 of the 14th Amendment to the U.S. Constitution because he previously took an oath to support the Constitution of the United States and, Objectors allege, has given "aid or comfort to [the] enemies" of the United States through various immigration and foreign policies.

Dispositive Motions: Candidate's Motion to Dismiss Objectors' Petition ("Motion") filed January 19, 2024. Candidate moves to dismiss the entirety of Objectors' petition. In so moving, Candidate first relies on *Welch v. Johnson*, 588 N.E.2d 1119 (1992), *Socialist Workers Party v. Chicago Board of Election Commissioners*, 566 F.2d 586 (7th Cir. 1977), and *Bettis v. Marsaglia*, 23 N.E.3d 351 (2014), for his contention that ballot access is a substantial right not to be lightly denied and, as such, courts go to great lengths to interpret election laws liberally and that the State of Illinois' policy is to generally favor candidate eligibility and ballot access.

Candidate argues Objectors' petition fails to allege sufficient plausible facts that would entitle them to the relief requested. Candidate claims Objectors' petition does not contain facts sufficiently plausible to survive a motion to dismiss, citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Instead, Candidate argues, Objectors' petition is "a lengthy and exhaustive list of policy disagreements with the Candidate's Administration[,]" inadmissible because those facts enumerated lack foundation, are hearsay, and do not plausibly allege Candidate personally engaged in providing aid or comfort to an enemy of the U.S. Candidate further states that accepting Objectors' theory would allow any citizen who disagrees with a policy decision by an officer of

the U.S. to block that officer's ballot access and, thus, would "permanently destabilize elections and fatally undermine Illinois' commitment to ballot access."

Of note, Candidate acknowledges other cases pending before the Board involving the issue of whether the Board has the authority to disqualify a candidate under Section 3 of the 14th Amendment of the U.S. Constitution and submits that the Board's ruling in those cases on the question of the Board's authority should govern this case and seeks to preserve this issue of the Board's authority.

Objectors' Response to Candidate's Motion to Dismiss filed January 23, 2024. In response to Candidate's Motion, Objectors first rely on *Goodman v. Ward*, 948 N.E.2d 580 (2011), to argue that while ballot access is a substantial right, Candidate must adhere to mandatory provisions of statute, including that a candidate be qualified for the office. Objectors argue those qualifications include Article II, Section 1 and Article XIV, Section 3 of the U.S. Constitution.

Second, Objectors argue their petition fully states the nature of their objection in accordance with Section 10-8 of the Election Code and includes exhibits taken from the public record, which, they argue, would be considered *prima facie* true as findings of public record. Objectors then cite to Rule 201(b)(1) of the Illinois Rules of Civil Procedure for their contention that public records are not hearsay if they are generally known.

Objectors argue that Candidate retains personal civil liability for actions taken in his official capacity when those actions are at done at his direct discretionary authority, citing *Cooper v. O'Connor*, 99 F.2d 135 (D.C. Cir. 1938), even if done in good faith. Objectors seek judicial notice of "the real world implications of the negligence which occurs at the direct and willful discretionary authority of the Candidate in his official capacity as he holds his public office…" among other alleged facts.

With regard to Candidate's submission to the Board's ruling on other matters concerning the applicability of Section 3 of the 14th Amendment, Objectors ask this objection be heard on its own merits and without concern or relation to other matters before the Board. Objectors argue Candidate has not provided a "positive refutation" of Candidate's disqualification and request Candidate's Motion be denied.

Candidate's Reply to Objectors' Response to Candidate's Motion to Dismiss filed January 25, 2024. In his Reply, Candidate reasserts the argument from his Motion that Objectors' petition fails to allege sufficient plausible facts that would entitle Objectors to their requested relief as, Candidate contends, Objectors' petition fails the pleading standards for an objection to nominating papers because: (1) mere policy disagreements do not, as a matter of law, rise to the level of aid or comfort as contemplated by Section 3 of the 14th Amendment of the U.S. Constitution; and (2) Objectors have failed to plead with any specificity allegations to state a plausible claim of providing aid or comfort to enemies of the U.S.

Candidate relies on the text of Section 3 of the 14th Amendment and cites to *Cramer v. U.S.*, 325 U.S. 1 (1945), to argue that an official's immigration and foreign policies fall short of the level of

"aid and comfort" contemplated in the 14th Amendment's disqualification language, which should be construed in reference to acts of insurrection, rebellion, or treason.

Candidate reiterates his pleading standard arguments contained within the Motion and notes that Objectors made no attempt to meet these pleading standards in their objection petition or Response.

Additionally, Candidate argues the exhibits accompanying Objectors' petition do not meet evidentiary standards as, even if considered public records, they are not certified as correct per Illinois Rule of Evidence 1005 and should not be admitted. Candidate requests Objectors' requests for judicial notice also be rejected as they do not meet the standards articulated in *People v. Taylor*, 95 Ill.App.2d 130 (1st Dist. 1968), and *People v. Davis*, 65 Ill.2d 157 (1976).

Record Exam Necessary: No.

Hearing Officer: David Herman

Hearing Officer Findings and Recommendations: The Hearing Officer first relies on *Siegel v. Lake Cnty. Officers Electoral Bd.*, 385 Ill.App.3d 452 (2d Dist. 2008), acknowledging ballot access is a substantial right not to be lightly denied.

As to the issue of the Board's jurisdiction to determine the issue of qualification requirements of Section 3 of the 14th Amendment, the Hearing Officer, in reliance on *Delgado v. Bd. Of Election Comm'rs*, 224 Ill.2d 481 (2007), and *Goodman v. Ward*, 241 Ill.2d 398 (2011), recommends finding the scope of the inquiry involved in a determination of a presidential candidate's qualifications under Section 3 of the 14th Amendment beyond that of an electoral board as the analysis is incompatible with the expedited nature of these proceedings.

The Hearing Officer then recommends that if the Board believes it had jurisdiction to do so, it should grant Candidate's Motion because the petition fails to factually and legally state a viable basis for an objection, as the allegations made involving Candidate's immigration and border security policies do not equate to providing aid or comfort to enemies to the U.S. The Hearing Officer recommends finding policy disagreements do not rise to the level of successfully pleading an allegation of providing aid or comfort to an enemy as contemplated within Section 3 of the 14th Amendment.

In the alternative, if the Board believes it has jurisdiction and chooses to deny the Candidate's Motion, the Hearing Officer recommends overruling Objectors' petition on the merits because Objectors failed to proffer competent, admissible, and relevant evident to support a challenge to Candidate's Statement of Candidacy on the basis of aid and comfort to the enemy as contemplated within Section 3 of the 14th Amendment.

The Hearing Officer recommends finding Candidate has submitted a valid Statement of Candidacy as set forth in the Election Code and that Candidate's name shall be placed on the March 19, 2024, General Primary ballot as a Democratic candidate for the office of President of the United States.

Recommendation of the General Counsel: I agree with all recommendations of the Hearing Officer except as specifically stated in this paragraph. I suggest granting Candidate's Motion without first considering the Board's jurisdiction to hear objections under Section 3 of the 14th Amendment to the U.S. Constitution. Regardless of the Board's jurisdiction to reach that specific legal issue, there is no question that Section 10-10 of the Election Code authorizes the Board to hear objections and decide whether nomination papers "on file are valid or whether the objections thereto should be sustained." *Samuelson v. Cook County Officers Electoral Bd*., 2012 IL App (1st) 120581, *quoting* 10 ILCS 5/10-10. An objection has been duly filed, and the Board necessarily has some statutory power to dispose of the objection, especially when it is this inadequate. Further, I agree the Motion should be granted for all the reasons stated *except* for the Hearing Officer's recommendation on page 6 that the "plain wording of Section Three of the Fourteenth Amendment to the United States Constitution does not apply to the office of President of the United States." Recommendation at 6. I find it unnecessary to reach this controversial question when the objection petition at issue is so obviously devoid of legal and factual validity and can be dismissed for that reason. Therefore, I recommend overruling the objection and certifying Candidate's name to the March 19, 2024 General Primary ballot.

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

Shane Bouvet, Timothy Conrad, Terry Newsome, Peggy Hubbard Petitioners-Objectors, vs. Joseph R. Biden, Jr. Respondent-Candidate.	)	Case No. 24-SOEB-GP-119

RECOMMENDATION

TO:

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This matter coming on for recommendation on Objectors' Petition in this matter and the Hearing Officer states as follows:

PROCEDURAL HISTORY

This matter commenced when Shane Bouvet, Timothy Conrad, Terry Newsome, and Peggy Hubbard (hereinafter "Objectors") filed an "Objectors' Petition" with the State Board of Elections. Objectors alleged the nominating papers of Joseph R. Biden, Jr. as a candidate for the Democratic Nomination for the Office of the President of the United States were insufficient in law and in fact for the following reasons:

A. Candidate falsely swore in his Statement of Candidacy he was "qualified" for the Office of the President of the United States because he provided aid or comfort to the enemy under Section Three of the Fourteenth Amendment of the United States Constitution.

An Initial Case Management Conference was conducted on January 17, 2024, and the Parties were provided an Initial Case Management Order.

On January 19, 2024, Candidate filed a Motion to Dismiss Objectors' Petition ("Motion"). The Motion argues Objectors' Petition fails to allege any sufficient or plausible facts demonstrating a legal deficiency in Candidate's nominating papers but instead provides a lengthy and exhaustive list of policy disagreements with Candidate's Administration which are based on no admissible evidence. The purported evidence is not admissible as it lacks foundation and is hearsay with conclusory statements. The Motion claims Objectors' Petition lacks any plausible allegation Candidate personally engaged in providing "aid or comfort" to an enemy of the United States. Candidate also preserves the issues involving the Board's authority to disqualify a candidate under Section Three of the Fourteenth Amendment of the United States Constitution. Finally, the Motion argues there is no historical precedent for keeping someone off the ballot for policy disagreements and since Objectors failed to allege any credible facts the Motion should be granted.

On January 23, 2024, Objectors filed a Response to Candidate's Motion to Dismiss ("Response"). The Response argues Candidate is not qualified for office as specified in Candidate's Statement of Candidacy because Candidate has "previously sworn an oath as a member of congress…….to support the Constitution" and Candidate has given "aid or comfort to the enemies [of the United States], which is not permissible under Section Three of the Fourteenth Amendment of the United States Constitution. The Response also argues that Objectors have fully stated the nature of their objection through legal argument as well as with exhibits taken from public record which should be considered *prima facie* true as findings of public record. Objectors request the Hearing Officer to take judicial notice of multiple matters.

On January 23, 2024, Candidate filed a Case Management Status Report. The Status Report stated, (1) the legal issues are summarized and argued in Candidate's Motion to Dismiss Objectors' Petition; and (2) the Parties enter no factual stipulations. Objectors did not file a Status Report as required by the Initial Case Management Order.

On January 25, 2024, Candidate filed a Reply to Objectors' Response to Candidate's Motion to Dismiss. First, Candidate argues Candidate's Motion to Dismiss should be granted because Objectors' Petition alleges policy disagreements with Candidate along with conclusory

statements that aid or comfort was provided to enemies of the United States but the alleged facts in Objectors' Petition do not plausibly allege that Candidate provided aid or comfort to enemies of the United States. Candidate cites *Iqbal. Anderson* v. *Vanden Dorpel, 661* N.E.2d 1296, 1300 (1996) and states that Illinois is a fact pleading state and conclusions of law and conclusory allegations unsupported by specific facts are not sufficient to survive a motion to dismiss. Candidate further argues that none of the exhibits provided with Objectors' Petition are admissible because these exhibits are copies that have not been "certified as correct" (Ill. R. Evid 1005) and they should not be admitted into evidence as public records and the Objectors' Petition should be dismissed. Finally, Objectors' request the Hearing Officer and the Board take judicial notice of various matters, including "the real world implications of the negligence which occurs at the direct and willful discretionary authority of the Candidate in his official capacity as he holds public office, and documentation thereof has been submitted from public records as exhibits to the Objectors' Petition" should be rejected because Objectors' Petition and the exhibits do not meet the standards for judicial notice found in *People v. Taylor, 95 Ill.App.2d 130, 137 (1st Dist. 1968)* and *People* v. *Davis,* 65 II1.2d 157, 165 (1976).

A hearing was held on Friday, January 26, 2024, at the State Board offices in Chicago and Springfield starting at approximately 11:00 a.m. The Hearing Officer, court reporter, and Objectors, Shane Bouvet, Timothy Conrad, and Peggy Hubbard were present in Springfield. Candidate, through his counsel, and Objector, Terry Newsome, were present in Chicago and appeared by video. Oral argument was heard from the parties as to the Pending Objection and Motion to Dismiss. Counsel for Candidate objected to Objectors' Petition based upon among other things the lack of admissible facts to support the objection and the objection merely recited a dispute over Candidate's Administration's immigration policies and the impact of those policies but did not assert any lack of qualifications of Candidate to be placed on the ballot. Candidate requested the pending motion be granted and a hearing on the merits not take place. During their argument, Objectors moved for the admission of three sets of exhibits (A, B and C). Two sets of the exhibits (A and B) were supplements to the attachments to the Petitioners' Objection. The request to admit these three sets of exhibits at the hearing was denied by the Hearing Officer as untimely[1] and an improper attempt to amend their Objection Petition. Objectors also sought the Hearing Officer to take judicial notice of certain facts as set forth in their Response.[2] No further evidence was admitted, and no testimony was taken.

[1] Objectors failed to timely disclose the offered exhibits as required by the Initial Case Management Order and presenting them to Candidate's counsel and the Hearing Officer for the first time during the hearing.

[2] Objectors request judicial notice be taken "of the official capacities, the extent of authority, and the scope of the duties of the Candidate as he holds his public office", "of the real world implications of the negligence which occurs at the direct and willful discretionary authority of the Candidate in his official capacity as he holds his public office, and documentation thereof has been submitted from public record as Exhibits", and "Candidate' Biden's Oaths of office . . . .and how . . . . [it] applies to Candidate Biden in a way that is does not to other Candidate(s) who have not taken the same oath." Objectors' multiple requests for judicial notice are denied by the Hearing Officer as they do not meet the standards for judicial notice, are disputed, and are not the types of assertions commonly admitted into evidence using judicial notice. *People v, Taylor*, 95 Ill.A..2d 130, 137 (1st Dist. 1968) ("Illinois courts may take judicial notice of facts known to be true."); *People v. Davis*, 65 Ill.2d 157, 165 (1976) (judicial notice may be taken of facts not generally known if they are readily verifiable from sources of undisputed accuracy); *In re A.B.*, 308 Ill. App. 3d 227, 237 (2nd Dist. 1999) ("A court may take judicial notice of matters generally known to the court and not subject to reasonable dispute.").

ANALYSIS

"[A]ccess to a place on the ballot is a substantial right and not to be lightly denied." *Siegel v. Lake Cnty. Officers Electoral Bd.*, 385 Ill. App. 3d 452, 460 (2d Dist. 2008) (citations omitted).

A. Objectors' Petition Raises Issues Outside the Board of Election's Scope of Inquiry as to Whether Candidate's Nominating Papers Comply with the Election Code Because it Requires the Board to Address Issues Involving a Complex Federal Constitutional Analysis

Objectors' Petition states "Candidate's nomination papers are not valid because when he swore in his Statement of Candidacy that he is 'qualified' for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely." Objectors' further state that Candidate "cannot satisfy the eligibility requirements for the Office of the President of the United States established in Section 3 of the Fourteenth Amendment of the U.S. Constitution. Under Section 3 of the Fourteenth Amendment to the U.S. Constitution, known as the Aid or Comfort Disqualification Clause, "No person shall. . . . hold any office, civil or military, under the United States, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof." Objectors' Petition sets forth how Objectors believe Candidate "has given aid or comfort to the enemies thereof and is therefore disqualified from public office under Section 3 of the Fourteenth Amendment."

Candidate's Motion to Dismiss states: "The Board currently has other cases pending before it that involve the issue of whether it has authority to disqualify a candidate under Amendment XIV, Section 3 of the United States Constitution. The Candidate submits that the Board's ruling in those cases on the question of the Board's authority should govern in this case, and the Candidate seeks to preserve the issue of the Board's authority by way of this pleading." Given Candidate's incorporation and preservation of the Board's authority to rule on the current objection, the Hearing Officer will address the Board's authority.

"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*).* In *Delgado,* the Illinois Supreme Court found that the Election Board (City of Chicago) exceeded its authority when it overruled the Hearing Officer's recommendation and concluded that a provision of the Illinois Municipal Code was unconstitutional: "Administrative agencies such as the Election Board have no authority to declare a statute unconstitutional or even to question its validity. (Cites omitted). In ruling as it did, the Election Board therefore clearly exceeded its authority." *Id., at 485.*

The Illinois Supreme Court in, *Goodman v. Ward*, 241 Ill.2d 398 (2011), further illustrated the limits of an Election Board's authority. In *Goodman,* Ward filed a petition with the electoral

board to have his name placed on the ballot as a candidate for circuit judge. At the time he filed his petition, Ward was not a resident of the subcircuit he wanted to run in. Two of the three officers of the electoral board decided that Ward could appear on the ballot because governing provisions of the Illinois Constitution were "arguably ambiguous and uncertain." The Court affirmed the lower court's reversal of the electoral board, holding, ". . . . the electoral board overstepped its authority when it undertook this constitutional analysis. It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Goodman, at 414-415.*

The Illinois Supreme Court in these two decisions has placed limits on what an electoral board can consider when ruling on an objection. In *Delgado,* the Court makes it clear that an electoral board may not, in performing its responsibilities in ruling on an objection, go so far as to even question the constitutionality of what it considers to be a relevant statute. The language in *Goodman* extends this prohibition when it uses the language of "constitutional analysis." Thus, an electoral board goes too far not just when it holds a statute unconstitutional but also goes too far when it enters the realm of constitutional analysis. Instead, as the Court wrote, "It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Id., at 414-415.*

The question, then, is whether the Board can decide whether candidate Biden is disqualified by Section Three of the Fourteenth Amendment, without embarking upon a constitutional analysis. It simply cannot. It is impossible for the Board to decide whether Candidate is disqualified by Section Three without engaging in a significant and sophisticated constitutional analysis. These constitutional issues belong in the Courts.

Moreover, the Election Code and the Rules of Procedure adopted by the Board, indicate these matters are handled on an expedited basis with the intent for the Board to handle matters quickly and efficiently to resolve ballot objections so that the voting process will not be delayed or bogged down in protracted litigation. This is evident by the timeline (and deadlines) in the pending case and the lack of any real discovery. With the Rules guaranteeing an expedited handling of cases and with limited available discovery, the Election Code is simply not suited for issues involving complex constitutional analysis. Accordingly, Objectors' Petition should be dismissed as the Board is without authority to disqualify a candidate under Section Three of the Fourteenth Amendment to the United States Constitution.

B. If Determined to be Within the Board's Scope of Inquiry The Objection Should Be Dismissed

If it is determined this matter is within the Board's scope of inquiry, Objectors' Petition should be dismissed for the additional reasons stated in Candidate's Motion to Dismiss. Objectors' Petition asserts Candidate has filed a false Statement of Candidacy because he is not qualified for the office of the President of the United States. The allegation to support the claim Candidate is not qualified for office is based upon the assertion he provided aid or comfort to the enemy. See U.S. Const. amend. XIV, § 3. The aid and comfort allegations are based upon Candidate's Administration's immigration and border security policy and the alleged impacts of those policies. Factual allegations setting forth the dislike of Candidate's policies and his

performance while in office are not a factual basis to disqualify a Candidate from the ballot. Asserting conclusory and causally dubious connections to those disliked policies also fail to factually establish any basis to disqualify Candidate.

Noticeably absent from Objectors' Petition are any factual allegations that Candidate personally engaged in providing aid or comfort to an enemy of the United States as contemplated by Section Three of the Fourteenth Amendment. Objectors' reliance upon a policy decision of Candidate's Administration that they or others may disagree with, in this case, simply does not rise to the level of pleading to support an allegation of providing aid or comfort to an enemy. The Hearing Officer believes Objectors' Petition fails to allege any factual basis to establish a colorable claim to remove Candidate from the ballot.

Moreover, the plain wording of Section Three of the Fourteenth Amendment to the United States Constitution does not apply to the office of President of the United States.[3] The President is not listed in the hierarchy list of offices set forth in and governed by Section Three. The office of President and Vice President were removed from previous drafts of Section Three prior to its ultimate adoption. Accordingly, the Hearing Officer believes Section Three of the Fourteenth Amendment has no application.

Finally, Objectors cite no caselaw to support their position that a disagreement with the immigration policies of a sitting president or dissatisfaction with his performance while in office is a basis for preventing him to be placed on the ballot under Section Three of the Fourteenth Amendment to the United States Constitution.[4] Accordingly, the Hearing Officer believes Objectors' Petition also fails to allege a legally recognized basis to remove Candidate from the ballot and should be dismissed.

C. If the Merits are Considered There is No Evidence of Candidate Providing Aid or Comfort

If the Board determines Section Three of the Fourteenth Amendment is deemed applicable to Candidate and the evidence proffered by Objectors regarding Candidate's Administration's Immigration Policies should be considered, the evidence presented does not establish Candidate provided aid or comfort to the enemy as contemplated by the United States Constitution. In the opinion of the Hearing Officer, there was no competent, admissible, and relevant evidence[5] presented by Objectors to support a challenge to Candidate's Statement of Candidacy asserting he was not qualified for office because he had aided or comforted the

[3] This issue is currently pending before the United States Supreme Court.

[4] During oral argument, Objectors acknowledge they have been unable to locate any caselaw to support their theory.

[5] The attachments to Objectors' Petition as argued by Objectors consists of hearsay evidence; evidence lacking the proper foundation; evidence consisting of conclusions, rather than fact; and consists of documents not certified consisted with Rule 902 as required by Ill. R. Evid. 1005. In addition to these infirmities, if the evidence is deemed admissible under the relaxed evidentiary rules as adopted by the Board, the Hearing Officer does not believe any of the purported evidence is relevant in any way to the adequacy of Candidate's Statement of Candidacy and should not be considered as to whether Candidate's name should appear on the ballot. To the extent any of the evidence can be considered relevant or admissible under the relaxed evidentiary rules adopted by the Board, given the above infirmities, the weight and credibility given to the evidence should be discounted and still does not meet Objectors' burden to have their Petition granted.

enemy. There was simply no evidence presented Candidate provided aid or comfort to the enemy and as a result his Statement of Candidacy was falsely sworn.

The evidence presented shows disagreements with Candidate's Administration's immigration policies, characterizations of such policies, attacks of such policies, conclusory allegations regarding the impact of such polices, and unsubstantiated assertions regarding those policies. Those that disagree with the immigration policies of the administration of a sitting president are not able to shape a narrative to turn disputed immigration policies and the alleged impact of those policies into a constitutional basis for preventing a candidate to be placed on the ballot. Objectors failed to present the required type and degree of evidence to show Candidate was personally engaged in aiding or comforting the enemy as contemplated by the United States Constitution. A disagreement as to immigration policies is simply not enough, there needs to be more. Here there is not more.

The situation asserted in Objectors' Petition is simply not the type of situation contemplated by Section Three of the Fourteenth Amendment, even if applicable. Thus, even if the Motion to Dismiss is denied, the evidence attached to the Objection is considered, and the merits of the Objection are reviewed, it is recommended the Objection be overruled and Candidate's name be placed on the ballot.

Accepting Objectors' argument would lead to the absurd result where the Electoral Board is called on to rule upon a candidate's previous performance in office and/or the effects of their previous policies and whether adopting and implementing those policies disqualify them from office. It is this Hearing Officer's opinion that disagreements with a candidate's policies are more appropriately addressed by voters at the ballot box.

Conclusions

It is recommended Candidate's Motion to Dismiss Objector's Petition be granted as Objectors' Petition raises issues outside the Board of Election's scope of inquiry as to whether Candidate's nominating papers comply with the Election Code because it requires the Board to address issues involving a complex Federal Constitutional analysis.

If this matter is found to be with the Board's scope of inquiry, it is recommended Candidate's Motion to Dismiss Objectors' Petition be granted because Objectors' Petition fails to factually and legally state a viable basis for an Objection and the allegations involving Candidate's immigration and border security policies do not equate to providing aid or comfort to the enemies of the United States.

However, if the Board disagrees with the granting of the Motion to Dismiss Objectors' Petition, it is recommended Objectors' Petition be overruled on the merits and Candidate be placed on the ballot.

Because Candidate **HAS** submitted a valid Statement of Candidacy as set forth in the Election Code, the Hearing Officer recommends that Candidate's name **BE PLACED** on the

ballot as a candidate for the Democratic Nomination for the Office of the President of the United States.

DATED: January 27, 2024 /s/ David A. Herman
David A. Herman, Hearing Officer

CERTIFICATE OF SERVICE

The undersigned certifies that on this 27th day of January, 2024, service of the foregoing document was made by electronic transmission from the office of the undersigned to the following individuals:

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/s/ David A. Herman
David A. Herman

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE UNITED STATES

Shane Bouvet, Timothy Conrad, Terry Newsome, Peggy Hubbard	)	
Petitioner-Objectors,	)	**24-SOEB-GP-119**
v.	)	
Joseph R Biden Jr,	)	
Respondent-Candidate.	)	

NOTICE OF FILING

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PLEASE TAKE NOTICE that on January 19, 2024, I filed with the State Officers Electoral Board the attached Motion to Dismiss Objectors' Petition, a copy of which is hereby served upon you.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Motion to Dismiss Objectors' Petition was served upon the persons referenced above via e-mail before 5:00 p.m. on January 19, 2024.

/s/ James M. Morphew

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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE UNITED STATES

Shane Bouvet, Timothy Conrad, Terry Newsome, Peggy Hubbard	)	
Petitioner-Objectors,	)	**24-SOEB-GP-119**
v.	)	
Joseph R Biden Jr,	)	
Respondent-Candidate.	)	

MOTION TO DISMISS OBJECTORS' PETITION

NOW COMES Respondent-Candidate Joseph R Biden Jr (hereinafter "Candidate"), by and through his attorneys, Kevin M. Morphew and James M. Morphew, and for his Motion to Dismiss the Objectors' Petition, states as follows:

A. Ballot Access is a Substantial Right that May Not be Lightly Denied

It is well established that ballot access is a substantial right that may not be lightly denied. *Welch v. Johnson*, 588 N.E.2d 1119 (1992); *Cunningham v. Schaeflein*, 969 N.E.2d 861 (1st Dist. 2012). Accordingly, courts go to great lengths to interpret election laws to define ballot access liberally. *Socialist Workers Party v. Chicago Board of Election Commissioners*, 566 F.2d 586 (7th Cir. 1977). The policy of the State of Illinois generally favors candidate eligibility and ballot access. *Bettis v. Marsaglia*, 23 N.E.3d 351, 387 (2014); *Maksym v. Board of Election Commissioners of City of Chicago*, 950 N.E.2d 1051, 1069 (2011).

B. The Objectors' Petition Fails to Allege Sufficient Plausible Facts that would Entitle Objectors to the Relief Requested

For a petitioner to survive a motion to dismiss, the complaint must contain sufficient factual matter to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678

(2009). A claim is plausible when it contains factual content that supports a reasonable inference that the defendant is liable for the harm caused. *Id.* When making a plausibility determination, the court relies on its "judicial experience and common sense." *McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011).

Here, the Objectors' Petition fails to allege plausible facts that would entitle the Objectors to the relief they request. Rather, the Objectors provide a lengthy and exhaustive list of policy disagreements with the Candidate's Administration – of which, none of the facts alleged are admissible evidence because they lack foundation and are hearsay – accompanied by several conclusory statements that seek to disqualify the Candidate for the office sought. What is lacking is any plausible allegation that the Candidate personally engaged in providing "aid or comfort" to an enemy of the United States. Providing "aid or comfort" to enemies is closely related to engaging in "insurrection" or "rebellion" and it is facially implausible to assert that the immigration policies of the President of the United States constitute an insurrection or rebellion against his own government.

If the Objectors' theory is correct, any citizen who disagrees with a policy decision by an officer of the United States can make a legitimate claim to block the official, despite meeting all other legal requirements, from the ballot. There is no historical precedent for keeping someone off the ballot for entirely ordinary policy disagreements, and accepting Objectors' theory would permanently destabilize elections and fatally undermine Illinois' commitment to ballot access.

Because the Objection fails to allege plausible facts that would entitle the Objectors to the relief they request, the Motion to Dismiss must be granted.[1]

[1] The Board currently has other cases pending before it that involve the issue of whether it has authority to disqualify a candidate under Amendment XIV, Section 3 of the United States Constitution. The Candidate submits that the Boad's ruling in those cases on the question of the Board's authority should govern in this case, and the Candidate seeks to preserve this issue of the Board's authority by way of this pleading.

WHEREFORE, for the foregoing reasons, the Candidate respectfully prays that the Motion to Dismiss be GRANTED in full, that the Objectors' Petition be DISMISSED and OVERRULED, and that the name of Joseph R Biden Jr be printed on the ballot for the Office of President of the United States to be voted on at the General Primary Election to be held on March 19, 2024.

Respectfully submitted,
JOSEPH R BIDEN JR, Candidate

BY: /s/ Kevin M. Morphew

Kevin M. Morphew
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BEFORE THE DULY CONSTITUTED STATE ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS

IN THE MATTER OF OBJECTIONS BY:	)	
	)	
Shane Bouvet, Timothy Conrad,	)	
Terry Newsome, Peggy Hubbard	)	No. 24-SOEBGP-119
Petitioners-Objectors	)	
	)	
V.	)	
	)	
Joseph R Biden, Jr.	)	
Respondent-Candidate	)	

NOTICE OF FILING

TO:

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Hearing Officer
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CC:

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Peggy Hubbard, Objector
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Terry Newsome, Objector
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PLEASE TAKE NOTICE that on the 23rd of January, 2024, I filed with the State Officers Electoral Board the attached response to Cadidate's "Motion to Dismiss Objectors' Petition", a copy of which is hereby served upon you.

The undersigned certifies that a copy of this response was served upon the persons referenced above via email before 5 o'clock p.m. on 23rd of January, 2024.

Timothy Conrad, Objector *pro se*
24516 W Emyvale, Plainfield, Illinois
1017pm@gmail.com

BEFORE THE DULY CONSTITUTED STATE ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS

IN THE MATTER OF OBJECTIONS BY:	)	
	)	
Shane Bouvet, Timothy Conrad,	)	
Terry Newsome, Peggy Hubbard	)	No. 24-SOEBGP-119
Petitioners-Objectors	)	
	)	
V.	)	
	)	
Joseph R Biden, Jr.	)	
Respondent-Candidate	)	

Objectors' Response Candidate's "Motion To Dismiss Objectors' Petition"

NOW COME Objectors *pro se* Shane Bouvet, Timothy Conrad, Terry Newsome, and Peggy Hubbard (hereafter "Objectors"), in their response to Candidate Joseph R Biden, Jr. (hereafter "Candidate")'s "Motion to Dismiss Objectors' Petition," and state as follows:

A. While Ballot Access is a Substantial Right, the Candidate must adhere to the mandatory provisions of statute, such as being duly qualified for the office in which they seek, lest they be disqualified from the ballot (Goodman v. Ward, 948 N.E.2d 580 (2011))

10 ILCS 5/10-5 in relation to the "Candidate's Statement of Candidacy" reads in relevant part, "Each such statement [of candidacy] shall set out the address of such candidate , the office for which he is a candidate, shall state that the candidate is qualified for the office specified and has filed a statement of economic interest as required by the Illinois Governmental Ethics Act." (Emphasis added) Objectors assert that the Candidate is not qualified for that office as would be required here pursuant to the provisions of the United States Constitution.

The explicit Qualifications for the office which Candidate Biden seeks are found in the United States Constitution, among other statutory requirements, and Objectors ask Judicial

Notice of the words contained therein as the determining factor of Candidate Biden's qualification of office:

a. Article II, Section 1, Clause 5 reads "No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States." The Objectors do not dispute this conditional qualification of office.

b. Amendment XIV, Section 3 reads "No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability." (Emphasis added) This is the qualification in which petitioners dispute: Candidate Biden, having both "previously sworn and oath as a member of Congress...to support the Constitution" and, as alleged in Objectors' Petition, given "aid or comfort to the enemies [of the United States]" is not qualified for the office he seeks.

Candidate Biden's "Substantial Right to Ballot Access" does not supersede the right of The People's public trust of the State Electoral Board's obligation to adhere to the Constitutional

Requirements of office, nor the Constitutional Obligations to be qualified for office as required by the Highest law of the land, explicitly in the text therein.

B. Candidate's motion, section B, claims a lack of factual information.

10 ILCS 5/10-8 reads in relevant part "The objector's petition... shall state fully the nature of the objections, to the certificate of nomination or nomination papers..." Objectors have fully stated the nature of their objection, as well as thorough legal argument, including exhibits taken from public record which, as a matter of public record, would be considered *prima facie* true as findings of public record.

Statute provides no presumption that a Candidate's nomination papers are *bona fide* (Daly v Stratton, 215 F. Supp. 244 (N.D. Ill. 1963)). As such in a Motion to Dismiss, the allegations of the objection are to be viewed as true and in a light most favorable to the objector, and as such entitle Objectors' petition to hearing on its merits in good faith.

Objectors' exhibits contain documentation from public record that show more than plausibility, but congressional finding, among other things, which support Objectors' plausible allegation of Candidate's "aid and comfort." These exhibits are not a matter of "policy disagreement," but a matter of finding revealing facts of the real world implications of the discretionary action of a public official (namely, the Candidate). The Motion to Dismiss does not take exception with any particular allegation, but rather provides a blanket "hearsay" objection without argument as to the admissibility of the facts provided in the objection and the attached exhibits. Public Record is not hearsay, but information subject to judicial notice at hearing as "generally known within the territorial jurisdiction" (Ill. R. Evid. 201(b)(1)) and "Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" (Ill. R. Evid. 201(b)(1)).

As a public official, Candidate Biden retains personal civil liability for the actions taken in his official capacity if it is at the direct discretionary authority of said official and as such cannot claim "Immunity of the Sovereign" by way of misrepresenting direct and willful actions of the Candidate as "policy." Generally, any public officer who acts wrongfully, although in good faith, is liable in a civil action and cannot claim the immunity of the sovereign (Cooper v. O'Connor, 99 F.2d 135 (D.C. Cir. 1938)). Objectors ask judicial notice of the official capacities, the extent of the authority, and the scope of the duties of the Candidate as he holds his public office. Objectors ask further judicial notice of the real world implications of the negligence which occurs at the direct and willful discretionary authority of the Candidate in his official capacity as he holds his public office, and documentation thereof has been submitted from public record as Exhibits to the Objectors' Petition.

Considering the findings of public record shown in Objector's exhibits submitted as evidence, it is plausible to assert that Candidate Biden, if executing his office in discretionary authority, could give direct "comfort and aid to the enemies of the United States" by nature of the extensive authority of that office, without regard to the legality of those actions, which would disqualify the Candidate from office. However, as stated multiple places in the objection, it is alleged that Candidate Biden has taken actions contrary to existing law and as such are *ultra vires*, not mere policy disputes.

Candidate further attempts and fails to equate "insurrection" with the "aid and comfort to enemies," which are two independant and different clauses, as exclusionary conditions of office enumerated in Amendment XIV, Section 3.

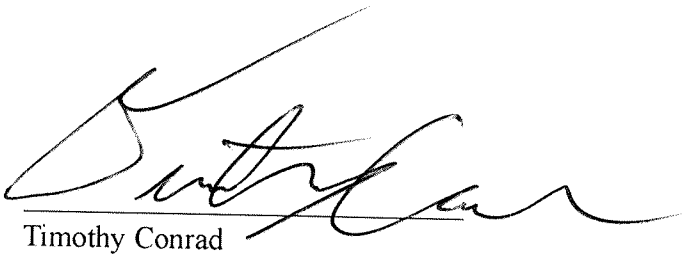
C. In a footnote of the Candidate's Motion, he falsely asserts that, in comparison to other cases currently before the board, this case be related with regards to Amendment XIV, Section 3.

Objectors ask judicial notice of Candidate Biden's Oaths of office "to support the Constitution…", as described in Amendment XIV, Section 3, as a member of the United States Senate and as President of the United States Senate (Vice President of the United States), and how Amendment XIV, Section 3 applies to Candidate Biden in a way that it does not to other Candidate(s) who have not taken that same oath. Objectors also ask that this Objection be heard on its own merits, without concern or relation to other cases before the board.

D. Because Candidate fails to provide a positive refutation of the Candidate's disqualification, based on the law, including consideration of the Highest Law of the Land, as alleged in Objectors' Petition, Candidate's Motion to Dismiss cannot be granted and these matters must be determined on their merits.

WHEREFORE the Objectors pray that this Electoral Board would deny Candidate's "Motion to Dismiss Objectors' Petition," grant the relief requested in the Objectors' Petition, and any further relief that is equitable and just.

Respectfully Submitted,



Timothy Conrad

With his Co-Objectors:
Shane Bouvet, Terry Newsome, and Peggy Hubbard

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

Shane Bouvet, Timothy Conrad, Terry Newsome, Peggy Hubbard

Petitioners-Objectors,

V.

Joseph R Biden, Jr.,

Respondent-Candidate.

ORIGINAL ON FILE AT STATE BD OF ELECTIONS ORIGINAL TIME STAMPED AT 1/12/2024 4:47 PM

Case No.

OBJECTORS' PETITION

Petitioners-Objectors Shane Bouvet, Terry Newsome, Peggy Hubbard, and Timothy Conrad ("Objectors") hereby file this Objectors' Petition pursuant to Article 10 of the Election Code and 10 ILCS 5/10-8 challenging the legal and factual sufficiency of the nomination papers of Respondent-Candidate Joseph R. Biden, Jr. ("Candidate" or "Biden") as a candidate for the Democrat Nomination for the Office of the President of the United States, and in support of their Petition state the following:

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

Objector Shane Bouvet resides at 408 Birch Street Stonington, IL 62567 and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

Objector Terry Newsome resides at 1516 Darien Club Drive, Darien, IL 60561 and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

Objector Peggy Hubbard resides at 5 Columbus Drive, Belleville, IL 62226 and is a duly qualified, legal, and registered voter at this same address within the State of Illinois.

Objector Timothy Conrad resides at 24516 W. Emyvale, Plainfield, IL 60586, and is a duly qualified, registered and legal voter at this same address within the State of Illinois

The Objectors' interest in filing this objection is that of citizens and voters desirous of seeing to it that the election laws of Illinois are properly complied with and that only duly qualified candidates for the Democrat Nomination for the Office of the President of the United States shall appear on the ballot for the General Primary Election on March 19, 2024.

Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate "Joseph R. Biden, Jr." shall not be printed on the official ballot as a candidate for the Democrat Nomination for the Office of the President of the United States for the March 19, 2024 General Primary or the November 5, 2024 General Election.

NATURE OF OBJECTION

> No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.
>
> U.S. Const. amend. XIV, § 3.

Candidate's nomination papers are not valid because when he swore in his Statement of Candidacy that he is "qualified" for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely. Biden cannot satisfy the eligibility requirements for the Office of the President of the United States established in Section 3 of the Fourteenth Amendment of the U.S. Constitution.

Under Section 3 of the Fourteenth Amendment to the U.S. Constitution, known as the Aid or Comfort Disqualification Clause, "No person shall ... hold any office, civil or military, under the United States, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

As set forth below, after having sworn an oath to support the Constitution of the United States,[1] Biden has given aid or comfort to the enemies thereof and is therefore disqualified from public office under Section 3 of the Fourteenth Amendment.

On December 19, 2023, the Colorado Supreme Court decided, in the only judicial interpretation of

[1] Mr. Biden was first elected to the United States Senate in 1972, elected six additional times, and elected as Vice-President of the United States in 2008 and 2012. Following each of those elections he swore an oath to support the Constitution of the United States.

Amendment XIV, Sec. 3 held that: "Congress does not need to pass implementing legislation for Section Three's disqualification provision to attach, and Section Three is, in that sense, self-executing", and "Section Three encompasses the office of the Presidency and someone who has taken an oath as President." *See Anderson* v. *Griswold,* _ P.3d _, 2023 CO 63, 2023 WL 8770111 (Colo. Dec. 19, 2023).

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

Since January 29, 2021, Candidate Biden has engaged in an ongoing series of actions that have provided aid or comfort to the enemies of the United States, including violations of not only his 2021 presidential oath, but also the series of oaths that he took as Senator and Vice-President.

Judicial interpretation of "aid and comfort" has arisen in the context of cases of treason against the United States. Treason is the only crime identified in the Constitution:

"Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort." US Const., Art, III, Sec. 3, Cl. 1

In *Cramer v. United States*, 325 U.S. 1 (1945), the Supreme Court favorably cited English definitions of "aid and comfort" as ". . . an act which strengthens or tends to strengthen the enemies" and "an act which weakens or tends to weaken the power ... of the country to resist or to attack the enemies . . . is . . . giving of aid and comfort." Id. 325 US at 29-30.

Two years later, the Supreme Court for the first time sustained a conviction for treason in *Haupt v. United States*, 330 U.S. 631 (1947). Of note in this case was that the defendant had provided

assistance to his son. He had sheltered his son, helped him find work and acquire a car. His son had been convicted by a military tribunal as a German saboteur. *Ex Parte Quirin*, 317 U.S. 1 (1942)

Defendant Haupt asserted that everything he did for his son were things any father would do. Justice Jackson's response for the Court to this argument was: "No matter whether young Haupt's mission was benign or traitorous, known or unknown to defendant, these acts were aid and comfort to him." *Haupt*, 330 U.S. at 635–36. Even actions that appear outwardly benign can be aid and comfort to enemies of the United States.

Exhibit A, BIDEN ADMINISTRATION ACTIONS THAT HAVE UNDERMINED BORDER SECURITY AND ENCOURAGED ILLEGAL IMMIGRATION, outlines 64 distinct actions that have provided aid or comfort to the enemies of the United States.

Modern authority agrees that no evidence or authority suggests that a prior criminal conviction whether under 18 U.S.C. § 2383 (insurrection) or any other statute-was ever considered necessary to trigger Section 3 of the Fourteenth Amendment. *Griswold,* 2023 WL 8770111, at *23

As discussed further in this objection, Candidate Biden, through his words and actions, after swearing an oath as United States Senator and an officer of the United States to support the Constitution, gave aid and comfort to its enemies, as defined by Section 3 of the Fourteenth Amendment. He is disqualified from holding the presidency or any other office under the United States unless and until Congress provides him relief, which it has not done.

AUTHORITY AND DUTY OF BOARD TO HEAR OBJECTION

The Electoral Board's authority and mandatory statutory duty indisputably includes determinations

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

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

The Illinois Supreme Court in *Goodman* directed that objections based on constitutionally-specified qualifications must be evaluated, including objections that a candidate has improperly sworn

that they meet constitutional qualifications for the office for which they seek candidacy. *Goodman*, 241 Ill. 2d at 409-10 ("The statutory requirements governing statements of candidacy and oaths are mandatory . . . . If a candidate's statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot").

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

Decisions of other Illinois courts track *Goodman* and recognize that electoral boards must apply constitutional criteria governing ballot placement. See Harned v. Evanston Mun. Officers Electoral Bd., 2020 IL App (1st) 200314, ("While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the first instance, if a proposed referendum is permitted by law, even where constitutional provisions are implicated"); Zurekv. Peterson, 2015 IL App (1st) 150456, (unpublished) (recognizing that while "the Board does not have the authority to declare a statute unconstitutional [, this] does not mean that the Board had no authority to consider the constitutionally-based challenges" and that to determine whether the referendum "was valid and whether the objections should be sustained or overruled, the Board was required to determine if the referendum was authorized by a statute or the constitution").

Consistent with these decisions, Illinois electoral boards have frequently evaluated objections based on constitutional candidacy requirements. See, e.g., Freeman v. Obama, No. 12 SOB GP 103 (Feb. 2, 2012) (evaluating objection that candidate did not meet qualifications for office of President of the United States set out in Article II, Section 1 of the U.S. Constitution); Jackson v. Obama, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); Graham v. Rubio, No, 16 SOEB GP 528 (February 1, 2016) (State Officers Electoral Board determining eligibility based on whether facts presented about candidate established he met natural born citizen requirement of U.S. Constitution); Graham v. Rubio, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board, determining that the Electoral Board was acting within the scope of its authority in reviewing the adequacy of the Candidate's Statement of Candidacy and evaluating whether it was "invalid because the Candidate is not legally qualified to hold the office of President" based on criteria in the U.S. Constitution); see also Socialist Workers Party of Illinois v. Ogilvie, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (approving Electoral Board's decision not to place presidential candidate who did not meet constitutional age qualification on ballot and denying motion for preliminary injunction to enjoin decision).

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

these constitutional requirements, fall directly within the Electoral Board's jurisdiction and mandatory duties.

The Board's evaluation of this objection to the Candidate's constitutional eligibility criteria follows the Election Code and the Illinois Supreme Court's direction in *Goodman* that the board must evaluate a candidate's statement of candidacy that they are "qualified" for the office at the time the nomination papers are filed because "statutory requirements governing statements of candidacy and oaths are mandatory." 241 Ill. 2d at 409-10; see also Delgado v. Bd. of Election Comm'rs of City of Chicago, 224 Ill. 2d 481, 485-86 (2007) (differentiating the impermissible action of an electoral board's "question[ing] its validity" of underlying legal prerequisites from the required action of an electoral board applying a constitutional provision).

To do so, the Electoral Board has the ability, and indeed the clear obligation, when necessary to evaluate evidence and resolve complex factual issues. The Board is obligated to "decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained". 10 ILCS 5/10-10.

To fulfill that responsibility, the Board "shall have the power to administer oaths and to subpoena and examine witnesses" and to require "the production of such books, papers, records, and documents as may be evidence of any matter under inquiry ...." Id. Electoral boards and their hearing officers indeed utilize this power to hear and evaluate the credibility of high volumes of witness testimony and documentary evidence in an expedited manner whenever necessary to fulfill their mandate. See, e.g., Raila v. Cook Cnty. Officers Electoral Bd, 2018 IL App (1st) 180400-U, ,J,J 17-27 (unpublished) ("the hearing officer heard testimony from over 25 witnesses and the parties introduced over 150 documents and a short video clip" and "issued a 68-page written recommendation that contained his summary of the testimony and documentary evidence"); Muldrow v.

Barron, 2021 IL App (1st) 210248, (electoral board properly made factual finding of widespread fraud based on determinations as to the credibility of witnesses' testimony).

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

STATEMENT OF FACTS

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

BIDEN TOOK AN OATH TO SUPPORT THE UNITED STATES CONSTITUTION WITHIN THE MEANING OF AMENDMENT XIV, SEC. 3

Joseph R. Biden was first elected to the United States Senate in 1972. He was subsequently reelected in 1978, 1984, 1990, 1996, 2002 and 2008. Following each of those elections he took the following oath:

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." https://www.senate.gov/about/origins-foundations/senate-and-constitution/oath-of-office.htm

In 2008 and 2012 he was elected Vice-President, and the prescribed oath for that office is the same as for a United States Senator and Biden took that oath twice.

The language of Amendment XIV, sec. 3 covers persons "who, having previously taken an oath, as a member of Congress … to support the Constitution of the United States…"

The oath taken by Biden as United States Senator (member of Congress) and Vice-President (who is also President of the Senate) clearly brings him under the coverage of Section 3.

Though Biden took another oath on January 20, 2021, it was the presidential oath prescribed by the Constitution in Article II. That oath is as follows:

"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

The presidential oath does not include the "support the Constitution" language of Section 3, but the prior nine oaths Biden took do contain the specific language referred to in Section 3. He is a person covered by that section.

FAILURE TO ENFORCE THE LAWS OF THE UNITED STATES

Beginning January 20, 2021, Joseph Biden has intentionally declined to enforce laws of the United States, particularly in relation to the security of our country's border. Exhibit A, BIDEN ADMINISTRATION ACTIONS THAT HAVE UNDERMINED BORDER SECURITY AND ENCOURAGED ILLEGAL IMMIGRATION, outlines 64 distinct actions taken by, at the direction, or with the approval of Biden. These actions have provided aid or comfort to the enemies of the United States, the disqualifying criterion found in Sec. 3.

Among the 64 actions listed are active, intentional acts contrary to the laws of the United States, and not discretionary policy choices including but not limited to:

- Illegal diversion of funds allocated for border wall
- Flouting court orders declaring DACA illegal
- Illegally declared a moratorium on deportations

- Contrary to law, creating unauthorized alternatives to removal
- Illegally exempted Unaccompanied Alien Children from Title 42
- Illegally instituted Central American Minors Program contrary to federal statute governing family based immigration procedures
- Following the Catch and Release protocol contrary to congressional mandate that illegal aliens "shall be detained"
- Cancellation of wall construction by Dept. of Defense as authorized by Congress
- Release of over 150,000 aliens without a Notice to Appear in court contrary to law
- Issuance of a memorandum that states "the fact an individual is a removable [alien] should [not be the sole] basis of an enforcement action", contrary to law
- Suspended large-scale worksite enforcement, a key tool to deter the hiring and employment of illegal aliens, intentionally not enforcing the law
- Created a program that included alternatives to detention (ATD) plus parole, resulting in "catch and release" for hundreds of thousands of aliens into the U.S. interior after they were encountered at the border (338,000 aliens were released in Fiscal Year 2022 alone) contrary to law
- Expanded unlawful parole programs to include individuals from Colombia, El Salvador, Guatemala, and Honduras
- Allow Immigration Judges to administratively close or dismiss removal proceedings without any action (something not permitted by statute), resulting in no decision denying asylum.

The United States House of Representatives has begun an impeachment investigation regarding Department of Homeland Security Secretary Alexander Mayorkas. Secretary Mayorkas serves at the pleasure of Joseph Biden and the actions of Mayorkas are directly attributable to Biden as his agent.

Under Article II of the Constitution, the President is responsible for the execution and enforcement of laws created by Congress. Fifteen executive departments—each led by an appointed member of the President's Cabinet—carry out the day-to-day administration of the Federal Government as directed by the President. https://trumpwhitehouse.archives.gov/about-the-white-house/the-executive-branch/

The Secure Fence Act of 2006 (Public Law 109–367) requires the Secretary of Homeland Security to take all actions "necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States [.]". The Act defines "operational control" as the "prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband."

During the Trump Administration, the Department of Homeland Security constructed approximately 450 miles of new and replacement border wall system; an additional 285 miles were either under construction or in the pre-construction phase at the end of the Trump Administration in January 2021. Under Secretary Mayorkas's direction, the Department of Homeland Security terminated contracts for additional border wall construction despite funds being appropriated by Congress for this purpose. The Secretary's action, as the agent of Joseph Biden, has left key portions of the southern border unsecure and cost American taxpayers billions of dollars.

Secretary Mayorkas reinstituted the catch and release policies of the Obama/Biden administration and has even released inadmissible aliens into the interior of the United States without issuing the aliens notices to appear for immigration proceedings. The Biden Administration is relying on the

aliens to report on their own volition to U.S. Immigration and Customs Enforcement offices to be placed into removal proceedings, a practice that violates the law and defies logic and common sense. Department of Homeland Security data show that over 80 percent of these released illegal aliens are failing to report to a U.S. Immigration and Customs Enforcement field office.

On May 13, 2021, Secretary Mayorkas admitted during testimony before the Senate Committee on Homeland Security and Governmental Affairs that U.S. Customs and Border Protection was releasing inadmissible aliens, whom the Department of Homeland Security is legally required to detain, into the interior of the United States. This was an admission that the Biden Department of Homeland Security is violating the law.

Secretary Mayorkas terminated the Migrant Protection Protocols, which provided a lawful pathway to process claims and served as a deterrent to illegal immigration and aliens making fraudulent asylum claims.

Secretary Mayorkas has even refused to tell aliens not to attempt to enter the United States illegally. During a White House press briefing on March 1, 2021, Secretary Mayorkas stated, "We are not saying, 'Don't come'."

As a result of the Biden Administration's actions, the border and the country are less secure today than when the Administration took office on January 20, 2021. U.S. Customs and Border Protection encounters have increased each month since January, 2021. Since February 2021, more than 800,000 aliens have been encountered by U.S. Customs and Border Protection personnel at the southwest land border. This number does not include the increasing number of "got aways", aliens who have evaded Border Patrol apprehension, of which there have been estimated to be approximately 1,000 per day.

In addition to illegal aliens, Biden Administration actions have led to a significant increase in illegal drug smuggling across the southern border and encouraged aliens to enter the United States

illegally, instead of taking actions to maintain operational control of the border. These actions have subverted the will of Congress and the core tenants of the Constitution.

In furtherance of the impeachment investigation of Secretary Mayorkas, the Committee on Homeland Security has issued a series of reports.

Attached as Exhibit B is CAUSES, COSTS, AND CONSEQUENCES, the committee's preliminary report which outlines in great detail the lawless actions of the Biden Administration when it comes to US Border Security.

Attached as Exhibit C, EMBOLDENED CARTELS, CRIMINALS, AND AMERICA'S ENEMIES which provides great detail in how Joseph R. Biden has given aid or comfort to enemies of the United States.

Continuing the pattern of lawlessness, recently released video footage reveals that Biden's DHS is continuing to mass release border crossers and illegal aliens directly into the U.S. interior. The footage shows "a large number of single adult illegal immigrants," being released onto buses in Brownsville, Texas.

The footage comes as new data unveiled that Biden, in the first 10 months of 2021, helped fly nearly 45,000 border crossers and illegal aliens into the U.S. on domestic commercial flights — allowing them to bypass, contrary to existing laws and regulations, standard photo ID requirements that Americans legally must follow. This is in addition to the more than half a million illegal aliens that were released into the U.S. interior in all of last year.

Throughout the last year, the orders successfully freed into the U.S. illegal aliens accused and convicted of child sex crimes, armed robbery, drunk driving, burglary, cocaine trafficking, grand theft auto, heroin trafficking, credit card fraud, money laundering, and other crimes.

https://www.breitbart.com/politics/2022/01/25/angel-families-dhs-chief-mayorkas-biden-criminally-aiding-illegal-aliens

ENEMIES OF THE UNITED STATES

What or who are enemies of the United States? Some legal definitions and candidates:

*Cornell Law School: any country, government, group, or person that has been engaged in hostilities, whether or not lawfully authorized, with the United States {SOURCE 50 USC 2204(2)}

18 USC Section 2381: a person who feels hatred for, fosters harmful designs against, or engages in antagonistic activities against another.

Thus, to sell to, or provide arms or munitions of war, or military stores, or supplies, including food, clothing, etc., for the use of the enemy, is within the penalty of the statute. And to hire, sell, or furnish boats, railroad cars, or other means of transportation, or to advance money, or obtain credits, for the use and support of a hostile army is treasonable. It is equally clear that the communication of intelligence to the enemy by letter, telegraph, or otherwise, relating to the strength, movements, or position of the army, is an act of treason. These acts, thus briefly noted, show unequivocally an adherence to the enemy, and an unlawful purpose of giving him aid and comfort.

*Dictionary.com: a person who is actively opposed or hostile to someone or something

*Merriam-Webster (p 260): One that tries to hurt or overthrow or that seeks the failure of another

*Bible- one who feels or behaves in a hostile manner

List of enemies of the United States:

China (non-ally), Iran (non-ally), North Korea (non-ally), Iraq, Libya, Somalia, Pakistan, Russia, and Afghanistan (2021 withdrawal), Yemen, Venezuela, Belarus, and Mexico-Cartel {source: worldpopulationreview.com}

AID OR COMFORT AND SPECIFIC ENEMIES

CHINA

Unprotected border and non-existent border enforcement has fostered a relationship between China and Mexican drug cartels, including Sinoloa and The Jalisco New Generation Cartel also

known as CJNG.

China's Role in the Illicit Fentanyl Business: China is the principal source country of illicit fentanyl and fentanyl-related compounds in the U.S., according to U.S. Customs and Border Protection. Fentanyl analogs and precursor chemicals used to make fentanyl are illicitly manufactured in Chinese labs and then sold on the Darknet and shipped in bulk to the U.S. and Mexico.

https://www.cbp.gov/newsroom/national-media-release/dhs-doubles-down-cbp-efforts-continue-combat-fentanyl-and-synthetic

China has been accused of weaponizing and capitalizing on the fentanyl crisis in the U.S. as the supplier of chemicals to the Mexican cartels and as the money launderers for these transnational criminal organizations. Chinese nationals are increasingly involved in illicit fentanyl operations in Mexico. The Zheng DTO (Drug Trafficking Organization), colloquially known as "Los Zheng," operates through multiple shell companies that seemingly offer legitimate services such as chemical labs, veterinary care, computers, and retail. Mexican intelligence officials have described the Zheng cartel as having the largest presence in Mexico for trafficking fentanyl and methamphetamines. The Zheng cartel has developed extensive relationships with suppliers in China, can easily import goods from China into Mexico, and has cultivated relationships on both sides of the U.S.-Mexico border and with both the Sinaloa and Jalisco cartels. In 2018, the U.S. Attorney's Office in Cleveland indicted two Zheng cartel leaders on 43 counts of manufacturing and shipping fentanyl analogues and 250 other drugs to 37 states and 25 countries. This Chinese cartel appears to serve as an intermediary between chemical suppliers in China and cartels in Mexico.

Source: Homeland.house.gov

SINOLOA CARTEL

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border and with both the Sinaloa and Jalisco cartels. In 2018, the U.S. Attorney's Office in Cleveland indicted two Zheng cartel leaders on 43 counts of manufacturing and shipping fentanyl analogues and 250 other drugs to 37 states and 25 countries. This Chinese cartel appears to serve as an intermediary between chemical suppliers in China and cartels in Mexico including Sinoloa. Source: Homeland.house.gov

MS 13 Gang

The Southwest border is wide open. The evidence is clear: more than 5.5 million encounters; more than 1.5 million known gotaways since FY21; nearly 380,000 encounters of unaccompanied minors; and a record number of fentanyl poisonings in the United States, largely driven by drugs flooding across the Southwest border.

Transnational gangs like MS-13, whose motto is "kill, rape, control," are also taking advantage. A senior Border Patrol agent has said that gang members "attempt to evade arrest by exploiting the influx of migrants attempting to enter our country." These gangs work closely with the cartels to support operations on both sides of the border.

According to ICE, 40 percent of MS-13 members they arrest arrived in the United States as unaccompanied alien children. MS-13 also forces women and girls into sex trafficking to make money for the gang. Cartels have made a record amount of money over the last two years. In 2021 alone, the cartels made an estimated $13 billion just from human trafficking and smuggling.

Given the lack of enforcement and actual invitation from the Biden Administration it is simple for gang members, drug dealers and other enemies of the United States to melt into the torrent of illegal immigrants. Nearly 1.4 million migrants were released into the interior in Fiscal Year 2023, with over 900,000 released by the Border Patrol alone. 850,000 visitors overstayed their visas and remained in the country illegally in 2022. 600,000 aliens were estimated to have entered the coun-

try illegally without apprehension and blended into the underground workforce that employers exploit as there is no requirement to use the free E-Verify online system to verify work authorization. Estimated 2.85 mm ILLEGAL ALIENS in FY 2022 surged into the United States. Source: https://www.numbersusa.com/resources/immigration-numbers/

The open borders intentionally operated by Joseph Biden clearly aid the countries enemies. Even the most benign immigrant entrant begins a presence in the country by breaking the law.

MS-13 Gang Information (During Joe Biden's Presidency)

Brief Description: Mara Salvatrucha (MS-13) was formed by Salvadoran immigrants that came to the United States as veterans of the civil war in El Salvador. Many of its members were trained in guerilla warfare and the use of military weapons. The gang is well-organized and is heavily involved in lucrative illegal enterprises, being notorious for its use of violence to achieve its objectives. According to website https://www.ojp.gov/ncjrs/virtual-library/abstracts/ms-13-gang-profile The gang originally was composed of Salvadoran nationals but now includes people associated with the Northern Triangle countries in Central America, including El Salvador, Guatemala, and Honduras. The FBI released a threat assessment 15 years ago as MS-13 began expanding in Northeastern and Mid-Atlantic states. (https://www.abcactionnews.com/news/local-news/i-team-investigates/ms-13-described-as-one-of-the-worlds-most-dangerous-gangs)

MS-13 is a largely urban phenomenon that has cells operating primarily on two continents. MS-13 has between 50,000 and 70,000 members concentrated in urban areas in Central America or locations outside this region where there is a large Central-American diaspora. Although the gang is still largely urban, it has spread into more rural areas, most notably in Long Island and North Carolina and increasingly California. (https://www.ojp.gov/ncjrs/virtual-library/abstracts/ms13-americas-major-findings) "Deadly consequences were on display May 23 (2023) when the House Judiciary Committee heard about the murder of 20-year-old Kayla Hamilton."

Former Border Patrol Chief Rodney Scott, who served under President Donald Trump and then Biden until August 2021, testified that the Biden administration is "laser-focused on expediting the processing and flow of migrants into the US" and "refused to accept the significant vulnerability this creates." New York Post article Killer MS-13 gangsters are being bused into our communities as "minors" https://nypost.com/2023/06/06/killer-ms-13-gangsters-are-being-bused-into-our-communities-as-minors/

A twice-deported gang member wanted in El Salvador in connection with three murders was recently sent back to his home country. Noe David Alvarez Escamilla, 24, was flown from Alexandria, Louisiana to the Monseñor Óscar Arnulfo Romero International Airport in San Salvador... https://www.foxnews.com/us/us-deports-illegal-immigrant-3-murders-el-salvador-third-time

Numbers below reflect FY2021 - FY2024, apprehensions by gang affiliation:

Fiscal Year 2024 runs October 1, 2023 - September 30, 2024.

Gang MS-13: 2021 - 113 Apprehensions; 2022 - 312 Apprehensions; 2023 - 178 Apprehensions; https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics

In the United States, there are around 10,000 MS-13 members who operate in 40 states. The strongholds are Los Angeles, New York, and the Washington D.C. area. From the book MS-13 *the Making of America's Most Notorious Gang*, author Steven Dudley, Publisher Hanover Square Press 2020. 352 Pages, Reviewer Jonathan D. Rosen March 2022. https://clcjbooks.rutgers.edu/books/ms-13-the-making-of-americas-most-notorious-gang/

According to https://www.pewresearch.org/short-reads/2023/11/16/what-we-know-about-unauthorized-immigrants-living-in-the-us/2021 - 800,000 unauthorized immigrants from El Salvador live in the U.S.

Other Data from El Salvador

Biden announced first-time Temporary Protected Status (TPS) designations for Afghanistan, Cameroon, Ethiopia, and Ukraine in response to conflicts in those countries. Migrants from TPS-designated countries can apply to reside legally in the United States for up to eighteen months, during which time they are eligible for employment and travel authorization and protected from deportation, though they are not granted permanent residency or citizenship. Sixteen countries currently have TPS designations and approximately 355,000 migrants have had their applications approved, though extensions and new designations made in 2021 and 2022 mean 176,540 additional individuals could be eligible. (https://www.cfr.org/article/ten-graphics-explain-us-struggle-migrant-flows-2022)

Where Do TPS Beneficiaries Come From?

Of the sixteen countries that have TPS designations, El Salvador, home of MS-13 has the most. Sources: Congressional Research Service; U.S. Department of Homeland Security; Pew Research Center. PS holders Estimated eligible under 2021 and 2022 designations El Salvador (194K) - The location of Gang M-13 194K Afghanistan 73K Ukraine 60K Honduras 59K Haiti 43K Venezuela 40K Ethiopia 27K Cameroon 12K Nepal 9K Syria Nicaragua Sudan Myanmar Yemen Somalia South Sudan

IRAN – HOME OF "TERRORIST ORGANIZATIONS IDENTIFIED BY US"

Iran is clearly an enemy of the United States. The chant "Death to America" expresses the enmity with clarity.

US imposed sanctions against Iran because of Iranian nuclear program and Iran support of Hezbollah, Hamas and Palestine Islamic Jihad. (Heritage Foundation, National Expert – James Carafano)

The United States has imposed restrictions on activities with Iran under various legal authorities

since 1979, following the seizure of the U.S. Embassy in Tehran.

The Department of State's Office of Economic Sanctions Policy and Implementation is responsible for enforcing and implementing a number of U.S. sanctions programs that restrict access to the United States for companies that engage in certain commercial activities in Iran. (State Dept.)

Islamic Revolutionary Guard Corps (2019) designated a "Foreign Terrorist Organization" whose recruits are barred from US (under President Trump). The Islamic Guard claimed responsibility for the strike on 3/13/22 on Erbil. Iran also backed the Houthi fighters in Yemen.

US Attorney Stewart Baker (served under President GW Bush as Security Assistant to Secretary of Policy: In regard to Biden's changes in 2021: "revoking travel ban" and "reopening US Borders to dangerous individuals" from Iran.

US House Foreign Affairs Committee Lead Republican Michael McCaul: "Iran's status as an enemy of Washington makes the vetting process for Iranian visa applicants very difficult if not impossible".

Biden REPEALED President Trump's travel ban on Iran and 12 other nations within hours of Jan 20, 2021 swearing in as President.

Biden granted 46 VISAS to Iranians in January 2021.

Steve Daines – Montana US Senator: Since the fiscal October through August -151 illegal aliens or "terrorists" let into the US were on the FBI "terror watch list" for being a terrorist or affiliated w/someone who was." They were encountered between the ports of entry. Another 76 more were encountered at the ports of entry and that did not include the "gotaways".

Under Trump (Heritage Foundation), during four years, 11 people on the Terrorist Watch list entered the US. In September 2023 alone, under the Biden Administration there were 18 terrorists that entered the US.

The United States at the direction of Joseph Biden, gave $6 Billion to Iran as part of deal to free

DETAINED Americans in Iran.

As stated by US Representative Bryan Steil, addressing the administration: "As you are aware, on September 11, 2023, your administration notified Congress that the United States issued a sanctions waiver license around August 9, 2023, to allow $6 billion in Iranian assets held in South Korea to be released to Iran. Nearly two months after Hamas's banker, Iran, received billions of dollars, Hamas launched a massive, unprovoked war on Israel. Arguing that these two events are unrelated strains credulity.

The more credible explanation is that the Biden release of $6 billion to Iran provided Iran with the assets to fund the terror attacks of October 7, 2023 resulting in the largest one day loss of Jewish life since World War II.

"The Biden administration on has continued to allow the Iranian regime to evade US sanctions by allowing them to move large amounts of sanctioned crude oil to countries like China with no re-percussions. According to the US energy Information Administration, after the US re-imposed sanctions on Iran's crude oil, their exports dropped from 2.5 million barrels per day to an average of 400,000 barrels per day.

"During your tenure, Iran's oil exports have recovered to pre sanction levels. According to the Wall Street Journal, Iranian crude oil production has hit 3 million barrels per day. This means Iran has earned between $81 billion to $90.7 billion in oil revenues. If our sanctions are not enforced, we will give Iran more revenue to fund the regime's destabilizing activities."

Source: https://steil.house.gov/media/press-releases/steil-demands-president-biden-enforce-financial-sanctions-on-iran

Iranian Mission to UN: Iranian prisoners released in exchange – all convicted of sending prohibited equipment or confidential information to Iran.

Under Biden (2021) – Iran Kaveh Afrasiabi charged "failing to register as a foreign agent acting

on behalf of Iran." -entered the US.

Iran under Biden (2021) arming Russia in support of its invasion of Ukraine – supplying large quantities of drones – bomb civilian targets.

In 2021, (Western Journal) 11 Iranians entered US illegally near San Luis, Arizona adding to the total of 14. In 2020, there were 8 Iranians entered the US illegally.

Lora Ries - Director of Heritage's Border Security Immigration Center – Heritage Foundation – Team Biden Let Iran Infiltrate Nuclear Deal (Heritage Foundation)

1. Democrats' Iran policy has been shaped by a foreign influence campaign – the Iran Experts Initiative (IEI) waged from within Iran itself.

2. The Biden Administration must take immediate action to mitigate the egregious breach of American national security.

3. The nuclear negation with Iranian regime was an elaborate parlor game.

Congress must demand a full accounting of the IEI's insidious infiltration campaign as revealed by recent reporting. They should start in 2014, when a group of U.S.-Iranian and EU-Iranian citizens began to publish and promote narratives on social media favorable to the Iranian regime's position on the Joint Comprehensive Plan of Action (JCPOA). Orchestrated by then-Iranian president Hassan Rouhani, along with his Minister of Foreign Affairs Javad Zarif and Islamic Revolutionary Guard Corps officer Mostafa Zahrani, these IEI operatives didn't stop there.

Congress must also get answers about the way that IEI analysts—such as Ali Vaez, Dina Esfandiary, and Ariane Tabatabai— cultivated influence with Rob Malley, the head of the International Crisis Group (ICG). That was a key allied group supporting the Obama/Biden administration's approach to the Joint Comprehensive Plan of Action (JCPOA).

In fact, the ICG worked so closely with the Obama/Biden administration that Malley joined the Obama/Biden National Security Council to support the nuclear negotiations before returning to

ICG in 2017, and then became Biden's special envoy for Iran at the State Department in 2021 for the new round of negotiations

"The administration has thus far refused to commit to submit a new Iran deal to the Senate for ratification as a treaty, as per its constitutional obligation, or for review under statutory requirements that passed on a bipartisan basis in response to the 2015 deal. Additionally, despite earlier promises to the contrary, the administration has failed to adequately consult with Congress."

Another example of illegal actions by Biden providing aid or comfort to enemies of the country and affirmatively ignoring the constitutional requirement to obtain consent from the United States Senate. Biden has been actively providing aid or comfort to Iran, not only as president but also during his time as vice-president under Barack Obama and failing to provide for the faithful execution of the law.

AMERICAN VICTIMS OF THE BIDEN BORDER INVASION[2]

When American citizens are victims of criminal noncitizens, it is a comfort to the enemies of the United States. The 14th Amendment, Sec. 3 disqualification refers to "aid ***or comfort".*** The following statistics of the border patrol provide a great deal of comfort to the enemies of the United States. The charts below demonstrate that from 2017 to 2020, during the Trump Administration's vigorous enforcement of border security consistent with US law, arrests of criminal noncitizens ***decreased*** each year to a low of 2,438 in 2020. Since Joseph Biden assumed office and set a course of refusing to enforce American law, each year arrests of noncitizen criminals increased to the point that 2023 was a 600% increase over 2020 in such arrests. The pattern is the same for each individual crime category. https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics

[2] Senator Roger Marshall (R-KS) has introduced to the Senate a resolution defining the result of the policies of Joseph Biden as an invasion. Senator Marshall's resolution is attached as Exhibit D. Biden does not simply give aid or comfort to the enemies of the United States, his actions have in fact facilitated an invasion.

Criminal Noncitizen Statistics

The following is a summary of U.S. Border Patrol enforcement actions related to arrests of criminal noncitizens for Fiscal Years 2017 - 2024.

Records checks of available law enforcement databases following the apprehension of an individual may reveal a history of criminal conviction(s). That conviction information is recorded in a U.S. Customs and Border Protection database, from which the data below is derived.

Arrests of Individuals with Criminal Convictions

The term "criminal noncitizens" refers to individuals who have been convicted of one or more crimes, whether in the United States or abroad, prior to interdiction by the U.S. Border Patrol; it does not include convictions for conduct that is not deemed criminal by the United States. Arrests of criminal noncitizens are a subset of total apprehensions by U.S. Border Patrol.

	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24YTD
U.S. Border Patrol Criminal Noncitizen Arrests	8,531	6,698	4,269	2,438	10,763	12,028	15,267	3,104

Fiscal Year 2024 runs October 1, 2023- September 30, 2024.

Total Criminal Convictions by Type

This table organizes nationwide convictions of criminal noncitizens by type of criminal conduct. Because some criminal noncitizens may be convicted of multiple criminal offenses, total convictions listed below exceed the total arrests noted in the table above.

	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24YTD
Assault, Battery, Domestic	692	524	299	208	1,178	1,142	1,254	188

	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24YTD
Violence								
Burglary, Robbery, Larceny, Theft, Fraud	595	347	184	143	825	896	864	131
Driving Under the Influence	1,596	1,113	614	364	1,629	1,614	2,493	490
Homicide, Manslaughter	3	3	2	3	60	62	29	6
Illegal Drug Possession, Trafficking	1,249	871	449	386	2,138	2,239	2,055	308
Illegal Entry, Re-Entry	4,502	3,920	2,663	1,261	6,160	6,797	8,790	1,954
Illegal Weapons Possession, Transport, Trafficking	173	106	66	49	336	309	307	48
Sexual Offenses	137	80	58	156	488	365	284	36
Other[1]	1,851	1,364	814	580	2,691	2,891	3,286	590

Fiscal Year 2024 runs October 1, 2023- September 30, 2024.

* The FY total displays the total CES apprehensions but does not equal the sum of data by category because the same apprehension can have multiple NCIC Charges that are included in multiple categories.

[1] "Other" includes any conviction not included in the categories above.

Source: United States Customs and Border Patrol

Individual Stories of Human Tragedy Visited Upon American Citizens

While the statistics speak of the great numbers and increased criminal activity resulting from the actions of Joseph Biden, behind the numbers are real people. The following stories are people who have lost loved ones to crimes or suffered permanent disabilities at the hands of illegal aliens. These stories originate from the time of Obama/Biden administration.

Tierra Stansberry

My name is Chris Stansberry. Tierra Stansberry is my daughter. On June 13, 2016 Tierra was murdered by an illegal alien. Johnny Sanchez set 2 fires to the place where Tierra was at. Not only did he murder my daughter that night but along with her murder he murdered 4 others and attempted to kill 2 more.

On November 8, 2018 Tierra has been granted justice when the jury ruled on 5 counts of murder, 2 counts attempted murder and numerous counts of arson. All jury members found him GUILTY of his cruel and heinous crimes.

My daughter would still be here and alive if our immigration laws had been followed. He has been deported three times prior to this happening and just three days prior to his malicious crimes he was in police custody.

My daughter will forever be remembered for who she is. She's goofy and knows how to have a good time, she's kind hearted and full of love. She would do anything for anyone. Tierra is deeply missed by her loving family and if you think that illegals don't affect you or that this could never happen to you or your family please rethink that possibility. That is the same thought process that I had and due to this I had to bury my daughter. With more illegals coming here day after day the possibility of this happening again to any family is greater than ever.

Supervisory Special FBI Agent Carlos Wolff

My husband, Carlos Wolff, was a Supervisory Special FBI Agent. Carlos was born in Venezuela and came to the United States - legally - with his parents, when he was 8 years old. He joined the FBI as a Special Agent when he was 25, and dedicated his 11 years at the FBI to protecting America. Carlos' life ended at 36 when he was hit by an illegal alien—on December 8, 2017.Carlos had been in a single vehicle accident and was stopped on the side of 270 in Montgomery County. Deputy Chief Fire Marshall Sander Cohen had stopped behind Carlos to help him. As Carlos and Sander were waiting on the shoulder for help to arrive, Roberto Garza Palacios hit and killed them. Palacios had overstayed his visa since 2009, and was wanted by ICE in 2015 AND in August of 2017 — just 3 months before hit and killed Carlos and Sander — due to his lengthy offense record, which included two DUIs, two counts of endangerment of life, property and person, malicious destruction of property, and possession of cocaine. However, Montgomery County, MD refused to hand Palacios over to ICE because of their sanctuary policies. Instead, Montgomery County elected officials believed it was preferable to shelter someone who was in our - my - community illegally, rather than doing what they should have done to keep my community safe. Palacios was then fined $280 for hitting Carlos and Sander, was out free, on a $15,000 bail, paid for by CASA de Maryland! Considering Palacios' record, he should have been deported in 2017 when ICE requested him from Montgomery County, MD! But Montgomery County politicians consider his prior record "minor offenses". Too minor to worry about paying attention to, in order to deport someone who is here illegally? Until they end an innocent person's life. And even then they released him back into the community! Our families are going through so much pain and heartache. Carlos and Sander were individuals who were loved by so many.

Hailey King

Hailey King was my daughter; she was also a mother, friend and hard worker with dreams of joining the Navy. On November 6, 2016, shortly before her 19th birthday, she became a victim of a hit and run homicide by an illegal alien. She was on her way home on a scooter driven by her friend David. They were one block from home when Sergio Larios - Rodriguez who was driving 70 mph in a 35 mph zone, hit their scooter from behind. Hailey was killed and David left permanently disabled. Hailey, who was the passenger, took the brunt of the impact, and never saw what was happening to her.

Sergio Larios - Rodriguez then dragged the scooter and David, who was trapped under his truck for over 2,000 feet until David's legs were torn off and his body finally released. Rodriguez then hid the truck with the scooter still trapped underneath it and walked away covertly hiding himself for over 48 hours. He never tried to help Hailey or David; leaving them both for dead on a main thoroughfare in Fayetteville, Arkansas. Hailey survived for six hours on a life support system. I was able to say good bye to my precious daughter. I promised to seek justice and to raise her daughter to know her mother. David survived but is now in a wheelchair.

Initially, there were no charges assigned to Rodriquez but after hard work and with the help of nonprofit organizations and legislators he faces charges including the death of Hailey and battery on David. Rodriquez came into the United States as an illegal immigrant and was able to live and work here until I started the journey to judicial justice. I am determined to work on public policy changes to better protect the legal citizens of our country. An illegal alien's actions have impacted generations of our family and left a little girl without her mother.

Sgt. Brandon Mendoza

My son, Sgt. Brandon Mendoza of the Mesa, AZ police department was killed on May 12, 2014, in a violent head-on collision on his way home from work. He was killed by a repeat illegal criminal

who had driven over 35 miles the wrong way on four different freeways before slamming head-on into my son's vehicle on a blind curved transition ramp. This illegal alien was high on meth and blood alcohol over 3X the legal limit. Brandon was a fun loving, incredible man/son/brother/uncle/grandson along with being an amazing police officer who took pride in his job and creating a stronger community. My fight has always been about honoring my son and also about getting our politicians on board with the fight to uphold immigration laws and to put Americans first.

Source: https://www.angelfamilies.org/stories/

BIDEN GAVE "AID OR COMFORT" TO THE ENEMIES OF THE UNITED STATES

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

This objection to the nomination papers of Candidate Biden details his provision of "aid or comfort" to the following enemies of the United States: China, Iran, Sinoloa Drug Cartel, the international gang MS-13 through intentional acts in violation of the laws of the United States.

The exhibits further illustrate Biden's actions and open-borders policies have empowered and emboldened some of the most vicious, ruthless, and savage individuals and groups in the world. Whether it is transnational criminal organizations (TCOs) like the cartels and human smuggling organizations in the Western Hemisphere, potential national security threats from countries who sponsor terrorism, or those coming from major state adversaries like China and Russia, the wide-open Southwest border has given America's enemies all over the globe an opportunity to infiltrate

the homeland—an opportunity too good to pass up. This objection barely scratched the surface of the United States that Joseph Biden has aided or comforted. *See* Exhibit B, page 3 et seq.

In addition to the body of the objection, the Exhibits are an integral element of this objection that lay out the violations of law, the intentional support of our enemies, "aid or comfort" provided and the harm done to the American people and our Republic.

By his conduct described herein, beginning before January 20, 2021, and continuing to the present time, Biden has given aid and comfort to enemies of the Constitution and the United States by, among other things, failing to enforce the laws of the United States, allowing entry of enemy agents illegally into the country including tens of thousands of military age men, and abandoning assets of the United States to the possession of our enemies.

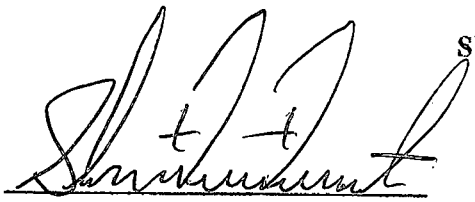
BIDEN IS DISQUALIFIED FROM PUBLIC OFFICE.

Biden is disqualified from holding "any office, civil or military, under the United States" and Congress has not removed this disability from Biden. The presidency of the United States is an "office ... under the United States" within the meaning of Section 3 of the Fourteenth Amendment.

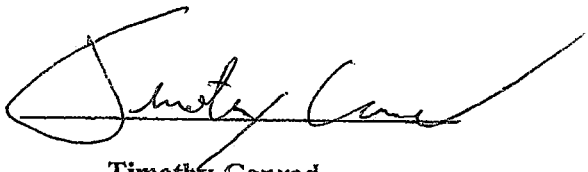
Consequently, Joseph Biden is disqualified from, and ineligible to hold, the office of President of the United States. Accordingly, his nomination papers are invalid under Illinois law because when Biden swore that he is "qualified" for the presidential office, as required by 10 ILCS 5/7-10, he did so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

WHEREFORE, Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate "Joseph R. Biden, Jr." shall not be printed on the official ballot as a candidate for the Democrat Nomination for the Office of the President of the United States for the March 19, 2024 General Primary Election or the November 5, 2024 General Election.

SUBMITTED BY:



Shane Bouvet



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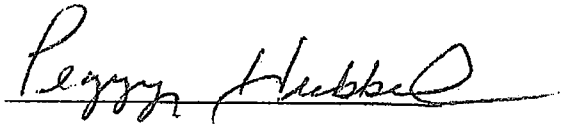
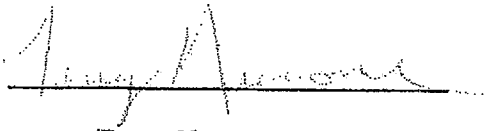


Peggy Hubbard



Terry Newsome

Exhibit A

SPEAKER OF THE HOUSE
MIKE JOHNSON

BIDEN ADMINISTRATION ACTIONS THAT HAVE UNDERMINED BORDER SECURITY AND ENCOURAGED ILLEGAL IMMIGRATION

	DATE	ACTION	SOURCE LINKS	NUMBERS
1	Jan 20, 2021	President Biden terminated the National Emergency at the Southwest border (Proclamation 9844), thereby halting emergency construction of a border wall.	See here and here.	CBP/OFO Total Encounters: 92,746 Children: 6,047 Fentanyl Seized: 945 pounds
2	Jan 20, 2021	President Biden issued an Executive Order (EO) further entrenching the unlawful Deferred Action for Childhood Arrivals (DACA) program. With his action, President Biden directed the Secretary of Homeland Security, in consultation with the Attorney General, "to preserve and fortify DACA", signaling to illegal aliens that his Administration supports amnesty and that illegal aliens need not fear coming to the U.S. or worry about immigration enforcement.	See here.	
3	Jan 20, 2021	President Biden unveiled the U.S. Citizenship Act, which would provide amnesty to millions of illegal aliens in the U.S., demonstrating intent to reward illegal border crossers with a path to citizenship.	See here.	

4	Jan 20, 2021	President Biden revoked Trump-era Executive Order that was designed to ensure there was meaningful enforcement of U.S. immigration laws.	See here.	
5	Jan 20, 2021	The Administration issued an Executive action ending limitations and restrictions against immigration from certain countries associated with terrorism.	See here.	
6	Jan 20, 2021	The Biden Administration announced a 100-day moratorium on deportations and immigration enforcement, effectively providing amnesty to criminal and other removable aliens and sending the signal the Biden Administration would not enforce the law. The Administration also announced interim immigration enforcement guidelines that signaled to illegal aliens that they do not have to worry about the possibility of deportation.	See here and here.	
7	Feb 1, 2021	The Department of Homeland Security (DHS) implemented Acting Secretary Pekoske's policy requiring a new "process [that] shall provide for assessments of alternatives to removal including, but not limited to, staying or reopening cases, alternative forms of detention, custodial detention, whether to grant temporary deferred action, or other appropriate action."	See here.	CBP/OFO Total Encounters: 115,559 Children: 9,611 Fentanyl Seized: 797 pounds

8	Feb 2, 2021	President Biden issued Executive Order (EO) 14010 and began processing asylum claims at the border. In the EO, the President also signaled an end to the Migrant Protection Protocols (which is known as "Remain in Mexico" or "MPP") while making other statements signaling an open border.	See here.	
9	Feb 6, 2021	Secretary of State Antony Blinken suspended, and began termination procedures, for the Trump Administration's Asylum Cooperative Agreements with El Salvador, Guatemala, and Honduras. These agreements ensured aliens seeking asylum could do so in countries closer to their home country and in countries other than the United States.	See here and here.	
10	Feb 2021	The Biden Administration voluntarily stopped applying Title 42 expulsions to children across the board, setting off a major wave of unaccompanied alien children, family units, and illegal aliens generally heading to the U.S. border.	See here.	
11	Feb 17, 2021	The Centers for Disease Control and Prevention (CDC) exempted unaccompanied alien children (UAC) from Title 42 expulsion requirements, thereby encouraging UACs to come to the U.S. and parents to pay cartels to smuggle their children to the U.S. border.	See here and here.	
12	Feb 25, 2021	The Biden Administration sped up releases of UACs.	See here.	

13	Mar 2, 2021	According to news reports, the Biden Administration lost track of 20,000 unaccompanied alien children and President Biden was briefed on the need to expand detention to hold an additional 20,000 children who had illegally crossed the border.	See here and here.	CBP/OFO Total Encounters: 192,025 Children: 19,115 Fentanyl Seized: 652 pounds
14	Mar 5, 2021	Faced with overwhelming numbers of UACs in federal custody, the CDC ignored its normal facilities guidance regarding COVID-19 and notifies "facilities caring for migrant children that they can open back up to pre-Covid-19 levels, acknowledging 'extraordinary circumstances.'"	See here and here.	
15	Mar 10, 2021	Biden Administration announced reinstatement of the Central American Minors (CAM) program, an Obama-era parole program that allowed citizens and aliens—including illegal aliens—to bypass the family-based immigration laws adopted by Congress and sponsor family members El Salvador, Guatemala, and Honduras to come to the United States.	See here.	
16	Mar 16, 2021	DHS Secretary Mayorkas delivered remarks effectively explaining the border is open for illegal immigration by stating DHS's focus would be on "processing" illegal aliens—in other words catch-and-release and the creation of new "lawful pathways."	See here.	

17	Mar 20, 2021	DHS began issuing illegal alien border crossers a Notice to Report (NTR) to U.S. Immigration and Customs Enforcement, as opposed to the standard Notice to Appear (NTA) in U.S. immigration court. The NTR policy allows illegal aliens to simply be released into the U.S. and relies on them to self-report to ICE at a later date.	See here.	
18	Mar 30, 2021	Office of Refugee Resettlement (ORR) took drastic actions to expand detention space to house unaccompanied alien children in so-called "Influx Care Facilities", often using unlicensed facilities that lacked child welfare experience. In March, April, and May of 2021, ORR expanded capacity to house another 23,849, including 10,000 at Fort Bliss. DHS was also holding children for a longer period than allowed by law (between 30 and 40 days) and, because the flow of UACs across the border outpaced Health and Human Services' (HHS) ability to vet adults who can care for the children.	See here.	
19	Mar 31, 2021	The Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) issued guidance rolling back requirements for background checks on adults in the household of a UAC sponsor.	See here, here and here.	

20	Apr 30, 2021	The Biden Administration canceled further wall construction which was being led by the Department of Defense (DOD).	See here.	CBP/OFO Total Encounters: 196,190 Children: 17,264 Fentanyl Seized: 886 pounds
21	June 15, 2021	The Biden Administration announced expansion of the Central American Minors (CAM) program to broaden the list of illegal aliens who can sponsor family members through the program, including illegal aliens who claim asylum.	See here.	CBP/OFO Total Encounters: 207,823 Children: 15,479 Fentanyl Seized: 1100 pounds
22	June 16, 2021	Attorney General Merrick Garland rescinded the Trump-era decision *In Matter of L-E-A-*, thereby expanding asylum eligibility to allow nuclear or immediate familial relationships to be treated as a "particular social group."	See here. See also here.	
23	June 16, 2021	Attorney General Merrick Garland rescinded the Trump-era decision in *Matter of A-B I* and *A-B II*, thereby expanding asylum eligibility to include gender and domestic relationships as certain social groups, reverting to policy under in *Matter of A-R-C-G*.	See here.	

24	July 2021	The United States Border Patrol (USBP or BP) released at least 50,000 aliens without giving them a "Notice to Appear" (a court date), instead advising them to self-report to ICE on their own. Unsurprisingly, 87% of aliens fail to report.	See here.	CBP/OFO Total Encounters: 233,919 Children: 19,438 Fentanyl Seized: 837 pounds
25	Aug 5, 2021	The USBP authorized the use of parole plus alternatives to detention (ATD) in the Del Rio Border Sector.	See here.	CBP/OFO Total Encounters: 231,243 Children: 19,609 Fentanyl Seized: 1100 pounds
26	Aug 17, 2021	DHS announced an expansion of alternatives to detention (effectively reinstating and expanding catch and release) and announced the expansion of taxpayer-funded services to illegal aliens in removal proceedings.	See here.	
27	Aug 31, 2021	The Biden administration released over 100,000 aliens into the United States between March 21, 2021 and August 31, 2021, without giving these aliens a "Notice to Appear", instead advising them to self-report to ICE on their own. Of those, nearly 50% of them did not check-in with ICE within the 60-day deadline.	See here.	

28	Sep 24, 2021	The Administration falsely accused Border Patrol agents on horseback in Del Rio, Texas of whipping aliens at the border. President Biden condemned the agents, saying the aliens had been "strapped" and vowed "consequences." Vice President Harris piled on the false allegations, comparing them to oppression and slavery. In fact, DHS Secretary Mayorkas knew the claim was false and even though the agents were exonerated in July 2022, the Administration proposed punishment for the agents.	See here, here and here.	CBP/OFO Total Encounters: 213,622 Children: 15,194 Fentanyl Seized: 737 pounds
29	Sep 30, 2021	DHS Secretary Mayorkas issued a memorandum that states "the fact an individual is a removeable [alien] should [not be the sole] basis of an enforcement action", effectively using prosecutorial discretion to give deportable aliens a pass to stay in the United States, thereby granting a form of amnesty to many illegal aliens.	See here.	
30	Fiscal Year 2021	Throughout Fiscal Year 2021, the Biden Administration distributed more than $300 million in federal law enforcement grants to Sanctuary Cities under SCAAP, Byrne, and COPS programs (amounting to 43% of total awards going to sanctuary cities), financially rewarding cities whose policies encourage illegal immigration.	See here.	
31	Oct 8, 2021	DHS canceled another group of border wall contracts led by DHS related to the Laredo and Rio Grande Valley Border Sectors.	See here.	CBP/OFO Total Encounters: 187,136 Children:

32	Oct 12, 2021	DHS effectively suspended large-scale worksite enforcement, a key tool to deter the hiring and employment of illegal aliens.	See here and here.	13,256 Fentanyl Seized: 1100 pounds
33	Oct 27, 2021	DHS Secretary Mayorkas issued a memorandum prohibiting enforcement of immigration laws in certain areas including schools, healthcare facilities, recreational areas, social service and emergency facilities, ceremonial locations (such as funerals and civil ceremonies) as well as at demonstrations and rallies.	See here.	
34	Oct 29, 2021	DHS Secretary Mayorkas terminated the Migrant Protection Protocols (known as "MPP" or "Remain in Mexico").	See here.	
35	Nov 2021	The Biden Administration formally created a program that included alternatives to detention (ATD) plus parole, resulting in "catch and release" for hundreds of thousands of aliens into the U.S. interior after they were encountered at the border (338,000 aliens were released in Fiscal Year 2022 alone) under this program.	See here.	CBP/OFO Total Encounters: 198,553 Children: 14,435 Fentanyl Seized: 1100 pounds
36	Dec 17, 2021	Immigrations and Customs Enforcement (ICE) repurposed three detention centers previously used for family detention, thus encouraging greater illegal immigration of family units.	See here.	CBP/OFO Total Encounters: 205,691 Children: 12,363 Fentanyl Seized: 549 pounds

37	Jan 2022	Between July 2021 and January 2022, the United States admitted more than 79,000 Afghan evacuees as part of Operation Allies Welcome after the Biden State Department and Department of Defense botched the nation's withdraw from Afghanistan. The DHS OIG determined that DHS failed to fully vet the evacuees. Failure to vet refugees, signaled that the Administration might also apply lax vetting to asylum seekers, further encouraging asylum abuse.	See here.	CBP/OFO Total Encounters: 186,808 Children: 9,171 Fentanyl Seized: 862 pounds
38	Apr 1, 2022	The Biden Administration announced intent to end Title 42. Federal District Court Judge from Louisiana temporarily blocks the action.	See here. See here.	CBP/OFO Total Encounters: 262,109 Children: 12,691 Fentanyl Seized: 1300 pounds
39	Apr 3, 2022	ICE Principal Legal Advisor issued memorandum promoting termination of cases in immigration court and directing ICE Office of the Principal Legal Advisor (OPLA) trial attorneys to comb through their cases to determine whether aliens would be considered a "priority" for removal under the Biden "enforcement priorities."	See here.	
40	Sep 9, 2022	The Biden Administration reversed Trump-era public charge rule, allowing aliens who are likely to become a burden to taxpayers to receive immigration benefits – such as a visa, admission, or adjustment of status.	See here and here.	CBP/OFO Total Encounters for: 272,338 Children: 12,508 Fentanyl Seized: 1900 pounds

	Fiscal Year 2022	U.S. Customs and Border Protection (CBP) encounters involving alien children in Fiscal Year 2022 reached a record high 158,865 total encounters (this includes both accompanied and unaccompanied children, 96.2% of whom were unaccompanied).	See here.	
41	Oct 31, 2022	DHS finalized a rule to "fortify DACA", which declares DACA recipients as "lawfully present" and grants them employment documents despite ongoing litigation.	See here.	CBP/OFO Total Encounters: 284,624 Children: 13,756 Fentanyl Seized: 2900 pounds
42	Dec 13, 2022	The Biden Department of Justice (DOJ) sued the State of Arizona in order to force Arizona to remove shipping containers placed to close gaps in the border wall.	See here.	CBP/OFO Total Encounters: 302,392 Children: 13,030 Fentanyl Seized: 2400 pounds
43	Jan 2023	CBP changed CBP One app to allow border crossers to schedule online appointments, expanding the number of aliens allowed into the United States.	See here.	CBP/OFO Total Encounters: 209,151 Children: 10,059 Fentanyl Seized: 1400 pounds

44	Jan 6, 2023	The Biden Administration began abusing statutory parole authority under INA 212(d)(5) by creating a categorical parole program for nationals of Cuba, Haiti, Nicaragua, and Venezuela. Parole was intended by Congress to be used sparingly and only on a "case by case" basis, yet DHS continues to create and administer categorical parole programs to allow hundreds of thousands of illegal aliens to classes of aliens.	See here.	
45	Feb 25, 2023	*The New York Times* reported data showing the Biden Department of HHS has lost track of 85,000 alien children over the prior two years. NYT exposes details of minor children working in factories in the United States.	See here.	CBP/OFO Total Encounters: 213,911 Children: 11,629 Fentanyl Seized: 2300 pounds
46	Mar 2023	ICE continued to ignore the need for deportations, allowing criminal aliens to stay in the U.S. ICE's non-detained docket grew to an estimated 5.3 million aliens, including 407,983 criminal aliens. Meanwhile, ICE arrests in Fiscal Year 2022 fell by 69% compared to Fiscal Year 2018 and arrests of convicted criminals fell 65% (to 36,322 in Fiscal Year 2022 from 105,140 in Fiscal Year 2018).	See here.	CBP/OFO Total Encounters: 259,471 Children: 13,178 Fentanyl Seized: 2900 pounds
47	Mar 25, 2023	Despite record numbers of illegal aliens arriving at the southern border, the Biden Administration proposed cutting detention beds by 25 percent as part of its Fiscal Year 2024 budget request.	See here.	

48	Mar 28, 2023	DHS Inspector General (IG), citing lax oversight, issued a report that identified misuse and fraud of federal emergency funds, resulting in up to $110 million in funds appropriated in the American Rescue Plan and other legislation being awarded to pay for services to illegal aliens and not Americans suffering due to COVID.	See here.	
49	Apr 13, 2023	The Biden Administration announced DACA recipients would be eligible for Obamacare benefits and Medicaid, giving taxpayer-funded healthcare to illegal aliens.	See here.	CBP/OFO Total Encounters: 276,036 Children: 12,214 Fentanyl Seized: 3200 pounds
50	Apr 27, 2023	The State Department and DHS announced plans to end Title 42, expand CBP One app, and create additional unlawful categorical parole programs for aliens from El Salvador, Guatemala, Honduras and Colombia. The program violates the law and allows aliens to enter before they receive a green card and without a visa.	See here and here.	
51	Apr 30, 2023	The Biden Administration circulated guidance that waters down the vetting process for Chinese illegal aliens, requiring that interviews used to question a Chinese illegal alien consist of five basic questions. The media reported that Chinese illegal aliens "quickly adapted" to the new CBP guidelines and were "coached" to give "stories that are identical."	See here.	

52	May 5, 2023	CBP expanded appointment capability of the CBP One App. Through Nov. 2023, nearly 360,000 appointments had been scheduled on the app (43,000 in November alone). The CBP One app continues to be vulnerable to exploitation by the cartels.	See here, here and here.	CBP/OFO Total Encounters: 275,166 Children: 10,525 Fentanyl Seized: 2700 pounds
53	May 11, 2023	The Biden Administration terminated use of Title 42 policy expulsion authority.	See here.	
54	May 31, 2023	The Biden Administration ended the DNA testing program used to verify that adults who crossed the border with a child and claimed to be related to that child, are in fact related. Ending the program promotes not only illegal immigration, but also child exploitation and trafficking.	See here and here.	
55	July 7, 2023	The Biden Administration expanded unlawful parole programs to include individuals from Colombia, El Salvador, Guatemala, and Honduras.	See here.	CBP/OFO Total Encounters: 245,154 Children: 11,236 Fentanyl Seized: 1800 pounds
56	July 24, 2023	The Biden Department of Justice sued the State of Texas to remove newly placed floating barriers in the Rio Grande River.	See here.	

57	Aug 10, 2023	The Biden Administration Office of Management and Budget requested nearly $14 billion in emergency funding that perpetuates the Biden Administration's open borders policies. For example, $600 million was requested for FEMA's Shelter and Services program, which provided airfare and hotels to illegal aliens. This is on top of the $363.8 spent by the program in Fiscal Year 2023.	See here (page 47). See here.	CBP/OFO Total Encounters: 304,073 Children: 14,922 Fentanyl Seized: 1800 pounds
58	Aug 29, 2023	ICE scrambled after releasing into the U.S. more than a dozen Uzbek nationals with ties to an ISIS smuggler.	See here.	
59	Aug 2023	DHS rebranded "Alternatives to Detention" as "Release and Reporting Management," effectively using ICE to provide social services to aliens instead of allowing ICE to function as a law enforcement agency.	See here.	
	Fiscal Year 2023	CBP encountered over 3.2 million aliens in FY2023, including nearly 2.5 million at the Southwest border. In the same timeframe of Fiscal Year 2023, ICE only removed 142,580 from the United States.	See here and here.	

	Fiscal Year 2023	CBP and Office of Field Operations (OFO) reported seizing 549,000 pounds of illicit drugs during Fiscal Year 2023, including 27,000 pounds of fentanyl – enough to kill every American 18 times. The Fiscal Year 2023 numbers represent an increase in fentanyl seizures from 14,700 pounds in Fiscal Year 2022, 11,200 pounds in Fiscal Year 2021, and 4,800 pounds in Fiscal Year 2020.	See here and here. See here and here.	
	Sep 2023	CBP recorded nearly 270,000 illegal alien encounters at our Southwest border in September, the highest number ever recorded in a single month.	See here.	CBP/OFO Total Encounters: 341,392 Children: 14,346 Fentanyl Seized: 1500 pounds
60	Sep 8, 2023	The Biden Administration promulgated a proposed rule to reverse Trump-era policy and allow Immigration Judges to administratively close or dismiss removal proceedings without any action (something not allowed by statute), resulting in no decision denying asylum.	See here and here.	
61	Oct 4, 2023	The Biden Administration issued new rules on UACs that fails to prevent the release of illegal alien children to strangers, fails to facilitate age determinations, and fails to collect immigration information on sponsors. All of this will encourage trafficking of children, including by the cartels.	See here.	CBP/OFO Total Encounters: 309,137 Children: 12,103 Fentanyl Seized: 1700 pounds

62	Dec 21, 2023	Biden Administration announced the creation of a new "juvenile" docket within immigration courts which is so expansive, it gives specialized treatment to 18, 19, and 20 year-old illegal aliens who should be deported through the expedited removal process.	See here.	CBP/OFO Total Encounters for Dec: Children: Fentanyl Seized: DATA NOT YET AVAILABLE
63	Dec 28, 2023	Following a trip to Mexico by Secretary of State Blinken and DHS Secretary Mayorkas, the Mexican government reported that their discussions focused on "regularizing" status – i.e., amnesty – for "Hispanic migrants who have been undocumented... and DACA beneficiaries."	See here.	
	Dec 29, 2023	According to media reporting, CBP recorded more than 300,000 illegal alien encounters at our southern border in December, the highest number ever recorded in a single month.	See here, here and here.	
64	Jan 3, 2024	The Biden Administration sued the State of Texas for enforcing a recently enacted Texas state law that allows Texas judges and magistrates to order illegal aliens to return to the foreign nation from which they entered.	See here.	

SOURCES FOR NUMBER COLUMN:

https://www.cbp.gov/newsroom/stats/nationwide-encounters
https://www.cbp.gov/newsroom/stats/drug-seizure-statistics

Exhibit B

CAUSES, COSTS, AND CONSEQUENCES:

WHY SECRETARY MAYORKAS MUST BE INVESTIGATED FOR HIS BORDER CRISIS

COMMITTEE ON HOMELAND SECURITY
MAJORITY REPORT

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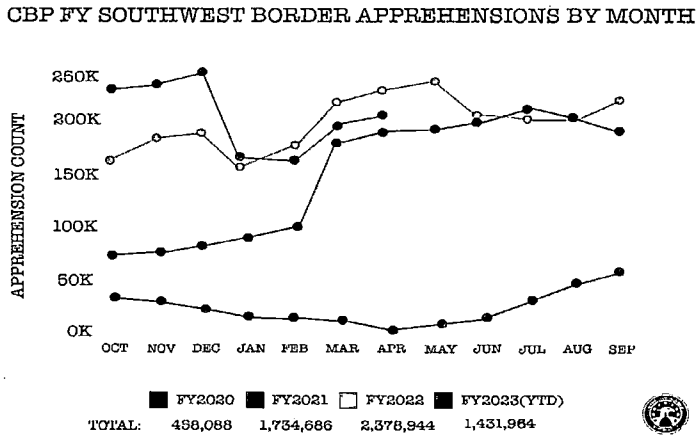
Source: U.S. Border Patrol

EXECUTIVE SUMMARY

For more than two years, the country has witnessed a national security, humanitarian, and public safety disaster at the Southwest border. Every day, Americans across the nation are feeling the devastating consequences of this crisis in new and tangible ways.

The flood of illegal aliens across America's sovereign borders has been unprecedented. Since the Biden administration took office, Customs and Border Protection (CBP) has reported more than 5.2 million apprehensions at the Southwest border alone[1], a number which grows to more than 6.1 million when factoring in apprehensions at America's Northern and maritime borders.[2]

In Biden and Mayorkas' first full month in office, CBP averaged well over 3,000 apprehensions per day at the Southwest border, totaling 101,099 for the month—and that was the low-water mark.[3]



Source: CBP Border Encounter Data

Since March 2021, CBP has recorded no fewer than 154,000 apprehensions at the Southwest border in any given month.[4] From March to December 2022, CBP recorded more than 200,000 apprehensions per month. Never in CBP history had the agency recorded so many apprehensions in consecutive months.

These massive numbers have pulled Border Patrol agents off their frontline mission of securing the border and enforcing America's immigration laws, to instead process and release the record number of illegal aliens surging across the border every day.

Transnational criminal organizations (TCOs), like the Mexican drug cartels, have been enriched and empowered by record profits from drug trafficking and human smuggling, funneling those blood-bought dollars into expanding their fearsome, military-grade arsenals that have allowed them to challenge and intimidate the Mexican government.

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1 "Southwest Land Border Encounters," U.S. Customs and Border Protection Newsroom, May 17, 2023, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.

2 "CBP Enforcement Statistics Fiscal Year 2023," U.S. Customs and Border Protection Newsroom, May 17, 2023, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics.

3 U.S. Customs and Border Protection Newsroom, supra note 1.

4 Ibid.

Fentanyl, the cartels' current narcotic of choice, is pouring across the increasingly porous border and into American communities, ruining lives and shattering families at an unprecedented rate. Meanwhile, as crime spikes in American cities, more than 1.5 million known gotaways have evaded apprehension by the Border Patrol since January 2021 and are now at large in the United States.[5] Among those who have evaded apprehension have doubtless been an unknown number of gang members, violent criminals, and other potential national security threats whose malicious intentions we may not even yet know or realize.

A record number of migrants have been found dead on U.S. soil in the last two years. CBP personnel in both the Border Patrol and Air & Marine Operations (AMO) have been putting their lives on the line at an exponentially higher rate than in years past, conducting an ever-increasing number of rescue operations along our borders.

An untold number of men, women, and children have become victims of sexual assault, violent theft, and other degradation and abuse along the journey through Central and South America to the Southwest border, and increasingly, the Northern border, as well. The sheer number of individuals crossing illegally has overwhelmed Border Patrol agents, leading to rampant overcrowding of holding facilities and stretching resources past the breaking point.

Source: Pool photo from Dario Lopez-Mills (AP)

The human cost, both to American citizens and those journeying to the border, has been incalculable.

Increasingly, Americans are also suffering from the strain of the financial costs imposed by this mass illegal immigration.

The border crisis has had an unprecedented and devastating effect on American states, cities, and small towns, particularly the schools, businesses, hospitals, law enforcement agencies, and other public service providers who have limited resources to deal with this massive influx of illegal aliens.

Simultaneously, as cities and states shoulder more costs required to handle this historic burden, many of the illegal aliens released into American communities are consuming far more in taxpayer-funded benefits than they are ever giving back.

New York City alone, for example, projects to have spent more than $4 billion by next year on benefits for illegal aliens since they first began arriving in waves from the Southwest border.[6]

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5 Patrick Hauf, "1.5 Million 'gotaways' at the border under the Biden Administration: Report," Fox News, May 16, 2023, https://www.foxnews.com/politics/million-gotaways-border-biden-administration-report.
6 Bernadette Hogan and Emily Crane, "Mayor Eric Adams Says Biden's Migrant Crisis Has 'destroyed' NYC," The New York Post, April 21, 2023, https://nypost.com/2023/04/21/mayor-eric-adams-says-bidens-migrant-

The truth is simple—the border crisis has turned every state into a border state, every town into a border town. The consequences of this crisis impact every American, regardless of race, gender, or socioeconomic status. It does not spare those of a particular political ideology. As this preliminary report will show, it affects us all.

The most egregious aspect of this crisis, however, is that it has been intentional from the start. Joe Biden ran a campaign on providing amnesty to millions of illegal aliens and promising to end the policies that had brought illegal immigration to a four-decade low.[7]

On Sept. 12, 2019, during a Democratic presidential debate, then-candidate Biden even encouraged individuals from around the world to "surge" to the border and file asylum claims, despite the Department of Justice data showing clearly that only around 10-15 percent of those filing such claims ever receive asylum:[8]

The Biden Administration's Track Record on Border Security

Biden and leading officials in his administration, particularly Department of Homeland Security (DHS) Secretary Alejandro Mayorkas, have certainly followed through on these promises.

Biden, Mayorkas, and other open-borders advocates in the administration quickly terminated, suspended, or rolled back numerous effective border-security policies,[9] despite repeated warnings from experienced border security professionals during the presidential transition period of the crisis that would ensue if they did so.[10]

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crisis-has-destroyed-nyc/.

7 Lora Ries, "President Trump and Joe Biden: Comparing Immigration Policies," The Heritage Foundation, October 21, 2020, https://www.heritage.org/immigration/report/president-trump-and-joe-biden-comparing-immigration-policies.

8 "Credible Fear and Asylum Process: Fiscal Year (FY) 2008 – FY 2019," Department of Justice Executive Office for Immigration Review, https://www.justice.gov/eoir/file/1216991/download.

9 "Data Visualization: Biden Administration's Border Catastrophe—A Policy Tracker," The Heritage Foundation, June 25, 2021, https://datavisualizations.heritage.org/immigration/biden-administrations-border-catastrophe-a-policy-tracker/.

10 Elissa Salamy, "Biden Administration Was Warned on Potential of Border Crisis, Says Mark Morgan," WPDE, March 23, 2021, https://wpde.com/news/nation-world/biden-administration-was-warned-on-poten-

The crisis that followed was swift, predictable, and catastrophic.

Since then, the Biden administration has implemented a host of policies that have opened our borders wide and signaled to those who cross illegally that they will likely be released into the interior of the country without consequences for breaking our laws.

Effective Policies Ended

Remain in Mexico (Migrant Protection Protocols/MPP): The Biden administration quickly moved to suspend the Remain in Mexico Program (MPP),[11] a critical tool that substantially reduced the filing of fraudulent asylum claims at the Southwest border following the 2019 crisis. For more than a year, the Biden administration fought numerous legal battles to dismantle the policy, ultimately prevailing at the Supreme Court in June 2022.[12]

Border Wall Construction: Walls work. The border wall system is a critical component in maintaining order and security at the Southwest border. A CBP press release in October 2020 states plainly, "The results speak for themselves: illegal drug, border crossings, and human smuggling activities have decreased in areas where barriers are deployed. ... [T]he border wall is forcing drug smugglers to where we are best prepared to catch them—our ports of entry."[13]

Upon taking office, however, Biden ordered a halt to construction of new border wall,[14] and prohibited the use of funds already authorized and allocated by Congress for that very purpose.

Asylum Cooperative Agreements: The Trump administration also negotiated asylum cooperative agreements (ACAs) with El Salvador, Guatemala, and Honduras.[15]

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tial-of-border-crisis-says-mark-morgan.

11 "DHS Statement on the Suspension of New Enrollments in the Migrant Protection Protocols Program," U.S. Department of Homeland Security, January 20, 2021, https://www.dhs.gov/news/2021/01/20/dhs-statement-suspension-new-enrollments-migrant-protection-protocols-program.

12 Amy Howe, "Divided Court Allows Biden to End Trump's 'Remain in Mexico' Asylum Policy," SCOTUSblog, June 30, 2022, https://www.scotusblog.com/2022/06/divided-court-allows-biden-to-end-trumps-remain-in-mexico-asylum-policy/.

13 "The Border Wall System Is Deployed, Effective, and Disrupting Criminals and Smugglers," U.S. Department of Homeland Security, October 29, 2020, https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers.

14 "Proclamation on the Termination Of Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction," The White House, January 20, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/.

15 "Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador," U.S. Department of Homeland Security, https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf.

These agreements served a number of important functions, including recognizing these nations as essentially "safe third country" options to which the United States could return individuals who had arrived at the Southwest border seeking relief, but who had not applied for asylum when passing through those countries on the journey to the Southwest border.

The agreements also made it clear that these individuals should claim asylum in the other countries party to the agreements, not the U.S. The Biden administration suspended these commonsense agreements on Feb. 6, 2021, and later terminated them.[16]

Title 42: In 2020, the Trump administration responded to the COVID-19 pandemic by invoking the Center for Disease Control and Prevention's (CDC) Title 42 public health authority. Under Title 42, CBP could process illegal aliens without asylum screening and immediately expel them back to Mexico through the closest port of entry. This was a vital authority, not only allowing Border Patrol agents to rapidly expel those who had no legal claim to enter the U.S., but to protect agents and American citizens throughout the country from the spread of COVID-19.

Mayorkas' DHS failed to fully and effectively utilize this authority. In February 2023, for example, just 33 percent (70,470) of those apprehended were expelled under Title 42.[17] The Biden administration ended Title 42 on May 11, 2023.

In the days leading up to May 11, thousands of illegal aliens gathered just across the Southwest border waiting to flood across once Title 42 ended.[18] Total apprehensions in April jumped to more than 275,000, with the vast majority occurring at the Southwest border.[19] Border Patrol recorded multiple consecutive days of more than 10,000 apprehensions in the days before Title 42 expired.[20] As the cartels temporarily pull back to assess the fallout of Title 42's end, daily apprehensions have fallen from such highs, but are still at crisis levels of more than 3,700 per day, according to DHS.[21]

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16 Anthony J. Blinken, "Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras," U.S. Department of State Office of the Spokesperson, February 6, 2021, https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras/.

17 "Nationwide Encounters," U.S. Customs and Border Protection Newsroom, May 17, 2023, https://www.cbp.gov/newsroom/stats/nationwide-encounters.

18 MaryAnn Martinez, "Up to 40,000 Migrants Amass at Border as End of Title 42 Nears," The New York Post, April 13, 2023, https://nypost.com/2023/04/13/up-to-40000-migrants-amass-at-border-as-end-of-title-42-nears/.

19 U.S. Customs and Border Protection Newsroom, supra note 17.

20 Adam Shaw and Bill Melugin, "Border Patrol Encounters 10,000 Migrants for Third Day in a Row as Numbers Swell before Title 42 Drops," Fox News, May 11, 2023, https://www.foxnews.com/politics/border-patrol-encounters-10000-migrants-third-day-numbers-swell-before-title-42-drops.

21 Anna Giaritelli, "Biden Administration Touts 70% Decline in Illegal Immigration since Ending Title 42," The Washington Examiner, June 6, 2023, https://www.washingtonexaminer.com/policy/immigration/biden-administration-decline-illegal-immigration-since-title-42-end.

In a briefing provided to members of the House Committee on Homeland Security, Border Patrol Chief Raul Ortiz told members he "fully expect[s]" apprehensions to soon rise back to the 6,500-7,000 per day that had become the norm.

National Border Patrol Council Pres. Brandon Judd wrote in December 2022, when Title 42 was previously on the chopping block, that once the authority ends, "there will be almost no agents left to patrol our Southwest border with Mexico. The cartels will gain complete control."[22]

Ending Abuse of Parole Programs: In 2017, Pres. Donald Trump signed an executive order ending the abuse of parole, and reiterating that parole was only to be used on a case-by-case basis for humanitarian purposes, in accordance with the law.[23] The Biden administration revoked this order on Feb. 2, 2021.[24] By law, parole should only be offered on a case-by-case basis when there is significant public benefit or urgent humanitarian need to do so, and only for temporary admittance into the country.

Cracking Down on Sanctuary Cities: The Trump administration issued an order in 2017 that prohibited federal grant money from being awarded to jurisdictions that refuse to cooperate with Immigration and Customs Enforcement (ICE) to remove criminal aliens, otherwise known as "sanctuary cities."[25] The Biden administration canceled the order on Jan. 20, 2021.[26]

Rolling Back DACA: The Trump administration attempted to rescind the Deferred Action for Childhood Arrivals (DACA) amnesty program, but was only partially successful, as the courts required the administration to continue processing renewals. The administration did not adjudicate new DACA requests, however. In a Jan. 20, 2021 executive order, Biden ordered DHS to "preserve and fortify" DACA.[27]

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22 Brandon Judd, "Once Title 42 Expires Mexican Drug Cartels Will Gain Complete Control of Our Southwest Border," Fox News, December 20, 2022, https://www.foxnews.com/opinion/title-42-mexican-drug-cartels-gain-complete-control-border-southwest-border

23 "Border Security and Immigration Enforcement Improvements," Executive Office of the President, January 30, 2017, https://www.federalregister.gov/documents/2017/01/30/2017-02095/border-security-and-immigration-enforcement-improvements.

24 "Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border," The White House, February 2, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration-throughout-north-and-central-america-and-to-provide-safe-and-orderly-processing/.

25 "Enhancing Public Safety in the Interior of the United States," Executive Office of the President, January 30, 2017, https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states.

26 "Executive Order on the Revision of Civil Immigration Enforcement Policies and Priorities," The White House, January 20, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-the-revision-of-civil-immigration-enforcement-policies-and-priorities/.

27 "Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)," The White House, January

Open-Borders Policies Implemented:

Mass Release of Illegal Aliens Under "Catch and Release": In short, the Biden administration's policy is one of "catch and release". Under this policy, CBP has released at least 2.02 million illegal aliens into the country,[28] while recording another 1.5 million known gotaways.

The actual number is almost certainly hundreds of thousands higher, given the lack of release data reported by ICE and CBP's Office of Field Operations (OFO) after June 30, 2022. This means *at least* 3.5 million illegal aliens are newly in the United States on Biden and Mayorkas' watch–almost certainly to stay, given the Biden administration's lax policy on deportations.

This removal of consequences for millions of illegal border crossers, coupled with benefits like work authorization and transportation to the city of their choice upon release, has only encouraged more to make the journey to the border.

Restrictive ICE Guidance: One of the administration's first acts under Biden's leadership was to issue new guidance to ICE which severely restricted agents' ability to pursue, detain, and deport illegal aliens. Upon confirmation, Mayorkas carried out and later supplemented this guidance.

Under new guidance issued in February 2021, DHS made it clear that only select groups of illegal aliens were to be targets for arrest and removal. A September 2021 Mayorkas memo detailed even more radical instructions for deportations, including Mayorkas' instruction that "the fact an individual is a removable noncitizen therefore should not alone be the basis of an enforcement action against them."[29] Fortunately, the U.S. District Court for the Southern District of Texas vacated the September memorandum.[30]

However, the initial restrictive guidance remains in effect, and illegal aliens know that if they are released into the interior, ICE almost certainly cannot and will not deport them. This has created a seemingly insurmountable problem for ICE, as well. With the release of literally millions of illegal aliens into the interior, it is unlikely ICE will ever have the logistical ability to remove them.

20, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/.

28 Andrew Arthur, "Biden's Released at Least 2,020,522 Southwest Border Migrants," The Center for Immigration Studies, April 17, 2023, https://cis.org/Arthur/Bidens-Released-Least-2020522-Southwest-Border-Migrants.

29 Alejandro Mayorkas, "Guidelines for the Enforcement of Civil Immigration Law," U.S. Department of Homeland Security, September 30, 2021, https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf.

30 "MEMORANDUM OPINION AND ORDER," The State of Texas and the State of Louisiana v. Alejandro Mayorkas, Troy Miller, Tae Johnson, and Tracy Renaud, Civil Action No. 6:21-CV-00016, (U.S. District Court Southern District of Texas Victoria Division, 2022), https://storage.courtlistener.com/recap/gov.uscourts.txsd.1821703/gov.uscourts.txsd.1821703.240.0_1.pdf.

Consider that in Fiscal Year (FY)2019, ICE deported more than 267,000 illegal aliens[31]—however, this total is a drop in the bucket compared to the total number of illegal aliens released into the interior by Mayorkas.

Joe Biden's 100-day moratorium on deportations, issued at the start of his administration and subsequently blocked by a federal judge,[32] also should have been a clear warning about interior enforcement under his and Mayorkas' leadership.

Abuse of CBP One App: In January 2023, DHS announced the expanded use of the CBP One mobile app for aliens to make appointments at a port of entry to file asylum claims.[33] In practice, however, this expanded use had actually been underway for several months prior.[34]

Aliens who would otherwise have no legitimate claim to enter the United States can now schedule an appointment at a port of entry to claim asylum, and promptly be released into the interior to await resolution of their claim.

According to recent reports, in the first few months of the new policy, more than 99 percent of individuals who sought a humanitarian exemption from Title 42 requirements had their request granted.[35] As of mid-April, more than 75,000 applications had been completed or scheduled through Apr. 25, 2023.[36] And the number of those being admitted via the program is projected to increase. A CBS News report from May 31, 2023, quoted DHS officials saying the department plans to admit nearly 40,000 aliens per month via the app.[37]

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31 "U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report," U.S. Immigration and Customs Enforcement, https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf.

32 Nomaan Merchant, "Judge Bars Biden from Enforcing 100-Day Deportation Ban," AP News, January 26, 2021, https://apnews.com/article/joe-biden-immigration-texas-barack-obama-51688033e490d50867e52ef-9c8ec574f.

33 "Remarks by President Biden on Border Security and Enforcement," The White House, January 5, 2023, https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/01/05/remarks-by-president-biden-on-border-security-and-enforcement/.

34 Todd Bensman, "Legalizing Border Crossing for All: The Next Stage of Biden's Migration Crisis," The Center for Immigration Studies, November 21, 2022, https://cis.org/Bensman/Legalizing-Border-Crossing-All-Next-Stage-Bidens-Migration-Crisis.

35 Adam Shaw, "Over 99% of Migrants Who Have Sought Title 42 Exception via CBP One App Were Approved," Fox News, April 14, 2023, https://www.foxnews.com/politics/99-percent-migrants-sought-title-42-exception-cbp-one-app-approved.

36 Ibid.

37 Camilo Montoya-Galvez, "U.S. Plans to Admit Nearly 40,000 Asylum-Seekers per Month through Mobile App," CBS News, May 31, 2023, https://www.cbsnews.com/news/asylum-seekers-cbp-one-mobile-app-u-s-plans-admit-nearly-40000-monthly/.

Empowering a Vast NGO Network to Facilitate Illegal Immigration: DHS has also worked closely with a vast network of non-governmental organizations (NGOs), particularly those located at the border, to help spread illegal aliens across the country. These groups receive hundreds of millions of taxpayer dollars to provide services to illegal aliens once they are released by CBP, including food, lodging, and transportation to the destination of their choice.[38]

To avoid the embarrassing optics of overcrowded facilities, these illegal aliens have been released to the NGOs since the early days of the crisis in 2021, who have provided logistical support CBP cannot.

The Government Accountability Office (GAO) leaves no doubt about this collaboration, per a report issued Apr. 19, 2023. In the study, the GAO notes, "When releasing these noncitizens into the U.S., DHS components such as CBP and U.S. Immigration and Customs Enforcement (ICE) may coordinate with nonprofit organizations (nonprofits) that provide services such as food, shelter, and transportation," further finding that the Federal Emergency Management Agency (FEMA) gives money to these NGOs to provide services to illegal aliens.[39]

The report also leaves no room for doubt that federal funds provided to these groups, particularly under the Emergency Food and Shelter Program-Humanitarian Relief (ESFP-H), go to purchasing services for illegal aliens.

FEMA has been given hundreds of millions of new taxpayer dollars to continue handing out to these groups,[40] money that is potentially being misused on a grand scale, according to a recent DHS Office of the Inspector General (OIG) report.[41]

Under the Cover of Darkness—Illegal Alien Flights: DHS has also been caught sending illegal aliens throughout the country on charter and commercial flights, often under the cover of night.

Perhaps the most notorious example of DHS' efforts to ferry illegal aliens throughout the country on these flights was in Westchester County, New York, where at least 2,000 minors were flown without coordination with local officials between June-October 2021.[42]

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38 Andrew Arthur, "Massive Spending Bill Includes $785 Million to Feed, House, and Transport Migrants," The Center for Immigration Studies, December 30, 2022, https://cis.org/Arthur/Massive-Spending-Bill-Includes-785-Million-Feed-House-and-Transport-Migrants.

39 "Southwest Border: DHS Coordinates with and Funds Nonprofits Serving Noncitizens," U.S. Government Accountability Office, April 19, 2023, https://www.gao.gov/assets/gao-23-106147.pdf.

40 Ibid.

41 Adam Shaw, "DHS OIG Finds Millions in American Rescue Plan Funds Misused by NGOs, Given to 'got-away' Illegal Immigrants," Fox News, March 31, 2023, https://www.foxnews.com/politics/dhs-oig-finds-millions-american-rescue-plan-funds-misused-ngos-given-gotaway-illegal-immigrants.

42 Miranda Devine, et al.,"Biden Secretly Flying Underage Migrants into NY in Dead of Night," The New York Post, October 18, 2021, https://nypost.com/2021/10/18/biden-secretly-flying-underage-migrants-into-ny-in-dead-of-night/.

Following the arrival of one such night flight, contractors getting off the plane refused to say who they were working with when questioned by airport security personnel. One told staff, "You want to try and be as down-low as possible. A lot of this is just down-low stuff that we don't tell people because what we don't want to do is attract attention. We don't want the media. Like we don't even know where we're going when they tell us."[43] The flights were suspended following public outcry, but the Biden administration restarted them in the spring of 2022.[44]

Illegal aliens have also been documented boarding commercial flights, carrying packets indicating they don't speak English and may need help transiting to their destinations.[45]

Releasing Illegal Aliens Outside Proper Procedure: Since early 2021, hundreds of thousands of illegal aliens have been released into the interior in such a way that DHS cannot possibly track them, hold them accountable for missing a court date, or ultimately remove them. One report found that out of more than 100,000 individuals released by Border Patrol just between March 21-Aug. 31, 2021, with a Notice to Appear (NTA) in court, more than 47,000 failed to show up.[46]

In the early months of the crisis, more than 50,000 illegal aliens were released without court dates at all, and only 13 percent had reported to ICE as instructed.[47] Two years later, NBC reported that since March 2021, approximately 600,000 illegal aliens had been released into the interior without court dates.[48]

The crisis has backlogged the system so badly that some aliens may have to wait as long as a decade, until 2033, for a court date.[49]

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43 Miranda Devine, "Leaked Video Reveals Joe Biden's 'hush Hush' Migrant Invasion," The New York Post, January 26, 2022, https://nypost.com/2022/01/26/leaked-video-reveals-joe-bidens-hush-hush-migrant-invasion/.

44 Christopher Sadowski, et al., "Biden Administration Resumes Migrant Flights to Airport Outside NYC," The New York Post, April 15, 2022, https://nypost.com/2022/04/15/biden-administration-resumes-migrant-flights-to-airport-outside-nyc/.

45 Fred Lucas, "Biden Border Policy Lets Illegal Immigrants Fly American Without ID," The Daily Signal, April 30, 2021, https://www.dailysignal.com/2021/04/30/exclusive-illegal-immigrants-fly-american-courtesy-of-biden-border-policy/.

46 Anna Giaritelli , "47,705 Migrants Released with Instructions to Report to ICE Have Gone Missing under Biden," The Washington Examiner, January 11, 2022, https://www.washingtonexaminer.com/news/47-705-migrants-released-with-instructions-to-report-to-ice-have-gone-missing-under-biden.

47 Stef Kight, "50,000 Migrants Released; Few Report to ICE," Axios, July 27, 2021, https://www.axios.com/2021/07/27/migrant-release-no-court-date-ice-dhs-immigration.

48 Julia Ainsley, "Nearly 600,000 Migrants Released inside U.S. since 2021 with No Court Date," NBC News, February 3, 2023, https://www.nbcnews.com/politics/immigration/nearly-600000-migrants-crossed-border-released-inside-us-rcna68687.

49 Steven Nelson, "NYC ICE 'Mostly Booked' Through 2033 for Migrants Needing Court Dates," The New York Post, April 18, 2023, https://nypost.com/2023/04/18/nyc-ice-mostly-booked-through-2033-for-migrants-needing-court-dates/.

Summary Conclusion and Findings

The ending of effective border security policies, and their replacement with policies of mass catch-and-release and removal of consequences for illegal entry, has created the worst border crisis in American history.

As commander-in-chief, Biden's culpability is clear. However, Congress has a duty to examine and investigate Mayorkas' role in this crisis, as well. As the top cabinet official charged with defending and securing the homeland, Mayorkas has a responsibility to the American people to uphold his oath of office, and to protect and defend the homeland.

The chaos and carnage at the border, and that which has been sparked in communities across this country by the crisis, has led congressional leaders to demand Mayorkas resign.

On. Nov. 22, 2022, then-incoming Speaker of the House Kevin McCarthy, R-Calif., told Mayorkas to resign over his handling of the border or face the full weight of congressional oversight. "If Secretary Mayorkas does not resign, House Republicans will investigate every order, every action, and every failure to determine whether we can begin an impeachment inquiry," he declared at a press conference in El Paso, Texas.[50]

The purpose of the House Committee on Homeland Security's investigation is not to determine whether Mayorkas has done a good job as secretary—he clearly has not.

Rather, this investigation is focused on determining whether Mayorkas has violated his oath, failed to carry out his constitutional obligations to the homeland, and been derelict in his duty, and thus deserving of greater accountability. The American people deserve the answers to these questions, and through this investigation, Congress will provide them.

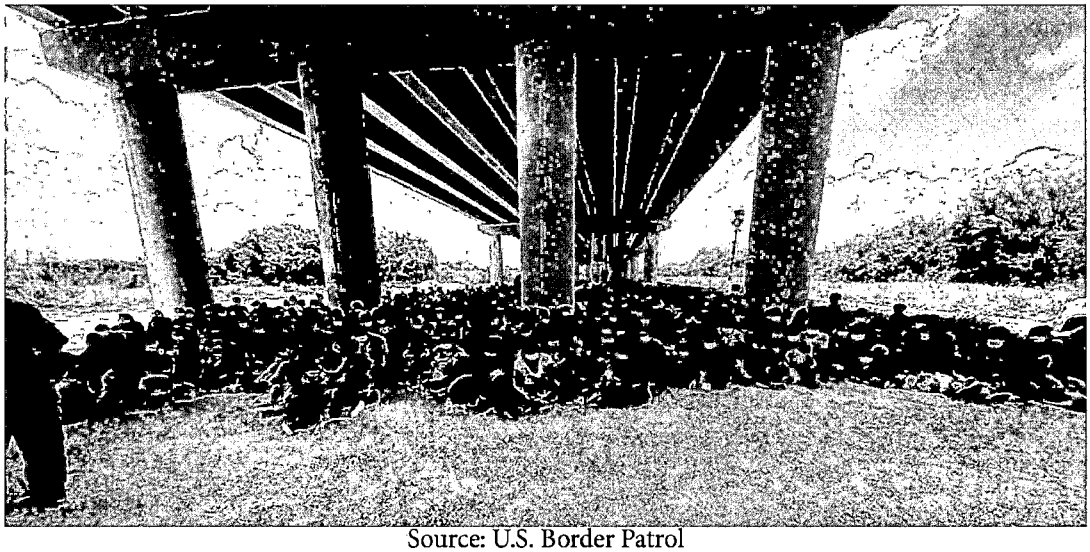
This preliminary report provides the Committee's initial assessment of the causes, costs, and consequences of the ongoing border crisis.

50 Lisa Mascaro, "GOP's McCarthy Threatens to Impeach Mayorkas over Border," AP News, November 22, 2022, https://apnews.com/article/biden-kevin-mccarthy-impeachments-alejandro-mayorkas-border-security-5b2a8fa00a8cc724922b89c328fe6609.

Preliminary Findings

In its initial investigation into the border security policies of the Biden administration, this Committee has reached the following preliminary conclusions:

- That the Biden administration, at the direction of the president and his most senior officials, terminated, suspended, or rolled back numerous border-security policies that had brought illegal immigration to historic lows;
- That, in addition to the policies terminated by the Biden administration, those implemented at the direction and under the leadership of both Biden and Mayorkas have proven directly responsible for the historic border crisis still ongoing today;
- That the agenda of the Biden administration under Biden and Mayorkas' leadership effectively amounts to a policy of open borders, resulting in a catastrophic loss of human life and dignity, record fiscal costs to the federal and state governments, and unprecedented profits for the TCOs operating in Mexico and the United States; and
- That Secretary Mayorkas, as the head of DHS, bears particular responsibility for the devastating crisis that has unfolded and expanded on his watch and due to his policies.



Source: U.S. Border Patrol

- Under the Biden administration, apprehensions at the Southwest border have exceeded 5.2 million, with total nationwide apprehensions totaling more than 6.1 million.[51]
- CBP has also recorded more than 1.5 million known gotaways during that time, bringing total apprehensions plus known gotaways to more than 7.6 million in just two years.[52]
- Since Oct. 1, 2020, CBP has recorded more than 92,000 arrests of individuals with criminal convictions or those with outstanding warrants.[53]
- Border Patrol arrests of criminal illegal aliens have exploded, as well.[54]
  - In FY22, Border Patrol arrested illegal aliens with a combined 62 convictions for homicide and manslaughter, up from just three in FY20.
  - Convictions for sexual offenses among aliens arrested in FY20 totaled 156, increasing to 488 in FY21 and 365 in FY22.
  - The number of convictions for theft hit 896 in FY22, up from 143 in FY20.
- Through April, CBP has seized more than 17,000 pounds of fentanyl along the Southwest border in FY23,[55] including more than 1,500 pounds between ports of entry (POEs).[56]
- The chaos at the Southwest border has fueled historic profits for the cartels. In 2021, human trafficking alone generated as much as $13 billion in cartel revenue.[57]
- Since the beginning of FY21, 212 individuals on the Terrorist Screening Data Set (TSDS) have been apprehended between POEs at the Southwest and Northern borders. By contrast, Border Patrol apprehended just 14 illegal aliens on the TSDS from FY17-20.[58]

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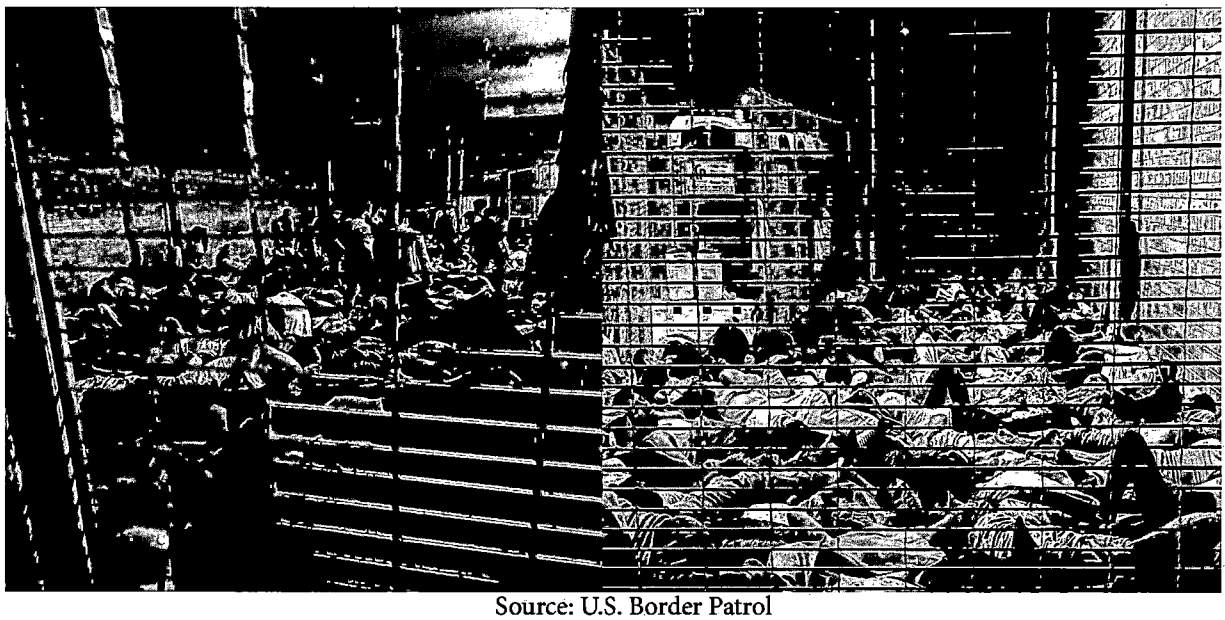
51 U.S. Customs and Border Protection Newsroom, supra note 2.
52 "Chairmen Green, Comer, Jordan Investigate Biden Admin's Handling of Suspected Terrorists Crossing U.S.-Mexico Border," Majority Committee on Homeland Security, May 19, 2023, https://homeland.house.gov/chairmen-green-comer-jordan-investigate-biden-admins-handling-of-suspected-terrorists-crossing-u-s-mexico-border/.
53 U.S. Customs and Border Protection Newsroom, supra note 2.
54 "Criminal Noncitizen Statistics Fiscal Year 2023," U.S. Customs and Border Protection Newsroom, April 14, 2023, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics.
55 U.S. Customs and Border Protection Newsroom, supra note 2.
56 "Full Committee Field Hearing: 'Failure By Design: Examining Secretary Mayorkas' Border Crisis,'" Homeland Security Committee Events, YouTube video, 1:34:23, March 15, 2023, Full Committee Field Hearing: "Failure By Design: Examining Secretary Mayorkas' Border Crisis".
57 Miriam Jordan, "Smuggling Migrants at the Border Now a Billion-Dollar Business," The New York Times, July 25, 2022, https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html.
58 U.S. Customs and Border Protection Newsroom, supra note 2.

- Per CBP, individuals from more than 160 countries have been apprehended crossing the border illegally, including aliens from countries on the State Sponsors of Terrorism list.[59]
- The number of Chinese nationals illegally crossing has skyrocketed. Apprehensions along the Southwest border jumped from 450 in FY21 to 9,854 in the first seven months of FY23. Chinese nationals are increasingly crossing the Northern border illegally, also.[60]
- In FY22, Mayorkas established a target to deport 91,500 criminal illegal aliens—down from 151,000 in FY20. ICE ultimately only removed 38,447 convicted criminal aliens. ICE's FY24 budget justification initially set a target of a mere 29,389,[61] a number that has since been replaced with "TBD" in the budget document.[62]
- From March 2021-January 2023, nearly 600,000 illegal aliens were released without court dates.[63]



Source: U.S. Border Patrol

59 Robert Sherman, "Migrants from More than 160 Countries Encountered at Border," NewsNation, October 6, 2022, https://www.newsnationnow.com/us-news/immigration/migrants-from-more-than-160-countries-encountered-at-border/.
60 U.S. Customs and Border Protection Newsroom, supra note 17.
61 Kristen Ziccarelli, "Expert Insight: Biden Administration Deprioritizes Criminal Alien Deportation in FY 24 Budget," America First Policy Institute Center for Homeland Security and Immigration, April 11, 2023, https://americafirstpolicy.com/latest/print/expert-insight-biden-administration-deprioritizes-criminal-alien-deportation-in-fy24-budget.
62 "U.S. Immigration and Customs Enforcement Budget Overview," U.S. Department of Homeland Security, https://www.dhs.gov/sites/default/files/2023-03/U.S%20IMMIGRATION%20AND%20CUSTOMS%20ENFORCEMENT_Remediated.pdf.
63 Ainsley, supra note 47.

I. Cartels Now Control the Southwest Border

The Biden administration's open-borders policies have empowered and emboldened these vicious, ruthless, and savage organizations that pose a massive threat to American safety and security.

The cartels have seized control of the Southwest border and used this control to smuggle record amounts of narcotics and people across, pocketing historic profits in the process.

Since January 2021, millions of individuals have made the journey through Mexico to the Southwest border in hopes of gaining entry into the United States. The cartels have been the natural beneficiaries.

As a June 2022 report from the Senate Foreign Relations Committee points out, the cartels control the migration routes through Mexico, and exert near-complete control on the movement of individuals through the country, particularly at and near the Southwest border.[64] It is essentially impossible to cross without paying them, according to former Border Patrol Chief Rodney Scott.[65]

The New York Times' Miriam Jordan has reported the same finding, writing in July 2022, "Migrant smuggling on the U.S. southern border has evolved over the past 10 years from a scattered network of freelance 'coyotes' into a multi-billion-dollar international business controlled by organized crime, including some of Mexico's most violent drug cartels."[66]

The unmitigated tide of individuals through Mexico has represented a windfall for the cartels, who have successfully smuggled or trafficked millions of illegal aliens across the border, forcing Border Patrol agents to apprehend, transport, and process unprecedented numbers of people rather than conduct their frontline security mission.

Border Patrol Chief Ortiz testified before the House Committee on Homeland Security in March 2023 that DHS did not have operational control of the Southwest border.[67] This loss of operational control to the cartels continues to present a challenge to CBP's security mission and the sovereignty of the United States. This testimony, from a Border Patrol agent with more than 30 years of experience, contradicted Mayorkas' sworn testimony in April 2022 that DHS did have operational control of the border.[68]

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64 "Biden's Border Crisis: Examining Policies That Encourage Illegal Migration," U.S. Senate Committee on Foreign Relations, June 2022, https://www.risch.senate.gov/public/_cache/files/5/0/5082e293-b23d-4726-a581-dc428517a843/9FB8D6A16D2415A013D48761339299C6.bidens-border-crisis.pdf.

65 Virginia Allen, "Former Border Patrol Chief Explains How Cartels Control Southern Border," The Daily Signal, February 10, 2023, https://www.dailysignal.com/2023/02/10/no-one-crosses-unlawfully-from-mexico-without-working-with-cartels-former-border-patrol-chief-says/.

66 Jordan, supra note 56.

67 "User Clip: Chief Ortiz Admits No Operational Control Over Border," C-SPAN, March 15, 2023, https://www.c-span.org/video/?c5062135/user-clip-chief-ortiz-admits-operational-control-border.

68 "Oversight of the Department of Homeland Security," Congress.gov, April 28, 2022, http://www.congress.gov/event/117th-congress/house-event/LC69767/text.

CONSEQUENCE 1: CARTELS HAVE TAKEN ADVANTAGE OF AMERICA'S OPEN BORDERS

Law enforcement veterans, local officials, and national security experts agree that the decreased presence of Border Patrol agents and other law enforcement has yielded this control of the United States' sovereign border to the cartels.

Former ICE Acting Director Tom Homan recently told Fox News, "We have lost operational control of our southern border. We no longer control it. The criminal cartels control it. I've talked to several chief patrol agents who told me they have lost operational control of the border. They cannot control the flow coming in."[69]

Former Border Patrol Chief Scott was even more explicit.

"They control the border today. And they control the border today under the Biden administration because of this mass migration to a level that they've never had. And I mean...they don't worry hardly at all about what they're trying to get in because their success rate is so high," he said earlier this year.[70]

Cochise County, Arizona Sheriff Mark Dannels told NewsNation in March 2023 the cartels "have the will, they have the structure, and they're exploiting" the administration's open-borders policies.[71]

Former acting DEA Chief Uttam Dhillon told a Washington, D.C., forum in March 2022, "Mexican cartels basically control our border now."[72]

The agreement is also bipartisan. In May, Arizona Democratic Sen. Kyrsten Sinema said, "The cartels are incredibly well-resourced and they're very strategic, so they're pushing people through different parts of the border at different times with different prices for different purposes, and they're controlling what's happening on the southern border, not the United States government."[73]

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69 "Tom Homan Says Biden Has Lost 'Operational Control' of the Border," Fox News, April 4, 2022, https://www.foxnews.com/media/tom-homan-title-42-border-biden-lost-control.

70 Allen, supra note 64.

71 "Ariz. Sheriff: Cartels Have 'Structure' to Control Border," NewsNation Live, YouTube video, 0:00, March 16, 2023, https://www.youtube.com/watch?v=G_7cUnwJIKw.

72 Maggie Hroncich, "Officials Assail Biden Inaction: 'Mexican Cartels Basically Control Our Border Now,'" The Daily Signal, March 15, 2022, https://www.dailysignal.com/2022/03/15/officials-assail-biden-inaction-mexican-cartels-basically-control-our-border-now/.

73 Kevin Stone, "Sen. Kyrsten Sinema Blasts Biden Administration over Title 42 End," KTAR News, May 11, 2023, https://ktar.com/story/5494615/sen-kyrsten-sinema-blasts-biden-administration-over-handling-of-title-42-end/.

II. Open Borders Equal Record Profits, Expanded Arsenals for the Cartels

The sheer volume of people and drugs the cartels are moving across the border has generated profit margins beyond the cartels' wildest dreams. In February 2021 alone, at the outset of the crisis, the Border Patrol estimated the cartels made $14 million per day smuggling illegal aliens across the border.[74]

Per reporting from the New York Times, the cartels may have made as much as $13 billion just from human trafficking and smuggling in 2021, a year in which CBP recorded around 1.5 million apprehensions at the Southwest border.

In FY22, this number jumped to 2.37 million, and through April, FY23 is on pace to total more than 2.45 million apprehensions. That's before counting another 1.5 million known gotaways on Biden and Mayorkas' watch, who not only pay the cartels to cross, but often "pay premium rates" to avoid apprehension.[75]

As these numbers continue to rise, so do the cartels' profits. Lucrative drug operations add even more revenue. Estimates are difficult to calculate precisely, but a report published by ICE as far back as 2010 estimated the cartels made nearly $30 billion on drug trafficking.[76]

That money goes right back to expanding the operations of the cartels who control the routes, to include building out massive paramilitary capabilities. Journalist Todd Bensman, who is also a Texas Department of Public Safety (DPS) veteran, wrote in a recent op-ed that there is "plenty of evidence to suggest" that the cartels have acquired the capability to "outgun" the Mexican government:

> "It's impossible to know how much military hardware the revenues from the Biden border crisis have paid for, but the cartels are clearly reinvesting their massive profits. ... These are armies, with highly trained special forces units, supported by professional intelligence operations and run by warlords. I'm not alone in my estimation that Biden's cartel-enriching mass migration crisis poses serious threats to important U.S. national interests, including many that are rarely discussed out loud, such as Mexican trade."[77]

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74 William La Jeunesse, "US-Mexico Border Traffickers Earned as Much as $14M a Day Last Month: Sources," Fox News, March 22, 2021, https://www.foxnews.com/politics/us-mexico-border-traffickers-million-february.

75 Nick Miroff, "Border Officials Say More People Are Sneaking Past Them as Crossings Soar and Agents Are Overwhelmed," The Washington Post, April 2, 2021, https://www.washingtonpost.com/national/got-aways-border/2021/04/01/14258a1e-9302-11eb-9af7-fd0822ae4398_story.html.

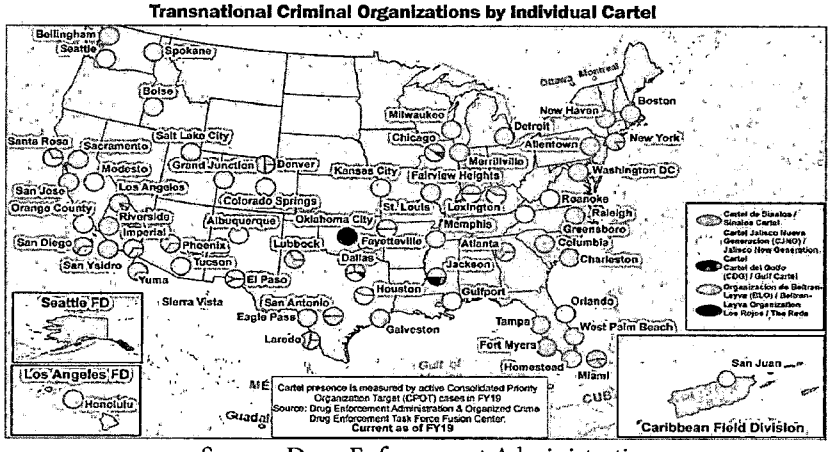
76 "United States of America-Mexico Bi-National Criminal Proceeds Study," U.S. Immigration and Customs Enforcement, https://www.ice.gov/doclib/cornerstone/pdf/cps-study.pdf.

77 Todd Bensman, "Mexico's Cartels Are Getting Rich and Powerful off of Biden's Mass Migration Crisis," The Daily Mail, December 22, 2022, https://www.dailymail.co.uk/news/article-11563659/Mexicos-cartels-getting-rich-powerful-Bidens-mass-migration-crisis-TODD-BENSMAN.html.

III. Cartel Operations in the United States

The cartels do not limit their operations to Mexico and the immediate border regions. They have long operated in American cities, and as the Biden border crisis continues to expand, so has the reach and influence of these groups. The Drug Enforcement Administration's (DEA) latest assessment in 2020 found major Mexican cartels are already operating in at least 60 American cities. That activity extends as far south as Miami, and as far north as Bellingham, Washington.[78]

Figure 58. United States: Areas of Influence of Major Mexican Transnational Criminal Organizations by Individual Cartel



Source: Drug Enforcement Administration

Use of Stash Houses: Stash houses are homes, apartments, or even hotels rooms used by the cartels to hide large groups of illegal aliens after they have been brought into the country. These groups are kept in squalid, unsanitary, and inhumane conditions before the TCOs are ready to smuggle them onto their next destination in the United States.

The use of stash houses by these organizations has exploded since the Biden border crisis began. In May 2021, in the early days of the crisis, Texas DPS and Border Patrol officials reported a 400-percent increase in the number of illegal aliens rescued from stash houses.[79] Since October 2022, in the El Paso Sector alone, Border Patrol has discovered more than 165 stash houses, containing more than 2,400 individuals.[80]

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78 "2020 National Drug Threat Assessment," U.S. Department of Justice Drug Enforcement Administration, March 2021, https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

79 Adolfo Muniz, "Texas DPS Says Human Smugglers Using Color-Coded Wristband System at the U.S.-Mexico Border," Spectrum News 1, May 15, 2021, https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2021/05/14/texas-dps-says-human-smugglers-using-color-coded-wristband-system-at-the-u-s--mexico-border-.

80 Chief Raul Ortiz [@USBPChief], "51 Migrants Located in a Single Stash House! US Border Patrol El Paso Sector Human Smuggling Interdiction Teams Have Uncovered over 165 Stash Houses in the Region with over 2,421 Migrants so Far in FY23. Outstanding Work Is Being Done at EPT! @USBPChiefEPT Https://T.Co/90A-J6xC7SH," Tweet, Twitter, April 28, 2023, https://twitter.com/USBPChief/status/1652010403734384640.

For comparison, in 2022, El Paso agents uncovered 232 stash houses.[81] In FY20, Border Patrol uncovered 397 stash houses across all jurisdictions.[82]

The New York Times' Jordan wrote in 2022, "Over the past year, federal agents have raided stash houses holding dozens of migrants on nearly a daily basis."[83]

Since January 2021, CBP and ICE—to say nothing of state and local law enforcement—have had to conduct hundreds of operations to shut down stash houses and break up these criminal enterprises, with CBP's press page alone documenting the routine occurrence of these operations on Mayorkas' watch.[84]

- In May 2023, Border Patrol agents in Santa Teresa, New Mexico, found more than 50 illegal aliens "living in deplorable conditions" in a stash house.[85]
- In April 2023, CBP and Texas DPS conducted operations at two separate stash houses in El Paso, finding more than 140 illegal aliens.[86]
- On March 27, 2023, Texas DPS moved on a stash house in El Paso where 23 illegal aliens were being held. Officials also discovered a shrine to Santa Muerte in the house, the patron saint of the cartels.[87]
- In April 2022, Border Patrol disrupted operations at four stash houses in 24 hours, leading to the apprehension of 53 illegal aliens. The stash houses were part of El Paso apartment complexes and motels.[88]

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81 MaryAnn Martinez, "Border Patrol Waging War on Cartels with Migrant 'Stash House' Busts," The New York Post, April 6, 2023, https://nypost.com/2023/04/06/border-patrol-waging-war-on-cartels-with-stash-house-busts/.

82 John Davis, "CBP Fights Human Smuggling and Stash Houses," U.S. Customs and Border Protection Front-line Magazine, last modified June 12, 2023, https://www.cbp.gov/frontline/cbp-fights-human-smuggling-and-stash-houses.

83 Jordan, supra note 56

84 "Media Releases." U.S. Customs and Border Protection Newsroom, accessed June 12, 2023, https://www.cbp.gov/newsroom/media-releases/all.

85 Dave Burge, "Border Patrol Finds More than 50 Migrants in 'Deplorable Conditions' in Stash House," KTSM 9 News, May 13, 2023, https://www.ktsm.com/news/border-patrol-finds-more-than-50-migrants-in-deplorable-conditions-in-stash-house/.

86 Patrick Reilly, "Border Forces Find over 140 Illegal Migrants in Stash House Raids," The New York Post, April 4, 2023, https://nypost.com/2023/04/04/border-forces-find-over-140-illegals-in-stash-house-raids/.

87 Louis Casiano, "Texas Illegal Immigrant Stash House Found with Shrine to Cartel 'Santa Muerte' Saint inside," Fox News, March 28, 2023, https://www.foxnews.com/us/texas-illegal-immigrant-stash-house-shrine-cartel-santa-muerte-saint.

88 "Four stash houses busted in 24-hours," U.S. Customs and Border Protection Office of Public Affairs, April 8, 2022, https://www.cbp.gov/newsroom/local-media-release/four-stash-houses-busted-24-hours

Stash houses also represent a major humanitarian concern. According to Border Patrol agent Fidel Baca, "So you have criminals inside these homes. A lot of the times they've committed serious crimes, crimes against people, crimes of sexual assault, crimes of assault, and they are caretaking for lots of people, people in which we have vulnerable populations. We have children, we have women in these homes, and they are being taken care of by criminals."[89] The family members of those in the stash houses are often extorted by the smuggling groups for even more money.[90]


Source: U.S. Border Patrol/CBP

According to now-Border Patrol Deputy Chief Matthew Hudak: "They'll stockpile them for a couple of days in one of these stash houses until they have enough people to put in a tractor-trailer, then lock it with no way for them to escape the brutal South Texas heat. When we open up these containers, and it's well over 105 degrees with no ventilation, no personal protective equipment, such as masks, no water. It's tragic." [91]

The tragedy in San Antonio last summer, where more than 50 people, including 5 minors, died after being trapped in the back of a locked semi-trailer, is devastating proof of how these people are treated like cargo.[92]

Drone Operations: Another area in which the cartels have developed and deployed sophisticated new tactics is the use of drones to conduct surveillance and intelligence-gathering operations, as well as to deliver narcotics across the border.

If Border Patrol agents are stretched to the breaking point trying to patrol the border and apprehend illegal aliens and narcotics coming across on the ground, imagine the extra nightmare these drone operations represent.

Texas DPS Lt. Chris Olivarez recently put it this way: "They're able to scout everything and watch what we are doing, every movement we are making. That's why it's a cat and mouse game and we have to try and be one step ahead of them."[93]

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89 Ariana Parra, "El Paso Sector Border Patrol Tells Community to Keep an Eye out for Stash Houses," KFOX, April 6, 2023, https://kfoxtv.com/news/local/el-paso-sector-border-patrol-tells-community-to-keep-an-eye-out-for-stash-houses-report-smuggling.

90 Mark Krikorian, "The Human Cost of Open-ish Borders," National Review, March 3, 2021, https://www.nationalreview.com/corner/the-human-cost-of-open-ish-borders/.

91 Davis, supra note 82.

92 "Death Toll Rises to 53 after Bodies of Migrants Found in Texas Tractor-Trailer," CBS News, June 29, 2022, https://www.cbsnews.com/news/san-antonio-migrants-texas-tractor-trailer-dead-injured/.

93 Robert Sherman, "For Texas Border Officials, Cartel Drones Are the Latest Headache," NewsNation, January 19, 2023, https://www.newsnationnow.com/us-news/immigration/border-coverage/for-texas-border-officials-cartel-drones-are-the-latest-headache/.

Border Patrol Agent Gloria Chavez, sector chief of the Border Patrol's Rio Grande Valley Sector, has noted the cartels "have 17 times the number of drones, twice the amount of flight hours and unlimited funding to grow their operations."[94]

During a recent hearing conducted by the House Committee on Homeland Security, Rep. Monica De La Cruz, R-Tex., told the Committee that drone operations just in the Rio Grande Valley Sector posed a massive challenge for Border Patrol—one they are simply unable to fully handle: "The cartel drone detections just right here in the RGV sector in FY22 was 35,000 drone detections. ... Out of the 35,000 drone detections, only 10,000 were intercepted."[95]

Complex Human Trafficking/Smuggling Operations: According to DHS and state law enforcement officials, the cartels are also engaged in complex operations to smuggle and traffic illegal aliens across the border into the United States.

One of the ways in which they do so is by using a complex system of wristbands which essentially create an inventory of those who have paid, where individuals are going, which TCO is responsible for smuggling the alien, and other similar logistical information.

Jaeson Jones, a former Texas DPS captain and expert on cartels, told the Center for Immigration Studies (CIS) researchers in early 2021, "What this means is that the cartels and the smuggling organizations have created a process because they are being so overrun with people that, even for them, it's difficult to keep up with who has paid and who hasn't."[96]

These wristbands and the registration process that goes along with them also help the cartels keep track of who maintains outstanding debts to the organization and will be required to work those debts off later once they arrive in the United States.

According to Jones, "If they don't pay their debt then the cartel has the information about where they're going, but more importantly, they have the information on their families in home countries. From there, they can start the threats and hold them accountable through debt bondage, a form of human trafficking. Either pay or we're going to come after your family."[97]

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94 Ali Bradley and Robert Sherman, "Border Patrol Agent Says Drug Cartels Using Drones," NewsNation, February 8, 2023, https://www.newsnationnow.com/us-news/immigration/border-coverage/border-agent-cartels-using-drones/.

95 "Full Committee Field Hearing: 'Failure By Design: Examining Secretary Mayorkas' Border Crisis,'" Homeland Security Committee Events, YouTube video, 1:52:14, March 15, 2023, https://www.youtube.com/live/7Z1ETzh3AUA?feature=share&t=6734.

96 Todd Bensman, "Overwhelmed Mexican Alien-Smuggling Cartels Use Wristband System to Bring Order to Business," The Center for Immigration Studies, March 2, 2021, https://cis.org/Bensman/Overwhelmed-Mexican-AlienSmuggling-Cartels-Use-Wristband-System-Bring-Order-Business.

97 Ibid.

Representative Henry Cuellar, D-Tex., has described another system, in which different color wristbands indicate how many times the alien has attempted to cross the border—"Those with red bands are first-time crossers and those with purple bands are not allowed to try to cross again."[98]

One expert has said of these operations, "They are organizing the merchandise in ways you could never imagine five or 10 years ago."[99]

IV. Open Borders Are Empowering Gangs Like MS-13

Texas DPS Director Steve McGraw said earlier this year that criminal gangs "work to support cartel operations on both sides of the border. They certainly do it, they operate in Mexico and they operate on this side too in terms of stash houses where there's drugs and people. They extort people on the south of the border and extort them when they get to this side of the border."[100]

Texas DPS estimates there are more than 100,000 gang members in the Lone Star State, many of whom maintain ties to Mexican drug cartels. Major cartels like the Sinaloa and Gulf cartels are also operating in cities like Chicago, providing drugs that are then sold and distributed by the violent street gangs in those locales.[101]

MS-13 is perhaps the most notorious and dangerous of these gangs. The gang's motto of "mata, viola, controla" ("kill, rape, control") is indicative of the group's operations within the United States. MS-13 gang members have been convicted of crimes that devastate communities, "including extortion, drug distribution, prostitution, robbery, and murder, as well as in more transnational illicit activity such as drug trafficking and human smuggling and trafficking."[102]

In October 2020, the Department of Justice released a report highlighting its efforts to combat TCOs, including MS-13. In the report, the DOJ noted 74 percent of 749 MS-13 members prosecuted by the department since 2016 were "unlawfully present" in the United States, with officials unable to verify the immigration status of another 15 percent.[103]

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98 Sandra Sanchez. "EXCLUSIVE: Colored Wristbands Help Cartels Track Migrants, Payments for Smuggling Them, Lawmaker Confirms," Border Report, April 15, 2021, https://www.borderreport.com/immigration/border-crime/exclusive-colored-wristbands-help-cartels-track-migrants-payments-for-smuggling-them-lawmaker-confirms/.

99 Jordan, supra note 56.

100 Cecilia Treviño, "DPS Director Says Mexican Cartels Recruit U.S. Gangs," KGNS TV, March 19, 2023, https://www.kgns.tv/2023/03/19/dps-director-says-mexican-cartels-recruit-us-gangs/.

101 Ali Bradley, "Cartels Recruit American Gangs in Smuggling Efforts," NewsNation, March 21, 2023, https://www.newsnationnow.com/us-news/immigration/border-coverage/cartels-recruit-american-gangs/.

102 Kristin Finklea, "MS-13 in the United States and Federal Law Enforcement Efforts," Congressional Research Service, August 20, 2018, R45292, https://sgp.fas.org/crs/homesec/R45292.pdf.

103 "Department of Justice Releases Report on Its Efforts to Disrupt, Dismantle, and Destroy MS-13," Department of Justice Office of Public Affairs, October 21, 2020, https://www.justice.gov/opa/pr/department-justice-releases-report-its-efforts-disrupt-dismantle-and-destroy-ms-13.

According to report, "The data also show that for decades MS-13 has exploited weaknesses in border enforcement policies..."[104] This was before Biden and Mayorkas implemented their radical open-borders agenda.

The gang continues to try to exploit the porous Southwest border. In August 2021, Border Patrol agents in the Rio Grande Valley Sector arrested four MS-13 gang members across Texas who attempted to illegally enter the United States.[105] In FY22, U.S. Border Patrol agents arrested 312 MS-13 members attempting to sneak into the United States from Mexico.[106]

Officials do not know how many MS-13 members have entered the United States un-apprehended or undetected during this timeframe but given the skyrocketing number of gotaways and the tendency of bad actors like violent criminals and gang members to pay more to enter the country uncaught, it is likely a number that should cause great concern.

Moreover, the historic influx of unaccompanied alien children (UACs) has also likely served to swell the ranks of vicious gangs like MS-13.

The Center for Immigration Studies' Jessica Vaughan told Congress in April 2023 that ICE officials estimate around 40 percent of the MS-13 members they arrest arrived in the United States as UACs.[107] A recent Florida grand jury investigation into the Biden administration's policies reported similar findings, showing that a growing number of gang members are being brought into the U.S. under the guise of being UACs:

> "According to the testimony of the Border Patrol's acting chief, even as far back as 2017 it was known that at least 59 UAC had been identified as members of the MS-13 gang. That number has increased significantly; we received testimony that other gangs likewise send members and even have UAC members graduate to adulthood and apply to sponsor other UAC members."[108]

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104 Ibid.

105 "MS-13 Gang Members Arrested After Illegally Entering the U.S.," U.S. Customs and Border Protection Office of Public Affairs, August 26, 2021, https://www.cbp.gov/newsroom/local-media-release/ms-13-gang-members-arrested-after-illegally-entering-us.

106 Anna Giaritelli, "More than 300 MS-13 Gang Members Arrested at Southern Border in Fiscal Year '22," The Washington Examiner, October 24, 2022, https://www.washingtonexaminer.com/news/crime/more-than-300-ms-13-members-arrested-fy-22.

107 "Statement of Jessica M. Vaughan: The Biden Border Crisis: Exploitation of Unaccompanied Alien Children," U.S. House Judiciary Committee Subcommittee on Immigration Integrity, Security and Enforcement, April 26, 2023, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/vaughan-testimony.pdf.

108 "THIRD PRESENTMENT OF THE TWENTY-FIRST STATEWIDE GRAND JURY REGARDING UNACCOMPANIED ALIEN CHILDREN (UAC)," SC22-796, Twenty-First Statewide Grand Jury of Florida, (Supreme Court of Florida, March 2023), https://www.documentcloud.org/documents/23734272-3rd-presentment-of-21st-swgj.

In late May 2023, five illegal aliens, all of them under the age of 30, were arrested and charged with the murder of 15-year-old Limber Lopez Funez in Frederick, Maryland. Lopez had gone missing in February, and his body was discovered in a Maryland state park in April. All five suspects were found to be MS-13 gang members.[109]

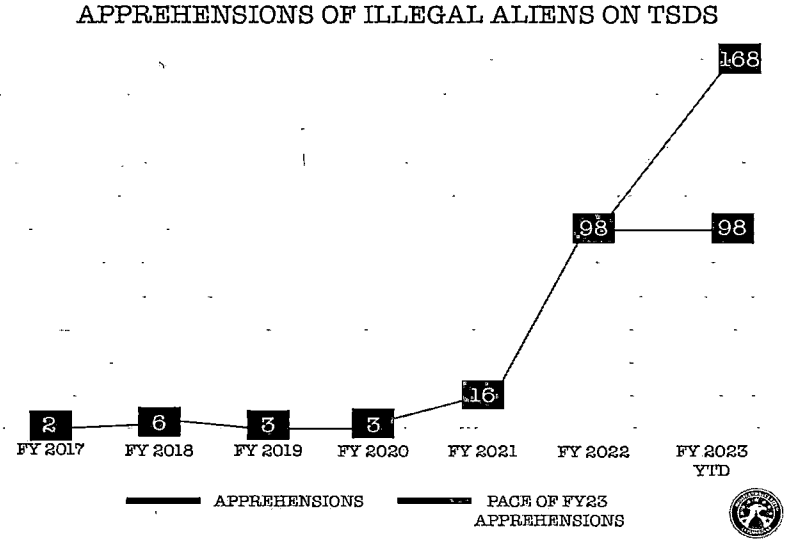
109 "5 Immigrants Charged in Murder of Missing 15-Year-Old Frederick Boy," FOX 5 DC, May 31, 2023, https://www.fox5dc.com/news/5-immigrants-charged-in-murder-of-missing-15-year-old-frederick-boy.

I. Individuals on the Terrorist Screening Dataset Coming Across in Record Numbers

Troublingly, CBP has seen a record number of apprehensions of individuals on the Terrorist Screening Data Set (TSDS). This dataset, also known as the "terror watchlist," is the "U.S. government's database that contains sensitive information on terrorist identities."[110]

During the Trump administration, from FY17–FY20, CBP encountered only 14 individuals at the Southwest and Northern borders who pinged on the TSDS, with most of them attempting to enter through the Southwest border.

In comparison, since FY21, 212 individuals who names are on the TSDS have been apprehended crossing both borders illegally—all but three at the Southwest border, per CBP numbers.[111] Ninety-six individuals on the TSDS have been apprehended at the Southwest border so far in FY23, nearly matching FY22's total of 98.



Source: CBP Terrorist Screening Data Set Encounters

II. Potential National Security Threats Arriving From Other Nations

The historic number of people arriving at the Southwest border are increasingly not just from Mexico or Central America—they are coming from countries beyond the Western Hemisphere, including China and Russia.[112]

Chinese and Russian nationals are of particular concern, given those nations' status as the United States' most significant adversaries and the threat they pose to American national security.

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110 U.S. Customs and Border Protection Newsroom, supra note 2.
111 Ibid.
112 Sherman, supra note 58.

In addition, these countries do not cooperate with the United States when it comes to providing law enforcement-related data on those apprehended illegally crossing the border, including information on criminal histories or terrorism connections. This makes it effectively impossible to truly vet these individuals—if CBP officials even had the time to do so.

Per CBP, the number of Chinese and Russian nationals illegally crossing has skyrocketed in the last two years. From October 2022 through April of this year, Border Patrol has recorded nearly 12,000 apprehensions of Chinese nationals just at the Southwest border. In all of FY20, the number was 1,236. A similar number of Russian nationals have also been apprehended crossing the Southwest border illegally in the same timeframe.[113]

The Border Patrol's Chavez pointed out in March 2023 that apprehensions of Chinese nationals in FY23 had increased more than 900 percent compared to FY22,[114] tweeting that the surge was "creating a strain on our workforce due to the complexities of the language barrier and lengthens the processing."[115] More than 60,000 Russians could illegally cross the Southwest border in 2023 if the current pace holds.[116]

Despite not being able to adequately vet these individuals from hostile nations, Fox News' Adam Shaw and Bill Melugin reported in February 2023 that Chinese nationals are typically processed for expedited removal, "unless they claim to have a credible fear of persecution if returned to the country—where the Chinese Communist Party holds power."[117] Consequently, sources told Shaw and Melugin, "many are claiming that fear and are subsequently being released into the U.S. on their own recognizance and with a notice to appear for a court date for their immigration hearings."[118]

It is simply unknown how many of those released into the interior have sinister intentions.

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113 U.S. Customs and Border Protection Newsroom, supra note 17.
114 Sandra Sanchez, "South Texas Sees Surge of Chinese Nationals Crossing Border Illegally, Chief Says," Border Report, March 20, 2023, https://www.borderreport.com/immigration/south-texas-sees-surge-of-chinese-migrants-crossing-border-illegally-chief-says/.
115 Chief Patrol Agent Gloria I. Chavez [@USBPChiefRGV], "RGV Continues to Lead the Nation in Chinese Migrant Encounters. In FY23, There Have Been 1,577 Apprehensions-91% Being Single Adults. A 920% Increase Compared to FY22 Creating a Strain on Our Workforce Due to the Complexities of the Language Barrier & Lengthens the Processing. Https://T.Co/X9Z4QEbNT3," Tweet, Twitter, March 16, 2023, https://twitter.com/USBPChiefRGV/status/1636489039917219840.
116 Alexander Panetta, "These Russians Are Fleeing to the U.S. — by Walking from Mexico," CBC News, February 16, 2023, https://www.cbc.ca/news/russian-migrants-arizona-border-1.6747978.
117 Adam Shaw and Bill Melugin, "Border Patrol Apprehensions of Chinese Nationals at Southern Border up 800%: Source," Fox News, February 9, 2023, https://www.foxnews.com/politics/border-patrol-apprehensions-chinese-nationals-southern-border-800-source.
118 Ibid.

III. Not So Friendly Skies—Reassigning Air Marshals to Administrative Duty

The Federal Air Marshals Service (FAMS) has also been impacted by the crisis, with marshals being relocated to the border to assist in understaffed jurisdictions. Per information provided to the House Committee on Homeland Security, air marshals are being placed on three-week rotations, with up to 150 air marshals and seven supervisors at the border at any given time.[119] This has pulled them away from their usual roles ensuring security on flights to instead perform duties unrelated to law enforcement.

According to the Air Marshals Association, the relocation of air marshals has been problematic. The association recently stated in an internal newsletter, "We have had a staggering number of retirements in the last few years. We cannot keep sending a large number of our flying FAMS to the border at the expense of our current mission, while also creating new AVO positions, which currently take more FAMS out of the air without a clearly defined job."[120]

These deployments represent a potential national security risk. David Londo, president of the Air Marshal National Council, said in November 2022 that pulling marshals from their normal jobs to deal with the border crisis leaves "a gaping hole in our aviation security," and that deploying them to the border during the holiday season was "irresponsible and dangerous."[121]

119 Information provided to the Committee on April 25, 2023.
120 "Message from the Ama," Air Marshal Association, April 22, 2023
121 Matthew Medsger, "Biden Admin Deploys Air Marshals to Border to Help with Migrants," The Boston Herald, November 23, 2022, sec. Politics, https://www.bostonherald.com/2022/11/23/biden-admin-deploys-air-marshals-to-border-to-help-with-migrants/.

I. Fentanyl—An Unprecedented, Deadly, and Growing Crisis

The United States is consumed by a fentanyl crisis and it is being driven by the fentanyl flowing from Mexico across the Southwest border. Fentanyl poisoning is now the leading cause of death for Americans ages 18-49,[122] and the number of Americans falling victim to this deadly synthetic opioid remains unacceptably high, particularly as the Mexican cartels continue to manufacture the low-cost drug and smuggle it into the United States.[123]

Approximately 107,000 Americans died from drug overdoses in 2021, with more than 70,000 of those caused by fentanyl poisoning, compared to 36,359 fentanyl deaths in 2019.[124] In 2021, more Americans died from fentanyl poisoning than died in auto and gun-related incidents combined.[125] In Texas, fentanyl deaths rose 89 percent from 2020 to 2021.[126]

According to a recent CDC report,[127] the number of drug overdose deaths linked to fentanyl increased by 279 percent between 2016 and 2021,[128] increasing from 5.7 deaths per 100,000 to 21.6 per 100,000 in the same period.[129]

According to CDC data, fentanyl is the leading cause of drug-associated deaths across all age groups, and fentanyl is particularly devastating the young adult population.

The cartels' growing practice of lacing other forms of narcotics, even what look to be prescription drugs, with fentanyl is poisoning even more Americans, because many don't ever know they're ingesting the substance.[130]

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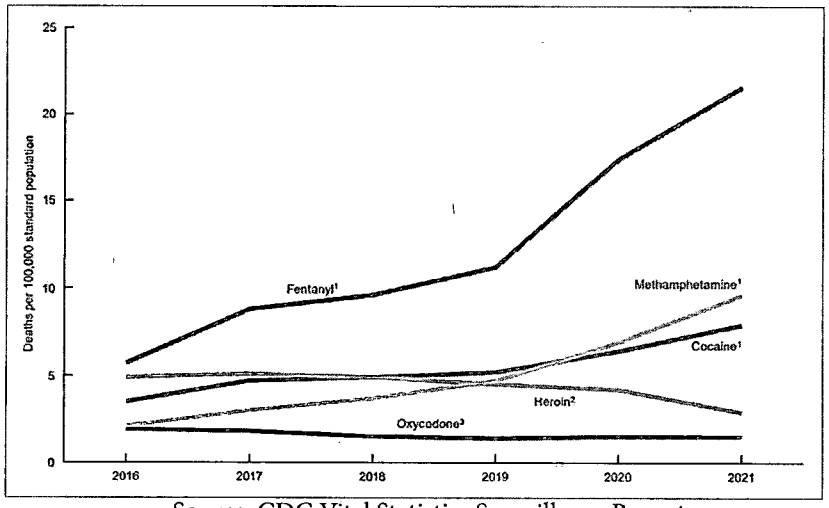
122 Julie Vitkovskaya and Courtney Kan, "Why Is Fentanyl so Dangerous?," The Washington Post, April 10, 2023, sec. National, https://www.washingtonpost.com/nation/2022/11/03/fentanyl-opioid-epidemic/.
123 "DEA Intelligence Report: Fentanyl Flow to the United States," DEA Intelligence Program Strategic Intelligence Section, DEA-DCT-DIR-008-20, January 2020, https://www.dea.gov/sites/default/files/2020-03/DEA_GOV_DIR-008-20%20Fentanyl%20Flow%20in%20the%20United%20States_0.pdf.
124 "Drug Overdose Death Rates," National Institute on Drug Abuse, February 9, 2023, https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates.
125 "DEA Warns of Increase in Mass-Overdose Events Involving Deadly Fentanyl," U.S. Drug Enforcement Administration Media Relations, April 6, 2022, https://www.dea.gov/press-releases/2022/04/06/dea-warns-increase-mass-overdose-events-involving-deadly-fentanyl.
126 "Fentanyl: One Pill Kills," Texas Department of Public Safety Media and Communications Office, February 3, 2023, https://www.dps.texas.gov/section/media-and-communications-office/fentanyl-one-pill-kills.
127 Merianne Spencer, et al., "Estimates of Drug Overdose Deaths Involving Fentanyl, Methamphetamine, Cocaine, Heroin, and Oxycodone: United States, 2021," Report No. 27, National Center for Health Statistics, May 3, 2023, https://www.cdc.gov/nchs/data/vsrr/vsrr027.pdf.
128 Nicoletta Lanese, "Fentanyl Overdose Death Rates 'more than Tripled' in Recent Years, CDC Report Shows," Live Science, May 3, 2023, https://www.livescience.com/health/medicine-drugs/fentanyl-overdose-death-rates-more-than-tripled-in-recent-years-cdc-report-shows.
129 Ibid
130 Ibid.

Indeed, the crisis is so acute that the FDA has taken the step of approving over-the-counter naloxone nasal spray to give Americans more access to life-saving treatment to counter fentanyl poisoning.[131]

Figure 1. Age-adjusted rates of drug overdose deaths, by selected drugs: United States, 2016–2021



Source: CDC Vital Statistics Surveillance Report

CBP's own data shows that the cartels have attempted to smuggle more fentanyl across the Southwest border than ever before. So far this fiscal year, CBP has seized 17,000 pounds of fentanyl at the Southwest border alone, including a record 3,257 pounds in April, blowing past FY22's total seizure of 14,100 pounds.[133] Troublingly, law enforcement officials believe they only apprehend about 5-10 percent of the total narcotics coming across.[134]

II. The Open-Borders Connection to the Fentanyl Crisis

This fentanyl is not just coming across in a vacuum. Mayorkas' open-borders policies are directly linked to the rising fentanyl crisis ravaging the country. The record seizures at the border, both between the ports and at the ports, indicate increased efforts by the cartels to traffic their product into the United States.

Smuggling between the ports is a particularly critical problem, because there simply is no way to know how much fentanyl is coming across these increasingly unguarded areas, and there are fewer ways to stop it.

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131 "FDA Approves First Over-the-Counter Naloxone Nasal Spray," U.S. Food & Drug Administration Office of the Commissioner, March 29, 2023, https://www.fda.gov/news-events/press-announcements/fda-approves-first-over-counter-naloxone-nasal-spray.

132 Spencer et al., supra note 125.

133 "Drug Seizure Statistics FY2023," U.S. Customs and Border Protection Newsroom, May 17, 2023, https://www.cbp.gov/newsroom/stats/drug-seizure-statistics.

134 Nick Miroff, "DEA Seized Enough Fentanyl to Kill Every Person in the U.S. in 2022," The Washington Post, December 21, 2022, sec. National Security, https://www.washingtonpost.com/national-security/2022/12/20/fentanyl-seizures-2022-dea/.

A South Texas sheriff recently told members of the House Committee on Homeland Security, "We have one of the busiest checkpoints in the southwest corridor. ... A lot of narcotics are coming through between the ports of entry, and I know that because I've done operations for 18 years. ... You can't put a metric on that."[135]

Early in the days of the crisis, the Border Patrol's Chavez told NBC News, "For the first time, we're starting to see these tactics where fentanyl is being smuggled between ports of entry. Cartels are very creative. They find ways to intimidate migrants and find ways to illegally have them transport that narcotic into the United States."[136] Chavez later noted, "These smuggling organizations (are) already doing drive-throughs through areas where my border barrier is weak or where there is none."[137]

With fewer Border Patrol agents performing their primary function of securing the border, the cartels have more gaps to exploit. They frequently use sophisticated tactics like pushing one group of illegal aliens across the border in one sector, knowing Border Patrol agents will respond, and then smuggling drugs like fentanyl across in the gaps their initial tactics created.

Former senior Border Patrol officials have confirmed this practice.[138]

III. Young People As Victims of the Fentanyl Crisis

In the United States, exposure to fentanyl is a crisis for the most innocent among us—children and young people.

Fentanyl poisoning deaths among American teens have risen at an alarming rate due to the proliferation of fentanyl. The synthetic opioid was involved in 884 adolescent deaths in 2021—up from 253 just two years earlier, according to a 2022 report published by the Journal of the American Medical Association.[139]

There were 133 opioid-related deaths among children under three years of age in 2021, according to federal mortality data, up from 67 in 2020 and 51 in 2019.

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135 "Texas Ranchers, Law Enforcement, and State Officials Share the Truth on Mayorkas' Border Crisis With Homeland Security Republicans," U.S. House of Representatives Committee on Homeland Security Republicans, March 16, 2023, https://homeland.house.gov/texas-ranchers-law-enforcement-and-state-officials-share-the-truth-on-mayorkas-border-crisis-with-homeland-security-republicans/.

136 Gabe Gutierrez and Al Henkel, "Fentanyl Seizures at U.S. Southern Border Rise Dramatically," NBC News, June 29, 2021, https://www.nbcnews.com/politics/immigration/fentanyl-seizures-u-s-southern-border-rise-dramatically-n1272676.

137 Ibid.

138 Rodney Scott, "Letter to Majority Leader Schumer, Minority Leader McConnell, Senator Peters, and Senator Portman," September 11, 2021, https://justthenews.com/sites/default/files/2021-09/Honorable%20Rob%20Portman%20%20US%20Senate%20Secuirty%20Concerns%20-%20Rodney%20Scott.pdf.

139 Joseph Friedman, et al., "Trends in Drug Overdose Deaths Among US Adolescents, January 2010 to June 2021," JAMA 327, no. 14 (April 12, 2022): 1398–1400, https://doi.org/10.1001/jama.2022.2847.

Synthetic opioids, of which fentanyl is the most significant, accounted for most of the fatalities.[140]

Pediatric deaths from fentanyl increased more than 30-fold between 2013 and 2021, according to the Yale School of Medicine.[141] More than 1,500 young people under the age of 20 died from fentanyl poisonings in 2021, more than four times as many than in 2018.[142]

Laboratory testing by the DEA has revealed that six out of 10 fentanyl-laced, fake prescription pills now contain a potentially lethal dose of fentanyl.[143] The emergence of "rainbow fentanyl"—brightly colored pills, powders and blocks made to look like candy—has created an even greater risk for kids.[144]

The DEA issued an alert in August 2022 about rainbow fentanyl, saying the drug had been seized in 26 states that month.[145] The DEA has warned that this brightly colored fentanyl is used to target and drive addiction in young Americans. This trend appears to be a new method used by the cartels to sell fentanyl-laced narcotics made to look like candy to children and young people.[146]

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140 Arian Campo-Flores and Jon Kamp, "The Youngest Victims of the Fentanyl Crisis," The Wall Street Journal, December 30, 2022, sec. Health, https://www.wsj.com/articles/children-victims-of-the-fentanyl-crisis-11672412771

141 "U.S. Child Deaths From Fentanyl Jumped 30-Fold in Just 8 Years," U.S. News & World Report and Health Day, May 8, 2023, https://www.usnews.com/news/health-news/articles/2023-05-08/u-s-child-deaths-from-fentanyl-jumped-30-fold-in-just-8-years.

142 Aimee Cunningham, "Fentanyl Deaths Have Spiked among U.S. Children and Teens," ScienceNews, April 28, 2023, https://www.sciencenews.org/article/fentanyl-deaths-children-teens-opioid.

143 "One Pill Can Kill," U.S. Drug Enforcement Administration, accessed June 12, 2023, https://www.dea.gov/onepill.

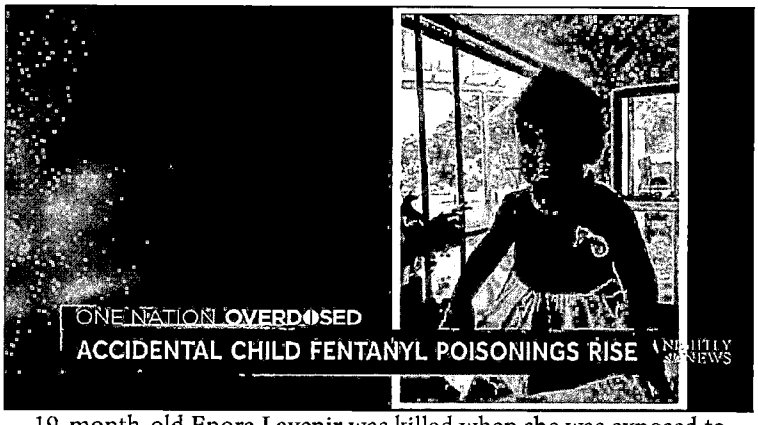
144 "DEA Warns of Brightly-Colored Fentanyl Used to Target Young Americans," U.S. Drug Enforcement Administration Media Relations, August 30, 2022, https://www.dea.gov/press-releases/2022/08/30/dea-warns-brightly-colored-fentanyl-used-target-young-americans.

145 "What Parents Should Know About Fentanyl," University Hospitals: The Science of Health, October 31, 2022, https://www.uhhospitals.org/blog/articles/2022/10/what-parents-should-know-about-fentanyl.

146 U.S. Drug Enforcement Administration Media Relations, supra note 142.

IV. Tragic Cases of Fentanyl Poisoning

In March 2023, the Lavenir family was staying at a VRBO rental unit in Florida. The family's attorney said 19-month-old Enora Lavenir was sleeping with her older sister in one of the rooms, when her mother, Lydie, found her unresponsive. The Palm Beach County Sheriff's Office and Medical Examiner's Office stated that she had gone into cardiac arrest due to toxic levels of fentanyl in her blood. A previous guest who rented the unit had left fentanyl behind.[147]



19-month-old Enora Lavenir was killed when she was exposed to fentanyl in a Florida VRBO rental unit.

Fifteen-year-old Brandon Dunn was killed by fentanyl in August 2022 after taking a counterfeit Percocet pill that contained four times the lethal dose of fentanyl. Noah's father, Brandon, testified before the House Judiciary Committee in February 2023, asking, "How many pounds of fentanyl are coming across the thousands of miles of sparsely policed or monitored southern border?"[148]

Rick and Erin Rachwal lost their 19-year-old son Logan in 2021 to fentanyl poisoning when he unknowingly took a pill in his dorm room that was laced with fentanyl. The family now runs a charity called "Love, Logan," which seeks to save young people from drug poisoning through education and preparedness.[149]

V. The Economic Cost of the Fentanyl Crisis

The human cost of the fentanyl crisis is incalculable. The lives lost from the fentanyl flowing across the Southwest border can never be replaced with any amount of money. However, it is important to note the financial costs this crisis has exacted from the American people.

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147 Sooji Nam, "Family Files Lawsuit after 19-Month-Old Daughter Dies from Fentanyl Exposure in Airbnb," WPBF, March 7, 2023, https://www.wpbf.com/article/florida-wellington-airbnb-vrbo-fentanyl-baby/43238731.

148 "Testimony of Mr. Brandon Dunn: The Biden Border Crisis: Part I," U.S. House Committee on the Judiciary, February 1, 2023, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/mr.-brandon-dunn-testimony.pdf.

149 Brittany Kasko, "Wisconsin Parents Lose Son to Fentanyl, Beg Other Families to Know the Truth about the Deadly Drug," Fox News, October 4, 2022, https://www.foxnews.com/lifestyle/wisconsin-parents-lose-son-fentanyl-beg-families-truth-deadly-drug.

In 2022, Congress' Joint Economic Committee released a report showing that that opioid epidemic cost the country almost $1.5 trillion in 2020 alone, an increase of more than 35 percent since the last time the cost was measured in 2017.[150] In the intervening years, the crisis has only worsened, meaning the next cost study will likely be even higher.

Health care providers have been hit hard by the rising opioid epidemic, as well. According to an Axios report in January 2023, the treatment of opioid use disorder (OUD) is costing hospitals an astounding $95+ billion per year, and accounting for almost eight percent of total hospital expenditures.[151] The report specifically names fentanyl as a driver of the crisis in the context of these higher costs.

150 "The Economic Toll of the Opioid Crisis Reached Nearly $1.5 Trillion in 2020," Joint Economic Committee Democrats, September 28, 2022, https://www.jec.senate.gov/public/_cache/files/67bced7f-4232-40ea-9263-f033d280c567/jec-cost-of-opioids-issue-brief.pdf.

151 Maya Goldman, "How Opioid Misuse Is Costing Health Systems," Axios, January 24, 2023, https://www.axios.com/2023/01/24/opioid-abuse-hospital-costs.

I. Plummeting Morale at CBP and ICE

In early May 2023, the DHS OIG released a report documenting how the record surge of illegal aliens across the border is negatively impacting the psychological health and morale of Border Patrol and ICE personnel.[152]

The specific findings of the report show a number of cracks forming in a DHS workforce suffering greatly from the stresses being placed on it by Biden and Mayorkas' open-borders policies.

The report's topline was sobering:

> "Based on interviews and survey responses from 9,311 law enforcement personnel, the details and overtime have negatively impacted the health and morale of law enforcement personnel, who feel overworked and unable to perform their primary law enforcement duties."[153]

Border Patrol agents spoke frankly with the Washington Examiner's Anna Giaritelli in June 2022, as well, with one agent telling her, "Under Biden, things are the worst they have ever been by far. Agents are calling in all the time. You always hear, 'It doesn't matter,' or, 'What's the point?' in reference to doing our job. Agents are afraid of ending up on the news for doing their job or getting in trouble for doing their job. There is no morale."[154]

Another agent bluntly said, "[I]t feels like we're committing a crime by allowing all these people into our country," rather than promptly removing or detaining those entering illegally.[155]

II. Border Patrol Suicides

The Border Patrol's Ortiz[156] and National Border Patrol Council Vice Pres. Chris Cabrera recently told Congress that 17 CBP personnel committed suicide in 2022[157]—the highest total in 13 years.[158]

152 "Intensifying Conditions at the Southwest Border Are Negatively Impacting CBP and ICE Employees' Health and Morale," U.S. Department of Homeland Security Office of the Inspector General, OIG-23-24, May 3, 2023, https://www.oig.dhs.gov/sites/default/files/assets/2023-05/OIG-23-24-May23.pdf.
153 Ibid.
154 Anna Giaritelli, "Border Patrol Cannot See Path Forward under Biden: 'There Is No Morale,'" The Washington Examiner, June 13, 2022, https://www.washingtonexaminer.com/policy/defense-national-security/border-patrol-cannot-see-path-forward-under-biden.
155 Ibid.
156 Virginia Allen, "'We Are Under Siege,' Texas Sheriff Says of Border Crisis," The Daily Signal, March 15, 2023, https://www.dailysignal.com/2023/03/15/we-are-under-siege-border-county-sheriff-tells-house-republicans-as-democrats-skip-hearing/.
157 Bethany Blankley, "Border Patrol Union: 'Failing' Biden Policies, Hardships Result in 17 Suicides in '22," The Center Square, March 16, 2023, https://www.thecentersquare.com/national/article_7c41f1ba-c428-11ed-b7dd-434d37b140a1.html.
158 Mireya Villarreal and Luke Barr, "US border officer suicides at 13-year high: How agency is focusing on 'culture change', ABC News, December 22, 2022, https://abcnews.go.com/US/us-border-officer-suicides-13-year-high-agency/story?id=95671395.

That includes the death of three Border Patrol agents within three weeks of each other in November 2022.[159] CBP reported another eight suicides in 2020 and 11 in 2021.

CBP started recording suicide statistics in 2007. Between then and the time of this report, the agency had lost at least 152 men and women to suicide. Around 40 of them have been lost in the last two years.[160]

Representative Tony Gonzales, R-Tex., who represents a district home to thousands of CBP personnel, has made clear how the current crisis is impacting them, saying in December, "Work has gotten very difficult on them. I've seen it in their faces. I've heard it in their voices for months now. It's almost, 'How much can a person take?' And often, they've taken a lot before they break."[161]

The aforementioned May 2023 OIG report found that the immense workload has forced CBP and ICE personnel to miss out on time with their families while subjecting them to additional stressors, with one agent commenting, "[The agency forces] a ridiculous 'anti-suicide' app onto our phones which cannot be deleted yet make us leave our homes and live in a hotel where we can't even eat healthily. This nightmare is forced upon us without a care of our mental or physical health."[162]

The wife of a long-serving Border Patrol agent confirmed this recently to the House Committee on Homeland Security, saying, "The first year that our men and women spent with this administration created so much PTSD, so much trauma, so much anxiety, so much depression, so much that us at home weren't trained to handle."[163]

III. Putting Border Patrol and Law Enforcement Officers At Risk

One of the stressors caused by the increasingly open border is the need for an ever-increasing number of search-and-rescue operations. Border Patrol agents routinely take heroic action to save individuals from dehydration, drowning in the Rio Grande River, and being callously tossed over the border wall by smugglers. Often, these efforts place the agents themselves in peril.

In FY22, CBP conducted 22,522 search-and-rescue operations nationwide, and 13,256 in FY21—the vast majority at the Southwest border.[164] Border Patrol Tucson Sector Chief John Modlin tweeted on May 25, 2023, that in just 72 hours, his agents had performed 60 rescues.[165]

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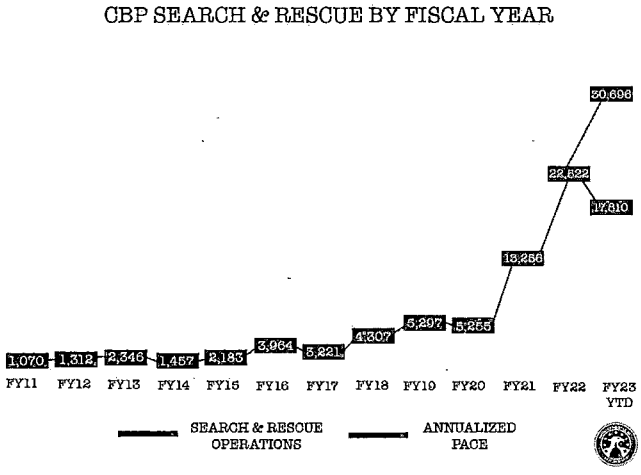
159 MaryAnn Martinez, "Three Border Patrol Agents Die by Suicide in Three Weeks," The New York Post, November 30, 2022, https://nypost.com/2022/11/30/three-border-patrol-agents-die-by-suicide-in-three-weeks/.
160 Ibid.
161 Ibid.
162 Ibid.
163 U.S. House of Representatives Committee on Homeland Security Republicans, supra note 133
164 U.S. Customs and Border Protection Newsroom, supra note 108.
165 John R. Modlin [@USBPChiefTCA], "Past 72 Hours... - 1 Agent Assaulted - 1,710 Apprehensions - 18 Criminal Migrants Arrested - 15 Pounds of Methamphetamine - 7 Human Smuggling Events - 1 Firearm We Also Performed 60 Rescues! #HonorFirst Https://T.Co/BVFzFtJDV6," Tweet, Twitter, May 24, 2023, https://twitter.com/USBPChiefTCA/status/1661468450508685312.

By comparison, CBP conducted 5,255 search operations in FY20, and even given the temporary crisis in FY19, CBP's total was 5,297.[166] A review of CBP data from FY11-FY18 shows that combined search-and-rescue operations from those years totaled 19,860, for an average of 2,482 a year—almost 3,000 fewer operations than CBP conducted just in FY22.[167]



Source: CBP Search and Rescue data

These efforts to enforce the law and save lives sometimes end in tragedy. In 2022, Texas National Guardsman Bishop Evans tragically lost his life trying to save two individuals who were drowning in the Rio Grande near Eagle Pass, Texas. He was successful in saving their lives, but a few days after the incident, Texas Rangers determined that both individuals "were involved in illicit transnational narcotics trafficking."[168]

166 "CBP Enforcement Statistics Fiscal Year 2020," U.S. Customs and Border Protection, May 8, 2023, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics-fy2020.

167 "Stats and Summaries," U.S. Customs and Border Protection, accessed on June 12, 2023, https://www.cbp.gov/newsroom/media-resources/stats.

168 Timothy Nerozzi, "Bishop Evans, Texas Soldier Who Died Saving Migrants, to Be Laid to Rest," Fox News, April 30, 2022, https://www.foxnews.com/us/bishop-evans-texas-soldier-funeral-died-saving-migrants.

CONSEQUENCE 5: OPEN BORDERS OPEN THE DOOR TO CRIMINAL ILLEGAL ALIENS

I. Rising Number of Criminal Illegal Alien Arrests

Border Patrol apprehensions of illegal aliens previously convicted of crimes have spiked on Biden and Mayorkas' watch.[169] These criminal aliens have the most serious crimes on their records, including homicide, assault, rape, burglary, theft, and weapons trafficking.

From Oct. 1, 2020, to March 2023, around two-and-a-half years, Border Patrol recorded nearly 28,000 arrests of illegal aliens with criminal backgrounds, about 6,000 more total arrests than the previous four fiscal years combined.[170]

According to CBP, illegal aliens apprehended with prior convictions for assault, battery, or domestic violence decreased each year under the Trump administration, to a low of 208 combined convictions among those apprehended in FY20. That number skyrocketed to 1,178 total convictions during Mayorkas' first year in office.

Total convictions for DUI among those apprehended at the border decreased every year under the Trump administration, to a low of 364 in FY20, but drastically increased to 1,629 in FY21. During Pres. Trump's entire term, illegal aliens apprehended by Border Patrol totaled only 11 convictions for homicide and manslaughter among them. Under Mayorkas' leadership, that number jumped to more than 130 in just two years.[171] The numbers for sexual offenses show a similar trend, with FY20's 156 total convictions rising to 488 in FY21 and 365 in FY22.

These are just CBP statistics. They do not encompass data from states like Texas, which through Operation Lone Star has apprehended hundreds of thousands of illegal aliens, and recorded more than 27,000 arrests of criminal illegal aliens itself.[172]

And these are just the criminals that are being caught. Some criminal illegal aliens are even released into the country, because Border Patrol agents simply cannot vet them adequately.

On May 30, 2023, ICE announced the arrest of a Brazilian gang member and convicted murderer in Massachusetts. According to ICE, the alien "has an extensive, violent criminal history," but after being apprehended crossing illegally in Arizona, he was released, "placed into removal proceedings," and given a court date for his immigration case after concealing information on his criminal history from Border Patrol.[173]

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169 "Major Spike in Convicted-Criminal-Alien Encounters by U.S. Border Patrol," The Heritage Foundation, April 19, 2023, https://datavisualizations.heritage.org/immigration/major-spike-in-convicted-criminal-alien-encounters-by-us-border-patrol.

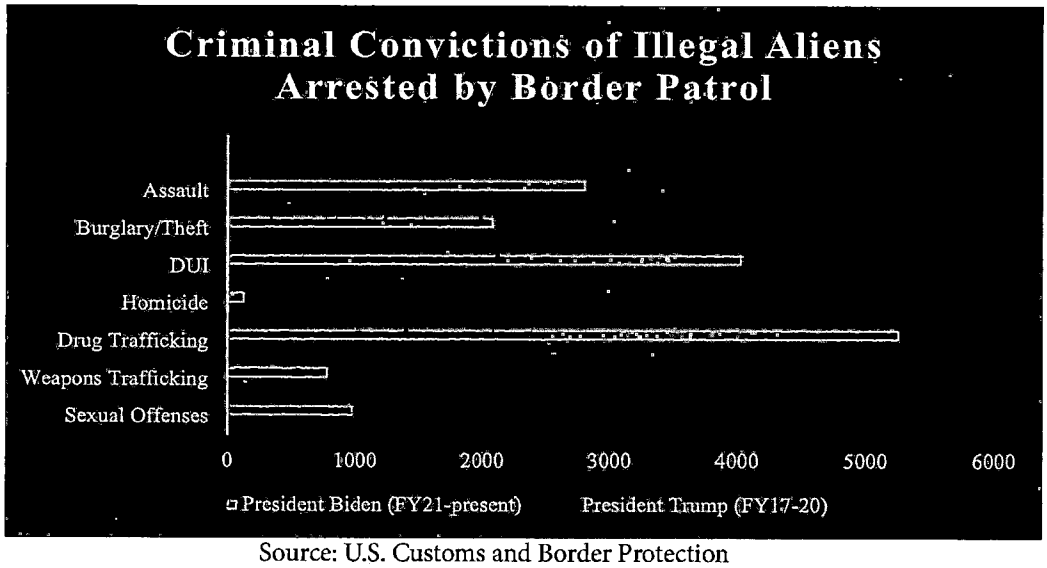
170 U.S. Customs and Border Protection Newsroom, supra note 53.

171 Ibid.

172 "Operation Lone Star Combats Increasing Smuggling Attempts By Cartels," Office of the Texas Governor, April 21, 2023, https://gov.texas.gov/news/post/operation-lone-star-combats-increasing-smuggling-attempts-by-cartels.

173 "ERO Boston Arrests Fugitive Gang Member Convicted of Murder in Brazil," U.S. Immigration and Customs Enforcement, May 30, 2023, https://www.ice.gov/news/releases/ero-boston-arrests-fugitive-gang-mem-

Criminals around the world are flocking to the Southwest border.



Source: U.S. Customs and Border Protection

II. Crimes Committed by Illegal Aliens Inside the United States

No national database exists to track crimes committed by illegal aliens. Many state and local jurisdictions do not record this information either, whether for reasons of resources or political correctness. However, it is instructive to note accounts of crimes committed by illegal aliens to understand the impact on innocent Americans, and to see how these individual crimes fit into the broader context of Mayorkas' open-borders policies and the chaos that the cartels and criminal aliens have created in the wake of those policies.

- On May 16, in Silver Spring, Maryland, just minutes from the nation's capital, Jose Hernandez-Espinal approached two women with a machete, stole their belongings, and raped one of them near a nature trail. He had entered the country as a minor, and eventually been ordered removed. ICE was not notified of his previous release from prison due to Prince George's County's sanctuary city law.[174] After his apprehension, Hernandez-Espinal indicated to law enforcement that he was responsible for raping a 15-year-old a few days prior in the same area.[175]

ber-convicted-murder-brazil.

174 Julio Rosas, "Surprise! Illegal Immigrant Accused of Sex Crimes Was Protected by Sanctuary Policies," Townhall, May 22, 2023, https://townhall.com/tipsheet/juliorosas/2023/05/22/illegal-immigrant-accused-of-sex-crimes-had-lengthy-criminal-record-n2623535.

175 David Kaplan and Tisha Lewis, "Alleged Silver Spring Trail Rapist Linked to Sex Assault in Prince George's County," FOX 5 DC, May 17, 2023, https://www.fox5dc.com/news/alleged-silver-spring-trail-rapist-linked-to-sex-assault-in-prince-georges-county.

- Also in May, Honduran national Grevi Geovani Rivera-Zavala was charged with raping a teenage girl in Prattville, Alabama, in a restaurant bathroom in a completely random attack. He was found to have a criminal record in Honduras when he was apprehended crossing the Texas border illegally in November 2021, but was released by Border Patrol into the interior.[176]
- Also in May, Venezuelan national Elvis Diaz-Betancourt stabbed another Venezuelan outside an emergency shelter in Chicago, so deeply that the victim could see his internal organs. He had been in Chicago for about four months.[177]
- Kayla Hamilton was raped and murdered by a teenage illegal alien in Maryland in July 2022.[178] He was also a member of MS-13 who was caught and released into the interior because he was an unaccompanied minor who arrived at the border without his parents.[179] Kayla's mother, Tammy Nobles, told the House Judiciary Committee in May 2023, "For me this not a political issue, this a safety issue for everyone living in the United States. This could have been anyone's daughter."[180]

20-year-old Jose Hernandez-Espinal is implicated in the rapes of at least two women in the Washington, D.C., area.

176 Marty Roney, "No Bond in Prattville Rape Case against Honduran Man Who Illegally Entered U.S.," Montgomery Advertiser, May 15, 2023, https://www.montgomeryadvertiser.com/story/news/crime/progress/2023/05/15/no-bond-in-prattville-rape-case-where-defendant-is-in-the-country-illegally/70219553007/.

177 "Migrant Stabbed, Critically Injured Another during a Fight near Downtown Chicago Park: Prosecutors," CWB Chicago, May 13, 2023, https://cwbchicago.com/2023/05/venezuelan-migrant-stabbed-another-during-fight-pritzker-park-chicago-standard-club-shelter.html.

178 "Teen MS-13 Gang Member Arrested for Murder of Maryland Autistic Woman, 20," FOX 5 NY, January 22, 2023, https://www.fox6now.com/news/kayla-hamilton-maryland-ms-13-murder-autistic-woman.

179 Stephen Dinan, "Suspect in Killing of 20-Year-Old Autistic Woman Was Newly Released Illegal Immigrant Teen," The Washington Times, January 23, 2023, https://www.washingtontimes.com/news/2023/jan/23/suspect-killing-20-year-old-autistic-woman-was-new/.

180 Tammy Nobles, "Testimony of Tammy Nobles: Biden Border Crisis: Part III,"U.S. House Judiciary Committee Subcommittee on Immigration Integrity, Security, and Enforcement, May 23, 2023, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/nobles-testimony.pdf

III. Illegal Aliens Making Our Streets Less Safe

Illegal aliens often bring harm and death to innocent Americans they encounter while fleeing law enforcement, engaging in human and drug smuggling, or simply disregarding the law through behavior such as driving recklessly or under the influence (DUI). Again, the lack of comprehensive data on vehicular homicides involving illegal aliens should not diminish the pain each story represents:

- On May 9, 2023, Polk County sheriff's detectives arrested Elmer Bryan Giron-Canil after he caused a two-car accident near Mulberry, Florida. Four of the occupants in Canil's Ford Expedition were ejected from the vehicle, with one dying at the scene and another later in the hospital.[181]
- On Apr. 8, 2023, in Watford City, North Dakota, 19-year-old Julian Montoya ran over a 6-year-old boy playing on his bicycle in an apartment complex parking lot. Per reports, Montoya made no attempt to stop or swerve in an effort to avoid hitting the boy, Ian Matteo Garcia, with his truck.[182]
- In September 2022, an illegal alien struck and killed Florida sheriff's deputy Mike Hartwick, then fled the scene. According to the sheriff's office, Juan Ariel Molina-Salles entered the country illegally in October 2021 in Eagle Pass, Texas, but was sent back to Mexico and at some point re-entered the country as a gotaway.[183]

Source: U.S. Border Patrol

181 "Guatemalan Man with No Valid Driver's License and Illegally in the Country Arrested during the Willow Oak Double Fatal Crash Investigation," Polk County Sheriff's Office, May 10, 2023, https://www.polksheriff.org/news-investigations/2023/05/10/guatemalan-man-with-no-valid-driver-s-license-and-illegally-in-the-country-arrested-during-the-willow-oak-double-fatal-crash-investigation.

182 "Driver Pleads Not Guilty in Death of 6-Year-Old Watford City Boy," The Bismarck Tribune, May 11, 2023, https://bismarcktribune.com/news/local/accident-and-incident/driver-pleads-not-guilty-in-death-of-6-year-old-watford-city-boy/article_846d0566-f031-11ed-9c16-df7b9557efcd.html.

183 Patrick Reilly, "Illegal Migrant Driving Front-End Loader Kills Florida Deputy," The New York Post, September 23, 2022, https://nypost.com/2022/09/23/illegal-migrant-driving-front-end-loader-kills-florida-deputy/.

IV. Human Smugglers and Cartels Destabilizing Border Communities

The cartels and human smuggling organizations have turned border states, cities, and towns into arenas of chaos, where law enforcement is being tested like never before, and innocent Americans are caught in the middle.

Between Jan. 1, 2021, and Dec. 31, 2022, Texas Highway Patrol recorded 8,721 traffic stops involving a vehicle suspected of transporting illegal aliens. In the execution of these stops, troopers discovered 39,100 illegal aliens being transported to cities like Houston—a national hub for human trafficking[184]—and San Antonio.[185]

The recent tragedy in Ozona, Texas, in which 71-year-old Maria Tambunga and her 7-year-old granddaughter Emily Tambunga were killed by a Louisiana man who hit them with his truck while smuggling two illegal aliens, brings home the devastation caused by increased human smuggling and trafficking on our streets.[186]

Brad Coe, sheriff of Texas' Kinney County, recently testified under oath before the House Committee on Homeland Security that his deputies arrested 741 human smugglers in 2022, up from 169 in 2021, and that the department was on pace to apprehend more than 900 in 2023. Importantly, he said, "The number of pursuits has increased with the increase in human smuggling arrests. With these increases, the risk of traffic accident and deaths associated to these accidents also increase."[187]

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184 Marie Jacinto, "'Sex Trafficking in Houston: Hidden in Plain Sight,'" The University of Houston Downtown, October 12, 2022, https://news.uhd.edu/sex-trafficking-in-houston-hidden-in-plain-sight/.
185 Anna Giaritelli, "Border Crisis News: Texas State Troopers Deployed by Abbott Stopped 8,721 Human Smugglers," The Washington Examiner, April 26, 2023, https://www.washingtonexaminer.com/policy/immigration/texas-state-troopers-abbott-human-smugglers-border-patrol.
186 "Community Mourns Loss of Grandmother and Granddaughter Killed in Multiple Vehicle Accident," The Ozona Stockman, March 14, 2023, https://www.ozonastockman.com/news-news-alert/community-mourns-loss-grandmother-and-granddaughter-killed-multiple-vehicle.
187 Sheriff Brad Coe, "Witness Testimony 1," U.S. House Committee on Homeland Security, March 15, 2023, https://homeland.house.gov/media/2023/03/03.15.23.Witness_Testimony-1.pdf.

I. Migrant Deaths

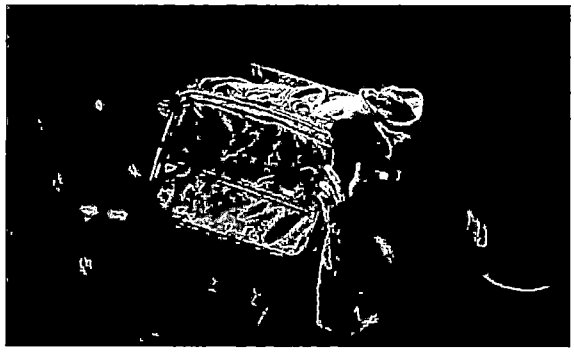

Photo by Fernando Llano/AP

Cartels often abandon those who have paid to get to the border in remote and dangerous areas, where severe heat, exposure, and miles of unforgiving desert pose deadly threats. Once they arrive at the border, many are simply dropped over the border wall[188] or abandoned to the elements, with Border Patrol agents or other law enforcement their only hope of rescue.[189]

For example, in March 2023, a Border Patrol agent in El Paso sped to the rescue of a one-year-old boy who was dropped off by a smuggler by a section of border wall along the Colorado River, a near-disastrous event that would have cost the child his life if not for the heroic actions of the agent.[190]

WATCH: Human Smuggler Abandons Toddler on Banks of Colorado River

Under Mayorkas' leadership, CBP has stopped recording the number of migrants found dead on U.S. soil, but in FY21, the last year for which CBP produced the data, Border Patrol reported 568 dead migrants found at the Southwest border, nearly double the 254 discovered in FY20. In FY22, the number jumped to 853, per reporting from the New York Post.[191]

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188 Amber Stegall, "VIDEO: Smugglers Drop 2 Toddlers over Border Barrier, Rescued by U.S. Border Patrol," KCBD, March 31, 2021, https://www.kcbd.com/2021/03/31/video-smugglers-drop-toddlers-over-border-barrier-rescued-by-us-border-patrol/.

189 Kelli Dugan, "Border Patrol Rescues Infant, Toddler Abandoned by Smugglers in Arizona Desert," KIRO 7 News Seattle, August 27, 2022, https://www.kiro7.com/news/trending/border-patrol-rescues-infant-toddler-abandoned-by-smugglers-arizona-desert/ZOM4S7GPLFC5TCAMNKAMG5G66U/.

190 Fernie Ortiz, "VIDEO: Smuggler Abandons 1-Year-Old Guatemalan Boy along Border River," Border Report, March 24, 2023, https://www.borderreport.com/immigration/video-smuggler-abandons-1-year-old-guatemalan-boy-on-riverbank-on-border/.

191 "CBP Deaths Are the Latest Sign of the Biden Border Disaster," The New York Post, December 8, 2022, https://nypost.com/2022/12/08/cbp-deaths-are-the-latest-sign-of-the-biden-border-disaster/.

Since Biden and Mayorkas have opened the borders, agents have revealed anonymously that more than 1,700 migrants have died on U.S. soil while trying to enter the county illegally.[192]

Photo provided by Yuma County Sheriff Leon Wilmot

Over the four years prior to FY21, the number of dead migrants found by Border Patrol at the Southwest border did not exceed 300.

II. Sexual Abuse and Assault of Migrants

The Wall Street Journal reported in September 2021 that Doctors Without Border staff operating in Panama, north of the infamous Darien Gap through which South American migrants must travel, had recorded at least 180 cases of rape since opening in May 2021.[193] According to staff, "[T]he true number of victims is likely far higher since many migrants don't report the attacks for fear of retribution or because they don't want to slow their journey."[194]

One woman from Cuba, whose journey north to the border with her family began in South America, told reporters after making it to a camp in Bajo Chiquito, "Even if I make it to the U.S. and live out my American dream, I don't think I'll be able to say that crossing the Darién was worth it."[195]

In 2017, Doctors Without Borders published a report that included a survey of migrants interviewed at a number of its facilities in Mexico. The survey found that 68 percent of those interviewed had been victims of violence upon entering Mexico on their way toward the United States. Approximately one third of the women surveyed said they had been sexually abused during the journey, along with 17 percent of men surveyed.[196]

If this percentage is even close to representative of the broader group of several million individuals who have made their way to the border since Biden and Mayorkas took office, it suggests that hundreds of thousands of men, women, and children have been sexually abused along their journey to the border to take advantage of those policies.

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192 Tom Homan, "Biden's Latest Border Gambit Opens America's Doors to Evil Child Smugglers," Fox News, February 7, 2023, https://www.foxnews.com/opinion/biden-latest-border-gambit-opens-america-doors-evil-child-smugglers.

193 Kejal Vyas, "Rapes of U.S.-Bound Migrants Make a Treacherous Route Even More Dangerous," The Wall Street Journal, September 6, 2021, sec. World, https://www.wsj.com/articles/rapes-of-u-s-bound-migrants-make-a-treacherous-route-even-more-dangerous-11630956539.

194 Ibid.

195 Vyas, supra note 189.

196 "FORCED TO FLEE CENTRAL AMERICA'S NORTHERN TRIANGLE: A NEGLECTED HUMANITARIAN CRISIS," Medecins Sans Frontieres, May 2017, https://www.doctorswithoutborders.org/sites/default/files/2018-06/msf_forced-to-flee-central-americas-northern-triangle.pdf.

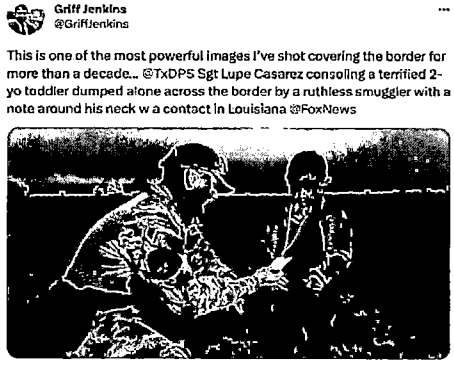
III. Increased Trafficking and Abuse of Unaccompanied Minors

Given the sheer volume of UACs entering through the Southwest border—approximately 350,000 since Mayorkas took office—tens of thousands of them have been released into the country to sponsors. Many of these minors are not even going to people who can be verified as legitimate family members or guardians.[197]

Two ground-breaking New York Times reports in February[198] and April[199] of this year showed how minors have been repeatedly taken advantage of after being released to "sponsors" in United States.

> "Thousands of children have ended up in punishing jobs across the country—working overnight in slaughterhouses, replacing roofs, operating machinery in factories—all in violation of child labor laws ... But all along, there were signs of the explosive growth of this labor force and warnings that the Biden administration ignored or missed, The Times has found."[200]

Similarly, NBC recently reported on an investigation into a meat-packing plant in Nebraska that was illegally employing alien minors as young as 13, who were "cleaning blood and animal parts off the floor of meatpacking plants by night and going to school by day."[201]



A Department of Health and Human Services (HHS) whistleblower reported late in 2022 that UACs were being placed with sponsors with known criminal records,[202] later testifying in April 2023 before a House Judiciary Committee subcommittee that the U.S. under Mayorkas' leadership has become a "middleman" in the human smuggling chain.[203]

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197 Twenty-First Statewide Grand Jury of Florida, supra note 106.

198 Hannah Dreier and Kirsten Luce, "Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.," The New York Times, February 25, 2023, sec. U.S., https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html.

199 Hannah Dreier, "As Migrant Children Were Put to Work, U.S. Ignored Warnings," The New York Times, April 17, 2023, sec. U.S., https://www.nytimes.com/2023/04/17/us/politics/migrant-child-labor-biden.html.

200 Ibid.

201 Julia Ainsley and Laura Strickler, "Feds Expand Probe into Migrant Child Labor in Slaughterhouses," NBC News, March 1, 2023, https://www.nbcnews.com/politics/feds-expand-probe-migrant-child-labor-slaughterhouses-rcna72930.

202 Kelly Laco, "HHS 'Knowingly' Transferred Migrant Children to Criminals, Sex Traffickers, GOP Senators Charge," Fox News, December 6, 2022, https://www.foxnews.com/politics/hhs-knowingly-transferred-migrant-children-criminals-sex-traffickers-gop-senators.

203 Adam Shaw, "Whistleblower Tells Congress That Govt Is Delivering Migrant Children to Human Traffickers," Fox News, April 26, 2023, https://www.foxnews.com/politics/whistleblower-tells-congress-that-govt-delivering-migrant-children-human-traffickers.

CONSEQUENCE 7: THE MASSIVE FINANCIAL COSTS OF MAYORKAS' OPEN BORDERS

Every day, millions of American taxpayer dollars are spent on costs directly associated with illegal immigration. Mass illegal immigration, accelerated by Mayorkas' open-borders policies, now represents a massive cost to the federal government and state governments alike, across a number of fronts.

Some of these costs include things most Americans would never even think to consider. For example, Leon Wilmot, sheriff of Yuma County, Arizona, wrote in his testimony to the House Judiciary Committee earlier this year that the county has had to spend $70,000 on portable toilets to place in agricultural fields throughout the county to keep illegal aliens from relieving themselves in those fields and contaminating crops.[204] Yuma County supplies 90 percent of leafy greens to the entire United States during the winter months, making preservation and sanitation of crops an issue of national importance.

Kinney County's Sheriff Coe recently told the House Homeland Security Committee that his Texas county, which shares 16 miles of border with Mexico, has seen a large influx of illegal alien foot traffic, with these individuals causing an untold amount of property damage to farms, ranches, and game-hunting operations.[205] Illegal aliens have torn down fences, damaged houses, and left "astronomical" amounts of trash on land owned by ranchers throughout Texas.[206] One rancher told NPR in April 2021, just weeks into the crisis, that he had spent at least $30,000 repairing damage caused by illegal aliens.[207]

And in a darkly sobering anecdote, a Brooks County, Texas, official said in 2022 that the costs to bury and cremate illegal aliens found dead on U.S. soil "were such an expense that county employees had to take a pay cut to cover the cost."[208]

This section contains just a sampling of the various costs imposed by the border crisis on every state, city, and town in the country.

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204 Leon Wilmot, et al.., "The Biden Border Crisis: Part Two," United States House Committee on the Judiciary, February 23, 2023, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/WilmotTestimony.pdf.

205 Coe, supra note 183.

206 Kaylee Greenlee, "Texas Rancher Says Illegal Immigrants Repeatedly Damage His Property," The Daily Signal, March 11, 2021, https://www.dailysignal.com/2021/03/11/texas-rancher-says-illegal-immigrants-are-repeatedly-causing-property-damage-and-trashing-his-land/.

207 John Burnett, "Human Smugglers Bypass Border Patrol, Bedeviling Sheriffs And Ranchers In South Texas," National Public Radio, April 24, 2021, https://www.npr.org/2021/04/24/990150761/human-smugglers-bypass-border-patrol-bedeviling-sheriffs-and-ranchers-in-south-t.

208 Andrew Arthur, "RGV Border Disaster: Demoralized Agents, Angry and Despondent Residents," The Center for Immigration Studies, April 13, 2022, https://cis.org/Arthur/RGV-Border-Disaster-Demoralized-Agents-Angry-and-Despondent-Residents.

Some recent studies found that the total combined costs incurred by illegal aliens could range anywhere from around $150 billion[209] to more than $450 billion.[210]

I. Health Care, Particularly Emergency Services, for Illegal Aliens

Hospital and emergency room care for illegal aliens is one of the most significant expenses. The Emergency Medical Treatment and Labor Act (EMTALA) requires public hospitals to provide emergency medical services to individuals regardless of their ability to pay for those services.[211]

Illegal aliens, most of whom have no form of health insurance, often rely on emergency rooms and services as a source of free or cheap health care. Consequently, this has led to significant costs for hospitals because providers are often not reimbursed for these services.

In a January 2021 filing challenging the Biden administration's deportation moratorium, Texas Attorney General Ken Paxton wrote that his state alone was required to pay anywhere between $62-90 million per year to cover illegal aliens under its Emergency Medicaid program.[212]

He also pointed out that between 2006-2008, uncompensated costs borne by Texas state hospitals providing care to illegal aliens ranged from $597 million to $717 million.[213] That's as much as $1.03 billion in May 2023 dollars.[214]

Data released by the state of Florida, meanwhile, showed that illegal aliens cost hospitals about $312 million in FY21, with hospitals only receiving around $103 million in reimbursements.[215]

Illinois is also facing a massive cost surge in providing care for illegal aliens. According to Politico in May 2023, "A state program that offers health benefits to undocumented adults is ballooning.

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209 "The Fiscal Burden of Illegal Immigration On United States Taxpayers 2023," The Federation for American Immigration Reform, https://www.fairus.org/sites/default/files/2023-03/Fiscal%20Burden%20of%20Illegal%20Immigration%20on%20American%20Taxpayers%202023%20WEB_0.pdf.

210 Andrew Arthur, "Biden's Border Fiasco Costing Local Taxpayers Billions," The Center for Immigration Studies, May 4, 2023, https://cis.org/Arthur/Bidens-Border-Fiasco-Costing-Local-Taxpayers-Billions.

211 "EMERGENCY HEALTH SERVICES FOR UNDOCUMENTED ALIENS," U.S. Centers for Medicare & Medicaid Services, May 09, 2005, https://www.cms.gov/newsroom/fact-sheets/emergency-health-services-undocumented-aliens.

212 "EMERGENCY APPLICATION FOR A TEMPORARY RESTRAINING ORDER," State of Texas v. David Pekoske, Troy Miller, Tae Johnson, and Tracy Renaud, Civ. Action No. 6:20-cv-00003, (U.S. District Court, Southern District of Texas Victoria Division, 2021), https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2021/Press/TRO%20Motion%20FINAL.pdf.

213 Ibid.

214 "Inflation Calculator," Federal Reserve Bank of Minneapolis, https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator.

215 "Cost of Services on the Health Care System Executive Order 21-223," State of Florida Agency for Health Care Administration, August 18, 2022, https://ahca.myflorida.com/content/download/20792/file/Executive_Order_21-223_Update_01302023.pdf.

When it was started a few years ago, lawmakers estimated it to run from $2 million to $4 million. Now health officials say the state needs more than $1.1 billion to keep it running," because the number of aliens using the service was far more than the state planned for.[216]

II. Specific Cases of the Border Crisis Burden Placed on Providers

Dr. Robert Trenschel, CEO of Yuma Regional Medical Hospital, recently told the House Committee on Homeland Security that the influx of aliens seeking medical services has swelled over the past two years, that most do not have insurance or money to pay for services, and that many arrive suffering from major illnesses or ailments:

> "Some migrants come to us with minor ailments but many of them come in with significant disease. We have had migrant patients on dialysis, cardiac catheterization and in need of heart surgery. Many are very sick. They have long-term complications of chronic disease that have not been cared for. Some end up in the ICU for 60 days or more. One of the largest cohorts we have seen are maternity patients who present with little or no prenatal care. These higher risk pregnancies and births result in higher complication rates and longer hospital stays."[217]

The hospital often provides transportation costs and hotel rooms, as well, and incurred more than $26 million in unreimbursed medical costs from December 2021 to November 2022 alone.[218]

III. Public School Expenditures

The number of Limited English Proficiency (LEP) students flooding American school districts is starting to overwhelm public schools. In Fairfax County, Virginia, LEPs made up nearly 20 percent of total enrollment, with the LEP budget increasing $1.5 million from FY19 to FY20.[219] In Buffalo, New York, the LEP budget increased from $12.9 million in 2018 to $20.4 million in 2020.[220] In Indianapolis, the number of "English learners" in the public school system in 2022 had increased by 27,000 from 2016.[221]

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216 Shia Kapos, "The Billion-Dollar Budget Drama," Politico, May 19, 2023, https://www.politico.com/newsletters/illinois-playbook/2023/05/19/the-1-1b-state-budget-drama-00097828.

217 Rebecca Kiessling et al., "Every State is a Border State: Examining Secretary Mayorkas' Border Crisis," U.S. House Committee on Homeland Security, 28 February 2023, https://homeland.house.gov/media/2023/02/2023-02-28-HRG-PressPacket.pdf.

218 Ibid.

219 "2020 Program Budget," Fairfax County Public Schools, July 11, 2019, https://www.fcps.edu/sites/default/files/media/pdf/FY_2020_Program_Budget.pdf.

220 "Buffalo Public Schools 2019-2020 Approved Budget," Buffalo Public Schools, May 15, 2019, https://www.buffaloschools.org/site/handlers/filedownload.ashx?moduleinstanceid=97&dataid=197087&FileName=2019-20%20Adopted%20Budget.pdf.

221 Camila Fernandez, "IPS Responds to Increase in English Language Learners," WISH-TV, March 29, 2022, https://www.wishtv.com/news/inside-story/ips-responds-to-increase-in-english-language-learners/.

Portland, Oregon schools are "scrambling" to place more than 800 new LEP students.[222] And in Rockland County, New York, more than 1,000 children have been added to county school districts.[223] One estimate has found that federal and state public school expenditures for illegal aliens or the U.S.-born children of illegal aliens may be as high as $75 billion.[224]

IV. Caring for Unaccompanied Minors

In the early days of the crisis, the Washington Post reported that the Biden administration was spending $60 million per week to provide care to around "just" 16,000 minors in HHS facilities,[225] not counting the cost of new soft-sided shelters in locations like Donna, Texas. Existing HHS beds quickly filled up, leading the administration to devote substantial resources to "emergency facilities" that could house additional minors. These new facilities often cost more than twice what HHS beds cost, per the Post's reporting.

In FY22, HHS reported it cost $8 billion to care for unaccompanied minors, which comes out to $61,584 per minor, with HHS requesting another $4.9 billion for FY23.[226]

V. State Law Enforcement Costs

Several states, most notably Texas, Florida, and Arizona, have devoted substantial resources to respond to the crisis sparked by Mayorkas' policies, especially given the Biden administration's refusal to provide relief to these states or change its policies. These efforts have cost the states billions of dollars. States like Texas and Arizona have borne the brunt of this cost, with Texas spending the most—more than $4 billion as of September 2022.[227] The Lone Star State is preparing to spend another $4.6 billion in just the next two years to secure its border.[228]

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222 "Across the Nation, Cities Feel Strain of Housing Migrants," NewsNation, May 23, 2023, https://www.newsnationnow.com/us-news/immigration/border-coverage/cities-strain-housing-migrants/.
223 Tesesa Kenny, "Kenny Testimony," U.S. House Committee on the Judiciary, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/kenny-testimony.pdf.
224 The Federation for American Immigration Reform, supra note 205.
225 Nick Miroff, "Biden Administration Spending $60 Million per Week to Shelter Unaccompanied Minors," The Washington Post, April 9, 2021, sec. National, https://www.washingtonpost.com/national/border-shelters-cost/2021/04/08/c54eec3a-97bd-11eb-8e42-3906c09073f9_story.html.
226 "Fiscal Year 2023 Budget in Brief," U.S. Department of Health and Human Services Assistant Secretary for Financial Resources, March 28, 2022, https://www.hhs.gov/sites/default/files/fy-2023-budget-in-brief.pdf, 121.
227 Glorie Martinez and Rhonda Fanning, "Texas Has Spent over $4 Billion on Operation Lone Star. Where Did That Money Come From?," KERA News, September 15, 2022, https://www.keranews.org/politics/2022-09-15/texas-has-spent-over-4-billion-on-operation-lone-star-where-did-that-money-come-from.
228 "Governor Abbott Urges Nation's Governors To Help Combat Border Crisis," Office of the Texas Governor, May 16, 2023, https://gov.texas.gov/news/post/governor-abbott-urges-nations-governors-to-help-combat-border-crisis.

States have also stepped up to help secure the Southwest border, at immense cost to themselves. Though dollar figures are not yet available, Florida Gov. Ron DeSantis announced on May 16, 2023, the deployment of substantial resources to Texas, including 101 Florida Highway Patrol troopers, 200 Florida Department of Law Enforcement officers, 800 Florida National Guard soldiers, 17 available unmanned aerial vehicles and support teams, and 10 vessels including airboats, shallow draft vessels, and mid-range vessels.[229] Tennessee, Idaho, and Nebraska have also contributed to the effort,[230] as have Virginia, South Carolina, and South Dakota.[231]

VI. Costs of Transporting Illegal Aliens

In the wake of daily surges of illegal aliens across the border and the limited capacity to handle them, several states—led by Texas, Arizona, and Florida—have had little choice but to transport those aliens out of their states to other locales, particularly sanctuary states and cities. This costs states even more money. Thousands of illegal aliens have been bussed and flown out of these states, and costs have varied depending on the state.[232]

For example, the city of El Paso is now spending up to $250,000 per day, up from $55,000 per day, to handle the historic flow of illegal aliens into the city.[233] Over the course of the year, this comes out to more than $91 million, nearly 20 percent of the city's general fund budget for FY23.[234]

Texas:

- According to Gov. Greg Abbott, the state has sent more than 12,000 illegal aliens to major cities including Washington D.C., Chicago, Philadelphia, and New York City. As of summer 2022, the state had paid a total of $12.7 million to Wynne Transportation, the company conducting much of the transportation.[235]

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229 "Governor Ron DeSantis: 'Florida Is Sending Help to Texas to Secure the Southern Border,'" Office of the Florida Governor, May 16, 2023, https://www.flgov.com/2023/05/16/governor-ron-desantis-florida-is-sending-help-to-texas-to-secure-the-southern-border/.

230 Greg Abbott [@GregAbbott_TX], "Tennessee Joins Idaho, Florida, and Nebraska in Support of Texas' Historic Border Mission. Thank You, @GovBillLee. Together, We Will Fill the Gaps Biden's Open Border Policies Created and Keep Americans Safe.," Tweet, Twitter, May 25, 2023, https://twitter.com/GregAbbott_TX/status/1661856812650446854.

231 Summer Concepcion, "Four GOP Governors Send National Guard to the Southern Border," NBC News, May 31, 2023, https://www.nbcnews.com/politics/immigration/va-gov-glenn-youngkin-sends-national-guard-southern-border-rcna87048.

232 Priscilla Alvarez, Tatiana Laborde, and Aaron Reichlin-Melnick, "What's Happening To The Migrants Being Bussed North?," NPR News, September 26, 2022, sec. 1A, https://www.npr.org/2022/09/26/1125217441/whats-happening-to-the-migrants-being-bussed-north.

233 "Migrant Crisis: FAQs," The City of El Paso, accessed June 12, 2023, https://www.elpasotexas.gov/migrant-crisis/faqs/.

234 "El Paso City Budget 2023," The City of El Paso Office of Management & Budget, August 23, 2022, https://www.elpasotexas.gov/assets/Documents/CoEP/OMB/FY23-Budget/FY-2023-Budget-Book-FINAL.pdf.

235 Pooja Salhotra, "Gov. Greg Abbott's Migrant Busing Program Costs Texas $12 Million," The Texas Tribune,

Arizona:

- Since May 2022, when Arizona's bus program began, 43 buses have departed from Arizona to Washington, D.C., bringing almost 1,600 illegal aliens to the east coast.
- Each bus trip cost roughly $83,000, bringing the total to around $3.5 million.[236]

Florida:

- State lawmakers allocated $12 million to the Florida Department of Transportation for illegal alien relocation purposes, which DeSantis made clear would be spent.[237]

Finally, from January-September 2021 alone, the Biden administration also spent at least $340 million transporting illegal aliens into the interior.[238]

VII. Hotel Rooms for Illegal Aliens

Cities are also spending millions of dollars on housing for illegal aliens that are not being detained or deported. New York City is perhaps the starkest example. Earlier this year, the city signed a $275 million contract with the Hotel Association of New York City to house just 5,000 illegal aliens—$55,000 per individual.[239]

New York City budget director Jacques Jiha said in January that the city has already spent more than $366 million on aid for illegal aliens since 2022.[240] In the city's application to requesting federal reimbursement, Jiha said New York City estimates it will spend $4.3 billion on shelter and services for illegal aliens by July 2024.[241] Other reports confirm similar figures.[242]

August 31, 2022, https://www.texastribune.org/2022/08/31/texas-12-million-migrant-busing-program/.

236 Polo Sandoval and Andy Rose, "Texas Spends More than $12 Million to Bus Migrants to Washington, DC, and New York," CNN Politics August 31, 2022, https://www.cnn.com/2022/08/30/politics/texas-migrant-busing-cost-abbott-washington-dc-new-york/index.html.

237 Douglas Soule, "As Legal Bills Mount, Florida Paid about $35,000 for Each Migrant in Martha's Vineyard Flights," The Tallahassee Democrat, January 9, 2023, https://www.tallahassee.com/story/news/politics/2023/01/09/marthas-vineyard-migrant-flight-lawsuit-could-cost-florida-1-million/69782146007/.

238 John Binder, "Biden's Flights of Illegals into U.S. Cost Taxpayers $340M in 9 Months," Breitbart, February 1, 2022, https://www.breitbart.com/politics/2022/02/01/bidens-flights-of-illegal-aliens-into-u-s-cost-taxpayers-340m-in-9-months/.

239 David Lazar, "Mayor Signs $275 Million Deal with Hotels to House Migrants," Spectrum News NY1, January 15, 2023, https://www.ny1.com/nyc/all-boroughs/housing/2023/01/15/mayor-signs--275-million-deal-with-hotels-to-house-migrants.

240 Carl Campanile and Bernadette Hogan, "Ka-Ching! Adams Ink $275 Million with Hotels to House Migrants," The New York Post, January 13, 2023, https://nypost.com/2023/01/13/ka-ching-adams-ink-275-million-with-hotels-to-house-migrants/.

241 Chris Sommerfeldt, "NYC Submits FEMA Application for $650 Million in Federal Migrant Aid — 4 Days before Deadline," Yahoo News and New York Daily News, April 10, 2023, https://news.yahoo.com/nyc-submits-fema-application-650-163200271.html.

242 Bernadette Hogan and Bruce Golding, "Biden Migrant Crisis to Cost NYC $4.2 Billion," The New York

The city is even reportedly considering housing illegal aliens at a closed prison facility on Riker's Island,[243] and in mid-May of this year, Mayor Eric Adams declared that nearly half of all hotel rooms in New York City were being occupied by illegal aliens, limiting the ability of the city to generate revenue from tourists using those hotels instead.[244]

- Denver city officials estimate they will spend $20 million just from January-June 2023 to house illegal aliens.[245]
- Chicago is spending more than $20 million monthly to "house and support" aliens.[246]
- Through May 2023, Washington, D.C. had spent $15.1 million to house, feed, and support illegal aliens arriving in the city—with local hotel space being maxed out.[247] Those costs are expected to rise to $52.5 million by October 2023.[248]

Post, February 7, 2023, https://nypost.com/2023/02/07/biden-migrant-crisis-to-cost-nyc-4-2-billion/.

243 Chris Sommerfeldt and Graham Rayman, "NYC Seriously Mulls Housing Migrants in Shuttered Jail on Rikers Island," New York Daily News, May 17, 2023, https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-island-migrants-closed-jail-mayor-adams-20230517-m5yhriyoffdwtbzrlln63upxrq-story.html.

244 "NYC Migrant Crisis: Roosevelt Hotel in Midtown Manhattan Begins Welcoming Migrants," ABC7 New York, May 19, 2023, https://abc7ny.com/nyc-migrants-hotels-gyms/13268663/.

245 Zachary Rogers, "Housing Migrants Will Cost Denver up to $20 Million in Just Six Months, Officials Estimate," KTUL, April 7, 2023, https://ktul.com/news/nation-world/housing-migrants-will-cost-denver-up-to-20-million-in-just-six-months-officials-estimate-mexico-border-biden-administration-illegal-immigrants.

246 Diane Pathieu, "City Seeks More Federal Funding to Manage Migrant Influx as Some Sleep in Chicago Police Stations," ABC7 Chicago, April 28, 2023, https://abc7chicago.com/chicago-migrants-immigrants-border-migrant/13191997/.

247 Antonio Olivo and Michael Brice-Saddler, "Migrants Find No Space in Crowded Hotels Leased by D.C., Council Members Say," The Washington Post, May 3, 2023, https://www.washingtonpost.com/dc-md-va/2023/05/02/migrants-dc-hotels-buses-closed/.

248 Cuneyt Dil, "D.C. struggles to help migrants amid influx," Axios, May 15, 2023, https://www.axios.com/local/washington-dc/2023/05/15/dc-struggles-to-help-migrants

CONCLUSION

There is undeniably a catastrophic crisis raging at our Southwest border, a crisis that has been raging for more than two years. The American people are suffering, not just in border states, but in communities all across this country, as the consequences of an unprecedented crisis impact Americans of all walks of life.

These costs and consequences are unacceptable, especially when they are the result of a crisis that was predictable and preventable. Indeed, many experienced men and women with long careers in law enforcement and national security warned the Biden administration against exactly this kind of policy agenda.

Those responsible for the policies that have brought us here must be investigated, and that is a duty this Committee is going to fully and faithfully execute. We will report our findings to the American people as obtain them, and will ultimately deliver final recommendations to Congress on next steps.

In closing, the American people must understand that this is not about politics. It is not about disagreements over policy. It is about law and order, and the safety of the American people.

This is about right and wrong, and whether a cabinet secretary has followed the law, upheld his oath, and been faithful to the public trust. These are questions we have a duty and responsibility to answer.

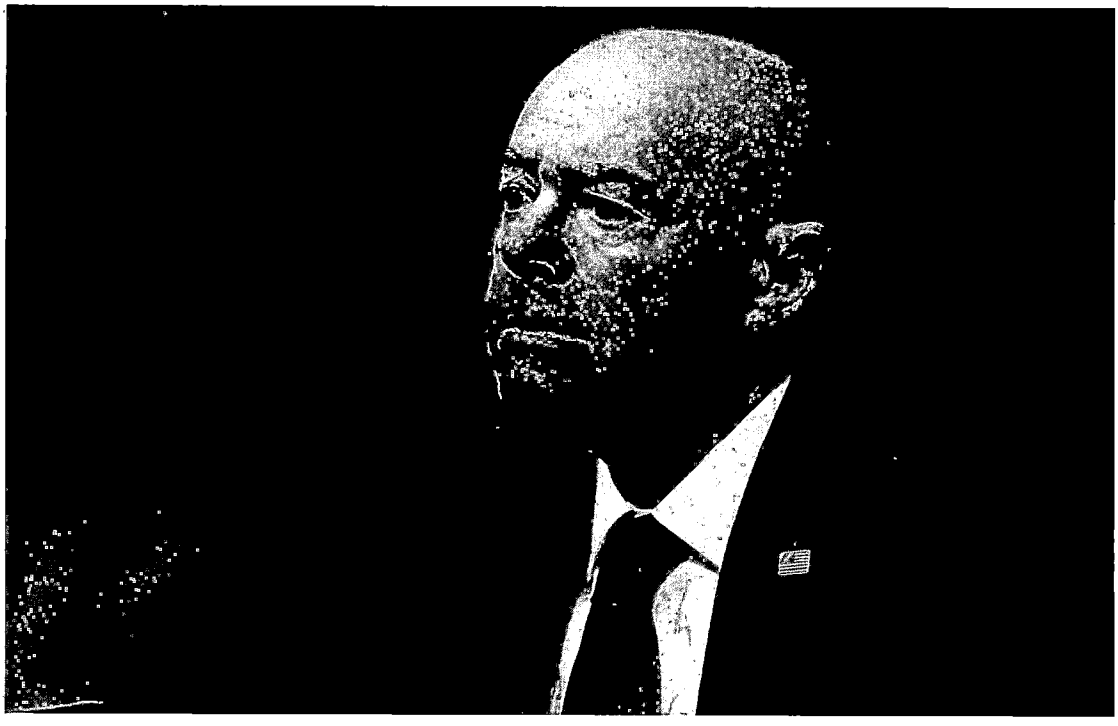

Exhibit C

DHS SECRETARY ALEJANDRO MAYORKAS HAS EMBOLDENED CARTELS, CRIMINALS, AND AMERICA'S ENEMIES

PHASE 2 INTERIM REPORT

COMMITTEE ON HOMELAND SECURITY MAJORITY REPORT

SEPTEMBER 7, 2023

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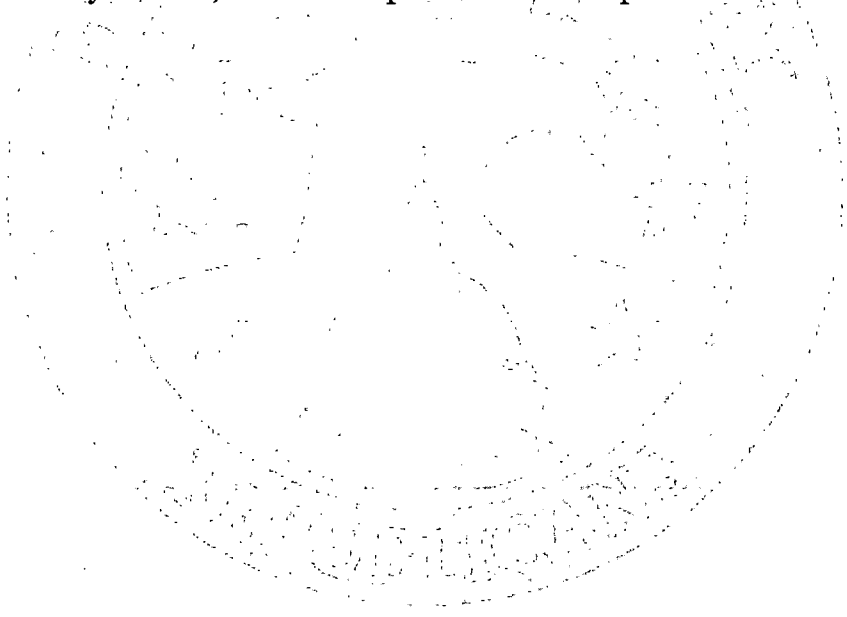
Introduction: Mayorkas Has Empowered the Worst Actors Around the Globe

Department of Homeland Security (DHS) Secretary Alejandro Mayorkas' open-borders policies have empowered and emboldened some of the most vicious, ruthless, and savage individuals and groups in the world. Whether it is transnational criminal organizations (TCOs) like the cartels and human smuggling organizations in the Western Hemisphere, potential national security threats from countries who sponsor terrorism, or those coming from major state adversaries like China and Russia, the wide-open Southwest border has given America's enemies all over the globe an opportunity to infiltrate the homeland—an opportunity too good to pass up.

This report will demonstrate the massive threats posed by these groups and individuals to Americans' safety and security. It will also highlight how the cartels have seized unprecedented control of the Southwest border to smuggle record amounts of illicit drugs and illegal aliens into the United States, pocketing historic profits in the process. Finally, the report will document the historic increase of individuals apprehended at the Southwest border who are being flagged as potential national security threats, and the inept use of federal personnel to respond to the crisis.



Section 1: How Cartels Are Taking Advantage of Open-Borders Policies

Understanding the Cartels

The cartels are the most vicious, evil organizations in the Western Hemisphere,[1] with operations that include a number of illicit activities—drug trafficking, human smuggling, and human trafficking chief among them. According to one senior official with the Drug Enforcement Administration (DEA), they are "ruthless and violent global criminal enterprises, with members, associates, facilitators and brokers in all 50 states and in at least 100 countries throughout the world. The cartels use treachery and deceit to drive addiction and deaths in our country."[2]

Moreover, the DEA's 2020 National Drug Threat Assessment highlights the cartels' connection to "independent drug trafficking organizations" and "transnational gangs, U.S.-based street gangs, prison gangs, and Asian money laundering organizations (MLOs)."[3] These groups employ brutal violence to exert their influence in Mexico. For example, in August 2023, members of the Jalisco Nueva Generación Cartel (CJNG) lured, abducted, and later beheaded five young men in the Mexican state of Jalisco after the men reportedly refused to be recruited into the cartel's ranks.[4]

These groups maintain substantial control in Mexico, with the two largest and most powerful cartels—Sinaloa and CJNG—actively operating in the majority of Mexico's 32 states.[5] The cartels are the leading suppliers of drugs to the United States,[6] with Sinaloa and CJNG responsible for most of the illicit fentanyl entering the country.[7]

Americans must understand the sheer control these organizations exert over the flow of illegal aliens and illicit drugs across the Southwest border, and how they profit from it all. The cartels control smuggling routes throughout Mexico and exert near-complete control on the movement of individuals through that country, particularly at and near the Southwest border.[8]

Before the cartels increased their control of the Southwest border, aliens could often cross by themselves to complete their journey to the United States. Now, it is nearly impossible to cross without paying some sort of price to the cartels. Former Border Patrol Chief Rodney Scott

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[1] "Cuccinelli: Cartels are the most evil, vicious people in western hemisphere," *Fox Business*, YouTube video, April 1, 2021, https://www.youtube.com/watch?v=sidPMxP4GtU.

[2] "Protecting the U.S. Homeland: Fighting the Flow of Fentanyl from the Southwest Border," *Homeland Security Committee Events*, YouTube video, 50:06, July 12, 2023, https://www.youtube.com/live/L0EurNtLz0M?feature=share&t=3006.

[3] U.S. Department of Justice, Drug Enforcement Administration, *2020 National Drug Threat Assessment*, DEA-DCT-DIR-008-21, March 2021, 69, https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

[4] Lawrence Richard, Five students beat, murdered by Mexican cartel in horrifically graphic video were lured by job offer: report," *Fox News,* August 18, 2023, https://www.foxnews.com/world/five-students-beat-murdered-mexican-cartel-horrifically-graphic-video-lured-job-offer-report.

[5] U.S. Department of Justice, Drug Enforcement Administration, *2020 National Drug Threat Assessment*, DEA-DCT-DIR-008-21, March 2021, 70-71, https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

[6] "Mexico's Long War: Drugs, Crime, and the Cartels," *The Council on Foreign Relations*, September 7, 2022, https://www.cfr.org/backgrounder/mexicos-long-war-drugs-crime-and-cartels.

[7] Katie Cooper, "Briefing on the Senate Foreign Relations Committee Countering Illicit Fentanyl Trafficking Hearing," *The Wilson Center,* February 24, 2023, https://www.wilsoncenter.org/article/briefing-senate-foreign-relations-committee-countering-illicit-fentanyl-trafficking-hearing#:~:text=Both%20cartels%20in%20Mexico%20are,coming%20into%20the%20United%20States.

[8] *See* U.S. Congress, Senate, Committee on Foreign Relations, Minority, *Biden's Border Crisis: Examining Policies That Encourage Illegal Migration*, 117th Cong., 2nd sess., June 2022, 28-29, https://www.risch.senate.gov/public/_cache/files/5/0/5082e293-b23d-4726-a581-dc428517a843/9FB8D6A16D2415A013D48761339299C6.bidens-border-crisis.pdf; and Josh Jones, "Cartels and Their Cruelty Are the Crisis at the Border," *Texas Public Policy Foundation,* March 15, 2021, https://www.texaspolicy.com/cartels-and-their-cruelty-are-the-crisis-at-the-border/.

answered affirmatively when asked by one media outlet in February 2023 if "every single person" crossing illegally has had "some sort of contact with the cartels," further explaining, "That hasn't always been that way, by the way."[9] Before smugglers controlled the Rio Grande River, some individuals crossed back and forth daily, according to Timothy Tubbs, a retired agent with Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI).[10]

The New York Times' Miriam Jordan put it succinctly in a July 2022 report, writing, "Migrant smuggling on the U.S. southern border has evolved over the past 10 years from a scattered network of freelance 'coyotes' into a multi-billion-dollar international business controlled by organized crime, including some of Mexico's most violent drug cartels."[11]

Now, almost anyone who crosses the Southwest border, including at ports of entry, has done so only because they have first paid a cartel, or agreed, knowingly or not, to enter into months or years of debt to the organization upon arriving in the United States. Jason Owens, then-chief patrol agent for the Del Rio Sector, told the House Committee on Homeland Security in May 2023 that the criminal organizations "keep a death grip on anything that comes across the border illicitly, because they want their cut. They want their money, and so they're going to do things to dissuade individuals from doing what you're saying, crossing on their own—to include violent tactics against them."[12] In his February 2023 testimony before the House Committee on Oversight and Reform, John Modlin, chief patrol agent for the Tucson Sector, said, "What I see in Tucson Sector, in my experience, is that no one crosses the border in Tucson Sector without going through the cartels."[13] He later told the House Committee on Homeland Security in July 2023, "[N]ow nobody crosses without paying the cartels. ... It's all controlled by them."[14]

The money these organizations have made has only increased their influence and command over the Southwest border. Former Customs and Border Protection (CBP) Acting Commissioner Mark Morgan pointed out in early 2022 that every individual who crosses the border illegally "paid the cartels. That illegal immigration is fueling and financing the cartels' criminal operations. It's making them stronger. And it's also enabling their criminal schemes in other areas, including drugs, to expand."[15]

Cartels Now Control the Southwest Border

Numerous law enforcement veterans, local officials, and national security experts agree that the cartels have seized an unprecedented level of control at the Southwest border. This control

[9] Virginia Allen, "Former Border Patrol Chief Opens Up About the Horrifying Power Cartels Wield Around the Rio Grande," *The Daily Signal,* February 10, 2023, https://www.dailysignal.com/2023/02/10/no-one-crosses-unlawfully-from-mexico-without-working-with-cartels-former-border-patrol-chief-says/.
[10] Miriam Jordan, "Smuggling Migrants at the Border Now a Billion-Dollar Business," *The New York Times*, July 25, 2022, https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html.
[11] Ibid.
[12] Jason Owens, Transcribed Interview with the House Committee on Homeland Security, 53-54, May 5, 2023.
[13] "On The Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents," *House Oversight and Accountability Committee,* YouTube video, 36:24, February 7, 2023, https://oversight.house.gov/hearing/on-the-front-lines-of-the-border-crisis-a-hearing-with-chief-patrol-agents/.
[14] John Modlin, Transcribed Interview with the House Committee on Homeland Security, 64, July 26, 2023.
[15] Maggie Hroncich, "Officials Assail Biden Inaction: 'Mexican Cartels Basically Control Our Border Now,'" *The Daily Signal,* March 15, 2022, https://www.dailysignal.com/2022/03/15/officials-assail-biden-inaction-mexican-cartels-basically-control-our-border-now/.

represents a significant challenge to CBP's national security mission, the safety of American communities, and the sovereignty of the United States.

Most notably, in a March 2023 hearing held by the House Committee on Homeland Security, then-Border Patrol Chief Raul Ortiz contradicted Mayorkas' prior claims that DHS has operational control of the Southwest border.[16] During the hearing, Ortiz testified to Chairman Mark Green, R-Tenn., that DHS did not have operational control of the border,[17] and that five of the Border Patrol's nine sectors along the Southwest border were under tremendous strain.[18]

During a July 2023 hearing, the House Committee on Homeland Security's Border Security and Enforcement Subcommittee Chairman Rep. Clay Higgins, R-La., asked witnesses if the cartels have gained "unprecedented access and networking within the United States of America." Derek Maltz, former special agent in charge of the DEA's Special Operations Division, and Jaeson Jones, a former captain in the Texas Department of Public Safety's (DPS) Intelligence and Counterterrorism Division, with years of experience in combatting the cartels, answered in the affirmative.[19] They further confirmed that cartel control increased "incredibly" during Mayorkas' tenure, with Maltz later testifying the cartels "have total control."[20]

Former Border Patrol Chief Scott stated in February 2023, "[The cartels] control the border today. And they control the border today under the Biden administration because of this mass migration to a level that they've never had. And I mean...they don't worry hardly at all about what they're trying to get in because their success rate is so high."[21]

Border correspondent Ali Bradley reported in February of this year that, based on Border Patrol assessments, the "cartels are controlling operations at the southern border as they force migrants across the Rio Grande at gunpoint and hold asylum seekers in stash houses...The cartel sees what is happening on the U.S. side and takes advantage of the lack of resources, pushing people and drugs through the holes while Border Patrol is busy processing..."[22] Bradley further explained that Border Patrol officials believe the cartels "are always one step ahead" of law enforcement.[23]

Other officials have echoed this conclusion. Former DEA Acting Administrator Uttam Dhillon told a forum in Washington, D.C., in March 2022, "Mexican cartels basically control our border now."[24] Morgan and former DHS Acting Deputy Chief of Staff Lora Ries released a statement in September 2022 agreeing with this assessment, stating, "The drug cartels now have operational

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[16] U.S. Congress, House of Representatives, Committee on the Judiciary, *Oversight of the Department of Homeland Security*, 117th Cong., 2nd sess., April 28, 2022, 119-120, https://www.congress.gov/117/chrg/CHRG-117hhrg49702/CHRG-117hhrg49702.pdf.

[17] "User Clip: Chief Ortiz Admits No Operational Control over Border," *C-SPAN video*, March 15, 2023, https://www.c-span.org/video/?c5062135/user-clip-chief-ortiz-admits-operational-control-border.

[18] Anna Giaritelli, "Biden Border Chief in Hot Seat over Whether US-Mexico Boundary Is Secure," *The Washington Examiner*, March 15, 2023, https://www.washingtonexaminer.com/policy/immigration/border-chief-hot-seat-texas-gop-hearing-mexico.

[19] "Biden and Mayorkas' Open Border: Advancing Cartel Crime in America," *Homeland Security Committee Events*, YouTube video, 1:21:01, July 19, 2023, https://www.youtube.com/live/kva0HOb1TUg?feature=share&t=4861.

[20] Ibid, 1:34:18.

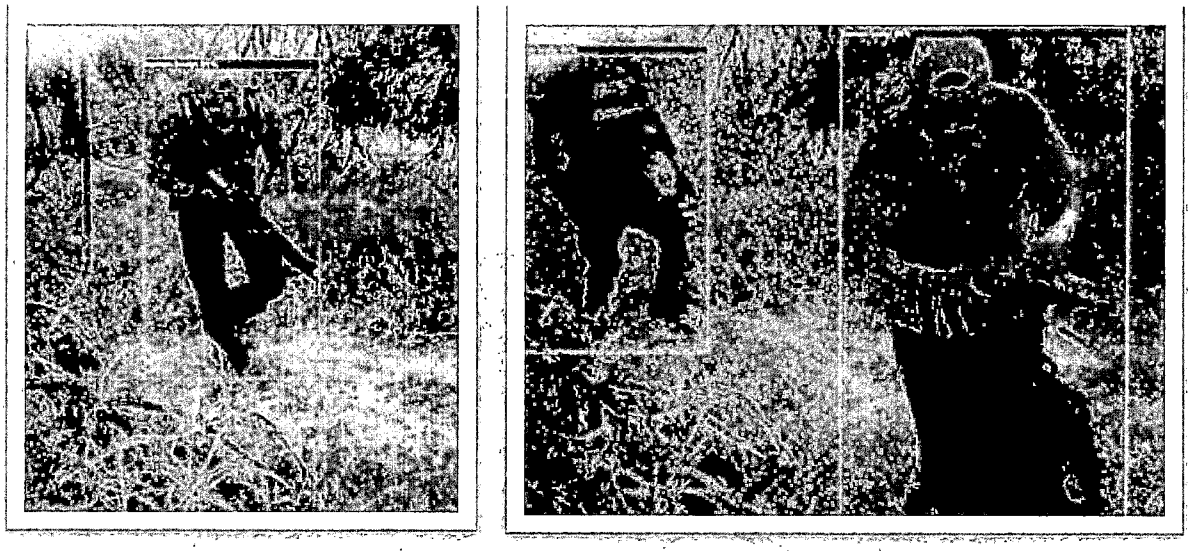
[21] Virginia Allen, "Former Border Patrol Chief Opens Up About the Horrifying Power Cartels Wield Around the Rio Grande," *The Daily Signal*, February 10, 2023, https://www.dailysignal.com/2023/02/10/no-one-crosses-unlawfully-from-mexico-without-working-with-cartels-former-border-patrol-chief-says/.

[22] Ali Bradley, "Cartels Controlling Migrant Activity at Southern Border," *NewsNation*, February 6, 2023, https://www.newsnationnow.com/us-news/immigration/border-coverage/cartels-migrant-activity-southern-border/.

[23] Ibid.

[24] Maggie Hroncich, "Officials Assail Biden Inaction: 'Mexican Cartels Basically Control Our Border Now,'" *The Daily Signal*, March 15, 2022, https://www.dailysignal.com/2022/03/15/officials-assail-biden-inaction-mexican-cartels-basically-control-our-border-now/.

control of our southern border,"[25] while Jonathan Lines, supervisor of Yuma County, Arizona, recently described the cartels as a major threat to communities like his—"Unless this situation changes and we take back control from the cartels, for the trafficking coming across our border, it will only get worse."[26]



Law enforcement officials released photos in August 2023 of a group of suspected cartel gunmen armed with rifles and body armor caught on camera crossing illegally into Texas in the Rio Grande Valley region. In June 2023, the Border Patrol's chief patrol agent for the Laredo Sector told the House Committee on Homeland Security that agents frequently encounter armed human smugglers in his sector.[27] Lieutenant Chris Olivarez of Texas DPS said in August 2023 that incursions by armed cartel operatives have become "a more common occurrence."[28] (Source: Fox News)

The assessment of cartel control at the Southwest border is bipartisan. Independent Arizona Sen. Kyrsten Sinema said in May 2023, in the context of the Biden administration's ending of the Centers for Disease Control and Prevention's (CDC) Title 42 public health order, "The cartels are incredibly well-resourced and they're very strategic, so they're pushing people through different parts of the border at different times with different prices for different purposes, and they're controlling what's happening on the southern border, not the United States government."[29]

[25] "Heritage Border Experts on Texas Designating Cartels as Terrorist Organizations: States Should Follow Texas' Lead on Border Security," *The Heritage Foundation*, September 22, 2022, https://www.heritage.org/press/heritage-border-experts-texas-designating-cartels-terrorist-organizations-states-should.
[26] Megan Myers, "Border under control of cartels, not the US, Yuma residents say as gangs rake in billions off human smuggling," *Fox News*, January 18, 2023, https://www.foxnews.com/us/border-control-cartels-us-yuma-residents-say-gangs-rake-billions-human-smuggling.
[27] Joel Martinez, Transcribed Interview with the House Committee on Homeland Security, 122, June 1, 2023.
[28] Ali Bradley [@AliBradleyTV], "I talked with @TxDPS @LtChrisOlivarez after two CDN cartel members were apprehended in Texas — He tells me cartel operatives are breaching our southern border on a daily basis— Saying state and federal partnerships are crucial in preventing those individuals from getting into our communities.," Tweet, *Twitter*, August 16, 2023, https://twitter.com/AliBradleyTV/status/1691981814225944640.
[29] Kevin Stone, "Sen. Kyrsten Sinema blasts Biden administration over handling of Title 42 end," *KTAR News*, May 11, 2023, https://ktar.com/story/5494615/sen-kyrsten-sinema-blasts-biden-administration-over-handling-of-title-42-end/.

This malign presence is not just confined to the Southwest border. As one West Texas sheriff put it during a recent roundtable with the House Committee on Homeland Security, "As far north as we are from the border—the cartels are here. They're everywhere."[30]

The American people agree with the judgment of these law enforcement and national security professionals. According to a poll released in September 2022, 61 percent of registered voters believe the cartels possess more control of the Southwest border than the federal government.[31]

How the Cartels Seized Control of the Southwest Border

Multiple factors have enabled the cartels' unprecedented seizure of control at the Southwest border—and they can all be traced back to President Joe Biden and Mayorkas' open-borders policies.

First, Mayorkas and Biden's reversal of the effective border security policies of the previous administration, as well as the host of policies they have subsequently implemented, have encouraged millions of individuals to make the journey to the Southwest border in hopes of being released into the United States. The Committee's Phase 1 interim report on Mayorkas' dereliction of duty presented substantial evidence of the consequences of these policies in explicit detail.[32]

The massive increase in the number of people now traveling up through Mexico on their way to the Southwest border represents a historic business opportunity for the cartels, as each person is someone off whom they can profit.

Second, the unmitigated tide of individuals flooding across the Southwest border under Mayorkas' policies has forced Border Patrol agents to focus their efforts on processing, transporting, and releasing unprecedented numbers of illegal aliens, rather than patrolling the border.[33]

This has left broad stretches of the border open to exploitation by the cartels, who not only take advantage of areas where agents are no longer present, but often send across groups of aliens in places where agents are in order to tie up Border Patrol resources. While those agents are responding, the cartels will then push drugs or other groups of aliens across in another location.[34] This process—"flooding the zones," as one expert has called it[35]—has been repeated day in and day out ever since Mayorkas implemented his open-borders policies, a fact confirmed by senior Border Patrol officials.

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[30] U.S. Congress, House of Representatives, Committee on Homeland Security, Majority, *Texas Ranchers, Law Enforcement, and State Officials Share the Truth on Mayorkas' Border Crisis With Homeland Security Republicans*, 118th Cong., 1st sess., March 16, 2023, https://homeland.house.gov/texas-ranchers-law-enforcement-and-state-officials-share-the-truth-on-mayorkas-border-crisis-with-homeland-security-republicans/.

[31] Diana Glebova, "Majority of Americans Think Cartels Control Border More than U.S. Government: Poll," *National Review*, September 22, 2022, https://www.nationalreview.com/news/majority-of-americans-think-cartels-control-border-more-than-u-s-government-poll/.

[32] U.S. Congress, House of Representatives, Committee on Homeland Security, Majority, *DHS Secretary Alejandro Mayorkas' Dereliction of Duty, Phase 1 Interim Report*, 118th Cong., 1st sess., July 19, 2023, https://homeland.house.gov/wp-content/uploads/2023/07/Phase-One-Report.pdf.

[33] "Full Committee Field Hearing: 'Failure By Design: Examining Secretary Mayorkas' Border Crisis,'" *Homeland Security Committee Events*, YouTube video, 2:46:10 March 15, 2023, https://www.youtube.com/watch?v=7Z1ETzh3AUA&t=9960s.

[34] "On The Front Lines of the Border Crisis: A Hearing with Chief Patrol Agents," *House Oversight and Accountability Committee*, YouTube video, 29:30, February 7, 2023, https://oversight.house.gov/hearing/on-the-front-lines-of-the-border-crisis-a-hearing-with-chief-patrol-agents/.

[35] "Biden and Mayorkas' Open Border: Advancing Cartel Crime in America," *Homeland Security Committee Events*, YouTube video, 2:14:29, July 19, 2023, https://www.youtube.com/live/kva0HOb1TUg?feature=share&t=8069.

Gregory Bovino, then-chief patrol agent for the El Centro Sector, confirmed this tactic to the House Committee on Homeland Security in July 2023, stating, "So, what in fact happens, there is a large group [that] comes across or a group comes across, gives up to Border Patrol agents, and, as Border Patrol agents are busy dealing with that group that had given up, the gotaways come around the periphery."[36] In May 2023, two other chief patrol agents confirmed the cartels' use of this tactic in interviews with Committee staff.[37]

Local law enforcement officials have documented this tactic, as well. According to Sheriff Leon Wilmot in Yuma County, Arizona:

> "So, what the cartels do is they tie up Border Patrol resources by sending across large groups of 'give ups' ... so they can actually funnel in those that are smuggling narcotics. And they are actually dropping off certain groups out 30 miles away from civilization and having them call 911, so that ties up our resources, and that's why we're seeing such a large amount of fentanyl throughout the whole of the U.S. We've never seen it this bad. Human life is nothing to them. It's a commodity..."[38]

Open Borders Equal Record Profits and Expanded Arsenals for the Cartels

The sheer volume of people and drugs the cartels are moving across the border has generated historic profit margins for these criminal organizations. Indeed, the cartels are no longer just "drug cartels," as human smuggling and trafficking have become central to their business model.[39] Per the New York Times, the cartels may have made as much as $13 billion just from human smuggling in 2021,[40] a year in which CBP recorded around 1.5 million encounters at the Southwest border.[41]

In Fiscal Year (FY)22, encounters jumped to 2.37 million, and through July 2023, CBP was on pace to record a similar number in FY23.[42] In an interview with House Committee on Homeland Security staff in May 2023, Owens said that his sector intelligence unit ascertained the cartels were making more than $30 million per week from human smuggling just in the Del Rio Sector alone, for a total of around $1.5 billion a year.[43]

Also to be factored into the cartels' balance sheet are the historic number of known gotaways—at least 1.5 million since FY21,[44] among whom are often previous deportees and individuals with

[36] Gregory Bovino, Transcribed Interview with the House Committee on Homeland Security, 174, July 12, 2023.
[37] *See* Jason Owens, Transcribed Interview with the House Committee on Homeland Security, 51-52, May 5, 2023; and Aaron Heitke, Transcribed Interview with the House Committee on Homeland Security, 40-41, May 9, 2023.
[38] America's Newsroom [@AmericaNewsroom], "CARTEL CRISIS: How Mexican Cartels Are Exploiting Biden's Open Border Policy @BillHemmer – Reporting Live from Yuma, AZ – Is Joined by Two County Officials Who Claim the Border Is Under Control of the Cartels, Not the US. 'We Have Never Seen It This Bad.,'" Tweet, *Twitter*, February 14, 2023, https://twitter.com/AmericaNewsroom/status/1625511036227842048.
[39] Miriam Jordan, "Smuggling Migrants at the Border Now a Billion-Dollar Business," *The New York Times*, July 25, 2022, https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html.
[40] Ibid.
[41] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Southwest Land Border Encounters*, August 18, 2023, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.
[42] Ibid.
[43] Jason Owens, Transcribed Interview with the House Committee on Homeland Security, 52, May 5, 2023.
[44] MaryAnn Martinez, "1.5M 'gotaways' have slipped into the US under Biden — three times as many as during 3 years of Trump," *New York Post,* May 15, 2023, https://nypost.com/2023/05/15/1-5m-gotaways-have-slipped-into-the-us-under-biden-three-times-as-many-as-during-3-years-of-trump/.

criminal records who "pay premium rates" to avoid apprehension.[45] Aaron Heitke, then-chief patrol agent for the San Diego Sector, confirmed this to the House Committee on Homeland Security in May 2023, saying, "From what we have gathered from people...it costs more to go through an area that has a better chance of getting away."[46]

Then-Border Patrol Chief Ortiz told the Committee in March 2023 that the true number of gotaways—known and undetected—could be 20 percent higher than the reported 1.5 million.[47] These numbers are truly historic. Through August 2023, the Border Patrol had recorded approximately 590,000 known gotaways in FY23, putting the agency on pace to record more than 640,000 gotaways this fiscal year.[48] In FY22, known gotaways totaled around 599,000, and more than 389,000 in FY21.[49]

All three totals far exceed annual known gotaways from the 10 years prior to the Biden administration. In fact, the number of gotaways in just the El Paso Sector in the first nine months of FY23—166,344[50]—exceeded total known gotaways across all nine Border Patrol sectors every year between FY10-20 except one, as the DHS numbers below show.

Table 2b.

USBP Detected Got Aways between POEs by Border, FY 2010 to 2020

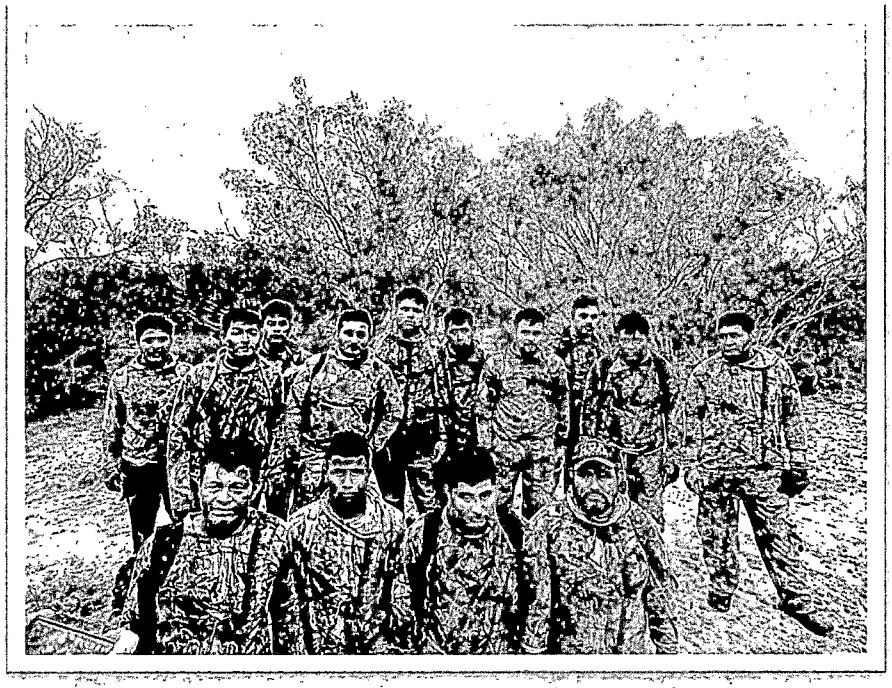
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Coastal Border	351	682	610	577	594	681	572	533	496	935	926
Northern Border	16	39	21	35	53	43	41	67	239	441	289
Southwest Border	155,232	85,505	104,474	171,051	161,424	100,771	106,030	103,694	127,944	150,090	135,593
Nationwide Total	**155,599**	**86,226**	**105,105**	**171,663**	**162,071**	**101,495**	**106,643**	**104,294**	**128,679**	**151,466**	**136,808**

Note: Data for 2013-2020 as of end of year dates; data for 2010-2012 as of July 30, 2021 (end of year data snapshots only began as of 2013).
Source: USBP.

The number of known gotaways has exploded on Mayorkas' watch, averaging well over 500,000 per year, and dwarfing known gotaway numbers from recent years. (Source: DHS 2021 Border Security Metrics Report)

Further, the approximate 1.5 million known gotaways from FY21-23 exceeds those from FY10-20 combined (1.29 million), according to the department's 2021 Border Security Metrics Report.[51] Even in 2019, with the short-lived spike in illegal crossings, known gotaways remained relatively stable compared to historic trends.[52]

[45] Nick Miroff, "Border Officials Say More People Are Sneaking Past Them as Crossings Soar and Agents Are Overwhelmed," *The Washington Post*, April 2, 2021, https://www.washingtonpost.com/national/got-aways-border/2021/04/01/14258a1e-9302-11eb-9af7-fd0822ae4398_story.html.
[46] Aaron Heitke, Transcribed Interview with the House Committee on Homeland Security, 43, May 9, 2023.
[47] "Full Committee Field Hearing: 'Failure By Design: Examining Secretary Mayorkas' Border Crisis,'" *Homeland Security Committee Events*, YouTube video, 1:08:17, March 15, 2023, https://www.youtube.com/live/7Z1ETzh3AUA?feature=share&t=4089.
[48] Bob Price and Randy Clark, "SOURCE: 590K Migrant Got-Aways This Year — Exceeds Last Year Same Period," *Breitbart*, September 1, 2023, https://www.breitbart.com/border/2023/09/01/source-590k-migrant-got-aways-this-year-exceeds-last-year-same-period/.
[49] MaryAnn Martinez and Stephanie Pagones, "530K Illegal Migrants Sneaked into US Since October: CBP," *New York Post*, May 10, 2023, https://nypost.com/2023/05/10/530k-illegal-migrants-have-border-agents-since-start-of-2025/.
[50] Anthony Scott Good, Transcribed Interview with the House Committee on Homeland Security, 73-74, June 29, 2023.
[51] U.S. Department of Homeland Security, *Department of Homeland Security Border Security Metrics Report: 2021*, April 27, 2022, 16, https://www.dhs.gov/sites/default/files/2022-06/2022_0427_plcy_border_security_metrics_report_FY2021_%282020_data%29.pdf.
[52] Ibid.



Texas DPS arrested 14 illegal aliens dressed in camouflage attempting to evade apprehension in April 2023. They would have entered as gotaways if not for the efforts of law enforcement. (Source: Texas DPS)

The massive increase in gotaways is just more fuel on the fire of the cartels' profits. Ultimately, as the number of illegal aliens—gotaways or not—being smuggled or trafficked across the border continues to rise, so do the cartels' profits.

In 2018, then-DHS Secretary Kirstjen Nielsen estimated the cartels made at least $500 million annually from human smuggling.[53] In August 2021, John Condon, HSI acting assistant director of international operations, told Congress the number had risen to somewhere between $2-$6 billion, and potentially more.[54] In February 2021 alone, the Border Patrol estimated the cartels made $14 million per day smuggling illegal aliens across the border.[55]

Crossing the border illegally is an expensive proposition. In 2021, Newsweek reported Border Patrol sources saying that Mexicans could expect to pay several hundred to several thousand dollars, while Central Americans could pay between $8,000-$10,000, and those from South American nations could pay upwards of $15,000.[56] Another 2021 report, this one from CNN, found that illegal aliens from Guatemala, Honduras, and El Salvador paid smugglers an average of $7,500 to make it to the border.[57] Additionally, press reports quoting individuals making the

[53] Stephen Dinan, "Kirstjen Nielsen: Cartels Make $500 Million a Year from Smuggling Illegals into U.S.," *The Washington Times*, May 15, 2018, https://www.washingtontimes.com/news/2018/may/15/kirstjen-nielsen-cartels-make-500-million-year-smu/.
[54] Stephen Dinan, "DHS: Cartels Earn up to $6 Billion a Year from Smuggling Migrants," *The Washington Times*, August 4, 2021, https://www.washingtontimes.com/news/2021/aug/4/dhs-cartels-earn-6-billion-year-smuggling-illegal-/.
[55] William La Jeunesse, "US-Mexico Border Traffickers Earned as Much as $14M a Day Last Month: Sources," *Fox News*, March 22, 2021, https://www.foxnews.com/politics/us-mexico-border-traffickers-million-february.
[56] Alex Rouhandeh, "Human Smugglers Charging Up To $15,000 Per Person for U.S. Border Crossing," *Newsweek*, June 3, 2021, https://www.newsweek.com/human-smugglers-charging-15000-per-person-us-border-crossing-1597043.
[57] Catherine Shoichet, "Central American Migrants Paid $2.2 Billion Trying to Reach the US," *CNN*, November 24, 2021, https://www.cnn.com/2021/11/24/us/central-american-migration-costs/index.html.

journey show many make various payments to different groups along the way in order to traverse particular sections of the route, or simply to pay off robbers or gangs.[58]

It is also instructive to note the higher fees the cartels charge individuals from nations like China. One report found that three Chinese nationals who entered in February 2023 each paid $35,000.[59] Texas officials say the $35,000 number for Chinese nationals is a baseline and may go as high as $50,000.[60] The Border Patrol's Joel Martinez, then-acting chief patrol agent for the Laredo Sector, told the House Committee on Homeland Security in June 2023 that he had heard reports of Chinese nationals being charged $60,000 by the cartels.[61]

The math gives Americans a sense of the potential scope of cartel profits under Mayorkas' policies. If every Chinese national apprehended illegally crossing the Southwest border in FY23—the Border Patrol recorded 17,678 apprehensions of Chinese nationals through July 2023[62]—paid the cartels $50,000 to cross the border, that would represent roughly $880 million in revenue. At $35,000 per Chinese national, the total would be around $618 million. Of course, 17,678 apprehensions are a mere drop in the bucket compared to almost 5.8 million Southwest border encounters recorded since Mayorkas took office and the more-than 1.5 million known gotaways, making total cartel profits a troubling figure to imagine. As Jones said in July 2021, "I can without any doubt tell you that the profits they are making today are like nothing we have seen prior. This is a major revenue stream."[63]

Contrary to Mayorkas' assertions,[64] his new policy that allows otherwise inadmissible aliens to request an appointment at an official port of entry via the CBP One mobile app is failing to stem the record profits flowing to the cartels. This is because individuals must still pay to get through Mexico to the Southwest border, whether they choose to cross between the ports of entry, or make use of Mayorkas' parole pathway at a port of entry. According to Jessica Vaughan, director of policy studies at the Center for Immigration Studies (CIS), in her testimony before the House Committee on Homeland Security on July 19, 2023:

> "Biden officials have claimed that that CBP One policy is a great success because the illegal migrants no longer have to do business with the cartels. We should be skeptical of this claim. First of all, CBP One can only be used from locations in northern Mexico and the migrants still have to get there, and for most, that still means paying a cartel-approved

[58] Nick Paton Walsh, et. al., "On one of the world's most dangerous migrant routes, a cartel makes millions off the American dream," *CNN*, April 17, 2023, https://www.cnn.com/2023/04/15/americas/darien-gap-migrants-colombia-panama-whole-story-cmd-intl/index.html.
[59] Adam Shaw and Bill Melugin, "Border Patrol Apprehensions of Chinese Nationals at Southern Border up 800%: Source," *Fox News*, February 9, 2023, https://www.foxnews.com/politics/border-patrol-apprehensions-chinese-nationals-southern-border-800-source.
[60] State of Texas, Office of the Texas Governor, Greg Abbott, *Operation Lone Star Turns Back Over 30,000 Illegal Immigrants*, March 24, 2023, https://gov.texas.gov/news/post/operation-lone-star-turns-back-over-30000-illegal-immigrants.
[61] Joel Martinez, Transcribed Interview with the House Committee on Homeland Security, 36, June 1, 2023.
[62] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, August 18, 2023, https://www.cbp.gov/newsroom/stats/nationwide-encounters.
[63] Karol Suárez, "Cartels reap growing profits in the smuggling of migrants across the US-Mexico border," *Louisville Courier Journal*, July 1, 2021, https://www.courier-journal.com/story/news/investigations/2021/07/01/mexican-cartels-fuel-immigration-crisis-at-us-border/5290082001/.
[64] "Oversight of the U.S. Department of Homeland Security," *House Judiciary GOP*, YouTube video, 1:58:02, July 26, 2023 https://www.youtube.com/live/cAhJdIQv1IA?feature=share&t=7082.

> smuggler, and the CBP One appointment itself turns out to be yet another opportunity for them to extort the migrants."[65]

Subsequent reporting demonstrates that the cartels are continuing to rake in record profits. According to media analysis of the data:

> "Secretary Alejandro Mayorkas has characterized the decline as a blow to the smuggling cartels that control the market. Yet those who make the attempt are paying more, according to The Washington Times' database of smuggling cases, which tracks payments in near-real time and which suggests that the cartels aren't taking as big of a hit as Mr. Mayorkas would like."[66]

The Times noted, "A Mexican crossing into the Laredo area of Texas is paying an average of $9,500, up from about $7,400 earlier this year, before the end of the Title 42 border pandemic expulsion policy in May. A Mexican sneaking into Arizona is paying an average of nearly $10,000, up from about $9,300."[67]

And, of course, as reported by the Washington Examiner in August 2023, the cartels have hijacked the app through the use of virtual private networks (VPN) to help aliens from all over the globe request appointments through the app, getting around the requirement that an individual be in northern Mexico before submitting such a request. Indeed, cartels are now offering this as a paid service, meaning they are actually using DHS' own policies and procedures to expand their profit margins.[68]

Lucrative drug operations add even more revenue. A report published by ICE as far back as 2010 estimated cartels made nearly $30 billion on drug trafficking,[69] though more recent comprehensive estimates are hard to come by. With the massive increase in the production of fentanyl and the favorable profit margin it provides,[70] one can only imagine the cartels' revenues from trafficking illicit drugs today.

And many of those dollars go right back to expanding the cartels' operations, including building up their massive paramilitary capabilities. Journalist Todd Bensman, who is also a former member of Texas DPS' Intelligence and Counterterrorism Division, wrote in a recent op-ed that there is "plenty of evidence to suggest" the cartels have acquired the capability to "outgun" the Mexican government:

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[65] "Biden and Mayorkas' Open Border: Advancing Cartel Crime in America," *Homeland Security Committee Events*, YouTube video, 37:22, July 19, 2023, https://www.youtube.com/live/kva0HOb1TUg?feature=share&t=2242.

[66] Stephen Dinan, "Smuggling cartels raking in cash despite lower border numbers," *The Washington Times*, July 30, 2023, https://www.washingtontimes.com/news/2023/jul/30/smuggling-cartels-still-raking-cash-despite-lower-/.

[67] Ibid.

[68] Anna Giaritelli, "Mexican cartels exploit US government's CBP One app," *The Washington Examiner*, August 4, 2023, https://www.washingtonexaminer.com/policy/immigration/mexican-cartels-exploit-cbp-one-app.

[69] U.S. Department of Homeland Security, Office of Counternarcotics Enforcement and U.S. Immigration and Customs Enforcement, Government of Mexico, Secretaría de Hacienda y Crédito Publico and Unidad De Inteligencia Financiera (UIF), *United States of America-Mexico Bi-National Criminal Proceeds Study*, June 2010, 2, https://www.ice.gov/doclib/cornerstone/pdf/cps-study.pdf.

[70] U.S. Congress, Senate, Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Prepared Testimony of the U.S. Department of Justice, Anne Milgram, Administrator, Drug Enforcement Administration for A Review of the President's Fiscal Year 2024 Funding Requests for the Federal Bureau of Investigation and for the U.S. Drug Enforcement Administration*, 118th Cong., 1st sess., May 10, 2023, 5, https://www.appropriations.senate.gov/imo/media/doc/Administrator_written%20statement_Senate%20CJS%20hearing.pdf.

> "It's impossible to know how much military hardware the revenues from the Biden border crisis have paid for, but the cartels are clearly reinvesting their massive profits. ... These are armies, with highly trained special forces units, supported by professional intelligence operations and run by warlords...I'm not alone in my estimation that Biden's cartel-enriching mass migration crisis poses serious threats to important U.S. national interests, including many that are rarely discussed out loud, such as Mexican trade."[71]

Bensman also highlighted several recent seizures by the American and Mexican governments of military assets the cartels acquired or attempted to acquire. The sheer firepower wielded by these organizations is staggering:

> "In March 2022, inside four houses controlled by a faction of the Sinaloa Cartel in the northern State of Sonora, the Mexican army recovered 2.8 million rounds of ammunition, 89 hand grenades, 20 machine guns, six .50 caliber sniper rifles, more than 150 handguns and automatic rifles, and bulletproof vests.
>
> "In May 2022, U.S. authorities broke up a Cartel del Noreste scheme to buy $500,000 worth of machine guns, grenades, and rocket-propelled launchers to be smuggled south from the U.S. into Mexico.
>
> "An August 2022 report showed that the state of Tamaulipas seized 257 shop-built armored 'narco-tanks' from the cartels in recent years, so-called 'monsters' made of semis, SUVs, or pickup trucks encased in thick steel with machine-gun ports. Video shows well-kitted masked cartel soldiers filling them."[72]

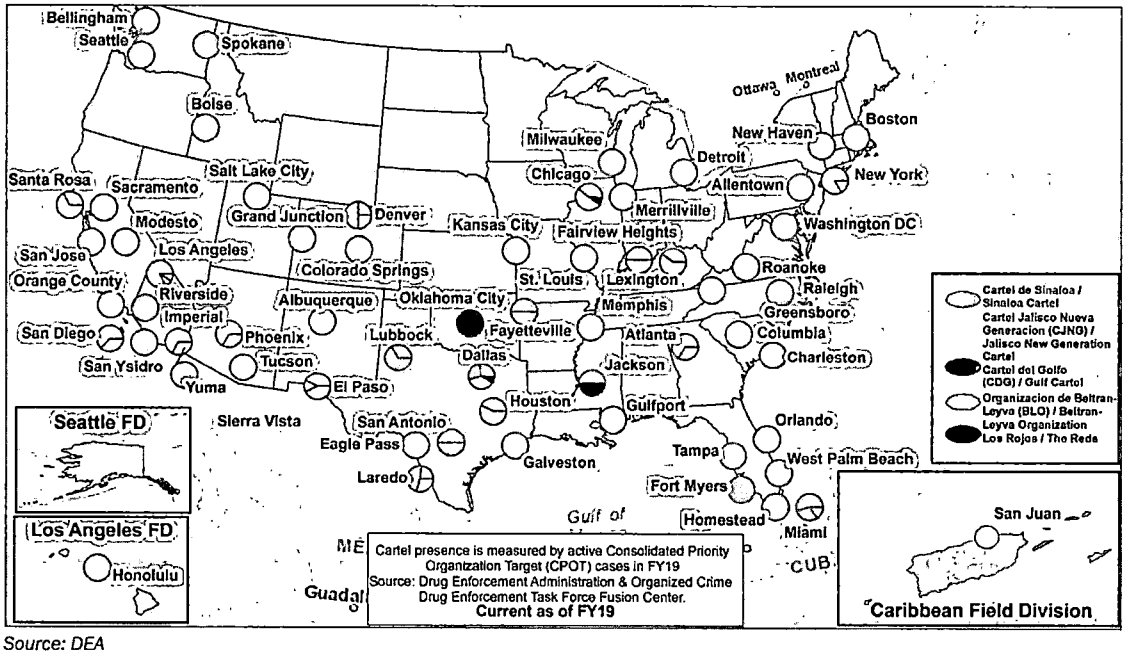
The cartels have even made use of advanced submarines, known as "narco-submarines," to traffic drugs into the United States. According to one report, "The technology has progressed in recent years and has become a significant force in the international drug trade."[73] In May 2023, one prominent Colombian TCO operative—the "Prince of Semi-Submersibles"—was sentenced to more than 20 years in prison for smuggling thousands of pounds of drugs into the United States via these submarines.[74] According to federal prosecutors, the organization "primarily sent vessels such as self-propelled semi-submersible vessels to Guatemala, where the cocaine was then smuggled over the Guatemala/Mexican border and then into the United States."[75]

[71] Todd Bensman, "Biden's border crisis is fueling growing cartel armies - now armed to the teeth and rivaling Mexico's military, warns TODD BENSMAN... so why is no one talking about this threat to American interests?," *The Daily Mail*, December 22, 2022, https://www.dailymail.co.uk/news/article-11563659/Mexicos-cartels-getting-rich-powerful-Bidens-mass-migration-crisis-TODD-BENSMAN.html.
[72] Ibid.
[73] Michael James, "Colombian 'Prince of Submersibles' gets 20 years for smuggling kilos of coke into US with narco-submarines," *USA Today*, May 8, 2023, https://www.usatoday.com/story/news/nation/2023/05/08/colombian-drug-lord-gets-20-years-for-smuggling-coke-into-us-via-narco-subs/70197761007/.
[74] Ibid.
[75] U.S. Department of Justice, U.S. Attorney's Office, Middle District of Florida, *Colombia's "Prince Of Semi-Submersibles" Sentenced To Over 20 Years In Federal Prison For Smuggling Thousands Of Kilograms Of Cocaine*, May 8, 2023, https://www.justice.gov/usao-mdfl/pr/colombias-prince-semi-submersibles-sentenced-over-20-years-federal-prison-smuggling.

Section 2: The Cartel-Crime Nexus at the Border and in the United States

These criminal operations are not limited simply to Mexico and border states, however. Indeed, the cartels are increasingly active in communities across the United States. As Mayorkas and Biden's border crisis has continued to expand, so has the reach and influence of these groups. The DEA's most recent assessment in FY19 showed major Mexican cartels already operating in at least 60 American cities.[76] Since the publication of that assessment, "the cartels have expanded to all 50 states, battling for control of the nation, coast to coast."[77] This section of the report will detail the innovative tactics being used by the cartels on Mayorkas' watch, and the criminal activity in which they are engaged in American communities.

Figure 58. United States: Areas of Influence of Major Mexican Transnational Criminal Organizations by Individual Cartel



Source: DEA

The Inhumane and Destabilizing Tactics of the Cartels

Debt Bondage and Coercion—A Horrific New Phenomenon: Increasingly, vulnerable individuals coming to the border are not just being forced to pay one-time fees, which perhaps constitute their entire life savings, in order to enter the United States. In many cases, they are being further

[76] U.S. Department of Justice, Drug Enforcement Administration, *2020 National Drug Threat Assessment*, DEA-DCT-DIR-008-21, March 2021, 69, https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

[77] "NewsNation exclusive: Deadly drug cartels in America | CUOMO," *NewsNation*, February 6, 2023, https://www.newsnationnow.com/video/newsnation-exclusive-deadly-drug-cartels-in-america-cuomo/8367575/.

exploited and forced to serve the cartels and smuggling organizations—a phenomenon known as "debt bondage."

In its 2021 Border Security Metrics report, DHS documented an increase in "alternative forms of payment in exchange for passage, including migrants being required to participate in smuggling controlled substances or other illicit items across the border or to work off debts upon arrival in the United States, as well as reports of harsh negotiations concerning payment plans with family members."[78] In other words, they pay their debt by facilitating and committing crimes against Americans inside the United States.

In July 2023, the San Francisco Chronicle corroborated this finding as part of an in-depth investigation into the city's drug trade. The report included interviews with numerous dealers who had arrived from other countries and were now selling drugs supplied by the cartels. According to the Chronicle, one dealer "said the migrants' desperation makes them easy targets for exploitation by coyotes:"

> "'They offer to take you to the United States and help you find a job,' the man said in an interview from jail. 'They tell you that once you work you can pay them back for the help they gave you. But once you are in their hands they start trying to figure out who your family is, who your parents are. Later, the threats start. They put you out there selling drugs.'
>
> "The coyotes, he said, 'put you under threat because you owe them money and you have to pay them. There are people who pay them, but they don't succeed in getting out because once you are benefiting them, they don't want to set you free. They always want you to be working.'"[79]

In a heartbreaking February 2023 report, the New York Times detailed the plight of unaccompanied alien children (UACs) brought across the border illegally and who now reside in the United States.[80] The next phase of this investigation will cover in unflinching detail the horrors many of these minors continue to experience daily. In this context, however, Americans must understand that in addition to the horrific exploitation and abuse to which many of these minors have been subjected, many are trapped in a system of debt bondage from which they may never escape. Per the Times, "Far from home, many of these children are under intense pressure to earn money. They send cash back to their families while often being in debt to their sponsors for smuggling fees, rent and living expenses."[81]

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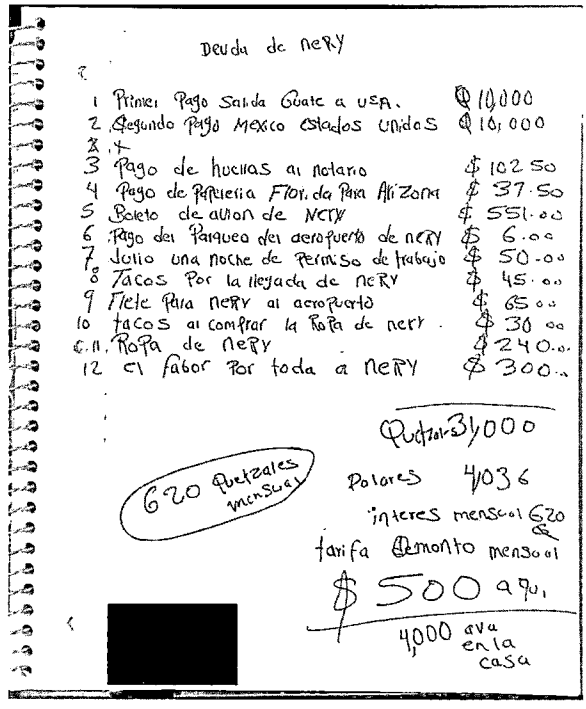
[78] U.S. Department of Homeland Security, *Department of Homeland Security Border Security Metrics Report: 2021*, April 27, 2022, 63, https://www.dhs.gov/sites/default/files/2022-06/2022_0427_plcy_border_security_metrics_report_FY2021_%282020_data%29.pdf.
[79] Megan Cassidy and Gabrielle Lurie, "This Is How San Francisco's Open-Air Drug Dealers Work," *San Francisco Chronicle,* July 10, 2023, https://www.sfchronicle.com/projects/2023/san-francisco-drug-trade-how-dealers-work/.
[80] Hannah Dreier, "Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.," *New York Times,* February 25, 2023, https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html.
[81] Ibid.

Just consider the experience of one Guatemalan teenager sent by his parents to the United States to find work:

> "Nery Cutzal was 13 when he met his sponsor over Facebook Messenger. Once Nery arrived in Florida, he discovered that he owed more than $4,000 and had to find his own place to live. His sponsor sent him threatening text messages and kept a running list of new debts: $140 for filling out HHS paperwork; $240 for clothes from Walmart; $45 for a taco dinner.
>
> "'Don't mess with me,' the sponsor wrote. 'You don't mean anything to me.'
>
> "Nery began working until 3 a.m. most nights at a trendy Mexican restaurant near Palm Beach to make the payments. 'He said I would be able to go to school and he would take care of me, but it was all lies,' Nery said."[82]


Deuda de NERY

1	Primer Pago Salida Guate a USA.	Q10,000
2	Segundo Pago Mexico Estados Unidos	Q10,000
3	Pago de huellas al notario	$ 102.50
4	Pago de Peluqueria Flor. de Para Az Zona	$ 37.50
5	Boleto de avion de NERY	$ 551.00
6	Pago del Parqueo del aeropuerto de NERY	$ 6.00
7	Dolio una noche de Permiso de trabajo	$ 50.00
8	Tacos Por la llegada de NERY	$ 45.00
9	Flete Para NERY al aeropuerto	$ 65.00
10	tacos al comprar la Ropa de NERY	$ 30.00
11	Ropa de NERY	$ 240.00
12	El fabor Por toda a NERY	$ 300.00

Quetzales 31,000

620 Quetzales mensual

Dolores 4036

interes mensual 620

tarifa Demonto mensual

$ 500 apu.

4,000 ava en la casa

A handwritten ledger, in Spanish, of Nery Cutzal's debts to his sponsor, including money for tacos and clothes. The child owed more than $4,000, plus interest. Court information has been redacted for privacy.

(Source: New York Times)

Another teenager told the Times, "I still have to pay back my debt, so I still have to work."[83]

The Border Patrol's Owens highlighted this practice in May 2023, telling Committee staff that individuals can "find themselves indentured and paying off that debt for years to come, doing unspeakable things."[84]

Jones, the former Texas DPS captain, has said, "If they don't pay their debt then the cartel has the information about where they're going, but more importantly, they have the information on their families in home countries. From there, they can start the threats and hold them accountable through debt bondage, a form of human trafficking. Either pay or we're going to come after your family."[85]

He further explained how the debt-bondage system works in his July 2023 testimony before the House Committee on Homeland Security:

> "The Gulf Cartel specifically has a saying and that is that 'people are the gift that keep giving,' because they can make them move the commodity...but we have seen that on the border, where they're now making migrants carry narcotics. We have seen where they then

[82] Ibid.
[83] Ibid.
[84] Jason Owens, Transcribed Interview with the House Committee on Homeland Security, 142-143, May 5, 2023.
[85] Todd Bensman, "Overwhelmed Mexican Alien-Smuggling Cartels Use Wristband System to Bring Order to Business," *Center for Immigration Studies*, March 2, 2021, https://cis.org/Bensman/Overwhelmed-Mexican-AlienSmuggling-Cartels-Use-Wristband-System-Bring-Order-Business.

exploit them. We've seen where other migrants are now being used to transport migrants themselves because you can truly make this commodity do what you want it to do. And what these really represent, that's the most important here to understand, is this is a process, because just as Border Patrol was being absolutely overwhelmed with these people, so were the cartels.

"And the Gulf had to come up with a process that worked and you're seeing it in my hand. There's a number on each of these [wristbands] ... That number goes into a database."[86]

"And now [the cartels] have transitioned into the final version of human trafficking known as 'debt bondage' and I am holding it in my hands. This is it. This is how emboldened they've become." — Former Texas DPS Capt. Jaeson Jones testifies before the House Committee on Homeland Security, July 19, 2023, about the Mexican cartels' sophisticated new system of inventorying, trafficking, and enslaving hundreds of thousands of individuals.

According to testimony submitted to the Committee by Sheriff Bill Waybourn of Tarrant County, Texas, on July 19, 2023, smugglers and traffickers are even exploiting the state's criminal justice system to further advance their illicit objectives, in particular trapping vulnerable women in forced servitude:

> "These traffickers also capitalize on the vulnerable inmate population by identifying females who are incarcerated and bond them out of jail for the strict purpose of sex trafficking. They will also force uncooperative females, sometimes those who were smuggled over the border, to engage in petty criminal activity to ensure they are arrested

[86] "Biden and Mayorkas' Open Border: Advancing Cartel Crime in America," *Homeland Security Committee Events*, YouTube video, 2:03:07, July 19, 2023, https://www.youtube.com/live/kva0HOb1TUg?feature=share&t=7387.

> and jailed. These criminal organizations are using the jail system—a taxpayer funded public safety system—to both capitalize on their victims and identify new ones."[87]

Texas DPS has reported a similar phenomenon, stating that smugglers often pick up individuals from stash houses and attempt to transport them to other destinations throughout the state, where some are "forced into debt bondage and work off the debt through forced labor and sex trafficking."[88]

Vaughan, in her July 2023 testimony before the House Committee on Homeland Security, also noted this new reality for many people who make the journey, stating:

> "Some people pay a discounted fee and give up their children for the smugglers to use to give to other single adults. Others agree, or are forced, to be drug mules. A large number just make a down payment on the smuggling fee that's paid off in fear-driven forced labor, debt bondage arrangements that are difficult for them to escape from."[89]

In July 2023, nearly 60 victims of human trafficking were rescued from an illicit marijuana facility in central California.[90] According to one report, "The victims arrived several days earlier, smuggled across the southern border 'with the promise that they would have a good-paying job and a place to stay'...They were found living in 'horrible' conditions, forced to process marijuana 'to pay back the individuals that brought them across the border,'" per law enforcement.[91]

The cartels' mass use of debt bondage, and the complex systems devised to make it a reality, are a unique consequence of Mayorkas' open-borders policies. The following exchange between New York Rep. Andrew Garbarino, and the Texas DPS veteran Jones in July 2023 should sober every American:

> *Garbarino*: "You talked about how you've seen this before, but lower numbers. With these higher numbers and the amount of people, is this relatively a new phenomenon under Secretary Mayorkas?"
>
> *Jones*: "It is. Now the smuggling of people has always been there, but the adjustment from smuggling into the trafficking through debt bondage because due to the sheer numbers, they thought to themselves, 'My God, we can make so much money and we can do it for the long run.' This is the game-changer. When you think of human trafficking, most people think of commercial sex. That's one piece of it. Don't forget you have forced labor, and this is your final form, debt bondage, and now it's nationwide."[92]

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[87] U.S. Congress, House of Representatives, Committee on Homeland Security, *Prepared Testimony of Sheriff Bill Waybourn for Biden and Mayorkas' Open Border: Advancing Cartel Crime in America*, 118th Cong., 1st sess., July 19, 2023, https://homeland.house.gov/wp-content/uploads/2023/07/Written-testimony-SIGNED3.pdf.

[88] State of Texas, Office of the Texas Governor, *Operation Lone Star Combats Increasing Smuggling Attempts By Cartels*, April 21, 2023, https://gov.texas.gov/news/post/operation-lone-star-combats-increasing-smuggling-attempts-by-cartels.

[89] "Biden and Mayorkas' Open Border: Advancing Cartel Crime in America," *Homeland Security Committee Events*, YouTube video, 38:24, July 19, 2023, https://www.youtube.com/live/kva0HOb1TUg?feature=share&t=2304.

[90] Aliza Chasan, "Dozens of suspected human trafficking victims found processing black market marijuana in California," *CBS News*, July 27, 2023, https://www.cbsnews.com/news/dozens-human-trafficking-victims-processing-black-market-marijuana-operation-merced-california/.

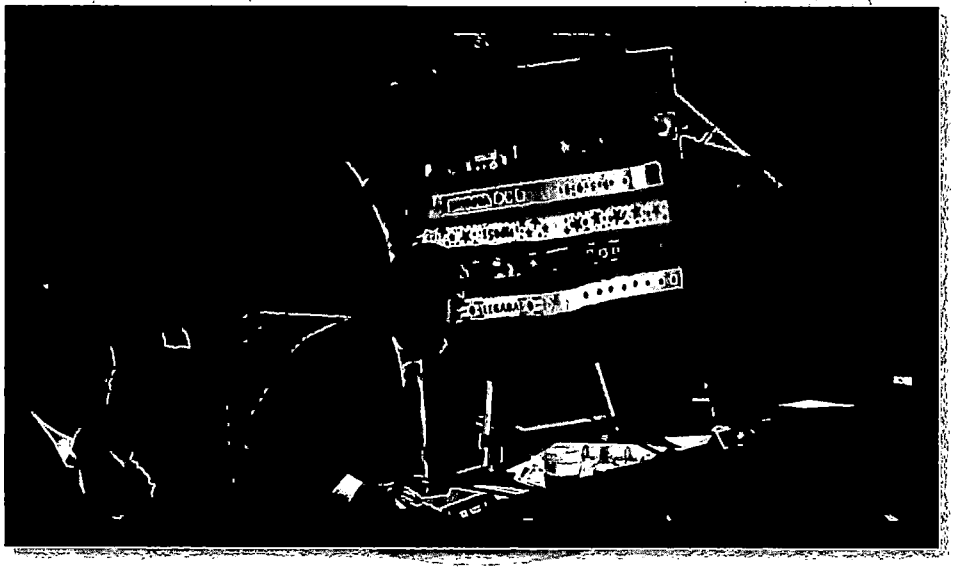
[91] Ibid.

[92] "Biden and Mayorkas' Open Border: Advancing Cartel Crime in America," *Homeland Security Committee Events*, YouTube video, 2:05:02, July 19, 2023, https://www.youtube.com/live/kva0HOb1TUg?feature=share&t=7502.

Complex Human Trafficking/Smuggling Operations: One of the ways in which some of the cartels execute their mass trafficking operation and enslave people in debt bondage is by using a complex system of wristbands. These wristbands help create an inventory of those who will owe the cartels upon arriving in the United States, where individuals are going, which group is responsible for smuggling the alien, and other logistical information.

The office of Rep. Henry Cuellar, D-Tex., has confirmed this type of system, in which different color wristbands indicate how many times the alien has attempted to cross the border, and whether they will be allowed to try again—"Those with red bands are first-time crossers and those with purple bands are not allowed to try to cross again."[93] One expert on smuggling has observed that the cartels "are organizing the merchandise in ways you could never imagine five or 10 years ago."[94] The Border Patrol's Owens told the House Committee on Homeland Security these organizations use these wristbands "as a way to categorize them, basically treating them like cattle."[95]

Incredibly, Mayorkas claimed ignorance of these wristbands when questioned by Texas Sen. Ted Cruz in a March 2023 Senate Judiciary hearing. When shown pictures of the bracelets worn by illegal aliens, as well as one in Cruz's hand, Mayorkas testified he did not know what they were.[96]



WATCH: Mayorkas Confesses Ignorance About Cartel Human Trafficking Operations

In response to this surprising admission by the secretary, National Border Patrol Council (NBPC) Vice President Art Del Cueto told Fox Business, "A Google search would have gotten him the

[93] Sandra Sanchez, "EXCLUSIVE: Colored Wristbands Help Cartels Track Migrants, Payments for Smuggling Them, Lawmaker Confirms," *Border Report*, April 15, 2021, https://www.borderreport.com/immigration/border-crime/exclusive-colored-wristbands-help-cartels-track-migrants-payments-for-smuggling-them-lawmaker-confirms/.

[94] Miriam Jordan, "Smuggling Migrants at the Border Now a Billion-Dollar Business," *New York Times*, July 25, 2022, https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html.

[95] Jason Owens, Transcribed Interview with the House Committee on Homeland Security, 148, May 5, 2023.

[96] "Secretary Mayorkas Testifies at Homeland Security Oversight Hearing," *C-SPAN video*, 2:10:05, March 28, 2023, https://www.c-span.org/video/?526938-1/secretary-mayorkas-testifies-homeland-security-oversight-hearing.

(Source: U.S. Border Patrol)

answer. It's been reported many times. ... It baffles me for the Secretary of Homeland Security to say he has no idea what they're for."[97]

Stash Houses: "Just imagine 60 people in an enclosed space with no electricity, running water, or food," from which they "can't escape because often they are locked in," said Laredo Sector Border Patrol agent Kenneth Kroupa in 2020.[98] Such images offer just a glimpse into the network of stash houses the cartels and smugglers use to facilitate the trafficking and smuggling of illegal aliens throughout the country.

The cartels use homes, apartments, or even hotel rooms as stash houses to hide large groups of illegal aliens after they have been smuggled into the country and prior to transporting them to their next destination. CBP officials describe these sites as often being filthy buildings with no water, food, or electricity, where smugglers pack illegal aliens until they can be distributed around the country, with air conditioning "unheard of," despite temperatures often in excess of 100 degrees.[99] Illegal aliens are often locked in these houses, unable to leave. Garbage often accumulates inside, as putting the trash generated by dozens of people out for collection could attract unwanted attention.[100]

These stash houses represent a public health nightmare, as the cramped and unsanitary conditions facilitate the transmission of diseases like COVID-19 and tuberculosis, particularly among populations coming from countries with minimal public health infrastructure or lower vaccination rates for diseases largely eradicated in the United States.[101]

The use of stash houses has exploded on Mayorkas' watch. In May 2021, in the early days of the crisis, Texas DPS and Border Patrol officials reported a 400-percent increase in the number of illegal aliens rescued from stash houses.[102] From October 2022 to April 2023 in just the El Paso

[97] "Mayorkas' cartel wristband ignorance is 'baffling': Art Del Cueto," *Fox Business*, Fox Business video, 01:01, March 29, 2023, https://www.foxbusiness.com/video/6323600529112.
[98] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Frontline Magazine, *Stashed Away: CBP Fights Human Smuggling and Disease by Shutting Down Filthy Stash Houses*, by John Davis, October 22, 2020, https://www.cbp.gov/frontline/cbp-fights-human-smuggling-and-stash-houses.
[99] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Frontline Magazine, *Stashed Away: CBP Fights Human Smuggling and Disease by Shutting Down Filthy Stash Houses*, by John Davis, October 22, 2020, https://www.cbp.gov/frontline/cbp-fights-human-smuggling-and-stash-houses.
[100] MaryAnn Martinez, "Border Patrol Waging War on Cartels with Migrant 'Stash House' Busts," *New York Post*, April 6, 2023, https://nypost.com/2023/04/06/border-patrol-waging-war-on-cartels-with-stash-house-busts/.
[101] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Frontline Magazine, *Stashed Away: CBP Fights Human Smuggling and Disease by Shutting Down Filthy Stash Houses*, by John Davis, October 22, 2020, https://www.cbp.gov/frontline/cbp-fights-human-smuggling-and-stash-houses.
[102] Adolfo Muniz, "Texas DPS Says Human Smugglers Using Color-Coded Wristband System at the U.S.-Mexico Border," *Spectrum News 1*, May 15, 2021, https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2021/05/14/texas-dps-says-human-smugglers-using-color-coded-wristband-system-at-the-u-s--mexico-border-.

Sector, Border Patrol agents discovered more than 165 stash houses, containing more than 2,400 individuals.[103]

By comparison, in 2022, El Paso agents uncovered 232 stash houses.[104] In FY20, Border Patrol uncovered 397 stash houses across all nine sectors.[105] According to the New York Times in 2022, "Over the past year, federal agents have raided stash houses holding dozens of migrants on nearly a daily basis."[106]

Since January 2021, CBP and ICE have conducted hundreds of operations to shut down stash houses and break up these criminal enterprises, with CBP's press page alone documenting the routine occurrence of these operations on Mayorkas' watch.[107]

- In a one-week period in July 2023, Border Patrol agents in the El Paso Sector discovered six stash houses holding 52 illegal aliens.[108]
- In May 2023, Border Patrol agents in Santa Teresa, New Mexico, found more than 50 illegal aliens "living in deplorable conditions" in a stash house.[109]
- In April 2023, CBP and Texas DPS conducted operations at two separate stash houses in El Paso, finding more than 140 illegal aliens.[110]
- On March 27, 2023, Texas DPS moved on an El Paso stash house holding 23 illegal aliens. The house contained a shrine to Santa Muerte, the patron saint of the cartels.[111]
- On March 3, 2023, the Border Patrol announced operations involving four stash houses in the El Paso Sector, rescuing 171 illegal aliens in the process.[112]
- In September 2022, HSI agents uncovered a stash house in Albuquerque, New Mexico, holding 29 illegal aliens, drugs, and a firearm.[113]

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[103] Chief Raul Ortiz [@USBPChief], "51 Migrants Located in a Single Stash House! US Border Patrol El Paso Sector Human Smuggling Interdiction Teams Have Uncovered over 165 Stash Houses in the Region with over 2,421 Migrants so Far in FY23. Outstanding Work Is Being Done at EPT! @USBPChiefEPT," Tweet, *Twitter*, April 28, 2023, https://twitter.com/USBPChief/status/1652010403734384640.

[104] MaryAnn Martinez, "Border Patrol Waging War on Cartels with Migrant 'Stash House' Busts," *New York Post*, April 6, 2023, https://nypost.com/2023/04/06/border-patrol-waging-war-on-cartels-with-stash-house-busts/.

[105] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Frontline Magazine, *Stashed Away: CBP Fights Human Smuggling and Disease by Shutting Down Filthy Stash Houses*, by John Davis, October 22, 2020, https://www.cbp.gov/frontline/cbp-fights-human-smuggling-and-stash-houses.

[106] Miriam Jordan, "Smuggling Migrants at the Border Now a Billion-Dollar Business," *The New York Times*, July 25, 2022, https://www.nytimes.com/2022/07/25/us/migrant-smuggling-evolution.html.

[107] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Media Releases*, accessed on July 19, 2023, https://www.cbp.gov/newsroom/media-releases/all?field_date_release_value_op=between&field_date_release_value%5Bvalue%5D=&field_date_release_value%5Bmin%5D=2021-01-20&field_date_release_value%5Bmax%5D=2023-04-14&field_newsroom_type_target_id_1=All&combine=stash+house.

[108] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, El Paso Sector, *El Paso Sector weekly recap*, July 19, 2023, https://www.cbp.gov/newsroom/local-media-release/el-paso-sector-weekly-recap.

[109] Dave Burge, "Border Patrol Finds More than 50 Migrants in 'Deplorable Conditions' in Stash House," *KTSM 9 News*, May 15, 2023, https://www.ktsm.com/news/border-patrol-finds-more-than-50-migrants-in-deplorable-conditions-in-stash-house/.

[110] Patrick Reilly, "Border Forces Find over 140 Illegal Migrants in Stash House Raids," *New York Post*, April 4, 2023, https://nypost.com/2023/04/04/border-forces-find-over-140-illegals-in-stash-house-raids/.

[111] Louis Casiano, "Texas Illegal Immigrant Stash House Found with Shrine to Cartel 'Santa Muerte' Saint Inside," *Fox News*, March 28, 2023, https://www.foxnews.com/us/texas-illegal-immigrant-stash-house-shrine-cartel-santa-muerte-saint.

[112] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, El Paso Sector, *Agents intercept smuggled migrants from multiple local stash houses*, March 3, 2023, https://www.cbp.gov/newsroom/local-media-release/agents-intercept-smuggled-migrants-multiple-local-stash-houses.

[113] Matthew Reisen, "Twenty-Nine Migrants Found in Alleged Cartel Stash House," *Albuquerque Journal*, October 18, 2022, https://www.abqjournal.com/news/local/twenty-nine-migrants-found-in-alleged-cartel-stash-house/article_79a37fa1-d515-5ee6-aefd-ed819ccaa1b1.html.

- In September 2022, CBP announced Border Patrol agents and members of Texas DPS had rescued 21 illegal aliens from a stash house in Laredo, seizing more than 160 pounds of illicit drugs in the process.[114]
- In August 2022, Border Patrol agents and local law enforcement rescued 28 illegal aliens from a stash house in Edinburg, Texas, after a woman called 911 and told operators she was being held against her will.[115]
- In April 2022, the Border Patrol disrupted operations at four stash houses in 24 hours, leading to the apprehension of 53 illegal aliens. The stash houses were part of El Paso apartment complexes and motels.[116]

Stash houses are not limited to border towns, but are used throughout the country wherever the cartels need to store illegal aliens. For example, in July 2022, ICE busted multiple stash houses in Washington, D.C.[117] More than 70 illegal aliens were found in the operation, including 13 minors.[118]

These stash houses also represent a major humanitarian concern. According to Border Patrol agent Fidel Baca, "So you have criminals inside these homes, a lot of the times they've committed serious crimes, crimes against people, crimes of sexual assault, crimes of assault, and they are caretaking for lots of people...We have children, we have women in these homes, and they are being taken care of by criminals."[119]

(Source: CBP)

Per the Border Patrol's Martinez during a transcribed interview with the House Committee on Homeland Security in June 2023, when it comes to how long individuals are held in these locations, "It could be hours, it could be days, it could be weeks. It depends on when the coast is clear, when the cartel believes the coast is clear for them to travel up north or further their travel."[120] When the cartels decide to move, many of these people are crammed into tractor-trailers, train cars, or other

[114] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, Laredo Sector, *Laredo Sector Border Patrol agents shut down stash house and seize narcotics*, September 7, 2022, https://www.cbp.gov/newsroom/local-media-release/laredo-sector-border-patrol-agents-shut-down-stash-house-and-seize.

[115] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, Rio Grande Valley Sector, *Migrant Credited with Saving Herself and 27 Others from Stash House*, August 16, 2022, https://www.cbp.gov/newsroom/local-media-release/migrant-credited-saving-herself-and-27-others-stash-house.

[116] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, El Paso Sector, *Four stash houses busted in 24-hours*, April 8, 2022, https://www.cbp.gov/newsroom/local-media-release/four-stash-houses-busted-24-hours.

[117] Quinn Owen, "73 Migrants -- Including 13 Kids -- Found in D.C. 'Stash Houses,' Official Says; Smuggling Suspected," *ABC News*, July 28, 2022, https://abcnews.go.com/US/73-migrants-including-13-kids-found-dc-stash/story?id=87565679.

[118] Ibid.

[119] Ariana Parra, "El Paso Sector Border Patrol Tells Community to Keep an Eye out for Stash Houses," *KFOX 14*, April 6, 2023, https://kfoxtv.com/news/local/el-paso-sector-border-patrol-tells-community-to-keep-an-eye-out-for-stash-houses-report-smuggling.

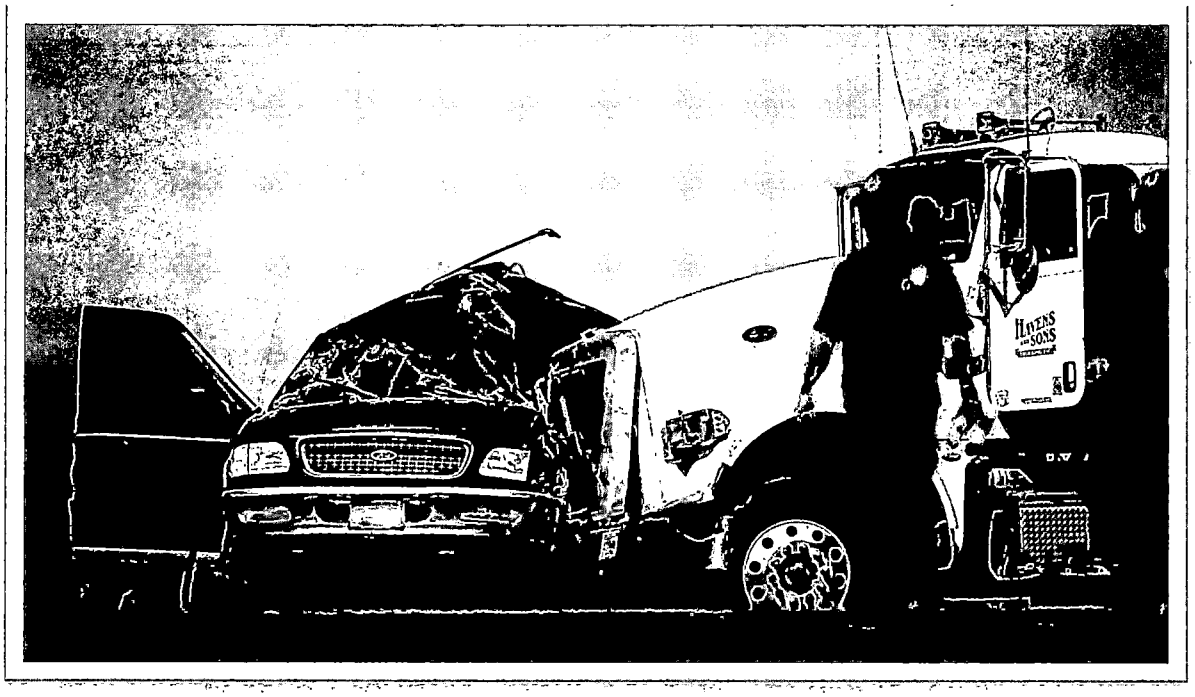
[120] Joel Martinez, Transcribed Interview with the House Committee on Homeland Security, 105, June 1, 2023.

vehicles to be transported elsewhere in the United States.

Now-Border Patrol Deputy Chief Matthew Hudak has said, "They'll stockpile them for a couple of days in one of these stash houses until they have enough people to put in a tractor-trailer, then lock it with no way for them to escape the brutal South Texas heat. When we open up these containers, and it's well over 105 degrees with no ventilation...no water. It's tragic."[121] Americans need look no further than the horror uncovered in San Antonio last summer, when more than 50 individuals died after being smuggled in the back of a locked tractor-trailer, for devastating proof of how the cartels treat these people like cargo.[122]

In another devastating example, 13 Mexicans and Guatemalans were killed in March 2021, when their transport vehicle was struck by a tractor-trailer in Imperial County, California.[123] At the time of the accident, 25 people were packed in the Ford Expedition driven by Jose Cruz Noguez, a Mexican national who, according to the Department of Justice's (DOJ) criminal complaint, "oversees the transportation of individuals who are in the United States illegally to stash houses; collects smuggling payments from family members or sponsors; recruits drivers; and scouts for the presence of law enforcement."[124]

[121] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Frontline Magazine, *Stashed Away: CBP Fights Human Smuggling and Disease by Shutting Down Filthy Stash Houses*, by John Davis, October 22, 2020, https://www.cbp.gov/frontline/cbp-fights-human-smuggling-and-stash-houses.
[122] "Death Toll Rises to 53 after Bodies of Migrants Found in Texas Tractor-Trailer," *CBS News*, June 29, 2022, https://www.cbsnews.com/news/san-antonio-migrants-texas-tractor-trailer-dead-injured/.
[123] Doha Madani, "Man Charged with Smuggling Migrants after California Crash That Killed 13 People," *NBC News*, March 31, 2021, https://www.nbcnews.com/news/latino/man-charged-smuggling-migrants-after-california-crash-killed-13-people-n1262642.
[124] U.S. Department of Justice, U.S. Attorney's Office, Southern District of California, *Man Charged with Organizing Smuggling Event that Led to Deaths of 13 Mexican and Guatemalan Nationals*, March 30, 2021, https://www.justice.gov/usao-sdca/pr/man-charged-organizing-smuggling-event-led-deaths-13-mexican-and-guatemalan-nationals.



More than a dozen people were killed in early March 2021 when the overpacked SUV they were being smuggled in was hit by a tractor-trailer in California. (Source: Gregory Bull/AP)

The cartels' casual disregard for human life is manifestly apparent. According to Martinez:

> "I mean, they consider you a commodity, not a human being, and they will stop at nothing to make money. So, you being a commodity, it doesn't matter if something happens to you. So, they're gonna lock you in an 18-wheeler; they're gonna walk you through the brush, and if you fall behind because you sprain your ankle, they're gonna leave you behind to find your own way home. They have no regard for human life."[125]

Stash houses also function as prisons for an increasing number of illegal aliens, as more and more are being held for ransom after being brought into the United States. In July 2022, the Federal Bureau of Investigation (FBI) announced that since February 2022, the agency—along with the Border Patrol and other law enforcement—had "rescued 88 victims from kidnapping for ransom incidents and continue to see an increase in extortion crimes directly affecting undocumented immigrants who have paid human smugglers to bring them across the United States-Mexico border."[126] According to Jeffrey Downey, FBI special agent in charge in El Paso, the FBI documented no instances of such extortion in 2021.[127]

"They have already paid upfront to cross the border. And then once they get here, they are assaulted and held in life-threatening situations," Downey told the New York Post last year. In his

[125] Joel Martinez, Transcribed Interview with the House Committee on Homeland Security, 122-123, June 1, 2023.
[126] U.S. Department of Justice, Federal Bureau of Investigation, El Paso Field Office, *FBI El Paso, US Border Patrol, and the El Paso Police Department Rescue Victims Held in Another Kidnapping for Ransom Incident*, July 8, 2022, https://www.fbi.gov/contact-us/field-offices/elpaso/news/press-releases/fbi-el-paso-us-border-patrol-and-the-el-paso-police-department-rescue-victims-held-in-another-kidnapping-for-ransom-incident.
[127] Isabel Vincent, "Cartels Hold Migrants for $10K Ransom after Crossing US Border," *New York Post*, July 13, 2022, https://nypost.com/2022/07/13/cartels-hold-migrants-for-10k-ransom-after-crossing-us-border/.

experience, individuals' families are forced to pay between $3,000-$10,000 on top of the thousands of dollars that have already been paid by the aliens themselves to enter the country.[128] Another immigration expert has said that family members of those being held in stash houses are often extorted by the smuggling groups for even more money.[129] In another report, the Post noted, "Migrants who are taken captive by cartel members have their cell phones taken away and have been dismembered if their families or friends in their home countries in the U.S. are unable to pay a ransom."[130]

Border Patrol agent Oscar Joanicot has made clear the stakes involved with these stash houses—"I don't care who you are, when you walk in and see something like [a stash house], especially when there's children involved, your heart goes out to them. ... [The smugglers'] commodity is people. They don't care if someone dies. They just go and find another person waiting to come across."[131]

Drone Operations and Surveillance: The cartels have also developed and deployed sophisticated tactics in their use of drones to conduct surveillance and intelligence-gathering operations, as well as deliver drugs across the border. According to the DEA's 2020 National Drug Threat Assessment, "Mexican TCOs also exploit various aerial methods to transport illicit drugs across the Southwest border. These methods include the use of ultralight aircraft and unmanned aerial systems (drones) to conduct airdrops."[132] Per testimony from DHS officials in 2022, "use of drones for illicit cross-border activity is not only wide-spread, but also organized and an integrated element of TCO operations."[133]

If Border Patrol agents are stretched to the breaking point trying to secure the border and apprehend illegal aliens and illicit drugs coming across on the ground, imagine the extra nightmare that expanded cartel drone operations represent.

Lieutenant Chris Olivarez of Texas DPS recently described the dire situation—"They're able to scout everything and watch what we are doing, every movement we are making. That's why it's a cat and mouse game and we have to try and be one step ahead of them."[134] NBPC President Brandon Judd has echoed Olivarez's assessment, saying, "They'll use drones to scout our positions, where our Border Patrol agents are, how can they facilitate the drug trade. They'll also use the drones to actually fly into United States land and they'll carry small packages with drugs."[135]

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[128] Ibid.

[129] Mark Krikorian, "The Human Cost of Open-ish Borders," *National Review*, March 3, 2021, https://www.nationalreview.com/corner/the-human-cost-of-open-ish-borders/.

[130] MaryAnn Martinez, "Migrants' Fingers, Ears Cut off If They Can't Pay Cartels: Report," *New York Post*, May 22, 2023, https://nypost.com/2023/05/22/migrants-fingers-ears-cut-off-if-they-cant-pay-cartels-report/.

[131] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Frontline Magazine, *Stashed Away: CBP Fights Human Smuggling and Disease by Shutting Down Filthy Stash Houses*, by John Davis, October 22, 2020, https://www.cbp.gov/frontline/cbp-fights-human-smuggling-and-stash-houses.

[132] U.S. Department of Justice, Drug Enforcement Administration, *2020 National Drug Threat Assessment*, DEA-DCT-DIR-008-21, 73, March 2021, https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.

[133] U.S. Congress, House of Representatives, Committee on Homeland Security, Subcommittee on Oversight, Management, and Accountability, and Subcommittee on Transportation and Maritime Security, *Assessing the Department of Homeland Security's Efforts to Counter Unmanned Aircraft Systems*, 117th Cong., 2nd sess., March 31, 2022, 22, https://www.congress.gov/117/chrg/CHRG-117jhrg47767/CHRG-117jhrg47767.pdf.

[134] Robert Sherman, "For Texas border officials, cartel drones are the latest headache," *NewsNation*, January 19, 2023, https://www.newsnationnow.com/us-news/immigration/border-coverage/for-texas-border-officials-cartel-drones-are-the-latest-headache/.

[135] Ibid.

According to Gloria Chavez, chief patrol agent for the Border Patrol's Rio Grande Valley Sector, the cartels "have 17 times the number of drones, twice the amount of flight hours and unlimited funding to grow their operations."[136] In a June 2023 interview with the House Committee on Homeland Security, the Border Patrol's Martinez confirmed that the cartels were using drones to track agents' movements and patterns in order to assist their smuggling operations.[137]

One Border Patrol agent told the press in July 2023, two months after the expiration of Title 42, that these operations were still ongoing. According to the agent, "We don't have operational control of the border," and the cartels are "using drones to bypass our movements, including sensor locations. They know where we are at all times. They know how to get around us."[138]

During a recent hearing conducted by the Committee, Texas Rep. Monica De La Cruz said that drone operations just in the Rio Grande Valley Sector had skyrocketed, posing a potentially insurmountable challenge for Border Patrol: "The cartel drone detections just right here in the RGV Sector in FY22 was 35,000 drone detections. ... Out of the 35,000 drone detections, only 10,000 were intercepted."[139] One Texas sheriff recently told Congress that just three Texas counties observed almost 2,000 drone incursions in a 31-day period earlier this year.[140]

The cost-benefit analysis also weighs heavily in favor of the cartels' expansive use of drones. James Mandryck, deputy assistant commissioner of CBP's Office of Intelligence, testified to the Committee in July 2023 that for the cost of perhaps $1,000 per drone, the cartels could smuggle around $1 million worth of fentanyl into the country per flight and run "continuous" flights throughout the day.[141]

The cartels also employ a vast human intelligence network in support of their operations. El Paso Sector Chief Patrol Agent Anthony "Scott" Good told the House Committee on Homeland Security in June 2023 that the cartels use the agency's own checkpoints against them. When asked whether cartel-employed scouts "know about situations where Border Patrol is vulnerable, like when you have to shut down checkpoint[s] because of decompression or weather extremity," he responded, "Yes. People, scouts, will frequently drive through the checkpoints to see if they're open or not, yes."[142]

The Cartel Connection to Crime at the Border and in Our Communities

The crime and chaos caused by TCOs has been exacerbated by Mayorkas' policies. According to the American Sheriff Alliance—a national coalition of several major sheriffs' associations—these

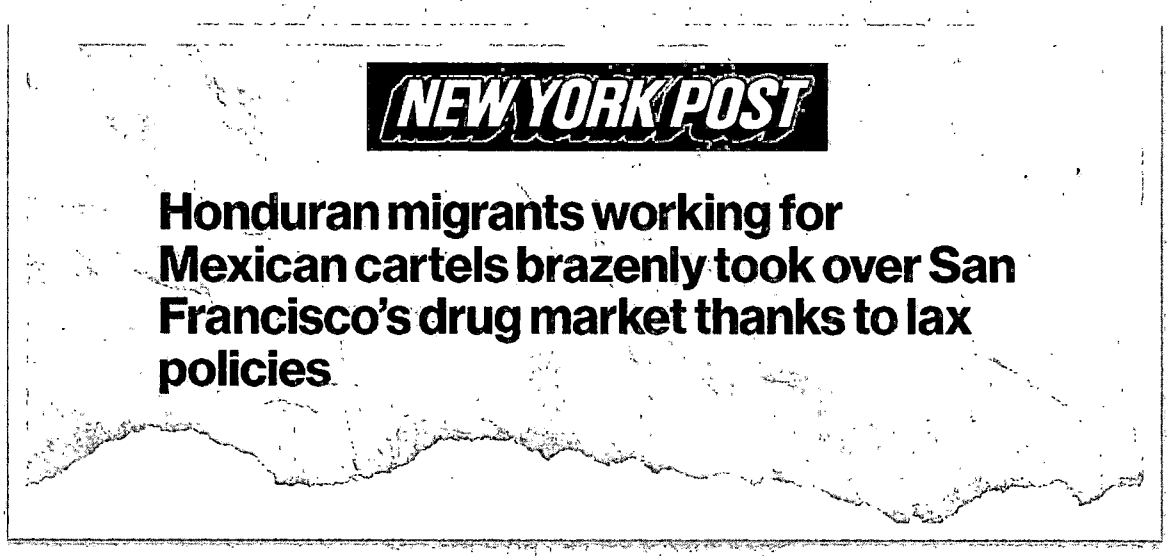
[136] Ali Bradley and Robert Sherman, "Border agent describes how cartels are using drones," *NewsNation*, February 9, 2023, https://www.newsnationnow.com/us-news/immigration/border-coverage/border-agent-cartels-using-drones/.
[137] Joel Martinez, Transcribed Interview with the House Committee on Homeland Security, 120, June 1, 2023.
[138] Bethany Blankley, "Border Patrol agents: June southwest border apprehension data is a 'shell game,'" *The Center Square*, July 11, 2023, https://www.thecentersquare.com/national/article_d6ece71e-2049-11ee-8d58-130f9e1cd70e.html.
[139] "Full Committee Field Hearing: 'Failure By Design: Examining Secretary Mayorkas' Border Crisis,'" *Homeland Security Committee Events*, YouTube video, 1:52:49, March 15, 2023, https://www.youtube.com/live/7Z1ETzh3AUA?feature=share&t=6734.
[140] Anna Giaritelli, "Texas sheriff tells Congress nearly 2,000 Mexican drug cartel drones are swarming US skies," *The Washington Examiner*, February 15, 2023, https://www.washingtonexaminer.com/policy/immigration/texas-sheriff-drones-border-mexico-congress.
[141] "Protecting the U.S. Homeland: Fighting the Flow of Fentanyl from the Southwest Border," *Homeland Security Committee Events*, YouTube video, 1:52:00, July 12, 2023, https://www.youtube.com/live/L0EurNtLz0M?feature=share&t=6716.
[142] Anthony Scott Good, Transcribed Interview with the House Committee on Homeland Security, 142, June 29, 2023.

groups "are directly responsible for the increases in deaths, human trafficking, sex trafficking, and unprecedented violence occurring in cities and counties across our nation."[143]

Sheriff Eddie Guerra of Hidalgo County, Texas, who is also chairman of the Southwestern Border Sheriffs' Coalition, said in a February 2023 press release that the crisis "is a public safety and public health issue. It's not just the violence and drugs, it's the sexual assaults, human trafficking, enslavement, and fear and terror that are destroying neighborhoods here in the United States."[144]

Drug Trafficking: The illicit drug trade in American cities is booming on Biden and Mayorkas' watch. According to Michelle Cook, sheriff of Clay County, Florida, in 2022, "I will tell you that the open borders are a problem. We are seeing a significant amount of drugs making its way to Clay County because of open borders, and that is definitely something that concerns me as a Sheriff."[145]

The cartels have grown so bold that the illegal alien dealer networks they supply have taken over the drug trade in major American cities. In California, "Honduran migrants have taken over San Francisco's drug market with the aid and blessing of Mexican cartels," where "they have squeezed competition out through their highly-coordinated organization and sheer numbers..."[146]


NEW YORK POST

Honduran migrants working for Mexican cartels brazenly took over San Francisco's drug market thanks to lax policies

Per the San Francisco Chronicle's investigation, the cartels are behind the rise of this vast network:

> "The cartels hire runners to ferry their product from Mexico to Southern California; from there it's transported up the West Coast with local operatives close to the cartels working

[143] "Nation's Sheriffs Call for the Eradication of Drug Cartels, Starting with the Sinaloa and Jalisco New Generation Cartels," *The American Sheriff Alliance*, February 9, 2023, https://www.sheriffs.org/AmericanSheriffAlliance_Feb092023.
[144] Ibid.
[145] "Clay County sheriff blames 'open borders' following arrest, seizure of 26 pounds of meth," *First Coast News*, February 8, 2022, https://www.firstcoastnews.com/article/news/crime/clay-county-sheriff-blames-open-borders-following-arrest-seizure-of-26-pounds-of-meth/77-8b4d1e4e-3d6f-44e0-9391-46b298f039a1.
[146] Stephanie Pagones, "Honduran migrants working for Mexican cartels brazenly took over San Francisco's drug market thanks to lax policies," *New York Post*, July 10, 2023, https://nypost.com/2023/07/10/honduran-migrants-mexican-cartels-overtaking-san-francisco/.

out the details. These operatives often own a few properties in the East Bay, which can serve as stash houses and rental units for street dealers, according to court records and police interviews.

"These operatives are the highest-ranking members of the Bay Area network and are the middlemen in this global operation. The operatives are known to their underlings as 'the machine,' according to two sources.

"Drugs will typically flow through the machine to either a lower-level distributor or directly to a dealer.

"Shipments are often sent by car to distributors who live primarily in Oakland and are from Honduras."[147]

Mayor London Breed said the massive and complex network "conduct[s] business like they're going to a job."[148] One dealer told Chronicle reporters that the city's streets are "oversaturated with migrant Honduran teens," while another, a man in his mid-20s, told them, "I'm going to be honest, I came here to sell drugs," and that he has been arrested four times since 2022.[149]

Tom Wolf, founder of Pacific Alliance for Prevention and Recovery and a recovering addict himself, told one media outlet in March 2023 that San Francisco had "become the epicenter of the overdose crisis in the United States," and that authorities needed to "take these organized drug dealers down because they are cartel-fueled, organized drug dealers that are operating on our streets."[150]

Meanwhile, the cartels' drug-smuggling operations are gaining momentum in Texas, as well. According to Tarrant County's Waybourn, the county recorded "a 1000% increase in the amount of drugs seized in a two-year span. In 2020, we seized $3 million worth of drugs. In 2022, it was $35 million."[151] Along with this increase in drugs flooding the Dallas-Fort Worth area came a massive increase in the number of fentanyl poisonings, increasing from 10 between 2018-2019 to 113 between 2020-2021.[152]

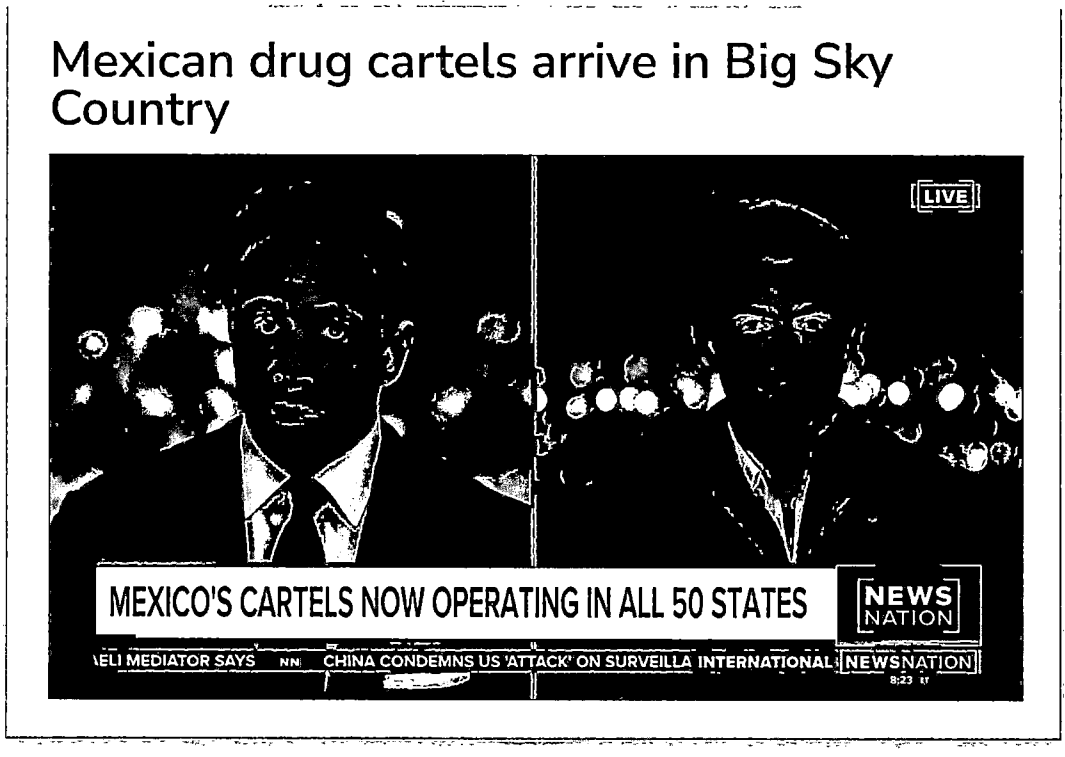
This deadly phenomenon is not just limited to border states, however. States and towns hundreds of miles from the Southwest border are feeling the consequences of increased cartel activity.

Per NewsNation's Robert Sherman, "Once limited to cities along the southern border, the influence of Mexican drug cartels has spread to smaller American towns across the country, including several in the state of Montana."[153] Montana Attorney General Austin Knudsen told the

[147] Megan Cassidy and Gabrielle Lurie, "This Is How San Francisco's Open-Air Drug Dealers Work," *San Francisco Chronicle,* July 10, 2023, https://www.sfchronicle.com/projects/2023/san-francisco-drug-trade-how-dealers-work/.
[148] Ibid.
[149] Ibid.
[150] Bailee Hill, "San Francisco activist warns city has become 'epicenter' of 'cartel-fueled' drug crisis as overdoses soar," *Fox News,* March 21, 2023, https://www.foxnews.com/media/san-francisco-activist-warns-city-become-epicenter-cartel-fueled-drug-crisis-overdoses-soar.
[151] U.S. Congress, House of Representatives, Committee on Homeland Security, *Prepared Testimony of Sheriff Bill Waybourn for Biden and Mayorkas' Open Border: Advancing Cartel Crime in America,* 118th Cong., 1st sess., July 19, 2023, https://homeland.house.gov/wp-content/uploads/2023/07/Written-testimony-SIGNED3.pdf.
[152] Ibid.
[153] Robert Sherman, "Mexican drug cartels arrive in Big Sky Country," *NewsNation,* February 7, 2023, https://www.newsnationnow.com/cuomo-show/mexican-cartels-montana/.

outlet last year, "We have specific intelligence that primarily two drug cartels based out of Mexico are operating here in Montana on a very large scale,"[154] and that he assesses the likelihood of drugs on Montana streets being linked to the cartels at "100 percent," saying, "Within 20 or 30 miles of where you purchased that, there is very likely a Mexican drug cartel member or an associate involved with that drug trade."[155] In December 2022, the DOJ announced that it had secured 22 convictions of individuals in Montana involved in a "large-scale drug trafficking organization that had ties to the Sinaloa Cartel," with three of those 22 directly connected to the cartel.[156]

A sheriff in Oregon recently told the press, "When you hear about the drug cartels and the amounts of drugs coming across the border, you start thinking those are big city problems. But if you have drugs in your community, and I don't think there is any community that can say they don't have any, it is coming from the drug cartels."[157]



In May 2023, the DEA announced dozens of arrests and the seizure of 1.3 million fentanyl pills in Kansas, Missouri, and southern Illinois following a year-long operation, "Operation Last Mile," which targeted "operatives, associates and distributors affiliated with the Sinaloa and Jalisco cartels — the two drug cartels based in Mexico responsible for the 'vast majority' of the fentanyl

[154] Ibid.
[155] "NewsNation exclusive: Deadly drug cartels in America | CUOMO," *NewsNation,* February 6, 2023, https://www.newsnationmow.com/video/newsnation-exclusive-deadly-drug-cartels-in-america-cuomo/8367575/.
[156] U.S. Department of Justice, U.S. Attorney's Office, District of Montana, *Investigation dismantles Butte drug trafficking organization with ties to the Sinaloa Cartel*, December 15, 2022, https://www.justice.gov/usao-mt/pr/investigation-dismantles-butte-drug-trafficking-organization-ties-sinaloa-cartel.
[157] Beth Warren, A cartel flooded an Oregon town with drugs. Here's how authorities nabbed the ringleader.," *Louisville Courier Journal,* March 9, 2023, https://www.usatoday.com/in-depth/news/nation/2023/03/09/el-menchos-mexican-cartel-cjng-supplied-drugs-to-portland-oregon/11418543002/.

and methamphetamine that is killing Americans."[158] Per one report, "The operation showed that the cartels use violent local street gangs and criminal groups and people across the U.S. to flood American communities with 'huge' amounts of fentanyl and methamphetamine, which drives addiction and violence and kills Americans."[159]

The operation resulted in the seizure of nearly 193 million lethal doses of fentanyl across the country,[160] with the agency's efforts also highlighting the cartels' relationships with gangs and dealers in states far from the border, like Kentucky,[161] Nebraska,[162] and Colorado.[163] According to another recent report, more than 300 people in the United States have been charged or arrested for criminal activity directly linked to the Mexican cartels since January 2022.[164]

The cartels are primarily motivated by profit margins, but law enforcement officials have noted more sinister elements within the cartels' trafficking of record amounts of fentanyl into the United States. According to Waybourn, "TCSO intelligence collection shows that Mexican cartels have weaponized drugs with the intent to harm Texas residents and destabilize our communities. In fact, cartel members have before expressed to our team that 'they will send whatever kills the gringo [Americans, irrespective of race].'"[165]

Similarly, when asked by Rep. Josh Brecheen, R-Okla., during a July 2023 hearing if law enforcement had observed a "revenge element" in the cartels' operations, DEA Principal Deputy Administrator George Papadopoulos testified:

> "We have evidence in some of the previous cases I mentioned where the cartels knew that there was deadly fentanyl. The amount of fentanyl that they were sending to the U.S. was deadly because they tested it on human beings in Mexico and they still sent it anyway...[We]'ve seen pills with less than a milligram of fentanyl all the way up to eight milligrams of fentanyl. The average dose is 2.4 milligrams, and two milligrams is considered a potentially deadly dose."[166]

Mayorkas' new CBP One app scheme also presents an opportunity for the cartels to push more illicit drugs across the Southwest border. One recent press report noted, "Frontline employees being pulled from normal inspection duties are reducing the number of labor hours dedicated to finding hidden narcotics, according to a source within Customs and Border Protection," and that

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[158] Angela Mulka, "Yearlong DEA operation targets cartel associates distributing drugs across US," *The Alton Telegraph,* May 8, 2023, https://www.thetelegraph.com/news/article/dea-st-louis-division-operation-long-mile-18085840.php.
[159] Ibid.
[160] U.S. Department of Justice, Drug Enforcement Administration, *DEA Operation Last Mile Tracks Down Sinaloa and Jalisco Cartel Associates Operating within the United States,* May 8, 2023, https://www.dea.gov/press-releases/2023/05/08/dea-operation-last-mile-tracks-down-sinaloa-and-jalisco-cartel-5.
[161] Mark Vanderhoff, "DEA targets link between Mexican cartels, Louisville gangs," *WLKY,* May 8, 2023, https://www.wlky.com/article/dea-mexican-cartels-louisville-gangs-drugs/43829200.
[162] "DEA arrests 87 cartel-connected suspects in Nebraska, Iowa and surrounding states," *KMTV-3,* May 8, 2023, https://www.3newsnow.com/news/local-news/dea-arrests-87-cartel-connected-suspects-in-nebraska-iowa-and-surrounding-states.
[163] Ashley Eberhardt, "Year-long DEA operation seizes almost 900K fentanyl doses," *Fox 21 News,* May 9, 2023, https://www.fox21news.com/news/state/year-long-dea-operation-seizes-almost-900k-fentanyl-doses/.
[164] Steve Joachim and Andrew Dorn, "Interactive map: Tracking cartel arrests across the country," *KTLA5 News*, February 16, 2023, https://ktla.com/news/interactive-map-tracking-cartel-arrests-across-the-country/.
[165] U.S. Congress, House of Representatives, Committee on Homeland Security, *Prepared Testimony of Sheriff Bill Waybourn for Biden and Mayorkas' Open Border: Advancing Cartel Crime in America*, 118th Cong., 1st sess., July 19, 2023, https://homeland.house.gov/wp-content/uploads/2023/07/Written-testimony-SIGNED3.pdf.
[166] "Protecting the U.S. Homeland: Fighting the Flow of Fentanyl from the Southwest Border," *Homeland Security Committee Events*, YouTube video, 1:12:38, July 12, 2023, https://www.youtube.com/live/L0EurNtLz0M?feature=share&t=4358.

per this source, "One worry is by redirecting personnel from inspections to asylum processing we are missing the deadliest drug we have seen in modern times, fentanyl."[167]

The source explained that those entering the country via the new CBP One app "require hours of administrative processing that is converting some frontline CBP Officers into asylum petition clerks."[168]

Ultimately, "even here in the heartland of America, cartels are taking lives from our communities," said Michael Davis, special agent in charge of the DEA's St. Louis Division, in May 2023.[169] Unfortunately, even as these vital federal agencies work tirelessly to protect Americans from the scourge of fentanyl and other drugs, the cartels are relentlessly flooding more of these illicit substances across the Southwest border. Under Mayorkas and Biden's policies, no community is safe from the expanding reach of the cartels and the drugs they are trafficking.

Violence: Cartel and gang violence continues to be a growing problem in the United States. Though it is less prevalent than in Mexico, direct cartel violence is well documented in the United States.

In January 2023, six people, including a six-month-old baby and her teenage mother, were shot dead in a house in the city of Goshen, California. Tulare County Sheriff Mike Boudreaux left no ambiguity about who was responsible, saying, "I think it's specifically connected to the cartel. The level of violence ... this was not your run-of-the-mill low-end gang member."[170] Boudreaux also said of the young mother murdered protecting her child, "I know for a fact this young lady was running for her life. And I know for a fact that there was no reason to kill her—but they did."[171] His assessment of the cartel presence in California was sobering: "I can tell you, the cartels are here. We have a very unsecure border right now—there's a lot of back and forth when it comes to the cartels and free movement up and down the state and across the border."[172]

Charles Marino, a former DHS senior law enforcement advisor, recently said, "My expert opinion is that we're going to see an increase in cartel violence within the United States in all of its forms."[173] Authorities in Texas have also been raising the alarm about cartel violence. In November 2021, Texas law enforcement reported that Mexican cartels were murdering victims and dumping their bodies on the American side of the border, with the Texas Rangers investigating a range of cartel activities linked to the dead bodies.[174] On Oct. 26, 2021, authorities found a woman who had been raped and tortured before she was killed. Texas DPS' Olivarez said

[167] Randy Clark, "Exclusive: Official Says Biden's CBP One Program Benefits Drug Cartels," *Breitbart,* June 18, 2023, https://www.breitbart.com/border/2023/06/18/exclusive-official-says-bidens-cbp-one-program-benefits-drug-cartels/.
[168] Ibid.
[169] U.S. Department of Justice, Drug Enforcement Administration, *DEA Operation Last Mile Tracks Down Sinaloa and Jalisco Cartel Associates Operating within the United States,* May 8, 2023, https://www.dea.gov/press-releases/2023/05/08/dea-operation-last-mile-tracks-down-sinaloa-and-jalisco-cartel-5.
[170] Kanishka Singh, "Six dead in California home shooting, including 6-month-old baby and her mother," *Reuters,* January 17, 2023, https://www.reuters.com/world/us/six-people-dead-california-home-shooting-including-six-month-old-baby-2023-01-16/.
[171] Lee Brown, 'Cartels are here': California sheriff rips border crisis as details emerge on massacre of 6," *New York Post,* January 19, 2023, https://nypost.com/2023/01/19/california-sheriff-rips-border-crisis-as-details-emerge-on-massacre-of-6/.
[172] Ibid.
[173] Andrew Dorn, "Are Mexican cartels carrying out more violence on US soil?," *NewsNation,* January 20, 2023, https://www.newsnationnow.com/crime/are-mexican-cartels-carrying-out-more-violence-on-us-soil/.
[174] Emily Crane, "Texas authorities claim Mexican cartels murdering people on US soil," *New York Post,* November 12, 2021, https://nypost.com/2021/11/12/texas-authorities-claim-mexican-cartels-murdering-people-on-us-soil/.

that cartels are "professional" and "very methodical" in their murderous actions, and that the cartels come to the United States to kill people and then cross back over the border. He pointed out that these murders send a message to rival cartels.[175]

Drugs coming from Mexico and beyond are being sold by the cartels to transnational and American gangs, who effectively function as the cartels' distribution network, and who then engage in their own turf wars on the streets of American cities, leading to even further carnage and devastation. DEA Administrator Anne Milgram has stated, "The Sinaloa and Jalisco Cartels use multi-city distribution networks, violent local street gangs, and individual dealers across the United States to flood American communities with fentanyl and methamphetamine, drive addiction, fuel violence, and kill Americans."[176] The Virginia Department of Criminal Justice Services has also reported collaboration between the cartels and street gangs, noting, "Mexican Cartels have continued their strategic relationship with traditional street gangs operating in the United States."[177] One expert has noted how cartel violence often "will be subcontracted to local street gangs, prison gangs, and local actors," while others have reported, "[D]rug disputes that ultimately stem from cartel activities may be attributed to domestic street gangs instead."[178]

These gangs are also involved in other avenues of violence, including manufacturing illicit, privately made firearms. In January 2023, for example, following an eight-month investigation, the DOJ charged nine members of the Latin Kings gang in New Jersey with not just conspiracy to distribute substances like fentanyl, but also with "manufacturing untraceable gun parts that could be used to convert weapons for automatic firing."[179]

In addition to the drug-related violence, senior Border Patrol officials have also acknowledged that cartel and gang violence targeting illegal aliens themselves has been happening more frequently inside the United States. During a May 2023 interview with the House Committee on Homeland Security, the Border Patrol's Heitke said:

> "[W]e have seen considerably more bandit activity on our side, as well. ... It's individuals coming up from Mexico and robbing the migrants as they're moving through. And it's a combination of the individual smugglers wanting to make a little extra money. They'll have—it's coordinated. So, they're working together.
>
> "But one of the foot guides, for example, will leave for a little while. They'll leave the group and say, 'I'll be back in a little bit.' Two more individuals will come up and rob them and leave, and then the smuggler will come back and move them on. It's just a way of earning extra money and preying on the remote areas with minimal law enforcement on either side

[175] Ibid.
[176] U.S. Department of Justice, Drug Enforcement Administration, *DEA Operation Last Mile Tracks Down Sinaloa and Jalisco Cartel Associates Operating within the United States*, May 8, 2023, https://www.dea.gov/press-releases/2023/05/08/dea-operation-last-mile-tracks-down-sinaloa-and-jalisco-cartel-5.
[177] State of Virginia, Department of Criminal Justice Services, *Mexican Drug Cartels*, March 2023, https://www.dcjs.virginia.gov/training-events/mexican-drug-cartels.
[178] Andrew Dorn, "Are Mexican cartels carrying out more violence on US soil?," *NewsNation*, January 20, 2023, https://www.newsnationnow.com/crime/are-mexican-cartels-carrying-out-more-violence-on-us-soil/.
[179] U.S. Department of Justice, United States Attorney's Office for the District of New Jersey, *Nine Men Charged with Roles in Gang-Led Drug and Gun Trafficking Network*, January 5, 2023, https://www.justice.gov/usao-nj/pr/nine-men-charged-roles-gang-led-drug-and-gun-trafficking-network.

> of the border. And most of the migrants have everything they own with them, so they're easy targets."[180]

Human Trafficking: These groups do not simply smuggle illegal aliens across the Southwest border—they are now engaged in transnational human trafficking operations worth billions of dollars.[181] Senior DHS officials have noted the cartels' shift away from simply drug trafficking to the insidious practice of human smuggling and trafficking. Blas Nuñez-Neto, DHS assistant secretary for border and immigration policy, said on July 20, 2023:

> "We see migrants now routinely paying smuggling organizations what are vast sums of money for them—often more than $10,000 to $15,000—to facilitate their journey to the border. This is so lucrative, in fact, that we are now seeing the drug cartels increasingly becoming a key player in not just collecting taxes for people who transit through their territory, which is what we saw historically, but actually moving people and becoming deeply involved in human smuggling, not just in Mexico, but throughout the region, including, you know, in Colombia and the Darien region."[182]

In testimony before the House Judiciary Committee in April 2023, CIS' Vaughan emphasized that the resurgence of the violent gang MS-13 in the Washington, D.C.-metro area "has brought an increase in cases of brutal sex trafficking in the area. The gang preys on young teenage girls who run away from shelters, foster care, or broken homes."[183] Other organizations have noted how MS-13 uses this trafficking to fund other aspects of its operations:

> "MS-13 preys on the vulnerability of the unaccompanied minors; some have previously suffered sexual abuse either in their home country or during the trip north; others lack a community and do not speak English. Members of MS-13 seek out the vulnerable young girls using violence and other coercive tactics to intimidate the girl into having sex for money to help financially support the gang."[184]

Guerra further described in March 2021 how the cartels use sex trafficking to enhance their profit margins, explaining that for family units looking to illegally enter the United States, "If you can't afford it, and you have that little 15, 16-year-old child with you, well, guess what? Well, you're gonna go to Houston. And that little girl is gonna go to work in sex trafficking and that little girl is going to pay off all your debt. That's happening."[185]

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[180] Aaron Heitke, Transcribed Interview with the House Committee on Homeland Security, 166, May 9, 2023.

[181] Human trafficking and human smuggling are two different crimes. Human trafficking is a crime committed against another person that does not necessarily require transportation or physical movement of that individual. For example, a victim of human trafficking may be coerced into forced labor at a marijuana grow farm. In contrast, human smuggling is a crime committed in violation of a country's immigration laws and requires the illegal transportation of a person across an international border.

[182] "Straining under the Backlog: Fixing a U.S. Immigration Court System in Crisis," *Migration Policy Institute*, YouTube video, 26:27, July 20, 2023, https://www.youtube.com/live/sA1fuW96GNo?feature=share&t=1587.

[183] U.S. Congress, House of Representatives, Judiciary Committee, Subcommittee on Immigration Integrity, Security and Enforcement, *Prepared Testimony of Jessica M. Vaughan for The Biden Border Crisis: Exploitation of Unaccompanied Alien Children*, 118th Cong., 1st sess., April 26, 2023, 6, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/vaughan-testimony.pdf.

[184] "The Connection between the Mara Salvatrucha and Human Trafficking," *Human Trafficking Search*, August 24, 2017, https://humantraffickingsearch.org/the-connection-between-the-mara-salvatrucha-and-human-trafficking/.

[185] Gabrielle Fonrouge, "Texas sheriff in charge of US-Mexico border says it's 'basically open,' blames Biden," *New York Post*, March 18, 2021, https://nypost.com/2021/03/18/texas-sheriff-at-us-mexico-border-says-its-basically-open/.

And these groups continue to deploy creative methods in their effort to evade law enforcement. On June 14, 2023, the Border Patrol's Good tweeted that Border Patrol agents and Texas DPS officers had broken up a human smuggling operation involving three vehicles and 26 aliens. Two of the vehicles being used by the smuggling groups were sprinter vans made to resemble FedEx delivery trucks.[186]

Organized Retail Theft: According to a July 2023 press report, the cartels have expanded their operations into mass-retail theft, "targeting big-box stores, luxury retail brands, and small businesses, then selling the stolen goods online and laundering the profits through Chinese brokers."[187] Per the Washington Examiner, the cartels "that have facilitated the greatest-ever human smuggling operation across the U.S.-Mexico border over the past two years and simultaneously caused the fentanyl epidemic in America now have a hand in organized retail crime."[188]

According to HSI, "Organized retail theft results in $125.7 billion in lost economic activity each year as criminals use e-commerce platforms to resell stolen merchandise."[189] And now the cartels have extended their operations into this multi-billion-dollar, illicit business. HSI also revealed in a June 2022 press release, "Recent investigations have also identified organized retail crime schemes exploiting undocumented migrants forced to steal goods to pay back 'coyotes' who smuggle them across international borders."[190]

RETAIL

Mexican drug cartels are behind the surge in retail thefts

The cartels have expanded their operations into mass-retail theft to increase their profit margins. (Source: Washington Examiner report)

Disorder in Border Towns: In March 2023, four Americans were attacked by members of the Gulf Cartel in the Mexican border state of Tamaulipas, with two of them, Shaeed Woodard and Zindell Brown, fatally wounded in the incident.[191] The group had traveled to Tamaulipas from South Carolina in order for one member, LaTavia Washington, to receive a medical procedure.

[186] Anthony "Scott" Good [@USBPChiefEPT], "Express Consequence Delivery! #SantaTeresa Station Anti-Smuggling Unit Agents along with @TxDPSWest Intercepted a Smuggling Scheme Involving 26 Smuggled Migrants. Of the 3 Vehicles Involved, 2 Were Cloned FedEx Vans. The Smugglers Will Face Charges! @cbp," Tweet, *Twitter*, June 14, 2023, https://twitter.com/USBPChiefEPT/status/1669116247093686272.
[187] Anna Giaritelli, "Mexican drug cartels are behind the surge in retail thefts," *The Washington Examiner*, July 24, 2023, https://www.washingtonexaminer.com/news/business/mexican-drug-cartels-behind-surge-in-retail-thefts.
[188] Ibid.
[189] U.S. Department of Homeland Security, U.S. Customs and Immigration Enforcement, Newsroom, *HSI New Orleans launches multistate Organized Retail Crime Alliance*, July 19, 2023, https://www.ice.gov/news/releases/hsi-new-orleans-launches-multistate-organized-retail-crime-alliance.
[190] U.S. Department of Homeland Security, U.S. Customs and Immigration Enforcement, Newsroom, *HSI, ACAMS take aim at organized retail crime*, June 1, 2022, https://www.ice.gov/news/releases/hsi-acams-take-aim-organized-retail-crime.
[191] Noe Torres, Sarah Morland and Dave Graham, "Five men arrested in Mexico over killings of Americans," *Reuters*, March 10, 2023, https://www.reuters.com/world/americas/five-people-mexico-held-over-killings-americans-state-prosecutor-2023-03-10/.

Officials believe the group was fired upon and then abducted because the cartel believed they were part of a rival Haitian smuggling group.[192]

Peter Yachmetz, a former hostage negotiator for the FBI, said following the events in Tamaulipas, "The big takeout is the border is wide open, and drug cartels are operating and controlling the border. Do not go through any of these border crossings. It is a known 'Do Not Travel' zone."[193] In fact, Tamaulipas' official "Do Not Travel" designation from the State Department puts it on par with nations like Afghanistan and Syria.[194]

The incident underscored just how unstable the cartels have made the region, on both sides of the border. That same month, shocking video emerged of hundreds of illegal aliens rushing across the Paso Del Norte International Bridge connecting El Paso with Ciudad Juarez, Mexico, "posing a potential threat to make a mass entry" into the United States, according to CBP.[195]

Texas DPS' Olivarez later said that this was the result of cartel efforts to distract and undermine law enforcement: "As it is, Border Patrol is overwhelmed, they're tied up in processing. So, they want to expose more vulnerable gaps along the border, so they can bring across criminals, fugitives or drugs, whatever the case may be."[196]

WATCH: Hundreds of People Storm Bridge Leading to El Paso

In August 2022, four Mexican border cities—Tijuana, Mexicali, Rosarito and Ensenada—erupted in violence when gang members targeted civilians and demolished stores and cars to send a

[192] Josh Campbell et al., "Cartel suspected of American kidnappings issues apology letter," *CNN*, March 10, 2023, https://www.cnn.com/2023/03/09/us/mexico-matamoros-americans-kidnapped-thursday/index.html.
[193] Antonio Planas, "Mexico kidnapping was 'difficult to prevent' despite known dangers in border regions," *NBC News*, March 7, 2023, https://www.nbcnews.com/news/us-news/mexico-kidnapping-danger-border-region-rcna73888.
[194] U.S. Department of State, Bureau of Consular Affairs, *Travel Advisories*, accessed on July 19, 2023, https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/.
[195] "Agents stop crowd at Texas border crossing amid asylum woes," *The Associated Press*, March 13, 2023, https://apnews.com/article/migrants-bridge-el-paso-mexico-customs-d414138040bb78229d3cfb6fc1793b05.
[196] Elizabeth Heckman, "Mexican cartels' social media misinformation blamed for rush of migrants to Texas border bridge," *Fox News*, March 14, 2023, https://www.foxnews.com/media/mexican-cartels-social-media-misinformation-blamed-rush-migrants-texas-border-bridge. Full quote in the second embedded video in the article.

message to authorities cracking down on the gangs.[197] Tijuana is a prime corridor for drug-trafficking, with various groups, including CJNG and Sinaloa, battling for control of the city.[198] Around the same time, 600 Mexican troops were sent to Juarez to combat cartel activity, shutting down many schools in the area.[199]

CONFLICTS | **MEXICO**

Mexico: Gang violence erupts in US border cities

08/13/2022

The US consulate in Tijuana told employees to "shelter in place" amid deadly violence which reportedly included gang members shooting at bystanders and starting fires.

11 people were killed in a wave of violence instigated by gangs in cities along the Southwest border in August 2022. (Source: Deutsche Welle)

In the Mexican state of Chihuahua, meanwhile, the murder rate is surging due to "cartel infighting for control of migrant smuggling."[200] Per Chihuahua Attorney General Cesar Jauregui, "It is clear to us what is going on. Criminal groups are having disputes and there is an increase in homicides related to people-trafficking. They are disputing control (of territory) and that has led to people being murdered for being involved in people-trafficking."[201] Most of these murders are taking place in Juarez, just across the border from El Paso.[202]

The city of Laredo, Texas, was put on edge in March 2022, after the Mexican border city of Nuevo Laredo was rocked by violence following the arrest of a cartel leader.[203] Two international bridges into Mexico were closed as a precaution, and law enforcement was put on alert, in another example of how cartel and gang violence impacts Americans even when it occurs on the other side of the border.[204]

The Connection Between the Cartels, Gangs, and Open Borders

"MS-13, other gang members exploit migrant wave to cross into U.S.," reads one headline from May 2021.[205] Unfortunately, this reporting is altogether accurate. It is not just the cartels who

[197] "Mexico: Gang violence erupts in US border cities," *Deutsche Welle*, August 13, 2022, https://www.dw.com/en/mexico-gang-violence-erupts-in-us-border-cities/a-62800685.
[198] Ibid.
[199] Ibid.
[200] Julian Resendiz, "Murders up as cartels fight for control of migrant smuggling in Chihuahua," *Border Report*, April 12, 2023, https://www.borderreport.com/immigration/border-crime/murders-up-as-cartels-fight-for-control-of-migrant-smuggling-in-chihuahua/.
[201] Ibid.
[202] Ibid.
[203] Sandra Sanchez, "Nuevo Laredo violence shakes sister city of Laredo, Texas, after cartel leader 'The Egg' arrested," *Border Report*, March 17, 2022, https://www.borderreport.com/immigration/border-crime/nuevo-laredo-violence-shakes-sister-city-of-laredo-texas-after-cartel-leader-the-egg-arrested/.
[204] Ibid.
[205] Isabel Vincent, "MS-13, other gang members exploit migrant wave to cross into US," *New York Post*, May 1, 2021, https://nypost.com/2021/05/01/ms-13-other-gang-members-exploit-migrant-wave-to-cross-into-us/.

have taken advantage of Mayorkas' open-borders policies—so have the transnational gangs seeking to expand their operations and influence. These gangs are responsible for human trafficking, drug smuggling, and criminal violence.

On April 30, 2021, the Border Patrol's Hudak tweeted that gang members "attempt to evade arrest by exploiting the influx of migrants attempting to enter our country."[206] CBP statistics show that the main gangs Border Patrol encounters include MS-13, Paisas, 18th Street, Surenos (Sur-13), and the Latin Kings.[207]

These gangs work closely with the cartels. Texas DPS Director Steve McGraw said earlier this year that the gangs "work to support cartel operations on both sides of the border. They certainly do it, they operate in Mexico and they operate on this side too in terms of stash houses where there's drugs and people. They extort people on the south of the border and extort them when they get to this side of the border."[208] Per ICE, "Transnational criminal gangs account for a large percentage of narcotics trafficking in communities throughout the United States."[209]

According to Texas DPS veteran Jones in his July 2023 testimony before the House Committee on Homeland Security:

> The cartels "contract directly with U.S.-based street gangs and what we call Tier-1 gangs. Those are gangs which impact multiple regions in our country. They work directly with the cartels, and today it is very important to understand, your U.S.-based street gangs are working side by side contracting with the cartels. ... So, when you wonder today why you are being overrun with drugs, it is because the Tier-1 gangs and U.S.-based street gangs are contracting and working directly with these cartels..."[210]

Per one report, "Cartels have been doubling down on their efforts, including recruiting American street gangs to act as distribution centers in major urban areas...Cartel recruitment efforts are ramping up in the U.S. as they wrangle members of notoriously violent American gangs like the Bloods, the Crips and the Aryan Brotherhood to work both sides of the border."[211]

Texas DPS estimates there are more than 100,000 gang members in the Lone Star State, many of whom are connected to Mexican cartels.[212] In California, the Mexican Mafia maintains

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[206] Laredo Sector Border Patrol [@USBPChiefLRT], "5 Gang Members in 7 Days! #Laredo Sector #USBP Agents Arrested a Total of 5 Gang Members in the Last Week, Including an #ms13 & Two 18th Street Gang Members. They Attempt to Evade Arrest by Exploiting the Influx of Migrants Attempting to Enter Our Country. #bordersecurity," Tweet, *Twitter*, April 30, 2021, https://twitter.com/USBPChiefLRT/status/1388123097568403468.

[207] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Enforcement Statistics Fiscal Year 2023*, August 18, 2023, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics.

[208] Cecilia Treviño, "DPS Director Says Mexican Cartels Recruit U.S. Gangs," *KGNS TV*, March 19, 2023, https://www.kgns.tv/2023/03/19/dps-director-says-mexican-cartels-recruit-us-gangs/.

[209] U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Combating Gangs*, August 4, 2022, https://www.ice.gov/features/gangs.

[210] "Biden and Mayorkas' Open Border: Advancing Cartel Crime in America," *Homeland Security Committee Events*, YouTube video, 59:42, July 19, 2023, https://www.youtube.com/live/kva0HOb1TUg?feature=share&t=3582.

[211] Ali Bradley, "Cartels Recruit American Gangs in Smuggling Efforts," *NewsNation*, March 21, 2023, https://www.newsnationnow.com/us-news/immigration/border-coverage/cartels-recruit-american-gangs/.

[212] Ibid.

documented ties to cartels.[213] The Sinaloa and Gulf cartels are operating in cities like Chicago, providing drugs that are then sold and distributed by the violent street gangs in those locales.[214]

However, despite the carnage being inflicted by these groups, the number of illegal alien gang members being removed from the United States has decreased under Mayorkas' leadership. In FY19, ICE removed 5,497 known or suspected gang members, compared to just 2,667 in FY22.[215]

MS-13—The World's Most Violent Gang Thrives on Mayorkas' Watch

MS-13 is perhaps the most notorious of the transnational gangs operating in the United States, and has been designated a transnational criminal organization by the U.S. government.[216] The gang's motto of "mata, viola, controla" ("kill, rape, control") accurately describes the group's activity within the United States.

MS-13 "has a reputation for particularly violent criminal activity."[217] Its members regularly commit crimes like "extortion, drug distribution, prostitution, robbery, and murder, as well as in more transnational illicit activity such as drug trafficking and human smuggling and trafficking. While some of the illegal activities help support the gang's criminal finances, others facilitate the maintenance of territory as well as gang brand and unity."[218] The gang also plagues Central American communities in the United States by extorting businesses, providing drugs to addicts, recruiting members of the community into its ranks, and inciting violence.[219]

For example, in February 2023, 15-year-old Limber Lopez Funez from Frederick, Maryland, went missing.[220] Two months later, his body was discovered in a Maryland state park. In May, five illegal aliens under the age of 30 were arrested and charged with Lopez Funez's murder. All five suspects were found to be MS-13 gang members.[221]

Additionally, many MS-13 members present in the United States are here illegally, with the gang historically taking advantage of "weaknesses in border enforcement policies."[222] In October 2020, the DOJ under the Trump administration released a report highlighting its efforts to combat TCOs, including MS-13. In the report, the DOJ noted 74 percent of 749 MS-13 members

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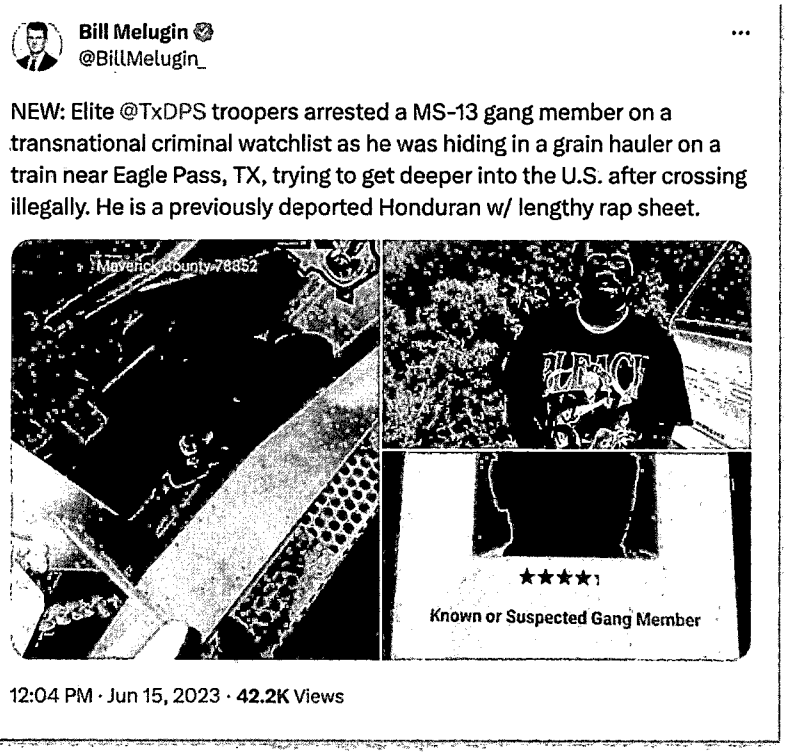
[213] Ibid.
[214] Ibid.
[215] *See* U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report,* 22, https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf; and U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *ICE Annual Report Fiscal Year 2022*, December 30, 2022, 24, https://www.ice.gov/doclib/eoy/iceAnnualReportFY2022.pdf.
[216] U.S. Department of the Treasury, *Treasury Sanctions Latin American Criminal Organization*, October 11, 2012, https://home.treasury.gov/news/press-releases/tg1733.
[217] U.S. Library of Congress, Congressional Research Service, *MS-13 in the United States and Federal Law Enforcement Efforts*, by Kristin Finklea, R45292, August 20, 2018, 6, https://sgp.fas.org/crs/homesec/R45292.pdf.
[218] Ibid.
[219] U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Combating Gangs*, August 4, 2022, https://www.ice.gov/features/gangs.
[220] "15-year-old from Frederick missing for days," *FOX 5 DC*, March 2, 2023, https://www.fox5dc.com/news/15-year-old-from-frederick-missing-for-days.
[221] "5 Immigrants Charged in Murder of Missing 15-Year-Old Frederick Boy," *FOX 5 DC*, May 31, 2023, https://www.fox5dc.com/news/5-immigrants-charged-in-murder-of-missing-15-year-old-frederick-boy.
[222] U.S. Department of Justice, Office of Public Affairs, *Department of Justice Releases Report on its Efforts to Disrupt, Dismantle, and Destroy MS-13*, October 21, 2020, https://www.justice.gov/opa/pr/department-justice-releases-report-its-efforts-disrupt-dismantle-and-destroy-ms-13.

prosecuted by the department since 2016 were "unlawfully present" in the United States, with another 15 percent unable to have their immigration status verified.[223]



The gang continues to try to exploit the porous Southwest border. In FY22, agents arrested more than 300 MS-13 members attempting to sneak into the United States.[224] Through July 2023, the Border Patrol had apprehended another 156 members of the gang.[225] On Aug. 16, 2023, Border Patrol Chief Jason Owens tweeted that Border Patrol agents in both Laredo and Miami had recently arrested "violent gang members," with one MS-13 member assaulting and injuring two agents in the Miami incident.[226] In May 2023, ICE officials in New York conducted operations over a three-day period targeting "over a dozen individuals who have reentered the United States unlawfully—some of whom are connected to the MS-13 gang," and per one press report, "Officials told NewsNation that many of the people they're arresting this week gain entry through the southern border."[227]

Officials do not know how many MS-13 members have entered the United States un-apprehended or undetected since Mayorkas took office. However, given the skyrocketing number of gotaways and the tendency of bad actors like violent criminals and gang members to pay more to enter the country without being caught, it is potentially a number that should cause great concern.[228]

Recent events demonstrate why Americans should be concerned about MS-13 members among the historic number of gotaways. In August 2023, ICE arrested MS-13 gang member Juan Carlos

[223] Ibid.

[224] Anna Giaritelli, "More than 300 MS-13 Gang Members Arrested at Southern Border in Fiscal Year '22," *The Washington Examiner*, October 24, 2022, https://www.washingtonexaminer.com/news/crime/more-than-300-ms-13-members-arrested-fy-22.

[225] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Enforcement Statistics Fiscal Year 2023*, August 18, 2023, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics.

[226] Chief Jason Owens [@USBPChief], "8/14: USBP agents in Laredo & Miami arrested violent gang members. During the arrest in Miami, an MS-13 gang member assaulted & injured two of our agents. That subject is now in custody & facing prosecution for Reentry & for Assault on a Federal Officer, both felonies.," Tweet, *Twitter*, August 16, 2023, https://twitter.com/USBPChief/status/1691797407753781421.

[227] Dray Clark and Ava Pittman, "New York ICE operation targets wanted illegal migrants," *NewsNation*, May 5, 2023, https://www.newsnationnow.com/crime/new-york-ice-operation-dozen-individuals-ms-13/.

[228] Bethany Blankley, "Arrests of noncitizens with criminal convictions at border at record highs," *The Center Square*, August 3, 2023, https://www.washingtonexaminer.com/news/arrests-of-noncitizens-with-criminal-convictions-at-border-at-record-highs. Former CBP Acting Commissioner Morgan quoted: "It's common sense. There have been more than 1.7 million total gotaways in the past 29 months. The number of [murderers], rapists, pedophiles, aggravated felons, and gang members among the gotaways who now call the U.S. home is staggering and should terrify us all." Multiple Border Patrol chief patrol agents also told the Committee in transcribed interviews that they were concerned about threats to public safety entering through the Southwest border as gotaways.

Portillo in Alabama.[229] At the time of his apprehension, Portillo was on El Salvador's "100 Most Wanted" list for a variety of heinous crimes, including aggravated kidnapping, attempted aggravated homicide, and aggravated homicide.[230] He had previously been apprehended and subsequently removed from the United States after crossing illegally near Hidalgo, Texas, in December 2022, but later reentered the country on an unknown date in an unknown location—in other words, as a gotaway.[231]

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>
> **ERO New Orleans arrests gang member on El Salvador's 100 Most Wanted list**

The historic influx of UACs is another area in which Mayorkas' policies have uniquely benefitted the gang, and almost certainly served to swell its ranks. Between May 2017 and March 2018, for example, ICE conducted an ongoing enforcement effort called "Operation Matador."[232] During the course of the operation, ICE arrested 475 gang members and affiliates, including 274 members of MS-13—99 of those 274 had entered the country as UACs.[233]

During a law enforcement roundtable hosted at the White House in 2018, Angel Melendez, HSI special agent in charge for New York, said that ICE routinely finds that 30 percent of MS-13 members they arrest came into the country as UACs.[234] Melendez also provided analysis that demonstrates the UAC pipeline MS-13 can exploit today at far greater scale.

He pointed out that in FY17, 40,810 UACs were referred by DHS to the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) to be resettled in the United States with sponsors, and that of this population, 21,881 were from Northern Triangle countries, male, and the right age for gang recruitment (13-17).[235] Melendez also briefed that MS-13 was "looking at these 21,000 unaccompanied alien children that came into the states as potential recruits to continue to fill in their ranks."[236]

By comparison, in FY21 and FY22, DHS referred approximately 250,000 UACs to HHS for placement, and in FY22, 72 percent of all UACs referred were over 14 years old, and 64 percent

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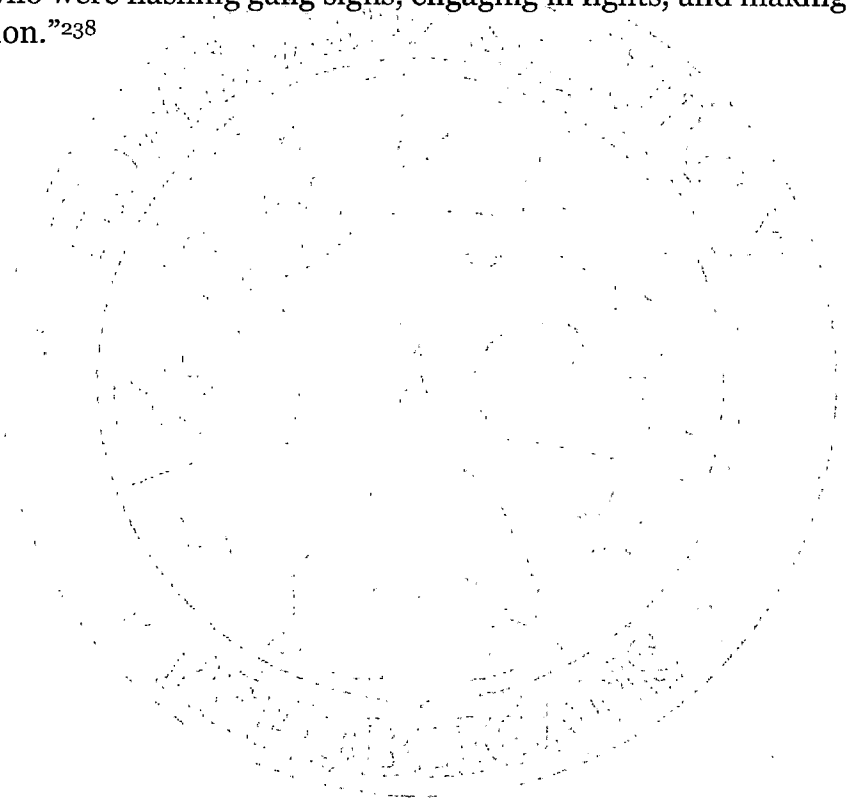
[229] U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Newsroom, *ERO New Orleans arrests gang member on El Salvador's 100 Most Wanted list*, August 14, 2023, https://www.ice.gov/news/releases/ero-new-orleans-arrests-gang-member-el-salvadors-100-most-wanted-list.
[230] Ibid.
[231] Ibid.
[232] U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, *Joint Operation nets 24 transnational gang members, 475 total arrests under Operation Matador*, March 29, 2018, https://www.ice.gov/news/releases/joint-operation-nets-24-transnational-gang-members-475-total-arrests-under-operation.
[233] Ibid.
[234] "WATCH: President Trump holds law enforcement roundtable on MS-13 at the White House," *PBS NewsHour*, YouTube video, 18:54, February 6, 2018, https://www.youtube.com/watch?v=lVYeA9ognyU&t=1134s.
[235] *See* "WATCH: President Trump holds law enforcement roundtable on MS-13 at the White House," *PBS NewsHour*, YouTube video, 17:52, February 6, 2018, https://youtu.be/lVYeA9ognyU?t=1072; and U.S. Department of Health & Human Services, Administration for Children & Families, Press Office, *Fact Sheet: Unaccompanied Children (UC) Program*, July 5, 2023, https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf.
[236] "WATCH: President Trump holds law enforcement roundtable on MS-13 at the White House," *PBS NewsHour*, YouTube video, 18:14, February 6, 2018, https://www.youtube.com/watch?v=lVYeA9ognyU&t=1093s.

were male.[237] Simple math makes clear that Mayorkas and the Biden administration's policies have almost certainly brought a flood of new potential recruits right to MS-13's doorstep.

A recent grand jury investigation in Florida into the Biden administration's irresponsible handling of the flood of UACs across the border found that a growing number of gang members are being brought into the United States under the guise of being UACs:

> "According to the testimony of the Border Patrol's acting chief, even as far back as 2017 it was known that at least 59 UAC had been identified as members of the MS-13 gang. That number has increased significantly; we received testimony that other gangs likewise send members and even have UAC members graduate to adulthood and apply to sponsor other UAC members. Entire separate facilities were required at some ORR shelters to house those UAC who were flashing gang signs, engaging in fights, and making threats due to gang affiliation."[238]



[237] U.S. Department of Health & Human Services, Administration for Children & Families, Press Office, *Fact Sheet: Unaccompanied Children (UC) Program*, July 5, 2023, https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf.

[238] State of Florida Supreme Court, Twenty-First Statewide Grand Jury Regarding Unaccompanied Alien Children, *Third Presentment*, No. SC22-796, March 29, 2023, 15, https://www.documentcloud.org/documents/23734272-3rd-presentment-of-21st-swgj.

Section 3: The Surge of National Security Threats Across the Border

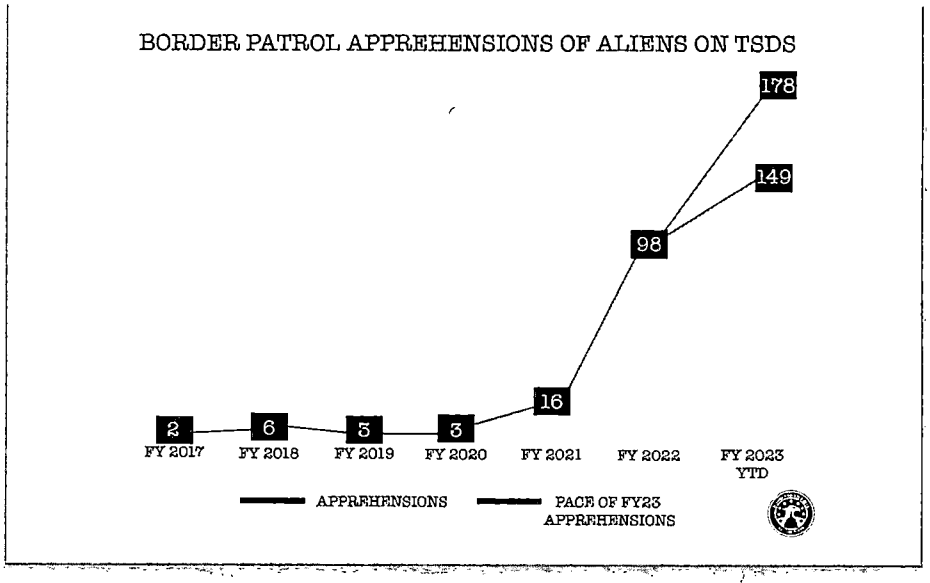
The Biden-Mayorkas border crisis represents an unmitigated national security threat. It is well documented that cartels, human smugglers, and violent gangs have taken full advantage of Mayorkas and Biden's open-borders policies in pursuit of their malicious ambitions—but they are not the only ones.

Individuals from more than 160 countries have been encountered by Border Patrol agents since January 2021,[239] including individuals from countries that sponsor terrorism or are major U.S. adversaries. According to DHS' Nuñez-Neto, an "enormous proportion" of the individuals CBP now encounters are not from Mexico or the Northern Triangle at all, in stark contrast to the majority of encounters in previous years.[240] John Modlin, Tucson Sector's chief patrol agent, told Committee staff in July 2023, "This flow of nontraditional migrants was what [the Yuma Sector] was dealing with a year ago—a lot of Chinese, a lot of...nontraditional migrants. Not Mexico, not Northern Triangle, just the rest of the world, basically. Now we are seeing that [in Tucson Sector]. It's not uncommon for one of these large groups to be made up of 12 to 15 different nationalities."[241]

Individuals on the Terror Watchlist Coming Across in Record Numbers

Perhaps most troubling is that an increasing number of those coming across the Southwest border represent potential national security threats. Since FY21, the Border Patrol has recorded a historic number of apprehensions of individuals who appear on the Terrorist Screening Data Set (TSDS) since the start of FY21. The TSDS, also known as the "terror watchlist," is the "U.S. government's database that contains sensitive information on terrorist identities."[242] The TSDS originally provided information on known or suspected terrorists, but now includes information about individuals who represent a potential threat to the United States.

[239] Robert Sherman, "Migrants From More Than 160 Countries Encountered At Border," *NewsNation*, October 6, 2022, https://www.newsnationnow.com/us-news/immigration/migrants-from-more-than-160-countries-encountered-at-border/.
[240] "Straining under the Backlog: Fixing a U.S. Immigration Court System in Crisis," *Migration Policy Institute*, YouTube video, 56:04, July 20, 2023, https://www.youtube.com/live/sA1fuW96GNo?feature=share&t=3364.
[241] John Modlin, Transcribed Interview with the House Committee on Homeland Security, 133, July 26, 2023.
[242] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *CBP Enforcement Statistics Fiscal Year 2023*, August 18, 2023, https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics.



(Source: CBP TSDS Encounters data)

From FY17–FY20, between ports of entry along the Southwest and northern borders, the Border Patrol apprehended just 14 individuals whose names were on the TSDS, with most of them attempting to enter through the Southwest border.[243] In comparison, 263 individuals whose names appear on the TSDS have been apprehended since FY21—259 of them along the Southwest border.[244] More than half of these individuals (146) have been apprehended at the Southwest border this fiscal year alone, far surpassing the previous record of 98 set in FY22.[245]

Shortly after the Title 42 public health order expired, CBP reported multiple apprehensions of individuals on the TSDS, including an Afghan national apprehended near San Diego,[246] a Pakistani national near Ajo Station, Arizona,[247] and five more individuals caught in the Tucson Sector.[248]

This historic number of TSDS apprehensions represent just the individuals Border Patrol agents have been able to catch. It is unknown how many additional national security threats have been among the approximately 1.5 million known gotaways that have evaded Border Patrol altogether. Richard Wiles, sheriff of El Paso County, has said the open border "is ripe for terrorists and criminals to simply walk across our border and do harm to our citizens."[249] When asked if he was concerned about the public safety implications of the gotaways in his sector, Sean McGoffin, chief

[243] Ibid.
[244] Ibid.
[245] Ibid.
[246] Danielle Dawson, "Afghan on terror watch list reportedly arrested near San Diego border," *Fox 5 San Diego*, May 15, 2023, https://fox5sandiego.com/news/end-of-title-42/afghan-on-terror-watch-list-reportedly-arrested-near-san-diego-border/.
[247] Anna Giaritelli, "Pakistani illegal immigrant on FBI terror list arrested at border day after Title 42 ended," *The Washington Examiner*, May 15, 2023, https://www.washingtonexaminer.com/policy/defense-national-security/pakistani-illegal-immigrant-fbi-terror-list-arrested-border.
[248] Randy Clark and Bob Price, "EXCLUSIVE: Five Migrants on Terror Watch List Arrested near AZ Border Post-Title 42," *Breitbart News*, May 14, 2023, https://www.breitbart.com/border/2023/05/14/exclusive-five-migrants-on-terror-watch-list-arrested-near-az-border-post-title-42/.
[249] Jamel Valencia, "El Paso County Sheriff sounds alarm over Border Patrol overwhelmed due to migrants," *CBS 4 El Paso*, September 15, 2022, https://cbs4local.com/richard-wiles.

patrol agent for the Big Bend Sector, told the House Committee on Homeland Security in April 2023, "Absolutely. I don't think anybody in law enforcement wouldn't be."[250]

The Border Patrol's Owens told Committee staff during a May 2023 interview that he was "absolutely" concerned that the high flow of illegal aliens through the Del Rio Sector was impeding his agents' ability to reduce the number of gotaways:

> "[I]f my men and women are stuck in a humanitarian effort of processing these folks, they cannot be in two places at once. They cannot be out on patrol. And where I need them out on patrol is to not only account for those gotaways but to reduce them, where possible. Everything revolves, as I said before, around having those men and women on the ground doing the job. ... I need them out doing the job that they were hired to do. And where they're doing something else, they cannot be there."[251]

"Anytime somebody chooses to evade capture, as I said before, you have to ask yourself why, and is that individual a cause of greater concern? What do they have to hide that they're willing to go through such lengths to try and evade capture? Those are the ones that—especially if they are among the gotaways—that keep us up at night," he later added.[252]

Finally, as former ICE Acting Director Tom Homan has pointed out, it is reasonable to assume that potential national security threats are among the gotaways entering the country, because they do not want to be apprehended by the Border Patrol. He told Fox News in March 2023:

> "After 9/11, we created all these databases so if you want to come to the United States, get a plane ticket or a visa, you gotta go through all this vetting through various databases. Why would any terrorist put themselves in a position to be vetted through these databases when you can simply get to Mexico, cross the Southwest border like 1.3 million others did, and not get arrested?"[253]

Some individuals have already tried to take advantage of the open border to commit acts of terrorism, including Shihab Ahmed Shihab Shihab. Shihab came to the United States on a non-immigrant visa, but was charged with planning to smuggle terrorists into the country through the open Southwest border in an attempt to assassinate former President George W. Bush.[254]

Individuals on the TSDS have also been released into the United States after being apprehended. In April 2022, a Colombian man named Isnardo Garcia-Amado was released into the interior with a GPS monitoring device via the Alternatives to Detention (ATD) program.[255] Three days

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[250] Sean McGoffin, Transcribed Interview with the House Committee on Homeland Security, 39, April 25, 2023.
[251] Jason Owens, Transcribed Interview with the House Committee on Homeland Security, 56, May 5, 2023.
[252] Ibid, 128.
[253] "Tom Homan: The southern border 'scares the hell out of me'," *Fox News*, Fox News video, 01:35, March 20, 2023, https://www.foxnews.com/video/6322980718112.
[254] U.S. Department of Justice, U.S. Attorney's Office for the Southern District of Ohio, *Ohio man charged with aiding and abetting plot to murder former President*, May 24, 2022, https://www.justice.gov/usao-sdoh/pr/ohio-man-charged-aiding-and-abetting-plot-murder-former-president.
[255] Adam Sabes and Bill Melugin, "Border Patrol released suspected terrorist who crossed into U.S. illegally, ICE took weeks to rearrest him," *Fox News*, May 23, 2022, https://www.foxnews.com/us/border-patrol-released-suspected-terrorist-ice-rearrest-weeks.

after his release, the FBI flagged his name as a hit on the terror watchlist, but ICE did not rearrest him until almost two weeks later. He had traveled from Arizona to Florida in that time.[256]

In June 2023, the DHS Office of the Inspector General (OIG) released a shocking report showing that in April 2022, CBP officials had released an illegal alien who was ultimately found to have been on the terror watchlist.[257] On April 17, 2022, the alien was apprehended with family members in Yuma, Arizona. He was initially determined to be an "inconclusive Terrorist Watchlist match" based on data provided by CBP to the FBI, and subsequently released April 19. Two days later, when the alien and his family attempted to fly from California to Tampa, Florida, the FBI received more information from TSA showing the alien was actually on the terror watchlist. Two weeks later, ICE arrested the alien.[258]

According to the OIG, "CBP apprehended and subsequently released a migrant without providing information requested by the [Terrorist Screening Center] that would have confirmed they were a positive match with the Terrorist Watchlist."[259] This potential terrorist was released before proper vetting was completed because, according to Border Patrol agents at the Yuma centralized processing center, "the Yuma CPC was over capacity following an increase in apprehensions, which created pressure to quickly process migrants and decreased the time available to review each file."[260]

It is deeply troubling that individuals on the terror watchlist are being released before they have been fully vetted simply because CBP officials feel pressured to release them. Ultimately, it is Mayorkas' policies that are to blame, as record numbers of illegal aliens continue to flow across the Southwest border in response to his mass "catch-and-release" policies.

Additionally, one recent report makes clear that those connected to terror groups have been able to take advantage of a Southwest border increasingly left vulnerable by Mayorkas' policies. On Aug. 29, 2023, CNN reported that a large group of Uzbek nationals were smuggled across the Southwest border earlier in 2023 by a smuggling network that contained at least one individual "with ties to ISIS."[261] At the time of CNN's report, federal law enforcement had not yet located all these individuals who had illegally crossed into the United States, and more than 15 of those who had been apprehended were "still under scrutiny by the FBI as possible criminal threats."[262]

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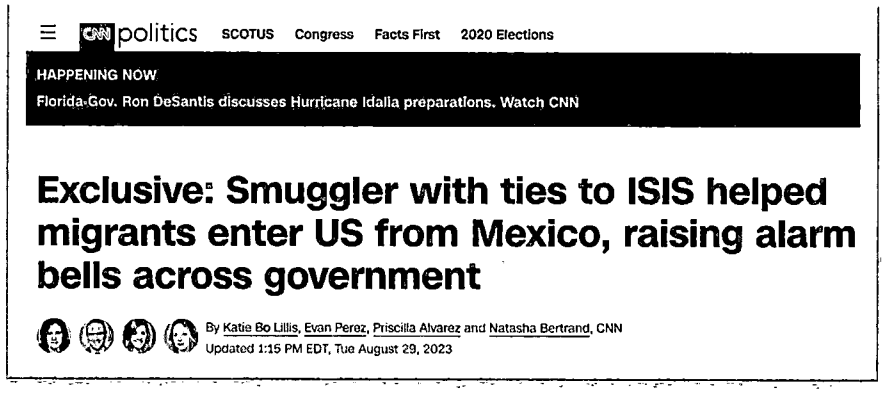
[256] Ibid.
[257] U.S. Department of Homeland Security, Office of the Inspector General, *CBP Released a Migrant on a Terrorist Watchlist, and ICE Faced Information Sharing Challenges Planning and Conducting the Arrest (REDACTED)*, OIG-23-31, June 28, 2023, 3, https://www.oig.dhs.gov/sites/default/files/assets/2023-07/OIG-23-31-Jun23-Redacted.pdf.
[258] Ibid.
[259] Ibid., p. 9.
[260] Ibid., p. 12.
[261] Katie Bo Lillis, et. al., "Exclusive: Smuggler with ties to ISIS helped migrants enter US from Mexico, raising alarm bells across government," *CNN*, August 29, 2023, https://www.cnn.com/2023/08/29/politics/migrants-us-southern-border-smuggler-isis-ties/index.html.
[262] Ibid.



Perhaps these examples demonstrate why the Laredo Sector's Martinez, in the context of national security, told the House Committee on Homeland Security, "every apprehension worries me," because agents "never know...who we'll run into. One minute we're dealing with a child and the next we're dealing with an adult. We don't know what their intentions are."[263] Mayorkas has lost control of the border, and created an environment in which nefarious individuals with the intention of doing Americans harm can enter the country at will.

Potential National Security Threats Arriving from Other Nations

It is not just potential terrorists that are flooding across the border, however. Waves of individuals from adversarial countries like China and Russia continue to flow across, as well. Then-Border Patrol Chief Ortiz tweeted on June 9, 2023, that from FY22 to FY23, Border Patrol agents had recorded surges of illegal aliens from China and Afghanistan in excess of 1,000 percent.[264]

The number of Chinese and Russian nationals crossing illegally has skyrocketed in the last two years. This fiscal year alone, the Border Patrol has recorded 17,678 apprehensions of Chinese nationals just at the Southwest border.[265] In all of FY20, that number was 1,236, just 323 in FY21, and 1,970 in FY22.[266] In the same timeframe, the Border Patrol has also apprehended more than 7,000 Russians illegally crossing the Southwest border, compared to 24 in FY20, 509 in FY21, and 5,197 in FY22.[267]

The surge in apprehensions of Chinese nationals at the Southwest border has placed a substantial strain on CBP officials. The Border Patrol's Chavez said in March 2023 that apprehensions of Chinese nationals in FY23 in the Rio Grande Valley Sector had increased more than 900 percent compared to FY22.[268] She tweeted that the surge was "creating a strain on our workforce due to the complexities of the language barrier & lengthens the processing."[269] Through July 2023, Border Patrol apprehensions of Chinese nationals along the Southwest border exceeded FY22

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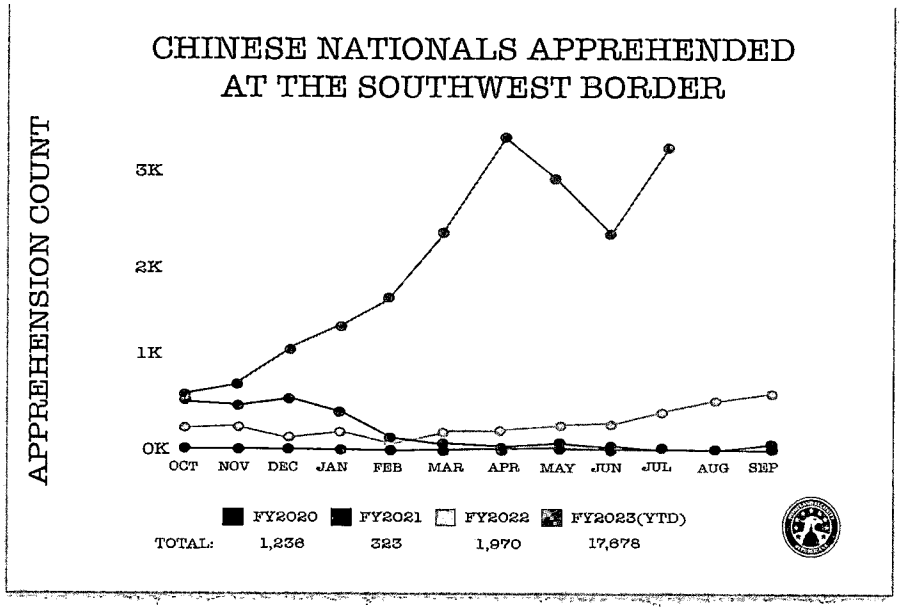
[263] Joel Martinez, Transcribed Interview with the House Committee on Homeland Security, 27-28, June 1, 2023.
[264] Chief Jason Owens [@USBPChief], "We Have Seen an Increase of over 1000% from Some Countries. While We Work Diligently to Repatriate Migrants from These Countries, We Still Have Challenges with Countries' Governments to Get Working Programs in Place to Repatriate All Those We Apprehend.," Tweet, *Twitter*, June 9, 2023, https://twitter.com/USBPChief/status/1667215420984573960.
[265] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, August 18, 2023, https://www.cbp.gov/newsroom/stats/nationwide-encounters.
[266] Ibid.
[267] Ibid.
[268] Sandra Sanchez, "South Texas Sees Surge of Chinese Nationals Crossing Border Illegally, Chief Says," *Border Report*, March 20, 2023, https://www.borderreport.com/immigration/south-texas-sees-surge-of-chinese-migrants-crossing-border-illegally-chief-says/.
[269] Chief Patrol Agent Gloria I. Chavez [@USBPChiefRGV], "RGV Continues to Lead the Nation in Chinese Migrant Encounters. In FY23, There Have Been 1,577 Apprehensions-91% Being Single Adults. A 920% Increase Compared to FY22 Creating a Strain on Our Workforce Due to the Complexities of the Language Barrier & Lengthens the Processing.," Tweet, *Twitter*, March 16, 2023, https://twitter.com/USBPChiefRGV/status/1636489039917219840.

apprehensions of the same demographic by almost 800 percent—the overwhelming majority of them single adults.[270]



(Source: CBP Nationwide Encounters data)

Chinese and Russian nationals are of particular concern, given those nations' status as the United States' most significant adversaries and the threat they pose to America's national security. Fox News' Adam Shaw and Bill Melugin reported in February 2023 that Chinese nationals are typically processed for expedited removal, "unless they claim to have a credible fear of persecution if returned to the country—where the Chinese Communist Party holds power."[271] Consequently, sources told Shaw and Melugin, "many are claiming that fear and are subsequently being released into the U.S. on their own recognizance and with a notice to appear for a court date for their immigration hearings."[272]

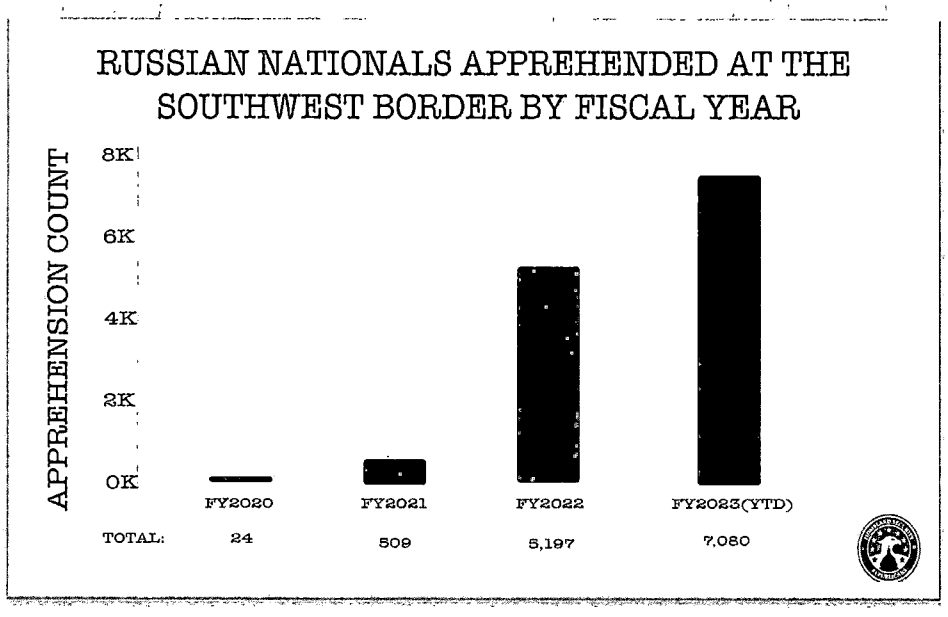
It is possible that many of these individuals are fleeing the authoritarian, repressive regimes in their home countries. Some of them may even qualify for asylum, unlike the vast majority of those who are crossing illegally for economic reasons or to flee general violence in their home countries.[273] Notably, however, Chief Patrol Agent Good told the House Committee on Homeland Security in June 2023 that based on his observations, the "typical reason" given by Chinese nationals for entering illegally was "the same as most of the migrants—for work or a better life."[274]

[270] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, August 18, 2023, https://www.cbp.gov/newsroom/stats/nationwide-encounters.
[271] Adam Shaw and Bill Melugin, "Border Patrol Apprehensions of Chinese Nationals at Southern Border up 800%: Source," *Fox News*, February 9, 2023, https://www.foxnews.com/politics/border-patrol-apprehensions-chinese-nationals-southern-border-800-source.
[272] Ibid.
[273] Members of the House Committee on Homeland Security were given a bipartisan classified briefing on July 27, 2023, by multiple CBP officials. In this briefing, officials stated that some of the Chinese nationals apprehended illegally crossing the border presented they were fleeing from oppression by the Chinese Communist Party, or taking advantage of relaxed COVID-19 restrictions.
[274] Anthony Scott Good, Transcribed Interview with the House Committee on Homeland Security, 37, June 29, 2023.

The threat to national security lies not just in the fact that these individuals are crossing illegally to begin with, putting undue strain on Border Patrol agents, but that CBP and other federal agencies simply do not have the ability to properly screen them before they are released into the interior. As the crisis continues, and agents are forced to continue rapidly processing and releasing those they encounter, the possibility of bad actors from these countries being released into American communities will only increase.

It is simply unknown how many of those released into the interior have sinister intentions. What is known, however, is that some unquestionably do. In an astounding revelation on June 14, 2023, House Homeland Security Committee Chairman Green revealed that senior Border Patrol sources had confirmed that some of the Chinese nationals apprehended in recent months at the Southwest border "have ties to the Chinese Communist Party (CCP) and the People's Liberation Army (PLA)."[275]

Russia has been suspected of using similar tactics on the borders of European nations for its own ends, smuggling operatives in amongst the flow of migrants between these states. A 2021 Newsweek report noted, "NATO allies on its Baltic front lines fear that Russia and Belarus are exploiting the flow of thousands of migrants into the European Union (EU)—perhaps even as cover for their agents—to infiltrate and destabilize Western democracies, and threaten exiled dissidents."[276]



(Source: CBP Nationwide Encounters data)

[275] U.S. Congress, House of Representatives, Committee on Homeland Security, *Chairman Green: "Alejandro Mayorkas Has Been Derelict in His Duty as the United States Secretary of Homeland Security,"* 118th Cong., 1st sess., June 14, 2023, https://homeland.house.gov/2023/06/14/chairman-green-alejandro-mayorkas-has-been-derelict-in-his-duty-as-the-united-states-secretary-of-homeland-security/.

[276] David Brennan, "NATO Allies Fear Russia, Belarus Using Migrant Chaos to Destabilize Europe, Hide Agents," *Newsweek*, October 19, 2021, https://www.newsweek.com/nato-allies-fear-russia-belarus-migrant-chaos-hide-agents-destabilize-europe-1640303.

Moscow, however, is not the only American adversary using migration flows for its own sinister purposes. In the Western Hemisphere, Venezuela has done the same thing. During a June 2023 hearing held by the House Homeland Security Committee's Subcommittee on Counterterrorism, Law Enforcement, and Intelligence, Christopher Hernandez-Roy of the Center for Strategic and International Studies (CSIS) testified that Venezuela had been known to embed spies in the flow of individuals into neighboring Colombia to "harass and persecute" those opposed to the Maduro regime. Such conduct, he said, raises questions about what other U.S. adversaries are doing to take advantage of the porous Southwest border:

> "Thus, a U.S. adversary has taken advantage of this human wave to conceal the entry of spies into a traditional U.S. ally. This begs the question of what more sophisticated U.S. adversaries like China and Russia might be doing to take advantage of the historic migration flows across the U.S. southern border."[277]

During the same hearing, Elaine Dezenski, former DHS acting assistant secretary for policy, was asked whether policymakers should assume China is taking advantage of the porous Southwest border. She responded, "I think we should assume that any vulnerabilities at our southern border are open for authoritarian influence of many kinds. I think that's a safe assumption. If the gaps are there, then those who are working against us are going to use them to their advantage."[278]

According to Dezenski, finding the national security risks among the millions of illegal aliens crossing the border is a "needle in the haystack problem" and that the United States has "an identity management problem at the border" that is only "going to become more and more difficult."[279]

[277] "Countering Threats Posed by Nation-State Actors in Latin America to U.S. Homeland Security," *Homeland Security Committee Events*, YouTube video, 31:40, June 21, 2023, https://www.youtube.com/live/riLhJjhoIkk?feature=share&t=1892.
[278] "Countering Threats Posed by Nation-State Actors in Latin America to U.S. Homeland Security," *Homeland Security Committee Events*, YouTube video, 44:08, June 21, 2023, https://www.youtube.com/live/riLhJjhoIkk?feature=share&t=1892.
[279] "Countering Threats Posed by Nation-State Actors in Latin America to U.S. Homeland Security," *Homeland Security Committee Events*, YouTube video, 52:31, June 21, 2023, https://www.youtube.com/live/riLhJjhoIkk?feature=share&t=3139.

Section 4: Irresponsible Use of Federal Law Enforcement Personnel

The massive influx of illegal aliens on Mayorkas' watch has put a tremendous strain on CBP personnel and resources. As a result, federal law enforcement personnel from around the country have been diverted from their vital responsibilities in order to support operations on the Southwest border—often in simple administrative capacities.

Redeploying Border Patrol Agents from the Northern Border

One of DHS' more controversial personnel shifts has been the deployment of Border Patrol agents from the northern border to the Southwest border. According to CBP, between October 2020-April 2023, thousands of Border Patrol agents and CBP officers were temporarily relocated from the northern border to the Southwest border.[280] Deployments of CBP officials, in particular, increased substantially from FY22 to FY23, [281] likely to further enable CBP to more rapidly process and release illegal aliens into the United States. In 2022, per a DHS spokesperson, "at the peak of deployments, 464 [Border Patrol] agents were deployed from northern border sectors."[282]

It should be noted that the Committee was provided the specific numbers of deployments for each agency, by year, but was prohibited from publishing them in this report by an arbitrary 'For Official Use Only' marking on the data.

After DHS confirmed the personnel policy in early 2022, Texas Rep. Cuellar criticized the policy, saying, "It's almost like bringing people so they can be more efficient in allowing the migrants to come into the United States... It's 'how do we move the migrants faster from the border out into the interior?'"[283]

In FY20, the number of Border Patrol agents assigned to the northern border totaled around 2,000, while around 17,000 were serving on the Southwest border.[284] The Border Patrol's Good, who previously served in the Grand Forks Sector along the northern border, told the House Committee on Homeland Security in June 2023 that sending agents to the Southwest border, and even having them help with processing remotely, had an impact on operations at the northern border:

> "Like I said before, we only have 200 agents for over 800 miles of border in the Grand Forks Sector. So, sending sometimes up to 30 agents...required us to have less shifts. So, if a station had two shifts for a 24-hour period, they were reduced to one shift. And there was a station that had three shifts, a 24/7 operation, that reduced to two shifts. And we were

[280] Information provided by CBP to the House Committee on Homeland Security, April 19, 2023.
[281] Ibid.
[282] Virginia Allen, "Illegal Immigrants Are Now Using the Northern Border, Too," *The Daily Signal*, February 20, 2023, https://www.dailysignal.com/2023/02/20/its-not-just-southern-border-anymore-northern-border-also-faces-explosion-of-illegal-immigration/.
[283] Tyler Olson, "Biden admin moving officers from northern US to southern border for Title 42 migrant surge, Cuellar says," *Fox News*, April 21, 2022, https://www.foxnews.com/politics/henry-cuellar-border-officers-northern-border-southern-title-42.
[284] U.S. Department of Homeland Security, U.S. Customs and Border Protection, U.S. Border Patrol, *Sector Profile - Fiscal Year 2020*, August 2021, https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Fiscal%20Year%202020%20Sector%20Profile%20%28508%29.pdf.

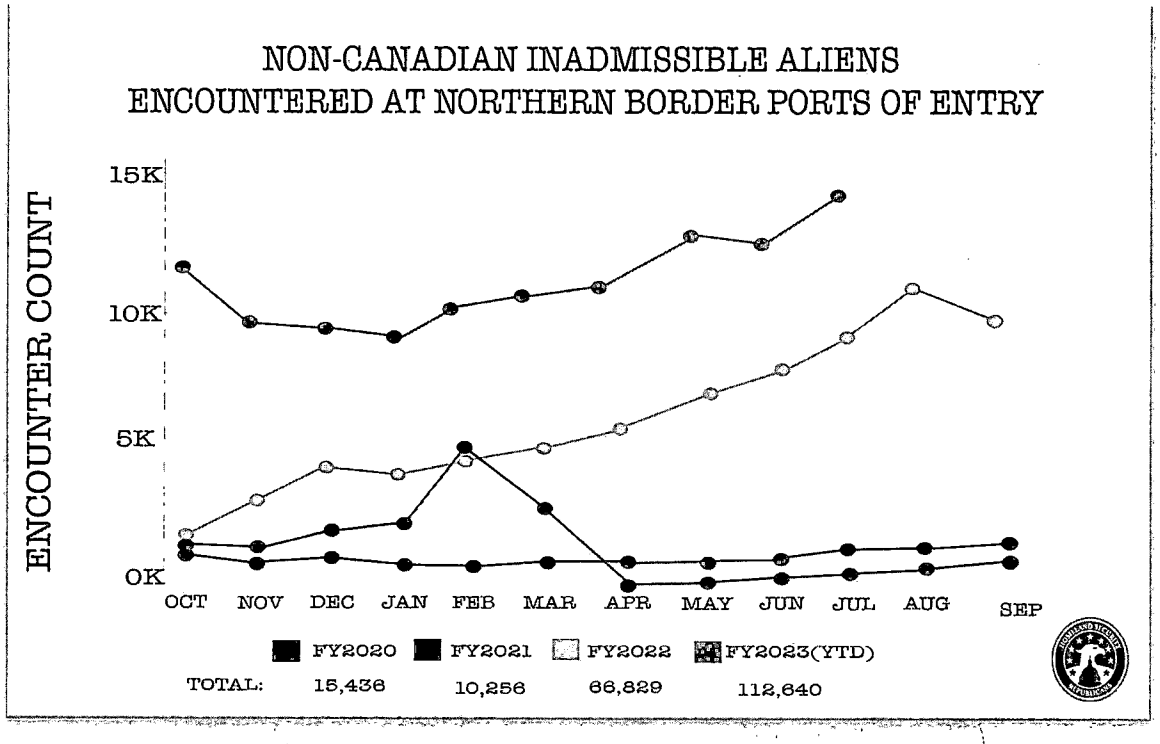
> successful by leveraging our Stone Garden partners, local law enforcement in those areas to assist us. However, there were less agents in the field doing border security missions in the Grand Forks Sector."[285]

In May 2023, the DHS OIG released a report on the operations being conducted at various CBP facilities it had inspected along the northern border.[286] In speaking with Border Patrol personnel in the course of this investigation, the OIG found that the deployment of agents to the Southwest border had a substantial operational impact:

> "Swanton sector Border Patrol officials also said the details affected enforcement on the northern border. For example, boat patrols on the St. Lawrence River were curtailed, as was participation in joint law enforcement task forces operating on the northern border. When agents needed to take emergency leave due to illness, some shifts were not staffed or were understaffed. Officials said as a result of the details, the Swanton sector Border Patrol was less effective at disrupting cross-border smuggling and assisting with criminal cases."[287]

Even as more Border Patrol agents and resources have been shifted to the Southwest border, illegal crossings at the northern border have surged. Total northern border encounters have jumped in the past two years. In FY21, CBP recorded 27,180 total encounters of inadmissible aliens at or between northern ports of entry. That jumped to 109,535 in FY22, and through July of FY23, stood at 150,743 encounters.[288] As noted by one independent analysis of the figures in February 2023, "the number of 'other than Canadian' nationals deemed inadmissible at the northern border ports jumped sixfold between FY 2021 and FY 2022 — from around 10,250 to nearly 67,000," with around 10 percent coming from China.[289]

[285] Anthony Scott Good, Transcribed Interview with the House Committee on Homeland Security, 35-36, June 29, 2023.
[286] U.S. Department of Homeland Security, Office of the Inspector General, *CBP Facilities in Vermont and New York Generally Met TEDS Standards, but Details to the Southwest Border Affected Morale, Recruitment, and Operations*, OIG-23-27, May 23, 2023, https://www.oig.dhs.gov/sites/default/files/assets/2023-05/OIG-23-27-May23.pdf.
[287] Ibid, 12.
[288] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, August 18, 2023, https://www.cbp.gov/newsroom/stats/nationwide-encounters.
[289] Andrew Arthur, "Migrant Surge — At the Northern Border," *Center for Immigration Studies*, February 23, 2023, https://cis.org/Arthur/Migrant-Surge-Northern-Border.



(Source: CBP Nationwide Encounters data)

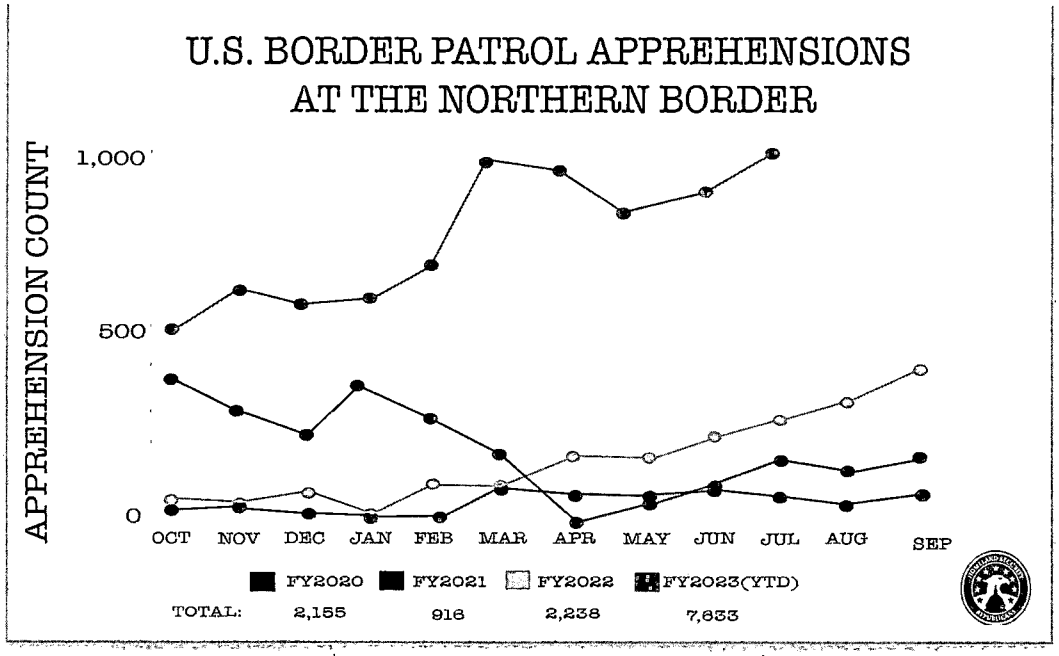
Meanwhile, the number of Border Patrol apprehensions between northern border ports of entry this fiscal year (7,633) has already more than tripled FY22's total (2,238), which in turn more than doubled FY21 (916).[290] North Carolina Rep. Dan Bishop, chairman of the House Committee on Homeland Security's Subcommittee on Oversight, Investigations, and Accountability, said in March 2023:

> The northern border "is now a hot spot for illegal alien crossings, including individuals on the terrorist watchlist, organized criminal activity, and illicit drug smuggling. Illegal alien encounters are up more than 800 percent from last fiscal year in the Swanton Sector alone. The Biden administration has encouraged and facilitated this lawlessness and left our northern Border Patrol agents without the means to accomplish their mission and defend our porous border."[291]

According to Border Patrol agents in the Swanton Sector in June 2023, illegal crossings between October 2022-May 2023 exceeded total crossings from the past six years combined.[292] By September, that number had increased even more, with Robert Garcia, chief patrol agent for the

[290] U.S. Department of Homeland Security, U.S. Customs and Border Protection, Newsroom, *Nationwide Encounters*, August 18, 2023, https://www.cbp.gov/newsroom/stats/nationwide-encounters.
[291] U.S. Congress, House of Representatives, Committee on Homeland Security, *Bishop Announces Subcommittee Hearing on Northern Border Crisis*, 118th Cong., 1st sess., March 23, 2023, https://homeland.house.gov/media-advisory-bishop-announces-subcommittee-hearing-on-northern-border-crisis/.
[292] Jennie Taer, "Agents in One Area of the Northern Border Saw More Migrants Cross Illegally in Eight Months Than Last Six Years," *The Daily Caller*, June 21, 2023, https://dailycaller.com/2023/06/21/agents-northern-border-migrants-cross-illegally-eight-months-last-six-years/.

sector, tweeting that apprehensions had exceeded 6,100 individuals from 76 different countries through August of FY23—more than the previous 10 years combined.[293]



(Source: CBP Nationwide Encounters data)

The NBPC's Judd pointed out in congressional testimony in March 2023 that given Canada's more-lax visa policies, individuals from hostile nations like China can more easily enter Canada and then illegally cross the United States' northern border.[294] Other officials have confirmed similar findings.[295]

The northern border's extreme elements can also be just as perilous as those at the Southwest border. In January 2022, Canadian police found an Indian family, including two young children, frozen to death near the U.S.-Canada border. Authorities believe the family perished attempting to cross.[296]

[293] Chief Patrol Agent Robert Garcia [@USBPChiefSWB], "Over 6,100 apprehensions from 76 different countries in just 11 months, surpassing the last 10 years combined. Swanton Sector Agents are resolute and determined to hold the line across our 295 miles of border in northeastern New York, Vermont & New Hampshire.," Tweet, *Twitter*, September 6, 2023, https://twitter.com/USBPChiefSWB/status/1699368978932449444.

[294] U.S. Congress, House of Representatives, Committee on Homeland Security, Subcommittee on Oversight, Investigations, and Accountability, *Prepared Testimony of Brandon Judd on Behalf of the National Border Patrol Council for Biden's Growing Border Crisis: Death, Drugs, and Disorder on the Northern Border*, 118th Cong., 1st sess., March 28, 2023, 41-42, https://homeland.house.gov/wp-content/uploads/2023/07/2023-03-28-OIA-HRG-Testimony-Arthur-combined.pdf.

[295] Jennie Taer, "Illegal Migrant Encounters Surge Roughly 36% At Northern Border," *The Daily Caller*, August 18, 2023, https://dailycaller.com/2023/08/18/illegal-migrant-encounters-surge-roughly-36-at-northern-border/.

[296] Samantha Fischer, Danny Spewak, and David Griswold, "Canadian police identify family found frozen to death near U.S.-Canada border," *KARE 11*, January 27, 2022, https://www.kare11.com/article/news/crime/canadian-police-identify-patel-family-found-frozen-to-death-near-us-canada-border/89-a68abf47-ab14-47b7-84a2-8a2647813b7b.

Finally, in an embarrassing turn of events demonstrating Mayorkas' reactionary approach to dealing with the border crisis, DHS has responded to the growing crisis at the *northern border* by deploying agents from the *Southwest border* to handle the influx there.[297]

Not-So-Friendly Skies—Reassigning Air Marshals to Administrative Duty

The Federal Air Marshals Service (FAMS) has also been impacted by the crisis, as marshals have been pulled away from their roles ensuring security on flights to instead perform duties at the Southwest border unrelated to law enforcement. The House Committee on Homeland Security received information in spring 2023 that air marshals are being placed on three-week rotations, with up to several dozen air marshals and multiple supervisors at the border at any given time.[298] In mid-2021, the marshals service requested volunteers for shifts at the Southwest border, but after few individuals volunteered to be taken away from their law enforcement duties, the deployments were made mandatory.[299]

According to the Air Marshals Association, the forced deployment of air marshals has put immense strain on the workforce as a whole, since many marshals are retiring. The association recently stated in an internal newsletter, "We have had a staggering number of retirements in the last few years. We cannot keep sending a large number of our flying FAMS to the border at the expense of our current mission, while also creating new AVO positions, which currently take more FAMS out of the air without a clearly defined job."[300]

These deployments also represent a national security risk. Per one 2022 press report, these involuntary deployments to the Southwest border "would strip 99% of commercial flights from federal protection as people take to the skies during the busiest time of the year for air travel," leaving "just 1-in-100 U.S. flights with federal agents on board, one-eighth of its normal coverage."[301] The National Association of Police Organizations (NAPO) released a statement in November 2022 highlighting similar concerns with the policy:

> "During these deployments, air marshals are not using their law enforcement skills to help secure the border, but are tasked with non-law enforcement jobs, including janitorial duties. The Federal Air Marshal Service is understaffed and covering the fewest number of flights since before September 11, 2001. We strongly question the decision by the Department of Homeland Security to divert much-needed aviation security to the southern border especially as we enter the busiest travel season of the year, particularly as a Federal emergency has not been declared at the border. The jobs air marshals are being asked to

[297] Julia Ainsley and Didi Martinez, "U.S. transfers Border Patrol agents to northern border as migrant crossings from Canada rise," *NBC News*, March 6, 2023, https://www.nbcnews.com/politics/immigration/us-transfers-border-patrol-agents-canada-border-migrant-crossings-rcna73623.
[298] Information provided to the Committee by Transportation Security Administration Legislative Affairs, May 4, 2023.
[299] *See* Anna Giaritelli, "US air marshals plot 'mutiny' against Biden plan to leave flights unprotected," *The Washington Examiner*, November 30, 2022, https://www.washingtonexaminer.com/restoring-america/fairness-justice/us-air-marshals-plot-mutiny-against-biden; and Matthew Medsger, "Biden admin deploys Air Marshals to border to help with migrants," *The Boston Herald*, November 23, 2022, https://www.bostonherald.com/2022/11/23/biden-admin-deploys-air-marshals-to-border-to-help-with-migrants/.
[300] "April Membership Update: Message from the AMA," *Air Marshal Association*, email newsletter, April 22, 2023.
[301] Anna Giaritelli, "US air marshals plot 'mutiny' against Biden plan to leave flights unprotected," *The Washington Examiner*, November 30, 2022, https://www.washingtonexaminer.com/restoring-america/fairness-justice/us-air-marshals-plot-mutiny-against-biden.

do at the border are well below their skill level and a waste of important resources. Further, it puts an incredible strain on an already stressed workforce."[302]

Diverting HSI Away from Federal Investigations

In addition, based on data provided to the Committee, as many as 120 HSI agents have been diverted from working on border security efforts, many of them being pulled away from their jobs doing casework on crimes like child trafficking.[303] In August 2023, the Biden administration announced it was sending 140 more HSI agents to the Southwest border, prompting one source to say, "You're using skilled and trained special agents who are trained in criminal investigations and law enforcement tactics to guard people and to hand out food to individuals and help with processing."[304]

The HSI source further told the press:

> "So, when you pull an agent from an active investigation, and you put them somewhere else for 30 days, that affects that agent's ability to continue working in that case. And for HSI a lot of times, we have just one agent in that case. We don't have multiple agents assigned to it. So, someone else can't pick up that slack once somebody has to go down there. So, your case just gets put on standstill, put on pause, but the criminal activity doesn't. That continues."
>
> "So, you're not able to continue with the activity going on in that investigation, which includes terrorism cases, human trafficking cases, violent organized crime cases and child exploitation cases. We're already understaffed as an agency, and pulling us down to the border — it makes us almost a critical level of understaffed."[305]

On a similar note, the Border Patrol's Good told Committee staff in June 2023 that law enforcement detailees are typically "put where the need is, which is usually processing and transportation," and that these professionals could be placed in administrative functions because that was the area of need.[306]

Senior DHS officials confirmed these functions in official memos, as well. In an April 2023 memorandum of agreement (MOA) signed by the heads of both ICE and CBP, the agencies stipulated that HSI detailees to the Southwest border would be assigned primarily to administrative functions, including "hospital watch," "entry control," and "welfare checks."[307]

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[302] "NAPO Opposes Forced Deployment of Federal Air Marshals to Southern Border," *National Association of Police Organizations,* November 8, 2022, https://www.napo.org/washington-report/latest-news-updates/napo-opposes-forced-deployment-federal-air-marshals-southern-border/.
[303] Internal correspondence provided to House Committee on Homeland Security.
[304] Adam Shaw, "Biden administration sending surge of ICE special agents to border amid increase in migrant numbers," *Fox News,* August 3, 2023, https://www.foxnews.com/politics/biden-admin-surging-ice-special-agents-border-amid-increase-migrant-numbers.
[305] Ibid.
[306] Anthony Scott Good, Transcribed Interview with the House Committee on Homeland Security, 83, June 29, 2023.
[307] April 2023 CBP-ICE Memorandum of Agreement provided to the House Committee on Homeland Security.

MEMORANDUM OF AGREEMENT
BETWEEN
U.S. CUSTOMS AND BORDER PROTECTION

AND

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

TO PROVIDE ASSISTANCE TO U.S. BORDER PATROL
ON THE SOUTHWEST BORDER

1. **PARTIES:**

The parties to this Memorandum of Agreement (MOA) are the U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) (collectively, "the Parties"), both of which are components of the U.S. Department of Homeland Security (DHS).

2. **AUTHORITIES:**

The authorities for CBP and ICE to enter into this Agreement are:

(A) 5 U.S.C. § 3341 and 5 C.F.R. § 300.301, which authorize details of personnel within an Executive agency for 120-day periods; and,

(B) 31 U.S.C §§ 1535-1536.

3. **BACKGROUND:**

The Nation is experiencing a surge in irregular migration along the Southwest Border. The unprecedented volume of Noncitizen Migrants (NCMs) currently apprehended and in U.S. Border Patrol (USBP) custody along the Southwest Border requires immediate action to protect the life and safety of federal personnel and noncitizens in CBP custody. To support its mission, CBP is seeking federal employees from DHS Components and other federal agencies to be placed on reimbursable detail to assist in critical support functions.

4. **PURPOSE:**

The purpose of this MOA is to document approval of, and terms and conditions for, the reimbursable detail of ICE, Homeland Security Investigations (HSI) Special Agents to CBP in support of the border security and humanitarian mission along the Southwest Border. This MOA addresses the relationships between operational (i.e., daily) control and administrative and management control of the detailees.

5. **DUTIES:**

Detailees will not be assigned responsibilities that exceed their current pay band. Non-supervisory personnel will not be asked to perform supervisory responsibilities while on detail to include but not limited to, monitoring, assigning, and directing work or work assignments of co-workers. No temporary promotions will be afforded during the detail assignments. Individual detailees, at the discretion of CBP, will be assigned to non-supervisory duties in one of the following categories:

a. **Hospital Watch** – Escort and transportation of NCMs to local health providers and hospitals, security detail for the duration of the NCM's hospital care, and transportation back to the USBP station or Office of Field Operations (OFO) facility once medically deemed fit for travel.

b. **Transportation** – Escort and transportation of NCMs from the point of apprehension to processing; from a port of entry to holding or processing; between Border Patrol Sector facilities or from Border Patrol Sector facilities to U.S. Immigration and Customs Enforcement (ICE) custody, the U.S. Department of Health and Human Services (HHS), or other entities with jurisdiction over post-processing custody, or point of release, as appropriate.

c. **Law Enforcement Searches** – Performing searches of NCMs in CBP custody in accordance with CBP Transportation, Escort, Detention, and Search (TEDS) standards, including immediate pat downs of individuals in custody before they board for transport, placing or removing handcuffs or restraint devices on individuals in custody, if necessary, during transport, and responsibility and oversight of NCMs' personal property, documents, and medications during transportation.

d. **Entry Control** – Aiding with authorizing access to CBP owned or managed facilities and/or grounds at the vehicle entry/exit-control points.

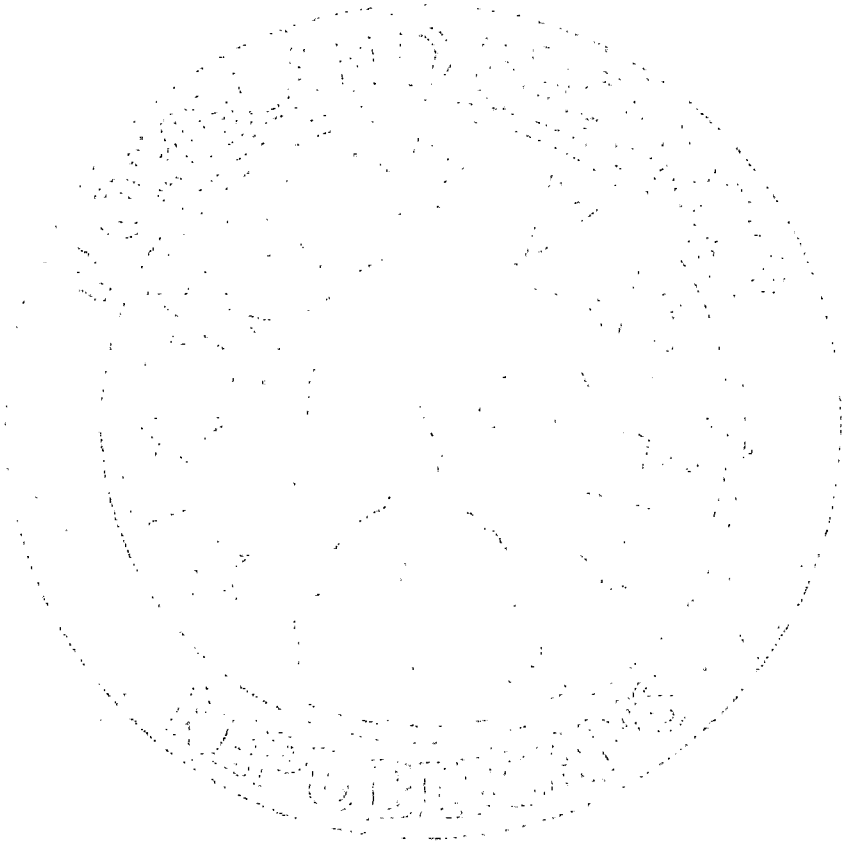
e. **Security at CBP Facilities** – Staffing holding areas at CBP facilities, including soft-sided detention facilities, and providing walking escort of NCMs, pedestrian access control, security for housing units, processing pods, and roving patrols on CBP owned/managed grounds.

f. **Welfare Checks** – Physically observing NCMs in holding areas and assessing safety and well-being while pending processing or transportation. These checks are required every 15 minutes and are required during the period that any person is in CBP custody.

An April 2023 memorandum of agreement shows that HSI agents are being required to perform administrative functions at the Southwest border.

DHS Requesting Volunteers from Federal Workforce

The Biden administration has also repeatedly solicited volunteers from other federal departments, even those not connected to border security, asking for assistance. In March 2021, the administration sent a request for volunteers to help process UACs as part of an HHS detail.[308] A year later, DHS leadership sent a department-wide request asking for more volunteers to assist CBP with the "large numbers" of illegal aliens flooding across the border.[309] Even more recently, in the summer of 2023, DHS sent an internal memo calling for volunteers to assist CBP, looking for "general support and data entry volunteers to perform non-law enforcement and logistics tasks to help our CBP colleagues at the Southwest border."[310]



[308] Eric Katz, "Biden Asks Feds Across Government to Volunteer to Assist at the Border," *Government Executive*, March 26, 2021, https://www.govexec.com/workforce/2021/03/biden-asks-feds-across-government-volunteer-assist-border/172953/.
[309] Adam Shaw, "DHS puts out call for employees to volunteer at southern border amid 'large numbers' of migrants," *Fox News*, March 17, 2022, https://www.foxnews.com/politics/dhs-call-employees-volunteer-border-large-numbers-migrants.
[310] Adam Shaw, "DHS calls for more agency volunteers to help process migrants at southern border," *Fox News,* August 5, 2023, https://www.foxnews.com/politics/dhs-agency-volunteers-help-process-migrants-southern-border.

Conclusion: Mayorkas Has Ceded Control of the Southwest Border to Cartels, National Security Threats

In the early days of the crisis, Texas Rep. Chip Roy and Nicole Bishop, criminal district attorney for Kendall County, Texas, explained that the crisis sparked by Mayorkas' policies at the Southwest border has not only overwhelmed federal and state law enforcement, but has empowered the cartels:

> "And with interior enforcement overrun, cartels are proving they are in control of this crisis. They are profiting handsomely as a result...This is no longer just a border problem; it's a problem for the whole country. There are dangerous people doing horrible things to human beings for profit further and further away from our border and closer and closer to where most of us live. Cartel smugglers are becoming increasingly armed and increasingly emboldened as they expand their operations on U.S. soil."[311]

This conclusion is inescapable. The evidence overwhelmingly demonstrates three incontrovertible facts about cartel operations at the Southwest border and in American communities across the nation.

First, the cartels have seized unprecedented control of the Southwest border. The testimony of experienced border security and law enforcement professionals, to say nothing of the sheer number of illegal aliens and illicit drugs being moved across the border every day, together demonstrate that the cartels now possess a historic level of control at the Southwest border. Despite their heroic efforts, the men and women of federal, state, and local law enforcement have been overwhelmed by the onslaught, and are only able to mitigate some of the consequences of that control.

Second, the cartels have seized control as a result of the open-borders policies of Mayorkas and the Biden administration. These groups have seized on the millions of people streaming through Mexico to the Southwest border to take advantage of Mayorkas' radical "catch and release" policies, confident in the knowledge that if they gain entrance into the United States, they will never be sent home. The cartels have capitalized on this eagerness, and devised insidious new ways to take advantage of vulnerable populations to ensure an effectively endless stream of revenue.

Third, cartel control of the Southwest border has led to dire consequences for Americans and aliens alike. The cartels' operations at the border and in communities across the country have meant more crime, more families ripped apart by addiction, and more vulnerable people exploited and abused. The massive increase in the frequency of these tragedies finds its root in Mayorkas' willful opening of America's borders. Meanwhile, the cartels continue to smuggle an unknown number of potential national security threats across the border, some of whom are simply released into the interior.

[311] Nicole Bishop and Chip Roy, "Drug Cartels Aren't Just a Border Problem," *National Review*, April 26, 2021, https://www.nationalreview.com/2021/04/drug-cartels-arent-just-a-border-problem/.

It is, therefore, this Committee's conclusion that Mayorkas and Biden's policies have emboldened and enriched the cartels, ceded control of America's sovereign Southwest border to these organizations, and jeopardized the safety and security of individuals and communities across this country in the process.

As Sheriff Mark Dannels of Cochise County, Arizona, stated in written testimony to the House Judiciary Committee in February of this year:

> "By allowing our border security mission and immigration laws to be discretionary, these Criminal Cartels continue to be the true winners, their exploitation of mankind is simply "Modern Day Slavery"; allowing thousands of pounds of illicit drugs into our country that continue to erode the core-values of families, schools, and subsequently killing Americans on an average of 270 every day is completely unacceptable at any level. ... Our voice of reason has been buried during what I call an intellectual avoidance by this Administration, and yes, members of [the] U.S. Congress."[312]

The facts are indeed clear—the cartels have been the greatest winners from Mayorkas and Biden's open-borders policies. In his testimony before the House Judiciary Committee on July 26, 2023, Mayorkas brazenly claimed that his policies had "weakened" the cartels.[313] That claim does not withstand even cursory scrutiny.

The next phase of this Committee's investigation will focus in even greater depth on the various human costs of Mayorkas' radical agenda, many of them stemming from the unprecedented control cartels now exercise over the United States' sovereign Southwest border.

(Source: Al Drago/Bloomberg via Getty Images)

[312] U.S. Congress, House of Representatives, Committee on the Judiciary, *Prepared Testimony of Sheriff Mark Dannels for The Biden Border Crisis: Part I*, 118th Cong., 1st sess., February 1, 2023, 3, https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/the-honorable-mark-dannels-testimony.pdf.

[313] "Oversight of the U.S. Department of Homeland Security," *House Judiciary GOP*, YouTube video, 2:24:22, July 26, 2023, https://www.youtube.com/live/cAhJdIQv1IA?feature=share&t=8662.,

Exhibit D

118TH CONGRESS
1ST SESSION

S. RES. _____

To express the sense of the Senate regarding the constitutional right of State Governors to repel the dangerous ongoing invasion across the United States southern border.

IN THE SENATE OF THE UNITED STATES

Mr. MARSHALL submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

To express the sense of the Senate regarding the constitutional right of State Governors to repel the dangerous ongoing invasion across the United States southern border.

Whereas, during a 2019 Democratic presidential primary debate, President Biden called for "all those people seeking asylum" to "immediately surge to the border";

Whereas, during a 2019 Democratic presidential primary debate, President Biden raised his hand when candidates were asked if their health plans will provide coverage for illegal immigrants;

Whereas, during a 2020 Democratic presidential primary debate, President Biden pledged support for "sanctuary cities" when he stated that illegal immigrants arrested by

local police should not be turned over to Federal immigration authorities;

Whereas, on January 20, 2021, one of President Biden's first actions as President was sending proposed legislation, the U.S. Citizenship Act, to Congress, which would provide a path to citizenship for an estimated 10,000,000 to 12,000,000 illegal immigrants who are currently residing in the United States;

Whereas, on January 20, 2021, President Biden also issued a "Proclamation on the Termination Of Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction", which halted construction of physical barriers along the international border between the United States and Mexico, and he later terminated existing border wall construction contracts and failed to obligate more than $1,000,000,000 that Congress had lawfully appropriated for border wall construction;

Whereas, on January 20, 2021, President Biden also halted enrollments in the Migrant Protection Protocols policy, which is also known as the "remain in Mexico" program;

Whereas on February 6, 2021, U.S. Secretary of State Antony Blinken suspended and terminated the Asylum Cooperative Agreements with the Governments of El Salvador, of Guatemala, and of Honduras;

Whereas in March 2022, the Department of Homeland Security began implementing the interim final rule titled "Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers"✖ which authorizes U.S. Citizenship and Immigration Services to consider

the asylum applications of individuals subject to expedited removal and violates the law enacted by Congress that requires asylum seekers to offer evidence to persuade a judge in an immigration court;

Whereas in August 2022, the Department of Homeland Security terminated the Migrant Protection Protocols (commonly known as the Remain in Mexico policy), which required aliens with pending asylum claims to wait in Mexico.

Whereas, during fiscal year 2021, U.S. Immigration and Customs Enforcement executed 59,000 deportations, which represents the lowest number of deportations since fiscal year 2008, and fewer than ⅓ as many deportations as the number of people who were deported during fiscal year 2020, and is significantly lower than the 226,000 to 410,000 removals that occurred every fiscal year since 2008;

Whereas, during fiscal year 2021, U.S. Immigration and Customs Enforcement—

(1) arrested 48 percent fewer convicted criminals than had been arrested during the prior fiscal year;

(2) deported 63 percent fewer criminals than had been deported in the prior fiscal year; and

(3) issued 56 percent fewer "detainer requests" to local authorities than had been issued in the prior fiscal year;

Whereas, during fiscal year 2021, U.S. Customs and Border Protection made more than 1,700,000 arrests of illegal immigrants along the international border between the United States and Mexico, which was the highest level ever recorded until more than 2,300,000 illegal immi-

grants were arrested along such border during fiscal year 2022;

Whereas, on April 1, 2022, President Biden announced the termination of a public health policy used to expel potentially infected illegal immigrants during the COVID–19 pandemic (commonly known as "title 42");

Whereas, on September 30, 2021, Department of Homeland Security Secretary Alejandro Mayorkas issued a memorandum titled "Guidelines for the Enforcement of Civil Immigration Law", which stated that an alien's illegal status in the United States should not be the sole basis of an enforcement action and prioritized for apprehension and removal aliens who are a threat to national security, public safety, or border security;

Whereas, on October 12, 2021, Secretary Mayorkas issued a memorandum titled "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual", which included Department-wide guidance to cease mass worksite operations, among other instructions;

Whereas, on October 27, 2021, Secretary Mayorkas issued a memorandum titled "Guidelines for Enforcement Actions in or Near Protected Areas", which listed numerous protected areas where the enforcement of Federal immigration law should not occur;

Whereas, in May 2022, U.S. Customs and Border Protection arrested 239,416 illegal immigrants along the international border between the United States and Mexico, which is the highest number of arrests ever recorded in a single month;

Whereas President Biden's fiscal year 2023 budget request aims to shift the Department of Homeland Security's border management away from enforcement and toward "effectively managing irregular migration along the Southwest border";

Whereas in November 2022, Texas Governor Greg Abbott—

(1) declared a state of invasion at the southern border; and

(2) increased security at the border to protect the state of Texas by invoking—

(A) section 10 of Article I of the Constitution of the United States; and

(B) the invasion clauses in the Texas Constitution;

Whereas in March 2023, at a hearing of the Committee on Homeland Security of the House of Representatives, U.S. Border Patrol Chief Raul Ortiz told lawmakers that the Department of Homeland Security did not have operational control of the border;

Whereas in March 2023, at a hearing of the Committee on the Judiciary of the Senate, Secretary of Homeland Security Alejandro Mayorkas stated that he does not use the statutory definition of operational control under section 2(b) of the Secure Fence Act of 2006 (Public Law 109–367; 8 U.S.C. 1701 note) when asked if the Department of Homeland Security had operational control of the border;

Whereas on January 6, 2023, the Biden Administration abused its parole authority under section 212(d)(5) of the Immigration Nationality Act (8 U.S.C. 1182(d)(5)) to create a new parole program for nationals of Cuba, Haiti, Nicaragua, and Venezuela;

Whereas on April 27, 2023, the Biden Administration further abused its parole authority by creating a new family reunification parole process, which grants parole to entire categories of aliens rather than granting parole on a case-by-case basis, as required under such section 212(d)(5);

Whereas the Biden Administration created a parole with conditions policy authorizing U.S. Border Patrol agents to release aliens through parole before they are given a Notice to Appear or entered into removal proceedings;

Whereas the Biden Administration has expanded the use of the CBP One app, allowing tens of thousands of aliens to enter the United States unlawfully to hide the mass immigration surge following the termination of the order of suspension issued by the Director of the Centers for Disease Control and Prevention under section 362 of the Public Health Service Act (42 U.S.C. 265) as a result of the public health emergency relating to the COVID–19 pandemic (commonly known as the "title 42 order");

Whereas drug cartels are receiving an estimated $13,000,000,000 each year from their human smuggling operations across the southern border of the United States, which represents an enormous increase from the estimated $500,000,000 the drug cartels received in 2018 from such operations;

Whereas in March 2023, according to the non-detained docket, an estimated 5,290,000 illegal aliens were at large in the United States, including 407,983 criminal aliens;

Whereas the estimated fiscal burden of illegal immigration on taxpayers in fiscal year 2023 is estimated to be $150,700,000,000, which is a massive increase from the

estimated fiscal burden of $116,000,000,000 during fiscal year 2017. Tax payments by illegal aliens are equal to approximately ⅙ of the costs incurred by government entities in the United States on their behalf;

Whereas during fiscal year 2022, total Federal justice enforcement expenditures as a result of illegal immigration were $25,100,000,000 and total Federal welfare program expenditures for illegal aliens were $11,600,000,000;

Whereas in April 2023, the Biden Administration proposed a plan to expand healthcare access for aliens granted deferred action pursuant to the final rule submitted by the Department of Homeland Security titled "Deferred Action for Childhood Arrivals" (87 Fed. Reg. 53152 (August 30, 2022)), further encouraging illegal aliens to enter the United States;

Whereas on May 3 2023, the Office of the Inspector General of the Department of Homeland Security issued a report titled "Intensifying Conditions at the Southwest Border Are Negatively Impacting CBP and ICE Employees' Health and Morale";

Whereas in June 2023, the Committee on Homeland Security of the House of Representatives opened an investigation into Secretary of Homeland Security Mayorkas for dereliction of duty;

Whereas in June 2023, an estimated 16,800,000 illegal aliens resided in the United States, which represents an increase of an estimated 16 percent during the first 2 years of the Biden presidency;

Whereas on June 30, 2023, U.S. Customs and Border Protection announced the expansion of available CBP One appointments to 1,450 per day;

Whereas U.S. Customs and Border Protection has apprehended illegal immigrants from Mexico, Guatemala, El Salvador, Nicaragua, Cuba, Haiti, Brazil, other Central and Latin American nations, Turkey, India, Russia, and other nations outside of the Western Hemisphere;

Whereas U.S. Customs and Border Patrol has apprehended 50 people since October 1, 2021 along the international border between the United States and Mexico who are listed on the Federal Bureau of Investigations' terrorist screening database;

Whereas, U.S. Customs and Border Protection arrested more than 10,800 illegal aliens during fiscal year 2023 who have been convicted of 1 or more crimes in the United States or abroad, including—

(1) 225 convicted sexual criminals;

(2) 24 who were convicted of homicide or manslaughter;

(3) 232 who were convicted of illegal weapons possession, transport, or trafficking;

(4) 644 who were convicted of burglary, robbery, larceny, theft, or fraud; and

(5) 924 who were convicted of assault, battery, or domestic violence;

Whereas, during fiscal year 2022, U.S. Customs and Border Protection seized—

(1) 14,599 pounds of fentanyl;

(2) 1,871 pounds of heroin;

(3) 175,410 pounds of methamphetamine;

(4) 70,293 pounds of cocaine; and

(5) 13,755 pounds of ketamine;

Whereas, provisional data from the National Center for Health Statistics of the Centers for Disease Control and

Prevention estimates that there were 107,622 drug overdose deaths in the United States during 2021, an increase of nearly 15 percent from the estimated 93,655 deaths in 2020, with overdose deaths involving opioids increasing from an estimated 70,029 in 2020 to an estimated 80,816 in 2021, and overdose deaths from synthetic opioids (primarily fentanyl), psychostimulants (such as methamphetamine), and cocaine also increasing during 2021.

Whereas clause 1 of section 10 of article I of the United States Constitution states, in part, "No State shall, without the Consent of Congress . . . engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.";

Whereas section 4 of article IV of the United States Constitution states, in part, "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion";

Whereas, in the context of known security concerns due to a lack of proper vetting processes and systems, and in conjunction with how the mass unlawful movement of people across the border of the United States directly empowers and enriches cartels and transnational gangs, the totality of such activity constitutes an invasion;

Whereas, on October 26, 2021, Arizona State Representative Jake Hoffman sent a letter to Arizona Attorney General Mark Brnovich requesting a formal legal opinion determining whether President Biden has violated his obligations to protect Arizona from invasion under section 4 of article IV of the United States Constitution; and

Whereas, on February 7, 2022, Arizona Attorney General Mark Brnovich issued a formal legal opinion, which states, in part—

(1) "The on-the-ground violence and lawlessness at Arizona's border caused by cartels and gangs is extensive, well-documented, and persistent. It can satisfy the definition of 'actually invaded' and 'invasion' under the U.S. Constitution."; and

(2) "Arizona retains the independent authority under the State Self-Defense Clause to defend itself when actually invaded.": Now, therefore, be it

Resolved, That the Senate finds that—

(1) President Biden's dereliction of duty and failure to take care that the laws be faithfully executed at our southern border has directly put the citizens of all 50 States in danger and has resulted in loss of life;

(2) the violent activity and smuggling of drugs, humans, guns, and other illicit goods carried out by drug cartels and transnational criminal organizations, and the crossing of the international border between legal ports of entry by significant numbers of individuals contrary to the laws of the United States, meet the definitions of—

(A) "actually invaded" under clause 3 of section 10 of article I of the United States Constitution; and

(B) "invasion" under section 4 of article IV of the United States Constitution; and

(3) Governors of all 50 States possess the authority and power as Commander-in-Chief of their respective States to repel the invasion described in paragraph (2).

BEFORE THE ILLLINOIS STATE BOARD OF ELECTIONS
SITTING EX-OFFICIO AS THE STATE OFFICERS ELECTORAL BOARD

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, AND DARRYL P. BAKER,	)	
Petitioners-Objectors,	)	No. 24 SOEB GP 517
v.	)	
DONALD J. TRUMP,	)	
Respondent-Candidate.	)	

HEARING OFFICER REPORT AND RECOMMENDED DECISION

Background of the Case

This matter commenced with the Objector's filing of a Petition to Remove the Candidate, Donald J. Trump from the ballot on January 4, 2024. In summary, the Objector's Petition, and the corresponding voluminous exhibits in support thereof, seek a hearing and determination that Candidate Trump's Nomination Papers are legally and factually insufficient based on Section 3 of the 14th Amendment and based on 10 ILCS 5/7-10 of the Illinois Election Code. The crux of these allegations center around the violent incidents of January 6, 2021 at the United States Capitol building in Washington D.C. and what Candidate Trump's involvement and/or participation in those violent events was. The Petition alleges "Candidate's nomination papers are not valid because when he swore in his Statement of Candidacy that he is "qualified" for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely" based on his participation in the January 6, 2021, events. [See Page 2, Paragraph 8 of Objector's Petition].

The Petition further asks this Board to determine that President Trump is disqualified under Article 3 of the Fourteenth Amendment which states in relevant part that ""No person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, . . . as an officer of the United States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

The factual determination before the Board therefore is first, whether those January 6, 2021, events amount to an insurrection. Next, if those events do constitute an insurrection, the question that requires addressing is whether the Candidate's actions leading up to, and on January 6, 2021, amounts to having "engaged" or "given aid" or "comfort" as delineated under Section 3 of the 14th Amendment. However, before the Hearing Officer addresses the factual

determination on the merits, the procedural issues, including the Motions that were filed, must be addressed.

Procedural History

Following the filing of the Petition on January 4, 2024, an Initial Case Management Conference was conducted on January 17, 2024. At the Initial Case Management Conference, the Parties were provided an Initial Case Management Order with corresponding deadlines for certain motions. As part of these proceedings, and in compliance with the Case Management Order, the Candidate filed a timely Motion to Dismiss on January 19, 2024. The Objectors also filed a timely Motion for Summary Judgment. Responses to those Motions were timely filed by the parties on January 23, 2024. Replies to the respective Motions were filed by the parties. Candidate sought a brief extension to file his Reply. The extension was unopposed by the Objectors. The extension was granted without objection and is considered timely. A link to the filings and exhibits is found here for the Board's convenience.

https://1drv.ms/f/s!AiUfM7KmKopbifBCDf_deqdCAMAgrg?e=xhUj5i

The Hearing Officer heard argument on the matter on January 26, 2024. Each party was provided with one hour for their argument. The Hearing Officer commends the attorneys for both Objectors and the Candidate for their cooperation and professionalism. Each of these motions, as well as the merits of the case are addressed in turn. For procedural reasons, we first begin with the Motion to Dismiss. The Hearing Officer further notes that the sufficiency, quality, quantify, and nature of the signatures on the Petition is not challenged and therefore the signatures are deemed sufficient.

Candidate's Motion to Dismiss

The Candidate's Motion to Dismiss states it raises five grounds, but in actuality the Hearing Officer, from the Brief, recognizes six separate arguments raised for dismissal. Those grounds argued by Candidate are as follows:

1. Illinois law does not authorize the SOEB to resolve complex factual issues of federal constitutional law like those presented by the Objectors, especially in light of the United States Supreme Court considering the same issues on an expedited basis.
2. Political questions are to be decided by Congress and the electoral process—not courts or administrative agencies.
3. Whether someone is disqualified under Section Three of the Fourteenth Amendment, is a question that can be addressed only in procedures prescribed by Congress, not by the SOEB.
4. Whether Section Three of the Fourteenth Amendment bars holding office, rather than running for office, and that states cannot constitutionally enlarge the disqualification from the "holding of office stage" to the earlier stage of "running for office."

5. That "officer of the United States," under Section 3 of the Fourteenth Amendment excludes the office of the President.
6. Lastly, even if Section Three of the Fourteenth Amendment applied here and the Board was empowered to apply it, Candidate argues that Objectors have not alleged facts sufficient to find that President Trump "engaged in insurrection."

Candidate's First Ground

Candidate first argues that "Illinois law does not authorize the [Illinois State Officer's Electoral Board] SOEB to resolve complex factual issues of federal constitutional law like those presented by the Objections." Candidate argues that "[10 ILCS 5] Section 10-10 [Of the Illinois Election Code] (and relevant caselaw) makes clear the SOEB's role is to evaluate the form, timeliness and genuineness of the nominating papers and that the SOEB is not authorized to conduct a broad-ranging inquiry into a candidate's qualifications under the U.S. Constitution." [See Candidate's Motion to Dismiss, Page 4].

Section 10 ILCS 5/10-10, in relevant part, states as follows:

> "The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1. The electoral board must state its findings in writing and must state in writing which objections, if any, it has sustained."

The Candidate argues that the SOEB does not have the authority to reach such complex issues of fact and law. Specifically, he argues that the questions of whether an insurrection happened, and constitutional application of Section 3 of the Fourteenth Amendment are beyond the purview of the power authorized to the SOEB in Section 10-10. Candidates' argument is that this is a fact intensive issue, and without proper vehicles of discovery the procedures afforded by the SOEB "are wholly inadequate for the kind of full-scale trial litigation and complex evidentiary presentation." [See Candidate's Motion to Dismiss, Pages 5-6].

Objectors, in response to this contention, argue that "There is no authority for the unworkable proposition that the Electoral Board's authority to hear objections depends on a subjective consideration of where the facts fall on a continuum from simple to complex." [See Objector's Response, Page 5]. Objectors also rely on Section 10-10 citing specifically to the language from the statute that the SOEB "shall decide whether or not the certificate of

nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained." Objector further cites to *Goodman v. Ward*, 241 Ill. 2d 398 (2011) claiming that "the Illinois Supreme Court has clearly directed that determinations of the validity of a candidate's nominating papers include whether the candidate has falsely sworn that they are qualified for the office specified, and candidate qualifications include constitutional qualifications."

Candidate's Second Ground

Candidate next argues that this matter is a political question, for which the Courts must decide. The Candidate contends that "the vast weight of authority has held that the Constitution commits to Congress and the electors the responsibility of determining matters of presidential candidates' qualifications."

The political question doctrine bars courts from adjudicating issues that are "entrusted to one of the political branches or involve no judicially enforceable rights." *Vieth v. Jubelirer*, 541 U.S. 267, 277 (2004). In *Baker v. Carr*, 369 U.S. 186, 217 (1962) the Supreme Court described six circumstances that can give rise to a political question:

> "[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Id*.

The *Baker* Court held that, "[u]nless one of these formulations is inextricable from the case at bar, there should be no dismissal for non-justiciability on the ground of a political question's presence. *Castro v. New Hampshire Sec'y of State*, 2023 WL 7110390, at *7. The question therefore becomes, whether the issue before the SOEB, falls into one of these six categories. More recent United States Supreme Court precedent has seemingly narrowed this to two factors. See *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195, 132 S. Ct. 1421, 1427, 182 L. Ed. 2d 423 (2012) holding that "we have explained that a controversy "involves a political question ... where there is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it."

Candidate offers precedent that is directly on point. In particular, *Castro*, the United States District Court for the District of New Hampshire, presiding over a nomination issue involving the same candidate, and the same claim for insurrection, found that this is a nonjusticiable political question barring the Courts from intervening. In so determining, the *Castro* Court recognized prior precedent from *Grinols v. Electoral Coll.*, 2013 WL 2294885, at

*6 (E.D. Cal. May 23, 2013) that held "the Twelfth Amendment, Twentieth Amendment, Twenty-Fifth Amendment, and the Article I impeachment clauses, "make it clear that the Constitution assigns to Congress, and not the Courts, the responsibility of determining whether a person is qualified to serve as President. As such, the question presented by Plaintiffs in this case…is a political question that the Court may not answer." *Castro* at 8.

In response to the precedent cited by Candidate, Objectors contend that the cases involved do not involve a section 3 constitutional challenge. In response, Objectors contend that:

1. Section 3, unlike other Constitutional provisions to which the doctrine applies, is not reserved for Congressional action in its text.
2. Section 3 involves judicially manageable standards, as illustrated by courts that have repeatedly applied and interpreted it.
3. Federal circuit court precedent that the Motion fails to cite demonstrates the inapplicability of the doctrine, as does the Colorado Supreme Court decision giving it close analysis.
4. A host of the cases cited in the Motion do not stand for the propositions relied on and do not hold up against the on-point precedent.

In conflict with *Castro*, is the recent Colorado Supreme Court decision, *Anderson v. Griswold*, 2023 WL 8770111 (Cob. Dec. 19, 2023). The *Anderson* Court "perceive[d] no constitutional provision that reflects a textually demonstrable commitment to Congress of the authority to assess presidential candidate qualifications." Id at ¶ 112. The decision further notes that state legislatures have developed comprehensive and complex election codes involving the selection and qualification of candidates. See also *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 1279, 39 L. Ed. 2d 714 (1974). The *Anderson* decision further finds that "Section Three's text is fully consistent with our conclusion that the Constitution has not committed the matter of presidential candidate qualifications to Congress…although Section Three requires a "vote of two-thirds of each House" to remove the disqualification set forth in Section Three, it says nothing about who or which branch should determine disqualification in the first place."

Candidate's Third Ground

Candidate next argues that the determination of an insurrection can only be made by Congress. In support of this argument, Candidate relies on *In re Griffin*, 11 F Cas 7 (C.C.D. Va. 1869). The *Griffin* Court found that enforcement of Section 3 is limited to Congress. Objectors argue *Anderson v. Griswold* rejected this argument and that the *Griffin* case is wrongly decided.

Candidate's Fourth Ground

Candidate next argues that Section 3 of the Fourteenth Amendment bars holding office, not running for office. In support of this argument Candidate relies on *Smith v. Moore*, 90 Ind. 294,

303 (1883) which allowed Congress to remove disabilities after they were elected. Candidate further argues the Constitution prohibits States from accelerating qualifications for elected office to an earlier time than the Constitution specifies. Candidate gives the example of Schaefer *v. Townsend*, 215 F.3d 1031, 1038 (9th Cir. 2000). In *Shaefer* California once tried to require congressional candidates to be residents of the state at the time when they were issued their nomination papers—rather than "when elected," as the Constitution says. Candidate also cites *US Term Limits, Inc v Thornton*, 514 US 779, 827, 115 S Ct 1842, 1866 (1995) (States do not "possess the power to supplement the exclusive qualifications set forth in the text of the Constitution.").

Objectors argue that the cases relied upon by Candidate are inapplicable. Objectors argue that a Candidate can control and can promise that he or she will be a resident of the state for the position that he is running for in the future.

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Candidate's Fifth Ground

Candidate includes the fifth ground within his fourth ground, but this appears to be a separate challenge. Here Candidate argues that the president is not an officer of the United States under the constitution. The Objectors disagree. Both sides cite a litany of sources, including Judges and the Constitution itself in support of their respective positions. This Hearing Officer has no doubt that given infinite resources, even more sources could be found to support both positions.

Candidate's Sixth Ground

The Candidate's final argument is that insufficient facts have been pled to amount to an insurrection. Although the section is not mentioned, this is the functional equivalent of a 735 ILCS 5/2-615 or Federal Rule of Civil Procedure 12(b)(6) argument. The Hearing Officer treats it as such. Under this section, Candidate puts forth sub-arguments. First, he contends that an insurrection has not been alleged. Candidate puts forth that "Dictionaries of the time confirm that "insurrection" meant a "rebellion of citizens or subjects of a country against its government," and "rebellion" as "taking up arms traitorously against the government.

Candidate next argues that he did not engage in the insurrection. Within this argument he says pure speech cannot amount to engaging in an insurrection. Candidate says that incitement alone cannot equal engagement. Both parties concede that Trump himself did not act with violence., The question therefore becomes whether words alone can amount to engaging in an insurrection.

Objectors' Motion for Summary Judgment

The Hearing Officer now turns his attention to the Motion for Summary Judgment, which also asks for the Petition to be Granted. The request for a ruling on the merits will be addressed separately. First, the Motion for Summary Judgment must be addressed.

In support of the Motion for Summary Judgment, Objectors cite a series of what they claim are undisputed facts. A summary recitation of those facts is warranted. It is clearly undisputed that Candidate Trump took an oath to preserve and protect the Constitution of the United States. It is also clearly undisputed that Candidate Trump ran for re-election. Further, it is alleged that Candidate Trump refused in a September 2020 press conference to acknowledge a peaceful transfer of power if he lost. It is further alleged that Candidate Trump regularly tweeted that if he lost it would be a result of election fraud, and that after he lost, he continued to claim election fraud. It is alleged that Candidate Trump's lawful means of contesting the election results failed. It is alleged that Candidate Trump attempted to convince the Department of Justice to adopt his narrative and failed. It is alleged that Candidate Trump was made aware of plans for violence on January 6, 2021, that despite this information, Trump went ahead with his rally. It is alleged that Candidate Trump had reason to know or believe prior to January 6, that the January 6, 2021, protests would be violent. It is alleged that on January 6, Candidate Trump began to call out Vice-President Pence' s name at the demonstration and ask him to reject the election results or that Trump will be "very disappointed in [him]." It is alleged that attacks began on the Capitol, and that Candidate Trump was aware of the attacks taking place on the Capitol. It is alleged that Candidate Trump tweeted, among other things, that "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution." It is alleged that Candidate Trump tweeted this while the attacks were ongoing and knew that the attacks were ongoing, and that this tweet led to increased violence. It is alleged that Candidate Trump subsequently tweeted "Stay peaceful." It is alleged that Candidate Trump did not call the National Guard despite what was happening. Objector's narrative of facts is quite lengthy, and significantly more detailed than what is laid out here. This is not meant to be an exhaustive retelling of the narrative, but rather a quick synopsis.

As Objector's point out, summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c).

Recommendations on Dispositive Motions

A. Objectors' Motion for Summary Judgment.

The Hearing Officer finds that there are numerous disputed material facts in this case, as well wide range of disagreement on material constitutional interpretations. **Hearing Officer recommends that the Board deny the Objectors' Motion for Summary Judgment**.

B. Candidate's Motion to Dismiss.

Candidate argues in his Motion to Dismiss that the Objector's Petition should be dismissed for several reasons. One of particular interest to the Electoral Board is the argument that "As a creature of statute, the Election Board possesses only those powers conferred upon it by law" and "[a]ny power or authority [the Election Board] exercises must find its source within the law pursuant to which it was created." *Delgado v. Bd. of Election Comm'rs*, 224 Ill. 2d 481,485 (Ill. 2007*).* Candidate's Motion to Dismiss Objector's Petition, page 5.

In *Delgado*, the Illinois Supreme Court found that the Election Board (City of Chicago) exceeded its authority when it overruled the Hearing Officer's recommendation and concluded that a provision of the Illinois Municipal Code was unconstitutional: "Administrative agencies such as the Election Board have no authority to declare a statute unconstitutional or even to question its validity. (Cites omitted). In ruling as it did, the Election Board therefore clearly exceeded its authority." *Id., at 485.*

A more recent decision of the Illinois Supreme Court, *Goodman v. Ward*, 241 Ill.2d 398 (2011), further illustrates the limits that the Court places upon an Election Board. In *Goodman,* Chris Ward, an attorney licensed to practice law in Illinois, filed a petition with the Will County Officers electoral board to have his name placed on the primary ballot as a candidate for circuit judge. At the time he filed his petition, Ward was not a resident of the subcircuit he wished to run in. Two of the three officers of the electoral board decided that Ward could appear on the ballot because governing provisions of the Illinois Constitution were "arguably ambiguous and uncertain." The Court affirmed the lower court's reversal of the electoral board, holding, " ... the electoral board overstepped its authority when it undertook this constitutional analysis. It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Goodman*, *at 414-415.*

The Illinois Supreme Court in these two decisions has clearly placed a limit upon what an electoral board can consider when ruling on an objection. In *Delgado*, the Court makes it clear that an electoral board may not, in performing its responsibilities in ruling on an objection, go so far as to even question the constitutionality of what it considers to be a relevant statute. The language in *Goodman* extends this prohibition when it uses the language of "constitutional analysis." Thus, an electoral board goes too far not just when it holds a statute unconstitutional but also goes too far when it enters the realm of constitutional analysis. Instead, as the Court wrote, "It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code." *Id., at 414-415.*

The question, then, is whether the Board can decide whether candidate Trump is disqualified by Section 3 of the Fourteenth Amendment, without embarking upon constitutional analysis.

The clear answer is that it cannot.

It is impossible to imagine the Board deciding whether Candidate Trump is disqualified by Section 3 without the Board engaging in significant and sophisticated constitutional analysis.

Section 3 of the Fourteenth Amendment reads as follows:

> Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Much of the language in Section 3, which is part of the United States Constitution, is the subject of great dispute, giving rise to several separate constitutional issues. These issues are being raised in the case now before the Board, even as these issues in dispute are now pending before the United States Supreme Court, Case No.23-719, Donald J. Trump, Petitioner v. Norma Anderson, et al., Respondents.

A breakdown, by issue, makes clear how the issues in dispute in this case are constitutional issues currently before the United States Supreme Court:

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue in their Motion to Dismiss the Objectors' Petition that Section 3 does not bar President Trump running for office. In their petition in support of their position they argue that Section 3 applies to holding office, not running for office.

That very issue is before the United States Supreme Court: "… section 3 cannot be used to deny President Trump (or anyone else) access to the ballot, as section 3 prohibits individuals only from *holding* office, not from *seeking* or *winning election* to office.

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue in their Motion to Dismiss the Objectors' Petition that the constitutional phrase "officers of the United States" excludes the President.

That issue is also before the United States Supreme Court: "The Court should reverse the Colorado decision because President Trump is not even subject to section 3, as the President is not an "officer of the United States" under the Constitution."

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue that Section 3 of the Fourteenth Amendment Can Be Enforced Only as Prescribed by Congress.

That issue is also before the United States Supreme Court: "…state courts should have regarded congressional enforcement legislation as the exclusive means for enforcing section 3, as Chief Justice Chase held in *In re Griffin*, 11 F. Cas. 7, 26 (C.C.D. Va. 1869) (*Griffin's Case*).

Counsel for Candidate in this case, No. 24 SOEB GP 517, argue that President Trump did not engage in insurrection within the meaning of Section Three.

That issue is also before the United States Supreme Court: "And even if President Trump were subject to section 3 he did not "engage in" anything that qualifies as "insurrection."

There is wisdom in the Illinois Supreme Court fashioning decisions which prohibit electoral boards from engaging in constitutional analysis. As the Candidate argues in his Motion to Dismiss, "The Board can and does resolve disputes about nominations and qualifications on records that are undisputed or (in the Board's estimation) not materially disputed. It does not and cannot hold lengthy and complex evidentiary proceedings of the kind that would be needed to assess objections like these."

The Rules of Procedure adopted by the State Board of Elections provides the following schedule for filing of briefs and motions within a time period between January 19, 2024 and January 25, 2024:

> **Schedule of Brief and Motion Filing**
> **Candidate's Motion to Strike and/or Dismiss or other similar motion (MTD)**
> **Objector's Motion for Summary Judgment or other similar motion (MSJ)**
> Must be filed no later than 5:00 p.m. on the second business day, **Friday, January 19, 2024,** following the date of the Initial Meeting of the Board, unless extended by the Board or Hearing Officer for good cause shown.
> **Objector's Response to Candidate's MTD**
> **Candidate's Response to Objector's MSJ**
> Must be filed no later than 5:00 p.m. on the second business day following the due date of the Candidate's MTD or Objector's MSJ, **Tuesday, January 23, 2024,** unless extended by the Board or Hearing Officer for good cause shown.
> **Candidate's Reply to Objector's Response to Candidate's MTD**
> **Objector's Reply to Candidate's Response to Objector's MSJ**
> Must be filed no later than 5:00 p.m. on the second business day following the due date of the Objector's Response to the Candidate's MTD or the Candidate's Response to the Objector's MSJ, **Thursday, January 25, 2024,** unless extended by the Board or Hearing Officer for good cause shown.

Any memorandum of law in support of any of the above pleadings shall accompany such pleading.
Briefs on any issue(s) shall be filed as directed by the Board or the Hearing Officer.
(APPENDIX A to Rules)

The Rules, as if it were even necessary to do, make it clear to all parties that the hearings are handled in an expedited manner:

1. **EXPEDITED PROCEEDINGS**
   a. Timing. On all hearing dates set by the Board or its designated Hearing Officer (other than
   the Initial Meeting), the objector and the candidate shall be prepared to proceed with the hearing of their case. Due to statutory time constraints, the Board must proceed as expeditiously as possible to resolve the objections. Therefore, there will be no continuances or resetting of the Initial Meeting or future hearings except for good cause shown.
   (Rule 1a.)

The Rules provide for very little discovery, although Rule 8 does allow for request of subpoenas:

Rule 8 provides a procedure for subpoenas:

a. Procedure and deadlines for general subpoenas.

1. Any party desiring the issuance of a subpoena shall submit a written request to the Hearing Officer. Such request for subpoena may seek the attendance of witnesses at a deposition (evidentiary or discovery; however, in objection proceedings, all depositions may be used for evidentiary purposes) or hearing and/or subpoenas *duces tecum* requiring the production of such books, papers, records, and documents as may relate to any matter under inquiry before the Board.

2. The request for a subpoena must be filed no later than **5:00 p.m. on Friday, January 19, 2024,** and shall include a copy of the subpoena itself and a detailed basis upon which the request is based. A copy of the request shall be given to the opposing party at the same time it is submitted to the Hearing Officer. The Hearing Officer shall submit the same to the Board (via General Counsel) no later than **5:00 p.m. on Monday, January 22, 2024.** The Chair and Vice Chair shall consider the request and the request shall only be granted by the Chair and Vice Chair.

3. The opposing party may submit a response to the subpoena request; however, any such response shall be given to the Hearing Officer no later than **4:00 p.m. on Monday, January 22, 2024,** who shall then transmit it to the Chair and Vice Chair (through the General Counsel's office) with the subpoena request. The Hearing Officer shall issue a recommendation on whether the subpoena request should be granted no later than **5:00**

p.m. on Wednesday, January 24, 2024. The Chair and Vice Chair may limit or modify the subpoena based on the pleadings of the parties or on their own initiative.

4. Any subpoena request, other than a Rule 9 subpoena request, received subsequent to **5:00 p.m. on Friday, January 19, 2024,** will not be considered without good cause shown.

5. If approved, the party requesting the subpoena shall be responsible for proper service thereof and the payment of any fees required by Illinois Supreme Court Rule or the Circuit Courts Act. *See* 10 ILCS 5/10-10; S. Ct. Rule 204, 208, and 237; 705 ILCS 35/4.3.

This subpoena procedure leaves little time to serve a person. In addition, there is no room for continuances, as the Board rules on the objections on January 30, the Tuesday following the hearing set on January 26.

All in all, attempting to resolve a constitutional issue within the expedited schedule of an election board hearing is somewhat akin to scheduling a two-minute round between heavyweight boxers in a telephone booth.

It is clear from the Election Code and the Rules of Procedure that the intent is for the Board to handle matters quickly and efficiently to resolve ballot objections so that the voting process will not be delayed as a result of protracted litigation. With the rules guaranteeing an expedited handling of cases, the Election Code is simply not suited for issues involving constitutional analysis. Those issues belong in the Courts.

Objectors point to the decision of the Colorado Supreme Court (now before the United States Supreme Court), and the Maine Secretary of State, both of which did resolve the candidate challenges in favor of the objectors and ordered the name of Donald J. Trump removed from the primary ballot.

It is worth taking a closer look at the Colorado opinion. (The Maine decision relied heavily on that opinion, which was announced during its proceeding.)

In *Anderson v Griswold*, 2023 CO 63, the Colorado Supreme Court case which is the subject of the United States Supreme Court appeal, the Colorado Court concluded "that because President Trump is disqualified from holding the office of President under Section Three, it would be a wrongful act under the Election Code for the Secretary to list President Trump as a candidate on the presidential primary ballot." In doing so, the Court upheld the rulings of the trial court, but reversed the trial court's decision that Section 3 did not apply to President Trump.

In their brief, the Objectors in 24 SOEB GP 517 argue that the opinion of the Colorado Supreme Court is a well-reasoned 133-page opinion. What the Objectors fail to say is that the opinion is a four to three decision, with three lengthy dissents.

The Colorado Supreme Court ("The Court") approved the decision by the trial judge to allow into evidence thirty-one findings from the report drafted by the House Select Committee to Investigate the January 6th Attack on the United States Capitol ("The Report"). The Court based its ruling on Federal Rule of Evidence 803(8) and its mirror rule in the Colorado Rules of Evidence. The Illinois Rules of Evidence contain the same rule in its own 803(8).

The Court found that the expedited proceedings in an election challenge provided adequate due process for the litigants: "… the district court admirably—and swiftly—discharged its duty to adjudicate this complex section 1-1-113 action, substantially complying with statutory deadlines." *Anderson*, at 85. (reference is to paragraph, not page). Whether there was substantial compliance is a matter of debate- one dissenting justice wrote that "if there was substantial compliance in this case, then that means substantial compliance includes no compliance." See discussion below.

On the issue of whether Section 3 of the Fourteenth Amendment is self-executing, the Court found that it was: "In summary, based on Section Three's plain language; Supreme Court decisions declaring its neighboring, parallel Reconstruction Amendments self-executing; and the absurd results that would flow from Intervenors' reading, we conclude that Section Three is self-executing in the sense that its disqualification provision attaches without congressional action." Id, at 106.

In arriving at their decision, the Court was required to analyze the *In re Griffin,* 11 F. Cas. 7 (C.C.D. Va. 1869) (No. 5,815) ("*Griffin's Case*"). *Griffin's Case* is a non-binding opinion written by Chief Justice Salmon Chase while he was riding circuit. Caesar Griffin challenged his criminal conviction because the judge who convicted him had previously served in Virginia's Confederate government. Chief Justice Chase concluded that Section 3 could be applied to disqualify only if Congress provided legislation describing who is subject to disqualification as well as the process for removal from office. Thus, Chief Justice Chase concluded that Section Three was not self-executing. *Griffin's Case,* at 26. Caesar Griffin's conviction and sentence were ordered to stand. Nonetheless, the Court concluded that congressional action was only one means of disqualification, and that Colorado's election process provided another, equally valid, method of determining whether a candidate for office was disqualified under Section 3. *Id.* at 105. That alternative to Congressional action is an election challenge hearing.

The Court went on to address each of the Constitutional issues raised by Candidate Trump, deciding each in favor of the objectors.

For example, the Court, found that "the record amply established that the events of January 6 constituted a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish the peaceful transfer of power in this country. Under any viable definition, this constituted an insurrection." *Anderson,* at 189.

The Court concluded that the "record fully supported the district court's finding that President Trump engaged in insurrection within the meaning of Section Three,*" Id.* at 225, and ordered that President Trumps' name not be placed on the 2024 presidential primary ballot.

Three justices wrote dissenting opinions.

Justice Boatright described in detail that the complexity of the Electors' claims cannot be squared with section 1-1-113's truncated timeline for adjudication. *Id.* at 264-268. He noted that under Colorado election law, a hearing is to be held within five days; in this case, however, it took nearly two months for a hearing to be held, a fact he argues is proof that the election procedures are inadequate for complex constitutional objections. *Id.* at 266.

Justice Samour argued in his opinion Section 3 was not self-executing; further, that the Colorado procedures dictating expedited proceedings denied President Trump due process.

Hearing Officer's Findings and Recommendation re Candidate's Motion to Dismiss

1. While the timeline for conducting a hearing and issuing findings is similar in both the Illinois election code and the Colorado election code, there are substantial differences, at least in terms of handling identical objections involving Section 3 of the Fourteenth Amendment;

2. In Colorado a trial judge hears evidence at a hearing while in Illinois, the Board conducts the hearing, typically through an appointed hearing officer;

3. The instant Illinois case, 24 SOEB GP 517, was called on January 18, 2024, the same day a hearing officer was appointed to handle the case. with hearing set on January 26, 2024. As described in Appendix A, above, a mad scramble of motions, responses and replies then took place, between January 19 and January 25. The hearing was held on the 26th, with an opinion expected to be filed by the hearing officer in advance of the Election Board hearing set for January 30th. There was no opportunity for meaningful discovery or subpoena of witnesses;

4. The Colorado hearing did not take place for nearly two months following the initial filing of the objection. The hearing lasted more than a week, with a full week devoted to taking testimony. At the hearing, several witnesses testified, including an expert witness in Constitutional law by each party; thereafter, closing arguments were held and a decision was rendered several days later;

5. Illinois law, including the Supreme Court decisions of *Goodman* and *Delgado* prohibit the Election Board from addressing issues involving constitutional analysis.

Recommendation on Candidate's Motion to Dismiss

The Hearing Officer finds that there is a legal basis for granting the Candidate's Motion to Dismiss the Objectors' Petition and **recommends** to the Board that the Motion to Dismiss be **granted.**

Hearing Officer's Findings and Recommendation Regarding the Objector's Petition

1. It is a unique feature of the Rules of Procedure that the final decision on dispositive motions, such as the Motion to Dismiss, are to be made by the Board. Inasmuch as the Board may decline to follow the Hearing Officer's recommendation, and that evidence has been received on the Objector's Petition, it is incumbent upon the hearing officer that he makes findings on the evidence received at the hearing and make a **recommendation** to the Board regarding a decision based on the evidence.

2. The Hearing Officer has received into evidence for consideration numerous exhibits. This evidence also includes the trial testimony heard in the case of *Anderson v.Griswold*, 2023 Co 63 (2023).

3. The Hearing Officer, pursuant to the Stipulated Order Regarding Trial Transcripts and Exhibits from the Colorado Action, has reviewed the entire transcript, consisting of several hundred pages, and finds while the hearing/trial did not afford all the benefits of a criminal trial, (e.g., right to trial by jury; proponent bearing a burden of beyond a reasonable doubt), the proceedings was conducted in a fashion that guaranteed due process for President Trump: parties had the benefit of competent counsel, the right to subpoena witnesses and the right to cross-examine witnesses. The proceeding was conducted in an open and fair manner, with no undue time restrictions that would effect the length of testimony on direct or cross. The parties clearly took advantage of the fact that they were not constrained by the typical expedited manner in which election challenges are normally carried out in Colorado. In fact, one dissenting justice on the Supreme Court commented on the greatly relaxed time frame, in response to the majority claim that the hearing was held in substantial compliance with the statute, by stating that if what the majority claimed was substantial compliance, then that

meant that substantial compliance included no compliance at all. In comparison to the Illinois procedure, the parties had several weeks to prepare for hearing. The result was that the witnesses included two constitutional law professors, with specialty in the history of the Fourteenth Amendment. Further, the lead investigator for the House Select Committee investigating the January 6 Attack upon the United States Capitol testified. A signed copy of the stipulation regarding testimony taken at the Coloado hearing has been transmitted to the General Counsel.

4. Hearing Officer finds that the January 6 Report, including its findings, may properly be considered as evidence, as it was by the Colorado trial court, based on Illinois Rule of Evidence 803(8), as well as the relaxed rules of evidence at an administrative hearing. Hearing Officer further finds, after reviewing the Report, that it is a trustworthy report, the result of months of investigation conducted by professional investigators and a staff of attorneys, many of whom with substantial experience in federal law enforcement. The findings of the Report are attached to this opinion.

5. Ultimately, even when giving the Candidate the benefit of the doubt wherever possible, in the context of the events and circumstances of January 6, 2024, the Hearing Officer recommends that the Board find in favor of the Objectors on the merits by a preponderance of the evidence. While the Candidate's tweets to stay peaceful may give the candidate plausible deniability, the Hearing Officer does not find that denial credible in light of the circumstances. Dr. Simi's testimony in the Colorado trial court provides a basis for finding that the language used by the candidate was recognizable to elements attending the January 6 rally at the ellipse as a call for violence upon the United States Capitol, the express purpose of the violence being the furtherance of the President's plan to disrupt the electoral count taking place before the joint meeting of Congress.

6. The evidence shows that President Trump understood the divided political climate in the United States. He understood and exploited that climate for his own political gain by falsely and publicly claiming the election was stolen from him, even though every single piece of evidence demonstrated that his claim was demonstrably false. He used these false claims to garner further political support for his own benefit by inflaming the emotions of his supporters to convince them that the election was stolen from him and that American democracy was being undermined. He understood the context of the events of January 6, 2021 because he created the climate. At the same time he engaged in an elaborate plan to provide lists of fraudulent electors to Vice President Pence for the express purpose of disrupting the peaceful transfer of power following an election.
7. Even though the Candidate may not have intended for violence to break out on January 6, 2021, he does not dispute that he received reports that violence was a likely possibility on January 6, 2021. Candidate does not dispute that he knew violence was occurring at the capitol.. He understood that people were there to support him. Which makes one single piece of evidence, in this context, absolutely damning to his denial of his participation: the tweet regarding Mike Pence's lack of courage while Candidate knew the attacks were going on is inexplicable. Candidate knew the attacks were

occurring because the attackers believed the election was stolen, and this tweet could not possibly have had any other intended purpose besides to fan the flames. While it is true that subsequently, but not immediately afterwards, Candidate tweeted calls to peace, he did so only after he had fanned the flames. The Hearing Officer determines that these calls to peace via social media, coming after an inflammatory tweet, are the product of trying to give himself plausible deniability. Perhaps he realized just how far he had gone, and that the effort to steal the election had failed because Vice President Pence had refused to accept the bag of fraudulent electors. It was time to retreat, with a final tweet telling the nation that he loved those who had assembled and attacked the caitol.

CONCLUSION

In the event that the Board decides to not follow the Hearing Officer's recommendation to grant the Candidate's Motion to Dismiss, the Hearing Officer recommends that the Board find that the evidence presented at the hearing on January 26, 2024 proves by a preponderance of the evidence that President Trump engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment, and should have his name removed from the March, 2024 primary ballot in Illinois.

Submitted by

Clark Erickson

Hearing Officer

Date _____

FINDINGS OF THE JANUARY 6 HOUSE SELECT COMMITTEE REPORT

This Report supplies an immense volume of information and testimony assembled through the Select Committee's investigation, including information obtained following litigation in Federal district and appellate courts, as well as in the U.S. Supreme Court. Based upon this assembled evidence, the Committee has reached a series of specific findings,[19] including the following:

1. Beginning election night and continuing through January 6th and thereafter, Donald Trump purposely disseminated false allegations of fraud related to the 2020 Presidential election in order to aid his effort to overturn the election and for purposes of soliciting contributions. These false claims provoked his supporters to violence on January 6th.

2. Knowing that he and his supporters had lost dozens of election lawsuits, and despite his own senior advisors refuting his election fraud claims and urging him to concede his election loss, Donald Trump refused to accept the lawful result of the 2020 election. Rather than honor his constitutional obligation to "take Care that the Laws be faithfully executed," President Trump instead plotted to overturn the election outcome.

3. Despite knowing that such an action would be illegal, and that no State had or would submit an altered electoral slate, Donald Trump corruptly pressured Vice President Mike Pence to refuse to count electoral votes during Congress's joint session on January 6th.

4. Donald Trump sought to corrupt the U.S. Department of Justice by attempting to enlist Department officials to make purposely false statements and thereby aid his effort to overturn the Presidential election. After that effort failed, Donald Trump offered the position of Acting Attorney General to Jeff Clark knowing that Clark intended to disseminate false information aimed at overturning the election.

5. Without any evidentiary basis and contrary to State and Federal law, Donald Trump unlawfully pressured State officials and legislators to change the results of the election in their States.

6. Donald Trump oversaw an effort to obtain and transmit false electoral certificates to Congress and the National Archives.

7. Donald Trump pressured Members of Congress to object to valid slates of electors from several States.

8. Donald Trump purposely verified false information filed in Federal court.

9. Based on false allegations that the election was stolen, Donald Trump summoned tens of thousands of supporters to Washington for January 6th. Although these supporters were angry and some were armed, Donald Trump instructed them to march to the Capitol on January 6th to "take back" their country.

10. Knowing that a violent attack on the Capitol was underway and knowing that his words would incite further violence, Donald Trump purposely sent a social media message publicly condemning Vice President Pence at 2:24 p.m. on January 6th.

11. Knowing that violence was underway at the Capitol, and despite his duty to ensure that the laws are faithfully executed, Donald Trump refused repeated requests over a multiple hour period that he instruct his violent supporters to disperse and leave the Capitol, and instead watched the violent attack unfold on television. This failure to act perpetuated the violence at the Capitol and obstructed Congress's proceeding to count electoral votes.

12. Each of these actions by Donald Trump was taken in support of a multi-part conspiracy to overturn the lawful results of the 2020 Presidential election.

13. The intelligence community and law enforcement agencies did successfully detect the planning for potential violence on January 6th, including planning specifically by the Proud Boys and Oath Keeper militia groups who ultimately led the attack on the Capitol. As January 6th approached, the intelligence specifically identified the potential for violence at the U.S. Capitol. This intelligence was shared within the executive branch, including with the Secret Service and the President's National Security Council.

14. Intelligence gathered in advance of January 6th did not support a conclusion that Antifa or other left-wing groups would likely engage in a violent counter-demonstration, or attack Trump supporters on January 6th. Indeed, intelligence from January 5th indicated that some left-wing groups were instructing their members to "stay at home" and not attend on January 6th.[20] Ultimately, none of these groups was involved to any material extent with the attack on the Capitol on January 6th.

15. Neither the intelligence community nor law enforcement obtained intelligence in advance of January 6th on the full extent of the ongoing planning by President Trump, John Eastman, Rudolph Giuliani and their associates to overturn the certified election results. Such agencies apparently did not (and potentially could not) anticipate the provocation President Trump would offer the crowd in his Ellipse speech, that President Trump would "spontaneously" instruct the crowd to march to the Capitol, that President Trump would exacerbate the violent riot by sending his 2:24 p.m. tweet condemning Vice President Pence, or the full scale of the violence and lawlessness that would ensue. Nor did law enforcement anticipate that

President Trump would refuse to direct his supporters to leave the Capitol once violence began. No intelligence community advance analysis predicted exactly how President Trump would behave; no such analysis recognized the full scale and extent of the threat to the Capitol on January 6th.

16. Hundreds of Capitol and DC Metropolitan police officers performed their duties bravely on January 6th, and America owes those individuals immense gratitude for their courage in the defense of Congress and our Constitution. Without their bravery, January 6th would have been far worse. Although certain members of the Capitol Police leadership regarded their approach to January 6th as "all hands on deck," the Capitol Police leadership did not have sufficient assets in place to address the violent and lawless crowd.21 Capitol Police leadership did not anticipate the scale of the violence that would ensue after President Trump instructed tens of thousands of his supporters in the Ellipse crowd to march to the Capitol, and then tweeted at 2:24 p.m. Although Chief Steven Sund raised the idea of National Guard support, the Capitol Police Board did not request Guard assistance prior to January 6th. The Metropolitan Police took an even more proactive approach to January 6th, and deployed roughly 800 officers, including responding to the emergency calls for help at the Capitol. Rioters still managed to break their line in certain locations, when the crowd surged forward in the immediate aftermath of Donald Trump's 2:24 p.m. tweet. The Department of Justice readied a group of Federal agents at Quantico and in the District of Columbia, anticipating that January 6th could become violent, and then deployed those agents once it became clear that police at the Capitol were overwhelmed. Agents from the Department of Homeland Security were also deployed to assist.

17. President Trump had authority and responsibility to direct deployment of the National Guard in the District of Columbia, but never gave any order to deploy the National Guard on January 6th or on any other day. Nor did he instruct any Federal law enforcement agency to assist. Because the authority to deploy the National Guard had been delegated to the Department of Defense, the Secretary of Defense could, and ultimately did deploy the Guard. Although evidence identifies a likely miscommunication between members of the civilian leadership in the Department of Defense impacting the timing of deployment, the Committee has found no evidence that the Department of Defense intentionally delayed deployment of the National Guard. The Select Committee recognizes that some at the Department had genuine concerns, counseling caution, that President Trump might give an illegal order to use the military in support of his efforts to overturn the election.

* * *

BEFORE THE ILLLINOIS STATE BOARD OF ELECTIONS
SITTING *EX-OFFICIO* AS THE STATE OFFICERS ELECTORAL BOARD

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, AND DARRYL P. BAKER,	)	No. 24 SOEB GP 517
Petitioners-Objectors,	)	
v.	)	
DONALD J. TRUMP,	)	Hearing Officer Clark Erickson
Respondent-Candidate.	)	

MOTION TO DISMISS OBJECTORS' PETITION

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Pursuant to the Rules of Procedure adopted by the State Officers Electoral Board on January 17, 2024 (the "SOEB Rules"), including SOEB Rule 7, the Illinois Code of Civil Procedure, and Illinois Supreme Court Rules, Respondent-Candidate Donald J. Trump hereby moves to dismiss the petition filed by Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker (the "Objectors"), and in support, states as follows:

INTRODUCTION

The Objectors want the Illinois State Board of Elections sitting *ex-officio* as the State Officers Electoral Board (the "SOEB") to wade into Presidential politics, declare Donald J. Trump ineligible to serve a second term as President of the United States, and remove his name from the Illinois Republican primary ballot. The Objections, however, lack legal and factual merit and should be dismissed.

First, Illinois law does not authorize the SOEB to resolve complex factual issues of federal constitutional law like those presented by the Objections. The Board can and does resolve disputes about nominations and qualifications on records that are undisputed or (in the Board's estimation) not materially disputed. It does not and cannot hold lengthy and complex evidentiary proceedings of the kind that would be needed to assess objections like these. Moreover, it would be imprudent for the SOEB to address these issues when the United States Supreme Court is considering—on an expedited basis with oral argument set for February 8, 2024—an appeal that will likely either resolve or provide significant guidance on applicable issues.

Second, a wealth of authority from around the nation holds that disputes over presidential qualifications are political questions to be decided by Congress and the electoral process—not courts or administrative agencies.

Third, long-settled law under the U.S. Constitution holds that whether someone is disqualified under Section Three of the Fourteenth Amendment, in particular, is a question that can be addressed only in procedures prescribed by Congress—in other words, not here.

Fourth, even if the Board were to consider Section Three, it does not apply here, for multiple reasons. As a matter of federal constitutional law, Section Three bars *holding* office, not *running for* office—and states cannot constitutionally move that disqualification to an earlier point in time. Moreover, Section Three was intentionally drafted not to apply to the President—it refers to an "officer of the United States," but our consistent and well recognized constitutional tradition is that these words *exclude* the President. And Section Three was drafted not to disqualify people from the Presidency, but instead to protect the Presidency by ensuring that members of the Electoral College are loyal to the United States.

Fifth and finally, even if Section Three applied here and the Board was empowered to apply it, Objectors have not alleged that President Trump "engaged in insurrection." The riot on January 6 was deplorable, but the facts alleged by Objectors cannot establish that it was an attempt to overthrow or break away from the government—so it was not an "insurrection." Moreover, Objectors' allegations that President Trump (1) contested an election outcome, (2) gave a speech to protesters asking them to act "peacefully," and then (3) monitored the situation at the Capitol before repeatedly calling for peace and asking protesters to "go home," cannot possibly establish that he "engaged in" an insurrection for purposes of Section Three.

For all these reasons, the Objections should be dismissed.

I. Illinois Law Generally Defers to Political Parties with Respect to Party Nominations and Does Not Authorize State Officials to Inquire into the Constitutional Elibilibity of Presidential Primary Candidates.

The SOEB lacks authority to exclude a candidate for nomination by a political party to the office of U.S. President from a primary ballot based on disputed facts about the candidate's alleged ineligibility under the U.S. Constitution. Instead, Illinois law grants substantial deference to political parties to nominate candidates chosen by primary voters. *See, e.g.*, 10 ILCS 5/7-9 (authorizing state parties to choose and select delegates and alternate delegates to national nominating conventions); 10 ILCS 5/7-11 (via written notice, national political party rules concerning the nomination of candidate for U.S. President override Election Code provisions re: primary ballot); 10 ILCS 5/7-14.1 (providing alternative methods for national parties to select delegates to nominating conventions, some of which are selected by congressional district and some of which are selected at large).

Here, the primary vote is not for the purpose of selecting the Presidential nominee; instead, the vote is for the purpose of selecting delegates to the Republican National Convention. 10 ILCS 5/7-11. Thus, although the names of presidential candidates may appear on the primary ballot, the vote for presidential candidates "shall be for the sole purpose of securing an expression of the sentiment and will of the party voters with respect to candidates for nomination." *Id.* Ultimately, the proposed delegates "receiving the highest number of votes of their party" either "at large" or by "congressional districts" shall be the delegates to the party's national convention. 10 ILCS 5/7-59. Notably, no one has objected to the nominating petitions for President Trump's delegates from each congressional district. (*See, e.g.,* Nominating Papers for Trump Delegates (1st Cong. Dist.) (attached hereto).) Thus, even if President Trump were stricken from the primary ballot, any of President Trump's electors that receive the highest vote totals in their congressional districts will

be Trump delegates to the Republican National Convention.

"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). Section 10-10 (and relevant caselaw) makes clear the SBOE's role is to evaluate the form, timeliness and genuineness of the nominating papers and that the SBOE is not authorized to conduct a broad-ranging inquiry into a candidate's qualifications under the U.S. Constitution.

> The electoral board shall take up the question as to whether or not the . . . nomination papers . . . 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 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.[1] *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"); *Delgado*, 224 Ill. 2d at 485 (Under Section 10-10, "an election board's scope of inquiry with respect to objections to nomination papers is limited to ascertaining whether those papers comply with the provisions of the Election Code governing such papers;" The Election Board has "no authority to declare a statute unconstitutional or even to question its validity).

Thus, Section 10-10 simply does not authorize the SOEB to resolve complicated factual disputes concerning the qualifications for a candidate for federal office. To be sure, caselaw demonstrates that the SOEB can evaluate a candidate's qualifications under state law. *See, e.g.,*

[1] Article 7 of the Election Code, 10 ILCS 5/7-1 *et seq.*, applies to nominations by political parties and incorporates the objection provisions of Article 10 (Sections 10-8 through 10.10.1) to objections to nominations of candidates by political parties. 10 ILCS 7-12.1.

Goodman v. Ward, 241 Ill. 2d 398, 414-15 (Ill. 2011) (affirming removal of state judicial candidate from ballot because Illinois constitution required candidate to be a resident of the judicial district at the time their nominating petitions were filed). But even in these cases, the SOEB is authorized to assess qualifications where the facts are undisputed or, in the SOEB's estimation, not materially disputed. *See, e.g., Goodman,* 241 Ill. 2d at 410 (candidate admitted he was not a resident of the judicial district); *Cinkus v. Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 206, 215-16 (Ill. 2008) (candidate did not dispute debt was owed).

Moreover, although the SOEB has, at times, overruled objections to a U.S. presidential candidate's qualifications, in those cases, the SOEB's authority to consider those objections was never addressed. *See, e.g., Freeman v Obama*, No. 12 SOEB GP 103, 2/2/2012 Decision (attached hereto); *Jackson v Obama*, No. 12 SOEB GP 104, 2/2/2012 Decision (attached hereto). In any event, each such objection was overruled based on a simple and undisputed record. *See id.*

This case is the opposite. The Objections here depend in large part on a long list of factual allegations concerning what President Trump did or said in private both before and after January 6. They also depend in very large part on allegations about what President Trump knew, believed, or intended at various times or in taking various actions. Many of these facts will be vigorously disputed. In particular, President Trump adamantly denies that he intended or knew that any alleged "insurrection" would occur. That deeply disputed and complex set of factual allegations lie at the heart of the Objections. The Board lacks statutory authority to address or resolve them.

That is only confirmed by the fact that the Legislature has not provided the Board with the practical tools needed to address or resolve complex factual allegations like these. The procedures that the Board is required by statute to follow are well suited to addressing disputes over the form and genuineness of nomination papers, or of signatures on a petition. They are wholly inadequate

for the kind of full-scale trial litigation and complex evidentiary presentation—involving witnesses and evidence well outside the jurisdiction of the Board to compel—that substantiating the Objections here would require. Plainly, then, Illinois law does not expect the Board to take up objections of this sort.

In summary, Illinois law does not require, or even permit, the SOEB to resolve disputed issues concerning January 6, including whether President Trump participated in an insurrection within the meaning of the Fourteenth Amendment.

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

Even if the Election Code 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.[2] As these courts have observed, the Constitution contains a host of provisions specifying how electors for President are appointed (Art. II, Sec. 1), how the electoral votes are cast and counted (Amend. XII, *see* 3 U.S.C. 15(d)(B)(ii) (Electoral Count Act), what happens if the result is an un-qualified President-elect (Amend. 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.

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 Constitution, giving each [state official] the power to override a party's selection

[2] *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. 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.").

> 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, Objectors are asking the SOEB to revisit 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.[3] 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.[4] But the Senate declined and acquitted President Trump. Now, Objectors ask the Board to second-guess and undo that decision—to consider the same factual and legal theories as the Senate, but to reach 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

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

[4] 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.

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

Objectors ask the SOEB to determine 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 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 other 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[5]) 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.

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

[5] 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).

prescribed by Congress. *Griffin*, 11 F. Cas. at 27. 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 the SOEB 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.

IV. Section Three Does Not Apply Here.

If the Court were to reach the merits of the Objections—despite all the dispositive obstacles 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. But Section Three does not do 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.[6] No authority appears to have concluded that allowing such candidates to

[6] *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

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. Therefore, the SOEB 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

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.").

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.[7] Each of these provisions clearly excludes the President. Article II, Section Two empowers the 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*.[8] 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

[7]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.

[8] 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").

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.'"[9] And in more modern times, this same rule has been noted in three memoranda for the White House Office of Legal Counsel[10]—including by future Justices Rehnquist[11] and Scalia[12]—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).

Like other parties in other ballot challenges to President Trump, Objectors no doubt will cite various *non*-constitutional sources (historical and modern) describing the President as an "officer," or even occasionally as an "officer of the United States." But that shows little about whether the phrase has a particular legal meaning when it appears in the Constitution. As just explained, it does—and that meaning excludes the President.

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

[9] 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)).

[10] *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.

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

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

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.[13]

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

[13] 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").

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 that language. *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 constitutional 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 has not been 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, 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.

V. Objectors Have Not Alleged 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. 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 Riot of January 6 was Not an "Insurrection or Rebellion."

Section Three can be violated only if there was an "insurrection or rebellion." The Objections do not allege one here.

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."[14] 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

[14] *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.

The Objectors plead events at the Capitol on January 6, 2021, that 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. Objectors plead no facts even suggesting 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.

To be sure, Objectors may have pleaded that the January 6 rioters were trying to violently obstruct Congressional proceedings, or to take physical control (temporarily) of an important government building. But there is no authority to suggest that these criteria by themselves can transform a political riot into an insurrection. Rioting in order to disrupt government proceedings or to occupy government buildings may be a crime—and the January 6 riots may have involved serious crimes of that kind. But this does not make them attempts to break away from or overthrow the government. Even a serious riot of this kind remains a riot, not an insurrection or rebellion. That is all that Objectors have alleged here, so their arguments under Section Three must be dismissed.

Objectors no doubt will rely on the Colorado Supreme Court's outlying opinion to the contrary. But the Colorado Supreme Court could reach conclusion only by adopting a definition of insurrection that is impossibly broad: (1) a public use or threat of force (2) by a group of people (3) to hinder execution of the Constitution. *Anderson*, 2023 CO 63, ¶¶ 179-184**.** 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. The SOEB should not adopt that definition.

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

Whether or not the January 6 riot was an "insurrection" (it was not), Objectors do not plausibly allege that President Trump "engaged in" it. The only conduct that Objectors point 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.

Objectors 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.[15] By contrast, at nearly the same time, the House *did* disqualify a former member of a rebel government and army.[16]

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).

[15] 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").
[16] *Hinds' Precedents* at 481, 486.

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, Objectors do not and cannot plead that President Trump engaged in or incited the January 6 riot. Objectors' 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 and 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, Objectors 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 delivered—an "orderly transition" of power.[17] 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, Objectors allege 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. Objectors apparently want to argue that this speech amounted to some sort of

[17] 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.

instruction to engage in violence or crimes. But there is nothing to support that contention. The transcript of the speech speaks for itself and does not support the Objectors' claims.[18] 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.

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.

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

Third, President Trump's alleged conduct *during* the January 6 riot cannot possibly amount to "engaging" in it. While rioters were in the Capitol, Objectors do not allege that President Trump did anything affirmative to help them. Objectors obviously wish that President Trump 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). That is especially true to the extent Objectors seek to ground their claims in President Trump's discretionary decision-making regarding the National Guard—which is *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, Objectors' 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!"[19] 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!"[20] The President released a

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

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

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."[21] The President then tweeted again that the rioters should "[g]o home with love & in peace."[22] About two hours after that, Congress re-convened to certify now-President Biden as the winner of the election.

At best, then, Objectors allege 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.

*

Objectors allege 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 nor any part is included within any reasonable interpretation of the phrase "engag[ing] in insurrection." Objectors therefore have failed to state any claim.

[21] *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.

[22] 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.

CONCLUSION

WHEREFORE, because neither Illinois law nor the U.S. Constitution authorizes the SOEB to remove President Trump from the Illinois Republican primary ballot, the Candidate, Donald J. Trump, prays this Honorable Electoral Board dismiss the Objectors' Petition.

Dated: January 19, 2024

Respectfully submitted,

CANDIDATE DONALD J. TRUMP

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CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that before 5:00 p.m. on January 19, 2024, I caused a true and correct copy of the foregoing MOTION TO STRIKE PETITIONERS' OBJECTION to be served via email as follows:

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

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

Petitioners-Objectors,

v. Case No. 24 SOEB GP 517

Donald J. Trump,

Respondent-Candidate.

OBJECTORS' MOTION TO GRANT OBJECTORS' PETITION, OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

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Petitioners-Objectors Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, and Ralph E. Cintron (the "Objectors"), by and through their undersigned attorneys, hereby move to grant their Objector's Petition. In the alternative, Objectors move for summary judgment in their favor. In support, Objectors state as follows:

INTRODUCTION

The undisputed facts show, in summary, that during the 2020 presidential election, the then-incumbent president, Donald J. Trump ("Trump" or "Candidate Trump"), devised and implemented a plot to prevent the peaceful transfer of power to the duly elected winner of that election, Joseph R. Biden, Jr., by falsely and fraudulently claiming that Trump and not Biden had, in fact, won and that the election had been "stolen." After exhausting various other lawful and unlawful means to overturn the 2020 election, and in concert with his illegal plan to submit fraudulent electoral vote certificates from states where Trump had lost the vote, Trump engaged in a last-ditch effort to prevent the electoral college vote from being certified by the United States Congress at a joint session presided over by his own Vice President, Mike Pence. Trump gathered an angry and armed mob—including known violent extremists—in Washington, D.C. on January 6, 2021, incited them, and sent them to the Capitol. They stormed the Capitol, threatened to kill Vice President Pence and Members of Congress, prevented the certification of the election results, and—for the first time in our nation's history—disrupted the peaceful transfer of power. In so doing, he "engaged in insurrection or rebellion against [the United States Constitution] [and gave] aid or comfort to [its] enemies" and thus is constitutionally disqualified from again holding public office, including the office of the presidency.

In Trump's own words:

> "Big protest in D.C. on January 6th. Be there, will be wild!"
> *Tweeted by Donald Trump, Dec. 19, 2020*

"Our Country has had enough, they won't take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!"

Tweeted by Donald Trump, January 5, 2021 in response to Stop the Steal rallies promising violence at the Capitol on January 6, 2021

"I don't fucking care that they have weapons. They're not here to hurt me . . . Let my people in. They can march to the Capitol from here, let the people in and take the [metal detectors] away."

Statement by Donald Trump, January 6, 2021 about his supporters at the Ellipse

"When you catch someone in a fraud, you're allowed to go by very different rules. . . We fight like hell. And if you don't fight like hell, you're not going to have a country anymore."

Donald Trump in his speech at the Ellipse, January 6, 2021

"Mike Pence didn't have the courage to do what should have been done to protect our Country and Our Constitution."

Tweeted by Donald Trump, January 6, 2021 at 2:24 p.m. as insurrectionists in the Capitol hunted Vice President Pence chanting "hang Mike Pence."

The events of January 6, 2021 rocked the nation. Not since the War of 1812 had the seat of government of our republic been invaded and violently prevented from functioning. After months of attempting unlawful schemes to overturn the 2020 election that voted him out of office, Trump summoned his supporters to Washington D.C. When they gathered, he directed them to "fight" to reclaim the presidency, and after inciting their anger, sent them, along with their weapons, to invade the United States Capitol and disrupt the peaceful transfer of power. Trump's supporters overwhelmed civilian law enforcement, forced the Vice President, Senators, Representatives, and staffers to flee into hiding, prevented Congress from certifying the 2020 presidential election, and captured the Capitol, a feat not even achieved by the Confederacy during the Civil War. As these events unfolded, Trump continued to goad his supporters and refused to call in law enforcement to aid those trapped and injured at the Capitol, or call off the attack. Five people died, and over 250 police officers suffered serious injuries, including broken bones, lacerations, and chemical burns. In the time since January 6, Trump has acknowledged he was in command of the Capitol attackers, praised their efforts, stated the prison sentences for those

convicted of crimes are a "shame," referring to them as "hostages" and vowing to pardon them upon reelection.

These extraordinary and shocking facts form the backdrop of the Objectors' Petition. But the Objection itself is simple. It asks the State Officers Electoral Board to perform a straightforward, mandatory duty: hear and decide the Objection that Candidate Donald Trump submitted invalid nomination papers, in violation of 10 ILCS 5/7-10, because he falsely swore in his Statement of Candidacy that he is "qualified" for the office of presidency. Objectors submit that Candidate Trump cannot meet one of the several qualifications for office set out in the United States Constitution—Section 3 of the Fourteenth Amendment, which mandates that no person shall hold office under the United States if they previously have taken an oath, as an officer of the United States, to support the Constitution of the United States and engaged in insurrection or rebellion against same, or given aid or comfort to the enemies thereof.

The import of the Objection does not enhance its scope or take it outside the Electoral Board's authority. The Board has a limited, non-discretionary task that it has performed many times before. The Illinois Election Code and Illinois Supreme Court precedent clearly require the Board to evaluate candidate objections based on constitutional criteria. Fortunately, the Board can do so here using a focused set of facts, almost all of which are already in the public record, and all of which are widely known and accepted, and indisputable. Moreover, those facts have been confirmed by detailed witness testimony provided during a five-day trial in which Candidate Trump participated. Based on this evidence, including the witness testimony which Objectors also present with this motion through affidavits, the presiding Colorado district court judge concluded, by clear and convincing evidence, that Trump engaged in insurrection, a conclusion affirmed by

the Colorado Supreme Court, which, accordingly, ruled that Trump is disqualified from the presidency under Section 3 and ineligible to appear on the presidential ballot.

Following extensive public investigation into the events surrounding January 6, 2021, and similar ballot challenges in other states, the key issues in this Objection have been illuminated, narrowed, and decided. The Electoral Board's narrow task is to apply clear and well-defined legal standards to clearly established facts to determine constitutional electoral qualifications, as it has done in every presidential election cycle.

The material facts asserted in Petitioners' Objection are supported by competent evidence, cannot be genuinely disputed, and compel the conclusion that Trump engaged in insurrection under Section 3 and is therefore ineligible for the office of the President. The evidence in the Objection includes Trump's own public statements on Twitter and in news videos, the authenticity of which cannot be disputed, and the facts recounted in public governmental reports, such as the Final Report of the House of Representatives Select Committee to Investigate the January 6th Attack ("House Select Committee") on the United States Capitol (the "January 6th Report"), which are admissible as public records or reports. Yet to the extent any further evidence is required, Petitioners append additional evidence here, including affidavits that incorporate and establish the admissibility of Colorado trial testimony from two law enforcement officers who were present at the Capitol on January 6, 2021, a Congressman who was in the Capitol that day, the chief investigative counsel for the House Select Committee, an expert on national security law, and an expert on political extremism, and move, in the alternative, for summary judgment. In either case, the material undisputed facts show that Trump cannot meet the qualifications for president set out in Section 3 of the Fourteenth Amendment of the U.S. Constitution, as a result he has presented

invalid nomination papers to the Illinois Board of Elections, and thus cannot appear on the presidential primary or general election ballot in the State of Illinois.

STATEMENT OF FACTS

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

On January 20, 2017, Donald Trump was sworn in as the forty-fifth president of the United States. The oath he swore was the one required by Article II, section 1, of the Constitution, stating: "I, Donald John Trump, do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my Ability preserve, protect, and defend the Constitution of the United States."[1]

II. TRUMP'S SCHEME TO OVERTURN THE GOVERNMENT AND PREVENT THE PEACEFUL TRANSFER OF POWER.

On June 18, 2019, at a rally in Florida, Trump officially launched his campaign for election to a second term as President.[2] During his campaign, Trump laid the foundation for the insurrection by repeatedly insisting that fraudulent voting activity would be the only possible reason for electoral defeat (rather than not receiving enough votes).[3] Trump did not hide his intentions: when asked during a September 23, 2020 press conference if he would commit to a peaceful transfer of

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[1] Trump White House Archived, *The Inauguration of the 45th President of the United States*, YOUTUBE (Jan. 20, 2017), https://www.youtube.com/watch?v=4GNWldTc8VU, at 26:30; *see also* U.S. Const. art. II, § 1, cl. 8.

[2] USA TODAY, *President Donald Trump kicks off 2020 re-election campaign in Florida*, YOUTUBE (June 18, 2019), https://www.youtube.com/watch?v=XLwgdi25mzo.

[3] *E.g.*, *President Trump Remarks in Oshkosh, Wisconsin*, C-SPAN (Aug. 17, 2020), https://www.c-span.org/video/?474841-1/president-trump-remarks-oshkosh-wisconsin, at 57:30 (On August 17, 2020, ("The only way we're going to lose this election is if the election is rigged."); *Watch Donald Trump's full speech on day one of the 2020 Republican convention*, WASH. POST (Aug. 2, 2020), https://www.washingtonpost.com/video/politics/watch-donald-trumps-full-speech-on-day-one-of-the-2020-republican-convention/2020/08/24/6f789cdc-3572-46a5-9571-5d09061bad99_video.html, at 22:15 ("The only way they can take this election away from us is if this is a rigged election."); *President Trump Departs White House*, C-SPAN (Sept. 24, 2020), https://www.c-span.org/video/?476212-1/president-trump-departs-white-house#, at 2:17 ("We want to make sure the election is honest, and I'm not sure that it can be. I don't know that it can be with this whole situation [of] unsolicited ballots.").

power following the election, Trump refused to do so.[4]

At the same time, Trump aligned himself with extremist and white supremacist organizations and signaled they should be prepared to act on his behalf. For example, on September 29, 2020, Trump was asked if he would disavow the Proud Boys, a right-wing extremist group that embraces political violence.[5] But instead of disavowing them, he stated: "Proud Boys, stand back and *stand by*," then adding "somebody's got to do something about Antifa and the left."[6] As their social media posts clearly demonstrated, and as political extremism expert Peter Simi testifies, the Proud Boys acted on this as a call to "stand by" to be ready for future action.[7]

On November 3, 2020, the United States held its fifty-ninth presidential election. Fifty-eight of those elections were followed by peaceful processes implementing the results of the elections, even when those elections were sometimes bitterly and hotly contested. The fifty-ninth was different. That evening, while media outlets projected that Biden was in the lead,[8] Trump alleged on Twitter that widespread voter fraud had compromised the validity of such results.[9] Four

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[4] *President Declines to Commit to Peaceful Transfer of Power If He Loses Election*, C-SPAN (Sept. 23, 2020), https://www.c-span.org/video/?c4909270/president-declines-commit-peaceful-transfer-power-loses-election.

[5] *See* Ex. 1, Simi Affidavit at Ex. A, 39:13-40:12. The Proud Boys bear responsibility for violence in conjunction with multiple political demonstrations. Several of the organizations' leaders and members have been convicted of federal offenses for crimes committed in conjunction of the events of January 6, 2021. *See, e.g.*, Dep't of Justice, Jury Convicts Four Leaders of the Proud Boys of Seditious Conspiracy Related to U.S. Capitol Breach (May 4, 2023), https://www.justice.gov/opa/pr/jury-convicts-four-leaders-proud-boys-seditious-conspiracy-related-us-capitol-breach.

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

[7] Ex. 8, H.R. REP. NO. 117-663, at 507-08 (2022) [hereinafter January 6th Report]; Simi Aff., *supra* note 5, at Ex. A, 78:18-23.

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

[9] *See* Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 4, 2020 at 12:49 AM ET), https://twitter.com/realDonaldTrump/status/1323864823680126977, attached hereto as part of a Group Exhibit 7, which is also referred to hereinafter as "Trump Tweet Compilation." ("We are up BIG, but they are trying to STEAL the Election. We will never let them do it. Votes cannot be cast after the Polls are

days after the election, on November 7, 2020, news organizations all across the country declared that Joseph Biden won the 2020 presidential election.[10] That same day, Trump falsely tweeted: "I WON THIS ELECTION, BY A LOT!"[11]

A. Trump Attempted to Enlist Government Officials and Others to Illegally Overturn the Election.

After Election Day, aides and advisors close to Trump investigated his election fraud claims and repeatedly informed Trump that such allegations were unfounded.[12] And on December 1, 2020, Trump's appointed Attorney General, William Barr, publicly declared that the U.S. Justice Department found no evidence of voter fraud that would warrant a change of the election result.[13]

Despite knowing the lack of evidence of voter fraud, Trump continued to refuse to accept his electoral loss. Some of Trump's actions—e.g., lawsuits contesting election results—were meritless but not illegal to pursue; these are not at issue here. But as it became clear that Trump's lawful, nonviolent attempts to remain in power would fail, he turned to unlawful means to illegally

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closed!"); *id.* at 2 (Nov. 5, 2020 at 9:12 AM ET), https://twitter.com/realDonaldTrump/status/1324353932022480896 ("STOP THE FRAUD!"); *id.* at 1 (Nov. 5th, 2020 at 12:21 PM ET), https://twitter.com/realDonaldTrump/status/1324401527663058944?lang=en ("STOP THE COUNT!").

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

[11] *See* Trump Tweet Compilation, *supra* note 9, at 2 (Group Ex. 7) (Nov. 7, 2020 at 10:36 AM ET), https://twitter.com/realDonaldTrump/status/1325099845045071873.

[12] January 6th Report, *supra* note 7, at 205-06 (Ex. 8) (reporting that lead data expert Matt Oczkowski informed Trump he did not have enough votes to win); *id.* at 374-76 (reporting that Attorney General William Barr informed Trump is fraud claims lacked merit); *id.* at 204 (reporting campaign lawyer Alex Cannon told Trump Chief of Staff he had not found evidence of voter fraud sufficient to change results in key states).

[13] *Id.* at 377; Michael Balsamo, *Disputing Trump, Barr says no widespread election fraud*, ASSOCIATED PRESS (June 28, 2022), https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d.

prolong his stay in office. During the weeks leading up to January 6, 2021, Trump oversaw, directed, and encouraged the commission of election fraud by means of a "fake elector" scheme under which seven states that Trump lost would submit an "alternate" slate of electors as a pretext for Vice President Pence to decline to certify the actual electoral vote on January 6.[14] In early December, Trump called the Chairwoman of the Republican National Committee, Ronna Romney McDaniel, to enlist the RNC's support in gathering a slate of electors for Trump in states where President-elect Biden had won the election but legal challenges to the election results were underway.[15] On December 14, 2020, at Trump's direction, fraudulent electors convened sham proceedings in seven targeted states where President-elect Biden had won a majority of the votes (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin) and cast fraudulent electoral ballots in favor of Trump.[16]

That same day, the *actual* presidential electors convened in all 50 states and in D.C. to cast their official electoral votes. They voted 306-232 for President Biden and against Trump.[17] Also on that day, Attorney General Barr, who continued to refuse to support Trump's ongoing election fraud, resigned as head of the Department of Justice ("DOJ"), and Trump appointed Jeffrey Rosen as acting attorney general and Richard Donoghue as acting deputy attorney general.[18]

Between December 23, 2020, and early January 2021, Trump repeatedly attempted to speak with Rosen in an effort to enlist his support for the purported election fraud.[19] On December

[14] January 6th Report, *supra* note 7, at 341-42 (Ex. 8).

[15] *Id.* at 346.

[16] *Id.* at 341.

[17] National Archives, *2020 Electoral College Results*, https://www.archives.gov/electoral-college/2020.

[18] January 6th Report, *supra* note 7, at 380-81 (Ex. 8).

[19] *Id.* at 383.

27, 2020, when Rosen told Trump that "DOJ can't and won't snap its fingers and change the outcome of the election," Trump responded: "Just say the election was corrupt and leave the rest to me and the Republican Congressmen."[20] On December 31, 2020, Trump asked Rosen and Donoghue to direct the Department of Justice to seize voting machines.[21] Rosen and Donoghue rejected Trump's request, citing the Department of Justice's lack of any legal authority to seize state voting machines.[22]

On January 2, 2021, Jeffrey Clark, the acting head of the Civil Division and head of the Environmental and Natural Resources Division at the DOJ, who had met with Trump without prior authorization from the DOJ, told Rosen and Donoghue that Trump was prepared to fire them and to appoint Clark as the acting attorney general.[23] Clark asked Rosen and Donoghue to sign a draft letter to state officials recommending that the officials send an alternate slate of electors to Congress, and told them that if they did so, then Clark would turn down Trump's offer and Rosen would remain in his position.[24] Rosen and Donoghue again refused.[25]

Trump's efforts to coerce public officials to assist in his fraudulent scheme to unlawfully overturn the election were not limited to federal officials. Following his election loss, Trump publicly and privately pressured state officials in various states around the country to overturn the election results. For example, on January 2, 2021, in a recorded telephone conversation, Trump pressured Georgia Secretary of State Brad Raffensperger to "find 11,780 votes" for him, and

[20] *Id.* at 386.

[21] *Id.* at 396.

[22] *Id.* at 396-97.

[23] *Id.* at 397.

[24] *Id.* at 389-90, 397.

[25] *Id.* at 397.

thereby fraudulently and unlawfully turn his electoral loss in Georgia to an electoral victory.[26] Trump's relentless false claims about election fraud and his public pressure and condemnation of election officials resulted in threats of violence against election officials around the country.[27] When Georgia election official Gabriel Sterling publicly warned Trump during a press conference to "stop inspiring people to commit potential acts of violence" or "[s]omeone's going to get killed,"[28] Trump did the opposite, retweeting a video of the press conference and repeating the same rhetoric regarding the purportedly "[r]igged election."[29]

On January 4, 2021, Trump and his then-attorney John Eastman met with then-Vice President Mike Pence and his attorney Greg Jacob to discuss Eastman's baseless legal theory that Pence might either reject votes on January 6 during the certification process, or suspend the proceedings so that states could reexamine the results.[30] As Trump later admitted, the decision to continue seeking to overturn the election after the failure of legal challenges was his alone."[31]

On January 5, 2021, Eastman met privately with Jacob and requested that Pence reject the certification of election results. During the meeting, Eastman acknowledged that there was no support for his legal theory that Pence could reject the certification and acknowledged that his

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[26] *Id.* at 263.

[27] *Id.* at 303-05 (providing non-exhaustive list of threats to officials in battleground states).

[28] Gabriel Sterling Press Conference (P-126), attached hereto as part of Group Exhibit 4, which consists of trial exhibits from *Anderson v. Griswold*. P-126 is the exhibit number in the Colorado proceedings.

[29] *See* Trump Tweet Compilation, *supra* note 9, at 3 (Group Ex. 7) (Dec 1, 2020 at 10:27 PM ET), https://twitter.com/realDonaldTrump/status/1333975991518187521.

[30] January 6th Report, *supra* note 7, at 428 (Ex. 8).

[31] NBC News, *Meet the Press full broadcast – Sept. 17*, YOUTUBE (Sept. 17, 2023), https://www.youtube.com/watch?v=Kcsn_6Wln60, at 9:50 (Q: "Were you calling the shots, though, Mr. President, ultimately?" Trump: "As to whether or not I believed it was rigged? Oh, sure. It was my decision").

theory would lose 9-0 before the Supreme Court.[32]

All the while, Trump continued to publicly lie, maintaining that the 2020 presidential election results were illegitimate due to fraud, and to set the false expectation that Pence had the authority to overturn the election. On December 4, 2020, Trump tweeted: "RIGGED ELECTION!"[33] On December 10, 2020, he tweeted: "How can you give an election to someone who lost the election by hundreds of thousands of legal votes in each of the swing states. How can a country be run by an illegitimate president?"[34] On December 15, 2020, Trump tweeted: "Tremendous evidence pouring in on voter fraud. There has never been anything like this in our Country!"[35] On January 5, 2021, he tweeted: "The Vice President has the power to reject fraudulently chosen electors."[36]

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

On December 11, 2020, the Supreme Court rejected a lawsuit brought by the State of Texas alleging that election procedures in four states had resulted in illegitimate votes.[37] The next morning, on December 12, 2020, Trump publicly attacked the Supreme Court order, tweeting that it was "a great and disgraceful miscarriage of justice," and "WE HAVE JUST BEGUN TO

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[32] January 6th Report, *supra* note 7, at 449-50 (Ex. 8).

[33] *See* Trump Tweet Compilation, *supra* note 9, at 4 (Group Ex. 7) (Dec. 4, 2020 at 8:55 AM ET), https://twitter.com/realDonaldTrump/status/1334858852337070083.

[34] *Id.* at 4, (Dec. 10, 2020 at 9:26 AM ET), https://twitter.com/realDonaldTrump/status/1337040883988959232.

[35] *Id.* at 6 (Dec. 15, 2020 at 10:41 AM ET), https://twitter.com/realDonaldTrump/status/1338871862315667456.

[36] *Id.* at 12 (Jan. 5, 2021 at 11:06 AM ET), https://twitter.com/realDonaldTrump/status/1346488314157797389?s=20.

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

FIGHT!!!"[38]

That same day, Ali Alexander of Stop the Steal, and Alex Jones and Owen Shroyer of Infowars led a march on the Supreme Court.[39] The crowd at the march chanted slogans such as "Stop the Steal!" "1776!" "Our revolution!" and Trump's earlier tweet, "The fight has just begun!"[40] Trump responded to the march by tweeting, "Wow! Thousands of people forming in Washington (D.C.) for Stop the Steal. Didn't know about this, but I'll be seeing them! #MAGA."[41]

Trump continued to issue tweets encouraging his supporters to "fight" to prevent the certification of the election results.[42] On December 18, 2020, Trump tweeted: ".@senatemajldr and Republican Senators have to get tougher, or you won't have a Republican Party anymore. We won the Presidential Election, by a lot. FIGHT FOR IT. Don't let them take it away!"[43]

Then, on December 19, 2020, Trump tweeted "Big protest in D.C. on January 6th. Be there, will be wild!"[44]

C. In Response to Trump's Call for a "Wild" Protest, Trump's Supporters Planned Violence.

In response to Trump's tweet calling for a "wild" protest, Twitter's Trust and Safety Policy

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[38] *See* Trump Tweet Compilation, *supra* note 9, at 5, (Group Ex. 7) (Dec 12, 2020 at 7:58 AM ET), https://twitter.com/realDonaldTrump/status/1337743516294934529; *id.* (Dec 12, 2020 at 8:47 AM ET), https://twitter.com/realDonaldTrump/status/1337755964339081216.

[39] *See* January 6th Report, *supra* note 7, at 505 (Ex. 8).

[40] *Id.*

[41] *See* Trump Tweet Compilation, *supra* note 9, at 6 (Group Ex. 7) (Dec. 12, 2020 at 9:59 AM ET), https://twitter.com/realDonaldTrump/status/1337774011376340992.

[42] "Far-right extremists view the word 'fight' in political terms. And 'fight' implies the need to commit violence to fend off threats." Simi Aff., *supra* note 5, at Ex. A, 83:20-22 (Ex. 1).

[43] *See* Trump Tweet Compilation, *supra* note 9, at 7 (Group Ex. 7) (Dec 18, 2020 at 9:14 AM ET), https://twitter.com/realDonaldTrump/status/1339937091707351046.

[44] *Id.* (Dec. 19, 2020 at 1:42 AM ET), https://twitter.com/realDonaldTrump/status/1340185773220515840.

team recorded "a 'fire hose' of calls to overthrow the U.S. government."[45] Other militarized extremist groups began organizing for January 6th after Trump's "will be wild" tweet. These include the Oath Keepers, the Proud Boys, the Three Percenter militias, and others.[46] An analyst at the National Capital Region Threat Intelligence Consortium observed that Trump's tweet led to "a tenfold uptick in violent online rhetoric targeting Congress and law enforcement" and noticed "violent right-wing groups that had not previously been aligned had begun coordinating their efforts."[47]

Members of extremist groups logically and predictably understood Trump's "will be wild" tweet as a call for violence in Washington, D.C. on January 6th.[48] On January 1, 2021, for example, a supporter tweeted to Trump that "The calvary [sic] is coming, Mr. President!"[49] Trump quoted that tweet and wrote back, "A great honor!"[50] Following Trump's tweet, organizers planned two separate demonstrations for January 6, 2021. Kylie and Amy Kremer, a mother-daughter pair involved with Women for America First, planned a demonstration on the Ellipse ("Ellipse Demonstration"), a park south of the White House fence and north of Constitution Avenue and the National Mall in Washington, D.C.[51] Ali Alexander, an extremist associated with the Stop the Steal group, planned an assemblage immediately outside the Capitol, on the court side and the steps of

[45] *See* January 6th Report, *supra* note 7, at 499 (Ex. 8).

[46] *See id.* at 499-501; Simi Aff., *supra* note 5, at Ex. A, 17:14-15 (Ex. 1).

[47] *See* January 6th Report, *supra* note 7, at 694 (Ex. 8).

[48] Simi Aff., *supra* note 5, at Ex. A, 80:13-81:1 (Ex. 1).

[49] *See* Trump Tweet Compilation, *supra* note 9, at 10 (Group Ex. 7) (Jan. 1, 2021 at 3:34 PM ET), https://twitter.com/realDonaldTrump/status/1345106078141394944.

[50] *Id.*

[51] Ex. 11, Women For America First Ellipse Public Gathering Permit, NAT'L PARK SERV. (Jan. 5, 2021), https://www.nps.gov/aboutus/foia/upload/21-0278-Women-for-America-First-Ellispse-permit_REDACTED.pdf.

the building.[52]

On December 29, 2020, Alexander tweeted, "Coalition of us working on 25 new charter buses to bring people FOR FREE to #JAN6 #STOPTHESTEAL for President Trump. If you have money for more buses or have a company, let me know. We will list our buses sometime in the next 72 hours. STAND BACK & STAND BY!"[53]

Meanwhile, by late December, Trump, his White House staff, and his campaign became directly involved in planning the Ellipse Demonstration. Trump personally helped select the speaker lineup, and his campaign and joint fundraising committee made direct payments to rally organizers.[54]

By December 29, 2020, Trump had formed and conveyed to allies a plan to order his supporters to march to the Capitol at the end of his speech in order to stop the certification of electoral votes.[55] Between January 2 and 4, 2021, Kremer and other organizers of the Ellipse Demonstration became aware from Mark Meadows that Trump intended to "order [the crowd] to the [C]apitol at the end of his speech."[56] These organizers messaged each other that "POTUS is going to have us march there [the Supreme Court]/the Capitol," and that the President was going to "call on everyone to march to the [C]apitol."[57]

In early January 2021, extremists began publicly referring to January 6 using increasingly threatening terminology. Some referred to a "1776" plan or option for January 6, suggesting by

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[52] January 6th Report, *supra* note 7, at 530 (Ex. 8); *President Trump Wants You in DC January 6*, WILDPROTEST.COM (2020), https://web.archive.org/web/20201223062953/http://wildprotest.com/ (archived).

[53] *See* January 6th Report, *supra* note 7, at 532 (Ex. 8).

[54] *See id.* at 532-36, 786.

[55] *Id.* at 533.

[56] *Id.*

[57] *Id.*

analogy to the American Revolution that their plans for the January 6 congressional certification of electoral votes included violent rebellion.[58]

On January 4, 2021, at a rally in Dalton, Georgia, Trump stated: "If you don't fight to save your country with everything you have, you're not going to have a country left."[59] During the rally, Trump made clear his intentions that the transfer of power set for January 6, 2021 would not take place because "We're going to fight like hell" and "take [the White House] back."[60] He continued to urge the crowd to "never back down" and "never, ever surrender." Several times during the rally, the crowd chanted "Fight for Trump! Fight for Trump!"[61]

By early January 2021, Trump anticipated that the crowd that was preparing to amass on January 6 at his behest would be large and ready to follow his command.[62] In total, Trump had repeated his call for supporters to come to Washington, D.C. on January 6 at least twelve times.[63] On January 5, 2021, several events were held across D.C. on behalf of Stop the Steal, an entity formed in early November 2020 to mobilize around Trump's claim that the election had been rigged. Speakers during these events made remarks indicating that the event to be held at the Capitol the next day would be violent.[64] On January 5, in response to these extremist

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[58] Simi Aff. at Ex. A, 29:2-9 (Ex. 1) ("[W]ithin far-right extremist culture, [1776] has a very specific connotation and relationship to violence, and it really is a direct call to violence.").

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

[60] *Id.*

[61] *Id.*

[62] Ex. 12, Letter from Donald J. Trump to The Select Committee to Investigate the January 6th Attack on the U.S. Capitol, at 2-3 (Oct. 13, 2022).

[63] *See* Trump Tweet Compilation, *supra* note 9, at 6-14 (Group Ex. 7)

[64] *See* January 6th Report, *supra* note 7, at 537-38 (Ex. 8) (reporting that Ali Alexander from Stop the Steal called on demonstrators to "rebel," to "keep fighting for [Trump]," and to "shut this country down"); *id.* at 537 (reporting that Roger Stone referred to a "fight for the future of Western Civilization as we know it"); *id.* (reporting that speakers told the crowd they were at "war" and promising to "fight" and "bleed").

demonstrations, Trump tweeted: "Our Country has had enough, they won't take it anymore! We hear you (and love you) from the Oval Office. MAKE AMERICA GREAT AGAIN!"[65] That same evening, President Trump told White House staff that his supporters would be "fired up" and "angry" the next day.[66]

Also on January 5, 2021, Trump authorized his campaign to issue the following false public statement: The Vice President and I are "in total agreement that the Vice President has the power to act."[67]

D. Trump and his Administration Knew of Supporters' Plans to Use Violence to Forcefully Prevent Congress from Certifying the Election Results.

Trump, his closest aides, the Secret Service, and the Federal Bureau of Investigations were all aware that Trump supporters—whom Trump had incited with false claims of election fraud and veiled calls for violence—intended to commit violence at the Capitol on January 6 in an effort to stop the vote from being certified. On December 24, 2020, the Secret Service received from a private intelligence group a list of social media responses to Trump's December 19 "will be wild" tweet, which indicated that supporters were planning for violence.[68] On December 26, 2020, the Secret Service received a tip that the Proud Boys had plans to enter Washington, D.C. armed. The Secret Service forwarded this tip to the Capitol Police.[69] On December 29, 2020, the Secret Service again forwarded warnings that pro-Trump demonstrators were being urged to occupy federal

[65] *See* Trump Tweet Compilation, *supra* note 9, at 13 (Group Ex. 7) (Jan. 5, 2021 at 5:05 PM ET), http://www.twitter.com/realDonaldTrump/status/1346578706437963777.

[66] *See* January 6th Report, *supra* note 7, at 539 (Ex. 8).

[67] *Id.* at 454.

[68] *Id.* at 61, 695.

[69] *Id.* at 61-62.

buildings.[70] On December 30, 2020, the Secret Service held a briefing that highlighted how the President's December 19 "will be wild!" tweet was found alongside hashtags such as #OccupyCapitols and #WeAreTheStorm.[71] Also on December 30, 2020, Jason Miller—a senior advisor to Trump—texted White House Chief of Staff Mark Meadows a link to thedonald.win website and stated, "I got the base FIRED UP." The link was to a page with comments like "Gallows don't require electricity" and "if the filthy commie maggots try to push their fraud through, there will be hell to pay."[72]

The Federal Bureau of Investigation also received many tips regarding the potential for violence on January 6.[73] One tip said:

> They think they will have a large enough group to march into D.C. armed and will outnumber the police so they can't be stopped. . . . They believe that since the election was stolen, that it's their constitutional right to overtake the government, and during this coup, no U.S. laws apply. Their plan is to literally kill. Please, please take this tip seriously and investigate further.[74]

On January 5, 2021, an FBI office in Norfolk, Virginia issued an alert to law enforcement agencies titled, "Potential for Violence in Washington, D.C., Area in Connection with Planned 'StopTheSteal' Protest on 6 January 2021."[75]

Trump was personally informed of these plans for violent action, but despite the expectation of violent action, Trump proceeded with his plans for January 6, 2021.[76]

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[70] *Id.*

[71] *Id.* at 62.

[72] *Id.* at 63.

[73] *Id.* at 695.

[74] Ex. 15, Heaphy Testimony, at 218:7-16.

[75] *See* January 6th Report, *supra* note 7, at 62 (Ex. 8).

[76] *See id.* at 63, 66-67, 539-40.

III. THE JANUARY 6, 2021 INSURRECTION.

A. The Two Demonstrations.

By 11:00 AM (Eastern Time) on the morning of January 6, 2021 the United States Capitol Police ("USCP") reported "'large crowd[s]' around the Capitol building," including approximately 200 members of the Proud Boys.[77] Other people headed to the Ellipse, where President Trump was scheduled to speak.

B. Trump's Preparations as the Demonstrations Began.

On the morning of January 6, at 1:00 AM, Trump tweeted: "If Vice President @Mike_Pence comes through for us, we will win the Presidency. . . . Mike can send it back!"[78] Later that morning, Trump again tweeted that "All Mike Pence has to do is send [the votes] back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!"[79]

At approximately 10:30 AM, Trump edited a draft of his speech for that afternoon's Ellipse Demonstration (also known as the Save America Rally). Over lawyer Eric Herschmann's objection, Trump personally added the text, "[W]e will see whether Mike Pence enters history as a truly great and courageous leader. All he has to do is refer the illegally-submitted electoral votes back to the states that were given false and fraudulent information where they want to recertify."[80]

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[77] Ex. 9, U.S. Senate Comm. On Homeland Security & Gov't Affairs, *Examining The U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6 (Staff Report)*, at 22 (June 8, 2021), [hereinafter Rules & Admin. Review] https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/HSGAC&RulesFullReport_ExaminingU.S.CapitolAttack.pdf (alteration in original).

[78] *See* Trump Tweet Compilation, *supra* note 9, at 15 (Group Ex. 7) (Jan. 6, 2021 at 1:00 AM ET), https://twitter.com/realDonaldTrump/status/1346698217304584192.

[79] *Id.* at 15 (Jan. 6, 2021 at 8:17 AM ET), https://twitter.com/realDonaldTrump/status/1346808075626426371.

[80] January 6th Report *supra* note 7, at 581-82 (Ex. 8).

C. The Increasingly Apocalyptic Demonstration at the Ellipse.

At the Ellipse Demonstration, speakers preceding Trump urged the crowd to take action to ensure that Congress and/or Pence rejected electoral votes for Biden. Representative Mo Brooks of Alabama urged the crowd to "start taking down names and kicking ass" and to be prepared to sacrifice their "blood" and "lives" and "do what it takes to fight for America" by "carry[ing] the message to Capitol Hill," since "the fight begins today."[81] Trump's lawyer Rudy Giuliani called for "trial by combat."[82]

Around 10:57 AM, the organizers of the demonstration played a two-minute pro-Trump video.[83] The video reflected flashing images of Joseph Biden and Nancy Pelosi while Trump voiced over, "For too long, a small group in our nation's capital has reaped the rewards of government, while the people have borne the cost."

At the Ellipse, an estimated 25,000 people refused to walk through the magnetometers at the entrance.[84] When Trump was informed that people were not being allowed through the monitors because they were carrying weapons, he responded, "I don't fucking care that they have weapons. They're not here to hurt *me*. Take the fucking [metal detectors] away. Let my people in. They can march to the Capitol from here. Take the fucking [metal detectors] away."[85]

D. Trump Directed Supporters to March on the Capitol and Intimidate Pence and Congress In An Effort to Prevent Certification of the Results

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

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

[83] Ryan Goodman, Trump Film Ellipse Jan. 6, 2021, VIMEO (Feb. 3, 2021), https://vimeo.com/508134765.

[84] *See* January 6th Report, *supra* note 7, at 585 (Ex. 8).

[85] *Id.* (alterations omitted); Heaphy Testimony, *supra* note 74, at 217:9-18 (Ex. 15).

of the Election.

Around 11:57 AM, Trump began his speech at the Ellipse.[86] For the first 15 minutes of his speech, he falsely repeated that he had been defrauded of the presidency, and claimed that he won "by a landslide." He exhorted the crowd that "we will never give up, we will never concede. It doesn't happen. You don't concede when there's theft involved."[87] Throughout his speech, Trump repeatedly called out Vice President Pence by name, urging Pence to reject electoral votes from states Trump had lost.[88]

Around 12:16 PM, Trump made his first call on demonstrators to head towards the Capitol: "After this, we're going to walk down and I'll be there with you. We're going to walk down. We're going to walk down any one you want, but I think right here. We're going to walk down to the Capitol, and we're going to cheer on our brave senators, and congressmen and women. We're probably not going to be cheering so much for some of them because you'll never take back our country with weakness. You have to show strength, and you have to be strong."[89] Trump criticized Republicans for being "nice" and acting like a "boxer with his hands tied behind his back," and told the crowd they were "going to have to fight much harder."[90]

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

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[86] *Id.*

[87] *Rally on Electoral College Vote Certification*, at 3:33:49, C-SPAN (Jan. 6, 2021), https://www.c-span.org/video/?507744-1/rally-electoral-college-vote-certification.

[88] *E.g.*, *id.* at 3:37:19, 3:46:29.

[89] *Id.* at 3:46:53.

[90] *Id.* at 3:46:10.

right now. I'm not hearing good stories."[91]

For the remainder of his speech, Trump asserted that Biden's victory was illegitimate and that the process of transferring power to Biden could not take place, telling the crowd that Biden would be an "illegitimate president"[92] and urging them to "fight like hell" because "if you don't fight like hell, you're not going to have a country anymore."[93] Trump supporters understood the calls to "fight," not as metaphorical but as a literal call to violence. And while in the midst of the calls to go to the Capitol to "fight" Trump also stated, "I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard." Professor Peter Simi has testified that this statement was part of a communication style aimed at preserving plausible deniability and was understood by Trump supporters to do nothing to diminish the call for fighting and violence.[94]

Around 1:00 PM, towards the end of his speech, Trump again urged the crowd to march toward the Capitol: "So we're going to, we're going to walk down Pennsylvania Avenue . . . and we're going to the Capitol, and we're going to try and give . . . 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."[95] Following Trump's direction to march to the Capitol, members of the crowd shouted, "Storm the Capitol!"; "Invade the Capitol Building!"; and "Take the Capitol!"[96]

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[91] *Id.* at 4:20:50.

[92] *Id.* at 4:10:20.

[93] *Id.* at 4:41:26.

[94] Simi Aff., *supra* note 5, at Ex. A, 49:14-21, 59:7-17, 101:8-102:21 126:11-19, 221:10-21 (Ex. 1)

[95] *See Rally on Electoral College Vote Certification*, *supra* note 87, at 4:41:56.

[96] Ellipse Crowd Video (P-166), attached hereto as part of Group Exhibit 4, which consists of trial exhibits from *Anderson v. Griswold*. P-166 is the exhibit number in the Colorado proceedings.

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

E. Pro-Trump Insurrectionists Violently Attacked the Capitol.

By the time Trump ended his speech at the Ellipse, attackers had already begun swarming the Capitol building.[97] The attackers, following directions from Trump and his allies, shared the common purpose of preventing Congress from certifying the electoral vote.[98] Many of them also expressed a desire to assassinate Vice President Pence, the Speaker of the House, and other Members of Congress.[99]

By 12:53 PM, attackers had breached the outer security perimeter that the Capitol Police (USCP) had established around the Capitol.[100] Many were armed with weapons including knives, tasers, pepper spray, and firearms.[101] Some wore full body armor and other tactical gear.[102] Many used flagpoles, signposts, or other weapons to attack police officers defending the Capitol.[103]

Following the initial breach, the crowd flooded into the Capitol West Front grounds. Attackers began climbing and scaling the Capitol building.[104] Around 12:55 PM, Capitol Police called on all available units to the Capitol to assist with the breach. Attackers clashed violently with police officers on the scene.[105]

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[97] January 6th Report, *supra* note 7, at 577 (Ex. 8).

[98] *See Rally on Electoral College Vote Certification*, *supra* note 87; Ex. 2, Hodges Affidavit, at Ex. A, 71:17-21, 77:6-15; Ex. 14, Pingeon Testimony, at 200:25-201:11.

[99] January 6th Report *supra* note 7, at 642, 655 (Ex. 8).

[100] Rules & Admin. Review, *supra* note 77, at 23 (Ex. 9).

[101] Hodges Aff., *supra* note 98, at Ex. A, 74:2-8, 75:15-76:1 (Ex. 2); January 6th Report, *supra* note 7, at 640-42 (Ex. 8).

[102] Hodges Aff., *supra* note 98, at Ex. A, 75:15-76:1 (Ex. 2); Pingeon Testimony, *supra* note 98, at 200:9-17 (Ex. 14).

[103] Hodges Aff., *supra* note 98, at Ex. A, 74:4–10; 75:15–76:4, 105:25–106:24 (Ex. 2); Pingeon Testimony, *supra* note 98, at 201:22–202:5, 220:23–221:2, 224:25–225:2 (Ex. 14).

[104] Rules & Admin Review, *supra* note 77, at 24 (Ex. 9).

[105] *Id.* at 23; Pingeon Testimony, *supra* note 98, at 217:15-218:5 (Ex. 14).

As the invasion was mounting, inside the Capitol, Congress was in session to certify electoral votes in accordance with the Electoral Count Act and the Twelfth Amendment to the U.S. Constitution. At approximately 1:12 PM, the House and the Senate separated to debate objections to the certification of Arizona's Electoral College votes.[106]

Rioters soon pushed through the United States Capitol Police perimeter and began scaling the walls of the Capitol. Around 1:50 PM, the on-site D.C. Metropolitan Police Department incident commander officially declared a riot at the Capitol.[107] At that point, law enforcement still held the building, and Congress was still able to function. But that soon changed.

By 2:06 PM, attackers reached the Rotunda steps.[108] By 2:08 PM, attackers reached the House Plaza.[109] By 2:11 PM, the West Front and northwest side of the Capitol had been breached through the barricades. Attackers smashed the first floor windows, which were big enough to climb through. Two individuals kicked open a nearby door to let others into the Capitol.[110] Many attackers demanded the arrest or murder of various elected officials who refused to participate in their attempted coup.[111]

Throughout the roughly 187 minutes of the attack, police defending the Capitol were viciously attacked.[112] While not all who stormed the Capitol personally used violence against law enforcement, a large number did, and the combined mass overwhelmed the police and prevented

[106] Rules & Admin Review, *supra* note 77, at 24 (Ex. 9).

[107] *Id*. at 24.

[108] *Id.*

[109] *Id.*

[110] *Id.* at 24-25.

[111] January 6th Report *supra* note 7, at 655 (Ex. 8).

[112] Pingeon Testimony, *supra* note 98, at 201:22-202:5, 208:6-22, 217:15-218:5 (Ex. 14); Hodges Aff., *supra* note 98, at Ex. A, 103:22-104:5 (Ex. 2).

the execution of lawful authority.[113]

F. The Fall of the United States Capitol.

Around 2:13 PM, Vice President Pence and congressional leaders were evacuated to secure locations for their physical safety, eventually forcing the House and Senate into recess.[114] By approximately 2:30 PM, the attack had succeeded in stopping the legal process for counting and certifying electoral votes.[115]

Around 2:43 PM, attackers broke the glass of a door to the Speaker's lobby, which would give them direct access to the House chamber.[116] There, officers barricaded themselves with furniture and weapons to prevent the attackers' entry.[117] Around ten minutes later, attackers successfully breached the Senate chamber.[118] By this point, both the House Chamber and Senate Chamber were under the control of the attackers.

Throughout the attack, Senators, Representatives, and staffers were forced to flee the House chamber and seclude themselves as attackers rampaged through the building.[119] Due to the ongoing assault, Congress was unable to function or exercise its constitutional obligations. The attack successfully obstructed Congress from certifying the votes, temporarily blocking the peaceful transition of power from one presidential administration to the next. For the first time in the history of our nation, an insurrection had succeeded in seizing the seat of government and

[113] Rules & Admin. Review, *supra* note 77, at 24 (Ex. 9); Pingeon Testimony, *supra* note 98, at 211:25-213:2 (Ex. 14); Hodges Aff., *supra* note 98, at Ex. A, 79:7-20 (Ex. 2).

[114] *Id.* at 25; Ex. 16, Swalwell Testimony, at 141:3-20.

[115] Swalwell Testimony, *supra* note 114, at 141:3-20 (Ex. 16).

[116] Rules & Admin. Review, *supra* note 77, at 25 (Ex. 9).

[117] *Id.* at 25-26 (Ex. 9); Swalwell Testimony, *supra* note 114, at 145:6-12 (Ex. 16).

[118] Rules & Admin. Review, *supra* note 77, at 25-26 (Ex. 9).

[119] Swalwell Testimony, *supra* note 114, at 141:3-147:14 (Ex. 16).

preventing its functioning.

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

Early during the attack, by approximately 1:21 PM, Trump was informed by staffers in the White House that television broadcasts of his speech had been cut to instead show the violence at the Capitol.[120]

After this, Trump immediately began watching the Capitol attack unfold on live news in the private dining room of the White House.[121] Shortly after, White House Acting Director of Communications Ben Williamson sent a text to Chief of Staff Mark Meadows recommending that Trump issue a tweet about respecting Capitol Police.[122]

At 2:24 PM, at the height of violence, Trump made his first public statement during the attack. Against his advisors' recommendation above, rather than make any effort to stop the mob's attack, he encouraged and provoked the crowd further by tweeting: "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!"[123]

Trump's 2:24 PM tweet "immediately precipitated further violence at the Capitol." Immediately after it, "the crowds both inside and outside of the Capitol building violently surged forward."[124]

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[120] *See* January 6th Report, *supra* note 7, at 592 (Ex. 8).

[121] *Id.* at 593.

[122] *Id.* at 595.

[123] Trump Tweet Compilation, *supra* note 9, at 16 (Group Ex. 7) (Jan. 6, 2021 at 2:24 PM ET), https://twiter.com/usatgraphics/status/1347376642956603392?s=20; https://web.archive.org/web/20210106192450/https://twiter.com/realDonaldTrump/status/1346900434540240897; January 6th Report, *supra* note 7, at 429 (Ex. 8).

[124] *See* January 6th Report, *supra* note 7, at 86 (Ex. 8).

Thirty seconds after the tweet, attackers who were already inside the Capitol opened the East Rotunda door. And thirty seconds after that, attackers breached the crypt one floor below Vice President Pence.[125] At 2:25 PM, the Secret Service determined it needed to evacuate the Vice President from his office to a more secure location. At one point during this process, attackers were within forty feet of him.[126]

Shortly after Trump's tweet, Cassidy Hutchinson (assistant to White House Chief of Staff Mark Meadows) and Pat Cipollone (White House Counsel) expressed to Meadows their concern that the attack was getting out of hand and that Trump must act to stop it. Meadows responded, "You heard him, Pat . . . . He thinks Mike deserves it. He doesn't think they're doing anything wrong."[127]

Around 2:26 PM, Trump made a call to Republican leaders trapped within the Capitol. He did not ask about their safety or the escalating situation but instead asked whether any objections had been cast against the electoral count.[128] Around the same time, Trump called House Leader Kevin McCarthy regarding any such objections. McCarthy urged Trump on the phone to make a statement and to instruct the attackers to cease and withdraw. Trump declined to make a statement directing the attackers to withdraw. Instead, Trump responded with words to the effect of, "Well, Kevin, I guess they're just more upset about the election theft than you are."[129]

Within ten minutes after Trump's tweet about Pence's purported lack of "courage," thousands of attackers "overran the line on the west side of the Capitol that was being held by the

[125] *Id.* at 465.

[126] *Id.* at 466.

[127] *Id.* at 596.

[128] *Id.* at 597-98.

[129] *Id.* at 598.

Metropolitan Police Force's Civil Disturbance Unit, the first time in history of the DC Metro Police that such a security line had ever been broken."[130]

Throughout the time Trump sat watching the attack unfold, multiple relatives, staffers, and officials—including McCarthy, Trump's daughter Ivanka, and attorney Eric Herschmann—tried to convince Trump to make a direct statement telling the attackers to leave the Capitol.[131] At 2:38 PM, Trump tweeted: "Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!"[132] Many attackers saw this tweet but understood it *not* to be an instruction to withdraw from the Capitol, and the attack raged on.[133]

Around 3:05 PM, Trump was informed that a Capitol Police officer fatally shot one Ashli Babbitt. Babbitt had been attempting to forcibly enter the Speaker's Lobby adjacent to the House chamber.[134]

Although the force and ferocity of the assault overwhelmed the U.S. Capitol Police, Trump did not himself order any additional federal military or law enforcement personnel to help retake the Capitol.[135]

After 3:00 PM, the Department of Homeland Security, the Bureau of Alcohol, Tobacco, Firearms, and Explosives and FBI agents, and police from Virginia and Maryland, joined Capitol Police to help regain control of the Capitol.[136]

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[130] *Id.* at 86; *see also* Hodges Aff., *supra* note 98, at Ex. A,103:12-104:5 (Ex. 2).

[131] *Id.* at 599, 601-04.

[132] *See* Trump Tweet Compilation, *supra* note 9, at 16 (Group Ex. 7) (Jan 6, 2021 at 2:38 PM ET), https://twitter.com/realDonaldTrump/status/1346904110969315332?lang=en.

[133] *See, e.g.*, Simi Aff., *supra* note 5, at Ex. A, 78:18-23 (Ex. 1).

[134] *See* January 6th Report, *supra* note 7, at 91 (Ex. 8).

[135] *See* January 6th Report, *supra* note 7, at 6-7, 595 (Ex. 8); Ex.10, The Daily Diary of President Donald J. Trump, January 6, 2021; Ex. 13, Banks Testimony, at 255:21-256:18.

[136] Rules & Admin. Review, *supra* note 77, at 26 (Ex. 9).

Throughout this period, a public statement from Trump directing the attackers to disperse could have halted the attack. In fact, when he finally *did* issue such a statement, after multiple deaths and after the tides were starting to turn against his violent mob as more law enforcement arrived, it had precisely that effect. At 4:17 PM, nearly 187 minutes after attackers first broke into the Capitol, Trump released a video on Twitter directed to those currently at the Capitol. In this video, he stated: "I know your pain. I know your hurt. . . . We love you. You're very special, you've seen what happens. You've seen the way others are treated. . . . I know how you feel, but go home, and go home in peace."[137]

Immediately after Trump uploaded the video to Twitter, the attackers began to disperse from the Capitol and cease the attack.[138] Attackers were streaming the video. One attacker, Jacob Chansley, announced into a bullhorn, "I'm here delivering the president's message: Donald Trump has asked everybody to go home." Other attackers acknowledged, "That's our order" or "He says go home. He says go home."[139] Group leaders from the Proud Boys and members of the Oath Keepers texted about the message. An Oath Keeper texted other members of the group saying, "Gentleman [sic], Our Commander-in-Chief has just ordered us to go home."[140]

Around 5:20 PM, the D.C. National Guard began arriving.[141] This was not because Trump ordered the National Guard to the scene; he never did.[142] Rather, Vice President Pence—who was not actually in the chain of command of the National Guard—ordered the National Guard to assist

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[137] January 6th Report, *supra* note 7, at 579-80 (Ex. 8); *President Trump Video Statement on Capitol Protestors*, C-SPAN (Jan. 6, 2021), https://www.c-span.org/video/?507774-1/president-trump-video-statement-capitol-protesters.

[138] January 6th Report, *supra* note 7, at 606 (Ex. 8).

[139] *Id.*

[140] *Id.* at 579.

[141] *Id.* at 747.

[142] Banks Testimony, *supra* note 135, at 255:21-256:18 (Ex. 13).

the beleaguered police and rescue those trapped at the Capitol.[143]

At 6:01 PM, Trump issued the final tweet of the day in which he stated that: "These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!"[144]

Vice President Pence was not able to reconvene Congress until 8:06 PM, nearly six hours after the process had been obstructed.[145] Even after Congress reconvened, Trump's attorney Eastman continued to urge Pence to delay the certification of the electoral results.[146] Ultimately, though six Senators and 121 Representatives voted to reject Arizona's electoral results,[147] and seven Senators and 138 Representatives voted to reject Pennsylvania's results,[148] Biden's election victory was finally certified at 3:32 AM, January 7, 2021.[149]

Professor Peter Simi, an expert in political extremism testified that the Trump supporters participating in January 6 understood that Trump's calls to "fight" were literal calls for violence and his communications to them incited the events at the Capitol, based on the history and pattern of Trump's communications and extremist culture.[150] In total, more than 250 law enforcement officers were injured as a result of the January 6th attacks, and five police officers died in the days

[143] January 6th Report, *supra* note 7, at 578, 724 (Ex. 8).

[144] *Id.* at 607.

[145] *Id.* at 467.

[146] *Id.* at 469.

[147] 167 Cong. Rec. H77 (daily ed. Jan. 6, 2021), http://bit.ly/Jan6CongRec.

[148] *Id*. at H98.

[149] January 6th Report, *supra* note 7, at 669 (Ex. 8); Swalwell Testimony, *supra* note 114, at 169:11-20 (Ex. 16).

[150] Simi Aff., *supra* note 5, at Ex. A, 49:14-21, 59:7-17, 101:20-102:6, 126:11-19, 221:10-21 (Ex. 1).

following the riot.[151]

IV. TRUMP REMAINS UNREPENTANT AND WOULD DO IT AGAIN.

On May 10, 2023, during a CNN town hall, Trump maintained his position that the 2020 presidential election was a "rigged election,"[152] stated his inclination to pardon "many of" the January 6th rioters who have been convicted of federal offenses,[153] and acknowledged that he had control of the January 6th attackers, who "listen to [him] like no one else."[154]

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

Instead, Trump has continued to defend and praise the attackers. As recently as November 2023, Trump decried the prison sentences January 6 attackers received for their criminal activity, referring to them as "hostages." At a 2024 presidential campaign event he stated: "I call them the J6 hostages, not prisoners. I call them the hostages, what's happened. And it's a shame."[155]

On December 3, 2022, in a post on social media website Truth Social, Trump called for "termination of all rules, regulations, and articles, even those found in the Constitution."[156]

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[151] January 6th Report, *supra* note 7, at 711 (Ex. 8).

[152] *Donald Trump CNN Townhall Kaitlan Collins 10 May 2023 Ep*, at 42:13, DAILYMOTION (May 11, 2023), https://www.dailymotion.com/video/x8kup36 [hereinafter *Trump CNN Townhall*]; *see also* CNN, *READ: Transcript of CNN's town hall with former President Donald Trump* (May 11, 2023), https://www.cnn.com/2023/05/11/politics/transcript-cnn-town-hall-trump/index.html.

[153] *Trump CNN Townhall*, *supra* note 152, at 13:22.

[154] *Id.* at 8:24.

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

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

OBJECTION REVIEW STANDARD

When evaluating an objection to a candidate's nomination papers, the Board may consider documentary evidence, testimonial evidence, and evidence presented through affidavits. *See* SOEB Rules of Procedure 2024, at §10(a)(1). "Generally, the objector must bear the burden of proving by operation of law and by a preponderance of the relevant and admissible evidence" that the objection is true and the petition is invalid. *Id.* at 11(b). Here, Objectors have thoroughly supported their petition with these categories of admissible evidence; judgment can be rendered based on the objection alone. This is true, even before taking into account that the Board not "bound by the rules of evidence which prevail in the circuit courts of Illinois," meaning that admissibility decisions can be made more flexibly based on discretion of the Board and hearing officer. *Id.* §10(a)(2). This Motion, however, supplements the original filing with additional evidence and conclusively demonstrates that application of the governing legal standards direct granting the Objection. Summary judgment is appropriate, where, as here, "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c); *see also Seymour v. Collins*, 2015 IL 118432, ¶ 42.

ARGUMENT

Section Three of the Fourteenth Amendment prohibits a person from holding any "office, civil or military, under the United States" if that person, as "an officer of the United States," took an oath "to support the Constitution of the United States" and subsequently "engaged in insurrection or rebellion against the same, or [gave] aid or comfort to the enemies thereof." U.S. Const. amend. XIV, § 3. Undisputed facts—or facts that cannot be meaningfully disputed—show that Section 3 disqualifies Candidate Trump from the office of the presidency because: (1) while President, he "engaged in insurrection" by inciting, supporting, encouraging, and bolstering the

violent January 6, 2021 insurrection at the United States Capitol, and also gave aid to the insurrectionists engaging in the attack; (2) the presidency is an "office" under the United States; (3) as the President, Trump was an "officer of the United States;" and (4) he took the presidential oath "to support the Constitution of the United States." Because there are no genuine issues as to any material facts, the objectors are entitled to summary judgment holding that Candidate Trump's Nomination Papers are legally and factually insufficient, disqualifying him from inclusion on the official ballot as a candidate for the Republican Nomination for the Office of President of the United States for the March 19, 2024 General Primary Election of the November 5, 2024 General Election.

I. THE BOARD IS AUTHORIZED AND OBLIGATED TO HEAR AND RULE ON THIS OBJECTION.

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

Under the Illinois Election Code, presidential primary candidates, like candidates for other offices, *must include* with their nomination papers a statement of candidacy that, among other things, states that the candidate "is qualified for the office specified." 10 ILCS 5/7-10. The Election Code specifies candidate qualifications, as do the constitutions of the State of Illinois and the United States. *See, e.g., Goodman v. Ward*, 241 Ill. 2d 398, 407 (2011) (striking candidate's name

from ballot and holding electoral board erred in denying objection where candidate falsely stated he was "qualified" for office despite not meeting eligibility requirements set forth in Illinois Constitution); U.S. Const. art. II, § 1, cl. 5 (specifying age, residency, and citizenship qualifications for Office of President); U.S. Const. Amend. XXII, § 1 (forbidding the election of a person to the office of President more than twice); U.S. Const. Amend. XIV, § 3 (requiring disqualification of candidates for public office who took an oath to uphold the Constitution and then engaged in or supported insurrection against the United States or gave aid or comfort to those who have).

The Illinois Supreme Court in *Goodman* directed that objections based on constitutionally-specified qualifications *must be evaluated*, including objections that a candidate has improperly sworn that they meet constitutional qualifications for the office for which they seek candidacy. *Goodman*, 241 Ill. 2d at 409-10 ("The statutory requirements governing statements of candidacy and oaths are mandatory . . . . If a candidate's statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot."). Decisions of other Illinois courts track *Goodman* and recognize that electoral boards *must apply* constitutional criteria governing ballot placement. *See Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 ("While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the first instance, if a proposed referendum is permitted by law, even where constitutional provisions are implicated."); *Zurek v. Petersen*, 2015 IL App (1st) 150456, ¶ 33-35 (unpublished) (recognizing that while "the Board does not have the authority to declare a *statute* unconstitutional[, this] does not mean that the Board had no authority to consider the constitutionally-based challenges" and that to determine whether the referendum "was valid and whether the objections should be sustained or overruled,

the Board was required to determine if the referendum was authorized by a statute or the constitution").

Consistent with these decisions, the State Officers Electoral Board has frequently evaluated objections to presidential candidates based on constitutional candidacy requirements. *See, e.g.*, *Freeman v. Obama*, No. 12 SOEB GP 103 (Feb. 2, 2012)[157] (evaluating objection that candidate did not meet qualifications for office of President set out in Article II, Section 1 of the U.S. Constitution); *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); *Graham v. Rubio*, No. 16 SOEB GP 528 (February 1, 2016) (State Officers Electoral Board determining eligibility based on whether facts presented about candidate established he met natural born citizen requirement of U.S. Constitution); *Graham v. Rubio*, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board, determining that the Electoral Board was acting within the scope of its authority in reviewing the adequacy of the Candidate's Statement of Candidacy and evaluating whether it was "invalid because the Candidate is not legally qualified to hold the office of President" based on criteria in the U.S. Constitution); *see also Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (approving Electoral Board's decision to remove from ballot presidential candidate who did not meet constitutional age qualification and denying motion for preliminary injunction to enjoin decision).

Article II, Section 1, Clause 5 of the U.S. Constitution requires the President to be a natural-born citizen, at least thirty-five years of age, and a resident of the United States for at least fourteen years. Section 1 of the Twenty-Second Amendment provides that no person can be elected President more than twice. Section 3 of the Fourteenth Amendment disqualifies from public office

[157] The Electoral Board decisions cited here are attached hereto as part of Group Exhibit 6.

any individual who has taken an oath to uphold the U.S. Constitution and then engages in insurrection or rebellion against the United States, or gives aid or comfort to those who have. Objections to a candidate's inclusion on the primary ballot, asking the Electoral Board to apply these constitutional requirements, fall directly within the Electoral Board's jurisdiction and mandatory duties.

The Board's evaluation of this objection to the Candidate's constitutional eligibility criteria is governed by the Election Code and the Illinois Supreme Court's direction in *Goodman* that the board *must* evaluate a candidate's statement of candidacy that they are "qualified" for the office at the time the nomination papers are filed because "statutory requirements governing statements of candidacy and oaths are mandatory." 241 Ill. 2d at 409-10; *see also Delgado v. Bd. of Election Comm'rs of City of Chicago*, 224 Ill. 2d 481, 485-86 (2007) (differentiating the impermissible action of an electoral board's "question[ing] [the] validity" of underlying legal prerequisites from the required action of an electoral board *applying* a constitutional provision).

To do so, the Electoral Board has the ability, and indeed the clear obligation, when necessary to evaluate evidence and even resolve complex factual issues. The Board is obligated to "decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained . . . ." 10 ILCS 5/10-10. To fulfill that responsibility, the Board has the power to compel and weigh witness testimony—through live testimony or affidavits—as well as documentary evidence, such as books, papers, records, and other documents. *Id.* Electoral boards and their hearing officers indeed utilize this power to consider and evaluate the credibility of high volumes of witness testimony and documentary evidence in an expedited manner whenever necessary to fulfill their mandate. *See, e.g., Raila v. Cook Cnty. Officers Electoral Bd.*, 2018 IL App (1st) 180400-U, ¶¶ 17-27 (unpublished) ("the

hearing officer heard testimony from over 25 witnesses and the parties introduced over 150 documents and a short video clip," and the hearing officer "issued a 68-page written recommendation that contained his summary of the testimony and documentary evidence"); *Muldrow v. Barron*, 2021 IL App (1st) 210248, ¶¶ 28-30 (electoral board properly made factual finding of widespread fraud based on determinations as to the credibility of witnesses' testimony).

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

II. THE REASONED OPINION OF THE COLORADO SUPREME COURT, BASED ON THE SAME EVIDENCE, DIRECTS THE OUTCOME OF THIS OBJECTION.

By now, the objection raised by petitioners has been presented in multiple states throughout the country. The two states that have addressed the merits of the issues, Colorado and Maine, both determined—following the presentation of evidence with the opportunity for cross-examination, and extensive briefing of the legal issues—(a) that the events of January 6, 2021 constituted an "insurrection," (b) that Trump "engaged in" that insurrection, and (c) that he is therefore ineligible for the Office of President of the United States. *See generally Anderson v. Griswold*, 2023 CO 63, 2023 WL 8770111 (Dec. 19, 2023); *In re Challenges of Rosen, Saviello, and Strimling, Gordin, and Royal*, (Me. Sec'y of State Dec. 28, 2023), *appeal remanded to Sec'y of State sub nom. Trump v. Bellows*, Docket No. AP-24-01 (Me. Super. Ct. Jan. 17, 2024) (Murphy, J). With those carefully reasoned, directly-on-point rulings as a guide, the Electoral Board should reach the same conclusions.

The Colorado Supreme Court decision, in which it reviewed factual findings issued by the trial court following a five-day trial, is particularly instructive. The Colorado Supreme Court

applied the identical constitutional standards raised here. Indeed, the persuasive authority that the Colorado opinion provides *based on the same evidence submitted with this motion*,[158] fully directs the same result. The thorough, well-reasoned decision concerning the same facts, evidence, and identical legal issues is highly persuasive, and there is no reason for the electoral board to depart from its conclusions. *See Kostal v. Pinkus Dermatopathology Lab., P.C.*, 357 Ill. App. 3d 381, 395 (1st Dist. 2005) ("Although they are not binding, comparable court decisions of other jurisdictions 'are persuasive authority and entitled to respect.'").

The Colorado Supreme Court had "little difficulty" concluding that substantial evidence supported the finding that the events of January 6th constituted an insurrection, noting the concerted and public use of force by a group of people for the purpose of preventing the peaceful transfer of power that day. *Anderson*, 2023 CO 63, ¶ 189. Then, in affirming the trial court's finding that Trump "engaged in" the insurrection, the Colorado Supreme Court highlighted evidence—"the great bulk of which was undisputed"—showing, among other things, that Trump laid the groundwork prior to the November 2020 election to later claim that the election was rigged, sought to overturn the lawful results of that election, fanned the flames of his supporters with knowledge of their violent propensities, knew of the potential for violence on January 6th, issued tweets that put a target on the back of Vice President Pence, exhorted his followers to fight at the Capitol, and took no action to stop the attack or call in reinforcements despite knowledge that the Capitol was under attack. *Id.* ¶¶ 197-221; *see also* Maine Sec. of State Ruling, Ex. 5 (evaluating the same facts). Trump can provide no reason for the electoral board to reach a different finding here.

[158] Witness testimony from the Colorado proceedings is included in Exhibits 1-2 and 13-16. Trial exhibits from that testimony are included as part of Group Exhibit 4; video exhibits from that testimony have also been separately submitted in the folder titled "Colorado Trial Video Exhibits." *See* Ex. 3, Fein Affidavit (providing testimony about witnesses, transcripts, and exhibits); *see also* Ex. 17, Sherman Affidavit.

In concluding that Trump's engaging in an insurrection disqualified him for the Office of President under Section Three of the Fourteenth Amendment, the Colorado Supreme Court also persuasively dispatched with Candidate Trump's various meritless attempts to avoid the plain effect of that constitutional provision. The court rejected, for example, the argument that Section Three of the Fourteenth Amendment is not enforceable without enacting legislation from Congress, recognizing that Section Three is—like the other provisions of the Reconstruction Amendments—self-executing, as it would be absurd to make those fundamental constitutional provisions dependent on congressional action. *Anderson*, 2023 CO 63, ¶ 106. The court also rejected that Section Three presents a non-justiciable political question because nothing in the text commits the task of assessing presidential candidate qualifications to Congress, and the standards for resolving Section Three claims are judicially discoverable and manageable. *Id.* ¶¶ 112-125. As for the notion that Section Three somehow does not apply to the Office of the President, the court explained that (a) the text and history of Section Three definitively establish that the President is an "office under the United States," (b) the President is an "officer of the United States," and (c) the presidential oath is an oath "to support the Constitution of the United States." *Id.* ¶¶ 128-159. Finally, the court conclusively rejected the claim that Trump's speech at the Ellipse—in which he exhorted the armed crowd to march to the Capitol and "fight like hell"—was somehow protected by the First Amendment, concluding that Trump's speech encouraged the use of violence, that Trump intended that his speech would result in the use of violence, and that the imminent use of violence was the likely result of his speech. *Id.* ¶¶ 228-255.

Colorado and Maine are the only two states that have yet evaluated the evidence and ruled on the merits of a Section 3 challenge, and both found Trump disqualified. No court anywhere has found otherwise. Rather, the only courts that have reached a decision to *not* bar Trump from the

ballot in the face of a challenge to his eligibility have done so based on procedural grounds not applicable here. *See, e.g., Castro v. Scanlan*, 86 F.4th 947, 953 (1st Cir. 2023) (affirming dismissal based on lack of Article III standing required in federal courts); *Growe v. Simon*, 997 N.W.2d 81, 83 (Minn. 2023) (deferring issues to general election under Minnesota state challenge procedure); *LaBrant v. Sec'y of State*, __ N.W.2d __, 2023 WL 8656163, *16 & n.18 (Mich. Ct. App.) (same under Michigan state law), *leave to appeal denied*, No. 166470 (Mich. Dec. 27, 2023) (mem.); *State ex rel. Nelson v. Griffin-Valade*, No. S070658 (Or. Jan. 12, 2024) (deferring until after U.S. Supreme Court decision; Oregon's primary is not until May 21), *available at* https://freespeechforpeople.org/wp-content/uploads/2024/01/court-issued-court-issued-miscellaneous-1.pdf; *Trump v. Bellows*, Docket No. AP-24-01 (Me. Super. Ct. Jan. 17, 2024) (Murphy, J.) (upon agreement by the parties, Maine Superior Court remanding to Maine Secretary of State until after U.S. Supreme Court Decision).

The highly persuasive decision of the Colorado trial court and Supreme Court, therefore, simplify the task of the Electoral Board here and guide the resolution of Petitioner's objection.

III. THE FACTS ESTABLISH THAT TRUMP ENGAGED IN INSURRECTION AND IS THUS DISQUALIFIED FROM PUBLIC OFFICE.

A. <u>The events of January 6 constituted an "insurrection" under Section 3.</u>

At the January 6th attack, a violent, unified mob flooded the Capitol, brandishing the Confederate flag and other symbols of white supremacism, attacked law enforcement, broke into chambers threatening to kill Vice President Mike Pence, Speaker of the House Nancy Pelosi, and other leaders, ultimately overwhelmed law enforcement and seized control of the Capitol building. Candidate Trump cannot legitimately dispute that the events of January 6, 2021 qualify as an insurrection. Indeed, as he has explicitly admitted through counsel during his impeachment

hearings, "everyone agrees" that it was an insurrection.[159] "Everyone," in this case, includes the United States Congress,[160] the Colorado Supreme Court in its detailed analysis of a Section 3 challenge, and at least fifteen federal judges who have presided over cases involving January 6.[161]

1. Legal standard.

Courts that have evaluated the meaning of "insurrection" under Section 3 have looked to both ordinary usage and historical context. What has emerged is universal recognition of a standard that encompasses the events of January 6, 2021. As recognized by the Colorado Supreme Court, "Any definition of 'insurrection' for purposes of Section Three would encompass a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish a peaceful transfer of power in this country." *Anderson*, 2023 CO 63, ¶ 184 And the Colorado Supreme Court had "little difficulty" concluding that the events of January 6 met these criteria. *Id.* ¶ 185. *See also* Ruling of the Secretary of State, *In re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for*

[159] 167 Cong. Rec. S729 (daily ed. Feb. 13, 2021), https://www.govinfo.gov/content/pkg/CREC-2021-02-13/pdf/CREC-2021-02-13.pdf.

[160] Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322. In a statute enacted by both houses, Congress declared the attackers were "insurrectionists."

[161] *United States v. Little*, 590 F. Supp. 3d 340, 344 (D.D.C. 2022); *United States v. Munchel*, 567 F. Supp. 3d 9, 13 (D.D.C. 2021); *United States v. Bingert*, 605 F. Supp. 3d 111, 115-16 (D.D.C. 2022); *United States v. Brockhoff*, 590 F. Supp. 3d 295, 298-99 (D.D.C. 2022); *United States v. Grider*, 585 F. Supp. 3d 21, 24 (D.D.C. 2022); *United States v. Puma*, 596 F. Supp. 3d 90 (D.D.C 2022); *United States v. Rivera*, 607 F. Supp. 3d 1 (D.D.C. 2022); *United States v. DeGrave*, 539 F. Supp. 3d 184 (D.D.C. 2021); *United States v. Randolph*, 536 F. Supp. 3d 128 (E.D. Ky. 2021); *Matter of Giuliani*, 197 A.D.3d 1, 25 (2021); *O'Rourke v. Dominion Voting Sys. Inc.*, 571 F. Supp. 3d 1190, 1202 (D. Colo. 2021); *United States v. Hunt*, 573 F. Supp. 3d 779, 807 (E.D.N.Y. 2021); *Rutenburg v. Twitter, Inc.*, No. 4:21-CV-00548-YGR, 2021 WL 1338958, at *1 (N.D. Cal. Apr. 9, 2021); *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1172, 1175-76 (N.D. Cal. 2022); *United States v. Munchel*, 991 F.3d 1273, 1275-79 (D.C. Cir. 2021).

President of the United States, at 24-25 (Dec. 28, 2023) ("Maine Sec. of State Ruling," attached as Exhibit 5) (ruling that even if it applied Trump's more demanding definition of "insurrection"—which it found to be unworkable and unsupported—"the events of January 6, 2021 meet that standard"); *State v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619, at *17 (N.M. Dist. Sep. 06, 2022) (defining "insurrection" as "an (1) assemblage of persons, (2) acting to prevent the execution of one or more federal laws, (3) for a public purpose, (4) through the use of violence, force, or intimidation, by numbers," and finding that January 6 readily satisfied that standard).

In line with these decisions, the definitions and usage of the word "insurrection" contemporaneous with the enactment of Section 3 can be summarized to denote a "concerted, forcible resistance to the authority of government to execute the laws in at least some significant respect." William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. __, at 64 (forthcoming) (canvassing dictionary definitions, public and political usage, judicial decisions, and other sources);[162] *see, e.g.*, President Lincoln, *Instructions for the Gov't of Armies of the United States in the Field*, Gen. Orders No. 100 (Apr. 24, 1863), art. 149 ("Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.");[163] *see also The Prize Cases (The Amy Warwick)*, 2 Black (67 U.S.) 635, 666 (1862) ("Insurrection against a government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of the Government.").

[162] *Available at* https://papers.ssrn.com//.cfm?abstract_id=4532751.

[163] *Available at* https://avalon.law.yale.edu/19th_century/lieber.asp#sec10.

To qualify as an insurrection, an uprising must be "so formidable as for the time being to defy the authority of the United States." *In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894) (emphasis added). However, no minimum threshold of violence or level of armament is required. *See id.* ("It is not necessary that there should be bloodshed"); *see also Case of Fries*, 9 F. Cas. 924, 930 (C.C.D. Pa. 1800) ("military weapons (as guns and swords . . .) are not necessary to make such insurrection . . . because numbers may supply the want of military weapons, and other instruments may effect the intended mischief"). Even a failed attack with no chance of success can qualify as an insurrection. *See In re Charge to Grand Jury*, 62 F. at 830 ("It is not necessary that its dimensions should be so portentous as to insure probable success"); *see also Home Ins. Co. of N.Y. v. Davila*, 212 F.2d 731, 736 (1st Cir. 1954) (an insurrection "is no less an insurrection because the chances of success are forlorn").

Moreover, although the insurrectionists must act in a concerted manner, they need not be highly organized. *See Home Ins. Co. of N.Y.*, 212 F.2d at 736 ("[A]t its inception an insurrection may be a pretty loosely organized affair . . . . It may start as a sudden surprise attack upon the civil authorities of a community with incidental destruction of property by fire or pillage, even before the military forces of the constituted government have been altered and mobilized into action to suppress the insurrection").

The insurrection of January 6, 2021 was larger, more coordinated, and more violent than several insurrections that predated the enactment of Section 3 and informed its meaning. *See The Reconstruction Acts (I)*, 12 U.S. Op. Atty. Gen. 141, 160 (1867) (construing language identical to Section 3 as including "not only the late rebellion, but every past rebellion or insurrection which has happened in the United States"). For instance, Congress specifically cited the Whiskey Insurrection as an example of a previous insurrection during debate over Section 3, *see Cong.*

Globe, 39th Cong. 1st Sess. 2534 (1866) (Rep. Eckley), and though it initially boasted thousands of participants, virtually all fled before federal forces arrived, and it was "almost bloodless." Indeed, Congress noted that though it was "small in comparison" to the Civil War, it nonetheless qualified as an insurrection. *Id.*; *see also* Robert Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789–1878*, at 35-66 (U.S. Army Ctr. of Mil. Hist. 1996) (recounting antebellum insurrections that involved loosely organized, lightly-armed groups and few deaths).[164]

2. The January 6 insurrection met the legal standard.

The January 6 insurrection unquestionably qualifies as an insurrection under Section 3. Trump's emphatic admission on this point should resolve the inquiry.[165] But it need not. As discussed above, the Colorado Supreme Court confirmed that January 6 constituted an insurrection after reviewing findings and evidence from a five-day trial—testimony and evidence that objectors also present in this motion. *Anderson*, 2023 CO 63, ¶¶ 4, 100-102; *see also supra* Part II.

January 6 involved actual and threatened use of force. As set forth in more detail in the Statement of Facts, a group of thousands descended on and forcibly entered the Capitol on January 6 with calls to "Storm the Capitol!", "Invade the Capitol Building!", and "Take the Capitol!", and their action was so formidable that it overwhelmed law enforcement. Many in the mob arrived armed with weapons, including firearms, knives, tasers, and pepper spray, as well as armor, and tactical gear. And many others fashioned weapons out of flagpoles and signposts. The mob repeatedly and violently attacked police officers who were tasked with defending the Capitol.

[164] Section 3's phrase "insurrection or rebellion against *the same*" is best read as an "insurrection or rebellion against [the Constitution of the United States]" (i.e., to block exercise of core constitutional functions of the federal government) but can also be read as an insurrection or rebellion against "the United States." The January 6 insurrection satisfies both readings, so the distinction does not matter here.

[165] 167 Cong. Rec. S729 (Trump's counsel stating "everyone agrees" that "there was a violent insurrection of the Capitol").

More than 250 law enforcement officers were injured in the January 6 attacks and five police officers died following the assault on the Capitol.

Moreover, the group's actions were concerted and public, and aimed at impeding the peaceful transfer of power to the incoming president. Seeing Trump's tweets as a call to arms to block the peaceful transfer of power, militarized extremist groups began organizing for January 6. The attackers shared the common purpose of using violence to prevent Congress from certifying the electoral vote on January 6—as Congress is required to do by the Twelfth Amendment and as is necessary to accomplish a peaceful transfer of power. Indeed, upon breaching the Capitol, the mob immediately marched through the Capitol building toward the House and Senate chambers, where the certification of the presidential election was to take place. This breach succeeded in forcing both chambers into recess and obstructing Congress's certification of electoral votes. What is more, the mob directed much of its vitriol and threats of violence at Vice President Pence, who had the constitutional duty to oversee the electoral count. *See* U.S. Const. art. I, § 3, cl. 4; *id.* at art. II, § 1, cl. 3.

In short, January 6 undoubtedly qualifies as an insurrection. In fact, this insurrection included something that *no past insurrection* achieved: its violent seizure of the Capitol, obstructing and delaying an essential constitutional procedure. Even the Confederates never attacked the heart of the nation's capital, prevented a peaceful and orderly presidential transition of power, or took the U.S. Capitol.

B. Donald Trump engaged in the January 6 insurrection.

1. Courts overwhelmingly recognize Trump's responsibility for the January 6 insurrection.

As discussed above, *supra* Part II, the Colorado Supreme Court concluded that Trump "engaged" in insurrection under Section 3 based on "Trump's direct and express efforts, over

several months, exhorting his supporters to march the Capitol to prevent what he falsely characterized as an alleged fraud on the people of this country"—efforts that he undertook "to aid and further a common unlawful purpose that he himself conceived and set in motion: prevent Congress from certifying the 2020 presidential election and stop the peaceful transfer of power." *Anderson*, 2023 CO 63, ¶ 221. Evaluating the same set of facts, the Maine Secretary of State concurred. *See* Maine Sec. of State Ruling, Ex. 5, at 26-32.

In addition, at least nine federal judges to date have recognized that Trump had significant, direct responsibility for the January 6 insurrection. In a published opinion, one federal judge in the District of Columbia stated:

> For months, the President led his supporters to believe the election was stolen. When some of his supporters threatened state election officials, he refused to condemn them. Rallies in Washington, D.C., in November and December 2020 had turned violent, yet he invited his supporters to Washington, D.C., on the day of the Certification. They came by the thousands. And, following a 75-minute speech in which he blamed corrupt and weak politicians for the election loss, he called on them to march on the very place where Certification was taking place.
>
> . . .
>
> President Trump's January 6 Rally Speech was akin to telling an excited mob that corn-dealers starve the poor in front of the corn-dealer's home. He invited his supporters to Washington, D.C., after telling them for months that corrupt and spineless politicians were to blame for stealing an election *from them*; retold that narrative when thousands of them assembled on the Ellipse; and directed them to march on the Capitol building—the metaphorical corn-dealer's house—where those very politicians were at work to certify an election that he had lost. The Speech plausibly was, as [John Stuart] Mill put it, a "positive instigation of a mischievous act."[166]

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

[166] *Thompson v. Trump*, 590 F. Supp. 3d 46, 104, 118 (D.D.C 2022).

- "Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021."[167]

- "The fact remains that [the defendant] and others were called to Washington, D.C. by an elected official; he was prompted to walk to the Capitol by an elected official. . . [the defendant was] told lies, fed falsehoods, and told that our election was stolen when it clearly was not."[168]

- "And as for the incendiary statements at the rally detailed in the sentencing memo, which absolutely, quite clearly and deliberately, stoked the flames of fear and discontent and explicitly encouraged those at the rally to go to the Capitol and fight for one reason and one reason only, to make sure the certification did not happen, those may be a reason for what happened, they may have inspired what happened, but they are not an excuse or justification."[169]

- "[B]ut we know, looking at it now, that they were supporting the president who would not accept that he was defeated in an election."[170]

- "And you say that you headed to the Capitol Building not with any intent to obstruct and impede congressional proceedings; but because the then-President, Trump, told protesters at the 'stop the steal' rally -- and I quote: After this, we're going to walk down; and I will be there with you. We're going to walk down. We're going to walk down. I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard. And you say that you wanted to show your support for and join then-President Trump as he said he would be marching to the Capitol; but, of course, didn't."[171]

- "[A]t the 'Stop the Steal' rally, then-President Trump eponymously exhorted his supporters to, in fact, stop the steal by marching to the Capitol. . . [h]aving followed then-President Trump's instructions, which were in line with [the defendant's] stated desires, the Court therefore finds that Defendant intended her presence to be disruptive to Congressional business."[172]

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[167] *Eastman*, 594 F. Supp. 3d at 1193.

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

[169] Tr. of Sentencing at 22, *United States v. Peterson*, No. 1:21-cr-00309, ECF No. 32 (D.D.C Dec. 1, 2021); *see also* Tr. of Plea and Sentence at 31, *United States v. Dresch*, No. 1:21-cr-00071 (D.D.C. Aug. 4, 2021) ("At the end of the day the fact is that the defendant came to the Capitol because he placed his trust in someone [Donald Trump] who repaid that trust by lying to him."); *United States v. Dresch*, No. 1:21-cr-00071, 2021 WL 2453166, *8 (D.D.C. May 27, 2021) ("Defendant's promise to take action in the future cannot be dismissed as an unlikely occurrence given that his singular source of information, . . . ('Trump's the only big shot I trust right now'), continues to propagate the lie that inspired the attack on a near daily basis").

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

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

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

- Four sentencing cases of January 6 defendants included statements by a judge that, "The events of January 6th involved the rather unprecedented confluence of events spurred by then President Trump . . . ."[173]

2. Legal standard.

The meaning of "engage" under Section 3, as reflected in dictionaries, historical evidence, and case law, undoubtedly encompasses the actions of Donald Trump. After surveying these sources, the Colorado Supreme Court concluded that "engaged in" requires "an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose." *Anderson*, 2023 CO 63, ¶ 194. *Cf. Engage,* WEBSTER'S DICTIONARY (1828) (relevantly defining "engage" as "[t]o embark in an affair").[174]

Also in accord with these definitions is the reading of "engage" as articulated, at the time the Fourteenth Amendment was being debated, by then-Attorney General Stanbery. He stated that a person may "engage" in insurrection or rebellion "without having actually levied war or taken arms." *The Reconstruction Acts (I)*, 12 Op. Att'y Gen. at 161. Indeed, as he explained, when individuals act "in the furtherance of the common unlawful purpose" or do "any overt act for the purpose of promoting the rebellion," they have "engaged" in insurrection or rebellion. *Id.* at 161-62. Words and actions alike can constitute engagement. According to Stanbery, "[d]isloyal sentiments, opinions, or sympathies would not disqualify; but when a person has, by speech or by

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

[174] *Cf. Engage*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (2002) (defining "engage" as "to begin and carry on an enterprise" or "to take part" or "participate"); *see also Engage*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/engage [https://perma.cc/7JDM-4XSB] (defining "engage" as "to begin and carry on an enterprise" or "to take part" or "participate").

writing, incited others to engage in rebellion, [h]e must come under the disqualification." *The Reconstruction Acts (II)*, 12 U.S. Op. Att'y Gen. 182, 205 (1867).

This reading is also consistent with the relevant case law, which defines "engage" under Section 3 as providing *any* voluntary assistance, either by service or contribution. *See United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (defining "engage" as "a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from insurrectionists' perspective] termination"); *Worthy v. Barrett*, 63 N.C. 199, 203 (1869) (defining "engage" as "[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing that was useful or necessary"); *Griffin*, 2022 WL 4295619, *19-20 (applying definition of "engage" from *Powell* and *Worthy*); *Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Ofc. of State Admin. Hrgs. May 6, 2022), slip op. at 13-14[175] (same). As underscored by the case law, engagement does *not* require that an individual personally commit an act of violence. *See Powell*, 27 F. Cas. at 607 (defendant made a payment to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (defendant simply served as county sheriff in service of the Confederacy); *Rowan*, *supra*, at 13-14 ("engagement" includes "marching orders or instructions to capture a particular objective, or to disrupt or obstruct a particular government proceeding"); *Griffin*, 2022 WL 4295619, at *20. Indeed, Jefferson Davis—the president of the Confederacy—never fired a shot. Furthermore, "engagement" does not require previous conviction, or even charging, of any criminal offense. *See, e.g.*, *Anderson*, 2023 CO 63, at ¶¶ 105, 190-95 (recognizing charging and conviction is not required); *Powell*, 27 F. Cas. at 607 (defendant not charged with any prior crime); *Worthy*, 63 N.C. at 203 (defendant not charged with any crime); *In re Tate*, 63 N.C. 308 (1869) (defendant not charged with any crime). Indeed, Section 3 could

[175] *Available at* https://bit.ly/MTGOSAH.

never have required a prior criminal conviction; President Andrew Johnson pardoned most ex-Confederates in 1865, before the Fourteenth Amendment was even drafted, and *all* ex-Confederates by 1868,[176] so virtually *no* ex-Confederates were ever charged with crimes—but Section 3 was vigorously enforced for years afterward.

3. Trump's participation in January 6 more than satisfies the definition of "engage."

Trump's words and actions leading up to and on January 6 readily satisfy these criteria. As set forth in detail in the Statement of Facts, even before the November 2020 election, Trump was the primary propagator of the lie that the election was fraudulent. During his campaign he claimed that fraudulent voting activity would be the only possible explanation for his defeat. He emphatically and publicly refused to commit to a peaceful transition of power following the election. At the same time, Trump aligned himself with militarized extremist groups, including white supremacist organizations, and asked them to be prepared to act on his behalf.

After he lost the election, Trump repeatedly asserted publicly—without any factual basis—that widespread voter fraud was the reason for his defeat, and that Vice President Pence had the authority to overturn the election. Both were known lies. In this same vein, he publicly and privately pressured state officials around the country to unlawfully overturn the election results.

On December 19, 2020, Trump sent a tweet recruiting his supporters to travel to Washington, D.C. on January 6: "Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January 6. Be there, will be wild!" Several far-right extremist groups, such as the Proud Boys, the Oath Keepers, and the Three Percenters militias, unsurprisingly viewed

[176] *See, e.g.*, Nat'l Park Serv., *Andrew Johnson and Reconstruction*, https://www.nps.gov/anjo/andrew-johnson-and-reconstruction.htm.

Trump's December 19, 2020 tweet as a call to arms, and began to organize their efforts to disrupt the January 6 session of Congress.

By early January 2021, Trump was aware of his supporters' plans to commit violent acts at the Capitol on January 6 in connection with the certification of electoral votes. Despite this knowledge, he proceeded to stoke the flames of their anger and facilitate this anticipated violence. This included deriding direct warnings, such as when he retweeted Gabriel Sterling's pleas to stop inspiring people to commit violence to avoid someone "get[ting] killed" with more rhetoric about the "rigged election," as well as calls to action such as at a rally, two days before the insurrection, where Trump asserted that the transfer of power set for January 6 would not happen because "We're going to fight like hell" and "take [the White House] back." Against this backdrop, Trump repeated his call for supporters to amass in Washington D.C. on January 6 at least twelve times.

On the morning of January 6, Trump was informed that his supporters were armed with weapons and as a result were not being permitted through the magnetometers at the Ellipse entrance. Trump ordered the magnetometers removed, explicitly stating his supporters wouldn't hurt *him* and they would proceed to march to the Capitol. Throughout his speech that morning, Trump repeatedly singled out Vice President Pence, urging him to reject electoral votes from the states Trump had lost. He asserted that Biden's victory was illegitimate and that the transfer of power to Biden could not take place, exhorting the crowd to "fight like hell" because "if you don't fight like hell, you're not going to have a country anymore." Trump criticized Republicans for being "nice" and acting like a "boxer with his hands tied behind his back," and told the crowd they were "going to have to fight much harder." Trump then called upon his supporters to proceed to the Capitol, which his supporters unsurprising took as a call for a violent invasion of the Capitol.[177]

[177] As noted above and made evident here, the Colorado Supreme Court easily concluded, Trump's speech on January 6 was not protected by the First Amendment pursuant to the test set forth *Brandenburg*

Professor Simi testified that these inciting communications were understood by Trump's supporters to be direct calls for violence.

At 1:21 p.m. Trump learned that mob at the Capitol had turned violent, yet he did nothing to stop the attack. On the contrary, Trump goaded the crowd by tweeting at 2:24 p.m.: "Mike Pence didn't have the courage to do what should have been done to protect our County and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!!" The violence raged on.

Ignoring the advice of government officials, personal advisors, and family members, and in violation of his fiduciary duties as Commander in Chief, Trump allowed the insurrection to continue for several hours without intervention or instruction for the mob to disperse, and without ordering additional law enforcement to the scene as the Capitol Police were overtaken by Trump's violent mob. And even then—and to this day—he refused to condemn the violent attack against the United States.

IV. TRUMP ENGAGED IN REBELLION.

As much as the events of January 6 constituted an "insurrection," the course of events leading up to January 6 likewise constituted a "rebellion" under Section 3. Just as South Carolina commenced its "rebellion" when it illegally seceded in December 1860—four full months before firing the first shots at Fort Sumter—so too Trump's rebellion against the Constitution and illegal attempt to overstay his term in office began well before he sent an armed mob to the Capitol. A federal court has ruled that Trump's illegal schemes, including pressuring Vice President Pence to

v. Ohio, 395 U.S. 444, 447 (1969) and its progeny because it incited lawless action. *Anderson*, 2023 CO 63, ¶¶ 228-256.

disregard valid electoral votes, and directing the fraudulent elector scheme, "more likely than not" constituted criminal obstruction and fraud against the United States. *See Eastman v. Thompson*, 594 F. Supp. 3d 1156, 1193 (C.D. Cal. 2022). The effort to overthrow the results of the 2020 election by unlawful means, from on or about November 3, 2020, through at least January 6, 2021, constituted a rebellion under Section 3: an attempt to overturn or displace lawful government authority by unlawful means. *See* Baude & Paulsen, *supra* Part III, at 115-16. Just as Trump engaged in insurrection, undisputed facts show he also engaged in rebellion.

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

While the facts clearly demonstrate that Trump "engaged" in insurrection, they also make clear that he falls within Section 3's prohibition on giving "aid or comfort to enemies" of the Constitution. As used in Section 3, "enemies" applies to domestic, as well as foreign enemies of the Constitution. This has been true since at least 1862 when Congress enacted the Ironclad Oath to "support and defend the Constitution of the United States, against all e*nemies, foreign and domestic*." Act of July 2, 1862, Ch. 128, 12 Stat. 502 (emphases added). Aid or comfort to enemies of the Constitution includes indirect assistance such as supporting, encouraging, counseling, or promoting the enemy, even where such conduct might fall short of "engaging" in insurrection.[178]

By his conduct described herein, beginning before January 6, 2021, and continuing to the present time, Trump gave aid and comfort to enemies of the Constitution by, among other things: encouraging and counseling insurrectionists; deliberately failing to exercise his authority and responsibility as President to quell the insurrection; praising the insurrectionists, including calling

[178] *See* Baude & Paulsen, *supra* Part III, at 67-68.

them "very special," "good persons," and "patriots"; and promising or suggesting that he would pardon many of the insurrectionists if reelected to the presidency.

VI. SECTION 3 APPLIES TO THE PRESIDENT.

Section 3 prohibits a person from holding any "office, civil or military, under the United States" if that person, as "an officer of the United States," took an oath "to support the Constitution of the United States" and subsequently engaged in insurrection. U.S. Const. amend. XIV, § 3. As established above, *supra* Part III, as President, Trump engaged in an insurrection, and Section 3 clearly applies to Trump because (i) the Presidency is an "office, civil or military under the United States"; (ii) the President is an "officer of the Unites States"; and (iii) the presidential oath constitutes an oath "to support the Constitution of the United States." *Id.* Any assertion to the contrary is mere sophistry. A President may not engage in insurrection while in office and then return to the Presidency.

A. The Presidency is an Office Under the Unites States.

As the Colorado Supreme Court decision definitively held, "both the constitutional text and historical record" show that the Presidency is an "office under the United States" within the meaning of Section 3. *Anderson,* 2023 CO 63, ¶ 129. First, the Presidency plainly satisfies the dictionary definitions of "office" from the time of the Fourteenth Amendment's ratification. *See, e.g.,* Noah Webster, *An American Dictionary of the English Language* 689 (C.A. Goodrich ed., 1853) (defining "office" as a "particular duty, charge or trust conferred by public authority, and for a public purpose," that is "undertaken by . . . authority from government or those who administer it"); *see also* Samuel Johnson, *A Dictionary of the English Language* 1755 (1st Folio ed. 1773) (defining "office" as "publick [sic] charge or employment").

If that were not clear enough, the Constitution itself refers to the Presidency as an "office" twenty-five times. *See, e.g.,* U.S. Const. art. I, § 3, cl. 5 ("The Senate shall chuse [sic] their other

Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the *Office of President of the United States*.") (emphasis added); *id.* at art. II, § 1, cl. 1 & 5 (providing that "[n]o Person except a natural born Citizen . . . shall be eligible to the *Office of President*" and "[t]he executive Power shall be vested in a President of the United States of America [who] shall hold his Office during the Term of four Years") (emphases added).

In addition, the Constitution's multiple references to an office "under the United States" make plain that the Presidency is such an office. For example, the Impeachment Clause—a clause that undoubtedly applies to the Presidency—states that Congress can impose, as a consequence of impeachment, a "disqualification to hold and enjoy any *Office* of honor, Trust or Profit *under the United States*." *Id.* at art. I, § 3, cl. 7 (emphasis added). A reading of "office under the United States" as excluding the Presidency, would lead to the absurd outcome that presidents could not be removed from office even if impeached and convicted.

In the same vein, the Incompatibility Clause states that "no Person holding any *Office under the United States*, shall be a member of either House during his Continuance in Office." *Id.* at art. I, § 6, cl. 2 (emphasis added). If "office under the United States" were read to omit the Presidency, a sitting President could simultaneously occupy a seat in Congress, which would violate the precise aim of the Incompatibility Clause: the separation of powers. *See Buckley v. Valeo*, 424 U.S. 1, 124 (1976) ("The principle of separation of powers . . . was woven into the [Constitution] . . . . The further concern of the Framers of the Constitution with maintenance of the separation of powers is found in the so-called 'Ineligibility' and 'Incompatibility' Clauses . . . .").

Moreover, the generation that ratified and implemented the Fourteenth Amendment understood it to bar oath-breaking insurrectionists' access to the Presidency. *See, e.g.*, MONTPELIER DAILY JOURNAL, Oct. 19, 1868 (observing that Section 3 "excludes leading rebels

from holding offices . . . from the Presidency downward"). When Congress considered the idea of granting blanket amnesty to shield Confederate rebels from Section 3, both supporters and opponents recognized that doing so would allow Jefferson Davis access to the Presidency. *See* John Vlahoplus, *Insurrection, Disqualification, and the Presidency*, 13 BRIT. J. AM. LEGAL STUD. __ (forthcoming 2024), at 7-10[179]; TERRE HAUTE WKLY. EXPRESS, Apr. 19, 1871, at 4, col.1 (warning that if amnesty were granted, "JEFF DAVIS would be elligible [sic] to the Presidency"); *The Administration, Congress and the Southern States—The New Reconstruction Bill*, N.Y. HERALD, Mar. 29, 1871, at 6[180] (proposing "such an amnesty as will make even Jeff Davis eligible again to the Presidency"); *see also* THE CHICAGO TRIBUNE, May 24, 1872 (asserting that amnesty would make rebels "eligible to the President of the United States"). Of course, the underlying assumption by both sides of the amnesty debate was that—without amnesty—Section 3 barred Jefferson Davis and other ex-Confederates from the Presidency.

Last, as the Colorado Supreme Court reasoned, Section 3 does not specifically mention the Presidency but lists senators, representatives, and presidential electors because the Presidency "is so evidently an 'office'" that to list it would be surplusage. *Anderson*, 2023 CO 63, ¶ 131. By contrast, senators, representatives, and presidential electors needed to be listed because none of these positions constitutes an "office." *Id.*

In short, by its plain language and any reasonable interpretation, Section 3 prohibits disqualified persons from holding the office of the Presidency.

B. The President of the United States is a Covered "Officer of the United States" Under Section 3.

[179] *Available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4440157.

[180] Reproduced in *Northern View*, FAIRFIELD HERALD, Apr. 12, 1871, at 1.

The Colorado Supreme Court's reasoned interpretation shows that just as the Presidency is an "office," all interpretations—logical or textual—place President as an "Officer of the United States" within Section 3. *See Anderson,* 2023 CO 63, ¶ 143. Thus, a person who swears an oath as President cannot engage in insurrection and then subsequently be permitted to hold public office.

The simplest meaning of "officer" is one who holds an office. *See* N. Bailey, *An Universal Etymological English Dictionary* (20th ed. 1763) ("one who is in an Office"); *see also United States v. Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823) (Marshall, C.J., riding circuit) ("An office is defined to be a public charge or employment, and he who performs the duties of the office, is an officer. If employed on the part of the United States, he is an officer of the United States") (quotation marks omitted). This plain meaning must be the starting point:

> The Constitution repeatedly designates the Presidency as an "Office," which surely suggests that its occupant is, by definition, an "officer." An interpretation of the Constitution in which the holder of an "office" is not an "officer" seems, at best, strained.

Motions Sys. Corp. v. Bush, 437 F3d 1356, 1371–72 (Fed. Cir 2006) (*en banc*) (Gajarsa, J., concurring in part and concurring in the judgment) (citations omitted). Even today, this plain meaning is widely used by the Supreme Court and the executive branch alike. *See, e.g., Nixon v. Fitzgerald,* 457 US 731, 750 (1982) (referring to president as "the chief constitutional officer of the Executive Branch"); *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 541 US 913, 916 (2004) (Scalia, J.) (referring to "the President and other officers of the Executive"); *Motions Sys. Corp.*, 437 F3d at 1368 (cataloguing multiple presidential executive orders in which the president refers to himself as an "officer"); Office of Legal Counsel, US Dep't of Justice, *A Sitting President's Amenability to Indictment and Criminal Prosecution* (Oct. 16, 2000), at 222, 226, 230 (distinguishing "*other* civil officers" from the president) (emphasis added), *available at*

https://www.justice.gov/d9/olc/opinions/2000/10/31/op-olc-v024-p0222_0.pdf; Exec. Order No. 11435 (1968) (referring to actions "of the President or of any other officer of the United States").

Indeed, Trump himself has repeatedly asserted that he was an "officer of the United States" in seeking removal of lawsuits to federal court. *See, e.g.*, Memo. in Opp. to Mot. to Remand, ECF No. 34, *People v. Trump*, No. 23-cv-3773 (S.D.N.Y. filed June 15, 2023) ("Trump Opp."), at 2-9[181] ("The President of the United States is an 'officer . . . of the United States'") (omission in original); Donald J. Trump's Notice of Removal, *K&D, LLC v. Trump Old Post Office LLC*, 1:17-cv-00731-RJL, ECF No. 1, at 3-4 (D.D.C. Apr. 19, 2017); Donald J. Trump's Notice of Removal, *New York v. Trump*, 1:23-cv-03773-AKH, ECF No. 1, at 4-5 (S.D.N.Y. May 4, 2023). This admission alone should be determinative for purposes of evaluating his candidacy for the office.

Further, there is well-founded historical support for this commonsense principle. Well before the Civil War, both common usage and judicial opinions described the president as an "officer of the United States." As early as 1789, congressional debate referred to the president as "the *supreme Executive officer* of the United States." 1 *Annals of Congress* 487–88 (Joseph Gales, ed. 1789) (Rep. Boudinot); *cf.* THE FEDERALIST No. 69 (Alexander Hamilton) ("The President of the United States would be an officer elected by the people"). In 1799, Congress passed a postal statute and enumerated a list of "officers of the United States" that specifically included "the President of the United States." An Act to establish the Post-Office of the United States, § 17, Mar. 2, 1799, 1 Stat. 733, 737. Chief Justice Branch wrote in 1837 while riding circuit that "[t]he president himself . . . is but an officer of the United States." *United States ex rel. Stokes v. Kendall*, 26 F. Cas. 702, 752 (C.C.D.C. 1837), *affirmed*, 37 U.S. 524 (1838).

[181] *Available at* https://bit.ly/TrumpRemandOpp.

By the 1860s, this usage was firmly entrenched. *See* Vlahoplus, *supra*, at 18-20. On the eve of the Civil War, President Buchanan called himself "the chief executive officer under the Constitution of the United States." *Id.* at 18 (citation omitted). That usage was repeated with respect to President Lincoln. *See Cong. Globe*, 37th Cong., 2d Sess. 431 (1862) (Sen. Davis) (referring to President Lincoln as "the chief executive officer of the United States"). In a series of widely reprinted official proclamations that reorganized the governments of former confederate states in 1865, President Andrew Johnson referred to himself as the "chief civil executive officer of the United States."[182]

This usage continued throughout the Thirty-Ninth Congress, which enacted the Fourteenth Amendment, *e.g.*, *Cong. Globe*, 39th Cong., 1st Sess. 335 (Sen. Guthrie) (1866), 775 (Rep. Conkling) (quoting Att'y Gen. Speed), 915 (Sen. Wilson), 2551 (Sen. Howard) (quoting President Johnson), and during its two-year ratification period, *see, e.g.*, *Mississippi v. Johnson*, 71 U.S. 475, 480 (1866) (counsel labeling the president the "chief executive officer of the United States"); *Cong. Globe*, 39th Cong. 2d Sess. 335 (1867) (Sen. Wade) (calling president "the executive officer of the United States"); *Cong. Globe*, 40th Cong. 2d Sess. 513 (1868) (Rep. Bingham) ("executive officer of the United States"). Given the repeated and consistent description of the president as the "officer of the United States," the plain meaning of the phrase in Section 3 necessarily includes the President.

In addition to violating its plain meaning, a construction of "officer of the United States" that excluded the President would mean that one who swears an oath to protect the Constitution *in*

[182] Andrew Johnson, Proclamation No. 135 (May 29, 1865); Proclamation No. 136 (June 13, 1865); Proclamation No. 138 (June 17, 1865); Proclamation No. 139 (June 17, 1865); Proclamation No. 140 (June 21, 1865); Proclamation No. 143 (June 30, 1865); Proclamation No. 144 (July 13, 1865), *all reprinted in* 8 *A Compilation of the Messages and Papers of the President*, 3510–14, 3516–23, 3524–29 (James D. Richardson ed., 1897).

the highest office in the nation would be unique among our nation's officers in that he would be permitted to violate that oath by engaging in insurrection and subsequently return to public office. Such a reading would not only be absurd but would also undermine Section 3's primary purpose: that "those who had been once trusted to support the power of the United Stated, and proved false to the trust repose, ought not, as a class, to be entrusted with power again until congress saw fit to relieve them from disability." *Powell*, 27 F. Cas. at 607.

C. The presidential oath is an oath to support the Constitution.

Finally, by both its text and historical context, the presidential oath to "preserve, protect and defend the Constitution," U.S. Const. art. II, § 1, cl. 8, is undoubtably an oath "to support the Constitution," *id.* at amend. XIC, § 3; s*ee Anderson,* 2023 CO 63, ¶¶ 153-58 (reaching this conclusion by looking to plain meaning and context of the oath and finding it to be the "most obvious" interpretation).

Article VI of the Constitution provides that "all executive and judicial Officers . . . of the United States . . . shall be bound by Oath or Affirmation, to support this Constitution" without requiring specific language for such an oath. *Id.* at art. VI, cl. 3. Article II specifies the particular language of the President's oath to support the Constitution: a commitment to "preserve, protect and defend the Constitution." *Id.* at art. II, § 1 cl. 8. The presidential oath is simply one articulation of the oath to support the Constitution required by Article VI. And the language of the presidential oath is, of course, consistent with the plain meaning of the word "support." Indeed, the definition of "defend" includes "support," and vice versa. *See Defend,* WEBSTER'S DICTIONARY (1828) (defining "defend" to include "to support," and defining "support" to include "to defend"); Samuel Johnson, A DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 1773) (defining "[d]efend" as "[t]o stand in defence of; to protect; to support").

As the Colorado Supreme Court reasoned, it would be an absurd result if "Section Three disqualifies every oath-breaking insurrectionist *except the most powerful one* and that it bars oath-breakers from virtually every office, both state and federal, *except the highest one in the land*." *Anderson,* 2023 CO 63, at ¶ 159. Under Section 3, a person who swears the presidential oath and then engages in insurrection is quite plainly barred from public office.

VII. CONCLUSION

To resolve this Objection, the Electoral Board has a straightforward, non-discretionary task. It must evaluate a focused package of evidence—evidence that has been thoroughly reviewed by the Colorado Supreme Court after proceedings in which Candidate Trump participated—and apply well-defined standards to determine electoral qualifications set out in Section Three of the Fourteenth Amendment. Because material, undisputed facts show that Trump cannot meet the qualifications for president set out in the U.S. Constitution, he has presented invalid nomination papers to the Board and cannot appear on the ballot in the State of Illinois.

WHEREFORE, Petitioners-Objectors respectfully request that their Objectors' Petition be granted, or in the alternative, for an entry of summary judgment in favor of Objectors and against Respondent-Candidate Trump, or for such other relief as the Board deems just, and, if necessary, a hearing to resolve any outstanding questions regarding Objectors' Petition.

Respectfully submitted,

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BEFORE THE ILLLINOIS STATE BOARD OF ELECTIONS
SITTING *EX-OFFICIO* AS THE STATE OFFICERS ELECTORAL BOARD

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, AND DARRYL P. BAKER,	)	No. 24 SOEB GP 517
Petitioners-Objectors,	)	
v.	)	
DONALD J. TRUMP,	)	Hearing Officer Clark Erickson
Respondent-Candidate.	)	

OPPOSITION TO OBJECTORS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The Board need not consider Objectors' motion for summary judgment because it should dismiss the Objection for the legal reasons explained in President Trump's separately filed motion to dismiss. We will not repeat those arguments here. But those arguments establish that, regardless of whether Objectors can or cannot prove what they have pleaded, the Objection is meritless as a matter of law and should be dismissed.

Nonetheless, if the Board considers the merits of Objectors' summary-judgment motion, it should be denied. Objectors' contention that there are no genuinely disputed facts in this case is incorrect. President Trump adamantly disputes and denies that he intended, planned, called for, or supported any crimes or violence at the U.S. Capitol on January 6, 2021, let alone an "insurrection." Far from having undisputed evidence on those points, Objectors have little evidence that is admissible and none that is undisputed. Instead, Objectors ask the Board to construe the factual record and draw inferences in their favor, which is contrary to the most basic principles governing summary judgment. Indeed, Objectors themselves rely almost entirely on decisions made ***after trial*** or an evidentiary hearing. Even by Objectors' own standards, then, summary judgment is not warranted and should be denied.

I. Summary Judgment Must Be Denied Because The Objections Rest On A Host Of Disputed Facts.

"Summary judgment should be granted only where the pleadings, depositions, admissions and affidavits on file, *when viewed in the light most favorable to the nonmoving party*, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law." *Sun-Times v. Cook Cnty. Health & Hosps. Sys*., 2022 IL 127519, ¶ 24A (cleaned up; emphasis added). A tribunal considering a summary judgment motion "must construe the record strictly against the movant and liberally in favor of the nonmovant." *Givens v.*

City of Chicago, 2023 IL 127837, ¶ 46, *reh'g denied* (Nov. 27, 2023). Therefore, "[w]here a reasonable person could draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact, summary judgment should be denied." *Beaman v. Freesmeyer*, 2021 IL 125617, ¶ 72

Here, Objectors are asking the Board to ignore the standard for summary judgment. Objectors' fundamental factual argument—that the sitting President of the United States purposely ordered an armed mob to take over the United States Capitol and shut down a meeting of Congress—depends entirely on partisan inferences based on evidence that is largely inadmissible. In fact, President Trump's central action on January 6, his speech at the Ellipse, expressly directed the gathered crowd to act "peacefully" and contemplated that Congress would complete its vote on election certification, yet Objectors construe even those facts as a call for insurrection. Far from relying on undisputed evidence, Objectors' central factual claim is that the President's actual intentions were the opposite of the words he used in the speech: that his instruction for the crowd to act "peacefully" was insincere, and that his obvious metaphors such as "fighting like a boxer with one hand behind his back" were not actually metaphors. It is hard to imagine a clearer example of a movant improperly drawing inferences from summary judgment evidence. It would be contrary to grant summary judgment based on such disputed evidence construed in Objectors' favor.

In fact, Objectors cite no tribunal anywhere that has done so—even Objectors' own precedents are decisions rendered after a trial or evidentiary hearing. To be clear, President Trump's position is that those decisions are wrong on their own terms, both for reasons explained herein and for others. But even those tribunals recognized that the events of January 6, 2021 involve disputes of fact that could not be resolved on a summary judgment record and proceeded to an adversarial proceeding.

A. Objectors Rely on a Long List of Disputed Facts.

President Trump's motion to dismiss explains the several reasons why Section Three of the Fourteenth Amendment does not apply here, and why the Board in any event lacks the statutory authority to resolve objections based on the Fourteenth Amendment. But even setting those matters aside, Objectors' claim under Section Three would require them to prove that (i) events occurring on January 6, 2021, amounted to an "insurrection," and (ii) President Trump "engaged in" those events. The parties dispute the meanings of both of those terms, and President Trump discusses those disputes as well in his other briefing. Here, suffice it to say that Objectors' arguments that these elements have been satisfied—even under their own definitions, let alone under President Trump's—depend on a long list of contested and disputed factual inferences. We will list just the main ones here:

Disputed Fact 1: The sincerity of President Trump's Ellipse speech.

Objectors acknowledge that President Trump's speech to the crowd on January 6 expressly told them to "march[] over to the Capitol building to peacefully and patriotically make your voices heard." (Br. at 21.) They also acknowledge that President Trump's speech used obvious figurative language, such as stating that Republicans fight like a "boxer with his hands tied behind his back." (Br. at 50.) Objectors contend, however, that President Trump's express request for peaceful conduct was insincere, and that he secretly meant for his figures of speech to be taken literally. Objectors add that when President Trump asked his supporters to march "peacefully" to the Capitol, the supporters interpreted this "as a call for a violent invasion."

Objectors' requested inference in their favor: Objectors offer no direct evidence that President Trump did not mean what he said. Their expert witness on sociology states that he "is not addressing that issue" of President Trump's intentions, because he is "not in President Trump's

mind." (Simi Tr. at 205.) Objectors nevertheless ask the Court to infer that President Trump's communications must have been a form of code, rather than plain English, apparently based on President Trump's general conduct after the election and on January 6. In its simplest form, Objectors' argument—and their purported expert's testimony—is that (1) people who support violence and crimes usually are reluctant to speak expressly about it in public, (2) President Trump's speech did not call for violence or crimes, but (3) some of the crowd subsequently committed violence or crimes, so therefore (4) President Trump's must have supported violence or crimes. One does not have to be master of logic to see the problem. (*See* Simi Tr. at 50-52, 101-02, 126-28.)

President Trump's evidence in dispute: *See, e.g.,* Summary of Material Disputed Facts (attached as Exhibit A) (response to factual assertion nos. 3, 42.)

Disputed Fact 2: President Trump's overall intent.

Objectors allege that President "Trump intended that his speech would result in the use of violence" (Br. at 32), insinuate that President Trump intended for "his supporters" to shut down Congress, *see* Br. at 14 ("Trump formed and conveyed to allies a plan to order his supporters to march to the Capitol at the end of his speech in order to stop the certification of electoral votes."), and assert that President Trump "had control of the January 6th attackers" when some of them broke into the Capitol and committed crimes and violence. (Br. at 38.)

Objectors' requested inference in their favor: Objectors have no statement from the President, no document, and no testimony from anyone, stating that he planned, directed, or intended violence at the Capitol (or anywhere). Instead, Objectors appear to ask the Board to *infer* this from the facts that President Trump had argued that Congress should not certify the electoral votes presented to it, that President Trump asked the crowd to protest at the Capitol "peacefully"

while Congress was considering those votes, and that the crowd ultimately started a riot that delayed Congress' certification of the votes. Similarly, in support of Objectors' inference that the President was in "control" of everything that happened on January 6th, they cite only the President's agreement with a reporter's assertion that the January 6th rioters "listen to" him "like no one else." (*See* Br. at 30 & n.24 (citing CNN Townhall).)

President Trump's evidence in dispute: *See, e.g.,* Exhibit A (response to factual assertion nos. 13, 48.)

Disputed Fact 3: President Trump's alleged knowledge of plans for violence.

Objectors contend that President "Trump was aware of his supporters' plans to commit violent acts at the Capitol on January 6 in connection with the certification of electoral votes," (Br. at 50), and that President "Trump was personally informed of … plans for violent action" on January 6. (Br at 17.)

Objectors' requested inference in their favor: Objectors present no documents purporting to communicate to the President any plans for violence at the Capitol, no statement from President Trump that he was aware of any such plans, and no testimony from anyone that they told him of any such plans. In fact, Objectors present no evidence that *anyone* in the government was aware of plans for violence that were directed specifically at the Capitol. Instead, Objectors ask the Board to *infer* President Trump's awareness of such plans, apparently from a triple-hearsay statement that an aide "told the President" *something*—what exactly Objectors do not know—about "weapons at the rally on the morning of January 6th."[1]

President Trump's evidence in dispute: *See, e.g.,* Exhibit A (response to factual assertion nos. 38-39.)

[1] *See* Jan. 6th Report at 67 (cited by Objectors' Br. at 17.)

Disputed Fact 4: President Trump's conduct toward public officials.

Objectors contend that President Trump tried "to coerce public officials to assist" in his contesting the election results. (Br. at 8.)

Objectors' requested inference in their favor: The only acts of "coercion" that Objectors point to are hearsay about instructions by the President to his subordinates about matters within their job responsibilities, and that the President considered whether (but evidently decided not) to fire officials who refused such instructions. (Br. at 9.) From this, and from the fact that President Trump tried to persuade others to act in accordance with his views about the election results, Objectors apparently ask the Board to infer that there were more nefarious, but unidentified, acts of "coercion."

President Trump's evidence in dispute: *See, e.g.,* Exhibit A (response to factual assertion nos. 17, 19, 22, 24.)

Disputed Fact 5: President Trump's understanding of the election result. Objectors maintain that President Trump knew that he had really lost the election, and his claims to the contrary were lies. *See* Br. at 11 ("Trump continued to publicly lie, maintaining that the 2020 presidential election results were illegitimate due to fraud."), 49 (Trump's assertions of voter fraud and Vice President Pence's authority were "known lies").

Objectors' requested inference in their favor: Objectors point to no admission by President Trump on this point, and no action by President Trump even suggesting that he believed the announced election results was correct. Instead, Objectors ask the Board to *infer* the President's state of mind from the fact that other people told him they disagreed with him on this point, and the fact that his arguments ultimately were unsuccessful.

President Trump's evidence in dispute: *See, e.g.,* Exhibit A (response to factual assertion no. 11.)

Disputed Fact 6: President Trump's alleged relationship with "extremist groups."

Objectors contend that President "Trump aligned himself with militarized extremist groups, including white supremacist organizations, and asked them to be prepared to act on his behalf." (Br. at 49; *see id.* at 5.)

Objectors' requested inference in their favor: Objectors present no evidence of President Trump ever writing or saying words that, by their terms, identify himself with any militarized group, or request that any such group do anything on his behalf. Instead, the quoted statement is Objectors' attempted inferential leap from the following exchange at a televised Presidential debate:

> WALLACE: Okay, you have repeatedly criticized the Vice President for not specifically calling out antifa and other left-wing—
> TRUMP: That's right—
> WALLACE: —extremist groups. But are you willing, tonight, to condemn white supremacists and militia groups?
> TRUMP: Sure.
> WALLACE: And to say that they need to stand down and not add to the violence in a number of these cities, as we saw in Kenosha, and as we're seeing in Portland?
> TRUMP: Sure, I'm willing to do that, but—
> WALLACE: Are you prepared specifically to do that?
> BIDEN: Then do it.
> WALLACE: Well, go ahead sir.
> TRUMP. I would say—I would say, almost everything I see is from the left-wing, not from the right wing, If you look—
> WALLACE: So what do you, what do you, what are you saying—
> TRUMP: I'm willing to do anything. I want to see peace.
> WALLACE: Well, then do it, sir.
> BIDEN: Say it, do it, say it.
> TRUMP: Do you want to call them—what do you want to call them? Give me a name. Give me a name.
> WALLACE: White supremacists and white—
> TRUMP: Give me a name, go ahead, what—who would you like me to condemn? Who?
> BIDEN: White supremacists. The Proud Boys. The Proud Boys.

> WALLACE: White supremacists and right-wing militia.
> TRUMP: Proud Boys, stand back and stand by. But I'll tell you what, I'll tell you what, somebody's got to do something about antifa and the left because this is not a right-wing problem—[2]

President Trump's evidence in dispute: *See, e.g.,* Exhibit A (response to factual assertion nos. 3, 30, 32.)

Disputed Fact 7: Whether the January 6 rioters had a broader revolutionary plan.

Objectors claim that the rioters' actions on January 6 "were … aimed at impeding the peaceful transfer of power to the incoming president." (Br. at 44.)

Objectors' requested inference in their favor: Objectors have presented no evidence—and not even any argument—that the rioters had any sort of plan (let alone a common plan) for how breaking into the Capitol would somehow give them the ability to determine who the next President would be. Nor have Objectors even identified what any possible plan of that kind could have been. Instead, they apparently ask the Board to *infer* the existence of some unspecified plan of that sort from the facts that the rioters were angry about Congress' impending action, and rioted in a way that disrupted and delayed that action.

President Trump's evidence in dispute: *See, e.g.,* Exhibit A (response to factual assertion nos. 34-35.)

Disputed Fact 8: The scale and scope of the January 6 riot.

Objectors assert that the January 6 riot "was larger, more coordinated, and more violent than" the Whiskey Rebellion, or other historical insurrections that Objectors do not name or identify. (Br. at 42.)

[2] https://www.youtube.com/watch?v=qIHhB1ZMV_o

Objectors' requested inference in their favor: Objectors have offered little or no proof of the comparative numbers of participants in, duration of, or levels of coordination or violence involved in the January 6 riot and the Whiskey Rebellion, let alone any other insurrection.

President Trump's evidence in dispute: The historical record indicates that the Whiskey Rebellion involved thousands of armed rebels, lasted for months, and included a movement for independence symbolized by a new six-striped flag. AMERICAN BATTLEFIELD TRUST, https://www.battlefields.org/learn/articles/whiskey-rebellion (last visited Jan. 22, 2024); Thomas P. Slaughter, THE WHISKEY REBELLION 197 (Oxford University Press, 1986); *see also* Donna Brearcliff, *The Whiskey Rebellion*, THE LIBRARY OF CONGRESS (last updated Jan. 2021) https://guides.loc.gov/this-month-in-business-history/august/whiskey-rebellion. The government response included an official declaration by a Supreme Court Justice that western Pennsylvania was in a state of rebellion, a military draft, and field command by President Washington himself (at least for a time) of an army of 13,000 soldiers—as large or larger than Washington's armies in the Revolution. Thomas P. Slaughter, THE WHISKEY REBELLION 196, 206, 210-11, 215 (Oxford University Press, 1986). Finally, the unrest occurred in Pennsylvania, Ohio, Virginia, and Kentucky and was intense enough that rebels were able to "reign over" a town, leaving local officials powerless to resist. *Id.* at 206, 210. And as shown by the Colorado trial exhibits and additional affidavits, *see Section III, infra,* Objectors' assertions that January 6 can only be viewed as a premeditated, violent insurrection is disputed and cannot be accepted on a motion for summary judgment.

B. Objectors' Own Arguments Show Summary Judgment Is Unwarranted.

It should be self-evident that these disputes cannot be resolved at summary judgment. If further confirmation were needed, however, it can be found in the fact that the only two precedents Objectors rely on were decisions made ***after*** a trial or evidentiary hearing.

Objectors ask this Board to follow "[t]he two states that have addressed the merits of the issues" they seek to present, "Colorado and Maine." (Br. at 36.) They contend that these two states made their decisions "following the presentation of evidence with the opportunity for cross-examination." (*Id.*) And indeed, neither of those proceedings involved a grant of summary judgment like Objectors are seeking now. The Colorado case involved "extensive prehearing motions;" "three substantive rulings on these motions;" a trial that "took place over five days and included opening and closing statements, the direct- and cross-examination of fifteen witnesses, and the presentation of ninety-six exhibits;" and a "102-page order" resolving the parties' factual disputes. *Anderson v. Griswold*, 2023 CO 63, ¶ 84, *cert. granted sub nom. Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024). Similarly, the Maine decision on which Objectors rely involved "the opportunity to present evidence; to call witnesses; to cross-examine, and to argue at length both the legal and factual issues." (Op. at 17.) Even then, multiple Justices of the Colorado Supreme Court, including the Chief Justice, dissented on the ground that even these proceedings were so defective that they denied President Trump due process of law. *Anderson*, 2023 CO 63, ¶¶ 269 (Boatwright, C.J. dissenting); 273 *et seq.* (Samour, J., dissenting).

Of course, President Trump does not agree with the outcomes of these cases. At his request, the U.S. Supreme Court has accepted review of the Colorado decision. *Trump v. Anderson*, 2024 WL 61814 (U.S. Jan. 5, 2024). President Trump also does not agree that the Colorado proceedings (which, among other defects, offered no opportunity for pretrial discovery) satisfied the

requirements of the Due Process Clause. But the point here is that even these tribunals—the ones Objectors say the Board should follow—***did not grant summary judgment***, but proceeded to trial or an evidentiary hearing. Here, if the Board does not dismiss the Objection pursuant to President Trump's motion, it must at minimum follow that same procedural path.

In fact, Objectors offer no real argument to the contrary. They suggest that they can simply transplant the transcripts of the Colorado proceedings to this case, and then rely on the Colorado court's verdict to argue that the Board should reach the same factual conclusions on summary judgment here. (Br. at 36-37.) But Objectors offer no argument or authority suggesting that this is proper. As a matter of logic, one tribunal's post-trial resolution of factual disputes cannot support a later tribunal's conclusion at summary judgment that there are no factual disputes to be resolved.[3] And as a matter of authority, Objectors cite only a decision holding that ***legal conclusion****s* by out-of-state courts can be persuasive precedent. *See Kostal v. Pinkus Dermatopathology Lab., P.C.*, 357 Ill. App. 3d 381, 396–97 (2005) (applying precedent for the proposition that personal jurisdiction is established when a defendant provides a medical diagnosis remotely to a patient located in the forum state). Objectors cite nothing suggesting that the ***factual findings*** of other tribunals are entitled to any kind of precedential deference from the Board—let alone that the Board can call off an evidentiary hearing entirely by simply substituting out-of-state factual findings for its own.

[3] To be sure, factual findings from prior proceedings can be made binding in the limited circumstances where collateral estoppel applies. But Objectors have not tried to argue that those circumstances are present here. And indeed, even the Maine Secretary of State did not rely on any estoppel effect of the Colorado ruling, but instead purported to conduct her own review of the evidence and make her own factual findings.

For these reasons, Objectors' own authorities show that their motion for summary judgment must be denied.

Finally, the Board should note that neither the Colorado nor the Main ruling actually removed President Trump's name from those states' primary ballots. The Colorado Supreme Court specifically ordered that "the Secretary will continue to be required to include President Trump's name on the 2024 presidential primary ballot, until the receipt of any order or mandate from the Supreme Court." *Anderson,* 2023 CO 63, ¶ 7.[4] Similarly, the Main Secretary of State "suspend[ed] the effect of my decision until the [Maine] Superior Court rules" on it (at 33)—and then consented to suspend Superior Court proceedings until after the U.S. Supreme Court's decision.

The result is that, if the Board were to enter an immediately effective order that President Trump's name be removed from the ballot, it would be the only tribunal anywhere in the country to take that step—and Illinois likely would become the only state in the Union in which President Trump's name would not appear on the primary ballot. There is no warrant for taking that step, and there *certainly* is no warrant for taking it at the summary judgment stage. Far from supporting Objectors' arguments, the Colorado and Maine decisions confirm that reality.

II. Much of the Objectors' Evidence Is Inadmissible.

For the reasons described above, the evidence proffered by Objectors could not support summary judgment even if the Board were to consider it. But on top of that, the Board should *not* consider the evidence because much of it is plainly inadmissible.

Rule 191(a) requires that summary judgment evidence must "consist of … facts admissible in evidence." Thus, "[e]vidence that would be inadmissible at trial is not admissible in support of

[4] As the U.S. Supreme Court has set the case for argument on February 8, *Trump*, 2024 WL 61814, and Colorado's primary election occurs on March 5—so as a practical matter, it is highly likely that the Colorado primary ballots will include President Trump's name.

or in opposition to a motion for summary judgment." *Ory v. City of Naperville*, 2023 IL App (3d) 220105, ¶ 19.

Objectors, however, rely on substantial evidence that is inadmissible and should not be considered. Attached hereto as Exhibit A is a summary of facts Objectors assert that are based on inadmissible evidence, and are disputed. For a multitude of reasons, for example, the partisan and biased January 6th Report on which Objectors so heavily rely is unreliable and speculative, continues multiple levels of hearsay, and was created after a so-called "investigation" to which President Trump was not a party and he had no opportunity to cross-examine any of the witnesses who testified before the January 6th Committee. (*See e.g.*, Exhibit A (response to factual assertion #1).[5] Moreover, Objectors rely heavily on the testimony of an expert the Colorado objectors retained and called at trial, who claims President Trump orchestrated (via coded communications) the most violent aspects of January 6. But this tribunal has not provided for experts, Objectors never disclosed Mr. Simi's opinions and bases therefor and President Trump has never had the opportunity to offer a rebuttal expert. (*Id.*) Introducing expert testimony without notice and an opportunity to respond is contrary to Illinois rules and procedures and basic notions of due process. Inadmissible evidence, in short, cannot normally be considered on summary judgment and there is no reason to depart from that practice here.

[5] Except for five exhibits that were admitted in Colorado (P21, P92, P94, P109, and P166), as to which the Candidate is asserting an authenticity objection, the parties have agreed not to dispute the authenticity of trial exhibits admitted in the Colorado Action, but have preserved all other objections to those trial exhibits. Similarly, the parties have agreed that testimony from the Colorado Action constitutes "former testimony" for purposes of Ill. R. Evid. 804(b)(1), but have preserved all other objections to the Colorado trial testimony

III. The Candidates' Exhibits from the Colorado Trial and Additional Affidavits the Candidate Has Secured Demonstrate Disputed, Material Facts.

In response to the Objector's exhibits, the Candidate provides the trial exhibits he offered that were admitted by the Colorado court. These include Exhibit Nos. 1000-1009, 1011-1020, 1022-1023, 1025, 1027-1028, 1031, 1045-1048, 1054, 1059, 1066, 1074, and 1080-1083. (*See* Exhibit B (index to Candidate's Colorado trial exhibits); *see also* link to shared folder included in 1/23/2024 email transmitting this response.) In addition, the Candidate has secured two additional affidavits, copies of which are attached hereto. (*See* 1/23/2024 T. Evans Affidavit (with link to videos affiant took at the Ellipse and in the U.S Capital building on January 6, 2021) (attached as Exhibit C); 1/23/2024 C. Burgard Affidavit (attached as Exhibit D).) These Colorado trial exhibits and additional affidavits (including the video evidence admitted in Colorado and the new videos referenced in and authenticated by the affiants) show the events of January 6, 2021, in a light that is at odds with Objectors' characterization of events, including by showing non-violent protesters, none of whom were armed, who marched to the Capital, discouraged talk of violence or destruction of property, and peacefully complied with requests by Capital Police officers to leave the Capital building.

IV. The Candidate's Rule 191(B) Affidavit Details Testimony Concerning Material Facts that the Candidate Cannot Procure Under The Circumstances.

Finally, Objectors' motion should be denied because President Trump has not had opportunity to develop evidence regarding material facts.

Although parties are free to move for summary judgment at any time, *see* 735 ILCS 5/2-1005, Illinois Supreme Court Rule 191(b) protects non-moving parties against premature motions for summary judgment:

> **(b) When Material Facts Are Not Obtainable by Affidavit.** If the affidavit of either party contains a statement that any of the material facts which ought to appear

> in the affidavit are known only to persons whose affidavits affiant is unable to procure by reason of hostility or otherwise, naming the persons and showing why their affidavits cannot be procured and what affiant believes they would testify to if sworn, with his reasons for his belief, the court may make any order that may be just, either granting or refusing the motion, or granting a continuance to permit affidavits to be obtained, or for submitting interrogatories to or taking the depositions of any of the persons so named, or for producing documents in the possession of those persons or furnishing sworn copies thereof. The interrogatories and sworn answers thereto, depositions so taken, and sworn copies of documents so furnished, shall be considered with the affidavits in passing upon the motion.

Ill. S. Ct. R. 191(b).

Concurrent with this response, the Candidate has provided a Rule 191(b) affidavit that complies with the express terms of the rule. (*See* 1/23/2024 D. Warrington Affidavit ("R. 191(b) Aff.") (attached as Exhibit E).) **First**, the affidavit identifies the witnesses whose testimony the Candidate seeks, but has not been able to procure because of the nature of the objection proceedings before the Electoral Board and other factors. (R. 191(b) Aff. ¶¶ 3, 6.) **Second**, the affidavit indicates why testimony cannot presently be procured from these witnesses, including because President Trump has not been permitted to conduct discovery in any proceedings challenging his nominating papers, including in Colorado, Maine or Illinois. (R. 191(b) Aff. ¶¶ 3, 6, 9.) **Third**, the affidavit indicates what the Candidate believes these witnesses would say if they were to testify via affidavit or deposition. (R. 191(b) Aff. ¶ 6.) Specifically, the testimony the Candidate cannot presently obtain would establish the material facts, including concerning precautions the Trump Administration took before the events of January 6, the lack of weapons observed or detected on January 6, and President Trump's authorization of National Guard troops as the day progressed, an offer D.C. Mayor Muriel Bowser and higher ups at the U.S. Capital Police Department refused, which would demonstrate the existence of material factual disputes and require denial of Objectors' motion for summary judgment. (R. 191(b) Aff. ¶ 6.) **Fourth**, the affidavit demonstrates the bases for the Candidate and Campaign's beliefs, including because they are consistent with the

Candidate's staff and counsel's recollection of the events before and on January 6, 2021, including discussions had with the identified witnesses, and are consistent with documents, video, and other materials President Trump's counsel and staff have gathered concerning the events at issue. (R. 191(b) Aff. ¶ 8.)

Given the complicated nature of these events, the volume of documents, video and other material on which Objectors rely, President Trump's affidavit demonstrates the unfairness of resolving Petitioners' Objections as part of an expedited and abbreviated proceeding that attempts to determine the nature and significance of the events of January 6, 2021 without first providing the Candidate with a full and fair opportunity to conduct discovery and subpoena and depose witnesses, including by securing testimony (via affidavits or deposition) from the witnesses identified.

In similar circumstances, Illinois courts do not hesitate to permit the non-movant to complete relevant discovery before considering and ruling upon a motion for summary judgment. *See, e.g., Jiotis v. Burr Ridge Park Dist.*, 2014 IL App (2d) 121293; *see also U.S. Bank, N.A. v. Kosterman,* 2015 IL App (1st) 133627 ¶¶ 12-18 (reversing summary judgment where trial court ignored Rule 191(b) affidavits and granted summary judgment without permitting the non-movant to complete relevant discovery). That is exactly what should happen here. *See* Ill. S. Ct. R. 191(b) (tribunal "may make any order that may be just, either granting or refusing the motion, or granting a continuance to permit affidavits to be obtained, or for submitting interrogatories to or taking the depositions of any of the persons so named, or for producing documents in the possession of those persons or furnishing sworn copies thereof").

CONCLUSION

For the reasons described herein, Objectors' motion should be denied.

Dated: January 23, 2024

Respectfully submitted,

CANDIDATE DONALD J. TRUMP

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	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
1	"During his campaign, Trump laid the foundation for the insurrection by repeatedly insisting that fraudulent voting activity would be the only possible reason for electoral defeat (rather than not receiving enough votes)."	Section II, p. 5	Fn. 3 (Aug. 17, 2020 C-SPAN video from WI; Aug. 2, 2020 WaPo video from RNC; Sept. 24, 2020 C-SPAN video of President Trump departing White House).	These videos show only that President Trump exercised his First Amendment rights to speak on matters of public concern (*i.e.*, election integrity). They cannot support the inference that he prepared or urged voters to engage in "insurrection," four to five months before Jan. 6, 2021.	These videos of President Trump's comments are irrelevant because they are temporally distant from the events of January 6, 2021, the day of alleged "insurrection." The comments were about election integrity and on matters of public concern—and which were not incendiary— are protected by the First Amendment. These videos are incomplete, lack foundation not supported by testimony, are from sources unauthenticated by the record, and represent an improper attempt to offer character evidence.
2	"Trump did not hide his intentions: when asked during a September 23, 2020 press conference if he would commit to a peaceful transfer of power following the election, Trump refused to do so."	Section II, pp. 5-6	Fn. 4 (Sept. 23, 2020 C-SPAN video of President Trump's statements).	See Disputed Fact No. 1.	See Disputed Fact No. 1.
3	"Trump aligned himself with	Section II, p. 6	Fn. 5-7 (Sept. 29, 2020,	The "stand back and stand by" comment was	All of Simi's testimony was based on President Trump's protected speech and not

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	extremist and white supremacist organizations and signaled they should be prepared to act on his behalf."		Trump asked to disavow Proud Boys—supported by Simi affidavit or testimony from *Anderson* trial; "stand back, stand by" comments—Sept. 29, 2020 AP video from debate; Proud Boys took that statement as call to be ready—Simi affidavit or testimony from *Anderson* and Jan. 6th Report)	in direct response to the moderator's demand that President Trump tell certain groups to "stand down." Moreover, Trump's reference to Proud Boys directly responded to Joe Biden's demand that President Trump direct his remark to "Proud Boys." Further, the entire exchange referred to then-recent unrest in cities like Kenosha, Wisconsin and Portland, Oregon. Further, the video clip is incomplete. Immediately before that exchange, President Trump expressly stated that his supporters "should not add to the violence in . . . these cities," and he said that he would "do anything" in order "to see peace."	any actions by President Trump. Simi admitted that all of the "patterns" of speech and behavior that he saw President Trump engage in are normal patterns of political speech. (TR. 10/31/2023, pp. 141:7-142:9). Simi further admitted that his testimony was limited to identifying the patterns in President Trump's communication over time and how it was interpreted by far-right extremists. Importantly, Simi testified that whether President Trump's intended to mobilize people to violence on January 6th was beyond the scope of his opinion. (TR. 10/31/2023, pp. 206:20-207:4). Simi did not consider First Amendment standards in evaluating President Trump's speech. Additionally, the comments are irrelevant because they are temporally distant from the events of January 6, 2021, the day of alleged "insurrection." Moreover, the videos lack foundation not supported by testimony and represent an improper attempt to offer character evidence. In addition to issues surrounding the formation and bias of the Select Committee, the Jan. 6th Report is inadmissible because it contains improper legal conclusions and speculation, and hearsay. The Report itself is

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
				Immediately after the exchange, President Trump reiterated that violence was a "problem." His "stand back" statement emphasized that his supporters were not the ones who should "do something" about the problem. The full exchange cannot plausibly be interpreted as an endorsement of those groups, let alone of their future actions in response to an election that had not yet happened. The very next day, September 30, President Trump emphasized to a reporter that although he was not familiar with the Proud Boys, "they have to stand down and let law enforcement do their work . . .	hearsay and each of the statements that it contains, quotes, and relies upon—the documents, the testimony, the transcribed interviews, and the like—is also inadmissible hearsay. Further, the Report is unreliable and untrustworthy as a product of a politically motivated and biased grandstanding exercise undertaken by congresspeople who had already predetermined President Trump's guilt, did not have a minority report issued because no pro-Trump congresspeople were on the committee, and issued statements accordingly before beginning work on a committee staffed by inexperienced investigators who had never handled investigations involving violence. Indeed, the Report is so unreliable that almost none of the Report's Eleven Recommendations, taking up a mere four pages out of over 800, have been adopted. Even the judge in *Anderson* announced in her Final Order that she only considered and cited 31 of the Report's conclusions, even though the petitioners in that case originally sought to admit all 411 conclusions. Thus, even a tribunal predisposed to remove President Trump from the ballot did not find the vast

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
				[W]hoever they are, they have to stand down. Let law enforcement do their work." The statement does not explicitly endorse actual violence, and President Trump used the exact words – "stand down" that the moderator asked him to use.	majority of conclusions to be reliable. President Trump, the party whose presence on the Illinois ballot is being challenged, was not a party to the Select Committee's proceedings, had no lawyer or other representative to protect his interests, and had no opportunity to cross-examine the witnesses who testified, to introduce testimony or documents, or to question the accuracy or truth of the Report's conclusions or any of the information that formed the basis for those conclusions. The Select Committee has been widely recognized as a political show trial or partisan political star chamber.
4	Fifty-eight of those elections were followed by peaceful processes implementing the results of the elections, even when those elections were sometimes bitterly and hotly contested.	Section II, p. 6	None.	Objectors fail to cite evidence supporting this factual statement and omit facts showing that Democrats disputed the results of previous presidential elections thereby obstructing the transition of power.	Unsupported statement.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
5	"[M]edia outlets projected that Biden was in the lead."	Section II, p. 6.	Fn. 8 (Nov. 5, 2020 CNN Election 2020 Presidential results)	Media outlets projecting that Biden was in the lead are irrelevant hearsay. Opinions from media outlets did not establish that President Biden would win the election or that the election was problem free.	This is hearsay, is irrelevant to the determination of whether the events of Jan. 6, 2021, constituted an insurrection, lacks foundation not supported by testimony, is from sources unauthenticated by the record, is an improper attempt to get testimony not subject to cross-examination into the record, and represents an improper attempt to offer character evidence.
6	"Trump alleged on Twitter that widespread voter fraud had compromised the validity of such results."	Section II, p. 6	Fn. 9 (President Trump's Nov. 4, 2020 tweet and two Nov. 5 tweets, all part of Group Exhibit 7/also referred to as "Trump Tweet Compilation").	These tweets are protected speech, advocating a public policy opinion. They did not advocate violence or urge people to engage in insurrection.	Statements in referenced tweets that President Trump made about election integrity and on matters of public concern— and which were not incendiary— are protected by the First Amendment. Additionally, they are irrelevant because they are temporally distant from the events of January 6, 2021, the day of the alleged "insurrection." Moreover, the tweets represent an improper attempt to offer character evidence.
7	"[O]n November 7, 2020, news organizations all across the country declared that Joseph Biden won . . ."	Section II, p. 7	Fn. 10 (Nov. 7, 2020 CBS and NPR articles)	See Disputed Fact No. 5.	See Disputed Fact No. 5.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
8	"Trump falsely tweeted: 'I WON THIS ELECTION, BY A LOT!'"	Section II, p. 7	Fn. 11 (Trump Nov. 7, 2020 tweet from Tweet Compilation (Group Ex. 7) at 2)	See Disputed Fact No. 6.	See Disputed Fact No. 6.
9	"[A]ides and advisors close to Trump investigated his election fraud claims and repeatedly informed Trump that such allegations were unfounded."	Section II.A., p. 7	Fn. 12 (January 6th Report, *supra* note 7, at 205-06 (Ex. 8) (reporting that lead data expert Matt Oczkowski informed Trump he did not have enough votes to win); *id.* at 374-76 (reporting that Attorney General William Barr informed Trump his	See Disputed Fact No. 3.	See Disputed Fact No. 3 (objections to January 6th Report). The evidence also demonstrates multilevel hearsay: the January 6th Report itself is hearsay and statements that anyone "informed" anyone else of anything is classic hearsay.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
			fraud claims lacked merit); *id.* at 204 (reporting campaign lawyer Alex Cannon told Trump Chief of Staff he had not found evidence of voter fraud sufficient to change results in key states).		
10	"And on December 1, 2020, Trump's appointed Attorney General, William Barr, publicly declared that the U.S. Department of Justice found no evidence of voter fraud . . . ."	Section II.A., p. 7	Fn. 13 (Jan. 6th Report at 377; June 28, 2022 AP Article.	That the Justice Department found no evidence of voter fraud to warrant a change in electoral results does not negate President Trump's sincerely held belief that voter fraud had occurred resulting in his loss.	See Disputed Fact Nos. 3, 5, and 9.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
11	"Despite knowing the lack of evidence of voter fraud, Trump continued to refuse to accept his electoral loss."	Section II.A., p. 7	None.	This statement claims to have knowledge about what President Trump knew when no evidence supports such claim.	Unsupported statement. Even Simi testified that he could not testify about Trump's knowledge (TR. 10/31/2023, pp. 205:22-207:4).
12	"Some of Trump's actions—e.g., lawsuits contesting election results—were meritless but not illegal to pursue . . . ."	Section II.A., p. 7	None.	This statement overarchingly calls all of President Trump's election lawsuits "meritless," when he sincerely believed they did have merit.	Unsupported statement. Wholly irrelevant to whether President Trump "engaged in insurrection."
13	"But as it became clear that Trump's lawful, nonviolent attempts to remain in power would fail, he turned to unlawful means to illegally prolong his stay in office."	Section II.A., pp. 7-8.	None.	Unsupported statement making improper legal conclusions.	Unsupported statement making improper legal conclusions.
14	"During the weeks leading up to January 6, 2021, Trump oversaw, directed, and	Section II.A., p. 8	Fn. 14 (January 6th Report at 341-42 (Ex. 8)).	These are legal conclusions unsupported by any record evidence. No record evidence	Improper legal conclusion. See Disputed Fact Nos. 3, 9, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	encouraged the commission of election fraud by means of a 'fake elector' scheme under which seven states that Trump lost would submit an 'alternate' slate of electors as a pretext for Vice President Pence to decline to certify the actual electoral vote on January 6."			supports that President Trump "oversaw" an effort to obtain and transmit alternate slates of electors. Nor can Objectors establish that any potential alternate slate of electors was illegal. Representative Swalwell testified that "it was well-known among myself and my colleagues and the public that President Trump believed that Pence had the – that Vice President Pence had the ability to essentially reject the electoral ballots that were sent from the states." TR [10/31/2023], p. 162:4-8. President Trump could not have believed that Vice President Pence could have rejected the ballots if he "had lost." There is no	

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
				record evidence that any alternate slate of electors was "fake."	
15	"In early December, Trump called the Chairwoman of the Republican National Committee, Ronna Romney McDaniel, to enlist the RNC's support in gathering a slate of electors for Trump in states where President-elect Biden had won the election but legal challenges to the election results were underway."	Section II.A., p. 8.	Fn. 15 (Jan. 6th Report at 346).	See Disputed Fact Nos. 3, 9.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.
16	"On December 14, 2020, at Trump's direction, fraudulent electors convened sham proceedings in	Section II.A., p. 8.	Fn. 16 (Jan. 6th Report at 341).	See Disputed Fact No. 14.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	seven targeted states where President-elect Biden had won a majority of the votes (Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin) and cast fraudulent electoral ballots in favor of Trump."				
17	"Between December 23, 2020, and early January 2021, Trump repeatedly attempted to speak with Rosen in an effort to enlist his support for the purported election fraud."	Section II.A., p. 8.	Fn. 19 (Jan. 6th Report at 383).	President Trump was not committing election fraud in "attempting to speak" to a person, nor by trying to determine what lawful options existed to object to the results.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.
18	Rosen told Trump that "DOJ can't and won't snap its	Section II.A., p. 9.	Fn. 20 (Jan. 6th Report at 386).	President Trump did not testify before the Select Committee nor did he	This is hearsay, and President Trump has had no opportunity to cross examine Rosen. See

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	fingers and change the outcome of the election," Trump responded: "Just say the election was corrupt and leave the rest to me and the Republican Congressmen."			have the ability to cross-examine those who claim he made this statement.	Disputed Fact Nos. 3, 9, including objections to January 6th Report.
19	On December 31, 2020, Trump asked Rosen and Donoghue to direct the Department of Justice to seize voting machines.	Section II.A., p. 9.	Fn. 21 (Jan. 6th Report at 396).	See Disputed Fact No. 18.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.
20	Rosen and Donoghue rejected Trump's request, citing the Department of Justice's lack of any legal authority to seize state voting machines.		Fn. 22 (Jan. 6th Report at 396-97).	See Disputed Fact No. 18.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.
21	"On January 2, 2021, Jeffrey Clark, the acting head of	Section II.A., p. 9.	Fn. 23 (Jan. 6th Report at 397).	Bureaucratic gossip and authorization to speak	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

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	the Civil Division and head of the Environmental and Natural Resources Division at the DOJ, who had met with Trump without prior authorization from the DOJ, told Rosen and Donoghue that Trump was prepared to fire them and to appoint Clark as the acting attorney general." (emphasis added)			with President Trump is irrelevant.	
22	Clark asked Rosen and Donoghue to sign a draft letter to state officials recommending that the officials send an alternate slate of electors to Congress, and told	Section II.A, p. 9.	Fns. 24-25 (Jan. 6th Report at 389-90, 397.	See Disputed Fact Nos. 14, 18.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	them that if they did so, then Clark would turn down Trump's offer and Rosen would remain in his position. Rosen and Donoghue again refused.				
23	Following his election loss, Trump publicly and privately pressured state officials in various states around the country to overturn the election results.	Section II.A., p. 9.	Unsupported.	No evidence to support this statement. President Trump disputes that he "pressured" state officials to overturn election results. And this is not evidence of engaging in insurrection.	Improper legal conclusion and subjective statement of fact unsupported by admissible evidence.
24	Trump pressured Georgia Secretary of State Brad Raffensperger to "find 11,780 votes" for him, and thereby fraudulently and unlawfully turn his electoral loss in	Section II.A, p. 9-10.	Fn. 26 (Jan. 6th Report at 263).	Improperly characterizes evidence. On the call, President Trump clearly noted that all he needed to win the state was 11,780 votes and that President Trump believed that more votes than that number had been illegally cast.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	Georgia to an electoral victory.			Irrelevant to whether President Trump "engaged in insurrection."	
25	Trump's relentless false claims about election fraud and his public pressure and condemnation of election officials *resulted in* threats of violence against election officials around the country. (emphasis added)	Section II.A, p. 10.	Fn. 27 (Jan. 6th Report at 303-05).	Irrelevant to whether President Trump "engaged in insurrection." There is no evidence of causation regarding threats of violence around the country. Gabriel Sterling video (Fn 28—P-126 attached in Group Exhibit 4) and President Trump's retweet of the video (Fn. 29—Group exhibit 7 at 3) only show allegations of threats in Georgia, and President Trump has not testified about these issues nor did he cross-examine the witnesses involved.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.
26	Trump and his then-attorney John Eastman met with then Vice President	Section II.A., p. 10.	Fn. 30 (Jan. 6th Report at 428).	Calling the theory "baseless" is subjective opinion. See Disputed Fact No. 14.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	Mike Pence and his attorney Greg Jacob to discuss Eastman's baseless legal theory that Pence might either reject votes on January 6 during the certification process, or suspend the proceedings so that states could reexamine the results.				
27	As Trump later admitted, the decision to continue seeking to overturn the election after the failure of legal challenges was his alone.	Section II.A, p. 10.	Fn. 31 (NBC News Meet the Press Sept. 17, 2023 broadcast).	Irrelevant to whether President Trump "engaged in insurrection." Mischaracterizes evidence. President Trump's statement indicated his belief that election fraud took place.	See Disputed Fact No. 5.
28	All the while, Trump continued to publicly lie, maintaining that	Section II.A., p. 11	None.	No evidence, but rather argument by counsel. Irrelevant to whether President Trump	Unsupported legal conclusions and subjective statement of fact unsupported by admissible evidence.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	the 2020 presidential election results were illegitimate due to fraud, and to set the false expectation that Pence had the authority to overturn the election.			"engaged in insurrection." President Trump sincerely believed the election results were illegitimate due to fraud and that Pence had the authority to reject slates of electors, so they were not lies or false expectations. See Disputed Fact No. 14.	
29	That same day, Ali Alexander of Stop the Steal, and Alex Jones and Owen Shroyer of Infowars led a march on the Supreme Court. The crowd at the march chanted slogans such as "Stop the Steal!" "1776" "Our revolution!" and Trump's earlier	Section II.B. p. 12.	Fns. 39-40 (Jan. 6th Report at 505).	Irrelevant to whether President Trump "engaged in insurrection." Any association with Alexander and Jones is contradicted by testimony that President Trump explicitly excluded Alexander and Jones from speaking at the Ellipse. (TR. 11/01/2023 p. 281:4-11); (TR. 11/01/2023 p. 293:8-11).	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	tweet, "the fight has just begun!"				
30	Trump continued to issue tweets encouraging his supporters to "fight" to prevent the certification of the election results.	Section II.B, p. 12.	Fn. 42 (Simi Aff., supra note 5, at Ex. A, 83:20-22 (Ex. 1).	Irrelevant to whether President Trump "engaged in insurrection." See Trump Video Exhibits 1046-1048, 1054, 1074 showing politicians regularly use rhetoric like "fight," but do not mean it as a call for actual physical combat or violence.	All of Simi's testimony was based on President Trump's protected speech and not any actions by President Trump. Simi admitted that all of the "patterns" of speech and behavior that he saw President Trump engage in are normal patterns of political speech. (TR. 10/31/2023, pp. 141:7-142:9). Simi further admitted that his testimony was limited to describing how President Trump's comments were interpreted by far-right extremists. Simi never spoke to a single January 6, 2021 participant, and he testified that President Trump's intent on or before January 6th was beyond the scope of his opinion. (TR. 10/31/2023, pp. 206:20-207:4). Simi did not take into account First Amendment and standards in evaluating President Trump's speech.
31	Other militarized extremist groups began organizing for January 6th after Trump's "will be wild" tweet. These include the	Section II.C., p. 13.	Fn. 46 (Jan. 6th Report at 499-501; Simi Aff., supra note 5, at Ex. A, 17:14-15 (Ex. 1)).	Irrelevant to whether President Trump "engaged in insurrection." The groups referenced in this statement have not submitted testimony in	See Disputed Fact Nos. 3, 9, 18, and 30, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	Oath Keepers, the Proud Boys, the Three Percenter militias, and others.			this case, nor has President Trump testified about these groups, nor has President Trump had an opportunity to cross-examine witnesses testifying to these purported findings.	
32	Members of extremist groups logically and predictably understood Trump's "will be wild" tweet as a call for violence in Washington, D.C. on January 6th	Section II.C., p. 13.	Fn. 48 (Simi Aff., supra note 5, at Ex. A, 80:13-81:1 (ex. 1)).	See Disputed Fact No. 31.	Speculation. See Disputed Fact No. 30.
33	On December 29, 2020, Alexander tweeted, "Coalition of us working on 25 new charter busses to bring people FOR FREE to #Jan6 #STOPTHESTEA	Section II.C., p. 14.	Fn. 53 (January 6th Report, supra note 7, at 532 (Ex. 8)).	See Disputed Fact No. 29.	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	L for President Trump. If you have money for buses or have a company, let me know. We will list our buses sometime in the next 72 hours. STAND BACK & STAND BY!"				
34	By December 29, 2020, Trump had formed and conveyed to allies a plan to order his supporters to march to the Capitol at the end of his speech in order to stop the certification of electoral votes.	Section II.C., p. 14.	Fn. 55 (Jan. 6th Report at 533).	President Trump disputes all facts in this statement.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report. This is opinion unsupported by any testimony or documentation.
35	In early January 2021, extremists began publicly referring to January 6 using increasingly threatening	Section II.C., pp. 14-15.	Fn. 58 (Simi Aff. at Ex. A, 29:2-9 (Ex. 1))	No evidence of "threatening terminology." No evidence that any member of the crowd on January 6, 2021, viewed	Hearsay. See Disputed Fact Nos. 3, 9, 18, and 30.

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	terminology. Some referred to a "1776" plan or option for January 6, suggesting by analogy to the American Revolution that their plans for the January 6 congressional certification of electoral votes included violent rebellion.			"1776" as a call to violence.	
36	By early January 2021, Trump anticipated that the crowd was preparing to amass on January 6 at his behest would be large and ready to follow his command.	Section II.C, p. 15.	Fn. 62 (Ex. 12, Letter from Donald J. Trump to The Select Committee to Investigate the January 6th Attack on the U.S. Capitol, at 2-3 (Oct. 13, 2022)).	Mischaracterizes the content of Trump's letter – he merely said that he authorized the National Guard because "based on instinct and what I was hearing, that the crowd coming to listen to my speech, and various others, would be a very big one."	

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
37	During the rally, Trump made clear his intentions that the transfer of power set for January 6, 2021 would not take place because "We're going to fight like hell" and "take [the White House] back."	Section II.C., p. 15.	Fn. 59 (Jan. 4, 2021 video of Trump GA rally, Bloomberg).	See Disputed Fact No. 30.	See Disputed Fact Nos. 1 and 13.
38	Speakers during these events made remarks indicating that the event to be held at the Capitol the next day would be violent.	Section II.C., p. 15.	Fn. 64 (Jan. 6th Report at 537-38).	See Disputed Fact No. 30.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.
39	Trump was personally informed of these plans for violent action, but despite the expectation of violent action, Trump proceeded	Section II.D, p. 17.	Fn. 76 (Jan. 6th Report at 63, 66-67, 539-40).	President Trump has not testified about these issues nor did he cross-examine the witnesses involved.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	with his plans for January 6, 2021.				
40	Statements from Mo Brooks and Giuliani at Ellipse.	Section III.D., p. 19.	Fn. 81-82 (the Hill and WaPo from Jan. 6, 2021).	Cherry-picks statements from the speech out of context. See Disputed Fact No. 30.	Hearsay. See Disputed Fact No. 3, 5, including objections to January 6th Report.
41	At the Ellipse, an estimated 25,000 people refused to walk through the magnetometers at the entrance. When Trump was informed that people were not being allowed through the monitors because they were carrying weapons…	Section III.D., p. 19	Fn. 84-85 (January 6th Report, supra note 7, at 585 (Ex. 8); Heaphy Testimony, supra note 74, at 217:9-18 (Ex. 15)).	Heaphy says "we had testimony that he was told about weaponry" but provides no detail that would allow President Trump the meaningful ability to investigate this claim.	See Disputed Fact No. 3, 9, and 18 (regarding hearsay).
42	Trump supporters understood the calls to "fight," not as metaphorical but as a literal call to violence. And while in the midst of the calls to go to the	Section III.D, p. 21.	Simi Aff., supra note 5, at Ex. A, 49:14-21, 59:7-17, 101:8-102:21, 126:11-19,	See Disputed Fact No. 30.	See Disputed Fact No. 3.

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	Capitol to "fight" Trump also stated, "I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard." Professor Peter Simi has testified that this statement was part of a communication style aimed at preserving plausible deniability and was understood by Trump supporters to do nothing to diminish the call for fighting and violence.		221:10-21 (Ex. 1).		
43	The attackers, following directions from Trump and his	Section III.E, p. 22.	Rally on Electoral College Vote Certification,	Mischaracterization of evidence. The evidence of "common purpose" was the use of the	"Fact" not supported by the evidence cited.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	allies, shared the common purpose of preventing Congress from certifying the electoral vote.		supra note 87; Ex. 2, Hodges Affidavit, at Ex. A, 71:17-21, 7:6-15; Ex. 14, Pingeon Testimony, at 200:25-210:11.	"Heave-Ho" chant to breach a door, people holding similar flags, and that the officers knew what was happening in the Capitol – this does not demonstrate "the common purpose of preventing Congress from certifying the electoral vote"	
44	Many were armed with weapons including knives, tasers, pepper spray, and firearms.	Section III.E., p. 22.	Hodges Aff., supra note 98, at Ex. A, 74:2-8, 75:15-76:1 (Ex. 2); January 6th Report, supra note 7, at 640-42 (Ex. 8).	No evidence that anyone had firearms. The word "many" mischaracterizes the evidence, in light of the tens of thousands who attended the rally at the Ellipse.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.
45	By this point, both the House Chamber and Senate Chamber were under the control of the attackers.	p. 24	None.	No evidence that "attackers" had chambers "under control."	Unsupported legal conclusion and subjective statement of fact not supported by evidence.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
46	After this, Trump immediately began watching the Capitol attack unfold on live news in the private dining room of the White House.	Section III, p. 25	January 6th Report, supra note 7, at 593 (Ex. 8).	Irrelevant to whether President Trump "engaged in insurrection." See Disputed Fact Nos. 3, 9.	See Disputed Fact Nos. 3, 9, 18, including objections to January 6th Report.
47	Against his advisors' recommendation above, rather than make any effort to stop the mob's attack, he encouraged and provoked the crowd further by tweeting: Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected	Section III, p. 25	Trump Tweet Compilation, supra note 9, at 16 (Group Ex. 7); January 6th Report, supra note 7, at 429 (Ex. 8).	Does not support a conclusion that President Trump "encouraged" or "provoked" the crowd. No statements from any participant or organizer to this effect. No evidence of President Trump's intent. President Trump was exercising his First Amendment rights to speak on a matter of national concern, not to encourage and provoke violence.	See Disputed Fact Nos. 3, 6, 9, including objections to January 6th Report.

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	set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth.				
48	Trump's 2:24 PM tweet "immediately precipitated further violence at the Capitol." Immediately after it, "the crowds both inside and outside the Capitol building violently surged forward."	Section III, p. 25.	January 6th Report, supra note 7, at 86 (Ex. 8).	Implies causation between the Trump tweet and the action of members in crowd, with no evidence that members of the crowd read his tweets. No evidence of a "surge" in the crowds at that time period. Also, the following sentence of the MSJ indicates that this reaction happened 30 seconds later – this is too fast for a unified reaction to a tweet.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report. This conclusion is not a fact and it is disputed.
49	Shortly after Trump's tweet, Cassidy Hutchinson and Pat Cipollone	Section III, p. 26.	January 6th Report, supra note 7, at 596 (Ex. 8).	This is not evidence demonstrating that President Trump believed Vice President	This is classic hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	expressed to Meadows their concern that the attack was getting out of hand and that Trump must act to stop it. Meadows responded, "You heard him, Pat…He thinks Mike deserves it. He doesn't think they're doing anything wrong.			Pence "deserved" violence.	
50	Around 2:26 PM, Trump made a call to Republican leaders trapped within the Capitol. He did not ask about their safety or the escalating situation but instead asked whether any objections had been cast against	Section III, p. 26.	January 6th Report, supra note 7, at 598 (Ex. 8).	No evidence that anyone was "trapped" within the Capitol, and this characterization is contradicted by the fact that Pence and others were evacuated. Irrelevant what Trump asked or said to those who were "trapped."	Hearsay within the January 6th report. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	the electoral count… McCarthy urged Trump on the phone to make a statement directing the attackers to withdraw, Instead, Trump responded with words to the effect of, "Well, Kevin, I guess they're just more upset about the election theft than you are."				
51	Throughout the time Trump sat watching the attack unfold, multiple relatives, staffers and officials – including McCarthy, Trump's Daughter Ivanka, and attorney Eric Herschmann – tried to convince	Section III, p. 27.	January 6th Report, supra note 7, at 599, 601-04.		This is classic hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	Trump to make a direct statement telling the attackers to leave the Capitol.				
52	Many attackers saw this tweet but understood it not to be an instruction to withdraw from the Capitol, and the attack raged on.	Section III, p. 27.	See e.g., Simi Aff., supra note 5, at Ex. A, 78:18-23 (Ex. 1).	See Disputed Fact Nos. 3, 9. 30.	See Disputed Fact Nos. 3, 9, 18, and 30. Simi never spoke with or interviewed a single participant in the events of January 6, 2021.
53	Trump did not himself order any additional federal military of law enforcement personnel to help retake the Capitol.	Section III, p. 27.	See January 6th Report, supra note 7, at 6-7, 595 (Ex. 8); Ex. 10, the Daily Diary of President Donald J. Trump, January 6, 2021; Ex. 13, Banks Testimony, at 255:21-256:18.	This omits Kash Patel's testimony that Trump authorized 10-20K national guardsmen. (TR. 11/01/2023, pp. 205:5-206:25); (TR. 11/01/2023, p. 212:1-3); (TR. 11/01/2023, p. 212:17-20); TR. 11/01/2023, p. 214:9-13)	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
54	In fact, when [Trump] finally did issue such a statement, after multiple deaths and after the tides were starting to turn against his violent mob as more law enforcement arrived, it had precisely that effect. At 4:17 PM, nearly 187 minutes after attackers first broke into the Capitol, Trump released a video on Twitter directed to those currently at the Capitol.	Section III, p. 28.	None (but arguably FN 137 applies to this statement, which says "January 6th Report, supra note 7, at 579-80 (Ex. 8)).	"After multiple deaths"– there were not multiple deaths. No evidence of multiple deaths. No evidence that members of crowd saw video and responded "precisely." Further, statement is directly contradicted by D.C. Mayor Murriel Bowser's statement and Tom Bjorklund's testimony.	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.
55	Immediately after Trump uploaded the video to Twitter, the attackers began to disperse from the	Section III, p. 28.	January 6th Report, supra note 7, at 606 (Ex. 8).	This conclusion is directly contradicted by Murriel Bowser's public text and Tom Bjorklund's testimony.	See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	Capitol and cease the attack				
56	Around 5:20 PM, the D.C. National Guard began arriving. This was not because Trump ordered the National Guard to the scene; he never did. Rather, Vice President Pence – who was not actually in the chain of command of the National Guard – ordered the National Guard to assist the beleaguered police and rescue those trapped at the Capitol.	Section III, p. 28-29.	Banks Testimony, supra note 135, at 255:21-256:18 (Ex. 13); January 6th Report, supra note 7, at 578, 724, 747 (Ex. 8).	Banks offered legal opinions as a professor of law. He did not testify to any of the events on January 6th. See also Disputed Fact No. 53. Irrelevant to whether President Trump "engaged in insurrection."	Banks did not testify to any of these facts. January 6th report is hearsay. These facts are not supported by evidence in the record. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.
57	Even after Congress reconvened, Trump's attorney Eastman continued	Section III, p. 29	167 Cong. Rec. H98; January 6th Report, supra note 7, at 669	Irrelevant to whether President Trump "engaged in insurrection."	Hearsay. See Disputed Fact Nos. 3, 9, and 18, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	to urge Pence to delay the certification of the electoral results. Ultimately, though six Senators and 121 Representatives voted to reject Arizona's electoral results and seven Senators and 138 Representatives voted to reject Pennsylvania's results, Biden's election victory was finally certified at 3:32 AM, January 7, 2021.		(Ex. 8); Swalwell Testimony, supra note 114, at 169:11-20 (Ex. 16).		
58	Professor Peter Simi, an expert in political extremism testified that the Trump supporters participating in January 6 understood that	Section III, p. 29.	Simi Aff. Supra note 5, at Ex. A, 49:14-21, 59:7-17, 101:20-102:6, 126:11-19, 221:10-21 (Ex. 1).	See Disputed Fact No. 30.	Simi's testimony was about how groups generally understood Trump's speech. But he did not personally interview or talk to a single January 6th participant. He relied entirely curated, incomplete, and doctored videos from the January 6th report. See Disputed Fact No. 3, 9, and 30, including objections to January 6th Report.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	Trump's calls to "fight" were literal calls for violence and his communications to them incited the events at the Capitol, based on the history and pattern of Trump's communications and extremist culture.				
59	In total, more than 250 law enforcement officers were injured as a result of the January 6th attacks, and five police officers died in the days following the riot.	Section III, pp. 29-30.	January 6th Report, supra note 7, at 711 (Ex. 8).	No evidence that anyone died as a result of events from January 6th, except for one civilian who was shot in the face at close range by a Capitol Police Officer. No evidence any police officer died as a result of the riot. DC Coroner ruled one officer's death –Officer Sicknick – as resulting from "natural causes."	See Disputed Fact Nos. 3, 9, including objections to January 6th Report.
60	On May 10, 2023, during a CNN	P. 30.	Donald Trump CNN	Mischaracterizes the evidence. President	See Disputed Fact No. 5.

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	town hall, Trump maintained his position that the 2020 presidential election was a "rigged election" stated his inclination to pardon "many of" the January 6th rioters who have been convicted of federal offenses, and acknowledged that he had control of the January 6th attackers, who "listen to [him] like no one else"		Townhall Kaitlan Collins 10 May 2023 Ep, at 42:13, DAILYMOTION (May 11, 2023), https://www.dailymotion.com/video/x8kup36 [hereinafter Trump CNN Townhall]; see also CNN, READ: Transcript of CNN's town hall with former President Donald Trump (May 11, 2023), https://www.cnn.com/2023/05/11/politics/transcript-	Trump never claimed he had control over January 6th participants. Rather, he claimed that his supporters listen to him "like no one else."	

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
			cnn-town-hall-trump/index.html.; id at 13:22; id at 8:24.		
61	As recently as November 2023, Trump decried the prison sentences January 6 attackers received for their criminal activity, referring to them as "hostages." At a 2024 presidential campaign event he stated: "I call them the J6 hostages, not prisoners. I call them hostages, what's happened. And it's a shame."	P. 30.	Former President Trump Campaigns in Houston, at 5:05, C-SPAN (Nov. 2, 2023), https://www.c-span.org/video/?531400-1/president-trump-campaigns-houston.	Statements decrying prosecutions, years after the events of January 6, 2021, are irrelevant to whether President Trump "engaged in insurrection."	See Disputed Fact No. 5.
62	On December 3, 2022, in a post on social media website Truth Social, Trump called for	P. 30	Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Dec.	Irrelevant to the determination of whether the events of January 6th constitute an insurrection.	

	Factual assertion	Cite in Brief	Claimed Evidentiary Support	Basis for disputing assertion	Evidentiary Objection
	"termination of all rules, regulations and articles, even those found in the Constitution.		3, 2022, 6:44 AM), https://truthsocial.com/@realdonaldtrump/posts/109449803240069864		

District Court
City and County of Denver

Case No. 2023CV32577
Anderson et al v. Griswold et al
Admitted Trial Exhibits - Intervenor Donald J. Trump
November 6, 2023

Ex. No.	Description
1000	Video, January 5, 2021--Bjorklund Campground
1001	Video, January 6, 2021--Bjorklund Jan. 6 Wash. Monument 1
1002	Video, January 6, 2021--Bjorklund Jan. 6 Walk to Capitol 1
1003	Video, January 6, 2021--Bjorklund Jan. 6 Wash. Monument 2
1004	Photo, January 6, 2021--Bjork. Jan. 6 Ellipse 1
1005	Photo, January 6, 2021--Bjork Jan. 6 Ellipse 2
1006	Photo, January 6, 2021--Bjork. Jan. 6 View of Capitol from Ellipse/Wash. Mon
1007	Photo, January 6, 2021--Bjork. Walk to Capitol 2
1008	Photo, January 6, 2021--Bjork. Walk to Capitol 3
1009	Photo, January 6, 2021--Bjork. Walk to Capitol 3
1010	Video, January 6, 2021--Bjork. Walk to Capitol 2
1011	Video, January 6, 2021--Bjork Walk to Capitol 3
1012	Video, January 6, 2021--Bjork View of Capitol
1013	Video, January 6, 2021--Bjork View of Capitol 2
1014	Video, January 6, 2021--Bjork. View from Foot of Capitol Stairs 1
1015	Video, January 6, 2021--Bjork View of Capitol 3
1016	Video, January 6, 2021--Bjork View from Foot of Capitol Stairs 2
1017	Photo, January 6, 2021--Bjork on Capitol Steps
1018	Photo, January 6, 2021--Bjork. Pic. of Patriot
1019	Video, January 6, 2021--Bjork. View of Cap Scaffolding 1
1020	Video, January 6, 2021--Bjork. View of Cap Scaffolding 2
1022	Video, January 6, 2021--Bjork. Walk Back from Capitol 1

District Court
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November 6, 2023

Ex. No.	Description
1023	Video, January 6, 2021--Bjork Walk Back from Capitol 2
1025	Video, December 12, 2020 Rally--Kremer
1027	Timeline--Kash Patel 1
1028	Letter, Murial Brower to The Hon. Jeffrey Rosen, The Hon. Ryan D. McCarthy, The Hon. Chris Miller, Jan. 5,
1031	*Review of DOD's Role, Responsibilities, and Actions to Prepare for and Respond to the Protest and Its And Respoind to the Protest and Its Aftermath at the U.S. Capitol Campus on January 6,*
1045	Letter Muriel Bowser to Donald J. Trump, June 4, 2020
1046	Video, Maxine Waters saying to create a crowd at Trump administration officials and push back on them
1047	Video, Elizabeth Warren saying she wants to smack President Trump
1048	Chuck Schumer warning that Justices Gorsuch and
1054	Joe Biden saying he would like to take President Trump
1059	President Trump full statement on Charlottesville
1066	Tweets from Rep. Eric Swalwell
1074	Video, Democrats using material rhetoric video
1080	*Read the full transcript from the first Presidential Debate between Joe Biden and Donald Trump,* USA Today, Oct. 4, 2020
1081	Remarks by President Trump Before Marine One Departure, Sept. 30, 2020.
1082	Video from Rally at the Ellipse
1083	Video Clip, Sept. 29, 2020, Presidential Debate

BEFORE THE ILLLINOIS STATE BOARD OF ELECTIONS
SITTING *EX-OFFICIO* AS THE STATE OFFICERS ELECTORAL BOARD

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, AND DARRYL P. BAKER,	)	No. 24 SOEB GP 517
Petitioners-Objectors,	)	
v.	)	
DONALD J. TRUMP,	)	Hearing Officer Clark Erickson
Respondent-Candidate.	)	

AFFIDAVIT OF TRENISS EVANS

I, Treniss Evans, being duly sworn on oath, state that I have personal knowledge of the facts contained herein, that the answers are true and correct to the best of my knowledge and belief and, if called as a witness, that I would testify as follows:

1. My name is Treniss Evans.

2. I am 49 years of age.

3. I own and operate my family's business.

4. The night of January 5, 2021, I stayed at the Freedom Plaza Marriott hotel (the "Hotel"), located at 1331 Pennsylvania Avenue, NW, Washington, District of Columbia.

5. The morning of January 6, 2021, I left the Hotel at approximately 8:00 AM and walked towards the location where President Trump would be speaking later that morning (the "Ellipse").

6. I arrived in the area of the Ellipse approximately two hours before President Trump began speaking.

7. From the time I left the Hotel until President Trump began speaking at the Ellipse, I estimate that I saw tens of thousands of fellow demonstrators, and I spoke to dozens of them.

8. During this time, the tone and tenor of the other demonstrators present was peaceful and excited to hear President Trump speak.

9. In addition to the thousands of people I could see, I could hear what sounded like many thousands more.

10. The crowd was comprised of people from every possible demographic and age range. I saw parents pushing children in strollers and carrying their children on their backs, and I saw many elderly demonstrators who required "walkers" to help them get around.

11. During this time, I did not hear anyone expressing any violent intent or the intent to break the law.

12. I did, however, hear people talking about walking to the Capitol following President Trump's remarks to continue to demonstrate.

13. None of the people whom I heard talking about going to the Capitol said anything that would indicate that they had the intent to breach the Capitol or to disrupt the proceedings scheduled to take place at the Capitol or to do anything violent.

14. While some of the demonstrators were wearing faux tactical equipment – such as vests or helmets – I did not see anyone with any weapons whatsoever.

15. Prior to President Trump speaking, I took out my phone and recorded a video of the crowd.

16. I have provided this video as **Exhibit 1** to this Affidavit, and it is available at https://www.dropbox.com/scl/fi/ksei4rge555y5j4ahxahq/Exhibit-1-Video-near-Ellipse.mp4?rlkey=8ohs3vyt9agu2bhivj6u1jyao&dl=0

17. **Exhibit 1** is a video taken by me and it accurately depicts the scene around the Ellipse as I saw it prior to President Trump taking the stage on January 6, 2021.

18. In **Ex. 1**, tens of thousands of demonstrators preparing to listen to President Trump's remarks are visible.

19. As is evident in **Ex. 1**, the crowd is calm and peaceful and there is no indication that anyone is armed in any way whatsoever.

20. I listened to the entirety of President Trump's remarks at the Ellipse.

21. The location where I stood to listen to President Trump's remarks was outside the circle of magnetometers around the Ellipse that I never even knew existed.

22. While I did not pass through any magnetometers on January 6, 2021, I was not armed.

23. During his remarks near the close of his speech, I heard President Trump ask the crowd to "peacefully and patriotically" go to the Capitol to continue their demonstrations.

24. I was delighted to hear President Trump would be joining us at the Capitol where I had already intended to be.

25. There were flyers circulating both online and being handed out about the events scheduled for permitted stages and speakers at the Capitol on January 5th and 6th

26. Prior to walking to the Capitol, I returned to the Hotel to get more food and water and to pack another layer and my rain jacket and pants.

27. From the time that I left the Ellipse until I returned to the hotel, I saw thousands or tens of thousands of fellow demonstrators and I talked to a few dozen people throughout the morning and during President Trumps speech.

28. As before, I could hear many more people than I could see.

29. During this time, the tone and tenor of the other demonstrators continued to be peaceful and excited.

30. During this time, I did not witness anyone with weapons of any sort.

31. I did not hear anyone expressing any violent intent or the intent to break the law.

32. Once I left the Hotel, I walked down Pennsylvania Avenue from the Hotel to the Capitol.

33. As I walked, I saw thousands of other demonstrators walking towards the Capitol as well.

34. Again, I could hear many more people than I could see.

35. Some of the demonstrators walking to the Capitol were wearing Revolutionary War era Halloween costumes – one person wearing such a costume was even holding two Halloween candy buckets that had been labeled "tar" and "feathers."

36. It was very clear that the costume and the buckets were meant to be political hyperbole and not meant to be a threat.

37. As I walked to the Capitol, I did not see anyone with any weapons of any kind.

38. As I walked to the Capitol, myself and the other demonstrators were excited and completely non-violent.

39. While walking to the Capitol, myself and the people I was walking near, heard repeated explosions coming from the direction of the Capitol. Based on the jovial atmosphere, we believed that these were either fireworks or ceremonial cannons being fired. It was only the next day through reading about the events of January 6th did I learn that these were "flashbangs" fired by Capitol Police at demonstrators.

40. I distinctly remember one individual who had a small child I would guess to be around age 10 asking if anyone knew if there were going to be fireworks.

41. The police had parked their squad cars to block the cross streets and protect the demonstrators on the "march route." The officers stood by or causally leaned on their vehicles.

42. The officers were receiving messages of support and love from the demonstrators and responded in kind.

43. I arrived at Peace Circle shortly after 2pm.

44. I entered the Capitol Grounds from the area of the "Peace Circle" at the end of Pennsylvania Avenue.

45. As I approached the Capitol building, I did not cross any sort of Police barricades or see any signage.

46. I did not witness signs or any barricade indicating people were not allowed to be on the grounds.

47. I did, however, walk past dozens of police officers and not one of them said anything to me to try to convince me to leave the area.

48. As I passed the police officers, myself and other demonstrators exchanged friendly greetings with them and they responded in kind.

49. As I approached the steps west of the inauguration stage outside the Capitol, I saw dozens and maybe hundreds of people going up the steps to the upper west terrace.

50. Upon reaching the upper west terrace I stood and observed the scene for approximately 20 minutes.

51. While standing outside the Capitol building, I led the demonstrators around me in the National Anthem and the Pledge of Allegiance.

52. None of the dozens of police officers who were standing near the demonstrators on the upper west terrace made any indication I should not be there.

53. After observing people enter the Capitol for about twenty minutes, I decided that I wanted to go into the building myself.

54. I recognize, and freely admit, that this was the wrong thing to do and that I shouldn't have entered the Capitol building. However, I did not enter the Capitol at the direction of President Trump – I went inside because my curiosity got the best of me.

55. As soon as I entered the Capitol building, I was recorded on the Capitol's closed-circuit camera system ("CCTV").

56. I have provided this video as **Exhibit 2** to this Affidavit, and it is available at https://www.dropbox.com/scl/fi/566ijfwojt86vzrx0uj13/Exhibit-2-Video-inside-Capitol.asf?rlkey=s2mzrxktk8pd9gz6y6bj0gsuy&dl=0

57. **Exhibit 2** is a video taken by the Capitol CCTV system and it accurately depicts the scene immediately inside the Capitol building's West Terrace as I saw it at approximately 3pm on January 6th, 2021.

58. I can be seen in **Ex. 2** entering the Capitol building at the 11 second mark of the video (wearing a yellow beanie and holding a megaphone).

59. As shown in **Ex. 2**, there were hundreds of fellow demonstrators inside the Capitol building, and they were just milling around taking pictures and talking excitedly.

60. Officers were taking selfies, giving hugs and engaged in casual conversation with demonstrators

61. Upon seeing the attitude of officers and hearing others calling for people to enter I invited others into the building.

62. None of the people that I saw at this point, or that are shown in **Ex. 2** are being violent or aggressive in any way.

63. None of the people that I saw at this point – or at any point throughout January 6th – were armed or using weapons of any kind.

64. At this point, I did not see – and had not seen – anyone being violent or threatening to law enforcement in any way.

65. Once inside the Capitol building, I lead the people around me in singing the National Anthem.

66. I again led the National Anthem as I walked towards what I now know is called the "Crypt" area of the Capitol.

67. When I entered the Crypt, I heard – for the first time – somebody expressing ill intent in the form of suggesting arson. I heard an unknown person say something to the effect of "burn it down!"

68. Hearing this, I took out my phone and recorded a video while on my megaphone instructing others to be peaceful. I said "Do not break, do not damage do not harm this is a peaceful protest."

69. I have provided this video as **Exhibit 3** to this Affidavit, and it is available at https://www.dropbox.com/scl/fi/2mtip0od5rreq13v3ie8i/Exhibit-3-Video-from-Crypt.mp4?rlkey=hbus0utmmvcy5n8w7t1oq96xi&dl=0

70. **Exhibit 3** is a video taken by me and it accurately depicts the scene in the Capitol's Crypt as I saw it at approximately 3:10pm on January 6, 2021.

71. In **Ex. 3**, hundreds of demonstrators can be seen aimlessly milling about the Crypt area of the Capitol.

72. None of the people shown in **Ex. 3** are being – or threatening to be – violent.

73. As is shown in **Ex**. **3**, in response to the man who yelled "burn it down!," many people around me began to shout at the person who suggested burning the building that "we aren't here to commit crimes." Knowing that President Trump told us to be peaceful, I joined in the chorus of voices, saying "we don't burn our buildings or destroy our cities" we are not "ANTIFA!" and I said "we back the blue and support the police" Do not harm the police, do not damage the building, do not destroy your own property."

74. Hearing my statements, two police officers that had been standing nearby approached me and shook my hand and then patted me on the back and he then asked me "when can we get these people out of here?" I responded by saying "I don't know, but more people are coming behind me," but I told them that "we aren't here to harm you or to hurt the building"

75. At this point, I no longer felt good being inside the Capitol building – this was the first time that any law enforcement indicated they wanted to get people to leave – so I began to retrace my steps to leave the same way I had entered – through the broken window near the West Terrace.

76. While walking towards the window, I passed an open room that I was falsely told was then-Speaker Pelosi's office, and I stopped to look around and to take pictures.

77. At this point, I saw several people sitting around on sofas and on the floor. These people were calmly talking with each other and some were even taking food out of their bags and making sandwiches.

78. While I was standing outside the office, I received a phone call from my Mother who knew I had gone to Washington DC for President Trump's speech. I told her that I was actually inside the Capitol and she insisted that the demonstration had turned violent and she told me that a woman (I later learned that this was Ashli Babbit) had been shot by the police.

79. The situation where I was – and everything I had seen – was so non-violent and controlled that I did not believe my Mother, thinking that what she was saying was absurd, and I told her that everything was fine before hanging up and resuming my walk out of the Capitol.

80. At this point, I heard police officers asking people to leave the Capitol, so I began to repeat their instructions and saying "back the blue!" to the people around me while starting to walk towards the window that I had used to get inside the building.

81. Hearing me repeat their calls and my statements of support, several police officers gave me a "fist bump" or patted me on the back, thanking me for helping.

82. It was apparent that the police officers did not view the demonstrators as a threat to their safety because the police did not yell orders at any demonstrators, they did not brandish weapons toward any of the demonstrators, and they did not adopt a combative or defensive posture towards the demonstrators. Instead, the police officers inside the Capitol building interacted with myself and other demonstrators in an easy, relaxed and friendly manner.

83. I was inside the Capitol building for approximately 12 minutes.

84. Once I left the Capitol building, I walked around the balcony on the West Terrace and when I turned the corner, I saw a small handful of people breaking windows by kicking them. This was the only property destruction that I personally witnessed the entire day.

85. Demonstrators were calling these people down and visibly disturbed as was I by seeing this.

86. I then walked back to the Hotel and eventually went to sleep pondering the stark reality of the difference of what I witnessed and what was showing on the TV.

87. Throughout the entirety of January 6, 2021, I estimate that I saw more than 100,000 demonstrators, and I heard many thousands more. Out of all of those people I saw and heard, I only heard one person talk about committing any acts of violence (see ¶ 67, above), and only saw approximately 6-8 people damaging property (see ¶ 84, above).

FURTHER AFFIANT SAYETH NAUGHT.

Treniss Evans

Treniss Evans

STATE OF COLORADO)
)ss.
COUNTY OF GRAND)

Subscribed and Sworn to before me this 23rd day of January, 2024.

Joanna Bila

NOTARY PUBLIC

Notarized online using audio-video communication

Joanna Bila
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19974005174
MY COMMISSION EXPIRES MARCH 23, 2025

BEFORE THE ILLLINOIS STATE BOARD OF ELECTIONS
SITTING *EX-OFFICIO* AS THE STATE OFFICERS ELECTORAL BOARD

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, AND DARRYL P. BAKER,	)	No. 24 SOEB GP 517
Petitioners-Objectors,	)	
v.	)	
DONALD J. TRUMP,	)	Hearing Officer Clark Erickson
Respondent-Candidate.	)	

AFFIDAVIT OF CHRIS BURGARD

I, Christopher Burgard, being duly sworn on oath, state that I have personal knowledge of the facts contained herein, that the answers are true and correct to the best of my knowledge and belief and, if called as a witness, that I would testify as follows:

1. I am Christopher Burgard. I am 18 years of age or older.

2. I have been a filmmaker and director for over 30 years. I live in Pittsburg, Texas.

My family and I decided to go to Washington, D.C. on January 6th to record a historical moment.

3. Leading up to January 6, 2021, I was aware that rallies and events were planned at the Ellipse related to President Trump's reelection campaign. I understood the rallies as intended to bolster the movement by certain congressional representatives to use their lawful authority to vote to delay the vote certification for the presidential election so that investigations could be conducted into potential irregularities affecting the election results.

4. On January 3, 2021, I made the decision with my family to attend the rally at the Ellipse on January 6, 2021, to hear President Trump speak. My family and I traveled from California to Washington, D.C. on January 5, 2021. We stayed at a rented house near the Capitol that I had previously rented when staying in Washington.

5. I was motivated to attend the planned events on January 6, 2021, because I felt called by God to witness a historical moment and record it for posterity. I, like many others, believed that showing up to support President Trump on January 6, 2021, alongside tens or hundreds of thousands of other people, would inspire members of Congress to take lawful action to delay the vote certification so the results could be investigated for any wrongdoing.

6. The decision to go to Washington was solely mine and my family's. It was not based on any affiliation with any organization or group of people, nor was it in response to any call to action by any other person. Our intentions were entirely peaceful and lawful and we did not plan to attend any events on January 6th other than President Trump's speech at the Ellipse. We were not aware that there would be a march to the Capitol at all.

The crowd outside the Ellipse was massive, peaceful, and joyous.

7. On the morning of January 6, 2021, my family and I left our rental house and went to the Washington Monument area around 7:30 am or 8:00 am.

8. Because we were there to witness a historic moment, both my daughter and I had cameras and were recording footage and taking photos throughout the day.

9. I spent roughly four hours (from about 8:00 am to about 12 pm) outside the Ellipse and around the Washington Monument area before going in to see President Trump's speech.

10. There was a sea of people outside the Ellipse. I would estimate the number was easily over 100,000. This massive crowd was overwhelmingly joyous in its mood. People were smiling, talking, and socializing like it was a big party. I recorded videos of the crowd, showing a staggering number of people who were radiating calm and joy, just happy to be outside and social after a year of Covid lockdowns. Exhibits 1

(https://dhillonlaw.box.com/s/kqurr996tjjuaay51q1syfndrlz6eqs9), 2 (https://dhillonlaw.box.com/s/6ihayitpn2pgmy7l8slc0scwum4it9s5), 3 (https://dhillonlaw.box.com/s/nv8d7e1s8qpld79k4trpp1q5bqlirixe), 11 (https://dhillonlaw.box.com/s/70d8zxko0vivehbcgc57368cjt4qbd5w), 13 (https://dhillonlaw.box.com/s/rdys1adwr4gzkym4se6rm5cd0gbz9d84).

11. The people in this crowd and on the line to enter the Ellipse were notably diverse in age, sex, and ethnicity. There were people of all ages, including families with children in strollers and elderly people in wheelchairs, and people of all ethnicities in the crowd, all sharing in the joyous mood. Videos I took of the crowd shows how diverse and clean-cut it was and how the gathering at the Ellipse was a family-friendly, all-ages event. Exhibits 2, 3, 11, 12 (https://dhillonlaw.box.com/s/wblbvhzpg54romyrvav30v4d3arv3o8s), 13.

12. I did not observe any anger, violent intent, or aggressiveness in the members of the crowd I saw or spoke to, with only two exceptions. Nor did I see any weapons on anyone other than police officers. The police officers I saw outside the Ellipse looked relaxed and calm and did not appear on guard around the crowd. One of the videos I took shows two police officers casually standing near the crowd in a relaxed posture. Exhibit 13.

13. During the time I was outside the Ellipse and around the Washington Monument, I filmed the crowd and interviewed roughly 30 people. I asked the people about why they were there and how they were feeling. I have video of these interviews and almost everyone I asked said they were there to support President Trump and/or that their reason for being there was to bolster congressional representatives so they would vote to investigate election irregularities. The people I interviewed were smiling, happy, and joyous. None of them were angry, violent, or aggressive about anyone or anything. Many of them seemed like they were having a great time

and enjoying the event like it was a party, and they were universally polite and cordial. Exhibits 2, 3, 4 (https://dhillonlaw.box.com/s/grxa23kcx8o20m6n56cciyn5tyenzspz), 5 (https://dhillonlaw.box.com/s/u3sk1bnkqp31ebc6c1nzfixnddw6zzs6), 6 (https://dhillonlaw.box.com/s/np0ev64dqwttw0rhbjtzrypl3el6wjqu).

14. One man I recorded an interview with said that coming to the event was not a partisan issue for him, but instead about respecting the constitution and rule of law for the sake of future generations. Exhibit 5.

15. I saw only two exceptions to the joyous, peaceful atmosphere in the crowd, and these exceptions stood out to me because they were so different from everyone else at the event. The first was a man dressed in black with a Fidel Castro-style hat who was shouting in a bullhorn about how people needed to take aggressive action and attack the Capitol. I took two videos of him, showing him trying to rile up people about going into the Capitol. He appeared to have one compatriot with him loudly agreeing with him as if he were part of the crowd, but both of them were ignored by the people around them. The videos show people either leaving a wide berth around him, passing or standing by and ignoring him, or recording his suspicious activity with bemused expressions. Exhibits 7 (https://dhillonlaw.box.com/s/q3w9387xsutem1zbw6ipb3i6x8tgico3), 8 (https://dhillonlaw.box.com/s/7upfy6ytg3mdlexzsen8ssk9hzu2mc71). The videos show that, other than his apparent compatriot, only about two or three people voiced any positive reaction to his shouting, out of the hundreds of people nearby. Exhibits 7, 8.

16. The other exception to the peaceful atmosphere I saw was Jacob Chansely, the man who famously wore the horned-hat and face paint. He looked odd and I have videos of him wandering along outside with a bullhorn rambling about communists. Exhibits 9

(https://dhillonlaw.box.com/s/2vethxsirv4m6rcjlchzpp6oplgxcc56), 10 (https://dhillonlaw.box.com/s/xd25awe8iml4mcvkyrqhearo15pvzmwu). The videos show that no one around him was paying him any particular attention or joining in his antics, and the most anyone reacted to him was to glance in his direction when he was shouting in the bullhorn and look away quizzically after seeing how he was dressed. Exhibits 9, 10.

17. These two individuals stood out from the rest of the crowd because they did not match the normalcy of the rest of the crowd—their behavior of shouting and/or acting aggressively was utterly out of keeping with the peaceful calm of the crowd.

18. Toward noon, I got on the line to enter through security to the Ellipse. The line was enormous, there were thousands upon thousands of people in it. I took videos of how long the line was, and they show how it was a diverse crowd of all ages, full of happy, calm people chatting with one another and enjoying a beautiful, though very cold, day while music played in the background as part of a general party atmosphere. Exhibits 11, 12.

President Trump's speech did not energize or rile up the crowd.

19. I waited on the security line for a while before finally making it through at around 11:50 am.

20. While my family was in the front few rows near the stage, I was at the back of the crowd to record footage. The people in the crowd around me for the speech were excited, but very cold, leading up the President Trump's appearance. In the crowd were all kinds of people of all ages and ethnicities, just like outside the security perimeter, including some nuns that people were clamoring to take photos with. I took video of the crowd in the Ellipse event that shows how diverse and joyous it was and how many people were trying to get their picture taken with the nuns. Exhibit 12, 13.

21. After President Trump's speech started, the crowd around me shifted from excited to generally bored. The speech did not contain any new information and it felt to me like a stump speech that did not have anything I had not heard before. It also felt like he started repeating his speech part of the way through. I took videos of the crowd during the speech that shows how people were not riled up or particularly energetic while the President was speaking. Exhibit 13, 14 (https://dhillonlaw.box.com/s/ryj708av6ea41wvhnt6vosqjexsolgk8).

22. When President Trump mentioned going to the Capitol to make our voices heard, there was no particular reaction in the crowd around me. There was no rise in energy or other notable reaction to President Trump's statement.

23. The biggest swells in energy in the crowd at the Ellipse were at the beginning of President Trump's speech when he came out to the stage and at the end when the speech finished and the crowd, including President Trump, started dancing to the song "Y.M.C.A." by the Village People. One of the videos I took shows the crowd's enthusiastic response to "Y.M.C.A." coming on at the end of the speech, and many people energetically joining in the dancing while President Trump himself was dancing to the music as well. Exhibit 15 (https://dhillonlaw.box.com/s/s4uefoyo1g371viczvdqm5wh22e1b0hx). The dancing to "Y.M.C.A." was wonderful, the song created a joyful, party atmosphere, with all kinds of people, young and old, joining in. Exhibits 15, 16 (https://dhillonlaw.box.com/s/43zfr8bty176osvog8le4obj4mmwyjnh).

24. As people were dispersing and leaving the Ellipse event area after the speech, it appeared that people were happy the speech was over and filing out of the event space to go use the bathrooms and/or because they were very cold, which can be seen in a video I took at the end of the speech. Exhibits 15, 16. The video also shows that people left the Ellipse event area quite

slowly and the crowd did not move with any particular speed or purpose after President Trump's speech ended. Exhibit 16.

The walk to the Capitol was slow and uneventful.

25. After the speech ended, my family and I joined the walk to the Capitol from the Ellipse around 1:15 pm or so.

26. We did not know ahead of time that there was going to be a walk to the Capitol, nor did many of the people I spoke with. My family and I had thought there was only going to be an event at the Ellipse and nothing further. While at the Ellipse, we heard from other members of the crowd that there were going to be more speakers at the Capitol after President Trump's speech, so we joined the walk to the Capitol to see them.

27. The crowd we joined going from the Ellipse speech to the Capitol was tens of thousands of people or more. It appeared that the majority of the people at the Ellipse joined the walk to the Capitol, but many people did not join because it was cold out.

28. The crowd was vast and moved at a very sedate pace. People were chatting, joking, laughing, and light-heartedly enjoying themselves on the walk. Videos I took of the walk to the Capitol show that the crowd was full of diverse, happy, smiling people of all ages and ethnicities, including families with young children and the elderly, and that people were slowly making their way over while having a great time, including joining in chants of "USA." Exhibits 17 (https://dhillonlaw.box.com/s/x86lcc42jp6zhr1nb15bvcldrk1567ks), 18 (https://dhillonlaw.box.com/s/em039ro2ctoswp7765l7ufwvgwzgmego), 19 (https://dhillonlaw.box.com/s/0xmp80wtgmq7bu6q9noocgo2qe6xjs1r) , 20 (https://dhillonlaw.box.com/s/va97z9akc4u9nzg9pcamn83wka1f30p3). The family-friendly nature of the crowd was humorously reflected in one of my videos when someone tried to start a

chant involving a cuss-word and then swiftly stopped after someone pointed out there are children around. Exhibit 19.

29. I did not see anyone rushing or storming toward the Capitol or otherwise moving aggressively. Part of the reason the crowd was so slow was that there were so many elderly people, people in wheelchairs, and children in strollers. I recall one moment when I saw an elderly woman who had collapsed to the ground with apparent heart trouble and a group of people had gathered around her to assist.

30. I do not recall seeing anyone carrying weapons on the walk to the Capitol.

31. As we walked, I noticed an apparent lack of police officers and members of the media following or covering the crowd. It struck me as conspicuous that I did not see police or media alongside this massive movement of people.

32. Our walk to the Capitol took about 45 minutes to an hour, during which time I interviewed several dozen people. The people I spoke to said similar things to the people I interviewed before I went into the Ellipse to hear President Trump speak. They said how they were there because they were concerned about the Constitution and maintaining its integrity, which is reflected in videos I took of some of these conversations. Exhibit 20. None of these people showed any intent to be violent or to interrupt the congressional proceedings. To the contrary, many of them said they were eager for the election certification proceedings to happen uninterrupted because they believed the representatives were voting to delay the certification.

The crowd at the Capitol was milling around and peaceful.

33. We finished our walk and arrived at the Capitol at roughly 2:20 pm.

34. We were surprised and confused that there were not more stages and speeches at the Capitol because of what we had heard from people at the Ellipse.

35. We arrived at the front of the Capitol, toward the back of the crowd. The crowd before us was massive. We did not see or hear any signs of violence when we arrived, all we heard was the dull roar of the crowd because of its size. The people in the crowd were generally milling around and talking with one another; there was nothing noteworthy happening. Videos I took of the crowd show its tremendous size and how the people in the crowd were just standing around calmly and enjoying the day, participating in patriotic chants, having relaxed conversations with one another, or using their phones. Exhibits 21 (https://dhillonlaw.box.com/s/aseaxx1t4bdfsol9wofnrslufhtyfg1u), 22 (https://dhillonlaw.box.com/s/uk2gx8flmvtcwatu4y49yhyprvvuzdgg). The videos I took do not show any violence or aggression in the crowd.

36. We made our way up to some scaffolding that was in the midst of the crowd, further toward the Capitol. We went to the left of the scaffolding and stayed in that area for about 90 minutes. I steered my family clear of the scaffolding itself because I did not trust that it could bear the weight of the people on it and did not want my family near it in case it collapsed. The videos I took from this position have a great angle showing the extent of the crowd and how joyous and peaceful it was, with people moving around calmly, chatting with one another, and having fun. Exhibit 21, 22.

37. I was able to record a beautiful moment of people on the scaffolding unfurling a massive American flag while the thousands of people in the surrounding crowd enthusiastically cheered, celebrated, and spontaneously broke out into chants of "USA" and a recitation of the Pledge of Allegiance. Exhibit 22.

38. During the approximately 90 minutes my family and I were in that area to the left of the scaffolding, I interviewed about a dozen people. The majority of the interviewees said

similar things to the people I spoke to outside the Ellipse and on the walk to the Capitol. Like the other people I spoke to earlier in the day, these people said they were there for peaceful purposes to support President Trump and bolster the legislators to vote against certification. In a video of one of these interviews, a kindly gentleman from Mississippi explicitly stated that he had no interest in violence. Exhibit 23 (https://dhillonlaw.box.com/s/5os1nfowpj39abkeygtnu44chwvlcjnm).

39. None of the people I interviewed described any violence or vandalism that they either witnessed or partook in while at the Capitol.

40. While at the Capitol, I did start to see some suspicious and off-putting people who did not look like the clean-cut, happy, and joyous people who made up the crowd outside the Ellipse, at the speech, and on the walk over. I spoke with one man who had no teeth and seemed unwell, who was there with a group of similar people.

41. At the Capitol was also the first time I recall seeing a group of people, other than police, wearing tactical gear. These people stood out from the rest of the crowd and were unlike anyone I saw in the crowd before arriving at the Capitol. I spoke with one young man in tactical gear and noticed several odd things about him. The gear looked brand-new, like it had never been used before, and he had many zip ties with him, which stood out to me as highly suspicious. When I interviewed him, he spoke vaguely and oddly to me, saying that he was there with his mother.

42. At the Capitol was also the first time I saw what looked like groups of people dressed in conspicuously dark clothing together. They were dressed similarly to the man with the bullhorn I saw outside the Ellipse who had encouraged people to enter the Capitol. These people too were utterly unlike the rest of the crowd I had seen outside the Ellipse, at President Trump's

speech, or on the walk to the Capitol. In addition to the clothing of the people in these groups standing out from the crowd at the Ellipse and on the walk over, these people wore many more masks, dark sunglasses, or neck gators pulled over their noses, obscuring their identities. While a few individuals wore those kinds of items scattered throughout the crowd at the Ellipse or on the walk over, the vast majority did not. These people at the Capitol therefore stood out as distinct from the Ellipse crowd.

43. In total, during my time at the Capitol, I recall seeing about 60 suspicious people like those described above, who did not fit in with the rest of the tens of thousands of people in the crowd that had been at the Ellipse and had walked over. They were a tiny number of people compared to the truly staggering crowd gathered at the Capitol, but they stood out to me when I saw them peppered throughout the crowd while my family and I were standing to the left of the scaffolding for about 90 minutes.

44. Despite seeing a few of these suspicious characters while at the Capitol, at no point did I observe any violence, vandalism, or breaking and entering into the Capitol. I did not see any violent people or fights between members of the crowd and the police. During my time at the Capitol, all that I witnessed was thousands upon thousands of people milling around and enjoying the day, with a relatively small handful of odd people among them. I did see a few police in riot armor walk by at one point, but they were moving at a calm pace without any look of aggressive intent about them, and I did not see them engaged in any violence.

45. I did speak to some people who said they had been inside the Capitol, but none of them said anything indicating they did so by breaking and entering, or that they had seen any violence.

46. We did see some tear gas from a distance and could smell it, but based on how we had neither seen nor heard of any violence, we thought it was just a generic crowd control measure by the police for dealing with a large and potentially rowdy crowd and not a response to actual violence.

On the walk home, I saw suspicious people but the FBI had no interest in them.

47. Around 4:00 pm, my family was cold and tired and wanted to go home, so we started to walk back to the rental house.

48. The rental house was on the opposite side of the Capitol from where we had been standing, so we had to head around the side and rear of the Capitol.

49. As we were moving past the rear side of the Capitol, we did not see or hear any violence, but we did come across two highly suspicious people. They were a man and a woman in their late 20s/early 30s who were speaking to members of the crowd around them, trying to incite them to violently attack police. They were highly suspicious, claiming they had been tear-gassed and that the crowd around them should go attack police in response. The crowd around them rejected their calls to violence.

50. When their attempt to get the crowd to attack the police failed, the couple walked away from the area toward where I could see tear gas in the distance. This struck me as confusing and suspicious because they had just been complaining that they had been tear-gassed, so I did not understand why they would head toward tear gas again. The couple's conduct was utterly unlike the rest of the crowd I had seen outside the Ellipse, at the speech, and on the walk to the Capitol.

51. The video I recorded of them reflects how suspicious their conduct was, with them cussing freely and acting in a highly aggressive manner, yelling at people to go commit

violence against law enforcement. Exhibit 24 (https://dhillonlaw.box.com/s/ub5ih5pcxpwzglsanm21zdvv4pftxe52). I did not see anything like that kind of behavior from other members of the crowd from earlier in the day or even around the Capitol, even taking into account the handful of suspicious people I previously described. The only other behavior that was comparable to theirs was the man with the bullhorn from outside the Ellipse who had called for people to enter the Capitol, and whom my video shows was similarly rejected by members of the crowd at large. Exhibits 9, 10. The video I recorded of them reflects my suspicions about them and their intentions at the time I saw them, because they were so out of place with the rest of the crowd I had seen throughout the day. Exhibit 24.

52. Around the same time, I saw the suspicious couple, I saw about 6 men in tactical outfits like the one I saw the young man wearing earlier. I asked some of these men why they had tactical gear and they responded that it was for self-defense in case Antifa showed up to mess with innocent people. These men were friendly and not at all aggressive or hostile to me or anyone else when I spoke to them.

53. As we continued around the Capitol toward the rental house, we came across DEA agents with what looked like undercover officers. Out of respect for these agents and the undercover officers, we turned off our cameras. The DEA agents did not look particularly on-guard or anxious, but instead very calm when I saw them.

54. We continued walking home and came across an FBI unit. I went to speak to them about the couple that had tried to incite the crowd to violence. I was concerned that this couple had tried to get a crowd to turn violent against police and wanted to make sure law enforcement knew what had happened. When I told the FBI agents about the couple's attempts to incite the crowd and asked whether they wanted me to point out the couple or provide information for a

report, they simply declined and were extremely casual about what I told them. This surprised me because I thought they would want to know about suspicious people trying to incite violence against police. After they declined my offer, we continued on.

55. We arrived at the rental house close to 5 pm and were able to complete a trip to the grocery store before the curfew started at 6 pm.

56. When we arrived home, we had no idea that there had been violence at the Capitol. Other than the tear gas in the distance, which we did not think anything of at the time, nothing we had seen and no one we had spoken with had indicated that there had been any violence at the Capitol or conflict between the crowd and the police. At no point in the day did I see anyone other than police with weapons, nor did I see any activity by the crowd or by groups of people that were violent or organized in an aggressive manner. I also did not see any aggressive, worried, or defensive activity by any law enforcement at any point in the day, whether outside the Ellipse, at the speech, on the walk to the Capitol, at the Capitol itself, or on the walk home from the Capitol.

57. My statements here are consistent with the testimony I gave the FBI when they interviewed me regarding my time at the Capitol on January 6th.

FURTHER AFFIANT SAYETH NAUGHT.

Chris Burgard

Christopher Burgard

STATE OF COLORADO)
)ss.
COUNTY OF GRAND)

Subscribed and sworn to before me this 23rd day of January, 2024.

Notarized online using audio-video communication

Joanna Bila
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19974005174
MY COMMISSION EXPIRES MARCH 23, 2025

Joanna Bila

NOTARY PUBLIC

BEFORE THE ILLLINOIS STATE BOARD OF ELECTIONS
SITTING *EX-OFFICIO* AS THE STATE OFFICERS ELECTORAL BOARD

STEVEN DANIEL ANDERSON, CHARLES J. HOLLEY, JACK L. HICKMAN, RALPH E. CINTRON, AND DARRYL P. BAKER,	)	No. 24 SOEB GP 517
Petitioners-Objectors,	)	
v.	)	
DONALD J. TRUMP,	)	Hearing Officer Clark Erickson
Respondent-Candidate.	)	

RULE 191(B) AFFIDAVIT IN RESPONSE TO
OBJECTORS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Illinois Supreme Court Rule 191(b), David Warrington, being first duly sworn, deposes and states as follows:

1. I currently serve as general counsel for President Trump's presidential campaign committee. I was responsible for ensuring that President Trump's Illinois nominating papers were properly completed and filed with the State Board of Elections on January 4, 2024.

2. I offer this affidavit in response to Objectors' Motion for Summary Judgment.

3. There are material facts essential to a fair resolution of Objectors' motion that ought to appear in affidavits opposing the motion for summary judgment, but that are known only to persons whose affidavits cannot be procured by either the Candidate or the Campaign by reason of hostility or otherwise.

4. No discovery has been permitted with respect to the Objections, which were filed on January 4 and are to be resolved by the Election Board on January 30, 2024. Given the abbreviated and expedited nature of these proceedings, the Candidate and Campaign's inability

to compel testimony, and other circumstances, neither the Candidate nor the Campaign have been able to procure affidavits from (or testimony by) these witnesses.

5. Based upon the Candidate and Campaign's investigation and review of relevant documents, video and other materials, including documents and video the Objectors reference and rely on, the proffered testimony would establish that material facts on which the Objectors rely are in fact disputed, which would require denial of Objectors' motion for summary judgment:

6. The names of witnesses, their likely testimony, the reasons the Candidate and Campaign believe they will testify in the manner described, and the reasons for the inability to procure their testimony, are as follows:

a. Mark Meadows, White House Chief of Staff during the events of January 6, 2021. Mr. Meadows would likely testify that (1) President Trump authorized the deployment of 10,000 to 20,000 National Guard Troops (as evidenced by testimony from Mr. Kash Patel on November 1, 2021 in Denver District Court), (2) President Trump and his staff took reasonable precautions to ensure no speakers at the Ellipse on January 6, 2021, would be likely to make incendiary comments that could be construed as incitement a call to violence (as evidenced by testimony from Ms. Katrina Pearson on November 1, 2021 in Denver District Court), and (3) President Trump was told in advance of January 6, 2021, by military officials that the U.S. Department of Defense had adequate plans and resources to address any disturbances on January 6, 2021, (as evidenced by Kash Patel's Colorado testimony and by the official Inspector General Report that investigated Department of Defense actions on January 6, 2021). Mr. Meadows is unwilling to testify because he is currently accused of crimes stemming from his involvement in events before and on January 6, 2021.

b. Mayor Muriel Bowser, current Mayor of Washington, D.C., and mayor during the events of January 6, 2021. She would likely testify that (1) the U.S. Army offered to augment city law enforcement with 10,000 to 20,000 National Guard troops for security on January 6, 2021, (as disclosed in Mr. Kash Patel's testimony on November 1, 2021 in Colorado District Court), (2) she was unwilling to allow more than 346 members of the National Guard to be deployed on January 6, 2021, (as evidenced by her formal letter to President Trump days before January 6, 2021), (3) she delayed requesting additional National Guard troops until mid-afternoon on January 6, 2021, (as evidenced by Mr. Kash Patel's testimony), and (4) that she delayed a public alert message ordering the public to vacate the Capitol Grounds until late afternoon on January 6, 2021 (as evidenced by testimony from Mr. Tom Bjorklund on November 2, 2023). She is unwilling to voluntarily testify due to her political animosity towards President Trump and because her testimony would reveal her own culpability in law enforcement's failure to properly respond to violence on January 6, 2021.

c. General Mark Milley, former Chairman of the Joint Chiefs of Staff and Chairman during the events of January 6, 2021. General Milley would likely testify that President Trump authorized the deployment of 10,000 to 20,000 National Guard troops on January 6, 2021, as evidenced by testimony from Mr. Kash Patel and the results of the Inspector General investigation into Department of Defense actions. He is unwilling to testify on behalf of President Trump due to the political and public nature of this litigation.

d. The operators of the magnetometers at the Ellipse on January 6, 2021. The current names and addresses of these individuals are unknown. They would likely testify that the vast majority of attendees at the Ellipse on January 6, 2021, possessed no dangerous items, and that they did not find a single firearm or deadly weapon, as evidenced by conclusions made by the

January 6 Select Committee. None of them is likely to voluntarily testify due to the political nature of this case and the publicity surrounding it.

e. Steven Sund, Chief of the United States Capitol Police on January 6, 2021. Mr. Sund will likely testify that he promptly requested National Guard troops both before and after violence broke out at the Capitol on January 6, 2021, but that his superiors denied his requests multiple times, as evidenced by his public statements. Mr. Sund has been contacted several times by President Trump's attorneys, but he has refused to return phone calls or electronic mail communications.

f. Ryan McCarthy, Secretary of the Army on January 6, 2021. Like General Milley, General McCarthy would likely testify that President Trump authorized deployment of 10,000 to 20,000 National Guard troops on January 6, 2021, as evidenced by testimony from Mr. Kash Patel and the results of the Inspector General investigation into Department of Defense actions. He is unwilling to testify on behalf of President Trump due to the political and public nature of this litigation.

g. Paul Irving, House Sergeant-at-Arms on January 6, 2021. Mr. Paul Irving will likely testify that he refused to request National Guard troops until late afternoon on January 6, 2021, because he did not perceive the violence at the Capitol to constitute a serious threat, as evidenced by public reports of his actions. Absent compulsion of service, he is unlikely to testify because of the political nature of this case and because his testimony will reveal his own culpability in the violence of January 6, 2021.

h. Michael Stenger, Senate Sergeant-at-Arms on January 6, 2021. Mr Stenger will likely testify that he refused to request National Guard troops until late afternoon on January 6, 2021, because he did not perceive the violence at the Capitol to constitute a serious threat, as

evidenced by public reports of his actions. Absent compulsion of service, he is unlikely to testify because of the political nature of this case and because his testimony will reveal his own culpability in the violence of January 6, 2021.

i. Capitol security guards located in the U.S. House of Representatives, identified by Representative Ken Buck during his testimony in Colorado on November 2, 2023. They would likely testify that at no time were any House members in physical danger, and that normal protocols called for evacuation of Members as a precaution to avoid violence at the Capital, as described by Representative Ken Buck's testimony on November 2, 2021, in Denver District Court. They are unlikely to voluntarily testify because they have been unwilling to publicly come forward, and because of the political nature of the current litigation.

j. Capitol police on East steps of the U.S. Capitol, as identified by Mr. Tom Bjorklund in his testimony on November 2, 2021, in Denver District Court. They would likely testify (1) that they gave protestors permission to climb the Capitol front steps on January 6, 2021, (2) that they perceived the January 6, 2021 demonstrators to be peaceful and not threatening, and (3) that all law enforcement vacated the front steps of the Capitol in order to respond to threats elsewhere, and because demonstrators in front of the Capitol were not perceived to be a threat. This is evidenced by testimony from Tom Bjorklund in Denver District Court on November 2, 2021, that law enforcement gave demonstrators permission to climb the Capitol steps and later abandoned their posts in front of the Capitol. They are unlikely to voluntarily testify because they have been unwilling to publicly come forward, and because of the political nature of the current litigation.

k. Representative Benny Thompson, Chairman of the United States House Select Committee on the January 6 attack. Representative Thompson would likely testify (1) that the

purpose of the House Select Committee was to gather evidence in an attempt to validate the belief shared by him and all other committee members (before their appointment to the Committee) that President Trump incited an insurrection on January 6, 2021 (as evidenced by their public votes in favor of impeaching President Trump and their public statements made well before the Committee was even formed), and (2) that the Committee doctored evidence and encrypted or destroyed evidence that it had collected (as evidenced by recent news media reports). He is unwilling to voluntarily testify due to his political animosity towards President Trump and because his testimony would reveal the bias and unreliability of the January 6 Report.

7. Given that the substantial involvement of government officials in planning and executing events on January 6, 2021, there are other current government officials, including members of the District of Columbia National Guard, with knowledge of the events of January 6 that the Candidate and Campaign would seek to interview and depose, but the given the abbreviated timeframe of this proceeding would be unable to secure access to those potential witnesses through the Touhy or other required process to obtain such access.

8. These material facts are consistent with my knowledge of the events and circumstances surrounding the events of January 6, 2021, including witness testimony, public reports, and previous discussions that I and others associated with the Candidate and Campaign have had with (or concerning) the witnesses identified above. These material facts are also consistent with documents, video and other materials the Candidate and Campaign's counsel and staff have gathered concerning the events at issue.

9. The complicated nature of these events, along with the volume of documents, video and other material, demonstrates the unfairness of resolving Petitioners' Objections as part of an expedited and abbreviated proceeding that attempts to determine the nature and

significance of the events of January 6, 2021 without first providing the Candidate a full and fair opportunity to conduct discovery and subpoena and depose witnesses, including by securing the testimony described herein via affidavit, deposition, or otherwise.

FURTHER AFFIANT SAYETH NAUGHT.

David Warrington

Subscribed to and sworn before me
This 23 day of January, 2024

Notary Public

Erin Bethany Potter
NOTARY PUBLIC
REG. #7903822
MY COMMISSION EXPIRES
03/24/2024
COMMONWEALTH OF VIRGINIA

CERTIFICATE OF SERVICE

I, Adam P. Merrill, hereby certify that before 6:10 p.m. on January 23, 2024, I caused a true and correct copy of the foregoing OPPOSITION TO OBJECTORS' MOTION FOR SUMMARY JUDGMENT (with Exhibits) to be served via email as follows:

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/s/ Adam P. Merrill
Adam P. Merrill

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

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

Petitioners-Objectors,

v. Case No. 24 SOEB GP 517

Donald J. Trump,

Respondent-Candidate.

OBJECTORS' RESPONSE IN OPPOSITION TO CANDIDATE TRUMP'S MOTION TO DISMISS

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Petitioners-Objectors Steven Daniel Anderson, Charles J. Holley, Jack L. Hickman, Ralph E. Cintron, and Darryl P. Baker (the "Objectors"), by and through their undersigned attorneys, hereby respond in opposition to Candidate Donald J. Trump's Motion to Dismiss Objectors' Petition ("Motion") and state as follows:

INTRODUCTION

Objectors' Petition asks the State Officers Electoral Board to perform a straightforward and clear, mandatory duty: to hear and decide the Objection that Candidate Donald Trump submitted invalid nomination papers, in violation of 10 ILCS 5/7-10, because he falsely swore in his Statement of Candidacy that he is "qualified" for the office of presidency. Candidate Trump cannot meet one of the several qualifications for office set out in the United States Constitution—Section 3 of the Fourteenth Amendment, which mandates that no person shall hold office under the United States if they previously have taken an oath, as an officer of the United States, to support the Constitution of the United States and engaged in insurrection or rebellion against same, or given aid or comfort to the enemies thereof. The Objection pleads detailed facts of how Candidate Trump, while President, laid the groundwork for the January 6, 2021 attack on the Capitol, incited his armed supporters to storm it, and encouraged and supported their efforts while the violent attack was underway, until they succeeded in overtaking it and disrupting certification of the 2020 presidential election. The insurrection was ended by Trump only after it became clear that the certification, while disrupted and delayed, would nonetheless take place.

Faced with these well-pled and detailed facts, showing that Illinois law and the U.S. Constitution disqualify Candidate Trump from appearing on the Illinois ballot, he now asks the Electoral Board to impose the severe and utterly unwarranted remedy of dismissing the objection on the pleading alone. To do this, his motion misstates both the facts and the law. It attempts to grossly sanitize and distort Candidate Trump's conduct related to January 6, contravening facts in

the public record and Trump's own statements, construing them for the Candidate rather than Objectors as is required for the Motion. It takes positions that run counter to established precedent and governing statutes. In some cases, it even misrepresents the authority it cites, excluding critical passages, subsequent history, or pertinent statutory provisions. The application of the proper legal standards to the well-pled facts in Petitioners' Objection, as the Board must do, requires denial of the Motion.

Candidate Trump's request to dismiss the Objection fails for several reasons. First, he takes the peculiar and unsupported position that the Board cannot resolve objections unless they involve "undisputed or (in the Board's estimation) not materially disputed" facts, despite a clear mandate in the Election Code and Illinois Supreme Court binding precedent that the Board must decide voter objections involving candidate qualifications, statutory authority to compel evidence and witnesses and hold evidentiary hearings, and a long Board history of resolving objections based on complex records and highly disputed facts and for objections involving presidential candidates. He also suggests, without either legal authority or even argument in support, that the Board should abdicate its clear statutory obligation to decide this objection because the Supreme Court is hearing his appeal of the Colorado Supreme Court's decision disqualifying him from appearing on the Colorado ballot. The Election Code does not authorize the Board to decline to hear or even delay resolution of objections on this basis.

Second, faced with Objectors' meticulously detailed and substantiated facts about January 6 and his role in it, Candidate Trump tries to twist the legal definition of "insurrection" into an unrecognizable pretzel that fully departs from the range of accepted legal standards so he can place January 6 outside of it. He attempts to do so even though *he admitted through counsel in his impeachment proceedings, that "everyone agrees" that January 6 was a "violent insurrection."*

This new attempt to argue otherwise contradicts not only his prior admission but also the meaning of the term at the time the Fourteenth Amendment was enacted, numerous judicial decisions, the statements of the Trump Administration's own Department of Justice, and the U.S. Congress.

More disturbing is Candidate Trump's blatant mischaracterization of the facts pled by Objectors about his actions during and leading up January 6 that accompanies his parallel effort to distort the legal definition of "engage." As detailed in the Objection for more than 200 paragraphs, then-President Trump did not simply contest an election outcome, give a speech to protestors requesting peaceful behavior, then monitor the "situation" at the Capitol before calling for peace and asking protestors to go home. This recasting of the facts as pled can only be characterized as dishonest. It flies in the face of the motion to dismiss standard, which requires the Board to take Objectors' well-pleaded facts as true and construe them in Objectors' favor. Those well-pleaded facts, include, among other things, the following. That even before the 2020 election, Trump made clear he would not accept the outcome of the election if he lost. Then, after he lost the election, Trump engaged in a host of lawful and unlawful means to overturn the 2020 election. When those failed, he called for and gathered an angry and armed mob—including known violent extremists—in Washington, D.C. on January 6, incited them, and sent them to the Capitol. They then stormed the Capitol, forced the Vice President, Senators, Representatives, and staffers to flee into hiding while threatening to kill them, prevented Congress from certifying the 2020 presidential election, and captured the Capitol. As these events unfolded, Trump continued to goad his supporters and refused to call in law enforcement to aid those trapped and injured at the Capitol, or call off the attack. Applying the proper legal standard to these facts fully overrides the call for dismissal.

Third, Candidate Trump makes a host of arguments in an effort to limit the scope of Section 3. He inaccurately describes his approach as "well-recognized constitutional tradition," and then

proceeds to ask the Board to abandon the thorough legal analysis of courts interpreting the Constitution, the text of the Fourteenth Amendment, and the accepted meanings of the terms within it. In sum, these strained attempts to interpret Section 3 to exclude the Presidency or the President, and to make the Presidential oath "to preserve, protect, and defend the Constitution" mean something other than to "support the Constitution," fail under the weight of their own lack of support and logic.

Fourth, Candidate Trump invokes the political question doctrine, arguing that this narrow doctrine should be applied to state electoral assessments of candidate qualifications. This is simply wrong based on the well-defined scope of the doctrine under controlling Supreme Court precedent, decisions applying it, the text of Section 3, and logic. States have long regulated their ballots to ensure presidential candidates meet mandated constitutional qualifications; depriving them of that right and reserving it to Congress following an election would create chaos of the electoral process.

Fifth, like the rest of the Fourteenth Amendment, Section 3 does not require specific legislation from Congress for it to take effect. The Colorado Supreme Court thoroughly rejected this proposition as "absurd" based on Section 3's plain language, established Supreme Court authority, and the results that would flow from Trump's requested reading. The Electoral Board should do the same.

In sum, Objectors have established the validity of their Objection, and review of the well-pled facts and applicable standards of law requires the denial of the motion to dismiss.

STANDARD OF REVIEW

"An electoral board is empowered to consider the objections made 'to a candidate's nomination papers' and the 'validity of those objections.'" *Daniel v. Daly,* 2015 IL App (1st) 150544, ¶ 32 (citing *Nader v. Illinois State Board of Elections,* 354 Ill. App. 3d 335, 343 (2004)). When faced with motions to dismiss objectors' petitions, an electoral board must determine

"whether [the] objections were in proper form, whether they were valid and whether they should be sustained." *Id.* (citing 10 ILCS 5/10-10). In making such a determination, all well-pleaded facts should be accepted as true, as should all reasonable inferences that may be drawn from those facts. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006) (citing *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 96–97 (2004)); *see also* SOEB Rules of Procedure 2024, at § 13. Moreover, allegations shall be construed in the light most favorable to the objector. *Marshall*, 222 Ill. 2d at 249 (citing *King v. First Capital Financial Services Corp.*, 215 Ill.2d 1, 11–12 (2005)).

ARGUMENT

I. THE BOARD IS AUTHORIZED AND OBLIGATED TO HEAR AND RULE ON THIS OBJECTION.

The Candidate takes the completely unsupported position that the Electoral Board cannot hear this objection because it involves a "complicated factual dispute[]" and a presidential primary candidate. Controlling Illinois law, the clear language of the Election Code, and plain logic bely both points. First, the Election Code *mandates* that the Electoral Board hear objections by voters to candidates and grants the Electoral Board full powers to hold evidentiary hearings on complex issues, and unequivocal Illinois Supreme Court precedent dictates that the validity of candidates' nomination papers turns on whether they meet constitutional qualifications for office. There is no authority for the unworkable proposition that the Electoral Board's authority to hear objections depends on a subjective consideration of where the facts fall on a continuum from simple to complex. Second, the Election Code explicitly mandates the Electoral Board to hear objections to presidential primary candidates (10 ILCS 5/7-12.1). While it does extend deference to political parties on certain other issues, it clearly and unequivocally requires the electoral board to ensure that candidates on the Illinois ballot meet mandatory qualifications for office such as that at issue here.

A. The Election Code Requires and Equips the Electoral Board to Decide Objections That Involve Disputed Facts

There is no dispute between the parties that: (1) the Illinois Election Code defines the Electoral Board's authority; and (2) the Board must follow its statutory mandate when exercising its powers. *See* Mot. at 4; *Delgado v. Bd. Of Election Comm'rs*, 224 Ill. 2d 481, 485 (2007). The Candidate attempts to deviate from these fundamentals, however, by ignoring the equally clear fact that the Election Code mandates and equips the Board to resolve objections like this one.[1]

The Electoral Board's duties and authority regarding candidate objections are set out in Article 10, Section 10 of the Election Code. It mandates that the Board *must* decide objections to the validity of candidate nominating papers:

> The electoral board . . .*shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained* and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1.The electoral board *must* state its findings in writing and must state in writing which objections, if any, it has sustained.

10 ILCS 5/10-10 (emphasis added).

In addition, the Illinois Supreme Court has clearly directed that determinations of the validity of a candidate's nominating papers include whether the candidate has falsely sworn that they are qualified for the office specified, and candidate qualifications include constitutional qualifications. *Goodman v. Ward*, 241 Ill. 2d 398, 406-07 (2011) (striking candidate's name from ballot and holding electoral board erred in denying objection where candidate falsely stated he was "qualified" for office despite not meeting eligibility requirements set forth in Illinois Constitution).

[1] The Electoral Board's authority to hear Petitioners' Objection also is comprehensively addressed in Objectors' Petition at ¶¶ 46-54 and in Objectors' Motion to Grant Objectors' Petition or in the Alternative for Summary Judgment, Argument, Section I (pp. 32-36).

Contrary to the Candidate's suggestion, this directive that electoral boards must *apply* constitutional requirements differs entirely from the well-established and unremarkable principle that administrative bodies, like and including the Electoral Board, do not have the authority to evaluate the validity of a statute or declare it unconstitutional. *Compare Goodman*, 241 Ill. 2d at 409-10 (recognizing the "statutory requirements governing statements of candidacy and oaths are mandatory" and board must evaluate whether statement "I am legally qualified to hold [the office specified]" is true or untrue), *with Delgado,* 224 Ill. 2d at 485 (Board of Elections exceeded its authority when it rejected objections to a candidate's nomination papers on the basis that the underlying statute was unconstitutional and thus unenforceable).[2] Under our tripartite form of government, only courts may declare legislative enactments unconstitutional, but all three branches of government must obey and apply constitutional mandates.

The Candidate's argument that Section 10-10 somehow limits authority based on the complexity of the challenge or whether the facts "in the SOEB's estimation, [are] not materially disputed" (Mot. at 5) is not supported by the plain language of the statute. It is made up from whole cloth. It would mean that certain objections would be foreclosed based on the nature of fact-finding required rather than by the powers granted by the Election Code. Or that the Board would have the authority to decide certain categories of qualifications but if, in its estimation, the facts were too complicated, that authority would dissipate. This would make the electoral objection process

[2] *See also Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 ("While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the first instance, if a proposed referendum is permitted by law, even where constitutional provisions are implicated."); *Zurek v. Petersen*, 2015 IL App (1st) 150456, ¶¶ 33-35 (unpublished) (recognizing that while "the Board does not have the authority to declare a *statute* unconstitutional[, this] does not mean that the Board had no authority to consider the constitutionally-based challenges" and that to determine whether the referendum "was valid and whether the objections should be sustained or overruled, the Board was required to determine if the referendum was authorized by a statute or the constitution").

chaotic, unpredictable, and unworkable, and leave many objectors without recourse for objections encompassed by the statute.

The Election Code forecloses that argument. Beyond its dictates that the Electoral Board "shall decide" on the validity of each candidate's nomination paper and "must" state its decisions on objections, the Election Code also expressly empowers the Electoral Board to evaluate evidence, hold complex evidentiary proceedings, and determine fact disputes. In authorizing the Board to do so, it provides it "shall have the power to administer oaths and subpoena and examine witnesses" and, upon majority vote, compel witness attendance and issue "subpoenas duces tecum requiring the production of such books, papers, records and documents as may be evidence of any matter under inquiry before the electoral board, in the same manner as witnesses are subpoenaed in the Circuit Court." 10 ILCS 5/10-10. It directs that the Electoral Board "on the first day of its meeting shall adopt rules of procedure for the introduction of evidence and the presentation of arguments and may, in its discretion, provide for the filing of briefs by the parties to the objection or by other interested persons." 10 ILCS 5/10-10. The Candidate's suggestion that the Board's limitations in securing witness appearances and documentary evidence mean it cannot hear complex matters is belied by the provisions of the Election Code and without any basis in fact or law.

The example provided by the Candidate to support his argument illustrates the fallacy of the argument. He notes that in *Goodman*, the candidate did not dispute that he failed to meet the residency requirements for the office sought, and for this reason the Electoral Board was "authorized to assess the qualifications," as opposed to circumstances where the facts were "materially disputed." Mot. at 5 (*citing Goodman* 241 Ill. 2d at 410). This suggests that if the candidate did dispute his residency, the Board would be divested of its power to hear evidence to

resolve the question, despite the Election Code's clear grant of authority. This is plainly false, not only based on the clear language of the statute, but also because the Illinois Supreme Court and Illinois courts of appeal have consistently confirmed the power of electoral boards to evaluate complex factual disputes on candidate qualifications, both for residency requirements and other issues. *See Maksym v. Bd. of Election Comm'rs of City of Chicago*, 242 Ill. 2d 303, 306 (2011) (crediting the "extensive evidentiary hearing" before electoral board and board's factual findings in appeal of objection on Rahm Emmanuel's qualification to appear on ballot based on disputed Chicago residency); *Dillavou v. Cnty. Officers Electoral Bd. of Sangamon Cnty.*, 260 Ill. App. 3d 127, 128, (1994) (affirming electoral board decision on objection made after holding three days of evidentiary hearings on the objectors' petition); *Raila v. Cook Cnty. Officers Electoral Bd.*, 2018 IL App (1st) 180400-U, ¶¶ 17-27 (unpublished) ("the hearing officer heard testimony from over 25 witnesses and the parties introduced over 150 documents and a short video clip" and the hearing officer "issued a 68-page written recommendation that contained his summary of the testimony and documentary evidence"); *Muldrow v. Barron*, 2021 IL App (1st) 210248, ¶¶ 28-30 (electoral board properly made factual finding of widespread fraud based on determinations as to the credibility of witnesses' testimony).

The underlying authority of the Electoral Board does not change when the objection is based on constitutional qualifications for a candidate for U.S. President. As the Motion correctly notes, the Electoral Board has repeatedly heard objections that a candidate has improperly sworn that they meet presidential constitutional qualifications. Mot. at 5 (citing *Freeman v. Obama*, No. 12 SOEB GP 103 (Feb. 2, 2012) and *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012)). However, the Board has done so not only in the cases the Motion cites, but also (contrary to the Candidate's argument) in others where the authority of the Board *was* evaluated. *See Graham v.*

Rubio, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board, determining that the Electoral Board was acting within the scope of its authority in reviewing the adequacy of the candidate's Statement of Candidacy and evaluating whether it was "invalid because the Candidate is not legally qualified to hold the office of President" based on criteria in the U.S. Constitution); *Graham v. Rubio*, No. 16 SOEB GP 528 (Feb. 1, 2016) (adoption by SOEB).[3]

If the Candidate's theory were correct that presidential qualifications were somehow different, the State of Illinois would have no recourse against presidential candidates seeking to appear on the ballot regardless of their age, residency in the United States, status as natural-born citizens, or prior presidential terms served, regardless of whether the relevant facts were straightforward or complex, or challenged or disputed. But again, the Election Code and its repeated interpretation by Illinois courts makes clear that the Board has authority to resolve disputed and complex challenges; this does not change for objections to presidential candidates, who necessarily invoke qualifications set forth in the U.S. Constitution. *See id.; Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (three judge panel decision approving Electoral Board's decision to remove from ballot presidential candidate who did not meet constitutional age qualification and denying motion for preliminary injunction to enjoin decision). Similarly, the fact that this objection involves Section 3 of the Fourteenth Amendment instead of one of the other provisions in the U.S. Constitution establishing presidential qualifications, does not take it outside the Electoral Board's purview as a matter of either logic or law.

[3] These SOEB decisions are attached as Group Exhibit A.

B. The Board Cannot Decline to Evaluate Petitioners' Objection Based on the Supreme Court's Decision to Grant Certiorari in the Colorado Case

Without advancing any actual argument in support, the Candidate also states in passing that it would "be imprudent" for the Board to address Petitioners' objection because the United States Supreme Court has granted certiorari in his appeal of the Colorado Supreme Court's decision disqualifying him from appearing on the ballot in a similar challenge under Colorado state law. Mot. at 1 (referring to *Anderson v. Griswold*, 2023 CO 63, *cert. granted sub nom. Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024)).

Objectors reiterate the arguments made above: the Electoral Board has a mandatory duty to evaluate their objection. 10 ILCS 5/10-10. Further, the legislature and the Electoral Board itself have made it clear that this duty must be performed expeditiously. Both the Election Code and the SOEB's Rules of Procedure emphasize the importance of mandatory deadlines and expedited proceedings. *See, e.g., Id.* (requiring Board to take action within 24 hours of receiving an objection and to meet 3 to 5 days after receipt of an objection); SOEB Rules of Procedure § 1(a) (directing that the "Board must proceed as expeditiously as possible to resolve the objections"); *id.* at § 4(a) (authorizing hearing officers to "take all necessary action to avoid delay"). Moreover, the SOEB, like all administrative bodies, is a creature of statute, and the Election Code does *not* provide authority for the Board to delay a decision for weeks, past the Supreme Court's decision, which will not come until mid or late February at the very earliest and could be later.[4] Nor does it authorize the Board to decline to determine the objection altogether because the Supreme Court has taken up a similar case. *See generally* 10 ILCS 5/10-10; *Goodman v. Ward*, 241 Ill. 2d 398,

[4] Oral argument is not scheduled until February 8, 2024. *See* U.S. Supreme Court Docket, Case No. 23-719, https://www.supremecourt.gov/docket/docketfiles/html/public/23-719.html.

414-15 (2011) (electoral boards cannot exercise authority beyond powers granted by statute). Thus, the Board cannot arrogate unto itself the authority to delay ruling in this case.

Even assuming arguendo that the Board had the authority to sit back and wait for the Supreme Court to rule, Objectors submit that it would be a mistake to do so. Not only is it unclear *when* the Supreme Court might rule, but also *how* it might rule. The Court could issue a decision that does not resolve the issues in this Objection, for example, holding that each state should determine the outcome of Section 3 concerns pursuant to the Electors Clause, or as Trump has requested, that Colorado courts exceeded their statutory authority under Colorado law. Proceeding with the objection will result in development of a full evidentiary record and ready the case for expedited appeal. In that posture, a court will have the authority to issue an order that will best preserve the integrity of the election process and allow for quick implementation of the Supreme Court's decision prior to the March 19, 2024 primary election.

C. The Election Code Requires the Electoral Board to Sustain Valid Objections to the Nomination Papers of Presidential Primary Candidates; Deference to Political Parties for These Nominations Does Not Override the Statutory Mandate.

The Candidate attempts to avoid Petitioners' Objection by suggesting that the provisions in the Election Code permitting involvement from political parties in the nomination process somehow supersede the authority of the Board to rule on a primary candidate's qualifications for office. Mot. at 3 (*citing* 10 ILCS 5/7-9, 5/7-11, 5/7-14.1). This too fails.

The Motion cites Section 5/7-11 of the Election Code for the undisputed proposition that Illinois law gives certain deference to political parties to nominate candidates, stating "via written notice, national political party rules concerning the nomination of candidate for U.S. President override Election Code provisions re: primary ballot." Mot at 3. It neglects to mention that this "override" pertains only to specifications in Section 5/7-11 regarding the time period for filing and

number of petition signatures needed by primary electors. *Id.*[5] In contrast, Section 5/7-12.1 of the Election Code clearly and unequivocally states that the objection procedures set out in Section 10-10, and discussed above, *apply to presidential primary candidates*:

> 5/7-12.1. Objections to nomination petitions; governing provisions
>
> The provisions of Sections 10-8 through 10-10.1 relating to objections to certificates of nomination and nomination papers, hearings on objections, and judicial review, shall also apply to and govern objections to petitions for nomination filed under this Article [Article 7, "The Making of Nominations by Political Parties"], except as otherwise provided in Section 7-13 for cases to which it is applicable.[6]

In other words, the Election Code makes clear that any deference given to political parties regarding nominations does not supersede the electoral board authority to hear objections about candidates' qualifications under the Election Code, the Illinois Constitution, or the United States Constitution. It is well settled that the Election Code properly regulates the activities of political parties, and that political parties have no right to act in conflict with the Code's mandates. *Totten v. State Bd. of Elections*, 79 Ill. 2d 288, 293-94 (1980).

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[5] The provision states:

> Any candidate for President of the United States may have his name printed upon the primary ballot of his political party by filing in the office of the State Board of Elections not more than 113 and not less than 106 days prior to the date of the general primary, in any year in which a Presidential election is to be held, a petition signed by not less than 3000 or more than 5000 primary electors, members of and affiliated with the party of which he is a candidate, and no candidate for President of the United States, who fails to comply with the provisions of this Article shall have his name printed upon any primary ballot: Provided, however, that if the rules or policies of a national political party conflict with such requirements for filing petitions for President of the United States in a presidential preference primary, the Chair of the State central committee of such national political party shall notify the State Board of Elections in writing, citing by reference the rules or policies of the national political party in conflict, and in such case the Board shall direct such petitions to be filed in accordance with the delegate selection plan adopted by the state central committee of such national political party.

10 ILCS 5/7-11.

[6] Section 7-13, which deals with city and county electoral boards, is not applicable to this objection.

The conduct of federal elections, including presidential primaries, are fundamentally controlled and administered pursuant to the election laws of the fifty sovereign states. In Illinois, this clear expression of electoral board authority differs substantially from governing election law in certain other states such as Minnesota and Michigan, where recent presidential primary objections were declined because their state's election procedures lacked the type of defined authority that Illinois has under Sections 7-12.1, 10-10, and interpretive Supreme Court precedent. *See Growe v. Simon*, 997 N.W.2d 81, 83 (Minn. 2023) ("there is no state statute that prohibits a major political party from placing on the presidential nomination primary ballot, or sending delegates to the national convention supporting, a candidate who is ineligible to hold office"); *Davis v. Wayne Cnty. Election Comm'n*, __ N.W.2d __, 2023 WL 8656163, *4 (Mich. Ct. App. Dec. 14, 2023) ("The Legislature ha[s] not crafted any specific prohibitions regarding whom could be placed on primary ballots.").

Neither the Objection nor the Board's authority is in any way undermined by the presidential primary's function of selecting delegates to the national convention, as the Candidate suggests (Mot. at 3-4). *See* 10 ILCS 5/7-11; 5/7-12.1; *Totten*, 79 Ill. 2d at 293 (confirming while a political party has rights pertaining to the party's internal management, "these may be exercised so long as there is no violation of statutory limitations"). Moreover, in Illinois, political parties do not determine who appears on the primary ballot; candidates file their own nominating petitions. *See* 10 ILCS 5/7-10. This means that regardless of the nominee election process the party follows, Illinois law controls as to whether the candidate appears on the ballot.

As to the Candidate's comments about delegates, as a practical matter, party leaders and National Convention Statewide Delegates (totaling 13 of 51 delegates) are bound to the candidate receiving the largest number of votes statewide. If a candidate cannot appear on the ballot because

the Electoral Board determines they have deficient nominating papers under Section 10-10, the candidate will lose at least these thirteen delegates from the state of Illinois at the national convention.[7] But even if the remaining delegates ultimately supported Candidate Trump, Illinois law is clear that *when the Electoral Board invalidates a statement of candidacy, that nullifies the candidate's request to be placed on the primary ballot*. 10 ILCS 5/10-10; *Goodman*, 241 Ill. 2d at 408-10 ("If a candidate's statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot" including because the "representation that 'I am legally qualified to hold the office' . . . was untrue."). And Illinois law also is clear that candidates must be qualified for office at the time they seek to appear on the ballot. *Id.* at 408-10; *see also infra* Part III.A. To ask the Electoral Board to throw up its hands and abdicate its responsibility to enforce the Election Code because certain Trump delegates might support his candidacy, despite a decision he is ineligible under Illinois law to appear on the ballot, flies in the face of the legislature's mandate that the Electoral Board must ensure that candidates on the Illinois ballot meet baseline qualifications for office.

II. PETITIONERS ADEQUATELY ALLEGE THAT CANDIDATE TRUMP ENGAGED IN INSURRECTION.[8]

For this Objection, the candidate qualification that the Board must consider is whether the well-pled facts in Petitioners' Objection that President Trump "engaged insurrection" through his involvement in the events of January 6 and thus is disqualified from the Presidency are sufficient to withstand the Candidate's motion to dismiss. Because the detailed facts in the Objection not only meet but exceed the applicable legal standards, the Objection cannot be dismissed.

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[7] *See* The Green Papers, *2024 Presidential Primaries, Caucuses, and Conventions*, https://www.thegreenpapers.com/P24/IL-R (providing the Republican Party of Illinois delegate plan).

[8] The issues in this section also are comprehensively addressed in Objectors' Motion to Grant Objectors' Petition or in the Alternative for Summary Judgment, Argument, Section III (pp. 39-51).

A. The Events of January 6 Constituted an "Insurrection" under Section 3.

Candidate Trump's contention that January 6 was not an "insurrection" flies in the face of the public record, the definitions and public usage of the term "insurrection" at the time the Fourteenth Amendment was enacted, at least fifteen judicial decisions, the statements of the Trump Administration's own Department of Justice, and the admission of Trump's own defense lawyer in his impeachment proceedings, not to mention the decisions from Colorado and Maine—the only two states to reach the merits in a Section 3 challenge to Candidate Trump's eligibility. The Colorado trial court's finding in *Anderson* that the events of January 6 constituted an insurrection is thus hardly an "outlying opinion" as Trump suggests, Mot. at 18; rather, it represents the settled, overwhelming consensus.

Under any reasonable interpretation of Section Three, the events of January 6, as alleged here, constituted an insurrection. The Colorado Supreme Court in *Anderson* declined to adopt a single definition of the word "insurrection" but concluded, after a careful review of the historical record, that any definition of the term for purposes of Section Three would necessarily "encompass a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish a peaceful transfer of power in this country." *Anderson v. Griswold*, 2023 CO 63, ¶ 184. There can be no serious or legitimate question that this definition is easily met by the events of January 6.

That general interpretation tracks the definitions and public usage of "insurrection" in the nineteenth century *See* William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. __, at 64 (forthcoming) (summarizing dictionary definitions, public and political usage, judicial decisions, and other sources to define "insurrection" as "concerted, forcible

resistance to the authority of government to execute the laws in at least some significant respect")[9]; *see also Allegheny Cty. v. Gibson*, 90 Pa. 397, 417 (1879) ("A rising against civil or political authority; the open and active opposition of a number of persons to the execution of law in a city or state; a rebellion; a revolt"); President Lincoln, *Instructions for the Gov't of Armies of the United States in the Field*, Gen. Orders No. 100 (Apr. 24, 1863), art. 149 ("Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.").

Candidate Trump's suggestion that "insurrection" is limited to a war-like "effort to break away from or overthrow the government's very authority" is simply incorrect. It is entirely unsupported and does not engage with the extensive historical evidence of the meaning of the term. Mot. at 17-18. Even the sole dictionary definition Trump cites, for example, is carefully presented incompletely. *Bouvier's Law Dictionary* did define "insurrection" to mean "rebellion," but it defined "rebellion" to include not only "taking up arms traitorously against the government" but also "[t]he *forcible opposition and resistance to the laws and process lawfully issued*." John Bouvier, *A Law Dictionary Adapted to the Constitution and Laws of the United States of America and of the Several States of the American Union* (6th ed. 1856).[10]

And the sole case Trump cites on this point, *United States v. Greathouse*, 26 F. Cas. 18 (C.C.N.D. Cal. 1863), did not purport to define "insurrection," and dealt, rather, with the level of conduct that must be proved to convict a criminal defendant of *treason*—an issue that has no

[9] *Available at* https://papers.ssrn.com//.cfm?abstract_id=4532751.

[10] Other dictionaries of the time track the full definition. *See, e.g., Insurrection,* WEBSTER'S DICTIONARY (1830) (defining insurrection as "combined resistance to … lawful authority…, with intent to the denial thereof").

bearing here. Moreover, the statement in *Greathouse* that "engaging in rebellion" amounts to a "levying of war" does not help Trump because, at the time, the meaning of "levying war" included actions far short of outright war to overthrow the government, such as the use of violence by an group for the common purpose of preventing execution of the law:

> [T]he words 'levying war,' include *not only the act of making war for the purpose of entirely overturning the government*, but also *any combination forcibly to oppose the execution of any public law of the United States*, if accompanied or followed by an act of forcible opposition to such law in pursuance of such combination. The following elements, therefore, constitute this offence: (1) A combination, or conspiracy, by which different individuals are united in one common purpose. (2) This purpose being to prevent the execution of some public law of the United States by force. (3) The actual use of force, by such combination, to prevent the execution of that law.

In re Charge to Grand Jury - Neutrality Laws & Treason, 30 F. Cas. 1024, 1025 (C.C.D. Mass. 1851) (emphasis added). In other words, even under the "levying of war" standard proposed by Candidate Trump, the elements of insurrection are the same as the consensus historical definition and the interpretation adopted in *Anderson*: (1) a common effort, (2) using violence, (3) to prevent the execution of the law. *See* Baude & Paulsen, *supra*, at 64; *Anderson*, 2023 CO 63, ¶ 184.

Based on that common understanding of the term, prior to the Civil War, violent uprisings against federal authority comparable to January 6 were regularly understood to be "insurrections." *See* Robert Coakley, *The Role of Federal Military Forces in Domestic Disorders, 1789–1878* (U.S. Army Ctr. of Mil. Hist. 1996) (recounting antebellum insurrections that involved loosely organized, lightly-armed groups and few deaths). None of these pre-1861 insurrections approached the scale of the Civil War; nor would any meet Trump's concocted insurrection standard of attempting to actually "break away from or overthrow the government." *See* Coakley, *supra*, at 6, 35-66, 74 (describing Shays, Whiskey, and Fries insurrections). And the framers and early interpreters of Section 3 made clear that these antebellum insurrections *were* the types of

insurrections to which Section 3 applied. *Cong. Globe,* 39th Cong. 1st Sess. 2534 (1866) (Rep. Eckley) (during debates over clause, arguing that "[b]y following the precedents of our past history will we find the path of safety," then discussing approvingly as a model the expulsions and investigations of representatives who supported the Whiskey Insurrection); *The Reconstruction Acts (I),* 12 U.S. Op. Atty. Gen. 141, 160 (1867) (opining that, in similarly-worded statute, "[t]he language here comprehends not only the late rebellion, but every past rebellion or insurrection which has happened in the United States").

Courts interpreting Section 3 are clear that no minimum threshold of violence or level of armament is required. *See In re Charge to Grand Jury*, 62 F. 828, 830 (N.D. Ill. 1894) ("It is not necessary that there should be bloodshed"); *Case of Fries,* 9 F. Cas. 924, 930 (C.C.D. Pa. 1800) ("military weapons (as guns and swords . . .) are not necessary to make such insurrection . . . because numbers may supply the want of military weapons, and other instruments may effect the intended mischief"). And even a failed attack with no chance of success can qualify as an insurrection. *See In re Charge to Grand Jury,* 62 F. at 830 ("It is not necessary that its dimensions should be so portentous as to insure probable success."). Here, of course, the January 6 invasion of the United States Capitol involved bloodshed, guns, and the equivalent of swords, and the successful interruption of the certification of a presidential election, but even without those damning facts, the violent uprising easily met the definition of an "insurrection."

To be clear, while there is no minimum threshold of violence or success, the requirement that an insurrection be "violent" and directed "against" the Constitution of the United States ensures that Section 3 of the Fourteenth Amendment would not apply, as Trump argues, to merely "any public, joint effort to obstruct federal law." Mot. at 18-19. Rather, it is the unprecedented nature of January 6 in modern times—the concerted violent effort to prevent the peaceful transfer

of power at the core of the U.S. Constitution—that brings that day's events within the scope of Section 3.

Under any viable and reasonable definition of insurrection, the events of January 6 meet the necessary criteria. As alleged in the Objection, the January 6 insurrectionists sought to block Congress from executing the law. Objection ¶ 38. Their attack was also unquestionably an "insurrection against" the Constitution of the United States, within the meaning of Section 3, in that it sought to prevent Congress from fulfilling its core constitutional duty to certify the results of a presidential election and thereby prevent the peaceful transfer of power. *Id.* ¶¶ 38, 43, 226, 331. Then-President Trump had repeatedly and baselessly denounced the results of the election as fraudulent, and openly and repeatedly called on everyone from the Vice President on down to his supporters to prevent the certification of the election results so that he could remain in power. That outcome was the attackers' common purpose, as established by, among other things, their pre-attack planning, gathering in Washington, D.C. at Trump's request on the date of the election certification, and taking direction from Trump as he exhorted them to march to the Capitol to "fight" to prevent anyone from "taking" the White House. *Id.* ¶¶ 38, 139-40, 202.

The attackers managed to achieve their common purpose, albeit only for a few hours, by causing Congress to suspend the count of the electoral vote. *Id.* ¶ 38. Thankfully, the success was short-lived, but even a failed attack with no chance of success can qualify as an insurrection. *See Charge to Grand Jury*, 62 F. at 830. In fact, the January 6 insurrection achieved something that *no past insurrection* achieved: its violent and armed seizure of the Capitol, in fact, obstructed and delayed an essential constitutional procedure. *See* Objection. ¶¶ 222-28. Even the Confederates never attacked the heart of the nation's capital, prevented a peaceful and orderly presidential transition of power, or took the U.S. Capitol.

The attack was extremely violent. Five people died and over 150 law enforcement officers were injured, some severely. *Id.* ¶ 269. This equaled or surpassed the level of violence in antebellum insurrections specifically characterized as insurrections. *See* Coakley, *supra* (describing Whiskey, Shays, and Fries Insurrections). The violence was so significant that civil authorities were unable to resist the attack; military and other federal agencies had to be called in. *Id.* ¶¶ 250-51.

Given the facts in the public record, presented in the Objection, it cannot genuinely be disputed that January 6 was an insurrection. Both house of Congress, by overwhelming majorities, deemed those who attacked the Capitol on January 6, 2021 to be "insurrectionists." Act of Aug. 5, 2021, Pub. L. No. 117-32, 135 Stat 322. Just days afterward, the U.S. Department of Justice under the Trump administration labeled the attack an "insurrection" in federal court. Government's Br. in Supp. of Detention at 1, *United States v. Chansley*, No. 2:21-MJ-05000-DMF, ECF No. 5 (D. Ariz. Jan. 14, 2021). So have at least fifteen court opinions. *See* Objection ¶ 279 nn. 219-28 (listing decisions). Even Trump's own defense attorney admitted during his impeachment trial that the January 6 attack was a violent insurrection. *See* 167 Cong. Rec. S729 ("[T]he question before us is not whether there was a violent insurrection of [*sic*] the Capitol. *On that point, everyone agrees.*") (emphasis added).

Most recently, the Maine Secretary of State had "little trouble concluding that the events of January 6, 2021 were an insurrection within the meaning of Section 3 of the Fourteenth Amendment" even under the limited standard proposed by Trump there. *In re Challenges of Rosen, Saviello, and Strimling, Gordin, and Royal*, at 24-45 (Me. Sec'y of State Dec. 28, 2023), *appeal remanded to Sec'y of State sub nom. Trump v. Bellows*, Docket No. AP-24-01 (Me. Super. Ct. Jan. 17, 2024) (Murphy, J) (upon agreement by the parties, the Maine Superior Court remanded to the

Maine Secretary of State until after U.S. Supreme Court decision), attached hereto as Ex. B. Before that, the Colorado Supreme Court affirmed that "the events of January 6 constituted a concerted and public use of force or threat of force by a group of people to hinder or prevent the U.S. government from taking the actions necessary to accomplish the peaceful transfer of power in this country" and therefore constituted an insurrection. *Anderson v. Griswold*, 2023 CO 63, ¶ 189. Trump does not cite any court or electoral board anywhere in the country that has ever concluded otherwise. There is no reason for the Electoral Board to depart from the national consensus that the events of January 6, 2021, as alleged in the Objection, constituted an insurrection for purposes of Section 3.

B. <u>Donald Trump Engaged in the January 6 Insurrection.</u>

On the issue of whether he "engaged in" the January 6 insurrection, Candidate Trump fails to apply—or even cite—the applicable legal standard and ignores swaths of facts set out in the Objection to provide a highly sanitized, and grossly inaccurate, account of his conduct on that day.

As the Colorado Supreme Court recognized after surveying the relevant historical evidence and case law, "engaged in" requires "an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose." *Anderson*, 2023 CO 63, ¶ 194. *Cf. Engage*, WEBSTER'S DICTIONARY (1828) (relevantly defining "engage" as "[t]o embark in an affair"). That definition is fully consistent with established prior case law, which defines "engage" under Section 3 as providing *any* voluntary assistance, either by service or contribution. *See United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (defining "engage" as "a voluntary effort to assist the Insurrection . . . and to bring it to a successful [from the insurrectionists' perspective] termination"); *Worthy v. Barrett*, 63 N.C. 199, 203 (1869) (defining "engage" as "[v]oluntarily aiding the rebellion, by personal service, or by contributions, other than charitable, of any thing [sic] that was useful or necessary"); *State v. Griffin*, No. D-101-CV-2022-00473, 2022 WL

4295619, *19-20 (N.M. Dist., Sept. 6, 2022) (applying definition of "engage" from *Powell* and *Worthy*); *Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Ofc. of State Admin. Hrgs. May 6, 2022), slip op. at 13-14 (same).[11]As underscored by the case law, engagement does *not* require that an individual personally commit an act of violence. *See Powell*, 27 F. Cas. at 607 (defendant made a payment to avoid serving in Confederate Army); *Worthy*, 63 N.C. at 203 (defendant simply served as county sheriff in service of the Confederacy); *Rowan*, *supra*, at 13-14 ("engagement" includes "marching orders or instructions to capture a particular objective, or to disrupt or obstruct a particular government proceeding"); *Griffin*, 2022 WL 4295619, at *20. Indeed, Jefferson Davis—the president of the Confederacy—never fired a shot.

But instead of contending with the legal standard adopted in *Anderson* and established by history and case law, Trump strains to argue for a new standard that would exclude incitement or speech in support of an insurrection from the definition of "engagement." Mot. at 19. The argument lacks any legal basis. Trump argues, for example, that Congress' inclusion of the word "incite" in the Second Confiscation Act indicates an intentional exclusion of incitement from Section 3 of the Fourteenth Amendment. *Id.* But the fact that the 1862 Second Confiscation Act criminalized a longer list of verbs is irrelevant. *See The Second Confiscation Act*, 12 Stat. 589, 590 (1862) (making it a crime to "incite, set on foot, assist, or engage in any rebellion or insurrection against the authority of the United States, or the laws thereof, or . . . give aid or comfort thereto"). No historical evidence suggests that Congress's decision to streamline this lengthy statutory verbiage in the later constitutional amendment was intended to exclude incitement or other forms of engagement. See *M'Culloch v. Maryland*, 17 U.S. 316, 407 (1819) (denying that Constitution must "partake of the prolixity of a legal code"). Nor do the House of Representatives' votes against

[11] *Available at* https://bit.ly/MTGOSAH.

excluding certain members following the Civil War establish that engagement in insurrection did not include incitement. In the particular cases cited by Trump, for example, the House voted against exclusion not because the members' conduct was limited to speech, but because both members took *immediate active efforts to defeat the insurrection once it began*. *See Cong. Globe*, 41st Cong, 2nd Sess. 5442, 5445 (1870) (Rice actively dissuaded "whole companies of men" from joining the Confederate Army and induced them to fight for the Union); 1 Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States*, ch. 14, § 462, at 477 (1907) (McKenzie changed his mind before Virginia seceded and became "an outspoken Union man").

Contrary to Trump's claims, the historical record indicates clearly and unequivocally that engagement includes incitement: "Disloyal sentiments, opinions, or sympathies would not disqualify; but when a person has, by speech or by writing, incited others to engage in rebellion, [h]e must come under the disqualification." *The Reconstruction Acts (II)*, 12 U.S. Op. Att'y Gen. 182, 205 (1867) (opinion of Attorney General Stanbery regarding a similarly-worded statute); *see also In re Charge to Grand Jury*, 62 F. at 830 ("When men gather to resist the civil or political power of the United States, or to oppose the execution of its laws, and are in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, they become insurgents; and *every person who knowingly incites, aids, or abets them, no matter what his motives may be, is likewise an insurgent*.") (emphasis added). Indeed, it would be hard to imagine how it could be otherwise, since excluding those who incite insurrection from the definition of "engaging" in insurrection would be to exclude those whose conduct is often the most culpable.

Applying the standard adopted by *Anderson* and other courts, there is no question that Objectors have pleaded more than sufficient facts to establish that Trump "engaged in

insurrection" through both acts of speech that incited and maintained the insurrection and other conduct. In an impressive feat of understatement, Trump summarizes his alleged conduct as simply "disputing an election outcome, giving a speech on January 6, and monitoring and Tweeting about the events at the Capitol as they occurred." Mot. at 21. That is, of course, hardly the extent of the facts presented in the Petitioners' Objection. Trump was not simply "contesting an election outcome." *Id.* By January 6, all of the very numerous lawful attempts by Trump to "contest" the January 6 election had been exhausted (and had failed); and yet he was attempting to subvert the Constitution by staying in office after he had lost. He repeatedly lied to the public about purported voter fraud in the 2020 election despite being told by advisers that his claims lacked merit. Objection ¶¶ 72, 117. He promoted an unlawful plan for Vice President Mike Pence to unilaterally prevent the transfer of power from Trump to President Joseph Biden by refusing to certify votes. *Id.* ¶¶ 145-48. He lied about Vice President Pence's agreement with the plan. *Id.* ¶ 148. He summoned a large crowd to Washington, D.C. to "be wild" on January 6, 2021. *Id.* ¶ 124.

Nor did Trump just "give a speech" on January 6. He personally helped plan the crucial mustering event: the "wild" Ellipse demonstration. ¶133-134. He ensured that his armed and angry supporters were able to bring their weapons to the speech and to the Capitol, *ordering* officials to remove magnetometers that would have prevented armed people from joining the assembly; *id.* ¶ 175-178; incited them against Vice President Pence, Congress, the certification of electoral votes, and the peaceful transfer of power, *id.* ¶¶ 186-191; and instructed them to march on the Capitol for the purpose of preventing, obstructing, disrupting, or delaying the electoral vote count and peaceful transfer of power, *id.* ¶¶ 192-93. As noted above, "marching orders or instructions to capture a particular objective, or to disrupt or obstruct a particular government proceeding, would appear to constitute 'engagement' under the *Worthy-Powell* standard." *Rowan*, *supra*, at 14. That describes

Trump's Ellipse speech. His supporters understood their orders perfectly: per his instructions, they *marched* to the Capitol, *captured* it, *obstructed* Congress, and *disrupted* the congressional electoral count.

Then, while the attack was ongoing, Trump did not simply "monitor it." After it became clear that Vice President Mike Pence would not participate in Trump's illegal plan to prevent the transfer of power, Trump fanned the flames of the attack by lashing out publicly at Vice President Pence for his lack of "courage." *Id.* ¶ 232. He knew, consciously disregarded the risk, or specifically intended that this tweet would exacerbate the violence at the Capitol—and it did. *Id.* ¶¶ 233-34. He also provided material support by refusing to mobilize federal law enforcement or National Guard assistance though it was clear that law enforcement at the Capitol was overwhelmed. *Id.* ¶ 40.

In short, Trump did everything he could to encourage and support the violent attack on the Capitol in an effort to achieve the illegal and unconstitutional goal of preventing the peaceful transfer of presidential power.

Based on these well-pled facts, Petitioners' Objection cannot be dismissed.

Trump's speech summoning his supporters to Washington, D.C. to "be wild" and ordering them to march to the Capitol to "fight" easily meets the standard for incitement of an insurrection:

> Having considered the President's January 6 Rally Speech in its entirety and in context, the court concludes that the President's statements that, "[W]e fight. We fight like hell and if you don't fight like hell, you're not going to have a country anymore," and "[W]e're going to try to and give [weak Republicans] the kind of pride and boldness that they need to take back our country," immediately before exhorting rally-goers to "walk down Pennsylvania Avenue," are plausibly words of incitement not protected by the First Amendment. It is plausible that those words were implicitly "directed to inciting or producing imminent lawless action and [were] likely to produce such action."

Thompson v. Trump, 590 F. Supp. 3d 46, 115 (D.D.C. 2022), *appeal pending*, No. 22-7031 (D.C. Cir.). But Trump's engagement in the January 6 insurrection was also not limited to speech. As noted, he directed the scheme to prevent certification of the votes; he helped to plan the demonstration where supporters gathered before attacking the Capitol, Objection ¶ 133; he planned the March on the Capitol, *id.* ¶ 135; and he ordered officials to remove magnetometers that were preventing armed people from joining the assembly, precisely so that they could bring weapons to the Capitol, *id.* ¶ 178.

Nor are Objectors' allegations regarding Trump's conduct during the insurrection limited to his inaction, as he suggests. Rather, Trump's tweet at the height of the violence regarding Mike Pence's lack of courage galvanized the attackers, eventually requiring Vice President Pence to be removed by the Secret Service for his safety to shelter in a secure location. *Id.* ¶¶ 232-43. Moreover, Trump's refusal to mobilize federal authorities or, for hours, give his followers a clear instruction to disperse is noteworthy given his specific duty to "take Care that the Laws be faithfully executed." U.S. Const. art. II, § 3. Yet for 187 minutes after the attack began, he refused to call in the necessary authorities or even to call off his supporters and tell them to go home. Objection ¶ 41. Instead, he fanned the flames. Objection ¶¶ 232-35.

Objectors have alleged more than sufficient facts to support the conclusion that President Trump "provided voluntary assistance for" and thus engaged in insurrection. That is the conclusion reached by the Maine Secretary of State and by the Colorado trial court and affirmed by the Colorado Supreme Court. Maine Sec'y of State Ruling, Ex. B, at 31-21; *Anderson*, 2023 CO 63, ¶ 221 (affirming finding that Trump engaged in insurrection). To date, nine federal judges have likewise ascribed responsibility for the January 6 insurrection to Trump. *See* Objection ¶ 287 (listing cases). Trump engaged in insurrection. No adjudicative body to have reached the merits of

challenges like this one has concluded otherwise. There is absolutely no basis for the electoral board to reach a contrary conclusion here.

III. SECTION 3 APPLIES TO BAR A FORMER PRESIDENT FROM THE OFFICE OF THE PRESIDENT.

Trump is wrong in arguing that, even if he engaged in insurrection, Section 3 still does not bar him from the Presidency. Section 3 clearly applies to Trump because (i) the Presidency is an "office . . . under the United States"; (ii) the President is an "officer of the Unites States"; and (iii) the presidential oath constitutes an oath "to support the Constitution of the United States." U.S. Const. amend. XIV, § 3. Moreover, the distinction he attempts to draw between "holding office" and "running for office" does not affect this Board's duty to remove him from the ballot.

A. Trump's Claim that Section 3 Disqualifies Insurrectionists from "Holding Office" but not "Running for Office" is Unavailing.

As a preliminary matter, Trump insists that this Board must allow him to appear on the ballot because, he argues, Section 3 bars insurrections from "holding office" but not from "appearing on a ballot or being elected." Mot. at 11-12. He does not cite any decision that agrees with him by any adjudicative body that has reached the merits of a challenge like this one.

This is the same argument that then-judge, now Justice Gorsuch rejected in *Hassan v. Colorado,* 495 F. App'x 947 (10th Cir. 2012). Like Trump here, Hassan argued that "even if Article II properly holds him ineligible to assume the office of president," it was unlawful "for the state to deny him a *place on the ballot*." *Id.* at 948 (emphasis in original). The court rejected this distinction, concluding that "a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office." *Id.* (upholding the exclusion of a constitutionally ineligible presidential candidate from state primary election ballots); *accord Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014) (same); *Socialist Workers Party*, 357 F. Supp.

109 (same); *see also Anderson*, 2023 CO 63, ¶ 67 ("Nor are we persuaded by President Trump's assertion that Section Three does not bar him from *running for* or *being elected* to office because Section Three bars individuals only from *holding* office. *Hassan* specifically rejected any such distinction.") (emphasis in original).

Trump seems to argue that Section 3's provision "that any disability may be removed by Congress" renders it unenforceable at the ballot stage. Mot. at 11. But Trump cannot himself cure the disqualification. Only Congress, by a two thirds majority of each house, may remove the Section 3 disability. Trump has not even requested that Congress do so, and there is no evidence that it would act in his favor, if presented with such a request. Trump's contention that election officials and the courts are powerless to enforce Section 3 unless and until a disloyal insurrectionist has successfully run for an office for which he is not currently qualified, then belatedly and unsuccessfully asks Congress to remove the disability, is both completely unfounded and a recipe for chaos. *See supra* Part IV.A. Even Trump specifically acknowledges "the constitutional crisis of a President-elect being chosen by loyal electors in a nationwide election, and then having his or her qualifications challenged." Mot. at 16. Yet he urges a course that could lead to *precisely* that outcome, by arguing that only Congress can adjudicate his eligibility—which would take place no sooner than January 6, 2025.

In short, the fanciful and speculative possibility that two-thirds of each chamber would vote to remove Trump's Section 3 disqualification provides no basis for including Trump on the ballot. As of this time (and indeed for the foreseeable future), he is disqualified from holding office and therefore may not appear on the ballot.

The cases Trump relies upon—*Schaefer v. Townsend*, 215 F.3d 1031 (9th Cir. 2000), and *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995)—are inapposite. In *Thornton*, unlike here,

the state of Arkansas imposed term limits on Representatives and Senators that were not contained in the Constitution. *Id.* at 783. And in *Schaefer*, California imposed a requirement that Representatives reside within the state *before* the election, which, the Ninth Circuit held, "contravenes the express language of the Qualification Clause" specifically providing that a Representative need not be an "Inhabitant of that State" until he is elected. *See* 215 F.3d at 1036-38 (citing U.S. Const. art. I, § 2, cl. 2). Furthermore, recognizing the risk that nonresident candidates might fail to establish residence in California upon winning the election and each state's "interest 'in avoiding confusion, deception, and even frustration of the democratic process at the general election,'" the court reasoned that California could "require candidates to file a document with their nomination papers attesting that they will be inhabitants of the state when elected." *Id.* at 1038. As explained above, Trump could never honestly attest that his disqualification will be removed by Congress. Unlike a nonresident candidate, who controls his own ability to move to the state by election day and can therefore truthfully attest that he will do so by election day, Trump cannot so attest because removal of disqualification depends on an entirely speculative act of a congressional supermajority. "[A] State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Bullock v. Carter*, 405 U.S. 134, 145 (1972). In removing a disqualified candidate from the ballot, Illinois is acting properly in accordance therewith.

Finally, in arguing that "the SOEB is not authorized to investigate matters under Section Three for purposes of ballot placement in a presidential primary election," (Mot. at 12.), Trump is asking this Board to ignore binding Illinois Supreme Court precedent, providing that, when a candidate submits his nomination papers to run for office, the candidate must swear that he is *currently* qualified for the office sought. *See Cinkus v. Vill. of Stickney Mun. Officers Electoral*

Bd., 228 Ill. 2d 200, 219 (2008). If his statement of candidacy is false, the candidate's name may not be printed on the ballot. *Goodman*, 241 Ill. 2d at 409-10. In short, a candidate is "ineligible to run for office" unless the disqualifying circumstances have already been "remedied by the time the candidate files his or her nomination papers." *Cinkus*, 228 Ill. 2d at 219-20. Trump's statement that he is currently qualified for the office of the Presidency is false, and accordingly, he must be excluded from the ballot.

B. The Presidency is an "Office . . . Under the United States." [12]

Trump argues that the presidency is not an office under the United States from which oath-breaking insurrectionists are disqualified by Section 3. Mot. at 15-16. He does not cite any decision agreeing with him by any adjudicative body to have reached the merits of challenges like this one.[13]

His contention defies the "normal and ordinary meaning" of "office . . . under the United States." *District of Columbia v. Heller*, 554 U.S. 570, 576 (2008). Not only does the Constitution refer to the presidency as an "office" no less than 25 times,[14] the plain meaning of "office" includes the Presidency, and the ratifying public understood the Presidency as an "office . . . under the United States." *See, e.g.,* Noah Webster, *An American Dictionary of the English Language* 689 (C.A. Goodrich ed. 1853) (defining "office" as a "particular duty, charge or trust conferred by public authority, and for a public purpose," that is "undertaken by . . . authority from government or those who administer it"); MONTPELIER DAILY JOURNAL, Oct. 19, 1868 (observing that Section 3 "excludes leading rebels from holding offices . . . from the Presidency downward"); TERRE

[12] The arguments in this Part and Parts III.C.-D. *infra* also are addressed in Objectors' Motion to Grant Objectors' Petition, or in the Alternative for Summary Judgment in Argument, Section VI (pp. 53-60).

[13] The Colorado trial court so ruled but was reversed on appeal. *See Anderson*, 2023 CO 63, ¶ 129.

[14] *See, e.g., U.S.* Const. art. II, § 1, cl. 1 ("[The President] shall hold his *Office* during the Term of four years."), art. II, § 1, cl. 8 ("Before he enter on the Execution of his *Office*, he shall take the following Oath or Affirmation:—'I do solemnly swear (or affirm) that I will faithfully execute the *Office* of President of the United States . . . .'").

HAUTE WKLY. EXPRESS, Apr. 19, 1871, at 4, col.1 (assuming that, unless he were granted amnesty, Section 3 would bar Jefferson Davis from the Presidency); *The Administration, Congress and the Southern States—The New Reconstruction Bill*, N.Y. HERALD, Mar. 29, 1871, at 6[15] (same). Trump's reading, which would disqualify disloyal insurrectionists from every public office, from meat inspector, to Governor, to Supreme Court Justice, *except the presidency*, flies in the face of the plain meaning and purpose of Section 3.

The fact that an early draft of Section 3 included the phrase "office of the President or Vice President," *Cong. Globe*, 39th Cong., 1st Sess. 919 (1866), does not, as Trump claims, suggest that the drafters intentionally *omitted* the office of the President or Vice President from Section 3. Instead, the drafters chose to include a "much broader catchall"—one that still included, but was not limited to, the office of the Presidency and Vice Presidency. Maine Sec'y of State Ruling, Ex. B, at 22; *Anderson*, 2023 CO 63, ¶ 140-141. Indeed, during amendment debates, when Senator Reverdy Johnson expressed his concern that Section 3 needed to prevent rebels from being elected President or Vice President, his colleague Senator Lot Morrill easily assuaged this concern by drawing his attention to the catchall phrase "'or hold any office, civil or military, under the United States," which would indeed include the President and Vice President. *Cong. Globe*, 39th Cong., 1st Sess. 2899 (1866).

Nor does the fact that Section 3 lists senators, representatives, and electors, but not the presidency, provide any evidence that the office of the presidency was omitted from the "offices under the United States," to which Section 3 applies. As the Colorado Supreme Court reasoned, Section 3 does not specifically mention the Presidency but lists senators, representatives, and presidential electors because the Presidency "is so evidently an 'office'" that to list it would be

[15] Reproduced in *Northern View*, FAIRFIELD HERALD, Apr. 12, 1871, at 1.

surplusage. *Anderson*, 2023 CO 63, ¶ 131. By contrast, senators, representatives, and presidential electors needed to be listed because none of these positions constitutes an "office." *Id.* The Constitution does not refer to Senators and Representatives as such, *see* U.S. Const. art. I, § 5, cl. 1 (referring to "Members" of Senate and House); *id.* art. I, § 6, cl. 2 (same); *id.* art. II, § 1 cl. 2 (distinguishing Senators and Representatives from those holding office under the United States), and electors are "no more officers . . . of the United States than are . . . the people of the States when acting as electors of representatives in congress," *Fitzgerald v. Green*, 134 U.S. 377, 379 (1890).

Last, Trump advances the misguided argument that two other Constitutional references to "office 'under the' United States" exclude the Presidency. *See* Mot. at 16 (citing U.S. Const. art. I, §§ 6, 9). That is not so. First, Trump claims that the Foreign Emoluments Clause, which restricts the acceptance of foreign gifts by any "Person holding any Office . . . under [the United States]"—is understood to exclude the President. But that is false. *See, e.g.*, *Trump v. Mazars USA, LLP*, 39 F.4th 774, 792 (D.C. Cir. 2022) (observing that the Foreign Emoluments Clause "bars federal officials (*including the President*) from accepting gifts or other payments from foreign governments") (emphasis added). Trump's reliance on Article I, Section 6 fares no better. This Section contains the Incompatibility Clause, which states that "no Person holding any *Office under the United States*, shall be a member of either House during his Continuance in Office." *Id.* at art. I, § 6, cl. 2 (emphasis added). If "office under the United States" were read to omit the Presidency, a sitting President could simultaneously occupy a seat in Congress, which would violate the precise aim of the Incompatibility Clause: the separation of powers. *See Buckley v. Valeo*, 424 U.S. 1, 124 (1976) ("The principle of separation of powers . . . was woven into the [Constitution] . . . . The

further concern of the Framers of the Constitution with maintenance of the separation of powers is found in the so-called 'Ineligibility' and 'Incompatibility' Clauses . . . .").

For these reasons, the Colorado Supreme Court decision correctly held that "both the constitutional text and historical record" show that the Presidency is an "office . . . under the United States" within the meaning of Section 3. *Anderson*, 2023 CO 63, ¶ 129.

C. The President of the United States is a Covered "Officer of the United States" Under Section 3.

Trump also contends that "Officer of the United States" should be read as a term of art—not according to its plain language—and interpreted, counterintuitively, as excluding the President. Mot. at 14 ("[T]he phrase has a *particular legal meaning* when it appears in the Constitution . . . and that meaning excludes the President.") (emphasis added).

In so arguing, Trump attempts to overcomplicate what should be a straightforward reading of clear constitutional text. "[T]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *Heller*, 554 U.S. at 576-77 ("Normal meaning . . . excludes . . . secret or technical meanings that would not have been known to ordinary citizens in the founding generation"); *see also Whitman v. Nat'l Bank of Oxford*, 176 U.S. 559, 563 (1900) ("The simplest and most obvious interpretation of a Constitution . . . is the most likely to be that meant by the people in its adoption.").

As the Colorado Supreme Court explained, "If members of the Thirty-Ninth Congress and their contemporaries all used the term 'officer' according to its ordinary meaning to refer to the President, we presume this is the same meaning the drafters intended it to have in Section Three. . . . [I]n the absence of a clear intent to employ a technical definition for a common word, we will not do so." *Anderson*, 2023 CO 63, ¶ 148. Like the Colorado Supreme Court, this Board too should

reject Trump's urging to adopt a "particular legal meaning" of the phrase "officer of the United States." Mot. at 14.

Notably, the self-serving definition of "Officer of the United States" that Trump advances here contradicts his federal court brief filed just a few months ago in *People v. Trump*, No. 23-cv-3773 (S.D.N.Y.). There, Trump asserted that he *is* a former "officer . . . of the United States." Memo. in Opp. to Mot. to Remand, ECF No. 34, *People v. Trump*, No. 23-cv-3773 (S.D.N.Y. filed June 15, 2023) ("Trump Opp."), at 2 (omission in original).[16] Indeed, he argued there that the reading he now advances—that the President is not an "officer of the United States"—"has never been accepted by any court." *Id.* at 2.[17] This Board should not be the first.

The phrase "Officer of the United States" by its plain language quite clearly encompasses the President. The Constitution refers to the presidency as an "office" over 25 times, *see supra* Part III.B., and the plain meaning of "officer" is one who holds an office. *See* N. Bailey, *An Universal Etymological English Dictionary* (20th ed. 1763) ("one who is in an Office"); *see also United States v. Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823) (Marshall, C.J., riding circuit) ("An office is defined to be a public charge or employment, and he who performs the duties of the office, is an officer. If employed on the part of the United States, he is an officer of the United States") (quotation marks omitted). A reading of "officer" that excludes the President cannot be

[16] *Available at* https://bit.ly/TrumpRemandOpp.

[17] Trump disingenuously relies now on the Appointments Clause cases, *Free Enterprise Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010), and *United States v. Mouat*, 124 U.S. 303 (1888), but he rightly distinguished those cases in his prior briefing, explaining that the "Supreme Court was not deciding that meaning of 'officer of the United States' as used in every clause in the Constitution," but rather was only describing the meaning of "*other* officers of the United States" in that clause, and "*Free Enterprise Fund* says nothing about the meaning of 'officer of the United States' in other contexts." Memo. in Opp. to Mot. to Remand, ECF No. 34, *People v. Trump*, No. 23-cv-3773 (S.D.N.Y. filed June 15, 2023) ("Trump Opp."), at 4. He continued that *Mouat* is inapposite because the distinction drawn there was between "officers of the United States" and "employees" (who are "lesser functionaries subordinate" thereto). *Id.* at 5. The Board should reject Trump's opportunistic turnabout.

squared with the meaning of "office," which includes the President, as discussed above. *Motions Sys. Corp. v. Bush*, 437 F.3d 1356, 1371–72 (Fed. Cir 2006) (*en banc*) (Gajarsa, J., concurring in part and concurring in the judgment) (citations omitted) ("An interpretation of the Constitution in which the holder of an 'office' is not an 'officer' seems, at best, strained.").

In addition, there is well-founded historical support for this commonsense reading. Well before the Civil War, both common usage and judicial opinions described the president as an "officer of the United States." As early as 1789, congressional debate referred to the president as "the *supreme Executive officer* of the United States." 1 *Annals of Congress* 487–88 (Joseph Gales, ed. 1789) (Rep. Boudinot); *cf.* THE FEDERALIST No. 69 (Alexander Hamilton) ("The President of the United States would be an officer elected by the people"). In 1799, Congress passed a postal statute and enumerated a list of "officers of the United States" that specifically included "the President of the United States." An Act to establish the Post-Office of the United States, § 17, Mar. 2, 1799, 1 Stat. 733, 737. Chief Justice Branch wrote in 1837 while riding circuit that "[t]he president himself . . . is but an officer of the United States." *United States ex rel. Stokes v. Kendall*, 26 F. Cas. 702, 752 (C.C.D.C. 1837), *affirmed*, 37 U.S. 524 (1838).

By the 1860s, this usage was firmly entrenched. *See* John Vlahoplus, *Insurrection, Disqualification, and the Presidency,* 13 BRIT. J. AM. LEGAL STUD. __ (forthcoming 2024), at 18-20. [18] On the eve of the Civil War, President Buchanan called himself "the chief executive officer under the Constitution of the United States." *Id.* at 18 (citation omitted). That usage was repeated with respect to President Lincoln. *See Cong. Globe,* 37th Cong., 2d Sess. 431 (1862) (Sen. Davis) (referring to President Lincoln as "the chief executive officer of the United States"). In a series of widely reprinted official proclamations that reorganized the governments of former confederate

[18] *Available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4440157.

states in 1865, President Andrew Johnson referred to himself as the "chief civil executive officer of the United States."[19]

This usage continued throughout the Thirty-Ninth Congress, which enacted the Fourteenth Amendment, *e.g.*, *Cong. Globe*, 39th Cong., 1st Sess. 335 (Sen. Guthrie) (1866), 775 (Rep. Conkling) (quoting Att'y Gen. Speed), 915 (Sen. Wilson), 2551 (Sen. Howard) (quoting President Johnson), and during its two-year ratification period, *see, e.g.*, *Mississippi v. Johnson*, 71 U.S. 475, 480 (1866) (counsel labeling the president the "chief executive officer of the United States"); *Cong. Globe*, 39th Cong. 2d Sess. 335 (1867) (Sen. Wade) (calling president "the executive officer of the United States"); *Cong. Globe*, 40th Cong. 2d Sess. 513 (1868) (Rep. Bingham) ("executive officer of the United States").

Even today, this plain meaning is widely used by the Supreme Court and the executive branch alike. *See, e.g.*, *Nixon v. Fitzgerald*, 457 U.S. 731, 750 (1982) (referring to president as "the chief constitutional officer of the Executive Branch"); *Cheney v. U.S. Dist. Court for the Dist. of Columbia*, 541 U.S. 913, 916 (2004) (Scalia, J.) (referring to "the President and other officers of the Executive"); *Motions Sys. Corp.*, 437 F.3d at 1368 (cataloguing multiple presidential executive orders in which the president refers to himself as an "officer"); Office of Legal Counsel, U.S. Dep't of Justice, *A Sitting President's Amenability to Indictment and Criminal Prosecution* (Oct. 16, 2000), at 222, 226, 230 (distinguishing "*other* civil officers" from the president) (emphasis added), *available at* https://www.justice.gov/d9/olc/opinions/2000/10/31/op-olc-v024-p0222_0.pdf; Exec. Order No. 11435 (1968) (referring to actions "of the President or of any other

[19] Andrew Johnson, Proclamation No. 135 (May 29, 1865); Proclamation No. 136 (June 13, 1865); Proclamation No. 138 (June 17, 1865); Proclamation No. 139 (June 17, 1865); Proclamation No. 140 (June 21, 1865); Proclamation No. 143 (June 30, 1865); Proclamation No. 144 (July 13, 1865), *all reprinted in* 8 *A Compilation of the Messages and Papers of the President*, 3510–14, 3516–23, 3524–29 (James D. Richardson ed., 1897).

officer of the United States"). Given the repeated and consistent description of the President as an "Officer of the United States," the plain meaning of the phrase in Section 3 necessarily includes the President.

In addition to violating its plain meaning, a construction of "Officer of the United States" that excluded the President would mean that one who swears an oath to protect the Constitution *in the highest office in the nation* would be unique among our nation's officers in that he would be permitted to violate that oath by engaging in insurrection and subsequently return to public office. Courts in both the nineteenth century and today have held that the phrase "officer" in Section 3 included officers of fairly low station. *See Powell*, 27 F. Cas. 605 (constable); *Griffin*, 2022 WL 4295619 (county commissioner); *Worthy*, 63 N.C. 199 (county sheriff); *In re Tate*, 63 N.C. 308, (1869) (county attorney). The *Worthy* court even enumerated additional "officers" subject to Section 3, including "Stray Valuers" and "Inspectors of flour, Tobacco, &c." 63 N.C. at 203. Under Trump's theory, Section 3 provides that a former *Inspector of Flour* who engages in insurrection is too dangerous for public office, but a former *President of the United States* who engages in insurrection is not. Such a reading would not only be absurd but would also undermine Section 3's primary purpose: that "those who had been once trusted to support the power of the United Stated, and proved false to the trust repose, ought not, as a class, to be entrusted with power again until congress saw fit to relieve them from disability." *Powell*, 27 F. Cas. at 607.

D. <u>The Presidential Oath is an Oath to Support the Constitution.</u>

Trump wrongly asks this Board to recognize yet another term of art: "oath . . . to support the Constitution of the United States." Mot. at 15. Trump does not even attempt to argue that these words, by their plain language, exclude the presidential oath—nor could he. The presidential oath to "preserve, protect and defend the Constitution," U.S. Const. art. II, § 1, cl. 8, is clearly consistent with the plain meaning of the word "support." *Anderson*, 2023 CO 63, ¶ 156 ("Modern dictionaries

define 'support' to include 'defend' and vice versa. So did dictionaries from the time of Section Three's drafting.") (citations omitted).

Finding no support for his reading in the Constitution's plain language, Trump asks this Board to decipher some implicit meaning from Section 3, which would limit its scope to officers who have taken an oath under Article VI. Mot. at 15. The Constitution is not read to convey "secret . . . meaning[s]," *see Heller*, 554 U.S. at 576-77, but even if it were, this too is a dead-end. To be sure, Article VI provides that "all executive and judicial Officers . . . of the United States . . . shall be bound by Oath or affirmation, to support this Constitution," but, as discussed above, the President is among the "executive . . . Officers . . . of the United States" to which Article VI applies. *See supra* Part III.C. The presidential oath is simply one articulation of the oath to support the Constitution required by Article VI.

In sum, Section 3 applies to bar Trump from the ballot because as President, he was an officer of the United States, and took an oath to support the Constitution, and, having engaged in insurrection, he is disqualified from the Presidency.

IV. TRUMP IS WRONG IN ARGUING THAT TRUMP'S QUALIFICATIONS FOR OFFICE ARE A NON-JUSTICIABLE POLITICAL QUESTION.

Candidate Trump also tries to dispose of this Objection by arguing it falls within the political question doctrine. His arguments on this point are not only are wrong, but significantly misrepresent several cases on which he relies. The positions taken in his motion must be rejected because the law is clear that the extremely limited application of this doctrine does not apply to a Section 3 candidacy challenge because: (1) Section 3, unlike other Constitutional provisions to which the doctrine applies, is not reserved for Congressional action in its text; (2) Section 3 involves judicially manageable standards, as illustrated by courts that have repeatedly applied and interpreted it; (3) federal circuit court precedent that the Motion fails to cite demonstrates the

inapplicability of the doctrine, as does the Colorado Supreme Court decision giving it close analysis, and (4) a host of the cases cited in the Motion do not stand for the propositions relied on and do not hold up against the on-point precedent.

The political question doctrine is a "narrow exception" to the rule that cases properly before a court are justiciable and must be decided. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 194-95 (2012). Even cases that are political in nature generally or that involve a presidential election specifically may fall outside the bounds of the political question doctrine. *Baker v. Carr*, 369 U.S. 186, 217 (1962) (courts cannot avoid deciding whether an action exceeds constitutional authority merely because the action at issue is "denominated 'political'"); *McPherson v. Blacker*, 146 U.S. 1, 23 (1892) (rejecting argument that all questions concerning the election of a presidential elector are political in nature and thus nonjusticiable).

Contrary to Trump's assertion, questions about a presidential candidate's qualifications do *not* fall under the narrow political question exception. The doctrine applies only where the issue: (1) is textually committed to another branch of government, or (2) lacks judicially discoverable and manageable standards for resolution. *See Rucho v. Common Cause*, 588 U.S. ___, 139 S.Ct 2484, 2494 (2019); *Zivotofsky*, 566 U.S. at 195.[20] As the Colorado Supreme Court held, neither factor applies to Section Three. *Anderson*, 2023 CO 63, ¶¶ 110-126.

A. The Determination of a Presidential Candidate's Qualification Is Not Textually Committed to Congress.

Trump does not cite any constitutional provision that textually commits the authority to assess presidential candidate qualifications to Congress. That is because no such textual

[20] While the U.S. Supreme Court identified six relevant factors in 1962, when it decided *Baker*, 369 U.S. 186, the recent Supreme Court precedent cited focuses only on the two factors discussed herein. *See also Anderson*, 2023 CO 63, ¶ 110 (deeming the other four *Baker* factors "not relevant" to the same issue presented here).

commitment exists. *Id.* at ¶ 112.

Article I, for example, explicitly authorizes and directs Congress to judge qualifications of incoming *Senators* and *Representatives*, *see* U.S. Const., art. I, § 5, cl. 1 ("Each House shall be the Judge of the . . . Qualifications of its own Members . . . ."), but neither Article II nor any other constitutional provision explicitly authorizes—let alone directs—Congress to judge presidential candidates' qualifications. While Section Three requires a "vote of two-thirds of each House" to *remove* the disqualification at issue, it conspicuously does not direct the determination of disqualification to either branch. U.S. Const. amend. XIV, § 3. Further, while the Twelfth Amendment authorizes Congress to count electoral votes and the Twentieth Amendment provides a contingency procedure "if the President elect shall have failed to qualify," neither of these provisions authorize Congress to assess presidential candidates' eligibility, much less textually commit that determination to Congress. *See* U.S. Const., amends. XII, XX; *see also Anderson*, 2023 CO 63, ¶ 121 ("[W]e may not conflate actions that are textually *committed* to a coordinate political branch with actions that are textually *authorized*.") (emphases in original) (internal quotation marks omitted).

On the other hand, the Constitution *does* textually commit plenary power to the *states* to appoint presidential electors in the manner they choose. *See* U.S. Const., art. II, § 1, cl. 2 ("Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . ."); *see also Bush v. Gore*, 531 U.S. 98, 104 (2000) ("[T]he state legislature's power to select the manner for appointing electors is plenary."); *accord, e.g., Moore v. Harper,* 600 U.S. 1, 37 (2023); *McPherson v. Blacker*, 146 U.S. 1, 35 (1892). "[B]ecause the legislature[] may choose the manner by which it selects its electors, it follows that it may restrict the discretion of the election process through an ex ante examination of candidates' qualifications." Derek Muller, *Scrutinizing Federal*

Election Qualifications, 90 Ind. L.J. 559, 604 (2015). This is confirmed by federal appellate court precedent from the Ninth and Tenth Circuits.

In *Hassan v. Colorado*, 495 F. App'x 947 (10th Cir. 2012), then-Judge (now Justice) Gorsuch, writing for the Tenth Circuit, upheld the Colorado Secretary of State's exclusion of a constitutionally ineligible candidate because "a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office." *Id.* at 948. Similarly, in *Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014), the Ninth Circuit rejected the notion that the Constitution permits only Congress to determine the qualification of a presidential candidate, finding "[n]othing in [the Twentieth Amendment's] text or history suggests that it precludes state authorities from excluding a candidate with a known ineligibility from the presidential ballot." *Id.* at 1065. Trump's argument that "presidential qualification disputes are not properly decided in state and local proceedings" and instead "belong in Congress" fails under this precedent. Mot. at 7-8.

Furthermore, Trump's claim that that pre-primary state evaluation of candidates' constitutional eligibility may lead to "chaotic results" (Mot. at 8) is fully undermined by the alternative. If states could not adjudicate presidential candidates' qualifications, only Congress, this would *maximize* chaos by barring adjudication of a candidate's constitutional qualifications until either **January 6, 2025** (under the Twelfth Amendment) or **January 20, 2025** (under the Twentieth Amendment). *That* is the invitation to chaos. Patently unqualified individuals—e.g., former President Obama (who has served two terms) or athlete Lionel Messi (a non-citizen)—could declare their candidacies for president, force Illinois and other states to include them on the ballot, and evade resolution until the eve of inauguration. "It is hard to believe the State legislatures that ratified the Constitution signed up for such a charade." *Cawthorn v. Amalfi*, 35 F.4th 245, 265

(4th Cir. 2022) (Wynn, J., concurring).

B. Section Three Involves Judicially Discoverable and Manageable Standards.

Section Three involves judicially discoverable and manageable standards, and Trump does not argue otherwise. It is easy to so conclude because Section Three involves two core terms, "engage" and "insurrection," which each have well-established definitions. As discussed *supra* at Part II.A., "insurrection" was interpreted and defined repeatedly by courts, law dictionaries, and other authoritative legal sources before, during, and after Reconstruction, and the judicial interpretation of "engage" under Section 3 has been established for 150 years. *See, e.g., United States v. Powell*, 27 F. Cas. 605, 607 (C.C.D.N.C. 1871) (No. 16,079) (defining "engage" as used in Section Three); President Lincoln, *Instructions for the Gov't of Armies of the United States in the Field*, Gen. Orders No. 100 (Apr. 24, 1863), art. 149 (defining "insurrection" as "the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government."); *see also Anderson*, 2023 CO 63, ¶ 124 (noting that the meaning of "engage" and "insurrection" have long been interpreted by numerous courts in both this and other contexts, and citing cases). Since Section Three "does not 'turn on standards that defy judicial application,'" the standards are judicially manageable and the narrow political question doctrine does not apply. *Anderson*, 2023 CO 63, ¶ 125.

C. Trump Relies on Unpersuasive and Discredited Decisions.

The only support Trump offers for his invocation of the political question doctrine are decisions mainly issued by trial courts, nearly all of which dismissed the challenges at issue for standing, mootness, or other jurisdictional defects and addressed the political question doctrine (if at all) in dictum. The cases cited are unpersuasive for a host of reasons, including that they either are unpublished, did not address the doctrine at issue, were litigated by *pro se* plaintiffs, have been

discredited, or were expressly not adopted by a reviewing court and are undermined by *Lindsay* and *Hassan*.[21]

Castro, for instance, was litigated by a *pro se* plaintiff who did not direct the court to *Lindsay* or *Hassan*. *Castro v. N.H. Sec'y of State*, __ F. Supp. 3d __, 2023 WL 7110390, *9 (D.N.H. Oct. 27, 2023). The *Castro* appellate court, which affirmed dismissal on other grounds, expressly declined to decide the political question issue, in part "because of the limited nature" of Castro's arguments concerning the doctrine's application. *Castro v. Scanlan*, 86 F.4th 947, 953 (1st Cir 2023). *Strunk* similarly was litigated by a *pro se* plaintiff who filed a "lengthy, vitriolic, baseless diatribe" and who did not use the objection procedure provided by the New York legislature. *Strunk v. New York State Bd. of Elections*, 35 Misc. 3d 1208(A), 2012 WL 1205117, at *2 (N.Y. Sup. Ct. 2012), *order aff'd, appeal dismissed*, 126 A.D.3d 777 (N.Y. App. Div. 2015).

Three other cases Trump cites, *Keyes, Robinson, and Jordan,* did not even discuss the political question doctrine and barred the ballot access challenges on inapplicable or baseless grounds. *Keyes v. Bowen*, 189 Cal. App. 4th 647, 659–61 (2010) (dismissing entirely on state law grounds without discussing political question doctrine); *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1147 (N.D. Cal. 2008) (citing case on *ripeness* for conclusion that judicial review should occur "*after* the electoral and Congressional processes" without discussing political question doctrine) (emphasis added); *Jordan v. Reed*, 2012 WL 4739216, at *1 (Wash. Super. Ct. Aug 29, 2012) (holding court lacked subject matter jurisdiction).

Other cases cited, *Grinols, Taitz*, and *Kerchner*, are inapposite because they involved *post-election* attempts to enjoin the Electoral College or Congress and claimed remedies that do not

[21] Notably, the Colorado Supreme Court considered most of the cases Trump cites here and easily found them unpersuasive. *See Anderson,* 2023 CO 63, ¶ 120.

exist, as only *Congress* holds the power to remove a sitting president, U.S. Const. art. I, § 2, cl. 5 (House has "sole Power of Impeachment"), whereas this *pre-election* candidacy challenge falls within the *state's* plenary power. *Grinols v. Electoral Coll.*, No. 2:12-CV-02997-MCE, 2013 WL 2294885, at *1 (E.D. Cal. May 23, 2013) (post-election suit seeking to enjoin Electoral College, Congress, and others), *aff'd on other grounds*, 622 F. App'x 624 (9th Cir. 2015); *Taitz v. Democrat Party of Mississippi*, No. 3:12-CV-280-HTW-LRA, 2015 WL 11017373, at *3 (S.D. Miss. Mar. 31, 2015) (seeking to "decertify or annul" presidential primary results); *Kerchner v. Obama*, 669 F. Supp. 2d 477, 479 (D.N.J. 2009) (seeking "to remove the President from office" or compel him to prove his qualifications), *aff'd on other grounds*, 612 F.3d 204 (3d Cir. 2010).

A consistent theme of every trial case Trump relies on is that the federal and state appellate courts that reviewed them uniformly refused to indulge the lower courts' musings on the political question doctrine in this context. *See Grinols*, 622 F. App'x at 625 n.1 (reaching "only the issue of mootness"); *Kerchner v. Obama*, 612 F.3d 204, 209 n.3 (3d Cir. 2010) ("[W]e need not discuss [political question] issue"); *Davis*, 2023 WL 8656163 (similar); *Castro*, 86 F4th at 953 (similar). The authoritative appellate decisions, rather than the lower court rulings that Trump cites without their subsequent history, turn on Article III standing (in federal court), mootness (for late challenges), and questions of state law—not the political question doctrine, and not anything at issue here.

Finally, in addition to being inapplicable for the reasons discussed above, *Robinson* and *Grinols* were also superseded by *Lindsay*, which explicitly rejected the idea that resolution of presidential candidates' qualifications is exclusively committed to Congress. 750 F.3d at 1065.[22]

[22] The trial court's decision in *Grinols* preceded *Lindsay*, and after *Lindsay*, the Ninth Circuit affirmed *Grinols* on mootness alone. *See Grinols*, 622 F. App'x at 625 n.1.

D. The Senate's Acquittal of Articles of Impeachment Brought Against Trump During His Prior Presidential Term Do Not Render this Controversy Nonjusticiable.

The Board should reject Trump's argument that this case is nonjusticiable because the Senate previously acquitted him of the Articles of Impeachment brought against him pertaining to January 6. There is absolutely no legal precedent to support the rather bizarre idea that the failure of the Senate to convict an impeached president has any relevance to the application of disqualifications to run for future office. Trump's argument would reverse the intentional design of Section 3. Under Section 3, an individual is disqualified *unless and until* two-thirds of *both* houses of Congress vote to grant that person amnesty. *See* U.S. Const. amend. XIV, § 3 ("But Congress may by a vote of two-thirds of each House, remove such disability."). Trump's argument would turn that upside down: *one-third* of *one* house (the Senate) could effectively remove the disability. Thus, Trump's assertion that Objectors are asking the Board to "undo" the Senate's decision and "reach the opposite conclusion," are baseless and nonsensical. Mot. at 8.

Indeed, if the Senate vote on the Articles of Impeachment has any relevance, it *supports* the conclusion that Trump engaged in insurrection. A bipartisan majority of 57 Senators concluded, as did a majority of the House, that Trump incited insurrection and should be convicted. And 22 Senators expressly based their vote to acquit on their belief (notwithstanding an earlier 56–44 procedural vote on jurisdiction, where those 22 were in the minority) that the Senate lacked jurisdiction over a former official. Those 22 Senators either criticized him or stated no view on the merits. *See* Goodman & Asabor, *In Their Own Words: The 43 Republicans' Explanations of Their Votes Not to Convict Trump in Impeachment Trial*, JUSTSECURITY (February 15, 2021).[23] A

[23] *Available at* https://bit.ly/3uUZA1A.

clear Senate majority, and likely two-thirds, agreed that Trump incited the insurrection.[24] To convert this incriminating fact into a legal shield from disqualification would be a legally unsupported travesty.

V. SECTION 3 DOES NOT NEED CONGRESSIONAL LEGISLATION FOR STATES TO ENFORCE IT.

Finally, Trump argues that Section 3 is not self-executing and can only be enforced with specific legislative action from Congress. Like his other arguments attempting to dismiss the Objection, this too is not supported by the law, the plain language of Section 3, or basic principles of constitutional interpretation.

This argument was thoroughly analyzed and rejected by the Colorado Supreme Court. *Anderson*, 2023 CO 63, at ¶¶ 88-106:

> In summary, based on Section 3's plain language; Supreme Court decisions declaring its neighboring, parallel Reconstruction Amendments self-executing; and the absurd results that would flow from Intervenors' reading, we conclude that Section Three is self-executing in the sense that its disqualification provision attaches without congressional action.

Id. at ¶ 106. This Court should adopt the compelling reasoning of the Colorado Supreme Court and similarly reject Trump's "absurd" argument for three central reasons: (1) the Constitution plainly requires states to apply its dictates, and it is a fundamental role of state courts to do so; (2) the plain language of the Fourteenth Amendment makes clear that federal implementing legislation is not required; (3) modern court decisions on Section 3 universally have rejected this argument; and (4) the *only* case finding federal legislation is a prerequisite to Section 3 enforcement not only

[24] The United States agrees. *See* Answering Brief, *United States v. Trump*, No. 23-3228, ECF No. 2033810, at 57-59 (D.C. Cir), *available at* https://bit.ly/3NVO29n (noting that "at least 31 of the 43 Senators who voted to acquit [Trump] explained that their decision to do so rested in whole or in part on their agreement with [his] argument that the Senate lacked jurisdiction to try him because he was no longer in office," even as they held him responsible for the insurrection).

has been rejected by subsequent courts but was wrongly decided based on unusual facts and misapplication of law.

A. State Courts Do Not Need Congressional Permission to Enforce the Fourteenth Amendment.

First, nothing in the Constitution supports the idea that state judges may apply the Constitution only if Congress says they can. To the contrary, state courts are *obligated* to apply the Constitution. *See* U.S. Const., art. VI, § 2 (the U.S. Constitution "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby"). The U.S. Supreme Court has "consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990); *Robb v. Connolly*, 111 U.S. 624, 637 (1884) (Harlan, J.) (emphasizing that obligation to enforce U.S. Constitution lies "[u]pon the state courts, equally with the courts of the Union"); *Claflin v. Houseman*, 93 U.S. 130, 136 (1876) (confirming that "State courts can exercise concurrent jurisdiction with the Federal courts in cases arising under the Constitution, laws, and treaties of the United States" except where Congress grants federal courts exclusive jurisdiction); *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 339-42 (1816). Indeed, when plaintiffs in state court civil actions raise federal constitutional claims, courts do not first demand a federal statute authorizing those claims. *See Testa v. Katt*, 330 U.S. 386, 389 (1947) (holding that, when federal law applies to a cause of action, state courts must apply it).

B. Nothing in the Fourteenth Amendment's Text Suggests that Section 3 Requires Federal Legislation.

Second, Section 3's plain language is clear in requiring no implementing legislation. It states the disqualification as a direct prohibition: "*No person shall be* a Senator or Representative in Congress, or elector of President and Vice-President, *or hold* any office" if they previously took an oath as a covered official and then engaged in insurrection or rebellion. U.S. Const. amend.

XIV, § 3 (emphasis added). It parallels other qualifications in the Constitution that also require no special implementing legislation. *See* U.S. Const. art. I, § 2, cl. 2 ("*No Person shall be* a Representative" who does not meet age, citizenship, and residency requirements) (emphasis added); *id.* at art. I, § 3, cl. 3 ("*No Person shall be* a Senator" who does not meet age, citizenship, and residency requirements) (emphasis added); *id.* at art. II, § 2, cl. 5 ("*No Person . . . shall be* eligible to the Office of President" who does not meet age, citizenship, and residency requirements) (emphasis added); *id.* at amend. XII ("*no person* constitutionally ineligible to the office of President *shall be* eligible to that of Vice-President") (emphasis added).

Likewise, Section 3's prohibitory language resembles the language of Section 1, which is indisputably self-executing. No federal legislation is needed to enforce the Due Process or Equal Protection Clauses in state court. *See* U.S. Const. amend. XIV, § 1 ("*No State shall make or enforce any law* which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive* any person of life, liberty, or property, without due process of law; *nor deny* to any person . . . the equal protection of the laws.") (emphases added). Illinois courts frequently enforce Section 1 of the Fourteenth Amendment[25] and their ability to enforce Section 3 is no different based on the text of both sections. [26]

Congress did not leave Section 3 to the whims of "the next Congress" which could pass or repeal legislation by bare majority; to the contrary, Section 3 applies until *two-thirds* of each chamber grants amnesty. In contrast, constitutional provisions that require effectuating federal

[25] *See, e.g., Passalino v. City of Zion*, 237 Ill.2d 118, 130 (Ill. 2010); *Linn v. Dep't of Revenue*, 2013 IL App (4th) 121055, ¶ 33; *O'Connell v. Cnty. of Cook*, 2021 IL App (1st) 201031, ¶ 34, *aff'd*, 2022 IL 127527, ¶ 34.

[26] For this very reason, the argument that HR 14-5 (117th Cong. 1st Sess.) (the bill Congress considered to provide a cause of action under Section Three) has any relevance fails. Regardless of what legislation Congress may have considered, the core substantive provision of the amendment still has effect.

legislation explicitly state that Congress *may* enact legislation. For example, Article I authorizes Congress "[t]o provide for the Punishment of counterfeiting the Securities and current Coin of the United States." U.S. Const. art. I, § 8. This neither prohibits counterfeiting, nor establishes a punishment; it authorizes Congress to "provide for" such punishment. Such authorizing language typically uses formulations such as Congress "may" "by Law" do something, *e.g.*, U.S. Const. art. I, § 2, cl. 3; *id.* at art. I, § 4, cl.1-2, or that Congress "shall have power" to do something, *e.g.*, *id.* at art. I, § 8; *id.* at art. III, § 3, cl. 2; *id.* at art. IV, § 3, cl. 2. Unlike those provisions, Section 3 enacts its own disqualification, "No person shall be . . . or hold," the office, and like other provisions of the Fourteenth Amendment, sets no prerequisites for congressional action before a state may independently implement it. As a result, Section 3 does not require additional federal legislation.

The fact that Section 3 allows Congress to *remove* disqualification does not suggest that Congress must affirmatively establish the power for disqualification in the first place. Congress already did that by passing the amendment.

Finally, the legislation power of Section 5 does not render Section 3 nugatory without such legislation. *See* U.S. Const. amend. XIV, § 5 ("Congress shall have power to enforce, by appropriate legislation, the provisions of this article."). This provision authorizes federal legislation but does not require it. Indeed, as the Supreme Court recognized soon after the enactment of the Fourteenth Amendment—and in the specific context of a dispute about the scope of Congress's enforcement power under Section 5—"the Fourteenth [Amendment], is undoubtedly self-executing without any ancillary legislation." *Civil Rights Cases*, 109 U.S. 3, 20 (1883). Section 5 applies to the entire Fourteenth Amendment, including Section 1's Due Process and Equal Protection Clauses. If Section 5 meant states could not adjudicate questions under Section

3 without congressional legislation, then it would *also* mean states could not adjudicate Due Process or Equal Protection Clause questions without congressional legislation. Yet courts in every state, including Illinois, routinely adjudicate such questions without specific congressional authorization. Just as Section 1 is enforceable outside of 42 USC § 1983, so too Section 3 is enforceable in state court even without federal legislation.

C. Recent Decisions Regarding the January 2021 Insurrection Recognize Section 3 Enforcement Without Special Federal Legislation.

Third, since January 6, 2021, three different state courts have applied Section 3 to the January 2021 insurrection, implicitly or explicitly ruling that Section 3 is self-executing. In 2022, a New Mexico state court applied Section 3 under the state *quo warranto* statute and removed a county commissioner from office for engaging in insurrection. *See New Mexico ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 WL 4295619 (N.M. 1st Jud. Dist., Sept. 6, 2022), *appeal dismissed*, No. S-1-SC-39571 (N.M. Nov. 15, 2022), *cert. filed* May 18, 2023. No special federal legislation was needed. Similarly, Georgia adjudicated a Section 3 ballot challenge against Representative Marjorie Taylor Greene. *See Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Ofc. of State Admin. Hrgs. May 6, 2022).[27] Neither the administrative law judge, nor the state courts on appellate review, *see Rowan v. Raffensperger*, No. 2022-CV-364778 (Ga. Fulton Cty. Sup. Ct. July 25, 2022), nor the federal court that rejected Greene's efforts to enjoin the state proceeding, *see Greene v. Raffensperger*, 599 F. Supp. 3d 1283 (N.D. Ga. 2002), *remanded as moot*, 52 F.4th 907 (11th Cir. 2022), questioned the state's authority to adjudicate and enforce Section 3. *See, e.g., Greene*, 599 F. Supp. 3d at 1319 ("Plaintiff has pointed to no authority holding that a state is barred from evaluating whether a candidate meets the constitutional

[27] *Available at* https://sos.ga.gov/sites/default/files/2022-05/Greene-final-decision.pdf.

requirements for office or enforcing such requirements"). Finally, the Colorado Supreme Court also rejected Trump's argument that Section 3 is not self-executing. *See Anderson*, 2023 CO 63, at ¶ 96 ("[W]e agree with the Electors that interpreting any of the Reconstruction Amendments, given their identical structure, as not self-executing would lead to absurd results.").

D. The Only Case Demanding Federal Legislation to Enforce Section 3 is Erroneous.

In support of his argument that Section 3 is not self-executing, Trump cites *Griffin's Case*, 11 F. Cas. 7 (C.C.D. Va. 1869) (No. 5,815). Trump raised the same argument in the Colorado Supreme Court, but the Court rejected it. *See Anderson*, 2023 CO 63, at ¶ 104 ("[W]e do not find *Griffin's Case* compelling."). The Board should reject the argument here for the same reasons.

Caesar Griffin, a Black man, was convicted in Virginia court. *Griffin's Case*, 11 F. Cas. at 22. He brought a federal habeas petition challenging his conviction, arguing the Virginia judge presiding over his trial was disqualified under Section 3. *Id.* at 22-23. Chief Justice Salmon P. Chase, acting as a Circuit Justice,[28] rejected the petition on the purported basis that Section 3 was not self-executing and required federal legislation for enforcement. *Id.* at 26. Put simply, the decision is wrong.

Chief Justice Chase acknowledged that the "literal construction"—what today would be called plain meaning—of Section 3 would disqualify the Virginia judge. *Griffin*, 11 F. Cas. at 24. However, that would mean that not only Griffin, but presumably other prisoners sentenced by ex-Confederate judges, would go free. Noting that the judge's counsel "seemed to be embarrassed by the difficulties" supposedly presented by that plain meaning, Chief Justice Chase expounded upon

[28] Chase had a long political history in the mid-19th Century, and at the time of this ruling, he was running for the then-segregationist Democratic Party nomination for president of the United States. C. Ellen Connally, *The Use of the Fourteenth Amendment by Salmon P Chase in the Trial of Jefferson Davis*, 42 Akron L. Rev. 1165, 1171 (2009).

the "great inconvenience" of applying it, sympathizing with the various "calamities which have already fallen upon the people of these [ex-Confederate] states." *Id.* at 24-25. To avoid this outcome, he adopted two alternative holdings: (1) a constitutional interpretation of Section 3 requiring federal legislation for it to take effect, and (2) a statutory interpretation that habeas was not available simply because a prisoner was sentenced by a judge later found disqualified.

The first holding contradicted a different case that Chief Justice Chase himself had just decided. In the treason prosecution of Jefferson Davis, Chief Justice Chase concluded that Section 3 *was* self-enforcing and that *no* Act of Congress was required for its implementation. *See Case of Davis*, 7 F. Cas. 63, 90, 102 (C.C.D. Va. 1867) (No. 3,621a); *Cawthorn*, 35 F.4th at 278 n.16 (Richardson, J., concurring) ("These contradictory holdings . . . draw both cases into question and make it hard to trust Chase's interpretation."). *Griffin's Case* did not reconcile these conflicting points of view.

Additionally, *Griffin's Case* never explained why *state* law could not be the basis for Section 3 enforcement. It noted that "[t]o accomplish this ascertainment [of who is disqualified] and ensure effective results, proceedings, evidence, decisions, and enforcements of decisions, more or less formal, are indispensable." 11 F. Cas. at 26. But it never explained why *state* courts could not provide such "proceedings, evidence, decisions, and enforcements of decisions, more or less formal"—like this action under Illinois law. Instead, Chief Justice Chase proceeded, without explanation, to conclude that "these can only be provided for by [C]ongress." *Id.* That may be true in *federal* court, where constitutional provisions can only be enforced through a statutory or implied private right of action (not found in the federal writ of habeas corpus), but in *state* fora, these "proceedings, evidence, decisions, and enforcements of decisions, more or less formal" can

be provided by state legislatures, as the Illinois legislature has done in authorizing this objection. *Id.*

Chief Justice Chase also mistakenly relied on Section 5, which authorizes congressional legislation. *Id.* But *authorizing* Congress to enact legislation does not *deprive* states of their inherent authority and obligation to enforce the U.S. Constitution. *See supra* Part V.A. Chase stated that the exclusive role for Congress in removing disqualifications "gives to [C]ongress absolute control over the whole operation of the amendment." *Griffin's Case*, 11 F. Cas. at 26. But that does not follow. Rather, Section 3's grant of exclusive authority to Congress to *remove* the disqualification, coupled with the absence of such language regarding the *disqualification itself*, reinforces that Section 3's disqualification requirement, may (and must) be enforced by state courts with or without congressional action. *See Anderson*, 2023 CO 63, at ¶ 104.

VI. CONCLUSION

In sum, Petitioners' Objection is fully supported by both the applicable legal standards and properly pled facts. For that reason, Candidate Trump's Motion to Dismiss Objectors' Petition should be denied.

Respectfully submitted,

By: /s/ Caryn C. Lederer
One of the Attorneys for Petitioners-Objectors

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

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

Petitioners-Objectors,

v. Case No. 24 SOEB GP 517

Donald J. Trump,

Respondent-Candidate.

PROOF OF SERVICE

Counsel for Objectors hereby certifies that Objectors' Response in Opposition to Trump's Motion to Dismiss was filed with the State Officers Electoral Board via email at generalcounsel@elections.il.gov and Hearing Officer Judge Clark Erickson via email at ceead48@icloud.com, and served on Candidate Trump via his counsel at AMerrill@watershed-law.com, before 5:00 p.m. on January 23, 2024.

/s/ Caryn C. Lederer
Caryn C. Lederer

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Respondent-Candidate.

OBJECTORS' PETITION

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

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

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

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

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

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

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

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

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

7. Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate "Donald J. Trump" shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President of the United States for the March 19, 2024 General Primary or the November 5, 2024 General Election.

NATURE OF OBJECTION

> No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.
>
> U.S. Const. amend. XIV, § 3.

8. Candidate's nomination papers are not valid because when he swore in his Statement of Candidacy that he is "qualified" for the office of the presidency as required by 10 ILCS 5/7-10, he did so falsely. Trump cannot satisfy the eligibility requirements for the Office of the President of the United States established in Section 3 of the Fourteenth Amendment of the U.S. Constitution.

9. Under Section 3 of the Fourteenth Amendment to the U.S. Constitution, known as the Insurrectionist Disqualification Clause, "No person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, . . . as an officer of the United

States, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

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

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

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

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

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

12. On December 28, 2023, the Maine Secretary of State also determined, following briefing and an evidentiary hearing, that Candidate Trump's Maine "primary petition is invalid" based on his false declaration that he is qualified to hold office when he, in fact, is constitutionally disqualified under Section 3 of the Fourteenth Amendment. *See* Ruling of the Secretary of State, *In re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States*, (Dec. 28, 2023) ("Maine Sec. of State Ruling," attached as Exhibit C). The decision recognized:

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

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

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

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

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

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

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

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

[3] Government's Br. in Supp. of Detention at 1, *United States v. Chansley*, No. 2:21-MJ-05000-DMF, ECF No. 5 (D. Ariz. Jan. 14, 2021).

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

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

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

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

[4] *See infra* notes 219-228.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31. Armed and militant supporters, including the Proud Boys and Oath Keepers, mobilized in response to Trump's "wild" tweet and reported for duty at the Capital on January 6, 2021.[8]

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

33. His campaign was directly involved in organizing and selecting speakers for a demonstration at a park near the Capitol on January 6, 2021.[9]

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

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

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

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

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

35. The speakers who preceded Trump on the stage at this demonstration prepped the crowd with violent rhetoric. Trump's lawyer, Rudy Giuliani, called for "trial by combat,"[11] and Representative Mo Brooks of Alabama urged the crowd to "start taking down names and kicking ass" and to be prepared to sacrifice their "blood" and "lives" and "do what it takes to fight for America" by "carry[ing] the message to Capitol Hill," since "the fight begins today."[12]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

message publicly condemning Pence. He said, "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution."[19]

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

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

42. When he finally made a public statement at 4:17 PM, he said: "we love you, you're very special, you've seen what happens, you've seen the way others are treated . . . I know how you feel, but go home, and go home in peace."[21]

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

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

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

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

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

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

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

AUTHORITY AND DUTY OF BOARD TO HEAR OBJECTION

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

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

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

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

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

50. Consistent with these decisions, Illinois electoral boards have frequently evaluated objections based on constitutional candidacy requirements. *See, e.g., Freeman v. Obama*, No. 12 SOB GP 103 (Feb. 2, 2012) (evaluating objection that candidate did not meet qualifications for office of President of the United States set out in Article II, Section 1 of the U.S. Constitution); *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); *Graham v. Rubio*, No, 16 SOEB GP 528 (February 1, 2016) (State Officers Electoral Board determining eligibility based on whether facts presented about candidate established he met natural born citizen requirement of U.S. Constitution); *Graham v. Rubio*, No. 16 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board, determining that the Electoral Board was acting within the scope of its authority in reviewing the adequacy of the Candidate's Statement of Candidacy and evaluating whether it was "invalid because the Candidate is not legally qualified to hold the office of President" based on criteria in the U.S. Constitution); *see also Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (approving Electoral Board's decision not to place presidential candidate who did not meet constitutional age qualification on ballot and denying motion for preliminary injunction to enjoin decision). (Electoral board decisions cited here are attached hereto as part of Group Exhibit D.)

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

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

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

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

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

STATEMENT OF FACTS

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

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

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

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

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

II. TRUMP'S SCHEME TO OVERTURN THE GOVERNMENT.

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

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

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

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

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

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

a. On August 17, 2020, Trump spoke to a crowd in Oshkosh, Wisconsin and stated: "The only way we're going to lose this election is if the election is rigged."[25]

b. On August 24, 2020, during his Republican National Convention acceptance speech, Trump stated: "The only way they can take this election away from us is if this is a rigged election."[26]

c. On September 24, 2020, Trump stated: "We want to make sure the election is honest, and I'm not sure that it can be. I don't know that it can be with this whole situation [of] unsolicited ballots."[27]

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

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

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

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

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

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

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

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

a. On the social media site Parler, Proud Boys leader Henry "Enrique" Tarrio responded, "Standing by sir."[29] (Tarrio was convicted of seditious conspiracy on May 4, 2023 and sentenced to 22 years in prison for his role on January 6.[30])

b. Another Proud Boys leader, Joseph Biggs, posted, "President Trump told the proud boys to stand by because someone needs to deal with ANTIFA...well sir! We're ready!!" and "Trump basically said to go fuck them up! this makes me so happy."[31] (Biggs was convicted of seditious conspiracy and sentenced to 17 years in prison for his role on January 6.[32])

c. That same night, the Proud Boys began making and selling merchandise with the slogan "Stand Back and Stand By."

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

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

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

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

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

[33] Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 7 (June 13, 2022), https://www.govinfo.gov/content/pkg/CHRG-117hhrg48999/pdf/CHRG-117hhrg48999.pdf [hereinafter Second Jan. 6 Hearing Transcript].

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

a. On November 1, 2020, Trump told close associates that he would declare victory on election night if it looked as if he was "ahead."[34]

b. Around the same time, Steve Bannon, former White House strategist and advisor to Trump told a group of associates: "And what Trump's going to do is just declare victory, right? He's gonna declare victory, but that doesn't mean he's the winner. He's just gonna say he's a winner."[35]

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

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

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

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

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

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

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

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

b. On November 5, 2020, he tweeted: "STOP THE FRAUD!" and, "STOP THE COUNT!"[38]

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

71. That same day, Trump falsely tweeted: "I WON THIS ELECTION, BY A LOT!"[40]

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

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

a. Days after the election, lead data expert Matt Oczkowski informed Trump that he would lose because not enough votes were in his favor.[41]

b. At approximately the same time, former Attorney General William Barr told Trump he did not agree with the idea of saying the election was stolen.[42]

c. On November 23, 2020, Barr again informed Trump that his claims of fraud were not meritorious.[43]

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

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

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

[41] Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, No. 117-2, at 6 (June 9, 2022), https://www.govinfo.gov/content/pkg/CHRG-117hhrg48998/pdf/CHRG-117hhrg48998.pdf [hereinafter First Jan. 6 Hearing Transcript].

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

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

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

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

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

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

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

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

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

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

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

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

[47] *Id.*

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

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

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

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

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

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

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

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

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[49] Indictment at 13-14, *U.S. v. Trump*, Case No. 1:23-cr-00257-TSC, ECF No. 1 (D.D.C., Aug. 1, 2023), https://www.justice.gov/storage/US_v_Trump_23_cr_257.pdf [hereinafter August 1, 2023 Indictment].

[50] National Archives, *supra* note 6.

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

[52] *Id.* at 8-9.

[53] *Id.*

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

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

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

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

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

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

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

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

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

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

[55] Fifth Jan. 6 Hearing Transcript, *supra* note51, at 23-24.

[56] *Id.*

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

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

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

95. On December 25, 2020, Trump called Pence to wish him a Merry Christmas and to request that Pence reject the electoral votes on January 6, 2021.[60]

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

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

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

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

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

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

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

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

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

[62] *Id.*

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

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

101. Rosen refused.[65]

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

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

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

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

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

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

[65] *Id.*

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

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

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

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

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

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

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

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

110. On January 3, 2021, Trump again told Pence that Pence had the right to reject the electoral vote on January 6.[69]

111. Pence again rejected Trump's request.[70]

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

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

[70] *Id.*

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

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

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

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

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

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

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

[73] *Id.*

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

[75] *Id.*

[76] *Id.* at 15-16, 21.

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

a. On December 4, 2020, Trump tweeted: "RIGGED ELECTION!"[77]

b. On December 10, 2020, Trump tweeted: "How can you give an election to someone who lost the election by hundreds of thousands of legal votes in each of the swing states. How can a country be run by an illegitimate president?"[78]

c. On December 15, 2020, Trump tweeted: "Tremendous evidence pouring in on voter fraud. There has never been anything like this in our Country!"[79]

d. On December 23, 2020, Trump retweeted a memo titled "Operation 'PENCE' CARD," which falsely asserted that the Vice President could disqualify legitimate electors.[80]

e. On January 5, 2021, Trump tweeted: "The Vice President has the power to reject fraudulently chosen electors."[81]

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

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

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

[80] Mike Pence, *Mike Pence: My Last Days With Donald Trump*, WALL STREET JOURNAL (Nov. 9, 2022) https://www.wsj.com/articles/donald-trump-mike-pence-jan-6-president-rally-capitol-riot-protest-vote-count-so-help-me-god-stolen-election-11668018494?st=rna6xw1pmjmaoss.

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

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

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

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

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

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

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

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

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

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

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

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

[85] *Id.*

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

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

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

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

D. In Response to Trump's Call for a "Wild" Protest, Trump's Supporters Planned Violence.

125. In response to Trump's "wild" tweet, Twitter's Trust and Safety Policy team recorded a "'fire hose' of calls to overthrow the U.S. government."[90]

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

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

128. For example:

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

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

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

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

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

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

b. Meggs was later convicted by a federal jury for seditious conspiracy under 18 U.S.C. § 2384 after the January 6 attack, and sentenced to 12 years in prison.[94]

c. Oath Keepers from various states had established a "Quick Reaction Force" plan where they cached weapons for January 6, 2021 at hotels in Ballston and Vienna in Virginia.[95]

d. Henry "Enrique" Tarrio, a leader of the Proud Boys, sent encrypted messages to others that they should "storm the Capitol."[96]

e. The Proud Boys received and had been in possession of a document titled "1776 Returns" where the initial authors divided their plan to overtake federal government buildings into five parts: "Infiltrate," "Execution," "[D]istract," "Occupy," and "Sit In."[97]

f. Members of the Proud Boys were also convicted of seditious conspiracy after the January 6 attack.[98]

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

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

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

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

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

g. Matt Bracken, a host for Infowars, a website specializing in disinformation and false election fraud theories, told viewers that it may be necessary to storm the Capitol, and that "we're going to only be saved by millions of Americans . . . occupying the entire area, if—if necessary storming right into the Capitol. . . we know the rules of engagement. If you have enough people, you can push down any kind of a fence or a wall."[99]

h. QAnon, an online false theory group, shared online a digital banner of "Operation Occupy the Capitol," which depicted the U.S. Capitol being torn in two.[100]

i. The Three Percenter militias, a far-right, anti-government movement, tried to share online "#OccupyCongress" memes with text that say, "If they Won't Hear Us" and "They Will Fear Us."[101]

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

130. Trump quoted that tweet and wrote back, "A great honor!"[103]

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

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

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

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

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

[103] *Id.*

a. Kylie and Amy Kremer, a mother-daughter pair involved with Women for America First, planned a demonstration on the Ellipse ("Ellipse Demonstration"), a park south of the White House fence and north of Constitution Avenue and the National Mall in Washington, D.C.[104]

b. Ali Alexander, an extremist associated with the Stop the Steal, planned an assemblage immediately outside the Capitol, on the court side and the steps of the building.[105]

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

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

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

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

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

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

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

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

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

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

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

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

[109] *Id.*

[110] *Id.*

[111] *Id.*

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

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

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

a. "If the liberal Democrats take the Senate and White House. . . . And they're not taking this White House. We're going to fight like hell, I'll tell you right now."

b. "We're going to take it back."

c. "There's no way we lost Georgia. There's no way. That was a rigged election, but we're still fighting it and you'll see what's going to happen."

d. "We can't let that happen. The damage they do will be permanent and will be irreversible. Can't let it happen."

e. "We will never give in. We will never give up. We will never back down. We will never, ever surrender."

f. "We have to go all the way and that's what's happening. You watch what happens over the next couple of weeks. You watch what's going to come out. Watch what's going to be revealed. You watch."

140. At the rally, the crowd chanted "Fight for Trump! Fight for Trump!" several times.[115]

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

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[114] *Id.*

[115] *Id.*

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

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

a. Ali Alexander from Stop the Steal said: "We must rebel . . . . We might make this 'Fort Trump' . . . . We're going to keep fighting for you, Mr. President." He stated further, "1776 is always an option. . . . These degenerates in the deep state are going to give us what we want, or we are going to shut this country down."[118]

b. Roger Stone stated: "This is a fight for the future of Western Civilization as we know it. . . we dare not fail."[119]

c. Several members of the Phoenix Project, a Three-Percenter-linked group, told the January 5 crowd, "We are at war," promising to "fight" and "bleed," and that they will "not return to our peaceful way of life until this election is made right."[120]

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

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

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

[119] *Id.*

[120] *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

[126] *Id.*

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

a. "I read [the President's tweet] as armed."[128]

b. "[T]here is not enough cops in DC to stop what is coming."

c. "[M]ake sure they know who to fear," and "[W]aiting for Trump to say the word."

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

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

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

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

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

[128] *Id.*

[129] *Id.* at 61-62.

[130] *Id.*

[131] *Id.*

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

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

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

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

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

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

III. THE JANUARY 6, 2021 INSURRECTION.

A. The Two Demonstrations.

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

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

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[132] *Id.* at 63.

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

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

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

B. Trump's Preparations as the Demonstrations Began.

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

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

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

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

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

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

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

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

[138] Hearing Before the Select Comm. to Investigate the January 6th Attack on the United States Capitol, 117th Cong., 2d sess., at 8-9 (June 28, 2022), https://www.govinfo.gov/content/pkg/CHRG-117hhrg49354/pdf/CHRG-117hhrg49354.pdf [hereinafter Sixth Jan. 6 Hearing Transcript].

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

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

C. The Increasingly Apocalyptic Demonstration at the Ellipse.

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

a. Representative Mo Brooks of Alabama urged the crowd to "start taking down names and kicking ass" and be prepared to sacrifice their "blood" and "lives" and "do what it takes to fight for America" by "carry[ing] the message to Capitol Hill," since "the fight begins today."[141]

b. Trump's lawyer Rudy Giuliani called for "trial by combat."[142]

c. Trump's lawyer John Eastman perpetuated claims of voter fraud and said: "all that we are demanding of Pence is this afternoon at 1 o'clock he let the legislators of the states look into this so we get to the bottom of it."[143]

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

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[140] *Id.*

[141] The Hill, *supra* note 12.

[142] Wash. Post, *supra* note 11.

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

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

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

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

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

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

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

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

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

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

177. Trump ordered his team to remove the magnetometers.

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

[146] Alemany, *supra* note 15.

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

[148] *Id.*

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

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

D. Insurrectionists Prepared for Battle at the Capitol.

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

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

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

a. Around 12:33 PM, police detained another individual with a rifle near the World War II Memorial, which was close to where Trump was speaking.

b. Around 12:45 PM, various security agencies such as the Capitol Police and FBI responded to reports of a pipe bomb outside the Republican National Committee headquarters and suspicious packages found in or around other buildings near the Capitol, such as the Supreme Court and the Democratic National Committee headquarters.

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

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[149] *Id.*

[150] Alemany, *supra* note 15.

[151] *Id.*

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

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

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

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

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

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

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[152] *Id.*

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

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

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

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

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

a. "And then we're stuck with a president who lost the election by a lot, and we have to live with that for four more years. We're just not going to let that happen."

b. "We want to go back and we want to get this right because we're going to have somebody in there that should not be in there and our country will be destroyed and we're not going to stand for that."

c. "And we're going to have to fight much harder."

d. "And you know what? If they do the wrong thing, we should never, ever forget that they did. Never forget. We should never ever forget."

e. "You will have an illegitimate president. That's what you'll have. And we can't let that happen."

f. "And we fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore."

[155] Mendoza & Linderman, *supra* note 17.

g. "When you catch somebody in a fraud, you're allowed to go by very different rules."

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

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

a. "So we're going to, we're going to walk down Pennsylvania Avenue. . . And we're going to the Capitol, and we're going to try and give."

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

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

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

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

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

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

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

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

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

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

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

G. Pro-Trump Insurrectionists Violently Attacked the Capitol.

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

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

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

[159] Alemany, *supra* note 15.

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

[161] *Id.*

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

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

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

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

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

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

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

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

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

[165] Alemany, *supra* note 15.

[166] *Id.*

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

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

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

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

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

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

a. Some chanted "hang Mike Pence" and threatened to kill Speaker Pelosi.[169]

b. Some taunted a Black police officer with racial slurs for pointing out that overturning the election would deprive him of his vote.[170]

c. Confederate flags and symbols of white supremacist movements were widespread.[171]

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

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[167] *Id.*

[168] *Id.*

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

[170] Alemany, *supra* note 15.

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

a. One police officer was crushed against a door, screaming in agony as the crowd chanted "Heave, ho!"[172]

b. An attacker ripped off the officer's gas mask, beat his head against the door, took his baton, and hit his head with it.[173]

c. Another officer was pulled into a crowd, beaten and repeatedly tased by attackers.[174]

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

H. The Fall of the United States Capitol.

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

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

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

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

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

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[172] Smith & Caldwell, *supra* note 15.

[173] Hymes & McDonald, *supra* note 15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

232. At 2:24 PM, at the height of violence, Trump made his first public statement during the attack. Against the advisors' recommendation above, rather than make any effort to quell the riotous mob, he fanned the flames by tweeting: "Mike Pence didn't have the courage to do what should have been done to protect our Country and our Constitution, giving States a chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which they were asked to previously certify. USA demands the truth!"[180]

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

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

[178] *Id.* at 593.

[179] *Id.* at 595.

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

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

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

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

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

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

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

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

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

[183] *Id.* at 466.

[184] *Id.* at 596.

[185] *Id.* at 597-98.

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

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

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

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

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

a. House Minority Leader Kevin McCarthy on the phone told Trump he must make a public statement to end the attack.

b. Ivanka Trump and Eric Herschmann entered the room where Trump sat watching the attack on television. They suggested he make a public statement about being peaceful.

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

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[186] *Id.* at 598.

[187] *Id.* at 86.

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

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

247. The attack raged on.

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

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

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

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

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

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

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

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

[192] Alemany, *supra* note 15.

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

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

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

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

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

257. Trump refused.[195]

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

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

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

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

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

go home." Other attackers acknowledged, "That's our order" or "He says go home. He says go home."[197]

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

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

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

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

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

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

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

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[197] *Id.* at 1:58:42.

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

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

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

[201] Alemany, *supra* note 15.

[202] *Id.*

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

267. Pence's counsel ignored it.[204]

268. Congress was required under the Electoral Count Act to debate the objections filed by Senators and Members of Congress to electoral results from Arizona and Pennsylvania. Despite six Senators and 121 Representatives voting to reject Arizona's electoral results,[205] and seven Senators and 138 Representatives voting to reject Pennsylvania's results,[206] Biden's victory was ultimately certified at 3:24 AM, January 7, 2021.[207]

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

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

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

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[203] *Id.*

[204] *Id.*

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

[206] *Id.* at H98.

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

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

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

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

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

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

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

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

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

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

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

[212] Government's Br. in Supp. of Detention, *supra* note 3.

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

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

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

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

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

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

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

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

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

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

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

[218] *Id.* at *17-19.

FBI, the riot was not 'patriotic' or a legitimate 'protest,' . . . it was an insurrection aimed at halting the functioning of our government."[219]

b. In *United States v. Munchel*, the judge granted an application for access to exhibits and wrote, "defendants face criminal charges for participating in the unsuccessful insurrection at the Capitol on January 6, 2021."[220]

c. In *United States v. Bingert*, the judge denied a motion to dismiss indictment and again called it an "unsuccessful insurrection."[221]

d. In *United States v. Brockhoff,* the judge issued an order denying a motion for pretrial release, stating that "[t]his criminal case is one of several hundred arising from the insurrection at the United Sates Capitol on January 6, 2021."[222]

e. In *United States v. Grider*, the judge denied a motion to dismiss indictment, stating that "[t]his criminal case is one of several hundred arising from the insurrection at the United States Capitol on January 6, 2021."[223]

f. In *United States v. Puma*, the judge characterized the January 6, 2021 attack as an "insurrection" repeatedly in an order denying a motion to dismiss the indictment.[224]

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

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

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

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

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

[224] 596 F. Supp. 3d 90 (D.D.C 2022).

g. In *United States v. Rivera*, the judge characterized the January 6, 2021 attack as an "insurrection" repeatedly in an opinion after bench trial.[225]

h. In *United States v. DeGrave*, the judge characterized the January 6, 2021 attack as an "insurrection" repeatedly in an order on pretrial detention.[226]

i. In *United States v. Randolph*, the judge characterized the January 6, 2021 attack as an "insurrection" repeatedly in an order on pretrial detention.[227]

j. In the *Matter of Giuliani*, a state appellate court referred to "violence, insurrection and death on January 6, 2021, at the U.S. Capitol" in an order suspending Trump's lawyer from the practice of law.[228]

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

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[225] 607 F. Supp. 3d 1 (D.D.C. 2022).

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

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

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

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

282. For example:

a. In April 2022, an Oath Keepers member named Brian Ulrich pleaded guilty to seditious conspiracy.[230]

b. In May of 2022, Oath Keepers member William Todd Wilson pleaded guilty to seditious conspiracy.[231]

c. In October 2022, former leader of the Proud Boys Jeremy Bertino pleaded guilty to seditious conspiracy.[232]

d. On January 23, 2023, four Oath Keepers were found guilty of seditious conspiracy.[233]

e. Around May 4, 2023, four members of the Proud Boys, including their former leader Enrique Tarrio, were convicted of seditious conspiracy.[234]

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

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

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

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

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

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

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

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

> For months, the President led his supporters to believe the election was stolen. When some of his supporters threatened state election officials, he refused to condemn them. Rallies in Washington, D.C., in November and December 2020 had turned violent, yet he invited his supporters to Washington, D.C., on the day of the Certification. They came by the thousands. And, following a 75-minute speech in which he blamed corrupt and weak politicians for the election loss, he called on them to march on the very place where Certification was taking place.
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> . . .
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> President Trump's January 6 Rally Speech was akin to telling an excited mob that corn-dealers starve the poor in front of the corn-dealer's home. He invited his supporters to Washington, D.C., after telling them for months that corrupt and spineless politicians were to blame for stealing an election *from them*; retold that narrative when thousands of them assembled on the Ellipse; and directed them to march on the Capitol building—the metaphorical corn-dealer's house—where those very politicians were at work to certify an election that he had lost. The Speech plausibly was, as [John Stuart] Mill put it, a "positive instigation of a mischievous act."[235]

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

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

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

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

287. For example:

a. "Based on the evidence, the Court finds it more likely than not that President Trump corruptly attempted to obstruct the Joint Session of Congress on January 6, 2021."[236]

b. "The fact remains that [the defendant] and others were called to Washington, D.C. by an elected official; he was prompted to walk to the Capitol by an elected official. . . [the defendant was] told lies, fed falsehoods, and told that our election was stolen when it clearly was not."[237]

c. "The steady drumbeat that inspired defendant to take up arms has not faded away . . . not to mention, the near-daily fulminations of the former President."[238]

d. "Defendant's promise to take action in the future cannot be dismissed as an unlikely occurrence given that his singular source of information, . . . ('Trump's the only big shot I trust right now'), continues to propagate the lie that inspired the attack on a near daily basis."[239]

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

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

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

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

e. "At the end of the day the fact is that the defendant came to the Capitol because he placed his trust in someone [Donald Trump] who repaid that trust by lying to him."[240]

f. "And as for the incendiary statements at the rally detailed in the sentencing memo, which absolutely, quite clearly and deliberately, stoked the flames of fear and discontent and explicitly encouraged those at the rally to go to the Capitol and fight for one reason and one reason only, to make sure the certification did not happen, those may be a reason for what happened, they may have inspired what happened, but they are not an excuse or justification."[241]

g. "[B]ut we know, looking at it now, that they were supporting the president who would not accept that he was defeated in an election."[242]

h. "And you say that you headed to the Capitol Building not with any intent to obstruct and impede congressional proceedings; but because the then-President, Trump, told protesters at the "stop the steal" rally -- and I quote: After this, we're going to walk down; and I will be there with you. We're going to walk down. We're going to walk down. I know that everyone here will soon be marching over to the Capitol Building to peacefully and patriotically make your voices heard. And you say that you wanted to show

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

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

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

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

i. "[A]t the 'Stop the Steal' rally, then-President Trump eponymously exhorted his supporters to, in fact, stop the steal by marching to the Capitol. . . [h]aving followed then-President Trump's instructions, which were in line with [the defendant's] stated desires, the Court therefore finds that Defendant intended her presence to be disruptive to Congressional business."[244]

j. Moreover, four sentencing cases of January 6 defendants included statements by a judge that, "The events of January 6th involved the rather unprecedented confluence of events spurred by then President Trump. . ."[245]

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

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

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

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

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

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

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

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

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

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

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

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

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

[247] *Id.*

[248] *Id.*

[249] *Id.*

[250] *Id.*

[251] *Id.*

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

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

VI. TRUMP REMAINS UNREPENTANT AND WOULD DO IT AGAIN.

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

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

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

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

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

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

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[252] *Id.*

his website Truth Social: "these folks don't get it that when they come after me, people who love freedom rally around me."[253]

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

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

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

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

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

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

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

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

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

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

VII. THE CONSTITUTION DISQUALIFIES INSURRECTIONISTS FROM OFFICE.

309. Section 3 of the Fourteenth Amendment to the U.S. Constitution provides: "No Person shall . . . hold any office, civil or military, under the United States . . . who, having previously taken an oath . . . as an officer of the United States . . . or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same."

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

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

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

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

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

VIII. TRUMP ENGAGED IN INSURRECTION OR REBELLION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Angry and armed supporters would amass in Washington, D.C., on January 6, 2021.

b. These supporters would, at his command, march on the U.S. Capitol.

c. These supporters would disrupt, delay, or obstruct Congress from certifying the electoral votes.

d. His 2:24 PM tweet would goad and encourage his supporters to continue their attack.

e. His refusal to issue a public statement directing the attackers to disperse would encourage the attackers to continue.

f. His refusal to order federal law enforcement to the scene would enable the attackers to continue.

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

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

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

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

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

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

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

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

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

X. TRUMP IS DISQUALIFIED FROM PUBLIC OFFICE.

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

339. Congress has not removed this disability from Trump.

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

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

WHEREFORE, Objectors request the following: (a) a hearing on the objection set forth herein; (b) a determination that the Nomination Papers of Candidate are legally and factually insufficient; and (c) a decision that the name of Candidate "Donald J. Trump" shall not be printed on the official ballot as a candidate for the Republican Nomination for the Office of the President

of the United States for the March 19, 2024 General Primary Election or the November 5, 2024 General Election.

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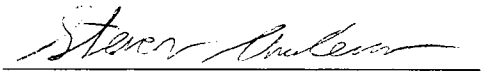

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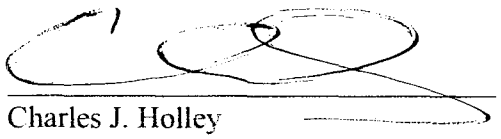

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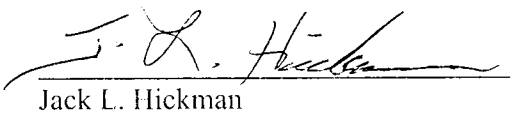

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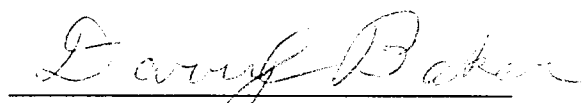

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INDEX OF EXHIBITS

***Anderson et al. v. Trump*, No. 24 SOEB GP ___**

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C	Maine Secretary of State Ruling in *In re: Challenges to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States* (Dec. 28, 2023)
D	Group Exhibit: Electoral Board Decisions
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EXHIBIT A

Colorado Supreme Court Opinion in
Anderson v. Griswold (Dec. 19, 2023)

2023 WL 8770111

Supreme Court of Colorado.

Norma ANDERSON, Michelle Priola, Claudine Cmarada, Krista Kafer, Kathi Wright, and Christopher Castilian, Petitioners-Appellants/Cross-Appellees,

v.

Jena GRISWOLD, in her official capacity as Colorado Secretary of State, Respondent-Appellee,

and

Colorado Republican State Central Committee, an unincorporated association, Intervenor-Appellee,

Donald J. Trump., Intervenor-Appellee/Cross-Appellant.

Supreme Court Case No. 23SA300

|

December 19, 2023

Synopsis

Background: Group of electors eligible to vote in Republican presidential primary, both registered Republican and unaffiliated voters, filed petition, under Colorado's Uniform Election Code, seeking to prohibit Colorado's Secretary of State from placing former President Donald J. Trump's name on Colorado Republican presidential primary ballot, as constitutionally ineligible for office of presidency based on Section Three of Fourteenth Amendment of United States Constitution, because he allegedly engaged in insurrection after swearing oath as President to support Constitution. Following intervention by former President and Colorado Republican State Central Committee (CRSCC), the District Court, City and County of Denver, Sarah B. Wallace, J., 2023 WL 7017744, denied former President's motion to dismiss and denied CRSCC's motion to dismiss and motion for judgment on pleadings, 2023 WL 7017745, denied former President's Fourteenth-Amendment-based motion to dismiss, and after bench trial, 2023 WL 8006216, determined that events at Capitol constituted insurrection and that President Trump engaged in insurrection, but that Section Three did not apply to President. Electors and former President appealed.

Holdings: The Supreme Court held that:

[1] Election Code allowed electors to challenge former President's status as qualified candidate based on Section Three;

[2] in matter of first impression, Section Three is self-executing;

[3] Section Three presidential disqualification did not pose nonjusticiable political question;

[4] in matter of first impression, Section Three applies to Office of Presidency;

[5] portions of congressional report on investigation of attack on United States Capitol were admissible;

[6] attack on United States Capitol constituted insurrection;

[7] then-President engaged in insurrection through his personal actions;

[8] then-President's speech inciting crowd that breached United States Capitol was not protected by First Amendment; and

[9] former President was disqualified from holding office of President under Section Three.

Affirmed in part and reversed in part.

Berkenkotter, J., Boatright, C.J., and Samour, J., filed dissenting opinions.

Procedural Posture(s): On Appeal; Judgment; Motion to Dismiss; Motion for Judgment on the Pleadings; Motion to Exclude Evidence or Testimony.

West Headnotes (99)

[1] **Election Law** ⇨ Preservation of grounds of review

Former President abandoned, on appeal, any challenge to evidentiary standard of proof for issues arising under Election Code, where former

President chose not to brief that issue on appeal of district court's determination that attack on United States Capitol constituted insurrection and that he engaged in insurrection. Colo. Rev. Stat. Ann. § 1-1-101 et seq.

[2] **Constitutional Law** – General Rules of Construction

Constitutional Law – Intent in general

In interpreting a constitutional provision, the goal of the Colorado Supreme Court is to prevent the evasion of the provision's legitimate operation and to effectuate the drafters' intent.

[3] **Constitutional Law** – Plain, ordinary, or common meaning

Constitutional Law – Extrinsic aids to construction in general

To interpret a constitutional provision, the Colorado Supreme Court begins with the plain language of the provision, giving its terms their ordinary and popular meanings; to discern such meanings, the court may consult dictionary definitions.

[4] **Constitutional Law** – Existence of ambiguity

If the language of a constitutional provision is clear and unambiguous, the Colorado Supreme Court enforces it as written, and the court need not turn to other tools of construction.

[5] **Constitutional Law** – Existence of ambiguity

If a constitutional provision's language is reasonably susceptible of multiple interpretations, then it is ambiguous, and Colorado Supreme Court may consider the textual, structural, and historical evidence put forward by the parties; the court will construe the provision in light of the objective sought to be achieved and the mischief to be avoided.

[6] **Appeal and Error** – Statutory or legislative law

Colorado Supreme Court reviews a district court's interpretation of the relevant statutes de novo.

[7] **Statutes** – Plain Language; Plain, Ordinary, or Common Meaning

Statutes – Context

In reviewing a district court's interpretation of statutes de novo, Colorado Supreme Court's primary objective is to effectuate the intent of the General Assembly by looking to the plain meaning of the language used, considered within the context of the statute as a whole.

[8] **Statutes** – Undefined terms

When a statutory term is undefined, Colorado Supreme Court construes the term in accordance with its ordinary or natural meaning.

[9] **Statutes** – Giving effect to statute or language; construction as written

If statutory language is clear, Colorado Supreme Court applies it as written.

[10] **Statutes** – In general; factors considered

If statutory language is reasonably susceptible of multiple interpretations, Colorado Supreme Court may turn to other tools of construction to guide its interpretation; these may include consideration of the purpose of the statute, the circumstances under which the statute was enacted, the legislative history, and the consequences of a particular construction. Colo. Rev. Stat. Ann. § 2-4-203(1).

[11] **Statutes** – Unintended or unreasonable results; absurdity

Colorado Supreme Court avoids statutory constructions that would yield illogical or absurd results.

[12] **Election Law** ⚖ Declaration of candidacy; qualification as candidate

Under the Election Code, the mechanism through which a presidential primary hopeful attests that he or she is a qualified candidate is the statement of intent, or affidavit of intent, filed with Secretary of State. Colo. Rev. Stat. Ann. § 1-4-1204(1)(c).

1 Case that cites this headnote

[13] **Election Law** ⚖ Actions against officers

A district court has jurisdiction, under the Election Code provision establishing the exclusive method for the adjudication of controversies between election officials and any candidate, political party officers or representatives, or persons making nominations, arising from a breach or neglect of duty or other wrongful act that occurs prior to the day of an election, when: (1) an eligible elector, (2) files a verified petition in a district court of competent jurisdiction, (3) alleging that a person charged with a duty under the code, (4) has committed, or is about to commit, a breach of duty or other wrongful act. Colo. Rev. Stat. Ann. § 1-1-113(1).

[14] **Election Law** ⚖ Jurisdiction

District court had jurisdiction, under Election Code, to hear electors' claim seeking to prohibit Secretary of State from placing former President's name on Colorado presidential primary ballot, as constitutionally ineligible for office under Section Three of Fourteenth Amendment, due to allegedly engaging in insurrection after swearing oath as President to support Constitution; electors were "eligible" electors, under code because, as Republican and unaffiliated voters, they met specific requirements for voting in specific election, they timely filed verified petition in proper district court, their petition was filed against Secretary as election official charged with duties under code, and petition alleged Secretary was about to commit breach of duty or other wrongful act by placing former President on primary ballot as he was not constitutionally qualified to hold office. U.S. Const. Amend. 14, § 3; Colo. Rev. Stat. Ann. §§ 1-1-104(16), 1-1-107, 1-1-113, 1-4-1203(2)(b), 1-4-1204(1), 1-4-1204(4), 1-7-201(1).

[15] **Election Law** ⚖ Power to Confer and Regulate

Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections. U.S. Const. art. 1, § 4, cl. 1.

[16] **Election Law** ⚖ State legislatures

United States ⚖ Regulation of Election of Members

The Constitution delegates to states the authority to prescribe the times, places, and manner of holding congressional elections, and states retain the power to regulate their own elections. U.S. Const. art. 1, § 4, cl. 1.

[17] **Election Law** ⚖ State legislatures

United States ⚖ Relation to state law; preemption

States exercise their powers to prescribe the times, places, and manner of holding congressional elections and to regulate their own elections through comprehensive and sometimes complex election codes, regulating the registration and qualifications of voters, the selection and eligibility of candidates, and the voting process itself. U.S. Const. art. 1, § 4, cl. 1.

[18] **United States** ⚖ Presidential electors

So long as a state's exercise of its constitutional power to appoint presidential electors does not

run afoul of another constitutional constraint, that power is plenary. U.S. Const. art. 2, § 1, cl. 2.

[19] **Election Law** – Power to regulate

United States – Presidential electors

States exercise their plenary constitutional appointment power not only to regulate the presidential electors themselves, but also to regulate candidate access to presidential ballots. U.S. Const. art. 2, § 1, cl. 2.

[20] **Election Law** – Power to regulate

United States – Presidential electors

Absent a separate constitutional constraint, states may exercise their plenary appointment power to limit presidential ballot access to those candidates who are constitutionally qualified to hold the office of President; nothing in the United States Constitution expressly precludes states from limiting access to the presidential ballot to such candidates. U.S. Const. art. 2, § 1, cl. 2.

[21] **Election Law** – Power to regulate

It is a state's legitimate interest in protecting the integrity and practical functioning of the political process that permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office. U.S. Const. art. 2, § 1, cl. 2.

[22] **Election Law** – Nature and form of remedy

When eligible electors challenge a listing by the Secretary of State on the presidential primary ballot of a candidate who is not constitutionally qualified to assume office, the Election Code offers an exclusive remedy, as exercised through a proceeding under the provision governing adjudication of controversies arising from a breach or neglect of duty or other wrongful act that occurs prior to the day of an election. Colo. Rev. Stat. Ann. §§ 1-1-113(4), 1-4-1204(4).

[23] **Election Law** – Effect of irregularities or defects

Under the Election Code, in presidential primary elections, where a candidate does not submit or cannot comply with the required attestations on the statement of intent form, the Secretary of State cannot list the candidate on the ballot. Colo. Rev. Stat. Ann. § 1-4-1204(1)(b, c).

[24] **Election Law** – Powers and duties of officers in general

Election Law – Declaration of candidacy; qualification as candidate

Under the Election Code, if the contents of a signed and notarized statement of intent appear facially complete, in other words, the candidate in presidential primary elections has filled out the Secretary of State's form confirming that he or she meets the Article II requirements under the United States Constitution of age, residency, and citizenship, and further attesting that he or she meets all qualifications for the office prescribed by law, the Secretary has no duty to further investigate the accuracy or validity of the information the prospective presidential candidate has supplied. U.S. Const. art. 2, § 1, cl. 5; Colo. Rev. Stat. Ann. § 1-4-1204(1)(b, c).

[25] **Election Law** – Determination by public officers

Election Law – Judicial resolution of contest in general

Under the Election Code, the fact that the Secretary of State has complied with her duties to certify the names and party affiliations of the candidates to be placed on presidential primary election ballots does not foreclose a challenge to the listing of any candidate on the presidential primary election ballot, using the code's procedural vehicle that creates a cause of action for electors alleging a breach of duty or other wrongful act under the code, thus requiring the district court, not the election official, to adjudicate an eligible elector's challenge to a

candidate's eligibility. Colo. Rev. Stat. Ann. §§ 1-1-113(1), 1-4-1204(1), 1-4-1204(4).

[26] **Election Law** ⚖ Actions against officers

The Election Code provision, affording a procedural vehicle that creates a cause of action for electors alleging a breach of duty or other wrongful act under the code, clearly comprehends challenges to a broad range of wrongful acts committed by officials charged with duties under the code, including any act that is inconsistent with the code. Colo. Rev. Stat. Ann. § 1-1-113(1).

[27] **Election Law** ⚖ Primary elections

Certifying an unqualified candidate to the presidential primary ballot constitutes a "wrongful act," within meaning of the Election Code, permitting any challenge to listing of any candidate on presidential primary election ballot, using the code's procedural provision that creates a cause of action for electors alleging a breach of duty or other wrongful act under the code, thereby running afoul of the code's provision limiting participation in the presidential primary to candidates qualified for office and undermining purposes of the code. Colo. Rev. Stat. Ann. §§ 1-1-113(1), 1-4-1203(2)(a), 1-4-1204(1), 1-4-1204(4).

[28] **Election Law** ⚖ Declaration of candidacy; qualification as candidate

Under the Election Code provision, limiting participation in the presidential primary to political parties fielding qualified candidates, "qualified" candidates for the presidential primary are those who, at a minimum, are qualified to hold office under the provisions of the United States Constitution. Colo. Rev. Stat. Ann. § 1-4-1203(2)(a).

1 Case that cites this headnote

[29] **Election Law** ⚖ Primary elections

Secretary of State's listing of candidate on presidential primary ballot who is not "qualified" to assume duties of office, including due to disqualification from office as oath-breaking insurrectionist under Section Three of Fourteenth Amendment, would be "wrongful act," within the meaning of the Election Code's procedural vehicle creating a cause of action for electors alleging breach of duty or other wrongful act under the code. U.S. Const. art. 2, § 1, cl. 5; U.S. Const. Amend. 14, § 3; Colo. Rev. Stat. Ann. §§ 1-1-113(1), 1-4-1204(1), 1-4-1204(4).

[30] **Constitutional Law** ⚖ Fourteenth Amendment in general

Election Law ⚖ Declaration of candidacy; qualification as candidate

Because Section Three of the Fourteenth Amendment is a part of the text of the United States Constitution, assessing a candidate's compliance with it for purposes of determining their eligibility for office does not improperly add qualifications to those that appear in the Constitution; doing so merely renders the list of constitutional qualifications more complete. U.S. Const. art. 2, § 1, cl. 5; U.S. Const. Amend. 14, § 3.

[31] **Election Law** ⚖ Declaration of candidacy; qualification as candidate

The Election Code's provisions require all presidential primary candidates to be constitutionally qualified before their names are added to the presidential primary ballot. Colo. Rev. Stat. Ann. § 1-4-1204(1).

[32] **Constitutional Law** ⚖ Proceedings in which question is raised

Election Law ⚖ Actions against officers

A claim challenging the constitutionality of the Election Code cannot be reviewed under the code's procedural provision that creates a cause of action for electors alleging a breach of duty or other wrongful act under the code. Colo. Rev. Stat. Ann. § 1-1-113.

[33] **Constitutional Law** – Political Rights and Discrimination

Constitutional Law – Political parties in general

Partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments, and as a result, political parties' government, structure, and activities enjoy constitutional protection. U.S. Const. Amends. 1, 14.

[34] **Constitutional Law** – Political Rights and Discrimination

A political party is well within its First and Fourteenth Amendment right to freedom of association to choose with whom it affiliates and to decide which candidates it recognizes as bona fide; it does not follow, though, that a party is absolutely entitled to have its nominee appear on the ballot as that party's candidate. U.S. Const. Amends. 1, 14.

[35] **Constitutional Law** – Right to run for public office in general; candidacy

Constitutional Law – Nominations; primary elections

Any state election law governing the selection and eligibility of candidates affects, to some degree, the fundamental right to associate with others for political ends; even so, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes. U.S. Const. Amends. 1, 14.

[36] **Constitutional Law** – Political parties in general

To determine if a state election law impermissibly burdens a political party's associational rights, courts must weigh the character and magnitude of the burden imposed by the rule against the interests the state contends justify that burden, and then consider whether the state's interests make the burden necessary. U.S. Const. Amends. 1, 14.

[37] **Constitutional Law** – Ballots and ballot access

In determining whether a state election law impermissibly burdens a political party's associational rights, limiting ballot access to those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable. U.S. Const. Amends. 1, 14.

[38] **Constitutional Law** – Nominations; primary elections

Election Law – Declaration of candidacy; qualification as candidate

Election Code's limitation on presidential primary ballot access to only qualified candidates did not violate Colorado Republican State Central Committee's (CRSCC) freedom of association protected by First Amendment, since restriction was eminently reasonable regulation that did not severely burden CRSCC's associational rights. U.S. Const. Amend. 1; Colo. Rev. Stat. Ann. §§ 1-4-1203(2)(a), 1-4-1204(1).

[39] **Constitutional Law** – Constitution as supreme, paramount, or highest law

Election Law – Political Organizations; Parties

Jones, Johanson, Sutterland, Johnson, DeGrelle, and Smith v. Biden, Jr.
24 SOEB GP 522

Candidate: Joseph R. Biden, Jr.

Office: President of the United States

Party: Democratic

Objectors: Arthur J. Jones, Eric Johanson, Scott Sutterland, Walt Johnson, Therese DeGrelle, and Anne Marie Smith

Attorney for Objectors: N/A – *pro se*

Attorneys for Candidate: James Morphew and Kevin Morphew

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: Objectors request that the Board "Ban President Joseph Biden from the upcoming March primary and November 2024 General Election" due to his "OPEN BORDERS" policy, economic and foreign policies, and mental and physical fitness.

Dispositive Motions: Candidate's Motion to Dismiss Objectors' Petition filed January 19, 2024. Candidate moves to dismiss the entirety of Objectors' petition. First, Candidate argues the objection petition fails to comply with Election Code Section 10-8, 10 ILCS 5/10-8, because it does not state any of the Objectors' residence addresses. Candidate cites *Pochie v. Cook County Officers Electoral Board*, 682 N.E.2d 258 (1st Dist. 1997), where the court held the objector address requirement of Section 10-8 is mandatory and affirmed the dismissal of an objection petition that did not include the street name in the objector's residence address. Here, Objectors' petition does not contain any residence addresses, and the only address contained within the filing is a P.O. Box for the America First Committee on a press release attached to the petition. This information, Candidate argues, is not a permanent abode as required by Section 3-2(a) of the Election Code and is insufficient to identify any Objector's status as "a legal voter of the requisite political subdivision or district" under Section 10-8.

Next, Candidate argues Objectors' petition fails to state their interest in filing the objection, a mandatory requirement, citing *Hagen v. Stone*, 660 N.E.2d 189 (1st Dist. 1995) and *Wollan v. Jacoby*, 653 N.E.2d 1303 (1st Dist. 1995).

Candidate argues Objectors' petition fails to allege specific facts that demonstrate any deficiency with Candidate's nomination papers. Objectors must, per Section 10-8, fully state the nature of

the objection such that the petition provides adequate notice and specificity in order to sustain a minimal burden of proof with respect to the alleged deficiencies, citing two Cook County Electoral Board cases, *Vojik v. Marinaro* and *Blakemore v. Shore*. Here, Candidate argues, Objectors' petition is "couched in terms of a generalized policy disagreement with certain actions Candidate is alleged to have taken as President of the United States." Candidate notes, citing *Wiseman v. Elward*, 283 N.E.2d 282 (1st Dist. 1972), an electoral board's authority is limited to determining whether nomination papers comply with the Election Code. Here, per Candidate, Objectors' petition fails to allege facts regarding Candidate's nomination papers and, thus, should be stricken.

Finally, Candidate requests Objectors Johanson, Sutterland, Johnson, DeGrelle, and Smith be dismissed under Rule 3(c) of the Board's Rules of Procedure for failure to appear at the Initial Meeting of the State Officers Electoral Board.

No response to Candidate's motion was filed.

Record Exam Necessary: No.

Hearing Officer: David Herman

Hearing Officer Findings and Recommendations: The Hearing Officer recommends granting the Candidate's Motion to Dismiss Objectors' Petition (Motion) in its entirety.

Objectors' failure to provide their residence addresses and state their interests in filing the objection, the Hearing Officer explains, are fatal to their objection petition. Section 10-8's requirement that an objector provide his residence address in his objection petition is mandatory, and failure to comply requires dismissal of the objection. *See Pochie*, 289 Ill.App.3d at 586. Likewise, Section 10-8's requirement that an objection petition "state the interest of the objector" is mandatory, and non-compliance necessitates dismissal of the objection. *See Hagen*, 660 N.E.2d 189; *Wollan*, 653 N.E.2d 1303.

The Hearing Officer further recommends granting Candidate's Motion because Objectors' petition "makes no objection that Candidate's nomination papers or petitions are not in the proper form, whether they were filed within the time and under the conditions required by law, or whether they are the genuine…. petitions which they purport to be." Instead, Objectors' petition objects to the President's policy decisions, outside the scope of an electoral board's duties under Section 10-10 to evaluate nomination papers for compliance with the Election Code.

The Hearing Officer further recommends entering a default order against Objectors Johanson, Sutterland, Johnson, DeGrelle, and Smith under Rule of Procedure 3(c), as none appeared at the January 17 initial hearing before the Board or January 26 hearing before the Hearing Officer.

At the hearing, neither side presented evidence. Objector Jones admitted he was not objecting to Candidate's nomination papers, and his objection was based upon "moral grounds." Therefore, the Hearing Officer recommends that the Motion to Dismiss Objector's Petition be granted, the objection overruled, and President Biden's name be certified to the ballot as a Democratic Party

candidate for President of the United States. Even if the Motion to Dismiss is denied and the merits of the Objection are ruled upon, it is recommended the Objection be overruled.

Recommendation of the General Counsel: The General Counsel concurs in the Hearing Officer's recommendation and recommends certifying Candidate's name to the March 19, 2024 General Primary ballot.

AN APPEAL TO BAN PRESIDENT JOE BIDEN FROM THE MARCH 19, 2024 PRIMARY AND THE NOVEMBER 2024 GENERAL ELECTION

Arthur J. Jones, Eric Johanson, Scott Sutterland, Walt Johnson, Therese DeGrelle, and Anne Marie Smith Petitioners-Objectors,	)	Case No. 24-SOEB-GP-522
vs.	)	
Joseph R. Biden, Jr. Respondent-Candidate.	)	

RECOMMENDATION

TO: Arthur J. Jones
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General Counsel
Illinois State Board of Elections
GeneralCounsel@elections.il.gov

Joseph R. Biden, Jr.
c/o James Morphew
Kevin Morphew
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This matter coming on for recommendation on Objectors' Petition in this matter and the Hearing Officer states as follows:

PROCEDURAL HISTORY

This matter commenced when Arthur J. Jones, Eric Johanson, Scott Sutterland, Walt Johnson, Therese DeGrelle, and Anne Marie Smith (hereinafter "Objectors") filed an "Objectors' Petition" with the State Board of Elections. alleging Joseph R. Biden, Jr. should be banned from appearing on the ballot as a candidate for the Office of the President of the United States for the following reasons:

A. Candidate has endangered the national security of this country with his Open Borders Policy.

B. Candidate's Economic Policy has been a disaster and is getting worse by the day.

C. Candidate's Foreign Policy is costly and is not based on any American national interest but rather on the greed and corruption of Candidate and his son.

D. Candidate is growing mentally and physically weaker.

An Initial Case Management Conference was conducted on January 17, 2024 and the Parties were provided with an Initial Case Management Order. Objector, Arthur J. Jones, was the only Objector to enter his appearance and appear at the Initial Case Management Conference. No other Objectors entered an appearance.

On January 19, 2024, Candidate filed a Motion to Dismiss Objectors' Petition ("Motion to Dismiss"). The Motion to Dismiss sets forth several arguments why the Objectors' Petition should be dismissed. First, Candidate argues Objectors' Petition does not comply with the requirements of Section 10-8 of the Election Code because the petition does not state the address of any of the Objectors' residences or the Objectors' interest. Moreover, Candidate argues Objectors' Petition fails to allege any facts demonstrating a legal deficiency with Candidate's nomination papers. Finally, Candidate argues that the Objectors who failed to appear at the Initial Case Management Conference should be dismissed from the proceedings. Objectors filed no Response to the Motion to Dismiss.

On January 23, 2024, Candidate filed a Case Management Status Report. Candidate's Status Report stated, (1) the legal issues are summarized and argued in Candidate's Motion to Dismiss Objectors' Petition; and (2) the Parties enter into no factual stipulations. Objectors did not file a Status Report as required by the Initial Case Management Order.

A hearing was held on Friday, January 26, 2024, at the State Board offices in Chicago and Springfield starting at approximately 9:00 a.m. The Hearing Officer and court reporter were present in Springfield. Candidate, through his counsel, and Objector, Arthur J. Jones (the only Objector to appear), were present in Chicago and appeared by video. Candidate moved to default the Objectors who had failed to appear and Objector Jones had no objection to the entry of default. Oral argument was heard from both parties as to the Pending Objection and Motion to Dismiss. Counsel for Candidate objected to Objectors' Petition based upon the lack of relevant, competent, admissible facts to support the objection and the objection merely recited a dispute over Candidate's policies and did not assert any lack of qualifications of Candidate to be placed on the ballot. No additional evidence was admitted, and no oral testimony was taken. Objector admitted at the hearing his objection did not challenge the sufficiency of any nominating papers filed by Candidate. Rather his objection was based upon "moral grounds".

ANALYSIS

A. Objectors' Failure to Include their Addresses or State Their Interest in Objectors' Petition Renders the Objection Invalid

Section 10-8 of the Election Code, made applicable to objections to nomination papers filed under Article 7 of the Election Code by 10 ILCS 5/7-12.1, provides that nomination papers shall be deemed to be valid unless objection thereto is duly made in writing within 5 business days after the last day for filing the nomination papers. 10 ILCS 5/10-8. "Any legal voter of the political subdivision or district in which the candidate * * * is to be voted on" may file an objection." 10 ILCS 5/10-8. Relevant here, Section 10-8 further provides that "[t]he objector's

petition shall give the objector's name and residence address and shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question and shall state the interest of the objector and shall state what relief is requested of the electoral board." 10 ILCS 5/10-8.

1. Failure to State Address

Objectors' Petition does not contain the residence address for any of the Objectors. The only address is a Post Office Box number for the America First Committee. In *Pochie v. Cook Cnty. Officers Electoral Bd.*, 289 Ill. App. 3d 585, 586 (1st Dist. 1997), the objector's petition alleged that "[t]he objector resides at 11006, Chicago, Illinois, Zip Code 60655, in the 28th Representative District of the State of Illinois, and is a duly qualified, legal and registered voter at that address." Thus, the objector's petition failed to name a street. The candidate moved to strike and dismiss the objection because "the objector's petition did not meet the requirements of section 5/10–8 of the Election Code of Illinois because the petition failed to state her address." *Pochie*, 289 Ill. App. 3d at 586. The court rejected the objector's argument that the address provision of Section 10-8 is directory and found it is mandatory. *Pochie*, 289 Ill. App. 3d at 586-99. The court concluded that "when the name of the street where an objector resides in an Illinois General Assembly legislative district is not given in the objector's petition, a candidate whose nominating petitions are being challenged cannot readily determine that the objector resides in the district." *Pochie*, 289 Ill. App. 3d at 587. Thus, the court affirmed the trial court's decision granting the motion to strike and dismiss the objectors' petition. *Pochie*, 289 Ill. App. 3d at 587.

Here, none of the Objectors' included their address on Objectors' Petition. Accordingly, Candidate's Motion to Dismiss is well-taken on this issue and the Objectors' Petition must be dismissed pursuant to *Pochie*, 289 Ill. App. 3d 585.

2. Failure to Identify Interest

Candidate asserts that Objectors' Petition does not sufficiently identify their respective interests as required by Section 10-8. Section 10-8 requires that an objector's petition shall "state the interest of the objector" 10 ILCS 5/10-8. Candidate relies on *Hagen v. Stone*, 277 Ill. App. 3d 388 (1st Dist. 1995) and *Wollan v. Jacoby*, 274 Ill. App. 3d 388 (1st Dist. 1995) for the proposition that this requirement is mandatory. Initially, both cases' discussion of mandatory versus directory had to do with Section 10-4. See *Hagen*, 277 Ill. App. 3d at 391, *Wollan*, 274 Ill. App. 3d at 393-94. Moreover, *Hagen* states that "[a]lthough the burden of proof in a proceeding to contest nominating petitions lies with the objector, an objector need not prove his interest, which is irrelevant for purposes of determining the validity of nominating petitions. Further, an objector is not required to prove standing as part of his prima facie case; rather, lack of standing is an affirmative defense which must be timely asserted by a candidate." *Hagen*, 277 Ill. App. 3d at 390 (citations omitted).

While candidate has asserted this defense here, neither Party cites any case addressing what is a sufficient statement of an objector's interest. In this case, Objectors' Petition notes they are citizens, voters, taxpayers and veterans of Illinois. It could be argued that they have implicitly stated their interest. However, given the statutory mandate that an objector's petition "state the

interest of the objector" (10 ILCS 5/10-8) and Objectors failure to file a Response, the Objectors' Petition should be dismissed for failure to state Objectors' interests as required by the Election Code.

B. Objectors' Petition Raises Issues Outside the Board of Elections' Scope of Inquiry as to Whether the Nominating Papers Comply with the Election Code and Therefore is Not a Proper Objection

Objectors' Petition states that "for the following issues herein listed, we are of the opinion that [Candidate] has no business seeking another 4-year term as President of this county." Objectors then set forth reasons why they claim Candidate's "open borders policy", economic policy, and foreign policy should result in Candidate being barred from the ballot. Additionally, Objectors argue that Candidate is "growing mentally feebler day by day. And physically weaker as well." "[F]or all these reasons listed in this appeal, objectors urge the State Board of Elections to "put aside any thoughts of loyalty to any political party and instead show the people of this state that * * * [it is] a courageous and honorable group of citizens who will put the interest of the people of Illinois first by banning Joe Biden from the ballot." As will be discussed below, these claims are not the proper basis of an objection to a candidate's nominating papers and the State Board of Elections is without power to order that a candidate's name not be placed on the ballot based upon an objector's disagreement with a candidate's policy decisions and age/physical condition.

Section 10-10 of the Election Code provides the following in pertinent part:

> The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained

10 ILCS 5/10-10. The Illinois Supreme Court has stated that "[u]nder section 10–10 of the Election Code, the function of an electoral board is limited to a consideration of objections to a candidate's nomination papers. An electoral board has no authority to certify, or to refuse to certify, candidates. As the statutes indicate, the function of an electoral board is to hear and pass upon objections to a candidate's nomination papers." *Kozel v. State Bd. of Elections*, 126 Ill. 2d 58, 68 (1988); see also *Goodman v. Ward*, 241 Ill. 2d 398, 411 (2011) ("Section 10–10 of the Election Code * * *, limits the scope of an election board's inquiry with respect to nominating papers to ascertaining whether those papers comply with the governing provisions of the Election Code").

Here, Objectors' Petition makes no objection that Candidate's nomination papers or petitions are not in proper form, whether they were filed within the time and under the conditions

required by law, or whether they are the genuine certificate of nomination or nomination papers or petitions which they purport to be. The only "law" cited in Objectors' Petition is a citation (in the section of the petition on Candidate's "open borders policy") to Article 4, Section 4 of the United States Constitution which states:

> The United States shall guarantee to every State in this Union a Republican Form of Government and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

While Objectors and others may have serious concerns about the situation at the border, that is not a proper subject of an objection to Candidate's nomination papers. Article 4 Section 4 has nothing to do with Candidate's nomination papers. The objections based on Candidate's policy decisions are outside the election board's permitted scope of inquiry with respect to nominating papers which inquiry is limited to ascertaining whether those papers comply with the governing provisions of the Election Code.

Accordingly, Objectors' Petition should be dismissed because it is not directed at Candidate's nominating papers but instead asks the State Board of Elections to bar Candidate from the ballot based upon his prior policy decisions and age/physical condition.

C. Objectors from Johanson, Sutterland, Johnson, DeGrelle and Smith Should Be Dismissed

Objectors Johanson, Sutterland, Johnson, DeGrelle and Smith failed to appear at the Initial Meeting of the Board and Case Management Conference, and have failed to enter appearances in this matter. Board Rule 3(c) states that such failure without good cause shown shall be sufficient grounds to default an objector provided that objector was served notice of the hearing. Objectors Johanson, Sutterland, Johnson, DeGrelle and Smith were provided notice of the Initial Meeting of the Board and the Case Management Conference and failed to appear at either. While Jones stated that he had been chosen by the other objectors to make appearances, he may not appear on their behalf. Board Rule 3(a) states that an objector may appear on their own behalf or appear by an attorney to practice law in the State of Illinois. Non-attorney's other than a party appearing *pro se* shall not appear or participate in the hearings on behalf of the objector.

For these reasons, Objectors Johanson, Sutterland, Johnson, DeGrelle and Smith should be defaulted and their objections stricken and dismissed.

D. Objector Admits he is not Challenging Candidate's Nominating Papers.

In the opinion of the Hearing Officer, there was no competent, admissible, and relevant evidence presented by Objector at the hearing to support any challenge to Candidate's

nominating papers.[1] Objector relied upon allegations contained in his Objectors' Petition to support his arguments without any further introduction of evidence. At the hearing, Objector admitted he was not objecting to Candidate's nominating papers and his objection was based upon "moral grounds." Thus, even if the Motion to Dismiss is denied and the merits of the Objection are ruled upon, it is recommended the Objection be overruled and Candidate be placed on the ballot.

Conclusions

It is recommended Candidate's Motion to Dismiss Objectors' Petition be granted because Objectors' Petition fails to state their residence addresses as required, fails to state their interest, and fails to object based on inadequacies with Candidate's nominating papers. Moreover, it is also recommended that the objections of Objectors Johanson, Sutterland, Johnson, DeGrelle and Smith be stricken and dismissed for their failure to appear at any hearing or enter their appearance.

However, if the Board disagrees with the granting of the Motion to Dismiss, it is recommended Objectors' Petition be overruled on the merits and Candidate be placed on the ballot.

Because Objectors have not filed a valid objection, the Hearing Officer recommends that Candidate's name **BE PLACED** on the ballot as a candidate for the Democratic Nomination for the Office of the President of the United States.

DATED: January 26, 2024

/s/ David A. Herman
David A. Herman, Hearing Officer

[1] However, given the recommendation to grant the Motion to Dismiss and Objector's admissions at the hearing (no challenge to nomination papers and objection based upon "moral grounds"), there is no need to engage in an evidentiary analysis for matters presented at the hearing.

CERTIFICATE OF SERVICE

The undersigned certifies that on this 26th day of January, 2024, service of the foregoing document was made by electronic transmission from the office of the undersigned to the following individuals:

Arthur J. Jones
7744 Ogden Avenue
Lyons, IL 60534
Afcartjones88@gmail.com

General Counsel
Illinois State Board of Elections
GeneralCounsel@elections.il.gov

Joseph R. Biden, Jr.
c/o James Morphew
Kevin Morphew
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Suite 200
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jmmorphew@sorlinglaw.com
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/s/ Mikie E. Ray

Mikie E. Ray, Paralegal
GIFFIN, WINNING, COHEN & BODEWES, P.C.
900 Community Drive
Springfield, Illinois 62703
Phone: (217) 525-1571

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE UNITED STATES

Arthur J. Jones, Eric Johanson, Scott Sutterland, Walt Johnson, Therese DeGrelle, and Anne Marie Smith,	)	
Petitioner-Objectors,	)	
v.	)	**Case No. 24SOEBGP522**
Joseph R. Biden, Jr.,	)	
Respondent-Candidate.	)	

NOTICE OF FILING

TO: Arthur J. Jones
Afcartjones88@gmail.com

General Counsel
Illinois State Board of Elections
GeneralCounsel@elections.il.gov

Hearing Officer David Herman
DHerman@gwcblaw.com

PLEASE TAKE NOTICE that on January 19, 2024, I filed with the State Officers Electoral Board the attached Motion to Dismiss Objectors' Petition, a copy of which is hereby served upon you.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Motion to Dismiss Objectors' Petition was served upon the persons referenced above via e-mail before 5:00 p.m. on January 19, 2024.

/s/ James M. Morphew

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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR NOMINATION TO THE OFFICE OF PRESIDENT OF THE UNITED STATES

Arthur J. Jones, Eric Johanson, Scott Sutterland, Walt Johnson, Therese DeGrelle, and Anne Marie Smith,	)	
Petitioner-Objectors,	)	
v.	)	**Case No. 24SOEBGP522**
Joseph R. Biden, Jr.,	)	
Respondent-Candidate.	)	

MOTION TO DISMISS OBJECTORS' PETITION

NOW COMES Respondent-Candidate Joseph R Biden Jr (hereinafter "Candidate"), by and through his attorneys, Kevin M. Morphew and James M. Morphew, and for his Motion to dismiss the Objectors' Petition, states as follows:

A. Objectors' Petition does not comply with Section 10-8 of the Election Code's pleading requirements for an Objectors' Petition.

Section 10-8 of the Election Code states in pertinent part:

> "The objector's petition ***shall give*** the objector's name and ***residence address***, and ***shall state fully the nature of the objections*** to the certificate of nomination or nomination papers or petitions in question, and ***shall state the interest of the objector*** and shall state what relief is requested of the electoral board."

10 ILCS 5/10-8 (West 2024) (emphasis added). Further, Section 10-8 requires an objector to be a "**legal voter** of the political subdivision or district in which the candidate…is to be voted on…" *Id.*

a. Objectors' Petition fails to state any of the Objectors' residence addresses, in violation of the Election Code.

It is well established that an objector's petition must list the residence address of the objector. *Pochie v. Cook County Officers Electoral Bd.*, 682 N.E.2d 258, 259-260 (1st Dist. 1997) (holding that the address provision of Section 10-8 is mandatory and affirming dismissal of the objector's petition for failing to specify the street name in the residence address of the objector). In *Pochie*, the the objector's failure to provide the street name in the objector's residence address was fatal. *Id.* at 259-260. The Court determined that the failure to provide a street name deprived the candidate whose nominating petitions were challenged the opportunity to determine whether the objector is a registered voter who resides in the district. *Id.* Since the failure to plead an objector's address is an affirmative defense which must be raised by the candidate, the *Pochie* Court went on to conclude that the failure to include the residence address places an undue burden on the candidate because the candidate "would be unable to make the decision to raise a defense without taking extraordinary steps to determine whether an objector resides in the relevant political subdivision." *Id.* at 260.

In this case, all six Objectors failed to provide a residence address anywhere in the body of the Objectors' Petition. In fact, the only "address" to be found in this filing is a Post Office Box number for the America First Committee on a document best characterized as a press release, which is attached to the purported Objectors' Petition.

As in *Pochie*, the absence of a residence address in the Objectors' Petition requires dismissal of the Petition for failure to comply with a mandatory provision of Section 10-8 of the Election Code. Because of this deficiency alone, the Motion to Dismiss should be granted.

b. The failure to provide the Objectors' residence addresses deprives the Candidate of the ability to determine if the Objectors are legal voters.

As noted above, Section 10-8 requires an objector to be "a legal voter of the political subdivision or district in which the candidate…is to be voted on…" 10 ILCS 5/10-8 (West 2024). Objectors' failure to provide their residence addresses places an undue burden on a candidate who seeks to dismiss an objector's petition due to the objector's failure to meet the "legal voter" requirement of Section 10-8.

Merely listing a Post Office Box on a document attached to the purported Objectors' Petition is legally insufficient. The Election Code specifically requires a permanent abode to constitute a residence necessary to become a registered voter. 10 ILCS 5/3-2(a) (West 2024). Since a Post Office Box is not a permanent abode, it does not qualify as a residence address. Since the Objector's Petition does not provide a residence address, the Candidate is deprived the opportunity to determine if Objectors are legal voters entitled to challenge the Candidate's petitions. The absence of a residence address in the purported Objectors' Petition precludes the Candidate from pursuing a motion to dismiss the Objectors' Petition on the grounds that the Objectors are not legal voters as required by Section 10-8. Therefore, the Motion to Dismiss should be granted.

c. Objectors' Petition fails to state the interest of the Objectors, in violation of the Election Code.

Section 10-8 also states that an objector's petition shall state the interest of the objector. (10 ILCS 5/10-8 West 2024). Courts have repeatedly recognized this requirement as mandatory. *Hagen v. Stone*, 660 N.E.2d 189, 190 (1st Dist. 1995) (West 2024); *Wollan v. Jacoby*, 653 N.E.2d 1303, 1306 (1st Dist. 1995) (West 2024). Here, the Objectors' Petition fails to state what interest the Objectors have in filing their objection. The failure to comply with this simple requirement renders the Objection invalid and the Motion to Dismiss should be granted.

B. Objectors' Petition fails to allege specific facts that demonstrate any legal deficiency with Candidate's nomination petitions.

As noted above, Section 10-8 of the Election Code requires an objector's petition to "fully state the nature of the objection." 10 ILCS 5/10-8 (West 2024). It is well established that an objector's petition must provide adequate notice and specificity in order to sustain a minimal burden of proof with respect to the alleged deficiencies in the nomination papers. *Vojik v. Marinaro*, No. 89-COEB-TC-03 (Cook Cty. Electoral Board 1990); *Blakemore v. Shore*, No. 11-COEB-MWRD-03 (Cook Cty. Electoral Board 2012) ("failure to describe potential defect that may or may not reside somewhere in the petition" by "provid[ing] specifics" is a "fatal pleading defect.").

In this case, the Objectors' Petition is couched in terms of a generalized policy disagreement with certain actions the Candidate is alleged to have taken as President of the United States, leaving the Candidate to guess the specific nature of the purported objections.

Moreover, the Petition completely fails to allege any deficiency with the nomination petitions filed by the Candidate. Indeed, the Petition fails to cite any statute or case law whatsoever, let alone a specific law that was allegedly violated. It is well established that the Electoral Board's authority is limited to determining whether nomination petitions comply with the Election Code. 10 ILCS 5/10-10; *Wiseman v. Elward*, 283 N.E.2d 282, 288, 1st Dist. 1972. It is not the role of an electoral board to decide policy disputes between citizens and political candidates.

Because the Objectors' Petition fails to allege specific facts demonstrating any legal deficiency with the Candidate's nomination papers, or provide adequate notice to the Candidate of deficiencies in the nomination papers, the Objectors' Petition should be stricken and dismissed in its entirety.

C. The Objectors who Failed to Appear at the Initial Case Management Conference Should be Dismissed from the Proceedings

Pursuant to Board Rule 3(c), "the failure of an objector to appear at the Initial Meeting of the Board … without good cause shown shall be sufficient grounds to default such objector, provided that the objector was served with notice of the hearing." Rule 3(c), Rules of Procedure. At the Initial Meeting of the Board and subsequent Case Management Conference with the Hearing Officer and Parties, only one individual, Arthur L. Jones, was present and participated via conference call with the Hearing Officer and counsel for the Candidate also present. No other objectors, namely Eric Johanson, Scott Sutterland, Walt Johnson, Therese DeGrelle and Anne Marie Smith, appeared at the hearings. In fact, Objector Arthur L. Jones stated for the record that he had been chosen by the other objectors to make appearances. Since Arthur L. Jones is not a licensed attorney in the State of Illinois, he cannot appear on behalf of other objectors. *See* Rule 3(a), Rules of Procedure. Therefore, the objectors Eric Johanson, Scott Sutterland, Walt Johnson, Therese DeGrelle and Anne Marie Smith should be dismissed from this case for failure to appear without good cause shown.

WHEREFORE, for the foregoing reasons, the Candidate respectfully prays that the Motion to Dismiss be GRANTED in full, that the Objectors' Petition be dismissed and OVERRULED, that those Objectors who failed to appear at the Initial Meeting of the Board be defaulted and dismissed, and that the name of Joseph R Biden Jr be printed on the ballot for the office of President of the United States to be voted on at the General Primary Election to be held on March 19, 2024.

Respectfully submitted,
JOSEPH R BIDEN JR, Candidate

BY: /s/ Kevin M. Morphew

Kevin M. Morphew
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FOR IMMEDIATE RELEASE

As citizens,voters,taxpayers and veterans of Illinois, the America First Committee, in alliance with several other groups in Illinois, have presented to the Illinois State Board of Elections on January 12,2024 our justifiable and reasonable objections to the placement of President Joseph R. Biden's name on the ballot for the March 19,2024 primary and the November 2024 general election.

We have selected just four issues,out of many others we could have chosen, to present to the Illinois State Board of Elections as to why they should shun loyalty to any political party and put the interests of the people of Illinois first,by banning President Biden from the ballot.

Our reasons why this action should be taken are set forth in the following 4 pages that are attached to this press release.

I have been selected by the other patriotic groups representatives to be their spokesman as they are well aware of what we are asking the Illinois State Board of Elections to do is very controversial and for them and their families even dangerous.

I can be contacted for any questions from any representative of the mass media if you have any need to speak with me via these methods:

Telephone – (708) 676-2005 E-mail: AFCartjones88@gmail.com

Post Office Box America First Committee,598 Lyons,Ill. 60534

Thank You

Arthur J. Jones

"OFFICIAL SEAL"
JAHAIRA M TRUJILLO
Notary Public, State Of Illinois
My Commission Expires April 24, 2027
Commission No. 970664

01/12/2024

An Appeal to Ban President Joe Biden from the March 19,2024 Primary and the November 2024 General Election

We, the undersigned,as citizens,voters,taxpayers and veterans of Illinois appeal to the Illinois State Board of Elections,to do their duty and Ban President Joseph Biden from the upcoming March primary and the November 2024 General Election to be held in Illinois.

For the following issues herein listed, we are of the opinion that this man has no business seeking another 4 year term as President of this country.

1. His "OPEN BORDERS POLICY"- He has endangered the national security of this country by allowing over 3 million illegal aliens from over 160 foreign countries to enter this country since he has been in office.

   As a result of this dangerous and reckless policy, thousands of these aliens have been allowed to roam our cities and in the process, engage in all kinds of serious criminal activity such as dealing in the deadly drug Fentanyl, a drug made in Communist China and smuggled into the U.S. by illegal alien drug cartels. And this has resulted in over 100,000 Americans dying from this drug last year.

2. Another result of this "OPEN BORDERS POLICY" is the spreading of diseases across the country by these illegal aliens. As just one example, the third largest city in this country – CHICAGO - is plagued by hundreds of illegal aliens who are suffering from an outbreak of Chickenpox – at last count over 400 cases. And possibly the deadly African Disease, EBOLA. A 5 year old boy in a warehouse in Chicago packed with over 2,300 illegal aliens died while bleeding from his nose and mouth. There is a good chance some of these illegal aliens from Africa could easily enter this country and in the process of NOT BEING SCREENED FOR DISEASE,could be sick with this deadly bleeding disease. And it could spread.

3. Biden's illegal alien policy is clearly a violation of the CONSTITUTION OF THE UNITED STATES – Article 4,section 4 : "The United States shall guarantee to every State in this Union a Republican form of Government, and shall protect each of them against invasion; and on Application of the Legislature,or of the Executive (when the Legislature cannot be convened) against domestic violence."

By allowing and assisting illegal aliens to enter this country spreading crime, deadly drugs and diseases, Biden has violated his oath of office and clearly and deliberately violated the Constitution of the UNITED STATES thus proving to the people of Illinois he should be banned from the ballot in Illinois.

BIDEN'S ECONOMIC POLICY - It has been a disaster,getting worse by the day. Inflation has robbed the average middleclass family of $7,500 in annual income. Retirement Plans lost ONE TRILLION DOLLARS and Pension Plans lost in the 3rd quarter of 2023,$3.3 TRILLION DOLLARS.

And by shutting down the Keystone XL Pipeline, he put thousands of Americans out of work and ended the Energy Independence from foreign oil we once had under President Trump. Now we are once again dependent upon foreign oil imports for our energy needs, thus endangering our national security.

Meanwhile, Biden's stated objective is to completely SHUT DOWN AND TO TOTALLY ELIMINATE THE FOSSIL-FUEL INDUSTRY. Should he do so, literally millions of Americans would be rendered unemployed and likely it would lead to a DEPRESSION GREATER THAN THAT OF 1929.

And his irresponsible decision to rely on unreliable sources of energy such as wind,solar, and thermal energy,as a replacement for the coal,oil, and gas derived energy,will not meet the needs of this nation,thus turning the United States into a powerless third-world nation. All this misery just to satisfy Biden's delusional "Green Revolution."

BIDEN'S COSTLY FOREIGN POLICY – If ever there was a time for some new leadership in Washington,D.C.,now is the time. The Biden foreign policy is NOT BASED ON ANY AMERICAN NATIONAL INTEREST. It is based on the greed and corruption of Joe Biden and his son Hunter Biden.

Both Biden's are guilty of accepting bribes from two foreign governments: the Ukraine and the government of Communist China. In exchange for a few million in the pockets of Hunter Biden and Joe Biden, the U.S. Gov. has spent $150 BILLION DOLLARS in support of the Ukraine's war with Russia. China meanwhile is preparing an invasion of Taiwan,a true U.S. ally. As long as China keeps money flowing to Joe and Hunter Biden,the Chinese Communists have nothing to worry about.

For that treasonable corruption Biden deserves to be banned from the ballot.

And in another part of the world, Biden has embroiled this country in a war in the Middleast between Israel and the organization called Hamas. After a supposed surprise attack on Israeli settlers near Gaza,a community of 2.3 Million people, Israel engaged in a campaign of savage mass murder, to avenge claims Israel made about the death of 1,200 Israeli settlers and taking 240 hostages.

We have yet to see such numbers of dead Jews. Even if it is true, that does not in any way justify the genocidal actions of Israel against the Palestinian people of Gaza.

As proof,consider these statistics of casualties compiled by various governments and United Nations agencies who have seen the carnage unleashed by the failure of Joe Biden to call for an end to Israel's campaign of mass murder.

Instead of calling for an end to this cold-blooded slaughter,Biden instructed our U.N. Ambassador to cast a VETO to block any action that could lead to the end of Israel's war to NOT DESTROY HAMAS,but to drive out all of the people of Gaza and annex their land for the benefit of Israel.

Now here are the real fact of what Joe Biden is supporting as of 1/10/2024:

30,676 DEAD	WOUNDED	HOMELESS	BUILDINGS
12,040 children;	62,216	1,935,000	355,000 damaged;
6,103 women	70% women		67,214 totally destroyed
105 journalists	& children		

Here is what the leaders of Israel have said about what the have done so far:

Prime Minister Netanyahu:
"We will turn Gaza into an island of ruins."

Yoa Gallant
Defense Minister:
"There will be no food, no water,no electricity, we are fighting animals are acting accordingly."

Daniel Hagari, IDF officer: "We are dropping hundreds of tons of bombs, focusing on destruction,not on accuracy."

Glassan Alian
Major Gen.IDF:
"You animals wanted Hell,

Ariel Kellner
Likud Party:
"Now there is only one goal:

and you'll get Hell."

NAKBA (expulsion of all Palestians),a NAKBA that will dwarf the NAKBA of 1948."(That was the time of the slaughter of several hundred Palestians in the village of DEIR YASSEN by the Jewish terrorist gang the the IRGUN,which led 700,000 unarmed Palestians to flee their homes in order to avert other massacres by the heavily armed Jewish terrorists.)

For supporting Israel's war against the Palestinian residents of Gaza, he has brought shame upon this nation that the whole world can see, that Joe Biden is nothing more than a puppet of the Jews of Israel. And that is yet another reason why his name should be barred from the ballot in Illinois.

Finally, President Biden is growing mentally feebler day by day. And physically weaker as well. Anyone who has seen how he can stumble about in a daze or lose his balance and fall down or simply forget or not know where he is or who he is talking to, has to conclude as we do,that this man should not be allowed to lead this country.

And for all these reasons listed in this appeal, we urge you to put aside any thoughts of loyalty to any political party and instead show the people of this state that you, the Illinois State Board of Elections are a courageous and honorable group of citizens who will put the interests of the people of Illinois first by banning Joe Biden from the ballot.

Arthur J. Jones, National Chairman America 1st Committee

Eric Johanson, President of Veterans of Jewish Wars (VJW)

Scott Sutterland, VJW Vice President

Walt Johnson, member 2nd Amendment Defense Committee

Therese DeGrelle, member Judicial Watch

Anne Marie Smith, Catholics for Life

SOURCES FOR THE APPEAL

Taxpayers for Peace.org

If Americans Only Knew.com

American Free Press – Washington,D.C. newspaper

Euro-Med Monitor – a European medical organization

Al Jazeera

Palestine Ministry of Health

Palestine Red Cresent (Muslim version of the Red Cross)

Harretz (Israeli newspaper)

Chicago Tribune – various issues on crime in Chicago

Chicago Sun Times – various issues on immigration in Chicago

Strategic Intelligence-an investment news letter

Wall Street Journal – various issues on President Biden