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HAND DELIVERED

The Honorable Shenna Bellows
Office of the Secretary of State
148 State House Station
Augusta, Maine 04333-0418

Dear Secretary Bellows:

Pursuant to 21-A M.R.S. §§ 336 and 337 (2023), Kimberley Rosen, a registered voter of the Town of Bucksport, Thomas Saviello, a registered voter of the Town of Wilton, and Ethan Strimling, a registered voter of the City of Portland (collectively the “Challengers”), by and through undersigned counsel, hereby submit the following challenge to the validity of the consent and primary petitions submitted by Donald J. Trump to appear as a candidate in the Republican presidential primary election to be held on March 5, 2024. Specifically, and as further summarized herein, this challenge asserts the following two grounds upon which such consent and petitions must be declared void:

First, former President Trump does not meet the qualifications of the office of President of the United States. Specifically, pursuant to section 3 of the Fourteenth Amendment (“Section 3”) to the Constitution of the United States, having previously taken an oath to support the Constitution, Trump engaged in insurrection against

the same, and therefore is now ineligible to hold any office, civil or military, under the United States. Pursuant to 21-A M.R.S. § 336(3), Trump’s primary petition must include a written consent, which “must contain a statement that the candidate meets the qualifications of the office the candidate seeks,” and if “any part of the declaration is found to be false by the Secretary of State, the consent and the primary petition are void.” Section 3 contains a “qualification[] of the office” that Trump seeks within the meaning of section 336(3). Because Trump is not eligible to hold the office of President of the United States, his declaration is false, and his consent and primary petitions are void.

Second, in the alternative, if the Secretary determines that the scope of Mr. Trump’s oath can *only* be construed as being limited to the qualifications contained on the list of constitutional requirements prepared by the Secretary and appearing on the form on which it was made, the consent is invalid because—for the same reason outlined above—the list is incomplete. Here, the error is material to former President Trump’s eligibility, and any attempt to cure the defective consent would be futile, because Trump is not eligible to hold the office of President of the United States.

On November 17, 2023, a state trial court in Colorado concluded that Donald Trump had “engaged in an insurrection on January 6, 2021 through incitement,” within the meaning of the Fourteenth Amendment. *Anderson v. Griswold*, No. 2023CV032577, 2023 Colo. Dist. LEXIS 362, ¶ 298 (Co. Dist. Ct., Denver, Nov. 17, 2023). Challengers have enclosed a copy of that decision, and incorporate here by reference each of the findings contained in paragraphs 39 through 193 of that

decision, as well as the conclusions of law contained in paragraphs 209, and 225 through 298, hereinafter cited as *Anderson* by reference to the paragraphs as numbered in the attached order.¹ See *In re Jonas*, 2017 ME 115, ¶ 38 n. 10, 164 A.3d 120 (holding that the reasonable person standard of evidentiary admissibility permits a fact-finder to rely on findings made in other jurisdictions' judgments).

I. Maine Ballot Access Statutes

Section 442 of Title 21-A (2023) provides that ballot access petitions circulated by persons desiring to appear in the Maine presidential primary must be completed and filed with the Secretary of State, “in the manner provided in sections 335 and 336.” *Id.* Section 336, in turn, provides that “[t]he written consent of each candidate must be filed . . . with that candidate's primary petition or [earlier]. . . .” *Id.* Section 336(3) requires that consent to contain a declaration stating:

that the candidate meets the qualifications of the office the candidate seeks, which the candidate must verify by oath or affirmation before a notary public or other person authorized by law to administer oaths or affirmations that the declaration is true. If, pursuant to the challenge procedures in section 337, any part of the declaration is found to be false by the Secretary of State, the consent and the primary petition are void.

Id.

The challenge procedure of section 337 require that challengers must be “registered voter[s] residing in the electoral division of the candidate concerned. . . .”

¹ Challengers adopt the court's relevant findings of fact in full, and, for the sake of brevity, the bulk of the incorporated findings of fact are not repeated here. Challengers also adopt the court's relevant conclusions of law, excluding the court's erroneous final conclusions regarding the applicability of Section 3 to the office of President and those who have sworn its required oath. Petitioners in the Colorado case appealed that single issue to the Colorado Supreme Court, which held oral arguments on December 6.

21-A M.R.S. § 337(2)(A). For this statewide election, each of the challengers meets this requirement. Section 337(2)(A) also requires that “the challenge must be in writing and must set forth the reasons for the challenge. . . . [and] filed in the office of the Secretary of State before 5 p.m. on the 5th business day after the final day for filing petitions. . . .” *Id.*

II. The Fourteenth Amendment

Following the Civil War, the Joint Committee on Reconstruction—led by Senator William Pitt Fessenden of Maine—was appointed to decide the terms and conditions upon which representation from the defeated southern states could be readmitted to Congress. The committee recommended adoption of a Fourteenth Amendment to the United States Constitution, including a provision designed to ensure “the exclusion from positions of public trust of . . . those whose crimes have proved them to be . . . unworthy of public confidence.” *Report of the Joint Committee on Reconstruction*, 39th Cong., 1st Sess. (1866), at xviii.²

Section 3 of the Fourteenth Amendment imposes a qualification—or more precisely a disqualification—for holding federal or state office, just as an age or residency requirement. *See e.g. Anderson*, ¶ 226; *New Mexico ex rel. White v. Griffin*, No. D-101-CV-2022-00473, 2022 N.M. Dist. LEXIS 1 at *44 (N.M. Dist. Ct. Sep. 6, 2022), *appeal dismissed*, No. S-1-SC-39571 (N.M. Nov. 15, 2022); *see also U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 787 n.2 (1995) (suggesting, without deciding,

² Senator Fessenden was the primary author of the Committee’s Report. Graber, Mark, *Punish Treason, Reward Loyalty: The Forgotten Goals of Constitutional Reform After the Civil War*, 69 (Kansas, 2023).

same).

The text of 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.

U.S. Const. amend. XIV § 3 (emphasis added).

The plain language and history of Section 3 demonstrate that its disqualification does not require an enabling statute, and must be enforced in state level proceedings where state law provides an appropriate vehicle to assert the claim. Section 3 dictates that “[n]o person *shall*” hold public office if its conditions are met, a constitutional command identical in language and force to the qualifications imposed by Article I, section 2 (“[n]o Person shall be a Representative . . .”), Article I, section 3 (“[n]o Person shall be a Senator . . .”), Article II, section 1 (“[n]o Person . . . shall be eligible to the Office of President . . .”), and section 1 of the Twenty-Second Amendment (“[n]o person shall be elected to the office of the President . . .”). States have never required permission to enforce Section 3, nor the other provisions of the Fourteenth Amendment. *See, e.g., Griffin*, 2022 N.M. Dist. LEXIS 1 (adjudicating Section 3 challenge under state law); *Worthy v. Barrett*, 63 N.C. 199, 204 (1869), *appeal dismissed sub nom. Worthy v. Comm’rs*, 76 U.S. 611 (1869) (same); *Alliance for Retired Americans v. Sec’y of State*, 2020 ME 123, 240 A.3d

45 (adjudicating Fourteenth Amendment Due Process Clause claim brought directly under the Constitution); *see also Rowan v. Greene*, No. 2222582-OSAH-SECSTATE-CE-57-Beaudrot (Ga. Off Admin. Hr'gs May 6, 2022) (adjudicating Section 3 challenge in state administrative proceeding).³

III. The Application of Section 3 to Donald Trump

Former President Trump is ineligible to hold the “office” of President under Section 3 because: (1) he took an “oath . . . as an officer of the United States . . . to support the Constitution of the United States” on January 20, 2017; (2) the January 6 attack on the U.S. Capitol constituted an “insurrection” against the Constitution of the United States; and (3) Trump “engaged in” that insurrection.

A. Trump swore an oath as an officer of the United States, and the office of President is an office under the United States.

The Constitution’s plain text makes clear that Section 3 applies to the office of President and its oath by referring to the President holding an “Office” 25 times, including in the Oath of Office Clause.⁴ See U.S. Const. art. I, § 3, art. II, §§ 1, 4, amends. XII, XXII, XV. Trump became subject to Section 3 disqualification when he swore to “faithfully execute the Office of President of the United States,” and “to the

³ States plainly have authority through their ballot access statutes to require that candidates for President must be eligible to hold the office. U.S. Const. art. II, sec. 1 (“[e]ach State shall appoint, in such Manner as the Legislature thereof may direct . . .”); *see also e.g. Hassan v. Colorado*, 495 F. App’x 947, 948 (10th Cir. 2012) (upholding ballot exclusion of constitutionally ineligible presidential candidate); *Lindsay v. Bowen*, 750 F.3d 1061 (9th Cir. 2014) (same).

⁴ Conversely, Section 3 itemizes Senators, Representatives, and electors, because nowhere in its pages does the Constitution refer to them as holding an “office.”

best of [his] Ability, preserve, protect and defend the Constitution of the United States.” U.S. Const. art. II § 1, cl. 8. 354. Section 3 does not only refer to certain federal offices, but to “*any* office, civil or military, under the United States” *Id.*; see *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (defining the word “any” to have “an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’”) (citation omitted)). It would be absurd for a Congress concerned with protecting “positions of public trust” from those Constitutional oathbreakers proven “unworthy of public confidence” to omit the position of greatest trust and those who had violated the Constitution’s most solemn oath.

Members of Maine’s congressional delegation certainly thought that Section 3 applied to the office of President and its oath. During Senate debate on passage of the amendment, Senator Reverdy Johnson, a Democrat from Maryland—and an opponent of the proposal—asked why former rebels “may be elected President and Vice-President of the United States, and why did you omit to exclude them?” Senator Lot Morrill of Maine—a Republican supporter of the proposal—responded: “Let me call the Senator’s attention to the words ‘or hold any office, civil or military, under the United States.’” Senator Johnson replied: “Perhaps I am wrong as to the exclusion from the presidency; no doubt I am.” *Cong. Globe*, 39th Cong., 1st Sess. 2899 (1866). Years later, Representative James Blaine, a Republican who had served Maine in Congress since 1863, opposed a blanket amnesty proposal by arguing that it would allow Jefferson Davis to “be declared eligible and worthy to fill any office up to the Presidency of the United States.” 4 *Cong. Rec.* 325 (1876). To the framers of the 14th

Amendment, that would have been an abomination.

B. January 6 was an insurrection.

“Insurrection,” as the term is used in Section 3, means “(1) a public use of force or threat of force (2) by a group of people (3) to hinder or prevent execution of the Constitution of the United States.” *Anderson*, ¶ 240. In this context, courts and other authorities have consistently used a broadly similar definition only varying in articulation, one which comports with the legal and legislative usage of the term around the time of the drafting of the Fourteenth Amendment. *See e.g. Griffin*, 2022 N.M. Dist. LEXIS 1 *48, (“(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”); *Case of Fries*, 9 F. Cas. 924, 930 (C.C.D. Pa. 1800) (a “rising of any body of the people, within the United States, to attain or effect by force or violence any object of a great public nature, or of public and general (or national) concern”). Here, where a violent mob breached the Capitol while Congress was performing a core constitutional function, in an effort to obstruct that core function, the specific definition is almost irrelevant. This was an insurrection.⁵

C. Trump engaged by inciting the violent mob on January 6.

“Engagement” in an insurrection was interpreted during the period of

⁵ Bipartisan majorities of both houses of Congress and more than a dozen federal courts have referred to the events of January 6 as an insurrection. *E.g.*, S. 35, 117th Cong. (2021); H.R. 3325, 117th Cong. (2021-2022); *United States v. Munchel*, 991 F.3d 1273, 1281 (D.C. Cir. 2021); *United States v. Brockhoff*, 590 F. Supp. 3d 295, 298-99 (D.D.C. 2022); *United States v. Randolph*, 536 F. Supp. 3d 128, 132 (E.D. Ky. 2021).

ratification by the United States Attorney General Henry Stanberry as “an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose.” The Reconstruction Acts, 12 Op. Att’y Gen. 182, 204 (1867); *see also Anderson*, ¶ 254 (quoting Stanberry); *United States v. Powell*, 65 N.C. 709 (C.C.D.N.C. 1871) (jury instructions stating that “the word ‘engage’ implies, and was intended to imply, a voluntary effort to assist the Insurrection or Rebellion, and to bring it to a successful termination.”). “Engagement” includes the incitement of others to commit acts of insurrection. The Reconstruction Acts, 12 Op. Att’y Gen. 182, 205 (“disloyal sentiments, opinions, or sympathies would not disqualify, but where a person has by speech or by writing, incited others to engage in rebellion, he must come under the disqualification.”); *see also Anderson*, ¶ 255 (a provision whose purpose was to exclude the oathbreaking *leaders* of an insurrection would naturally include the incitement of that insurrection, because, “[i]nstigation and incitement are typically actions taken by those in leadership roles, and not, for example, by those on the front lines, with weapon in hand.”).

Here, as the Colorado court held, there can be no doubt that Trump “engaged” in insurrection by inciting the violence on January 6. *Anderson* ¶¶ 288-298. Trump’s conduct and words “were the factual cause of . . . the January 6, 2021 attack on the United States Capitol.” *Id.* ¶ 145. He called his supporters to Washington for a “wild” protest on January 6, “incited” them with words that “explicitly” and “implicitly” commanded violence, and then they violently stormed the Capitol. *Id.* ¶¶ 129, 144-45, 169-93, 288-98.

“[P]rior to the January 6, 2021 rally, Trump knew that his supporters were angry and prepared to use violence” and “did everything in his power to fuel that anger” by repeatedly and falsely asserting imaginary election fraud. *Id.* ¶¶ 87-112, 120-22, 128. After the electoral college voted, Trump lured his supporters to Washington by falsely promising that on January 6, Pence could overturn the election results. *Id.* ¶¶ 113-19, 127. He called the allegedly stolen election an “act of war.” *Id.* ¶¶ 121-122. Despite knowing the risk of violence and that the crowd was angry and armed, *id.* ¶¶ 134-35, Trump incited violence both explicitly and implicitly. He repeatedly called out Pence, told the crowd to “fight like hell” and used other variations of “fight” 20 times, repeatedly insisted that “we” (including the agitated crowd) could not let the certification happen, and promised that he would march with them to the Capitol. *Id.* ¶¶ 135, 137-38. He said “[w]hen you catch somebody in a fraud, you’re allowed to go by very different rules,” commanding the crowd to use unlawful means rather than normal political advocacy. *Id.* ¶¶ 135, 144.

Trump added the most inflammatory remarks himself; they were not part of the written teleprompter speech. *Id.* ¶¶ 136-39. During the speech, listeners shouted, “storm the Capitol!” and “invade the Capitol Building!” *Id.* ¶ 141. “Trump’s Ellipse speech incited imminent lawless violence” and “was intended as, and was understood by a portion of the crowd as, a call to arms.” *Id.* ¶¶ 144-45. Trump knew and intended that his supporters would take his words not “symbolically” but as “literal calls to violence.” *Id.* ¶¶ 84-85. Trump knew “the power that he had over his supporters,” *id.* ¶ 143, and that “his supporters were willing to engage in political violence and that

they would respond to his calls for them to do so,” *id.* at ¶ 289; *see also id.* ¶¶ 130-35. For years, Trump and his extremist followers had repeated a pattern of his calling for violence using similar language, supporters then engaging in violence, and Trump finally rewarding them with praise for that violence. *Id.* ¶¶ 42, 61-86. By January 6, Trump knew how some of his supporters would respond to his rhetoric, and used that language deliberately to cause violence. *Id.* ¶¶ 85, 142-45.

Trump did nothing to stop the mob for nearly three hours, instead pouring fuel on the fire. *Id.* ¶¶ 169-86. He knew by 1:21 pm the Capitol was under siege, but made no effort to mobilize federal law enforcement or the National Guard. *Id.* ¶ 169, ¶¶ 181-85. “Trump ignored pleas to intervene and instead called Senators urging them to help delay the electoral count,” telling Rep. Kevin McCarthy, “I guess these people are more upset about the election than you are.” *Id.* ¶ 180. Most damning, at 2:24 pm, while Trump knew the Capitol was under violent attack, he tweeted: “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!” *Id.* ¶ 170. This tweet “encouraged imminent lawless violence by singling out Vice President Pence and suggesting that the attacking mob was ‘demand[ing] the truth. . . .’” and “paint[ed] a ‘target’ on the Capitol,” causing the mob to surge violently and forcing lawmakers and Pence to flee. *Id.* ¶¶ 172-77.

Trump finally told the mob to leave at 4:17 p.m., in a message that actually praised the attackers and justified their actions. *Id.* ¶¶ 186-90. But just hours later,

Trump celebrated the violence again. *Id.* ¶¶ 189. Even years later, Trump continues to insist that alleged 2020 election fraud justified “termination of all rules, regulations, and articles, even those found in the Constitution.”⁶ At his rallies, he now plays a rendition of the national anthem sung by a prison choir of January 6 insurrectionists, including some convicted of violent assault on police officers at the Capitol.⁷ He refers to these men as “hostages.”⁸ The Colorado court correctly concluded that Trump intend to incite unlawful political violence directed at the Capitol to disrupt the electoral certification, *id.* ¶ 288, and that his language used consistently leading up to and throughout January 6, 2021 was likely to incite imminent violence. *Id.* ¶ 296.

IV. Conclusion

The Constitution commands that, having sworn an oath to “preserve, protect, and defend” it, and then having desecrated that oath by directing a violent mob to storm the Capitol while Congress was performing a core constitutional function essential to the transition of power, Trump is ineligible to hold *any* office under the

⁶ Kristen Holmes, *Trump calls for the termination of the Constitution in Truth Social post*, CNN, Dec. 4, 2022, <https://www.cnn.com/2022/12/03/politics/trump-constitution-truth-social/index.html>.

⁷ *Behind Trump’s musical tribute to some of the most violent Jan. 6 rioters*, Washington Post (May 4, 2023), <https://www.washingtonpost.com/investigations/interactive/2023/trump-j6-prison-choir/>.

⁸ Jake Traylor, *Trump calls people charged and convicted for Jan. 6 riots ‘hostages’*, NBC News (November 3, 2023), <https://www.nbcnews.com/meet-the-press/meetthepressblog/trump-calls-people-charged-convicted-jan-6-riots-hostages-rcna123617>.

United States, least of all the office of President. Pursuant to 21-A M.R.S. §§ 336 and 337 (2023), the Secretary must remove his name from the presidential primary ballot.

Sincerely,


/s/ Benjamin Gaines

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