STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY
BRANCH 1

KIRK C. BANGSTAD, DOUGLAS R. SMITH AND THE MINOCQUA BREWING COMPANY SUPERPAC;

Plaintiffs,

-vs-

Case No. 24-CV-53

DONALD J. TRUMP, THE REPUBLICAN PARTY OF WISCONSIN, AND THE WISCONSIN ELECTIONS COMMISSION

Defendants,

BRIEF IN SUPPORT OF MOTION FOR EXPEDITED DECLARATORY JUDGMENT AND TEMPORARY INJUNCTION PURSUANT TO WIS. STAT. §§ 813.02, 806.04

Plaintiffs KIRK C. BANGSTAD, DOUGLAS R. SMITH and the MINOCQUA BREWING COMPANY SUPERPAC, by and through their attorneys of record, Frederick Melms of Melms Law and Sam Wayne of Wayne Law S.C., bring their brief in support of their MOTION FOR EXPEDITED DECLARATORY JUDGMENT AND TEMPORARY INJUNCTION PURSUANT TO WIS. STAT. § § 813.02, 806.04. to enforce the Disqualification Clause of the Fourteenth Amendment against Defendant DONALD J. TRUMP. Plaintiffs move this Court for an expedited declaration declaring that Defendant TRUMP is disqualified from serving as President of the United States, a second declaration declaring that constitutionally unqualified candidates may not participate in Wisconsin general elections or primary elections and for a temporary injunction against Defendant, THE WISCONSIN ELECTIONS COMMISSION

ordering the WISCONSIN ELECTIONS COMMISSION to withdraw Defendant TRUMP as a candidate in the Republican presidential preference primary to be held on April 2, 2024, and strike his name from all ballots it creates for this primary election.

INTRODUCTION

The core facts demonstrating TRUMP's disqualification are a matter of public record. He fraudulently and unlawfully tried to overturn the 2020 election results through a conspiracy to replace legitimate electoral college votes with fraudulent ones. When that failed, he summoned tens of thousands of his enraged supporters for a "wild" protest in Washington, D.C. on January 6, 2021—the date that Congress and the Vice President would meet to certify the results of the 2020 presidential election under the Twelfth Amendment to the Constitution and the Electoral Count Act, 3 U.S.C. § 15.

Just shy of four years after taking an oath to "preserve, protect and defend" the Constitution as President of the United States, U.S. Const. art. II, § 1, TRUMP tried to illegally and forcefully overturn the results of the 2020 election, ultimately ordering his supporters to engage in a violent insurrection at the United States Capitol to prevent the lawful transfer of power to his successor. What happened on January 6, 2021, was not a protest or even a riot, but instead a failed coup. By instigating this unprecedented assault on American constitutional order, TRUMP violated the oath he took upon becoming president of the United States and disqualified himself from ever again serving as President of the United States, under Section Three of the Fourteenth Amendment.

TRUMPS's insurrection was no accident; he had spent his entire presidency preparing his supporters to commit acts of violence on his behalf and had successfully ordered them to do so on previous occasions. Additionally, on January 6, 2021, TRUMP was fully aware that his supporters were prepared be violent to keep him in power, TRUMP had received weeks of law enforcement

reports explaining to him that those coming to Washington D.C. for his January 6, 2021, rally planned to commit acts of violence, including taking over government buildings and killing Congresspeople and Senators. On January 6, 2021, TRUMP was also aware that his supporters had come armed. He then loudly repeated the lies he had been spreading about the integrity of the 2020 election and said to his supporters, who at this time were little more than an angry mob, "And we fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore" he further used the rally as an opportunity to direct the angry crowd at Vice President Mike Pence telling his mob that Vice President Pence is "going to have to come through for us, and if he doesn't, that will be a, a sad day for our country because you're sworn to uphold our Constitution ." Finally, after TRUMP directed his mob to fight to "save" their county, and directed their anger towards Vice President Pence, TRUMP ordered his angry, violent, armed supporters, to go to the Capitol, where Vice President Pence was preparing to certify the election results. *See generally* Exhibit 1, transcript of January 6, speech.[1]

On his orders, Trump's mob went on to violently storm and seize the United States Capitol, a feat even the Confederacy never achieved during the Civil War. The mob forced Vice President Pence and members of Congress to flee for their lives and halt their constitutional duties. Their attack disrupted the peaceful transfer of presidential power for the first time in American history.

Ultimately TRUMP's mob carried out the most significant breach of the Capitol building since the War of 1812. Their attack led to seven deaths, injuries to more than one hundred law enforcement officers, and more than $2.7 billion in property damage and losses. Further, in what

[1] Many of the exhibits filed herewith are matters of public record. Plaintiffs request the Court admit them as evidence pursuant to Wis. Stat. §§ 909.01, 909.015(7), and take judicial notice of the facts referenced in each pursuant to Wis. Stat. § 902.01(2)(b).

was perhaps the single most embarrassing moment in American history, Trump's mob flew the flags and displayed the symbols of America's enemies in both chambers of congress.

The Fourteenth Amendment to the United States Constitution, was one of three Civil War Amendments ratified in the aftermath of the American Civil War. Collectively, these amendments sought to redefine the relationship between the federal government and individual citizens, establish fundamental rights, and address issues related to slavery, citizenship, voting rights, and to prevent the government of the United States from falling into the hands of those disloyal to the Constitution of the United States of America.

The Fourteenth Amendment specifically addressed citizenship rights, equal protection under the law and was intended to prevent those who had actively participated in insurrection or rebellion against the United States from holding public office. Section Three, the provision at issue in this suit, was aimed to prevent former Confederate leaders and sympathizers from returning to influential roles in government and to enshrine into our Constitution the edict that any American who broke their oath to the United States Constitution should be forever barred from serving as Senator or Representative in Congress, or elector of President and Vice-President, or holding any office, civil or military.

Section Three of the Fourteenth Amendment to the Constitution of the United States 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

Section Three embodies the Fourteenth Amendment's framers' recognition of the grave threat that insurrection against the Constitution poses to the existence and integrity of our Union. "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), appeal dismissed sub nom. *Worthy v. Comm'rs*, 76 U.S. 611 (1869).

Section Three also imposes a qualification for holding the office of President of the United States. It is a constitutional limitation on who can run for President, no less than the requirements that the President be at least 35 years of age, a natural-born U.S. citizen, a U.S. resident for at least 14 years, and one who has not served two prior presidential terms. And as with other constitutional amendments, Section Three is enforceable through civil suits in state court. Further, neither Section Three's text nor precedent require a criminal conviction for "insurrection" before a candidate is disqualified.

Although Section Three disqualification does not require a criminal conviction or impeachment for any offense, a federal grand jury has indicted TRUMP on four criminal counts relating to his efforts to subvert the 2020 election results: (1) conspiracy to defraud the United States in violation of 18 U.S.C. § 371; (2) conspiracy to obstruct an official proceeding in violation of 18 U.S.C. § 1512(k); (3) obstruction of, and attempt to obstruct, an official proceeding in violation of 18 U.S.C. § 1512(c)(2), 2; and (4) conspiracy against citizens' constitutional right to vote and to have one's vote counted in violation of 18 U.S.C. § 241, a statute originally codified after the Civil War to counteract political violence against newly enfranchised Black citizens, See First Ku Klux Klan Act, 16 Stat. 140 (May 31, 1870). See Generally Exhibit 2, *United States V. Donald J. Trump* Indictment.

Separately, a Georgia grand jury has indicted Trump on 13 criminal charges relating to a sweeping "conspiracy to unlawfully change the outcome of the [2020] election in favor of Trump" through false statements, forgery, solicitation of public officers to violate their oaths to the Constitution, and other state felonies. *See generally*, Exhibit 3, *The State of Georgia v. Donald J. Trump*, et al Indictment.

Further, A bipartisan majority of the House of Representatives impeached TRUMP for "incitement of insurrection," and a bipartisan majority of the Senate voted to convict him, with several Senators voting against conviction (and the final vote falling below the requisite two thirds supermajority) based "on the theory that the Senate lacked jurisdiction to try a former president." The bipartisan January 6th Select Committee and numerous federal judges have likewise recognized TRUMP's central role in the insurrection. *See generally*, Exhibit 4, The January 6th Report.

TRUMP has also been disqualified from the Republican presidential primary ballot in Colorado. The action began in Colorado district court which found, by clear and convincing evidence, following a five-day trial that TRUMP engaged in an insurrection against the United States. The district court concluded, however, that Section Three of the Fourteenth Amendment does not apply to the President. Therefore, the Colorado district court denied the petition to keep TRUMP off the presidential primary ballot. The Colorado Supreme Court reversed the district court decision finding that Section Three of the Fourteenth Amendment did apply the office of President, and ruled that TRUMP was ineligible to participate in the Colorado Republican Presidential Primary. See Exhibit 5, *Anderson v. Griswold* Colorado Supreme Court Decision. The decision in *Anderson v. Griswold* has since been stayed to allow the US Supreme Court to consider the matter.

Ultimately, TRUMP disqualified himself from ever again holding public office, under Section Three of the Fourteenth Amendment to the United States Constitution. TRUMP, on and for some time leading up to January 6, 2021, chose his own power over the will of the American people and the oath he took as President to defend the Constitution of the United States. He engaged in a violent insurrection and failed coup against the country he swore to protect and disqualified himself from ever again serving as President of the United States. Consequently, he has also forfeited his right to appear on the Republican presidential preference primary or the general election ballot in Wisconsin.

Despite Donald Trump's disqualification, he is slated to participate on the Wisconsin Republican presidential preference primary election slated to be held on April 2, 2024, with the explicit approval of Wisconsin Elections Committee. In both failing to determine Donald Trump is disqualified from holding the office of President and allowing him on the ballot, the Wisconsin Elections Commission has violated the law and abused their discretion. Plaintiffs as Wisconsin electors have the right under Wis. Stat. § 5.06 and *Teigen et al v. Wisconsin Elections Commission et al*, to challenge the illegal conduct of the Wisconsin Elections Commission in this circuit court, and demand that the Wisconsin Election Commission conform their conduct to law. *Teigen et al v. Wisconsin Elections Commission et al.,* 2022 WI 64, 33, 403 Wis. 2d 607, 976 N.W.2d 519. Plaintiffs now bring that challenge and make that demand.

Therefore, Plaintiffs KIRK C. BANGSTAD, DOUGLAS R. SMITH and the MINOCQUA BREWING COMPANY SUPERPAC request this Court issue an expedited declaration that Defendant TRUMP is disqualified from serving as President of the United State and enjoin the Wisconsin Elections Commission from including TRUMP on the Wisconsin Republican presidential preference primary ballot or in the alternative, order the Wisconsin Elections

Commission to have TRUMP's name stricken from existing ballots, while prohibiting his inclusion on ballots yet-to-be-printed.

PROCEDURAL HISTORY OF THE CASE

On December 28, 2023, Plaintiff Kirk C. Bangstad (hereinafter BANGSTAD), believing that TRUMP would be illegally and unconstitutionally allowed to participate in Wisconsin's Republican presidential preference primary, filed a complaint with the Wisconsin Elections Commission (hereinafter WEC) under Wis. Stat. § 5.06, alleging that the six WEC commissioners intended to abuse their discretion by allowing a disqualified candidate to appear on the Wisconsin presidential preference primary ballot. The complaint was sworn against each of the six WEC Commissioners and demanded that the WEC conform their conduct to the law by finding that TRUMP was disqualified from serving as President of the United States by Section Three of the Fourteenth Amendment to the United States Constitution. See Exhibit 6, Bangstad WEC complaint. BANGSTAD's complaint was denied as the WEC does not consider complaints made against the commission itself. The WEC explained in a letter dismissing the complaint that:

> "Additionally, the lead opinion of the Wisconsin Supreme Court in *Teigen et al v. Wisconsin Elections Commission et al*, stated that "it would be nonsensical to have WEC adjudicate a claim against itself under § 5.06(1)." 2022 WI 64, 33, 403 Wis. 2d 607, 976 N.W.2d 519. Justice Hagadorn's concurrence further stated that "the better reading is that the § 5.06 complaint process does not apply to complaints against acts of WEC as a body."

See Exhibit 7, WEC Dismissal Letter.

On January 2, 2024, a committee of Wisconsin Republicans convened to determine which candidates would appear on the Republican presidential preference primary ballot pursuant to Wis. Stat. § 8.12. Among the candidates chosen was TRUMP, and TRUMP intends to seek the Republican nomination and run for the office of the President of the United States. The WEC will now create, print, and distribute the ballots containing TRUMP's name and distribute them before

the April 2, 2024, Republican presidential preference primary. Plaintiffs then brought their Complaint for Declaratory and Injunctive Relief on January 4, 2024. (Dkt 1).

BACKGROUND AND FACTUAL HISTORY OF THE CASE

The January 6th attack was the culmination of a multi-part months long scheme to use lies, fraud, coercion, intimidation, and violence against government officials to overturn the 2020 election results. The goal was to unlawfully keep TRUMP in office, invalidating the votes of more than 81 million Americans who cast ballots for Biden in the 2020 election.

TRUMP's attempt to undermine the will of the people and effectuate a coup against the United States of America was executed through two distinct but intertwined strategies. The first strategy relied on a conspiracy between TRUMP and an unknown number of TRUMP supporters around the country. On TRUMP's orders these individuals, many of whom were elected officials, conspired to submit false and fraudulent slates of electors to the President of the Senate (Vice President Pence), the Senate, and the House of Representatives to the Joint Session of Congress on January 6, 2021, in order to overturn the election.

The ultimate goal of the fraudulent elector scheme was to have Vice President Pence unilaterally reject the legitimate electoral votes of Wisconsin and six other states for the Biden-Harris ticket and instead count the illegal, fraudulent electoral votes criminally submitted by the fake electors. TRUMP is currently under indictment for his role in the fraudulent elector's plot. *See generally*, Exhibit 2.

The second, more violent, strategy devised by TRUMP and his inner circle to keep TRUMP in office illegally, played out in and around the United States Capitol Building on January 6, 2021, when on TRUMP's orders, tens of thousands of TRUMP's followers violently stormed the capital

in an attempt to install TRUMP as president for a second term. TRUMP's followers had traveled from around the country to Washington D.C. to engage in violence for TRUMP because TRUMP summoned them there. His followers then turned on their own country and attacked the Capitol Building on Trump's orders.

Among those TRUMP mobilized for the January 6th coup were violent extremists and now convicted seditionists whom he earlier instructed to "stand back and stand by." Others were supporters Trump had inflamed for months with the lie that the 2020 election would be "rigged" and was being "stolen" from them. Once his supporters were assembled at the White House Ellipse, President Trump urged them to "fight like hell" to "Stop the Steal"—i.e., stop Vice President Pence and Congress from lawfully certifying the Electoral College votes designating Joseph R. Biden, Jr. the 46th President of the United States. After repeating his incendiary lies, TRUMP then directed his angry mob to march on the Capitol, and he gave this direction knowing many there were armed and prepared for violence.

Accordingly, TRUMP's mob followed his orders and went to the Capitol building to "fight" and "stop the steal." The mob's flags, banners, clothing, and chants made it clear they were there for TRUMP, and they would do anything to install him as president for a second term. Eventually TRUMP's mob stormed the Capitol Building and took control, and for the first time since the war of 1812, the United State' capitol building fell to her enemies.

A. The failed fake elector coup d'etat.

On January 20, 2017, TRUMP took an oath as officer of the United States when he was sworn in as President of the United States at his inauguration. He then ran for reelection in 2020 and accepted the Republican nomination at Republican National Convention in Charlotte North Carolina on August 27, 2020.

TRUMP accepted the Republican Party nomination knowing that he was behind in the polls and would likely be defeated by Joseph R. Biden, but that was of no concern for TRUMP because he was already anticipating that he would lose the presidential election and had begun plotting to remain in power by any means necessary following his inevitable defeat on November 6, 2021. His plan was multifaceted but each facet of his plan required TRUMP's supporters to lose faith in the integrity of American elections. Accordingly, TRUMP and his co-conspirators began sowing the seeds of discord among his supporters. They took to TV cable news and social media to begin questioning the legitimacy of America's elections as early as May of 2020. Exhibit 4, at 199-203. And continued to do so up until election night.

When the polls closed on November 3, 2020, TRUMP falsely stated that he had prevailed and called on states to stop counting. Exhibit 4, at 9. But on Saturday, November 7, 2020, President Biden was declared the winner of the election and identified in the media as the next President of the United States by all major networks and news sources, including conservative outlets like Fox News.

When the results were announced that Saturday, Trump tweeted the first of what would be variations of an onslaught that continued uninterrupted until the January 6, 2021, insurrection at the U.S. Capitol: "THE OBSERVERS WERE NOT ALLOWED INTO THE COUNTING ROOMS. I WON THE ELECTION, GOT 71,000,000 LEGAL VOTES. BAD THINGS HAPPENED WHICH OUR OBSERVERS WERE NOT ALLOWED TO SEE. NEVER HAPPENED BEFORE. MILLIONS OF MAIL-IN BALLOTS WERE SENT TO PEOPLE WHO NEVER ASKED FOR THEM!"

In the days following the election, TRUMP's campaign team repeatedly told President Trump that there was no evidence the election had been "stolen" and that he had simply lost. Exhibit 4 at

204–206. TRUMP campaign manager Bill Stepien and his team served as the "truth telling squad" to the President, debunking false claims that "didn't prove to be true." Exhibit 4 at 204–206. TRUMP campaign lawyer Alex Cannon informed Vice President Pence and White House Chief of Staff Mark Meadows that he was not finding any evidence of fraud sufficient to change the results in any state. Exhibit 4 at 204–206.

Similarly, Attorney General Bill Barr, Acting Attorney General Jeffrey Rosen, and other top Justice Department officials repeatedly told President TRUMP in the weeks after the election that their investigations uncovered no evidence of fraud or irregularities sufficient to change the outcome of the election. Attorney General Barr relayed that finding to the press on December 1, 2020. Exhibit 4 at 14–15.

President Trump disregarded the findings of his campaign advisors, the Department of Justice, senior administration officials, and the White House Counsel's office. He instead turned to a new team of legal advisors willing to promote his outright lies and conspiracy theories, including Giuliani, Jenna Ellis, John Eastman, Sidney Powell, and Cleta Mitchell. See Exhibit 4 at 14–15, 203–204, and 209–210. They immediately went to work to try to overturn the election. In a November 14, 2020, strategy session with Trump loyalists, Giuliani announced planned litigation "to invalidate upwards of 1M ballots." *See,* Exhibit 4 at 210.

On December 14, 2020, fraudulent electors from Arizona, Georgia, Michigan, Nevada, New Mexico, Pennsylvania, and Wisconsin met on TRUMPS orders and cast their ballots for TRUMP. See Exhibit 4 at 342. While these groups of TRUMP loyalists called themselves Presidential electors weren't electors in any legal sense, they were merely seditionists and insurrectionists who wanted to hand over our country to TRUMP. Exhibit 4 at 342.

"By January 6th, President Trump had been discouraged by his top lawyers from following through on this plan. The Trump Campaign's senior staff attorneys had concerns, and several days before the joint session, the Acting Attorney General and the Deputy Attorney General blocked the sending of a letter indicating that there were "competing slates" of electors, including "in Georgia and several other States." But this reasoning did nothing to change President Trump's rhetoric or plan. He continued to assert that there were "competing" or "dual" slates of electors to create an opportunity to stay in office on January 6th." Exhibit 4 at 342.

"These lawyers were right: President Trump's plan was illegal. In his June 7, 2022, opinion, Federal District Judge David Carter wrote that this initiative to "certify alternate slates of electors for President Trump" constituted a "critical objective of the January 6 plan." This followed Judge Carter's earlier determination in March that "[t]he illegality of the plan was obvious," and "[e]very American—and certainly the President of the United States—knows that in a democracy, leaders are elected, not installed. With a plan this 'BOLD,' President Trump knowingly tried to subvert this fundamental principle. 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." Exhibit 4 at 342.

"The fake elector plan emerged from a series of legal memoranda written by an outside legal advisor to the Trump Campaign: Kenneth Chesebro. Although John Eastman would have a more prominent role in advising President Trump in the days immediately before January 6th, Chesebro—an attorney based in Boston and New York recruited to assist the Trump Campaign as a volunteer legal advisor—was central to the creation of the plan. Memos by Chesebro on November 18th, December 9th, and December 13th, as discussed below, laid the plan's foundation. Chesebro's first memo on November 18th suggested that the Trump Campaign could gain a few

extra weeks for litigation to challenge Wisconsin's election results, so long as a Wisconsin slate of Republican nominees to the electoral college met on December 14th to cast placeholder electoral college votes on a contingent basis. This memo acknowledged that "[i]t may seem odd that the electors pledged to Trump and Pence might meet and cast their votes on December 14 even if, at that juncture, the Trump Pence ticket is behind in the vote count, and no certificate of election has been issued in favor of Trump and Pence." However, Chesebro argued that if such a slate of alternate electors gathered to cast electoral votes on a contingent basis, this would preserve the Trump Campaign's options so "a court decision (or, perhaps, a state legislative determination) rendered after December 14 in favor of the Trump-Pence slate of electors should be timely." On December 9th, Chesebro penned a second memo, which suggested another purpose for fake electoral college votes on January 6th. It stated that unauthorized Trump electors in these States could be retroactively recognized "by a court, the state legislature, or Congress." Under this theory, there would be no need for a court to decide that the election had been decided in error; instead, Congress itself could choose among dueling slates of purported electoral votes—and thereby decide the Presidential election— even though Article II of the Constitution grants that power to the electoral college via the States." Exhibit 4 at 344.

On December 13th, the fake elector scheme became even clearer in an email sent by Chesebro to Giuliani. His message was entitled "Brief notes on 'President of the Senate' strategy." It addressed how the fake electors meeting the next day, December 14th, could be exploited during the joint session of Congress on January 6th by the President of the Senate—a role that the Constitution grants to the Vice President of the United States.19 Chesebro argued that, on January 6th, the President of the Senate could: ...firmly take the position that he, and he alone, is charged with the constitutional responsibility not just to open the votes, but to count them—including

making judgments about what to do if there are conflicting votes...Chesebro's email suggested that the President of the Senate (which under the Constitution, is the Vice President) could toss out former Vice President Biden's actual electoral votes for any State where the Trump Campaign organized fake electors, simply "because there are two slates of votes." Of course, there were never two slates of electoral votes, so this premise itself was fundamentally wrong. But he was arguing that even if votes by fake electors were never retroactively ratified under State law, their mere submission to Congress would be enough to allow the presiding officer to disregard valid votes for former Vice President Biden. Chesebro suggested this might result in a second term for President Trump, or, at minimum, it would force a debate about purported election fraud—neither of which was a lawful, legitimate reason to organize and convene fake electors. Exhibit 4 at 344-345.

"The evidence indicates that by December 7th or 8th, President Trump had decided to pursue the fake elector plan and was driving it. Trump Campaign Associate General Counsel Joshua Findlay was tasked by the campaign's general counsel, Matthew Morgan, around December 7th or 8th with exploring the feasibility of assembling unrecognized slates of Trump electors in a handful of the States that President Trump had lost." Exhibit 4 at 344-345.

"On December 14th, using instructions provided by Chesebro, the fake Trump electors gathered and participated in signing ceremonies in all seven States. In five of these States—Arizona, Georgia, Michigan, Nevada, and Wisconsin—the certificates they signed used the language that falsely declared themselves to be "the duly elected and qualified Electors" from their State. This declaration was false because none of the signatories had been granted that official status by their State government in the form of a certificate of ascertainment." Exhibit 4 at 352-353.

"The paperwork signed by the fake Trump electors in two other States contained partial caveats. In New Mexico, the document they signed made clear that they were participating "on the understanding that it might later be determined that we are the duly elected and qualified Electors...." In Pennsylvania, the document they signed indicated that they were participating "on the understanding that if, as a result of a final non-appealable Court Order or other proceeding prescribed by law, we are ultimately recognized as being the duly elected and qualified Electors...." Exhibit 4 at 353.

"All seven of these invalid sets of electoral votes were then transmitted to Washington, DC. Roman's team member in Georgia, for example, sent him an email on the afternoon of December 14th that affirmed the following: "All votes cast, paperwork complete, being mailed now. Ran pretty smoothly." Likewise, Findlay updated Campaign Manager Bill Stepien and his bosses on the legal team that the Trump team's slate in Georgia was not able to satisfy all provisions of State law but still "voted as legally as possible under the circumstances" before transmitting their fake votes to Washington, DC, by mail." Exhibit 4 at 354.

"On the evening of December 14th, RNC Chairwoman McDaniel provided an update for President Trump on the status of the fake elector effort. She forwarded President Trump's executive assistant an "Elector Recap" email, which conveyed that "President Trump's electors voted" not just in "the states that he won" but also in six "contested states" (specifically, Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin). Minutes later, President Trump's executive assistant replied: "It's in front of him!" Exhibit 4 at 354.

"By early January, most of the fake elector votes had arrived in Washington, except those from Michigan and Wisconsin. Undeterred, the Trump team arranged to fly them to Washington and hand deliver them to Congress for the Vice President himself. "Freaking trump idiots want

someone to fly original elector papers to the senate President...” Wisconsin Republican Party official Mark Jefferson wrote to Party Chairman Hitt on January 4th. Hitt responded, “Ok I See I have a missed call from [Mike] Roman and a text from someone else. Did you talk to them already? This is just nuts....” Exhibit 4 at 354.

The conspiracy to put forth fraudulent electors was devised by TRUMP’s inner circle and carried out by TRUMP’s devoted supporters on TRUMP’s orders. The ultimate goal of the fraudulent elector scheme was to have Vice President Pence unilaterally reject the legitimate electoral votes of Wisconsin and six other states for the Biden-Harris ticket and instead count the illegal, fraudulent electoral votes criminally submitted by the fake electors. TRUMP is currently under indictment for his role in the Fraudulent Electors Plot. See Exhibit 4, 199-203.

Beginning in December 2020 and with greater frequency as January 6th approached, TRUMP pressured Vice President Pence in private and public to obstruct the January 6th proceeding based on his illegal “President of the Senate strategy” wherein Vice President Pence would use the fake electors as a basis to either not certify the 2020 election for Joseph R. Biden, or effectively appoint TRUMP to a second term. Exhibit 4 at 442-461.

At a December 21st White House meeting with President TRUMP and Vice President Pence, several Members of Congress urged the Vice President to reject Biden electors from one or more of the seven contested states. See Exhibit 4 at 355.

By early January 2021, Vice President Pence’s counsel, Greg Jacob, concluded that under the Electoral Count Act of 1887 and the Twelfth Amendment “‘[t]here is no justifiable basis to conclude that the Vice President has … authority’ to affect the outcome of the presidential election.” See Exhibit 4 at 435. Pence agreed with that view. As Jacob later testified, “the Vice President’s first instinct, when he heard this theory, was that there was no way that our Framers,

who abhorred concentrated power, who had broken away from the tyranny of George III, would ever have put one person—particularly not a person who had a direct interest in the outcome because they were on the ticket for the election—in a role to have decisive impact on the outcome of the election. And our review of text, history, and, frankly, just common sense, all confirmed the Vice President's first instinct on that point." See Exhibit 4 at 31.

At a January 4th Oval Office meeting with Vice President Pence, President TRUMP and Eastman sought to convince Pence that he had the power to disregard certified electors from states Biden won. Exhibit 4 at 444. Eastman acknowledged, in President TRUMP's presence, "that his proposal violated the Electoral Count Act," that it "was not supported by precedent," that "the Supreme Court would never endorse it," and that the fake electoral slates upon which his plan depended were invalid. Exhibit 4. at 446–447. TRUMP and Eastman nonetheless pressed Pence to carry out the unlawful scheme; Pence refused. Exhibit 4 at 448.

At 11:06 a.m. on January 5th, President TRUMP tweeted to his tens of millions of followers, one of a number of tweets, spreading election lies, that "[t]he Vice President has the power to reject fraudulently chosen electors." That same day, TRUMP summoned Pence for a one-on-one meeting at the White House, where he again pressured Pence to overturn the election on January 6th. Exhibit 6. at 452–453. Pence, again, refused. Exhibit 4 at 452–453. TRUMP grew frustrated and told Pence he would have to publicly criticize him. Upon learning this, the Vice President's Chief of Staff Marc Short was concerned for Pence's safety and alerted the head of the Vice President's Secret Service detail. Exhibit 2 ¶ 97.

Later in the day on, January 5th, TRUMP, Pence, Jacob, and Eastman held a call, during which Eastman asked if the Vice President would at least be willing to "consider sending the electors back to the States." Exhibit 4 at 453. Pence said, "I don't See it," while stating his counsel would

continue to hear out Eastman's theories. Exhibit 4 at 453. TRUMP allies, including political advisor Steve Bannon, amplified the public pressure on Pence in the leadup to January 6th. Exhibit 4. at 454–455.

The pressure campaign on Vice President Pence came to a head on January 6, 2021, when tens of thousands of enraged Trump supporters from across the country answered President Trump's call to assemble in Washington, D.C. to "Stop the Steal." TRUMP repeatedly directed his supporters' anger toward Vice President Pence that day, including after he knew his mob was attacking the Capitol and threatening the lives of Pence and others.

Fortunately for the rule of law and the survival of the Republic, Vice President Pence refused to buckle under the relentless pressure applied by TRUMP and his fellow insurrectionists, and he counted the electoral votes according to law, exactly as it had been done for every other presidential election in the nation's history. While TRUMP's co-conspirators were trying to defraud the American electorate inside the house chambers, TRUMP was outside with his followers who had been enraged by flagrant lies and one of the most shameful scenes in the history of the United States played out on TRUMP's orders.

B. The Violent Insurrection.

Violent insurrections don't just happen; they must be planned, and the seditionists must be inspired and assembled. And that is exactly what TRUMP and his closest allies were doing in the months leading up to the November 2020 election. TRUMP and his coconspirators spent countless hours on TV news shows spreading lies about the election, and used social media to suggest that the election was going to be "rigged" against TRUMP and that a TRUMP defeat would prove the election was "rigged ." The purpose of this public campaign by TRUMP and others was to lay the groundwork to cast doubts on any unfavorable election results and attack various state voting

procedures around the United States as being fraudulent and not trustworthy in the event he lost. TRUMP had decided well before the election that he would be staying in power regardless of the will of the people, and to do that, he needed to manufacture distrust in the American election system.

Then when the polls closed on November 3, 2020, TRUMP falsely stated that he had prevailed and called on states to stop counting. But on Saturday, November 7, 2020, President Biden was declared the winner of the election and identified in the media as the next President of the United States by all major networks and news sources, including conservative outlets like Fox News. When the results were announced that Saturday, Trump tweeted the first of what would be variations of an onslaught that continued uninterrupted until the January 6, 2021, insurrection at the U.S. Capitol: "THE OBSERVERS WERE NOT ALLOWED INTO THE COUNTING ROOMS. I WON THE ELECTION, GOT 71,000,000 LEGAL VOTES. BAD THINGS HAPPENED WHICH OUR OBSERVERS WERE NOT ALLOWED TO SEE. NEVER HAPPENED BEFORE. MILLIONS OF MAIL-IN BALLOTS WERE SENT TO PEOPLE WHO NEVER ASKED FOR THEM!" Exhibit 4 at 206.

Within a day (or perhaps earlier) of Biden being declared the winner, TRUMP, in association with others initiated through express and/or tacit agreement a plot to overturn the 2020 election results, install TRUMP as president, and end 245 years of American Democracy. Trump and the other insurrectionists continued to make false claims concerning widespread election fraud and a lack of integrity in the elections in the battleground states to incite Trump voters to anger and violence. They similarly began pressuring federal agencies to find irregularities in the election, including the Department of Justice ("DOJ"), the Cybersecurity & Infrastructure Security Agency

("CISA") of the Department of Homeland Security ("DHS"), and the National Security Agency ("NSA").

While TRUMP and his most devoted followers were spreading election lies, TRUMP's campaign team repeatedly told President Trump that there was no evidence the election had been "stolen" and that he had simply lost. Exhibit 4 at 204–206. TRUMP campaign manager Bill Stepien and his team served as the "truth telling squad" to the President, debunking false claims that "didn't prove to be true." Exhibit 4 at 204. TRUMP campaign lawyer Alex Cannon informed Vice President Pence and White House Chief of Staff Mark Meadows that he was not finding any evidence of fraud sufficient to change the results in any state. Exhibit 4 at 204.

Similarly, Attorney General Bill Barr, Acting Attorney General Jeffrey Rosen, and other top Justice Department officials repeatedly told President TRUMP in the weeks after the election that their investigations uncovered no evidence of fraud or irregularities sufficient to change the outcome of the election. *See* Exhibit 4 at 14–15.

The violence on January 6, 2024, was not spontaneous, but had been planned by TRUMP and others in the weeks leading up to the Joint session of Congress and the Electoral College vote count. TRUMP spent the weeks leading up to TRUMP stoked the fires and enraged his supporters by spreading the "big lie." "In the ensuing days and weeks, President Trump often referred to "dumps" of votes that were injected into the counting process. His supporters latched onto these false claims. There were no "dumps" of votes—just tallies of absentee ballots as they were reported by jurisdictions throughout the country in a fully transparent process. These batches of ballots included votes for both Trump and Biden. The late-reported votes favored the former Vice President, just as President Trump's campaign advisors said they would, particularly in primarily Democratic cities. Attorney General Bill Barr recognized immediately that the "Red Mirage" was

the basis for President Trump's erroneous claim of fraud. "[R]ight out of the box on election night, the President claimed that there was major fraud underway," Barr said. "I mean, this happened, as far as I could tell, before there was actually any potential of looking at evidence." President Trump's claim "seemed to be based on the dynamic that, at the end of the evening, a lot of Democratic votes came in which changed the vote counts in certain states, and that seemed to be the basis for this broad claim that there was major fraud." President Trump knew about the Red Mirage. He chose to lie about it repeatedly—even after being directly informed that his claims were false. This was often the case in the post-election period. The President consciously disregarded facts that did not support his Big Lie." Exhibit 4 at 203.

On December 19th, 2020, TRUMP announced to his supporters that he would be holding a protest of the election to "stop the steal", tweeting "Big protest in D.C. on January 6th. Be there, will be wild! ." This President tweet galvanized tens of thousands of his supporters across the country. He had been inflaming them for months with the lie of a "stolen" election, and now, he focused their anger on the joint session of Congress in Washington, D.C. on January 6th. *See*, Exhibit 4 at 499.

The "big lie" inspired TRUMP's devoted supporters to work and fight to "Stop the Steal ." "Stop the Steal" is a phrase originally coined by longtime TRUMP political advisor Roger Stone during the 2016 election to dispute the election results if Trump lost. Exhibit 4 at 502. When TRUMP won, the phrase went dormant. On November 5, 2020, when the failure of Trump's re-election bid seemed imminent, Stone told associates he planned to reconstitute "Stop the Steal." Exhibit 4 at 502.

TRUMPS tweets had their desired effect as they 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." *See* Exhibit 4 at 694.

In the ensuing weeks, President TRUMP posted more than a dozen other tweets to his more than 86 million Twitter followers encouraging them to come to Washington, D.C. to "#stopthesteal" on January 6th. *See* Exhibit 4 at 55. TRUMP's tweets and other communications mobilized and coalesced a constellation of groups involved in the January 6th attack, including violent far-right extremists, anti-government militia groups, white nationalists, conspiracy theorists, rally organizers, and others who Trump knew closely followed his social media posts and whose presence could add to the size of the mob. With the President's unifying call to action, these disparate groups now had a single date, a rallying point, and a mission: "Stop the Steal ." *See* Exhibit 4 at 55.

TRUMP's tweets, along with TRUMP's other lies about election fraud, led tens of thousands to travel to Washington, D.C. to intimidate Vice President Pence and congress, and when they did not succumb to the demands of the violent mob, they stormed the Capitol and calling for their murders. TRUMP was also well aware that the zealots he was calling to Washington D.C. would commit acts of violence on his command. For years TRUMP encouraged and endorsed political violence and the consequences were predictable: it normalized the idea of using violence, force, and intimidation against political foes in the minds of TRUMPS followers.

Violent far-right extremists who long supported President TRUMP—including the Proud Boys, the Oath Keepers, the Three Percenters, and others—predictably viewed his December 19th "will be wild" tweet as a call to arms. Leaders of the Proud Boys and Oath Keepers have since

been convicted on charges of seditious conspiracy to oppose by force the lawful transfer of presidential power. Exhibit 4, at 499-507.

President TRUMP had already publicly endorsed the Proud Boys at the September 20, 2020, presidential debate. Trump when "asked to disavow far-right extremists, including the Proud Boys. The President did not explicitly condemn the group. Instead, he seemingly endorsed their mission. "Stand back and stand by," President Trump told the Proud Boys," Exhibit 4 at 507.

TRUMP's words electrified the Proud Boys, causing the group's membership to triple. The Proud Boys quickly embraced TRUMP's "stand back and stand by" directive as a slogan and started selling merchandise with it that same night. Exhibit 4 at 508. Tarrio, Biggs, and two other Proud Boys leaders were later convicted of seditious conspiracy to oppose by force the lawful transfer of presidential power on January 6th. Exhibit 4 at 507–508.

> "As the presidential votes were tallied, the Proud Boys became agitated at the prospect that President Trump would lose. On November 5, 2020, Biggs posted on social media, "It's time for fucking war if they steal this shit." As former Vice President Joe Biden's victory became apparent, Proud Boys leaders directed their ire toward others in the Government. Biggs, speaking on a Proud Boys livestream show with Tarrio and others, warned that government officials are "evil scum, and they all deserve to die a traitor's death." Ethan Nordean—another Proud Boys leader who allegedly helped lead the attack at the Capitol—responded, "Yup, Day of the Rope," referring to a day of mass lynching of "race traitors" in the white supremacist novel The Turner Diaries." Exhibit 4 at 508.

Although the Proud Boys and Oath Keepers historically were not allies, TRUMP's tweet conveyed a sense of urgency that motivated the two extremist rivals to work together for a common goal: stopping the lawful transfer of power. Exhibit 4 at 514. Senior Oath Keeper Kelly Meggs

announced an alliance with the Proud Boys and Florida Three Percenters, stating "We have decided to work together and shut this shit down." Exhibit 4 at 514.

The group, whom President Trump had instructed about three months earlier to "stand back and stand by," reacted immediately to TRUMP's December 19th tweet and began planning an attack. Exhibit 4 at 56. They restructured their chain-of-command and created encrypted group chats entitled "Ministry of Self Defense" and "Boots on the Ground" to coordinate their January 6th plan. Exhibit 4 at 510.

By late December 2020, Tarrio determined the Proud Boys' actions on January 6th would be "centered around the Capitol." Exhibit 4 at 56. On social media, Tarrio referenced "revolt" and "[r]evolution" and asked on Telegram "What if we invade it?" Exhibit 4 at 56. On January 4th, Tarrio told his men they should "storm the Capitol." Exhibit 4 at 500.

The Proud Boys would go on to lead the January 6th attack at key breach points, penetrate the Capitol Building, and lead hundreds of others inside. Exhibit 4 at 56. As the attack unfolded, Tarrio claimed credit in a private chat, writing: "We did this." Exhibit 4 at 500.

TRUMP's "will be wild" tweet also galvanized the Oath Keepers. The Oath Keepers are an anti-government militia group that focuses on recruiting former and current military, law enforcement, and other public servants who have taken an oath to support the U.S. Constitution. Exhibit 4 at 512. Like the Proud Boys, the Oath Keepers were incredibly involved in the January 6, 2021, attack on the United States Capitol. Further, days before TRUMP's tweet, on December 10, 2020, Stewart Rhodes (Leader of the Oath Keepers) vowed that if TRUMP did not invoke the Insurrection Act, the Oath Keepers would "rise up in insurrection (rebellion) against the ChiCom puppet Biden." Exhibit 4 at 514.

After Trump's tweet, on December 22nd, leader of the Oath Keepers Florida chapter Kelly Meggs echoed the tweet in a Facebook message, writing: "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!!" Exhibit 4 at 515.

The Three Percenters are another violent militia that viewed President TRUMP's December 19th tweet as a call to arms. The Three Percenters also used President TRUMP's "will be wild" tweet as a recruitment tool to encourage others to answer TRUMP's call. In late December, the Three Percenters issued a letter to its members announcing "this organization will be answering that call!." Exhibit 4 at 521- 524. Three Percenters across the country also began planning for violence after TRUMP's "be wild" tweet, which tapped into a well of anti-government extremism already prevalent among the group's members.

Violent extremists were not the only ones electrified by TRUMP's promise of a "wild" protest on January 6th. The "Stop the Steal" movement—a coalition of rally organizers, far-right provocateurs, and TRUMP allies who helped him amplify the lie of a "stolen" election— also acted swiftly to answer the President's call. That coalition helped to mobilize thousands of TRUMP supporters to form a violent mob in Washington, D.C. on January 6th to do exactly what their deceptive slogan promised: "Stop the Steal." Exhibit 4, 530-532.

Ali Alexander, an ally of TRUMP advisor Roger Stone, quickly organized a new "Stop the Steal" campaign, establishing Stop the Steal, LLC, in Alabama on November 10, 2020. Exhibit 4 at 503. Other key players in the coalition included Alex Jones, the conspiracy theorist and host of InfoWars; Nick Fuentes, leader of the white nationalist group Groypers; and Amy and Kylie

Kremer, pro-Trump rally organizers and founders of Women for America First. Exhibit 4 at 503, 530.

Between Election Day 2020 and January 6th, Stop the Steal organizers held dozens of rallies around the country, with TRUMP's implicit and explicit approval, inflaming Trump supporters with election disinformation and recruiting them to travel to Washington, D.C. for January 6th. Exhibit 4 at 530. The rallies brought together many groups, including violent extremists such as the Proud Boys, Oath Keepers, and Three Percenters; QAnon conspiracy theorists; white nationalists; and anti-vaccine activists. Exhibit 4 at 502–507. While these groups had differing goals and ideologies, their common denominator was support for President Trump and his lie of a stolen election.

Trump adviser Roger Stone served as a link between several of these groups and the TRUMP administration. Exhibit 4 at 517–519. The Oath Keepers provided security for Stone at Stop the Steal rallies, and Proud Boys leaders had long-standing relationships with Stone. Stone maintained a chat group on the encrypted messaging app Signal called "F.O.S." (or Friends of Stone) that included Ali Alexander, Enrique Tarrio, and Stewart Rhodes, in which they coordinated on Stop the Steal strategy and events between the election and January 6th. Exhibit 4 at 519. This group chat also created a communication channel between the violent extremists and the TRUMP administration.

The Stop the Steal events previewed the violence of January 6, 2021, as many of the events focused on intimidating government officials to overturn the election results in their states. This was the case in Georgia, a focal point of President Trump's election subversion efforts. Between November 18 and 21, 2020, Stop the Steal participants gathered outside of the Georgia state capitol and the governor's mansion, including for armed protests. Exhibit 4 at 504. Leading Stop the Steal

proponents—including Ali Alexander, Roger Stone, Alex Jones, Nick Fuentes, and members of the Proud Boys and Oath Keepers—used inflammatory rhetoric and sought to intimidate lawmakers to overturn the election results in Georgia, which was required to certify Biden's victory by the end of that week. See Exhibit 4 at 505. Alexander exhorted supporters to "storm the [state] capitol" and vowed "we'll light the whole shit on fire." Exhibit 4 at 504–505.

These same Stop the Steal leaders joined two "Million MAGA Marches" in Washington, D.C. on November 14th and December 12th. Exhibit 4 at 505. Tens of thousands of Trump supporters attended the events, with protests focused on the Supreme Court building. At that time, the Court was considering long-shot election challenges by Trump allies.

The December 12th Million MAGA March coincided with the Jericho March, a Christian nationalist rally named after the biblical battle of Jericho. Exhibit 4 at 505 In that story, "God orders his followers to march around the city of Jericho" and then "brings the walls down and orders his followers to violently sack the defenseless city … and murder every living being" within. The Jericho March co-founder said God wanted Americans to hold a similar march around the "spiritual walls of this country"—that is, the Capitol, the Supreme Court, and other government buildings in Washington. At the December 12th Jericho March, Stewart Rhodes urged President Trump to invoke the Insurrection Act and warned that, if he did not, they would be forced to wage "a much more desperate [and] much more bloody war." Exhibit 4 at 505. Alex Jones vowed, "Joe Biden will be removed, one way or another!" Exhibit 4 at 505.

"President Trump made sure to let the protestors in Washington know that he personally approved of their mission. During the November rally, President Trump waved to the crowd from his presidential motorcade. Then, on the morning of December 12th, President 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." Later that day, President Trump flew over the protestors in Marine One" Exhibit 4, at 506.

President TRUMP's December 19th "will be wild" tweet focused the "Stop the Steal" movement's nationwide efforts on a single date and location: January 6th in Washington, D.C. Prior to that tweet, the Stop the Steal coalition was not planning any large-scale demonstration in Washington for January 6th. But after TRUMP's December 19th tweet, Stop the Steal rally planners immediately set out to do two things: mobilize Trump supporters around the country to travel to Washington for January 6th, and prepare for a "wild" rally to coincide with the joint session of Congress.

Ali Alexander, founder of Stop the Steal, LLC, quickly launched a new website invoking the President's tweet, "WildProtest.com." Exhibit 4 at 530. The site advertised a planned January 6th events under a banner that read: "President Trump Wants You in DC January 6." Exhibit 4 at 530.

Alex Jones devoted much of his December 20th InfoWars show to TRUMP's "will be wild" announcement, telling his audience: "[Trump's] calling you, he needs your help, we need your help," "we need 10 million people there." Exhibit 4 at 506. InfoWars co-host Matt Bracken urged viewers to "occupy[] the entire area" and "if necessary storm[] right into the Capitol." Exhibit 4 at 507. He also previewed the strategy—successfully deployed on January 6th—of using the mob itself as a weapon: "If you have enough people, you can push down any kind of fence or a wall." Exhibit 4 at 507.

Women for America First ("WFAF"), leading pro-Trump rally organizers, moved to secure a rally permit for January 6th mere hours after President Trump's "will be wild" tweet. Exhibit 4 at 530. On December 19th, WFAF co-founder Kylie Kremer amplified the President's call on Twitter: "The calvary [sic] is coming, President! JANUARY 6th | Washington, DC

TrumpMarch.com #MarchForTrump #StopTheSteal." Exhibit 4 at 530. On January 1st, President Trump retweeted Kremer's December 19th "calvary" tweet, stating "A great honor!" WFAF later hosted the Stop the Steal rally on the Ellipse where President TRUMP directed the crowd to march on the Capitol. Exhibit 4 at 530.

By late December, the White House took on a direct role in coordinating the January 6th Stop the Steal rally. Exhibit 4 at 533. President TRUMP participated in selecting the speaker lineup, Exhibit 4 at 536, and Trump's campaign and joint fundraising committees made direct payments of $3.5 million to rally organizers. White House staff and Stop the Steal organizers understood that President TRUMP planned to speak at the rally and direct his supporters to march to the Capitol at the end of his speech. Exhibit 4 at 533. TRUMP wanted a crowd at the Capitol to force Congress to stop the electoral college certification and send it back to the states. Exhibit 4 at 533.

On January 5th, the Stop the Steal coalition hosted rallies in front of the U.S. Capitol, the Supreme Court, Freedom Plaza, and other prominent locations in downtown Washington, D.C. With the election certification looming, the tone at the rallies became increasingly desperate and extreme. Speakers openly called for "war," "revolution," and "battle" and led chants of "1776," a reference to the Revolutionary War. Exhibit 4 at 537.

At one rally in front of the U.S. Capitol, Eli Alexander told the crowd "We must rebel. I'm not even sure if I'm going to leave D.C. We might make this 'Fort Trump,' right?" Exhibit 4 at 537. At a rally that evening, Alexander said "1776 is always an option." Exhibit 4. at 537–38. And at another rally, members of a Three Percenter-linked group told the crowd, "We are at war," promised to "fight" and "bleed," and vowed that "patriot[s]" would "not return to our peaceful way of life until this election is made right." Exhibit 4. at 537.

At 5:43 p.m., President TRUMP tweeted a final advertisement for his January 6th rally, stating, "I will be speaking at the SAVE AMERICA RALLY tomorrow on the Ellipse at 11AM Eastern. Arrive early – doors open at 7AM Eastern. BIG CROWDS!" Exhibit 4, 160.

That evening, President TRUMP acknowledged to White House staff that his supporters would be "fired up" and "angry" the next day because they believed the election was stolen. Exhibit 4 at 539. Trump knew they were angry that night because he could hear them from the Oval Office. Exhibit 4 at 539. But this was not news to Trump: he knew well before January 6th that his supporters were coming to Washington angry and prepared for violence.

As the nation's "Commander-in-Chief and Chief Law Enforcement Officer President Trump had access and control over all of the intelligence concerning a potential riot on January 6th in the weeks leading up to the January 6, 2021, insurrection and TRUMP was warned by Federal agencies about the risk of significant threats of violence ahead of January 6th rally. This included threats that his supporters planned to storm the U.S. Capitol and kill elected officials. Such threats were made openly online and widely reported in the press. President Trump continued to urge his supporters to come to Washington, D.C. even after these threats. Exhibit 4, 693-700.

From December 1, 2020, through January 6, 2021, seven federal agencies— including Executive Branch agencies that President Trump oversaw—developed 27 threat products warning of potential violence in Washington, D.C. on January 6th. Agencies relayed some of these threats to the White House and the Secret Service. See Exhibit 8 at 24. US GAO Jan 6 Report at 24. Each agency threat product concerned Congress's counting of electoral votes, with some predicting a violent assault on the U.S. Capitol. Some noted that January 6th rally attendees planned to use actual and improvised weapons, including firearms, explosive devices chemical weapons and irritants, knives, baseball bats, and fireworks. All seven agencies issued threat products indicating

that domestic violent extremists or militia groups planned for violence on January 6th. See Exhibit 8 at 24.

A January 5th situational information report from the FBI's Norfolk Field Office, titled "Potential for Violence in Washington, D.C. Area in Connection with Planned 'stopTheSteal' Protest on 6 January 2021," identified "specific calls for violence" online, including one that read: "Be ready to fight. Congress needs to hear glass breaking, doors being kicked in, and blood from their BLM and Pantifa slave soldiers being spilled. Get violent. … stop calling this a march, or rally, or a protest. Go there ready for war. We get our President, or we die. NOTHING else will achieve this goal." Exhibit 9 Jan 6, FBI report.

The Secret Service also received many indications of potential violence on January 6th. On December 24th, the agency received a compilation of threatening social media posts: one urged protesters to "march into the chambers"; another highlighted President TRUMP's "will be wild" tweet and said TRUMP "can't exactly openly tell you to revolt" and that this was "the closest he'll ever get"; and others construed the President's tweet as encouraging supporters to come to Washington "armed" or otherwise prepared for violence. Exhibit 4 at 695.

On December 26th, the Secret Service received a tip that the Proud Boys were planning to have a "large enough group to march into DC armed and will outnumber the police so they can't be stopped." Exhibit 4 at 695. "Their plan is to literally kill people," the informant warned. Exhibit 4 at 695.

Senior Trump administration officials anticipated violence on January 6th. Acting Deputy Attorney General Richard Donoghue testified that DOJ leadership "knew that if you have tens of thousands of very upset people showing up in Washington, DC, that there was potential for violence." Exhibit 4 at 695. He added: "Everyone knew that there was a danger of violence.

Everyone knew that the Capitol and other facilities were potential targets." Exhibit 4. at 698. Director of DHS Special Operations Christopher Tomney recalled "broad discussion/acknowledgment that folks were calling for bringing weapons into the city on that day, "[N]o one disagreed that there was going to be the high likelihood that there could be some violence on January 6." Exhibit 4 at 698.

The intelligence reports concerning the threat of violence on January 6, 2021 certainly crossed TRUMP's desk and White House and campaign staff were also aware of the threats of violence as they were posting and amplifying, the closely monitored content on far-right websites such as TheDonald.win, where users openly discussed attacking the Capitol and other violence on January 6th. Exhibit 4 at 527-529. On December 30th, Trump campaign Senior Advisor Jason Miller sent Meadows a text boasting "I got the base FIRED UP," linking to a post on TheDonald.win in which, in response to Miller's post, users stated that "gallows don't require electricity" and millions will "bust in through the doors if they try to stop Pence from declaring Trump the winner." Exhibit 4 at 529.

DOJ attorney Jeffrey Clark and Trump advisor John Eastman said violence may be necessary to keep TRUMP in office. On January 3rd, a Deputy White House Counsel told Clark there would be "riots in every major city in the United States" if TRUMP remained in office, to which Clark responded, "that's why there's an Insurrection Act," a statute that allows the president to deploy the military within the United States and use it against Americans. Exhibit 2 ¶ 81. On January 4th, after a senior White House advisor told Eastman that his plan would "cause riots in the streets," Eastman responded that there had been points in the nation's history where violence was necessary to protect the republic. Exhibit 2, ¶ 94.

TRUMP knew what his supporters were coming to Washington to engage in violence based on the intelligence reports from law enforcement, the statements and prior violent conduct of his supporters, and the widely circulated threats in the public domain. And Ultimately, TRUMP knew of or consciously disregarded the risk that his supporters would become violent on January 6, 2021. But that was the point: TRUMP wanted his supporters to commit violence on his behalf and he shared their goal of stopping the transfer of power to Joseph R. Biden by any means necessary, including the use of violence.

Early on January 6th and throughout the day, TRUMP continued to tell his supporters that Vice President Pence was the last hope for overturning the election. He did so even though Pence told the President "[m]any times" he would not unlawfully reject the certified electors from any state. Exhibit 4 at 456. At 1:00 a.m. on January 6th, Trump tweeted, "If Vice President @Mike_Pence comes through for us, we will win the Presidency. Many States want to decertify the mistake they made in certifying incorrect & even fraudulent numbers in a process NOT approved by their State Legislatures (which it must be). Mike can send it back!" Exhibit 4 at 35.

At 8:17 a.m., Trump tweeted, "All Mike Pence has to do is send them back to the States, AND WE WIN. Do it Mike, this is a time for extreme courage!" Later that morning, TRUMP asked speechwriters to revise his rally speech to call out Pence by name. Exhibit 4 at 581. The line was later removed at the request of White House legal staff. Exhibit 4. at 582.

Around 11:20 a.m., President TRUMP and Vice President Pence had a heated phone conversation in which Pence again refused to overturn the election results. Exhibit 4 at 457–458. TRUMP called Pence a "wimp," said he "was not tough enough," and that he "made the wrong decision" by choosing Pence as his running mate. Exhibit 4 at 458. After that call, President

Trump's speechwriting team was instructed to "REINSERT THE MIKE PENCE LINES" in TRUMP's speech. Exhibit 4 at 583.

In the early morning of January 6th, tens of thousands of Trump supporters began gathering at the Ellipse and the Washington Monument for the President's speech and "wild" protest. Exhibit 4. at 639.

The Proud Boys, who had been planning an attack since TRUMP's December 19th "will be wild" tweet, did not participate in the rally at the Ellipse. They instead made the tactical decision to march on the Capitol early, at 10:30 a.m. Exhibit 4 at 642–643. Led by senior members Joseph Biggs, Ethan Nordean, and Zachary Rehl, between 200 and 300 Proud Boys arrived at the west side of the Capitol shortly after 11:00 a.m. Exhibit 4 at 643–644. They walked the perimeter of the Capitol grounds until shortly before 1:00 p.m., when they led the attack on the Capitol. Exhibit 4. at 645.

What happened on January 6, 2021, was not an ordinary political rally or protest; the President's supporters came ready for violence and intended to overthrow the government. In fact, many of TRUMP's supporters traveled to Washington DC hoping to kill elected officials. Mark Mazza of Indiana told authorities that he intended to target House Speaker Nancy Pelosi and that "you'd be here for another reason" if he had found her inside the Capitol. Exhibit 4 at 641. Texan Garrett Miller threatened to assassinate Congresswoman Alexandria Ocasio-Cortez. Exhibit 4 at 642. Trevor Hallgren stated, "[t]here's no escape Pelosi, Schumer, Nadler. We're coming for you. … Even you AOC. We're coming to take you out. To pull you out by your hairs." Exhibit 4 at 642. And Texan Guy Reffitt stated on the morning of January 6th, "I just want to see Pelosi's head hit every fucking stair on the way out. … And Mitch McConnell too. Fuck em all." Exhibit 4. at 652.

Approximately 28,000 rallygoers went through the security checkpoint to get to the January 6 Rally before TRUMP ordered the security checkpoints taken down to allow his armed supporters to participate as well. From those 28,000 rallygoers the Secret Service confiscated hundreds of weapons and prohibited items, including 269 knives or blades, 242 canisters of pepper spray, 18 brass knuckles, 18 tasers, 6 pieces of body armor, 3 gas masks, 30 batons or blunt instruments, and 17 miscellaneous items like scissors, needles, or screwdrivers. Exhibit 4 at 68. Several January 6th attendees have also pleaded guilty or been convicted of carrying firearms on or near the Capitol grounds. Exhibit 4 at 640–41. Other January 6th assailants brought axes, tasers, cattle prods, bear spray, pepper spray, pitch forks, hockey sticks, and sharpened flag poles. Exhibit 4 at 642.

From a tent backstage at the Ellipse, President TRUMP looked out at the crowd of around 53,000 supporters and became enraged when he saw that about half of them refused to walk through magnetometers and be screened for weapons. Exhibit 4 at 585. Earlier that morning, Deputy Chief of Staff Ornato told TRUMP that the onlookers did not want to go through security screening because "[t]hey have weapons that they don't want confiscated by the Secret Service." Exhibit 4 at 585. Upon learning that his supporters refused to go through security because they were armed, TRUMP shouted to his advance team: "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." Exhibit 4 at 585.

Once TRUMP's armed mob had fully assembled at the ellipse, the main event began. Rudy Giuliani and John Eastman spoke before TRUMP, firing up the angry mob by repeating false election fraud claims and other lies about the November 2020 election. Giuliani also called for "trial by combat." Exhibit 4 at 460.

TRUMP then took the stage and spoke from noon until 1:10 p.m. Exhibit 4 at 585, 587. Building on months of inflammatory lies, TRUMP continued to falsely claim the election was stolen and that Vice President Pence had the power to keep him in office. He repeatedly targeted "weak Republicans" and "RINOs" in Congress. TRUMP also called out Vice President Pence eleven times, demanding PENCE install him as President for another term:

a. "I hope Mike is going to do the right thing. I hope so. I hope so. Because if Mike Pence does the right thing, we win the election";

b. "The states got defrauded … Now they want to recertify. … All Vice President Pence has to do is send it back to the states to recertify and we become president and you are the happiest people";

c. "I just spoke to Mike. I said: 'Mike, that doesn't take courage. What takes courage is to do nothing. That takes courage.' 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";

d. "And Mike Pence is going to have to come through for us, and if he doesn't, that will be a, a sad day for our country because you're sworn to uphold our Constitution";

e. "And Mike Pence, I hope you're 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"; and

f. "So I hope Mike has the courage to do what he has to do. And I hope he doesn't listen to the RINOs and the stupid people that he's listening to." Exhibit 1 Transcript

TRUMP's statements had the intended effect and directed the mob's anger towards Vice President Pence—anger the mob acted on that day. Exhibit 4 at 37. During TRUMP's speech, rallygoers could be heard shouting "storm the Capitol!" "invade the Capitol building!" and "take the Capitol!" Knowing his supporters were angry and armed, President TRUMP used the word "fight" or variations of it 20 times during his speech at the Ellipse. Nearly every mention was improvised: the word "fight" appears only once in a teleprompter draft of the speech. TRUMP claimed, from the perch of the presidency, that the very existence of our country depended on his supporters' willingness to fight: "And we fight. We fight like hell. And if you don't fight like hell, you're not going to have a country anymore." *See generally* Exhibit 1.

TRUMP also pushed his armed and angry mob to display strength, stating "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." President TRUMP insisted "[w]e must stop the steal" and stated repeatedly that "we can't let" the election certification happen. *See generally* Exhibit 1.

President TRUMP finally ordered his supporters to march to the Capitol and claimed he would join them: "[A]fter this, we're going to walk down, and I'll be there with you, … we'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," he stated. He repeated that call at the end of his speech, while again targeting "weak" Republicans: "[W]e're going to walk down Pennsylvania Avenue. … And we're going to the Capitol, and we're going to … give our Republicans, the weak ones[,] … the kind of pride and boldness that they need to take back our country. So, let's walk down Pennsylvania Avenue." *See generally* Exhibit 1.

Around 12:53 p.m., toward the end of President TRUMP's speech, the Proud Boys breached the Capitol perimeter and created a path for the rest of the mob to follow. Exhibit 4 at 645. The violent insurrections then pushed Capitol Police officers to the ground, removed fencing, and made their way toward the Capitol building. Exhibit 4. at 646. By 12:58 p.m., the mob had infiltrated the lower West Terrace of the Capitol just below the inauguration stage that had been constructed for President-Elect Biden's inauguration on January 20th. Exhibit 4 at 646. Police contained the mob temporarily, but once the attendees from President TRUMP's rally arrived TRUMP's mob was large enough to overwhelm law enforcement. Exhibit 4. at 647.

Meanwhile, Vice President Pence released a "Dear Colleague" letter publicly rejecting TRUMP's calls to overturn the election results. Exhibit 4. at 462. Pence explained: "It is my considered judgment that my oath to support and defend the Constitution constrains me from claiming unilateral authority to determine which electoral votes should be counted and which should not. … I do not believe that the Founders of our country intended to invest the Vice President with unilateral authority to decide which electoral votes should be counted during the Joint Session of Congress, and no Vice President in American history has ever asserted such authority." Exhibit 4. at 462.

News of Pence's letter spread quickly. Ryan Nichols, who traveled from Texas and was later charged with eight felonies, live-streamed a diatribe stating, "I'm hearing that Pence just caved. … I'm telling you if Pence caved, we're gonna drag motherfuckers through the streets." Exhibit 4 at 647. Oath Keeper Jessica Watkins, who traveled from Ohio, wrote to others in a Zello group that "'100%' of the Ellipse crowd was 'marching on the Capitol' because 'it has spread like wildfire that Pence has betrayed us.'" Exhibit 4 at 647. Watkins was later convicted of four felonies and sentenced to eight and a half years in prison for her role in the insurrection. Exhibit 4 at 57.

Then at 1:03 p.m., as police officers were fighting back the mob outside the Capitol, Vice President Pence gaveled in the joint session of Congress. Concurrently, the mob was outside pushing toward the Capitol Building. Exhibit 4. at 24. At 1:49 p.m., the D.C. Metropolitan Police Department declared a riot at the Capitol. Exhibit 4 at 651. The mob overwhelmed and brutalized police officers, continued to fight through barricades, climbed scaffolding, and made its way closer to the Capitol from multiple angles. Exhibit 4 at 651–52.

Finally, at 2:13 p.m., attackers breached the Capitol building, led by Proud Boy Dominic Pezzola who smashed a window on the Senate wing using a riot shield he stole from a police officer. Exhibit 4 at 653. Others entered through the window and opened doors from the inside, allowing more of the mob to enter the building. Exhibit 4 at 653. The Senate was forced into recess. *See* Exhibit 8, Capitol Attack Senate Report at 25. Around that time, Vice President Pence was evacuated to his ceremonial Senate office and congressional leadership were evacuated to secure locations. Exhibit 4 at 664–665.

Members of extremist groups, white supremacists, neo-Nazis, and neo-Confederates were among the first to forcibly breach the Capitol. Exhibit 4 at 653–655. Delaware man Kevin Seefried paraded a Confederate battle flag—a symbol of white supremacy and violent rebellion against the United States—through the halls of the Capitol building. Exhibit 4 at 653-655. He was not alone, many of TRUMPS supporters who stormed the Capitol proudly displayed the symbols of symbols of America's enemies.

At 2:18 p.m., the House was also forced into recess as hundreds of attackers confronted Capitol Police officers inside the Capitol's Crypt. Exhibit 4 at 660. At 2:30 p.m., the Senate was evacuated, and senators were rushed to a more secure location. Exhibit 4 at 665. At 2:38 p.m., Members of Congress were evacuated and rushed to a more secure location. Exhibit 4 at 665. Unfortunately,

28 Members of congress were trapped in the gallery as the mob roamed the halls surrounding the House chamber. Exhibit 4 at 666. The Capitol Police emergency response team was eventually able to rescue the trapped congresspeople but only after they cleared the Capitol hallways with rifles at 3:00 p.m. Exhibit 4 at 666.

By 1:21 p.m., mere minutes after finishing his speech, President TRUMP was informed that the Capitol was under assault. Exhibit 4 at 592. From then until 4:03 p.m., he sat in the presidential dining room and watched the attack on live television. Exhibit 4 at 592–593.

At no point on January 6th did President TRUMP contact top officials in his administration such as the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Attorney General, the Secretary of Homeland Security, or the FBI Director to ensure they were working to quell the violence. Exhibit 4 at 94. He took no action to deploy the D.C. National Guard, which falls under the President's direct command. Exhibit 4 at 724. Nor did he contact Vice President Pence to check on his safety. Exhibit 4 at 94. But TRUMP did act to exacerbate the violence.

President Trump had primed his supporters for violence by targeting Vice President Pence in his Ellipse speech. After Pence publicly rebuked Trump's pressure tactics in his "Dear Colleague" letter and throughout the afternoon, the mob chanted: "Hang Mike Pence!"; "Bring him out. Bring out Pence."; and referred to Pence as a "traitor." Exhibit 4 at 37–38. And then at 2:24 p.m., when he knew the Capitol was under assault and that Vice President Pence would not carry out his demands, President TRUMP poured fuel on the fire. 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!"

TRUMP's own staff knew his tweet would incite further violence. Exhibit 4 at 87–88. Deputy Press Secretary Sarah Matthews stated that "it was obvious that the situation at the Capitol was violent and escalating quickly," that she knew "the impact [Trump's] words have on his supporters," and that "in that moment for [Trump] to tweet out the message about Mike Pence, it was him pouring gasoline on the fire and making it much worse." Exhibit 4 at 87-88.

Secret Service agents in the Protective Intelligence Division predicted the tweet was "probably not going to be good for Pence" and noted it garnered "over 24K likes in under 2 min[utes]." Exhibit 4 at 597. As anticipated, President TRUMP's 2:24 p.m. tweet immediately caused the mob to surge both inside and outside the Capitol, intensifying the violence that Trump knew was underway. Exhibit 4 at 38, 86. Minutes after the tweet, the mob broke through a security line of the D.C. Metropolitan Police Department. Exhibit 4 at 38. One minute after the tweet, at 2:25 p.m., the Secret Service determined they could no longer protect the Vice President in his ceremonial office and evacuated him and his family to a secure loading dock, where he remained for the next four and a half hours. Exhibit 4 at 38–39, 466. The violent mob, which was calling for Pence's murder, came within 40 feet of the Vice President as he was evacuated. Exhibit 4 at 466.

By 2:36 p.m., the mob had seized control of the Senate chamber and pushed past a line of Capitol Police officers guarding the House chamber. Exhibit 4 at 661. The mob proceeded to breach the Capitol from other entry points, viciously assaulting and overwhelming police officers within and outside the building. Exhibit 4 at 661. Members of the mob attacked police officers with a variety of actual and improvised weapons and engaged them in hand-to-hand combat. Exhibit 4 at 662. Officers were crushed in metal doors, attacked with tasers, shocked with cattle prods, sprayed with pepper spray, bludgeoned with flag poles and metal poles broken apart from security barricades, and beaten with their own stolen batons and riot shields. Id.

One of the attackers Daniel Rodriguez, later told the FBI that he traveled to Washington because "Trump called us to DC … he's the commander in chief and the leader of the country, and … I thought he was calling for help." Rodriguez was convicted of conspiracy and obstruction of an official proceeding, obstruction of justice, and assaulting a law enforcement officer with a deadly or dangerous weapon and sentenced to more than 12 years in prison. Exhibit 4 at 663–664.

. During the invasion of the Capitol President TRUMP's senior staff, family, and close allies repeatedly urged him to issue a statement instructing the mob to leave the Capitol, but he refused. Exhibit 4 at 592-606. Minutes after the mob breached the Capitol building at 2:13 p.m., White House Counsel Pat Cipollone told Chief of Staff Mark Meadows that "rioters have gotten to the Capitol" and that they needed to "go down and see the President now." Exhibit 4 at 595. Meadows responded: "He doesn't want to do anything, Pat." Exhibit 4 at 595. Cipollone replied, "something needs to be done, or people are going to die and the blood's going to be on your [fucking] hands." Exhibit 4 at 595.

President TRUMP's first public statement after the attack began was his 2:24 p.m. tweet targeting Vice President Pence, which intensified the violence. Shortly after the incendiary 2:24 p.m. tweet, Cipollone and Meadows emerged from a meeting with President Trump. Exhibit 4 at 596. Cipollone said to Meadows, "Mark, we need to do something. They're literally calling for the Vice President to be [fucking] hung." Exhibit 4 at 596. Meadows responded: "You heard him, Pat. He thinks Mike deserves it. He doesn't think they are doing anything wrong." Exhibit 4 at 596. And rather than intervening to defend the Capitol, President TRUMP tried to enlist congressional allies to keep delaying the election certification. Exhibit 4 at 577, 597–98. He made one such call to Senator Tommy Tuberville at 2:26 p.m., two minutes after his inflammatory tweet targeting Pence. Exhibit 4 at 598.

TRUMP also had a heated phone call with then-House Minority Leader Kevin McCarthy. Id. McCarthy told Trump to "call … off" his mob. TRUMP replied, "Kevin, I guess they're just more upset about the election theft than you are." Exhibit 4 at 598. At 2:38 p.m., TRUMP tweeted: "Please support our Capitol Police and Law Enforcement. They are truly on the side of our Country. Stay peaceful!" and then at 3:13 p.m., he sent a similar tweet urging the crowd to "remain peaceful." Both tweets falsely implied his supporters were "peaceful," when in fact TRUMP knew of the ongoing violence at the Capitol. Neither of Trump's tweets condemned the mob's violence or told them to leave the Capitol building. Exhibit 4 at 600, 602.

Chairman of the Joint Chiefs of Staff General Mark Milley confirmed that President Trump did "[n]othing," "[z]ero" to marshal a federal response to the assault on the Capitol. Exhibit 4 at 578. Instead, it was Vice President Pence who issued "very explicit, very direct orders" to "get the [National] [G]uard down" to the Capitol, even though he lacked constitutional power to issue such orders. Id. Acting Secretary of Defense Christopher Miller likewise confirmed that TRUMP had no involvement—"none"—in "the Department of Defense efforts on January 6." Exhibit 4, 578.

In the nearly three-hour period between 1:21 p.m. and 4:03 p.m., President TRUMP could have walked just down the hallway from the Oval Office to record a statement instructing the mob to go home from the White House Press Briefing Room, where cameras are ready to go live at a moment's notice. Exhibit 4 at 604. He did not.

Following nearly three hours of barbaric violence and desperate pleas for the President to intervene, and only after it was clear that the attack would fail to stop the election certification, TRUMP finally filmed a video statement at 4:03 p.m. telling the mob to "go home." Exhibit 4 at 606. The video was released at 4:17 p.m. Id. In the video, President TRUMP did not condemn the

attack—he justified it. He repeated his lie of a "stolen" election, empathized with the attackers, and told them, "we love you" and "[y]ou're very special." Exhibit 4 at 606.

Throughout the evening of January 6th, TRUMP and Giuliani continued to try and exploit the violence and chaos at the Capitol by calling Members of Congress and urging them to further delay the election certification. Exhibit 4 at 608–10. At 7:01 p.m., as Giuliani was calling U.S. Senators on TRUMP's behalf, White House Counsel Pat Cipollone asked President Trump to withdraw any objections and allow the certification; TRUMP refused. Exhibit 3 ¶ 120.

The mob forced both chambers of Congress to go into recess by 2:18 p.m. The Vice President could not return to the Senate chamber and the election certification proceedings could not resume until all trespassers in the restricted area were removed and the Capitol complex was deemed secure and congress did not go back into the joint session until shortly after 8:00 p.m. Exhibit 4 at 669. It was not until 3:42 a.m. on January 7th that Congress completed its business and certified the election. Exhibit 4 at 669.

The insurrection failed, but its failure does not alleviate TRUMP from the consequences for fomenting an insurrection against the United States.

Memorandum of Points and Authorities

a. Declaratory Judgment Standard

A Declaratory Judgment is appropriate when there is an actual controversy between adverse parties, the party seeking relief has a legally protectable interest in the matter, and the issue is ripe for a judicial determination. "In order to obtain declaratory judgment, there must be a justiciable controversy. *See Loy v. Bunderson*, 107 Wis.2d 400, 410, 320 N.W.2d 175 (1982). A controversy is justiciable when the following factors are present:

> (1) A controversy in which a claim of right is asserted against one who has an interest in contesting it.
> (2) The controversy must be between persons whose interests are adverse.
> (3) The party seeking declaratory relief must have a legal interest in the controversy--that is to say, a legally protectible interest.
> (4) The issue involved in the controversy must be ripe for judicial determination.
>
> *Putnam v. Time Warner Cable of Se. Wis., Ltd. P'ship*, 2002 WI 108, ¶41, 255 Wis.2d 447, 649 N.W.2d 626 (citing Loy, 107 Wis.2d at 410).

Further, all four factors must be met for a court to grant declaratory relief. "If all four factors are met, the controversy is justiciable and a court may entertain an action for declaratory judgment." *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 61 (Wis. 2022) (citing *Miller Brands-Milwaukee, Inc. v. Case*, 162 Wis.2d 684, 694, (1991)).

It is also important to note that the purpose of ripeness in a Declaratory Judgment action is different than actions brought in tort or contract, in that the ripeness requirement is fulfilled when the facts in question are sufficiently developed 'to avoid courts entangling themselves in abstract disagreements.'" *Olson*, 309 Wis. 2d 365, ¶43, 749 N.W.2d 211 (quoting *Miller Brands-Milwaukee*, 162 Wis. 2d at 694, 470 N.W.2d 290). Courts resolve concrete cases, not abstract or hypothetical cases. That being said, "the ripeness required in declaratory judgment actions is different from the ripeness required in other actions" because declaratory judgments are prospective remedies. *Olson*, 309 Wis. 2d at ¶43. A plaintiff need not prove an injury has already occurred. *Id*. Rather, the facts must be "sufficiently developed to allow a conclusive adjudication." *Id*. (citing *Milwaukee Dist. Council 48 v. Milwaukee Cty*., 2001 WI 65, ¶41, 244 Wis. 2d 333, 627 N.W.2d 866). "The facts on which the court is asked to make a judgment should not be contingent or uncertain, but not all adjudicatory facts must be resolved as a prerequisite to a declaratory judgment" *Papa v. Wis. Dep't of Health Servs*., 393 Wis. 2d 1, 21 (Wis. 2020) (citing M*ilwaukee Dist. Council* 48, 244 Wis. 2d 333, 627 N.W.2d 866).

b. Temporary Injunction Standard

The purpose of an injunction is to prevent violations of a Plaintiff's rights or the law, "the threat of which in the future is indicated because of the similarity or relation to those unlawful acts" which have been committed. We recognize that the breadth of the injunction depends on the circumstances of each case. A too narrow injunction contributes to evasion; a too broad injunction leaves [the defendant] without adequate guides." *Pure Milk Prod. Coop. v. National Farmers Organ*, 90 Wis. 2d 781, 803 (Wis. 1979).

Additionally, this Court may issue a temporary injunction when the moving party demonstrates four elements: (1) the movant is likely to suffer irreparable harm if a temporary injunction is not issued; (2) the movant has no other adequate remedy at law; (3) a temporary injunction is necessary to preserve the status quo; and (4) the movant has a reasonable probability of success on the merits. See *Werner v. A.L. Grootemaat & Sons*, Inc.,80 Wis.2d 513, 520–21, 259 N.W.2d 310 (1977). Similarly, the granting or denial of injunctive relief is a matter of discretion for the circuit court. *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cnty*., 370 Wis. 2d 644, 659 (Wis. Ct. App. 2016) (citing State v. C. Spielvogel & Sons Excavating, Inc.,193 Wis.2d 464, 479, 535 N.W.2d 28 (Ct.App.1995))

Most importantly the party seeking an injunction must show "a sufficient likelihood that the defendant's future conduct will cause the plaintiff irreparable harm." *Diamondback v. Chili's of Wisconsin*, 735 N.W.2d 192 (Wis. Ct. App. 2007) (citing Pure Milk Prods. Co-op. v. National Farmers Org. , 280 N.W.2d 691 (1979).) The courts have clarified that "Irreparable harm is that which is not adequately compensable in damages." *Id*. "The plaintiff must also lack an adequate remedy at law ." *Diamondback 735 N.W.2d at ¶ 15*. (citing *Sunnyside Feed Co. v. City of Portage*

, 588 N.W.2d 278 (Ct.App. 1998)), and establish that "on balance, equity favors issuing the injunction," *Diamondback 735 N.W.2d at ¶ 15 (*citing *Nettesheim v. S.G. New Age Prods., Inc*. 702 N.W.2d 449 (Ct. App 2005)). “The requirements are essentially the same for both temporary and permanent injunctions.” *Diamondback* 735 N.W.2d at ¶ 15 (citing *Werner v. A. L. Grootemaat Sons, Inc*. , 259 N.W.2d 310 (1977)). *Werner* explains that “temporary injunctions are issued only when necessary to preserve the status quo and irreparable injury is satisfied by a showing that without it to preserve the status quo the permanent injunction sought would be futile.” *See also*, *Gillen v. City of Neenah* , 219 Wis. 2d 806, 821, 580 N.W.2d 628 (1998) (permanent injunctions are designed to prevent injury, are issued upon proof of a sufficient threat of future irreparable injury, and it is not necessary to wait until injury has been done).

“Additionally, [t]hat unlawful activity may be enjoined in the absence of an express showing of irreparable damage has been recognized by this Court.” *Vogt, Inc. v. International Brotherhood, supra*. The express basis for such holdings is that the fact that the activity has been declared unlawful reflects a legislative or judicial determination that it would result in harm which cannot be countenanced by the public.” *Joint School District No. 1 v. Wisconsin Rapids Education Ass'n*, 70 Wis. 2d 292, 310 (Wis. 1975)(citing *Vogt, Inc. v. International Brotherhood*, 270 Wis. 315, 319 (Wis. 1956) Effectively, even if Plaintiffs cannot show that they would be irreparably injured without the injunction, this Court should grant the injunction if doing so would prevent unlawful activity from continuing.

c. TRUMP is disqualified from serving as president under Section Three of the Fourteenth Amendment.

The Fourteenth Amendment was one of the three Reconstruction Amendments adopted in the wake of the Civil War. The Reconstruction Amendments were drafted and ratified to serve as the

foundation on which the United States of America would rebuild itself following the civil war, with one of the primary purposes of their adoption being the prevention of another civil war. Further, Section Three of the Fourteenth Amendment was adopted explicitly to ensure that oath breakers like TRUMP who rose up against the country they swore to protect would not be able to again hold public office.

In effect, Section Three of the Fourteenth Amendment imposes a simple qualification for holding public office in the United States, and it is one that TRUMP no longer meets. Section Three disqualifies from public office any person who swore an "oath … to support the Constitution of the United States" as a federal or state officer and then "engaged in insurrection or rebellion against the same, or [gave] aid or comfort to the enemies thereof," U.S. Const. amend XIV, § 3. Ultimately, Section 3 serves as a measure of self-defense designed to protect the United States of America from those who have previously chosen to do her harm. It further embodies the recognition of the reconstruction government of the threat that those who would wage war against the Constitution poses to the existence and integrity of our Union. "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), appeal dismissed sub nom. *Worthy v. Comm'rs*, 76 U.S. 611 (1869). TRUMP fails the test established by Section Three of the Fourteenth Amendment and may never again serve as President of the United States.

Section Three of the Fourteenth Amendment to the Constitution of the United States is written plainly and 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;

Just like the other constitutional qualifications for office based on age, citizenship, and residency, Section Three is enforceable through civil suits in state court to challenge a candidate's eligibility to hold public office, including the Office of the President. Neither Section Three's text nor precedent require a criminal conviction for "insurrection" before a candidate is disqualified. Section Three creates the qualification, and this Court may use Section Three of the Fourteenth Amendment to the United States Constitution to disqualify TRUMP from again serving as President.

1. This Court need not find that TRUMP is disqualified from serving as President because the issue has already been litigated.

The question of TRUMP's qualification for the office of the President of the United States was fully and fairly litigated to a determination in *Anderson v. Griswold*. In *Anderson*, voters in Colorado brought a petition before the Colorado District Court for the City of and County of Denver ("hereinafter Colorado District Court or District Court") challenging TRUMPS' qualification for office in September of 2023. The Colorado District Court found, following a five-day trial in which TRUMP participated, that TRUMP had engaged in insurrection, but ruled that Article Three of the Fourteenth Amendment does not apply to the office of the President. *Anderson v. Griswold*, No. 23SA300 (2023) ¶22 (Unpublished Colorado Supreme Court Decision disqualifying TRUMP). The Colorado Supreme Court overturned the lower court's decision that Article Three of the Fourteenth Amendment did not apply to the President of the United States and

finding that TRUMP was disqualified from serving of the United States under article three. *Anderson v. Griswold*, No. 23SA300 (2023) ¶5.

The question of TRUMP's qualification for the office of President of the United States was litigated to a final determination in *Anderson v. Griswold*, No. 23SA300 (2023) ¶5. When a matter is fully litigated to a final determination, the issue need not be relitigated in front of another court as the matter is barred from relitigation by issue preclusion. "In order for the bar to apply, the party against whom it is being asserted must have been a party to the prior action (or in privity with a party), [and] the issue must have been actually litigated in that action...." *Reuter v. Murphy*, 2000 WI App 276, ¶ 7, 240 Wis.2d 110, 622 N.W.2d 464 "The doctrine of issue preclusion, formerly known as collateral estoppel, is designed to limit the relitigation of issues that have been actually litigated in a previous action. The burden is on the party asserting issue preclusion." *Aldrich v. Labor & Indus. Review Comm'n*, 341 Wis. 2d 36, 68 (Wis. 2012). "[O]nce an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." *Paige K.B. v. Steven G.B*, 226 Wis. 2d 210, 219 (Wis. 1999) (citing *Montana v. United States*, 440 U.S. 147, 153 (1979)) Effectively if this Court finds that the issue of TRUMP's eligibility for the presidency has been fully litigated and a court of competent jurisdiction has made a final ruling on an issue, that ruling stands and the issue need not be relitigateded.

In making a determination on issue preclusion, this Court must apply a two-step analysis, "(1) whether issue preclusion can, as a matter of law, be applied, and if so, (2) whether the application of issue preclusion would be fundamentally fair." *Estate of Rille v. Physicians Ins. Co.*,2007 WI 36, ¶ 36, 300 Wis.2d 1, 728 N.W.2d 693. "As to the first step, we must determine whether the issue or fact was actually litigated and determined in the prior proceeding by a valid

judgment in a previous action and whether the determination was essential to the judgment. Id., ¶ 37. Only if the first step is satisfied do we move to the second inquiry" *Harborview Office Center, LLC v. Nash*, 804 N.W.2d 829, 832 (Wis. Ct. App. 2011) (citing *Estate of Rille*, 300 Wis.2d at 20).

Once this Court determines that the question of TRUMP's qualification for the office of Presidency was fully litigated to a final determination in *Anderson v. Griswold*, No. 23SA300 (2023), it must then ask if it would be fundamentally unfair to either party to preclude or not preclude relitigation on the issue.

"Fundamental fairness plays a significant role in the application of issue preclusion to bar re-litigation. The fundamental fairness standard in the doctrine of issue preclusion emerged in Wisconsin and federal courts out of a general loosening of the formal requirements of issue preclusion. Formalistic requirements have been abandoned in favor of a looser, equities-based interpretation of the doctrine of issue preclusion. Wisconsin courts have adopted a flexible approach toward the application of issue preclusion." *Kruckenberg v. Harvey*, 279 Wis. 2d 520, 544-45 (Wis. 2005).

The Wisconsin Supreme Court "has set out five factors which may bear upon the question of whether issue preclusion applies. These are: (1) could the party against whom preclusion is sought, as a matter of law, have obtained review of the judgment; (2) is the question one of law that involves two distinct claims or intervening contextual shifts in the law; (3) do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issues; (4) have the burdens of persuasion shifted such that the parties seeking preclusion had a lower burden of persuasion in the first trial than in the second; and (5) are matters of public policy and individual circumstances involved that would render the application of collateral estoppel[, now known as issue preclusion,] to be fundamentally unfair, including

inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action." *State v. Kasian*, 207 Wis. 2d 611, 615-16 (Wis. Ct. App. 1996) (citing *Michelle T. v. Crozier*, 495 N.W.2d, 327 330)

Additionally, the five factors are not controlling and the ultimate decision to apply or not apply the doctrine of issue preclusion is one of justice and equity. "These enumerated factors are illustrative; they are not exclusive or dispositive. The most important factor to be considered is fairness to the party against whom preclusion is asserted, and this fairness determination should be made on a case-by-case basis. The final decision whether the doctrine of issue preclusion should be applied rests on the circuit court's sense of justice and equity." *Estate of Rille*, 300 Wis. 2d at 30 (Wis. 2007). (*internal quotations omitted*). And, this Court should find that it would be just to preclude the issues previously litigated in *Anderson v. Griswold* from relitigation,

i. The Question of Donald Trump's qualification for office was fully litigated to a final determination and does not need to be relitigated.

TRUMP was found to be disqualified from holding the office of President under the Fourteenth Amendment to the United States Constitution after the matter was fully and actually litigated in the Colorado Courts. *Anderson v. Griswold*, No. 23SA300 (2023) ¶5. Accordingly, the findings in *Anderson* do not need to be relitigated for this Court to grant Plaintiffs' requested declaratory and injunctive relief. "The first step in the analysis of issue preclusion is to 'determine whether the issue or fact was actually litigated and determined in the prior proceeding by a valid judgment in a previous action and whether the determination was essential to the judgment.'" *Aldrich v. Labor & Indus. Review Comm'n*, 341 Wis. 2d 36, 71 (Wis. 2012) (citing *Estate of Rille*, 300 Wis.2d 1, ¶ 37, 728 N.W.2d 693" *Aldrich v. Labor & Indus. Review Comm'n*, 341 Wis. 2d 36, 71 n.36 (Wis. 2012)). Several issues related to TRUMP's disqualification under Section Three of the Fourteenth

Amendment to the United States Constitution were fully and actually litigated to determinations in *Anderson*, and those determinations were essential to the ultimate finding that TRUMP is ineligible to appear on Colorado's Republican presidential primary ballot. *Anderson* No. 23SA300 (2023) ¶5. These same issues do not need to relitigated in Wisconsin.

Additionally, the doctrine of issue preclusion is not exclusive to pure questions of fact, an "issue on which relitigation is foreclosed may be one of evidentiary fact, of `ultimate fact' (i.e., the application of law to fact), or of law." *Heggy v. Grutzner*, 156 Wis. 2d 186, 195 (Wis. Ct. App. 1990) Consequently, this Court may preclude from relitigation both issues of fact and law that were fully litigated to a determination. Plaintiffs therefore request this Court find that the following issues, which were fully and actually litigated in *Anderson,* are precluded from relitigation under the issue preclusion doctrine"

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. That on and for some time before January 6, 2021, Donald J. Trump engaged in an insurrection against the United States.

A brief examination of the procedural history of *Anderson v. Griswold*, No. 23SA300 (2023) makes it clear that each of the four issues that Plaintiffs request this Court bar from relitigation under the issue preclusion doctrine, were fully and actually litigated to an essential determination.

"On September 6, 2023, the Electors initiated these proceedings against the Secretary in Denver District Court under sections 1-4-1204(4), 1-1-113(1), 13-51-105, C.R.S. (2023), and C.R.C.P. 57(a). In their Verified Petition, the Electors challenged the Secretary's authority to list President Trump "as a candidate on the 2024 Republican presidential primary election ballot and any future election ballot, based on his disqualification from public office under Section [Three]." *Anderson,* No. 23SA300 ¶ 14.

"President Trump intervened and almost immediately filed a Notice of Removal to federal court, asserting federal question jurisdiction. See 28 U.S.C. §§ 1331, 1441(a), 1446. In light of the removal, the Denver District Court closed the case on September 8. On September 12, the federal district court remanded the case back to state court, concluding that it lacked jurisdiction because the Electors had no Article III standing and the Secretary had neither joined nor consented to the removal." *Anderson*, No. 23SA300 (2023) ¶ 15.

"Once the Electors filed proof with the Denver District Court that all parties had been served, the court reopened the case on September 14. At a status conference four days later, on September 18, the Secretary emphasized that she must certify the candidates for the 2024 presidential primary ballot by January 5. See § 1-4-1204(1). The court set the matter for a five-day trial, beginning on October 30. On September 22, with the parties' input, the court issued expedited case management deadlines for a host of matters, including the disclosure of expert reports, witness lists and exhibits, as well as for briefing and argument on several motions. The court also granted CRSCC's motion to intervene on October 5. *Anderson*, No. 23SA300 (2023)" ¶ 16.

Prior to the trial "12 motions testing the legal sufficiency of the Electors' claims" were argued and ruled upon, which in turn "allowed for extended discovery and disclosure procedures, and providing the opportunity to depose expert witnesses. *Anderson*, No. 23SA300 (2023) ¶ 82.

"[T]he district court took many steps to address the complexities of the case. For example, the first hearing in this case was a status conference on September 18—four days after the case was reopened after being remanded from federal court. In recognition of the complexity of the case, the district court—with the parties' input—adopted a civil-case-management approach to the litigation that afforded the parties the opportunity to be heard on a wide range of substantive issues." *Anderson*, No. 23SA300 (2023) ¶ 83

"The district court's case-management approach worked. After permitting multiple intervenors to participate, the district court allowed sufficient time for extensive prehearing motions in which all parties vigorously engaged. It then issued three substantive rulings on these motions, including an omnibus ruling addressing four of Intervenors' motions, all in advance of the trial. The trial 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. Moreover, the legal and factual complexity of this case did not prevent the district court from issuing a comprehensive, 102-page order ." *Anderson*, No. 23SA300 (2023) ¶ 84

"In short, the district court admirably—and swiftly—discharged its duty to adjudicate this complex section 1-1-113 action, substantially complying with statutory deadlines while demonstrating the flexibility inherent in such a proceeding to address the various issues raised by Intervenors. And nothing about the district court's process suggests that President Trump was deprived of notice or opportunity to fully respond to the claim against him or to mount a vigorous defense." *Anderson*, No. 23SA300 (2023) ¶ 85

"The trial began, as scheduled, on October 30. The evidentiary portion lasted five days, with closing arguments almost two weeks later, on November 15. During those two weeks, the Electors, the Secretary, President Trump, and CRSCC submitted proposed findings of fact and conclusions

of law. The court issued its written final order on November 17, finding, by clear and convincing evidence, that the events of January 6 constituted an insurrection and President Trump engaged in that insurrection. The court further concluded, however, that Section Three does not apply to a President because, as the terms are used in Section Three, the Presidency is not an "office . . . under the United States" nor is the President "an officer of the United States" who had "previously taken an oath . . . to support the Constitution of the United States." U.S. Const. amend. XIV, § 3; See *Anderson*, ¶¶ 299–315. Accordingly, the Secretary could not exclude President Trump's name from the presidential primary ballot. Anderson, Part VI. Conclusion." *Anderson*, No. 23SA300 (2023) ¶ 22.

The matter was then appealed to the Colorado Supreme Court, which after considering the factual basis presented at trial as well as the pertinent case law made the following findings applicable to the instant case. *Anderson*, No. 23SA300 (2023). ¶4.

a. The Election Code allows the Electors to challenge President Trump's status as a qualified candidate based on Section Three. Indeed, the Election Code provides the Electors their only viable means of litigating whether President Trump is disqualified from holding office under Section Three.

b. 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.

c. Judicial review of President Trump's eligibility for office under Section Three is not precluded by the political question doctrine.

d. Section Three encompasses the office of the Presidency and someone who has taken an oath as President. On this point, the district court committed reversible error.

e. The district court did not abuse its discretion in admitting portions of Congress's January 6 report into evidence at trial.

f. The district court did not err in concluding that the events at the U.S. Capitol on January 6, 2021, constituted an "insurrection."

g. The district court did not err in concluding that President Trump "engaged in" that insurrection through his personal actions.

h. President Trump's speech inciting the crowd that breached the U.S. Capitol on January 6, 2021, was not protected by the First Amendment.

The issues Plaintiffs are requesting that this Court preclude from relitigation under the issue preclusion doctrine were fully and actually litigated to a determination by any definition of the phrase. The parties in *Anderson*, including TRUMP, engaged in significant motion practice and filed interlocutory appeals before holding a five-day trial on the merits. At that five-day trial the parties called and examined fifteen witnesses and introduced 96 exhibits in evidence. Following the intense litigation by the Plaintiffs, the Colorado Republican Party, and TRUMP himself, the District Court found that while TRUMP had engaged in an insurrection, Section Three of the Fourteenth Amendment was not applicable to the office of the President.

The District Courts' ruling was then reviewed by the Colorado Supreme Court which held that TRUMP was disqualified from holding the office of President under Section Three; because he is disqualified, it would be a wrongful act under the Election Code for the Secretary to list him as a candidate on the presidential primary ballot. *Anderson v. Griswold*, No. 23SA300 (2023) ¶ 23. The question of TRUMP's qualification to hold the office of Presidency was fully litigated, the District Courts heard pretrial motions and held a trial, where the parties called witnesses and introduced exhibits, the district courts then made their rulings which were reviewed by the Colorado Supreme

Court which looked to both the factual record and applicable law. Following the district court's 5-day trial and subsequent District Court ruling, the Colorado Supreme Court reviewed the matter and issued the rulings listed above. Each of the Colorado Supreme Court rulings was essential in and of themselves, but also essential to the final judgment of the Colorado Supreme Court which ruled that TRUMP may not appear on the Colorado primary ballot because he is disqualified from holding officer under Section Three of the Fourteenth Amendment.

Accordingly, this Court should bar relitigation of the following four issues that were fully and actually litigated in *Anderson v. Griswold* under the doctrine of issue preclusion"

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. That on, and for some time before, January 6, 2021, Donald J. Trump engaged in an insurrection against the United States.

ii. It would not be fundamentally unfair to TRUMP to find him disqualified to hold the office of Presidency, as a matter of law, based on the preclusive effect of *Anderson v. Griswold.*

The four issues that Plaintiffs are requesting this Court bar from relitigation were unquestionably fully and actually litigated to an essential determination in *Anderson v. Griswold*, and this Court's decision to apply the doctrine of issue preclusion to bar relitigation of the four issues now turns on a determination of fundamental fairness. *See*, *Estate of Rille*, 300 Wis.2d at ¶ 37. And while this decision has a number of consideration, when this Court looks to the five

fundamental fairness factors outlined below, and considers the equities of the decision, it will see that application of the doctrine of issue preclusion to the four issues in question would not be fundamentally unfair to TRUMP or the WEC.

The Wisconsin Supreme Court has established five factors to help circuit courts determine if the application of issue preclusion is fundamentally fair." *Estate of Rille*, 300 Wis. 2d at ¶ 29. But, while the factors can help the circuits courts make their decision, the ultimate decision rests on whether the application of issue preclusion is fundamentally fair. "Fundamental fairness plays a significant role in the application of issue preclusion to bar re-litigation." *Kruckenberg v. Harvey*, 279 Wis. 2d 520, 544-45 (Wis. 2005). Similarly, the recent issue preclusion jurisprudence has resulted in a "loosening of the formal requirements of issue preclusion. Formalistic requirements have been abandoned in favor of a looser, equities-based interpretation of the doctrine of issue preclusion" *Id*. Accordingly, while this Court should look to the following five factors when deciding the applicability issue preclusion to the instant case, this Court only need answer the question, is barring relitigation of the issues at hand fundamentally fair.

The five fairness factors are;

> "(1) could the party against whom preclusion is sought, as a matter of law, have obtained review of the judgment;
>
> (2) is the question one of law that involves two distinct claims or intervening contextual shifts in the law;
>
> (3) do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issues;
>
> (4) have the burdens of persuasion shifted such that the parties seeking preclusion had a lower burden of persuasion in the first trial than in the second; and
>
> (5) are matters of public policy and individual circumstances involved that would render the application of collateral estoppel to be fundamentally unfair, including inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action. ."

Estate of Rille, 300 Wis. 2d at ¶ 61.

As to the first factor, TRUMP has not only had the opportunity to have the judgment from *Anderson v. Griswold* reviewed, it has been. Additionally, each of the rulings that Plaintiffs are asking this Court to use to preclude further litigation on the four issues at question were made following Colorado Supreme Court review in *Anderson v. Griswold,* 23SA300. The first factor outlined in *Estate of Rille* is clearly satisfied.

Furthermore, not only have the issues Plaintiffs are requesting be precluded from further litigation been reviewed as contemplated by *Estate of Rille*, but they also continue to be reviewed. The United States Supreme Court has granted certiorari on the question of TRUMP's disqualification from the Republican Presidential Primary and will soon be hearing oral arguments. *Trump v. Anderson et al.* No. 23-719 (cert granted). The pending Supreme Court decision in *Trump v. Anderson et al.* No. 23-719 does not prevent this Court from applying issue preclusion to the issues in the instant case, however. To apply issue preclusion, this Court must only find that the "issue or fact was actually litigated and determined in the prior proceeding by a valid judgment in a previous action and whether the determination was essential to the judgment" *Estate of Rille.*, 300 Wis. 2d at ¶ 20. The issue preclusion doctrine does not require the exhaustion of appellate remedies. *See*, *Uniloc U.S. v. Motorola Mobility LLC*, 52 F.4th 1340, 1347 (Fed. Cir. 2022) (finding that the application of issue preclusion is not barred by a pending appeal). Clearly, this Court may apply the doctrine of issue preclusion to the four issues delineated by Plaintiffs in this matter notwithstanding the United States Supreme Court litigation in *Trump v. Anderson.*

Moreover, this Court should not find that it would be fundamentally unfair to bar TRUMP or the WEC from relitigating the issues previously litigated in *Anderson v. Griswold* under the second factor outlined in *Estate of Rille*, which asks, is the question one of law that involves two distinct claims or intervening contextual shifts in the law? 300 Wis. 2d at ¶ 61. The claims that Plaintiffs are making in the instant case are nearly identical to the claims made by the Petitioners in *Anderson v. Griswold,* with the respective parties each asking the courts to find that TRUMP is disqualified from serving as President under Section Three of the Fourteenth Amendment to the United States Constitution and similarly requesting the State bar Trump from participating in a primary election. *Anderson,* No. 23SA300 ¶ 14 Further, there have been no significant changes in the jurisprudence surrounding Section Three of the Fourteenth Amendment in the last six months. The questions of law and fact in the instant case are nearly identical to the questions raised in *Anderson v. Griswold*, (indeed, the questions of law and fact as to whether TRUMP is disqualified from election to the presidency are entirely identical) and consequently this Court cannot find that it would be fundamentally unfair to TRUMP or the WEC to apply the doctrine of issue preclusion to the four issues identified by Plaintiffs.

This court similarly need not find that it would be fundamentally unfair to TRUMP to bar him from relitigating the issues previously litigated in *Anderson v. Griswold* under the third or fourth factors outlined in *Estate of Rille*, which ask, do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issues, and have the burdens of persuasion shifted such that the parties seeking preclusion had a lower burden of persuasion in the first trial than in the second. *Id.* In *Anderson v. Griswold* the district court held a five-day trial. Relitigating the issues from *Anderson* in the instant case would not result in a more substantial examination of the issues, just duplicate litigation. Similarly, there is functionally no

difference between the burden of proof required for the finding in *Anderson v. Griswold*, and the burden of proof that would be required in the instant case. In *Anderson,* the petitioners were required to prove that TRUMP was disqualified from the Colorado primary ballot by the preponderance of the evidence. The Colorado preponderance of the evidence standard is nearly identical to the ordinary burden of proof in Wisconsin, which would be the requisite burden of proof in the instant case. *See* Colorado Section 1-4-1204(4) and *Carlson Erickson Builders v. Lampert Yards*, 190 Wis. 2d 650, 654 (Wis. 1995).

There is no significant difference in the nature of the prior proceedings in *Anderson* and the potential future proceeding in the instant case, nor is there a significant difference between the burden of proof that was required in *Anderson* or the burden of proof which would be required in the instant case. Consequently, neither factors three nor four from *Estate of Rille* can be said to demonstrate that the application of the issue preclusion doctrine in the instant case would be fundamentally unfair to TRUMP or WEC. *See*, *Estate of Rille*, 300 Wis. 2d at ¶ 61.

The fifth factor outlined in *Estate of Rille* asks whether there are "matters of public policy and individual circumstances involved that would render the application of [issue preclusion] to be fundamentally unfair, including inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action." In the instant case, there are no matters of public policy that would render the application of issue preclusion in the instant case fundamentally unfair. The facts pertaining to TRUMP's conduct on and around January 6, 2021, are a matter of public record and have been examined repeatedly. TRUMP's conduct was initially investigated by the House of Representatives as part of the impeachment proceedings against him. Exhibit 10 House Resolution 24 - Impeaching Donald John Trump, President of the United States, for high crimes and misdemeanors. The House of representative voted to Impeach TRUMP, on January 13, 2021, for

engaging in or aiding an insurrection against the United States and the final count was 232 yea votes and 197 nay votes. The Senate then voted to convict TRUMP on February 13, 2021, with 57 yeas and 43 nays. While a majority of the senate voted to convict, the yeas did not secure the requisite two-thirds majority required for a conviction.

The matter was subsequently investigated by the bipartisan United States House Select Committee on the January 6 Attack. Most of the witnesses that testified, as part of that investigation were Republicans, many of whom were members of TRUMP's administration. Exhibit 4 at 131. The witness list included former Attorney General William Barr and former acting Attorney General Jeff Rosen. After conducting their investigation, the Select Committee released an 814-page report with their findings and concluded that TRUMP engaged in an insurrection against the United States. *See generally*, Exhibit 4 and Exhibit 4 at 109.

This matter was then fully and actually litigated in *Anderson v. Griswold.* The Colorado District Court heard pretrial motions, held a five-day trial where 15 witnesses were examined and cross examined and 96 exhibits were entered into evidence. The District Court initially found that while TRUMP had engaged in an insurrection against the United States, Section Three of the Fourteenth Amendment Could not be used to disqualify an individual from serving as President of the United States. The findings of the District Court were then reviewed by the Colorado Supreme Court which affirmed the findings of fact made by the District Court, but overturned several findings of law and ruled that Section Three of the Fourteenth Amendment could disqualify an individual from serving as president of the United States, and that TRUMP was disqualified from serving as President of the United as he had previously taken an oath and engaged in an insurrection against the country he swore to protect in taking that oath. Ultimately, the Colorado Supreme Court removed TRUMP from the Colorado Republican presidential primary ballot. And

it would not be fundamentally unfair to TRUMP or the WEC to preclude the issues identified by plaintiffs from relitigation.

Plaintiffs in the instant case are asking this Court to make the same finding that the Colorado Supreme Court and the United States House of Representatives have already made. That TRUMP on, and for some time leading up to January 6, 2021, engaged in an insurrection against the country he swore to protect. Precluding TRUMP from relitigating the matter would not be fundamentally unfair as no new facts have come to light since the prior findings by Colorado Supreme Court or the United States House of Representatives, and Section Three of the Fourteenth Amendment has not been amended or repealed. Further, since the national embarrassment that was TRUMP's insurrection and failed coup played out publicly on television screens and across various social media platforms, nothing about his conduct was hidden or requires additional scrutiny. TRUMP's status as an insurrectionist is unquestionable and he will – hopefully – go down in history as the only American President to lead a failed coup against the United States. Relitigating the issues previously litigated in *Anderson* will not change that and will only result in the Plaintiffs and this Court wasting time and resources to produce an inevitable result.

Furthermore, this Court can use a foreign ruling to preclude relitigation in Wisconsin. The issue preclusion doctrine only asks if a "Court of Competent Jurisdiction" made the determination at issue, refusing to limit the doctrine to Wisconsin courts. *See Paige K.B. v. Steven G.B*, 226 Wis. 2d 210, 216 (Wis. 1999). Additionally, the courts have clarified that, provided the party against which issue preclusion would work was in privity with the party that actually litigated the matter, issue preclusion can bar relitigation based on foreign rulings. *See*, *State v. Jackson*, 862 N.W.2d 619 (Wis. Ct. App. 2015) (Finding that a fully litigated issue in Federal Court can have a preclusive

effect on Wisconsin litigation provided the party issue preclusion is being asserted against is in privity with the party that actually litigated the issue)

Ultimately this Court must make its determination on the fundamental fairness of application of the issue preclusion doctrine in the instant case based on its own "sense of justice and equity ." *Estate of Rille*, 300 Wis. 2d ¶ 30. And in that vein, it would be totally unwarranted for this Court to find that it would be fundamentally unfair to TRUMP or the WEC to bar them from relitigating TRUMP's qualification under Section Three of the Fourteenth Amendment or any of the other findings of fact from *Anderson v. Griswold*, which would be applicable to the instant case. TRUMP's insurrection and failed coup were perpetrated publicly, and his conduct played out in front of the eyes of every American. The matter has been investigated to no end. Further, TRUMP was already given the opportunity to present his case to a neutral fact finder and litigate all of the issues surrounding his disqualification under Section Three of the Fourteenth Amendment, with the Colorado Supreme Court ultimately finding that, Section Three of the Fourteenth Amendment applies to the office of the President of the United States and that TRUMP having previously taken the oath of office as president of the United States, chose to betray that oath by engaging in an insurrection against the country he swore to protect. TRUMP has already had his day in court on the question of his qualification to again serve as president and the principles of equity and justice do not allow him a second opportunity. This court can and should find that precluding TRUMP, RPW, and the WEC from relitigating the following issues matters would not be fundamentally unfair. *See*, *Estate of Rille*, 300 Wis. 2d ¶ 30.

Plaintiffs therefore request this Court find the following issues barred from relitigation by the issue preclusion doctrine:

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. That on, and for some time before January 6, 2021, Donald J. Trump engaged in an insurrection against the United States.

iii. The WEC is in privity with TRUMP.

The application of issue preclusion against TRUMP can also be imparted on the WEC. When issue preclusion "is applied against a litigant who was not a party to the prior proceeding, that litigant's right to due process is violated if the litigant did not have sufficient identity of interests with a party to the prior proceeding." *Ambrose v. Continental Insurance Company*, 208 Wis. 2d 346, 356 (Wis. Ct. App. 1997) (Citing *In re the Paternity of Mayonia M.M*, 202 Wis.2d at 469,) Moreover, "*Mayonia M.M.* also extends the concept of a party in a prior action to those additional persons who had a "sufficient identity of interest" with the party such that their interests are deemed to have been litigated in the prior action. " *Jensen v. Milwaukee Mut. Ins. Co.*, 204 Wis. 2d 231, 237 (Wis. Ct. App. 1996)(citing *In re the Paternity of Mayonia M.M*, 202 Wis.2d at 469). Functionally, this Court can apply issue preclusion against the WEC if their interests are so aligned with TRUMP's that their interests were litigated in *Anderson v. Griswold,* and their respective interests are aligned in the instant case.

The WEC intends to allow TRUMP to appear on the Wisconsin Primary ballot, despite Section Three of the Fourteenth Amendment plainly prohibiting his participation. TRUMP similarly believes he should be permitted to participate in the Wisconsin Republican presidential preference primary election despite being disqualified. The WEC and TRUMP have perfectly aligned interests in this matter and the application of issue preclusion can rightly be imparted from TRUMP to the WEC. "To be in privity the parties must be so closely aligned that they represent the same legal interest." *Paige K.B*, 226 Wis.2d at 226. Further, TRUMP is a named party to this action and applying issue preclusion to bar TRUMP from relitigating the issues Plaintiffs wish to have precluded, would be nonsensical and create a questionable result. Additionally, Plaintiffs' could have rightly brought this action against TRUMP alone, moved for a declaratory judgment and then joined the WEC to move for the injunction and the outcome would be no different, consequently, their interests are perfectly aligned.

2. This Court can enforce Section Three of the Fourteenth Amendment against TRUMP as matter of law.

i. Section Three of the Fourteenth Amendment is self-executing.

The United States Supreme Court has ruled that the Fourteenth Amendment "is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances." The *Civil Rights Cases*, 109 U.S. 3, 20 (1883). Further, in *Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966) the Supreme Court reiterated that the Fourteenth amendment was self-executing holding that Section Five gives Congress authority to "determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment," without disputing that the Fourteenth Amendment can be enforced without enabling legislation.

Moreover, Section Three is one of four substantive sections of the Fourteenth Amendment, and the Supreme Court has held that Section One is self-executing and Sections Two and Four have always been treated as self-executing. See e.g., C*ity of Boerne v. Flores*, 521 U.S. 507, 524 (1997) ("As enacted, the Fourteenth Amendment confers substantive rights against the States which, like the provisions of the Bill of Rights, are self-executing."), superseded by statute, Religious Land Use and Institutionalized Persons Act of 2000, 114 Stat. 803, on other grounds as recognized in *Ramirez v. Collier*, 595 U.S. 411, 424 (2022). Section Two was enacted to eliminate the three-fifths compromise. This was the constitutional provision which counted slaves as only three-fifths of a person for purposes of legislative apportionment. The self-executing nature of that section has never been called into question, similarly the self-executing nature of Section Four has never been questioned. There is no objective reason for this Court to believe that Section Three is the only section of the Fourteenth Amendment that requires enabling legislation.

Similarly, the two other reconstruction amendments, the Thirteenth Amendment and Fifteenth Amendment have been found to be self-executing by the courts, and therefore there is no reason for this Court to believe that Section Three of Fourteenth Amendment requires enabling legislation. The Thirteenth Amendment, which abolished slavery following the civil war was found to be self-executing in *The Civil Rights Cases, 109 U.S. 3* at 20. Supreme Court explained "This amendment, as well as the Fourteenth, is undoubtedly self-executing without any ancillary legislation" *Id. at* 20. While "legislation may be necessary and proper to meet all the various cases and circumstances to be affected by it," it is not required for enforcement. *Id*. The Supreme Court also ruled that the Fifteenth Amendment is self-executing in S*outh Carolina v. Katzenbach*, 383 U.S. 301, 325 (1966) holding that Section One of the Fifteenth Amendment "has always been treated as self-executing and has repeatedly been construed, without further legislative

specification, to invalidate state voting qualifications or procedures which are discriminatory on their face or in practice."

Additionally, no other constitutional qualifications for office require enabling legislation. *See* U.S. Const. art. I, § 2, cl. 2 ("No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."); *Id*. at § 3, cl. 3 ("No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen."); *Id*. at art. II, § 1, cl. 5 ("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."). Each of these qualifications is enforced without any enabling legislation. Furthermore, the Twenty-Second Amendment to the United States Constitution which states "No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once." The Twenty-Second amendment created an additional qualification for the office of the presidency and is also currently enforced without any enabling legislation.

This court can enforce Section Three of the Fourteenth Amendment based on its text alone and without any additional legislation just as the United States Supreme Court has done with other sections of the Thirteenth, Fourteenth, and Fifteenth Amendments. Additionally, nothing in the text of Section Three of the Fourteenth Amendment that suggests that the qualification to hold

office created by Section Three is distinct from the other qualifications for elected office created by the United States Constitution. Each qualification is enforced without further act of Congress. Section Three of the Fourteenth Amendment is clearly self-executing, and this Court may use Section Three of the Fourteenth Amendment to the United States Constitution to find that TRUMP, by leading an insurrection against the United States, disqualified himself from ever again holding the Presidency of the United States, or any other federal office.

ii. This court has the authority to remove TRUMP from the Republican Presidential preference primary ballot.

The WEC has made the decision, in error, to allow TRUMP to participate in the Wisconsin Republican presidential preference primary.[2] The Wisconsin legislature and courts have provided Plaintiffs with an avenue to challenge the WEC's decision and correct that error, however. In Wisconsin, individual electors are empowered to challenge any abuse of discretion committed by the WEC through the circuit courts. This Court has the authority to bar unqualified Presidential candidates from the ballot. Wis Stat § 5.06 (1) states:

> "Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law."

Further, the Wisconsin Supreme Court clarified in *Teigen et al v. Wisconsin Elections Commission et al*, that the WEC should not be considering complaints against itself; accordingly,

[2]Rich Kremer, *Candidates, including Donald Trump, approved for Wisconsin's presidential primary*, wpr.org, https://www.wpr.org/politics/seven-candidates-donald-trump-approved-wisconsin-presidential-primary

when an elector believes the WEC has abused its discretion they must go directly to courts as directed in Wis. Stat. Wis. Stat. § 5.06(8). As such, Plaintiffs in this matter come to this Court requesting that it order the WEC to conform their conduct to law and remove TRUMP from the ballot.

The state of Colorado has a similar statute that allows residents to challenge the qualification of Presidential candidate and the Petitioners in *Anderson v. Griswold* successfully challenged TRUMP's qualification to participate in the Colorado Republican Presidential Primary. Moreover, when considering TRUMP's qualification for office, the Colorado Supreme Court found that, "it would be a wrongful act for the Secretary to list a candidate on the presidential primary ballot who is not "qualified" to assume the duties of the office." *Anderson*, *No. 23SA300* ¶ 62.

There is a large body of case law that allows a state court in a civil proceeding to remove an unqualified candidate from the ballot. The State of Colorado has a similar statute that allows residents to challenge the qualification of Presidential candidate and the Petitioners in *Anderson* successfully removed TRUMP from the ballot. And when considering TRUMP's qualification for office, the Colorado Supreme Court noted that if Colorado could not exclude TRUMP from the primary ballot under Section Three of the Fourteenth Amendment, "It would mean that the state would be powerless to exclude a twenty-eight-year-old, a non-resident of the United States, or even a foreign national from the presidential primary ballot" as well. *Anderson v. Griswold,* No. 23SA300 (2023) ¶66. Several other courts have expressly upheld states' ability to exclude constitutionally ineligible candidates from their presidential ballots. See *Lindsay v. Bowen*, 750 F.3d 1061, 1065 (9th Cir. 2014) (upholding California's refusal to place a twenty-seven-year-old candidate on the presidential ballot); *Hassan v. Colorado*, 495 F. App'x 947, 948–49 (10th Cir.

2012) (affirming a state's right to exclude a foreign-born naturalized citizen from the presidential ballot); *Socialist Workers Party of Ill. v. Ogilvie*, 357 F. Supp.32 109, 113 (N.D. Ill. 1972) (per curiam) (affirming Illinois's exclusion of a thirty-one year-old candidate from the presidential ballot).

As Judge Gorsuch reasoned in *Hassan*, 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." 495 F. App'x at 948. And, excluding a candidate for failing to qualify for office under Section Three of the Fourteenth Amendment is no different than excluding candidates who do not satisfy the age, residency, and citizenship requirements of the Presidential Qualifications Clause of Article II. See U.S. Const. art. II, § 1, cl. 5, and exclusions under these provisions have been upheld repeatedly. See *Lindsay*, 750 F.3d at 1065; *Hassan*, 495 F. App'x at 948; *Ogilvie*, 357 F. Supp. at 113.

The WEC has abused its discretion by allowing TRUMP to appear on the Republican presidential primary ballot. Plaintiffs, as qualified electors are empowered by Wis. Stat. § 5.06 to challenge that abuse of discretion, and this Court should terminate that same abuse of discretion by enjoining TRUMP from participating in the Republican Presidential Preference Primary.

iii. The disqualification clause of Section Three of the Fourteenth Amendment can be applied to TRUMP.

Section Three 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 then engaged in an insurrection against the country they swore to protect. U.S. Const. amend. XIV, § 3. Accordingly, this Court can apply Section Three Defendant TRUMP as the Presidency is an "office, civil or military, under the United States"; (2)

the President is an "officer of the United States"; and (3) the presidential oath set forth in Article II constitutes an oath "to support the Constitution of the United States."

When this Court interprets the Constitution, it should look to a phrase's normal and ordinary usage and not to some "secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *District of Columbia v. Heller*, 554 U.S. 570, 577 (2008). Dictionaries from the time of the Fourteenth Amendment's drafting and ratification define "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." Noah Webster, An American Dictionary of the English Language 689 (Chauncey A. Goodrich ed., 1853); See also 5 Johnson's English Dictionary 646 (J.E. Worcester ed., 1859) (defining "office" as "a publick charge or employment; magistracy"); *United States v. Maurice*, 26 F. Cas. 1211, 1214 (C.C.D. Va. 1823) (No. 15,747) ("An office is defined to be 'a public charge or employment,' . . . ."). The Office of President of the United States falls within these definitions.

Further, reading the office requirement of Section Three of the Fourteenth Amendment to include the office of President is "consistent with the Constitution as a whole. The Constitution refers to the Presidency as an "Office" twenty-five times. E.g., Constitution. at 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)); Art. II, § 1, cl. 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)). And it refers to an office "under the United States" in several contexts

that clearly support the conclusion that the Presidency is such an office." *Anderson,* No. 23SA300 at ¶133.

Moreover, as the President is an elected official who holds an office, he is an "officer of the United States ." See *Motions Sys. Corp. v. Bush*, 437 F.3d 1356, 1372 (Fed. Cir. 2006) (Gajarsa, J., concurring in part) ("An interpretation of the Constitution in which the holder of an 'office' is not an 'officer' seems, at best, strained."). "Indeed, Americans have referred to the President as an "officer" from the days of the founding. See, e.g., The Federalist No. 69 (Alexander Hamilton) ("The President of the United States would be an officer elected by the people . . . ."). And many nineteenth-century presidents were described as, or called themselves, "chief executive officer of the United States." *See* Vlahoplus, *supra* (manuscript at 17–18) (listing presidents). Second, Section Three's drafters and their contemporaries understood the President as an officer of the United States. See Graber, Our Questions, Their Answers, supra, at 18–19 (listing instances); See also Cong. Globe, 39th Cong., 1st Sess. 915 (1866) (referring to the "chief executive officer of the country"); The *Floyd Acceptances*, 74 U.S. 666, 676–77 (1868) ("We have no officers in this government, from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority." (emphases added)). *Anderson,* No. 23SA300 at ¶146 . Further, Henry Stanbery, the Attorney General at the time of reconstruction "observed that the term "Officers of the United States" includes "without limitation" any "person who has at any time prior to the rebellion held any office, civil or military, under the United States, and has taken an official oath to support the Constitution of the United States." The Reconstruction Acts, 12 Op. Att'y. Gen. 182, 203 (1867) ("Stanbery II") *Anderson v. Griswold,* No. 23SA300 ¶149

The clear purpose of Section Three of the Fourteenth Amendment to the United States Constitution is to ensure that insurrectionist officers never again hold elected office in the United States. It would be illogical – absurd, ridiculous, unbelievable - for the drafters of the Fourteenth amendment to intend that the Presidency is the only office to which that qualification does not apply. The drafters of Section Three drafted the Fourteenth Amendment following the treason of the confederacy and after spending just shy of four years fighting the civil war. The drafters were therefore only concerned with the existence of a broken oath, not by the type of officer who broke it. Senator John Sherman explained that "those men who have once taken an oath of office to support the Constitution of the United States and have violated that oath in spirit by taking up arms against the Government of the United States are to be deprived for a time at least of holding office . . . ." Cong. Globe, 39th Cong., 1st Sess. 2899 (1866); Senator John B. Henderson further explain that the " language of this section is so framed as to disfranchise from office . . . the leaders of any rebellion hereafter to come." *Id*. at 3035–3036. Any reading of Section Three that would allow a former President who broke his oath to the Constitution by rising up against the country he swore to protect to serve again as President is unfaithful to the purpose and history of Section Three of the Fourteenth Amendment.

The Presidency is an office of the United States, and the President is an officer within the plain meaning of the words, both at the time the Fourteenth Amendment to the Constitution of the United States was drafted and ratified and now. Further, at the time the Fourteenth Amendment to the United States Constitution was drafted and ratified, the President of the United States was regularly referred to as an officer by members of congress, the Attorney General, and the United States Supreme Court. TRUMP served as an officer of the United States and then later engaged in an insurrection against the United States and this Court must find him constitutionally disqualified

under Section Three of the Fourteenth Amendment to the Constitution from ever holding public office again.

iv. TRUMP took an oath as an officer of the United States.

On January 20, 2017, TRUMP swore an oath to "preserve, protect and defend" the Constitution as President of the United States as required by U.S. Const. art. II, § 1.[3]

v. TRUMP engaged in an insurrection against the United States.

On and for some time before January 6, 2021, TRUMP engaged in a very public insurrection and failed coup against the United States by attempting to overturn the results of the 2020 through fraud and violence and install himself as president for a second term. *See generally* Exhibit 4. Ultimately, to make this finding however, this Court will have to settle on a definition of what constitutes an insurrection against the United States; and there are several definitions of insurrection that this Court could choose from. For instance, Noah Webster's dictionary from 1860 (contemporaneous with the implementation of the Fourteenth Amendment) defined "insurrection" as:

> 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. It is equivalent to SEDITION, except that sedition expresses a less extensive rising of citizens. It differs from REBELLION, for the latter expresses a revolt, or an attempt to overthrow the government, to establish a different one, or to place the country under another jurisdiction.
>
> Noah Webster, An American Dictionary of the English Language 613 (1860).

There are also definitions of what constitutes an insurrection that this Court can derive from case law. *See The Brig Amy Warwick* (*The Prize Cases*), 67 U.S. (2 Black) 635, 666 (1862) ("Insurrection against a government may or may not culminate in an organized rebellion, but a

[3] Donald J. Trump, *The Inaugural Address*, January 20, 2017, https://trumpwhitehouse.archives.gov/briefings-statements/the-inaugural-address/

civil war always begins by insurrection against the lawful authority of the Government.") and *Case of Davis*, 7 F. Cas. 63, 96 (C.C.D. Va. 1871) (No. 3,621a) ("Although treason by levying war, in a case of civil war, may involve insurrection or rebellion, and they are usually its first stages, they do not necessarily reach to the actual levying of war."). This court could also look to legal treatises. C.J.S. Riot; Insurrection § 36, Westlaw (database updated August 2023) ("Insurrection is distinguished from rout, riot, and offenses connected with mob violence by the fact that, in insurrection, there is an organized and armed uprising against authority or operations of government, while crimes growing out of mob violence, however serious they may be and however numerous the participants, are simply unlawful acts in disturbance of the peace which do not threaten the stability of the government or the existence of political society."). But by any reasonable definition of insurrection, TRUMP engaged in an insurrection against the United States on and for some time prior to January 6, 2021.

TRUMP's insurrection took place very publicly, and on two fronts as described in the beginning sections of this brief. The first front involved a conspiracy to ensemble fraudulent slates of electors from several states to impede or defraud the electoral vote count during the Joint Session of Congress on January 6, 2024. *See generally* Exhibit 4. Once that plan appeared as though it was going to fail, TRUMP summoned tens of thousands of his angry and violent supporters to Washington D.C. and then commanded them to "fight" for their country and march on the Capitol and "fight like hell ." And they did just that, they violently overpowered law enforcement, stormed the Capitol Building, and flew the Confederate battle flag in halls of congress. Exhibit 4 at 654. TRUMP was well aware that his followers had come to Washington prepared to commit acts of violence to keep in power, he ordered the suspension of measures designed to ensure that people did not have dangerous weapons, and he ordered his armed followers to the Capitol, nonetheless.

Exhibit 4 at 60, 585. He also "poured fuel on fire" during the attack. Exhibit 4 at 660. He refused to marshal a defense of the capitol during the attack. Exhibit 4 at 578.

The facts surrounding TRUMP's violent insurrection and failed coup have been investigated at length by the bipartisan Select Committee to Investigate the January 6th Attack on the United States Capitol. The committee consisted of members House of Representatives, including Republican Vice Chairperson Liz Cheney, who after considering the sworn testimony of over a thousand witnesses, most of whom were Republicans and many of whom were members of the TRUMP administration concluded that TRUMP engaged in an insurrection of the United States. *See generally* Exhibit 4.

The Colorado District Court in *Anderson v. Griswold* also found that TRUMP engaged in an insurrection. The court held a five-day trial, in which 15 witnesses were called and 96 exhibits were entered into evidence and found by "clear and convincing" evidence that President Trump engaged in insurrection as those terms are used in Section Three. *Anderson,* No. 23SA300 ¶3. This finding was then affirmed by the Colorado Supreme Court. *Anderson,* No. 23SA300 ¶5.).

Shenna Bellows the Secretary of State for Maine similarly considered DONALD J TRUMP's qualification for President and similarly found that he was disqualified from serving as President of the United States.[4]

TRUMP initiated his insurrection and attempted coup first, by enraging and inflaming his followers through a campaign of elections lies and false information whereby he and his acolytes took to television and social media to attack the integrity of 2020 election. Exhibit 4 at 201. TRUMP and his closest advisors then devised a plan a to have false and fraudulent slates of electors

[4] Crew, Maine Secretary of State bars Trump from ballot, citizensforethics.org, December 28, 2023, https://www.citizensforethics.org/news/press-releases/maine-secretary-of-state-bars-trump-from-ballot/

submitted to the Joint Session of Congress to allow Vice President Pence to either use the false slates of electors to deny Joe Biden's victory through a manufactured constitutional crisis or use the false slates of electors to unconstitutionally install TRUMP for a second term. Exhibit 4 at 341-354. While TRUMP was trying to defraud the Electoral College vote he was also simultaneously inspiring his supporters to violence through more election lies. Exhibit 4 195-230. When it seemed as though Vice President Pence was unwilling to install him as President for a second term he invited his followers to Washington DC for a "wild" protest of the Electoral College vote count. Exhibit 4 at 499. TRUMP was also aware that his followers had come to Washington D.C. prepared to commit acts of violence. Exhibit 4 at 60. Once TRUMP's followers were assembled in Washington D.C., TRUMP held a rally where among other thing he blamed Vice President Pence for not using the electoral college to appoint him for a second Term, knowingly repeated the lie that the election had been stolen from the those in the crowd and the American public as a whole, and then instructed his followers that they needed to "fight" to save their country from those that stole the election. Exhibit 4 at 230-233 and 584. TRUMP then ordered his crowd of followers, whom he knew to be armed and prepared to commit acts of violence, including breaching the capitol and killing Senators and Congressmen, to go to the capitol building to "fight like hell" and "take back our country ." Exhibit 4 at 586. TRUMP's actions on, and in the days leading up to, January 6, 2021, can only be described as engaging in an insurrection against the United States.

d. Plaintiffs have standing to bring this action.

Plaintiffs have standing to bring their Claims for Summary Judgment and Declaratory Relief. Wis. Stat. § 5.06 creates a private right of action for Wisconsin's electors to challenge the qualifications of a candidate and creates a legally protectable interest in keeping unqualified candidates off Wisconsin's ballots. "Standing also requires that the injury be to a legally

protectable interest." See *City of Madison v. Town of Fitchburg* , 112 Wis. 2d 224, 228, 332 N.W.2d 782 (1983). A legally protectable interest is one arguably within the zone of interests that the law under which the claim is brought seeks to protect. *Nedvidek v. Kuipers*, 747 N.W.2d 527 (Wis. Ct. App. 2008). Furthermore, judicial "policy favors hearing cases presenting "carefully developed and zealously argued" issues. *McConkey*, 326 Wis.2d 1, Â¶16. To ensure a full vetting of the issues, we typically require plaintiffs to possess some personal stake in the case: "the gist of the requirements relating to standing . . . is to assure that the party seeking relief has alleged a personal stake in the outcome of the controversy as to give rise to that adverseness necessary to sharpen the presentation of issues[.]" *Moedern v. McGinnis*, 70 Wis.2d 1056, 1064, 236 N.W.2d 240 (1975). This standard is quite liberal; even "'a trifling interest' may suffice" provided the asserted interest generates sufficient adversity. *Teigen v. Wis. Elections Comm'n*, 2022 WI 64, 12-13 (Wis. 2022) (citing *McConkey v. Hollen*, 326 Wis. 2d 1, ¶15 (Wis. 2010)). Additionally, "While standing in federal court is constitutionally confined, in Wisconsin it is limited only by prudential considerations. The United States Constitution extends "[t]he judicial power" only to "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. No similar language exists in the Wisconsin Constitution. See Wis. Const. art. VII, § 8 (creating, as a general rule, "original jurisdiction" in the circuit courts over "all matters civil and criminal within this state"). "Because our state constitution lacks the jurisdiction-limiting language of its federal counterpart, standing in Wisconsin is not a matter of jurisdiction, but of sound judicial policy." *Teigen*, 2022 WI at 12 (internal quotation omitted). BANGSTAD and SMITH are qualified electors. See Exhibit 11, Affidavits of BANGSTAD and SMITH. Plaintiffs, as electors, have a personal stake in the outcome of this matter and adversity can be assured. See *Id* at 12-13. Consequently, Plaintiffs BANGSTAD and SMITH have standing as qualified electors to bring claims for both declaratory and injunctive

relief against TRUMP, the RPW and the WEC, as Wis. Stat. § 5.06 allows qualified electors to challenge the qualification of candidates for elected office. See Exhibit 11, Affidavits of BANGSTAD and SMITH.

Further Wis. Stat. § 5.06 shows that the legislature intended to provide electors an opportunity to challenge the qualification of candidates, and that federal elections are overseen by the WEC. § 5.06 reads.

> Whenever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates, voting qualifications, including residence, ward division and numbering, recall, ballot preparation, election administration or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law. The complaint shall set forth such facts as are within the knowledge of the complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur. The complaint may be accompanied by relevant supporting documents. The commission may conduct a hearing on the matter in the manner prescribed for treatment of contested cases under ch. 227 if it believes such action to be appropriate.

Moreover, the holding in *Teigen* authorizes electors to bring Wis. Stat. § 5.06(1) complaints against the WEC in the circuit court without first going through the WEC. Wisconsin Stat. § 5.06(1) allows "any elector" to file "a written sworn complaint" with WEC if the elector "believes that a decision or action" of "an election official" related to the "conduct of elections is contrary to law[.]"2022 WI at 23. After reviewing the complaint, the “commission may conduct a hearing on the matter in the manner prescribed for treatment of contested cases under ch. 227 if it believes such action to be appropriate.” *Id*. Additionally, “it would be nonsensical to have WEC adjudicate a claim against itself under Wis.Stat. § 5.06(1).”

By statutorily authorizing qualified electors to challenge the qualification of candidates for elected office the state created a legally protected interest for qualified electors in keeping unqualified candidates off of Wisconsin ballots. The WEC is abusing its discretion by allowing TRUMP to appear on the Wisconsin Republican presidential preference primary ballot. Consequently, both BANGSTAD and SMITH will suffer an injury to the legally protected interest created by Wis. Stat. § 5.06 if TRUMP continues to be allowed to participate in the Wisconsin Republican presidential preference primary. Additionally, BANGSTAD and SMITH's have a constitutional right to be represented by constitutionally qualified candidates, and their voting rights will similarly be injured if an unqualified candidate is allowed on the ballot.

Plaintiff, MINOCQUA BREWING COMPANY SUPERPAC, (hereinafter MBC) will suffer a more discrete injury if a disqualified candidate is allowed to appear on the Ballot. MBC is a Wisconsin based SuperPAC that has spent hundreds of thousands of dollars during prior Wisconsin election cycles advocating for progressive candidates and intends to do the same this election cycle. Exhibit 12, Affidavit of Kirk Bangstad for MBC. MBC currently intends to focus the bulk of its expenditures on defeating TRUMP in Wisconsin, provided TRUMP is qualified to serve as President of the United States. If he is not qualified to serve as President of the United States, MBC will focus its expenditures on down ballot races. Ergo, the uncertainty around TRUMP's qualification is and will continue to cause MBC financial injuries. MBC has a legally protectable interest in a judicial determination on TRUMP's qualification to serve as President of the United States, as the current uncertainty around TRUMPS qualification for office is causing them injury. Exhibit 12

Plaintiffs clearly have standing under to bring this action under Wisconsin law, either, because they are qualified electors had the Wisconsin legislature has provided them with the

opportunity to challenge the qualification of candidates under Wis. Stat. § 5.06(1), or because they will suffer an injury to their voting rights or in the case of MBC their expenditures.

e. An Expedited Declaratory Judgment and Temporary Injunction are necessary to protect the integrity of Wisconsin's elections.

TRUMP, having previously taken an oath of office as an officer of the United States, engaged in an insurrection against it and is now disqualified from ever again holding office. And while TRUMP is disqualified under the Fourteenth Amendment, a declaratory judgment is necessary to enforce that disqualification, and that decision must come quickly as Wisconsin's Presidential preference primary will take place on April 2, 2024.

Wisconsin Courts, through the Uniform Declaratory Judgments Act under Wis. Stat. § 806.04, are uniquely empowered and positioned to declare that TRUMP is disqualified from again serving as President of the United States. "By its very terms it [the Uniform Declaratory Judgments Act] is `declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations" *F. Rosenberg Elevator Co. v. Goll*, 18 Wis. 2d 355, 359 (Wis. 1963). As the Wisconsin Republican presidential preference primary looms ever closer there is much uncertainty in DONALD TRUMPS candidacy, that this Court can resolve. TRUMP has now been removed from the ballot in both Colorado and Maine and voters in many other states are seeking similar rulings. It is time for the Wisconsin courts to weigh in on the matter and declare TRUMP's qualification for office.

In order to obtain a declaratory judgment, Plaintiffs must demonstrate that a controversy is justiciable, meaning: "(1) A controversy in which a claim of right is asserted against one who has an interest in contesting it. (2) The controversy must be between persons whose interests are adverse. (3) The party seeking declaratory relief must have a legal interest in the controversy—

that is to say, a legally protectible interest. [and] (4) The issue involved in the controversy must be ripe for judicial determination." *Voters With Facts v. City of Eau Claire* , 382 Wis. 2d 1, 64 (Wis. 2018). "In order to demonstrate proper standing, the party must show that he or she has "a personal stake in the outcome of the controversy as to give rise to that adverseness necessary to sharpen the presentation of issues" *Lakefront Neighborhood v. Milwaukee*, 647 N.W.2d 467 (Wis. Ct. App. 2002)

a. Plaintiffs' brief demonstrates that there is a controversy in which a claim of right is asserted against one who has an interest in contesting it.

The question of TRUMP's qualification for President is justiciable, as there is a controversy in which a claim of right is asserted against one who has an interest in contesting it. *Voters With Facts,* 382 Wis. 2d at 64. As Plaintiffs' brief explains, a controversy exists between Plaintiffs and Defendants and Plaintiffs have a claim of right to contest it. *Id*. Plaintiffs believe TRUMP is disqualified from serving as President of the United States and therefore may not appear on the Wisconsin Republican presidential preference primary ballot. Additionally, Plaintiffs, as qualified electors have a statutorily protected right to challenge disqualified candidates under Wis. Stat. § 5.06(1).

Alternatively, Defendants believe that TRUMP is qualified to serve as President of the United States and has the right to participate in Wisconsin's presidential preference primary. The RPW nominated TRUMP to appear on the primary ballot, and the WEC will soon distribute the primary ballots containing TRUMP's name.[5] If nothing changes before April 2, 2024, TRUMP will unlawfully appear on the Wisconsin presidential preference primary ballot. Further, TRUMP, will

[5]Associated Press, *Biden, Trump and others chosen for Wisconsin 2024 presidential primaries ballot*, Associated Press, January 2, 2024, https://pbswisconsin.org/news-item/biden-trump-and-others-chosen-for-wisconsin-2024-presidential-primaries-ballot/

continue campaigning in Wisconsin for an office he is Constitutionally disqualified from holding. Similarly, the WEC is violating the law and abusing its discretion by allowing, TRUMP, a constitutionally disqualified candidate, to participate in the Wisconsin Republican presidential preference primary ballot. The RPW, the WEC, and TRUMP are each anticipated to defend this action and contest Plaintiffs' claims.

Consequently, Plaintiffs bring this suit to demand the WEC conform its conduct to the law by finding that TRUMP is disqualified from serving as President of the United States by Section Three of the Fourteenth Amendment to the United States Constitution. Further, Plaintiffs demand that the WEC commissioners conform their conduct to law by refusing TRUMP ballot access for the 2024 Republican presidential preference primary. The instant case is clearly a controversy in which a claim of right is asserted against one who has an interest in contesting it, and as such the first requirement of justiciability is met.

ii. Plaintiffs and Defendants have adverse interests.

Plaintiffs and Defendants have adverse interests as required to support a claim for declaratory relief. Plaintiffs allege that TRUMP is disqualified from serving as president again under Section Three of the Fourteenth Amendment, while Defendants clearly disagree, as TRUMP is campaigning for the office of President of the United States and will both be appearing on the primary ballot. The parties in this matter have adverse positions and Plaintiffs' claim for declaratory relief is proper.

iii. Wis. Stat. 5.06(1) provides qualified electors with a legally protectable interest in challenging the qualification of candidates.

Plaintiffs in the instant case have a legally protectable interest in keeping unqualified candidates off of the ballot in Wisconsin's Republican presidential preference primary, makingthis

matter justiciable. *Voters With Facts,* 382 Wis. 2d at 64. In passing Wis. Stat. § 5.06, the legislature authorized a procedure for qualified electors to challenge the qualification of candidates, by demanding that an election official conform their conduct to law, i.e. remove an unqualified candidate from the ballot. The Supreme Court in *Teigen*, clarified that if the election official is the WEC itself, then the elector need not go through the WEC administrative complaint process and can instead go directly to the circuit court. *Teigen*, 2022 WI at 23. Both BANGSTAD and SMITH bring their complaint against the WEC in this action alleging that WEC is abusing its discretion by allowing TRUMP to participate in the Wisconsin presidential preference primary. As the law stands, an action in the circuit court is the only way that an elector can challenge the qualifications of a candidate running for federal office in Wisconsin, as the WEC oversees Federal elections in Wisconsin.

In a declaratory judgment action, a legally protectable interest can be viewed as standing. "the question whether [an] interest is legally protected for standing purposes is the same as the question whether plaintiff (assuming his or her factual allegations are true) has a claim on the merits." (" *Wis. Mfrs. & Commerce v. Evers*, 960 N.W.2d 442, 449 (Wis. Ct. App. 2021). Wis. Stat. § 5.06 creates a private right of action for Wisconsin's electors to challenge the qualifications of a candidate and creates a legally protectable interest in keeping unqualified candidates off Wisconsin's ballots. "Standing also requires that the injury be to a legally protectable interest. See *City of Madison v. Town of Fitchburg*, 112 Wis. 2d 224, 228, 332 N.W.2d 782 (1983). A legally protectable interest is one arguably within the zone of interests that the law under which the claim is brought seeks to protect. *Nedvidek v. Kuipers,* 747 N.W.2d 527 (Wis. Ct. App. 2008). To have standing, the plaintiff must have suffered or be threatened with an injury to an interest that is legally protectable. *Chenequa Land Conservancy, Inc*. v. *Village of Hartland* , 2004 WI App 144,

¶ 16, 275 Wis. 2d 533, 685 N.W.2d 573. The injury must be such that the party has a personal stake in the outcome of the suit and is directly affected by the issues in controversy. Village of *Slinger v. City of Hartford ,* 2002 WI App 187, ¶ 8, 256 Wis. 2d 859, 650 N.W.2d 81. Also, this Court must "construe standing in declaratory judgment actions liberally, in favor of the complaining party, as it affords relief from an uncertain infringement of a party's rights." *State ex Rel. Village of Newberg v. Town of Trenton*, 321 Wis. 2d 424, 431-32 (Wis. Ct. App. 2009)(Citing *Town of Eagle v. Christensen*, 191 Wis. 2d 301, 315, 529 N.W.2d 245 (Ct. App. 1995)).

By passing and enacting Wis. Stat. § 5.06 the legislature provided electors an opportunity to challenge the qualification of candidates. Consequently, Wis. Stat. § 5.06(1) provided electors a legally protected interest in both challenging the qualification of candidates for elected office and keeping unqualified candidates off of ballots in Wisconsin. The WEC is violating the legally protected interests of BANGSTAD and SMITH by allowing TRUMP, a constitutionally disqualified candidate, to remain on the ballot.

Moreover, the WEC has a legal and constitutional obligation to keep unqualified candidates off ballots in Wisconsin and is failing to fulfill that duty and abusing its discretion. Ergo, Plaintiffs' BANGSTAD and SMITH have standing as qualified electors to challenge TRUMP's qualification for office and ballot through Wis. Stat. § 5.06(1). Additionally, because the WEC complaint process is not available to electors who wish to challenge WEC conduct, BANGSTAD and SMITH's only opportunity to challenge the WEC's abuse of discretion is through this circuit court action. Exhibit 8.

The most appropriate way to bring this action challenging TRUMP's qualification for the office of President and qualification for the Wisconsin Republican primary preference ballot is to bring their claim for declaratory relief against the WEC, TRUMP and the RPW. See Exhibit 1,

Affidavits of BANGSTAD and SMITH. Additionally, BANGSTAD and SMITH's voting rights will be diluted if an unqualified candidate is allowed to appear on the ballot and Plaintiffs have a constitutional right to be represented by constitutionally qualified candidates. This right will suffer an injury if an unqualified candidate is allowed to appear on the ballot.

As described above, Plaintiff MBC will suffer more concrete financial damage if a disqualified candidate is allowed to appear on the ballot, as the uncertainty around TRUMP's qualification causes and will continue to cause MBC financial injuries. MBC has a legally protectable interest in a judicial determination on TRUMP's qualification to serve as President of the United States.

Plaintiffs clearly have standing under Wisconsin law to bring this action, either because they are qualified electors had the Wisconsin legislature has provided them with the opportunity to challenge the qualification of candidates under Wis. Stat. § 5.06(1), or because they will suffer an injury to their voting rights or in the case of MBC their expenditures. The Plaintiffs seeking declaratory relief in the instant case have a legally protected interest in the controversy and therefore their claims are justiciable and declaratory relief is appropriate.

iv. The matters at issue in Plaintiffs' claims for relief are ripe for judicial determination.

Plaintiffs' case is ripe for judicial determination and all facts necessary to rule on their claims have been established. The ripeness required in a declaratory judgment action is different from the ripeness required in other types of lawsuits. *Id.,* ¶ 43. "[A] plaintiff seeking declaratory judgment need not actually suffer an injury before availing himself [or herself] of the [Uniform Declaratory Judgments] Act." *Id.* Instead, "[w]hat is required is that the facts be sufficiently developed to allow a conclusive adjudication." *Id.* Not all adjudicatory facts must be resolved in order for a declaratory judgment action to be ripe; however, the facts on which the

court is asked to make a judgment should not be contingent or uncertain. *Id. Ray v. Town of Kinnickinnic*, 888 N.W.2d 23 (Wis. Ct. App. 2016) (citing "*Olson v. Town of Cottage Grove*, 2008 WI 51, ¶ 73, 309 Wis.2d 365, 749 N.W.2d 211."

The facts necessary to establish Plaintiffs' claim for relief are fully established and a matter of public record. Plaintiffs are asking this Court to make two declarations, first that TRUMP's actions on and prior to January 6, 2021, have disqualified him from serving as president, and that a disqualified candidate may not appear on a primary ballot in Wisconsin.

For Plaintiffs to prove they are entitled to the declaratory relief they are seeking; they must be able to show that TRUMP will be appearing on the Wisconsin presidential preference primary ballot, and he will, absent a ruling from this Court. Plaintiffs will also have to show that the WEC will be printing and distributing ballots, which they are statutorily required to do under Wis. Stat. § 8.12(2). Plaintiffs will finally have to show that TRUMP took an oath of office,[6] and finally that he engaged in an insurrection, disqualifying him from ever again being president. *See generally* Exhibit 4. The facts required to demonstrate each of these points are all fully developed, and the case is ripe for a judicial determination.

As this Brief has made clear, the matter is justiciable under *Voters With Facts*, and a declaratory judgment is the most appropriate avenue for Plaintiffs to obtain requested relief. 382 Wis. 2d at 64. Plaintiffs' case involves "a controversy in which a claim of right is asserted against one who has an interest in contesting it" in that Plaintiffs have a statutory right under Wis. Stat. § 5.06(1) to challenge the qualification of candidates for elected office. Additionally, the parties to the action are adverse, Plaintiffs are seeking a declaration that TRUMP is not qualified, the RPW nominated

[6] Donald J. Trump, *The Inaugural Address*, January 20, 2017, https://trumpwhitehouse.archives.gov/briefings-statements/the-inaugural-address/

TRUMP to appear on the Wisconsin Presidential preference primary ballot, Trump accepted the nomination, and the WEC is allowing TRUMP to participate in the Wisconsin Republican presidential preference primary. Further, Plaintiffs BANGSTAD and SMITH have a legally protectable interest in preventing unqualified candidates off of the Wisconsin Presidential preference primary ballot, and Plaintiff MBC has standing to bring this action as it is currently suffering financial injuries from the uncertainty around Trump's qualification to hold the office of president. Finally, the issue is ripe for a declaratory judgment as the facts are sufficiently developed for this Court to grant the requested declarations. Plaintiffs meet all of the requirements for this Court to find Plaintiffs' case justiciable and this Court can properly grant Plaintiffs requested relief.

f. Donald J. Trump is disqualified from serving as President of the United States this court must enjoin the WEC and order they not all TRUMP to appear on the Republican presidential preference primary Ballot.

TRUMP is disqualified from serving as President of the United State by Section Three of the Fourteenth Amendment to the Constitution of the United States. On January 20, 2017, TRUMP took an oath as officer of the United States at his inauguration when he was sworn in as President of the United States.[7] TRUMP then broke that oath and engaged in an insurrection against the United States that began sometime in the Spring of 2020 and came to head on January 6, 2021, when after his attempt to fraudulently and unconstitutionally change the electoral college results to install himself as president for a second term failed, Trump ordered a violent mob to take over the Capitol Building. Exhibit 4 at 201, 342, and 540. TRUMP's mob proceed to storm the Capitol building and take control and for the first time since the war of 1812, the Capitol fell to America's enemies. Exhibit 4 at 637.

[7] Donald J. Trump, *The Inaugural Address*, January 20, 2017, https://trumpwhitehouse.archives.gov/briefings-statements/the-inaugural-address/

Section Three of the Fourteenth Amendment is a constitutional limitation on who can run for President, no less than the requirements that the President be at least 35 years of age, a natural-born U.S. citizen, a U.S. resident for at least 14 years, and one who has not served two prior presidential terms. And as with other constitutional qualifications, Section Three challenges can be adjudicated through civil suits and administrative proceedings like Wis. Stat. § 5.06.

The WEC is responsible for the administration of all election laws not related to campaign finance under Wis. Stat. § 5.05(1) And the WEC intends to allow TRUMP to participate in the Wisconsin Republican presidential preference primary, scheduled for April 2, 2024, in violation of both Section Three of Fourteenth Amendment and Wis. Stat. § 5.05(1). Section Three, just like any other constitutional qualification for public office, is nothing more than an election law and just like any other election law, it can be enforced in state proceedings.

Moreover, several "courts have expressly upheld states' ability to exclude constitutionally ineligible candidates from their presidential ballots. See *Lindsay*, 750 F.3d at 1065 (upholding California's refusal to place a twenty-seven-year-old candidate on the presidential ballot); *Hassan*, 495 F. App'x at 948–49 (affirming a state's right to exclude a naturalized citizen from the presidential ballot);. *Ogilvie*, 357 F. Supp.32 at 113 (N.D. Ill. 1972) (affirming Illinois's exclusion of a thirty-one year-old candidate from the presidential ballot). As Judge Gorsuch reasoned in *Hassan*, 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." *Hassan*, 495 F. App'x at 948. And excluding a candidate for failing to qualify for office under Section Three of the Fourteenth Amendment is no different than excluding candidates who do not satisfy the age, residency, and citizenship requirements of the

Presidential Qualifications Clause of Article II. See U.S. Const. art. II, § 1, cl. 5, and exclusions under these provisions have been upheld repeatedly. .

The WEC is currently failing to fulfill its statutory responsibilities by allowing TRUMP to remain on the ballot. As the WEC is refusing to fulfill its duties under Wis. Stat. § 5.05(1), Plaintiffs look to Wis. Stat. § 5.06(1) to compel the WEC to conform its conduct to law, find TRUMP is ineligible to serve as President of the United States and remove him from the Wisconsin Republican presidential primary ballot. Wis. Stat. § 5.06(1) was drafted and passed by the Wisconsin legislature to provide an avenue for qualified electors to enforce election law in Wisconsin. Wis. Stat. § 5.06(1) explains:

"[w]henever any elector of a jurisdiction or district served by an election official believes that a decision or action of the official or the failure of the official to act with respect to any matter concerning nominations, qualifications of candidates… or conduct of elections is contrary to law, or the official has abused the discretion vested in him or her by law with respect to any such matter, the elector may file a written sworn complaint with the commission requesting that the official be required to conform his or her conduct to the law, be restrained from taking any action inconsistent with the law or be required to correct any action or decision inconsistent with the law or any abuse of the discretion vested in him or her by law"

Wis. Stat. § 5.06(1)

Plaintiffs in the instant action are unable to make a complaint directly to the WEC, however. Under, Wis. Stat. § 5.06(1) The Wisconsin presidential preference primary is overseen by the WEC themselves, so any complaint about qualification or ballot access would have to go right to. See Wis. Stat. Wis. Stat. § 8.12. Consequently, Plaintiffs must go through this Court to request relief under Wis. Stat. § 5.06(1). The most recently ruling from the Wisconsin Supreme Court in *Teigen et al v. Wisconsin Elections Commission et al*, explains that "it would be nonsensical to have WEC adjudicate a claim against itself under § 5.06(1). *Teigen*, 403 Wis. 2d at 976. As Plaintiffs' may not go through the WEC to request relief under Wis. Stat. § 5.06(1), they have no other choice to

come before this Court seeking injunctive relief to order the WEC to remove TRUMP from the Wisconsin Republican presidential preference primary ballot.

i. This court must issue a temporary injunction to prevent TRUMP from participating in the Republican presidential preference primary election.

"This court may issue a temporary injunction when the moving party demonstrates four elements: (1) the movant is likely to suffer irreparable harm if a temporary injunction is not issued; (2) the movant has no other adequate remedy at law; (3) a temporary injunction is necessary to preserve the status quo; and (4) the movant has a reasonable probability of success on the merits. *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cnty.*, 370 Wis. 2d 644, 659 (Wis. Ct. App. 2016)(citing *Werner v. A.L. Grootemaat* & Sons, Inc.,80 Wis.2d 513, 520–21, 259 N.W.2d 310 (1977)).

Plaintiffs in the instant case can demonstrate that they fulfill all four elements required for this Court to grant them their requested injunctive relief. *Werner*.,80 Wis.2d at 520–521. First, Plaintiffs are likely to suffer irreparable harm if TRUMP is not removed from the Wisconsin Republican presidential preference primary, in that Wis. Stat. § 5.06(1) created for legally protectable interest for qualified electors, in having qualified candidates on the ballot and their voting rights will be diluted. Further, Plaintiffs have no other adequate remedy at law. Wis. Stat. § 5.06(1) is typically enforceable through the WEC itself, but the ruling in *Teigen* has closed that remedy to Plaintiffs. *Teigen*, 403 Wis. 2d at 976. Additionally, a temporary injunction is necessary to maintain the status quo, as the matter stands right now TRUMP is disqualified from serving as President of the United States under Section Three of the Fourteenth Amendment to the United States Constitution and allowing him to unlawfully remain on the ballot devastates the status quo and American Constitutional order. Additionally, Plaintiffs will succeed on the merits. TRUMP was removed from the Colorado primary ballot due to his disqualification under Section Three of

the Fourteenth Amendment by the Colorado courts. His removal was ordered following a five-day trial and the subsequent Colorado Supreme Court decision in *Anderson v. Griswold.* Additionally, after examining over 1000 witnesses, the bipartisan United States House Select Committee to Investigate the January 6th Attack on the United States Capitol found that TRUMP had engaged in an insurrection against the United States. There is no question that Donald TRUMP engaged in an insurrection against the United States after taking an oath as officer of the United States, and there is similarly no question that Plaintiffs will succeed on the merits. Plaintiffs can demonstrate all of the necessary elements for this Court to issue a temporary injunction against TRUMP.

Plaintiffs' therefore request this Court enjoin the WEC's illegal conduct and order them to refuse TRUMP access to the Wisconsin Republican presidential preference primary ballot, or in the alternative strike TRUMP's name from any existing ballots.

ii. Plaintiffs are likely to suffer irreparable harm if the temporary injunction is not granted.

Plaintiffs will suffer irreparable harm absent a temporary injunction. "When seeking an injunction, a plaintiff must show a sufficient likelihood that the defendant's future conduct will cause the plaintiff irreparable harm. *Pure Milk Prods. Co-op. v. National Farmers Org.* , 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979). "To invoke the remedy of injunction the plaintiff must moreover establish that the injury is irreparable, i.e. not adequately compensable in damages." *Pure Milk Prod. Coop*, 90 Wis. 2d at 800 (Wis. 1979) (Citing *Ferguson v. Kenosha*, 5 Wis.2d 556, 561, 93 N.W.2d 460 (1958)). The purpose of an injunction is to prevent violations, "the threat of which in the future is indicated because of the similarity or relation to those unlawful acts" which have been committed." *Id.* at 803.

In passing Wis. Stat § 5.06(1) and providing Plaintiffs with an avenue to enforce candidate qualifications, the state also enshrined the right of qualified Wisconsin electors to only have qualified candidates on Wisconsin ballots, and the WEC is currently refusing to protect that right for Plaintiffs. Additionally, without an injunction the illegal conduct of the WEC will continue, as they do not appear to have any intention of conforming their conduct to the law and removing TRUMP from the ballot. *See Id.* at 803.

Plaintiffs need this Court to issue a temporary injunction against the WEC because Plaintiffs are currently suffering injuries, and while Plaintiffs' injuries may not be concrete or calculable, they are real, nonetheless. *See Id.* at 800. The injuries Plaintiffs

Further, unlawful conduct, like that of the WEC, "may be enjoined in the absence of an express showing of irreparable damage that has been recognized by this Court. Vogt, Inc. v. International Brotherhood, supra. The express basis for such holdings is that the fact that the activity has been declared unlawful reflects a legislative or judicial determination that it would result in harm which cannot be countenanced by the public. *Joint School District No. 1 v. Wisconsin Rapids Education Ass'n,* 70 Wis. 2d 292, 310 (Wis. 1975).

Finally, As described above, Plaintiff MBC is suffering an injury caused by TRUMP remaining on the ballot, and it is an injury that cannot be adequately compensated for as they could not bring this claim in tort against the WEC. See *Pure Milk Prod. Coop*, 90 Wis. 2d at 800.

Plaintiffs will clearly suffer injuries, either to their right as qualified Wisconsin Electors to only have qualified candidates on the ballot, or because their expenditure strategy is significantly influenced by TRUMP remaining on ballot. In either instance, the injuries suffered are irreparable and Plaintiffs require an injunction to protect them from future harm.

iii. Plaintiffs have no other adequate remedy at law.

Plaintiffs have no other adequate opportunity to effectively challenge the candidacy of TRUMP. TRUMP has clearly disqualified himself from serving as president by engaging in an insurrection against the United States. *See generally Anderson, No. 23SA300*. Yet this insurrectionist, who precipitated a failed coup against his own country, remains on the ballot for the Wisconsin Republican presidential primary. *See generally* Exhibit 4. The WEC, which is charged with enforcing all Wisconsin election laws under Wis. Stat. § 5.05(1), has failed to act to prevent TRUMP from participating in in the Wisconsin primary, and by doing so implicitly endorsed his qualification for the office of Presidency. Plaintiffs have waited for three years for government officials to do something to prevent TRUMP from taking office again, but everyone has failed to act. Plaintiffs have nowhere left to turn but this Court and seek an injunction to have him removed from the ballot for the Wisconsin Republican presidential primary.

Plaintiffs have sought relief from the WEC. BANGSTAD, believing that TRUMP would be unconstitutionally allowed to participate in Wisconsin's Republican presidential preference primary, filed a complaint with the WEC under Wis. Stat. § 5.06. The complaint was sworn against each of the six WEC Commissioners and demanded that the WEC conform their conduct to the law by finding that TRUMP was disqualified from serving as President of the United States under Section Three of the Fourteenth Amendment to the United States Constitution. Further, BANGSTAD demanded that the WEC commissioners conform their conduct to law by refusing TRUMP ballot access for the 2024 Republican presidential preference primary. BANGSTAD's complaint to the WEC was summarily denied as the WEC does not consider complaints made against the commission itself.

The WEC explained in a letter dismissing the complaint that "Additionally, the lead opinion of the Wisconsin Supreme Court in *Teigen et al v. Wisconsin Elections Commission et al*, stated

that "it would be nonsensical to have WEC adjudicate a claim against itself under § 5.06(1)." 2022 WI 64, 33, 403 Wis. 2d 607, 976 N.W.2d 519. Justice Hagedorn's concurrence further stated that "the better reading is that the § 5.06 complaint process does not apply to complaints against acts of WEC as a body." *See* Exhibit 2.

Effectively, under *Teigen,* Plaintiffs BANGSTAD and SMITH are unable to make a complaint to disqualify TRUMP from the Wisconsin Republican presidential preference primary directly to the WEC. Under, Wis. Stat. § 8.12 The Wisconsin presidential preference primary is overseen by the WEC itself, so any complaint about qualification or ballot access has to go to a circuit court. *See*, *Teigen*, 403 Wis. 2d at 976. Consequently, Plaintiffs must come before this Court to request relief under Wis. Stat. § 5.06(1), as Plaintiffs' may not go through the WEC to request relief under the aforementioned statute.

Plaintiffs have no choice but to request injunctive relief from this Court. Plaintiffs have already requested relief from the WEC which has still refused to fulfill their responsibility under Wis. Stat. 5.05(1) and disqualify Trump under Section Three of the Fourteenth Amendment to the United States Constitution. Additionally, the Supreme Court ruling in *Teigen* instructs Plaintiffs to bring complaints under Wis. Stat. § 5.06(1) directly to the circuit courts.

iv. A Temporary Injunction is necessary to preserve the status quo.

A temporary injunction necessary to preserve the status quo. TRUMP is disqualified under Section Three of the Fourteenth Amendment to the United States Constitution from ever again serving as president of the United States. On January 20, 2017, TRUMP took an oath of office when he was inaugurated as President of the United States.[8] Then, just shy of four years later, he

[8]Donald J. Trump, *The Inaugural Address*, January 20, 2017, https://trumpwhitehouse.archives.gov/briefings-statements/the-inaugural-address/

ordered an armed and violent mob to "fight like hell" and attack the Capitol Building, and the mob did just that, storming the Capitol, overrunning law enforcement, threatening sitting members of congress, and as a result the United states Capitol fell into the hands of her enemies for the first time since the War of 1812. See Exhibit 4 at 665. TRUMP inspired and ordered the attack and engaged in an insurrection against the country he swore to protect and is therefore constitutionally disqualified from serving as President of the United States again.

Additionally, the courts of Colorado considered the question of TRUMPS qualification for office under Section Three of the Fourteenth Amendment to the Constitution of the United States in *Anderson v. Griswold.* In *Anderson,* the district court held a five-day trial where the court found by clear and convincing evidence that TRUMP engaged in an insurrection. The matter was then reviewed by the Colorado Supreme Court, which affirmed the finding that TRUMP was an insurrectionist and also found that he was disqualified from office and from participating in the Colorado Republican presidential primary. Consequently, TRUMP's name was ordered removed from the Colorado Primary ballot. *See generally Anderson* No. 23SA300. The United States House of Representatives similarly impeached TRUMP for engaging in insurrection against the United States. The bipartisan, United States House Select Committee to Investigate the January 6th Attack on the United States Capitol further investigated TRUMP's conduct and after interviewing over 1000 witnesses they also found that TRUMP had engaged in insurrection. See generally Exhibit 4.

The WEC is responsible for enforcement of Section Three of the Fourteenth Amendment to the United States Constitution, as Section Three is essentially an election law as it creates a qualification for serving as President of the United States. Wis. Stat. § 5.05(1) explains that the

> "elections commission shall have the responsibility for the administration of chs. 5 to 10 and 12 and other laws relating to elections and election campaigns, other than laws relating to campaign financing. Section Three provides a qualification for office no different than any of the other qualifications for office contained within the constitution or qualifications for state office in Wisconsin statutes, and these laws should be enforced."

Additionally, Wis. Stat. § 7.75(1) instructs Wisconsin's Presidential Electors "When all electors are present, or the vacancies filled, they shall perform their required duties under the constitution and laws of the United States" When Wis. Stat. § 7.75(1) is read in conjunction with Section Three of the Fourteenth Amendment to the Constitution of the United States it becomes clear that an unqualified candidate cannot receive Wisconsin's ten electoral votes. Moreover, Wis. Stat. § 5.06 creates a private right of action for Wisconsin's electors to challenge the qualifications of a candidate and creates a legally protectable interest in qualified electors having only qualified candidates on Wisconsin's ballots. Under Wisconsin law, TRUMP should not be permitted to participate in Wisconsin's presidential preference primary.

TRUMP is disqualified from serving as President of the United States and is therefore unlawfully participating in Wisconsin's Republican Presidential preference primary. The status quo is currently not being preserved as a constitutionally disqualified insurrectionist is slated to unlawfully participate in a Wisconsin presidential preference primary on April 2, 2024., and only a temporary injunction issued by this Court can return Wisconsin to the status quo.

v. Plaintiffs will succeed on the merits.

Plaintiffs will succeed on the merits because the weight of the evidence against TRUMP favors Plaintiffs significantly and because the following four issues are barred from relitigation by issue preclusion:

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. That on, and for some time before, January 6, 2021, Donald J. Trump engaged in an insurrection against the United States.

If this Court grants Plaintiffs' request that those four issues be barred by the issue preclusion doctrine, Plaintiffs win on the merits of TRUMP's disqualification under Section Three of the Fourteenth Amendment to the United States Constitution, but even if this Court does not preclude those four issues, Plaintiffs will still succeed on the merits.

TRUMP was found to be disqualified for office under the Fourteenth Amendment to the United States Constitution after the matter was fully litigated in the Colorado Courts. *Anderson v. Griswold*, No. 23SA300 (2023) ¶5. The parties in *Anderson*, including TRUMP, engaged in significant motion practice and filed interlocutory appeals before holding a five-day trial on the merits. At that five-day trial the parties called and examined fifteen witnesses and introduced exhibits ninety-six exhibits into evidence. Following the intense litigation by the Plaintiffs, the Colorado Republican Party, and TRUMP himself, the District Court found that while TRUMP had engaged in an insurrection, Section Three of the Fourteenth Amendment was not applicable to the office of the President. *Anderson*, 23SA300 ¶3.

The District Court's factual findings and ruling were reviewed by the Colorado Supreme Court, which held that TRUMP was disqualified from holding the office of President under Section Three and because he is disqualified, it would be a wrongful to list him as a candidate on the presidential primary ballot. *Anderson*, No. 23SA300 ¶ 23. The question of TRUMP's qualification to hold the

office of Presidency was fully litigated, the District Courts heard pretrial motions and held a trial, where the parties called witnesses and introduced exhibits, the district courts then made their rulings which were reviewed by the Colorado Supreme Court. Following the District Court's 5-day trial and subsequent District Court ruling, the Colorado Supreme Court reviewed the matter and entered its rulings.

The factual basis for Plaintiffs claims has also been investigated at length by the bipartisan United States House Select Committee to Investigate the January 6th Attack on the United States Capitol and the Senate, who after considering the sworn testimony of over 1000 of witnesses, most of whom were Republicans and many of whom were members of the TRUMP administration released an 814-page final report. And in that report, the bipartisan committee concluded that TRUMP engaged in an insurrection of the United States.

A bipartisan majority of the House of Representatives similarly impeached TRUMP for "incitement of insurrection," and a bipartisan majority of the Senate voted to convict him, with several Senators voting against conviction (and the final vote falling below the requisite two thirds supermajority) based "on the theory that the Senate lacked jurisdiction to try a former president."

Section Three of the Fourteenth Amendment imposes a simple qualification for holding public office in the United States, and it is one that TRUMP no longer meets. Ultimately, Section 3 serves as a measure of self-defense designed to protect the United States of America from those who have previously chosen to do it harm. It further embodies the recognition of the reconstruction government of the threat that those who would wage war against the Constitution poses to the existence and integrity of our Union. "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), appeal dismissed sub nom. *Worthy v. Comm'rs*, 76 U.S. 611 (1869). TRUMP broke his oath and therefore fails the test established by Section Three of the Fourteenth Amendment and may never again serve as President of the United States.

Just like the other constitutional qualifications for office based on age, citizenship, and residency, Section Three is enforceable through civil suits in state court to challenge a candidate's eligibility to hold public office, including the Office of the President. Neither Section Three's text nor precedent require a criminal conviction for "insurrection" before a candidate is disqualified. Section Three creates the qualification, and this Court must use Section Three of the Fourteenth Amendment to the United States Constitution to disqualify TRUMP from again serving as President.

Finally, the WEC should have already found TRUMP constitutionally disqualified from holding the office of the President and removed him from the ballot. The WEC is responsible for enforcement of Section Three of the Fourteenth Amendment to the United States Constitution in Wisconsin as Section Three is essentially an election law, and Wis. Stat. § 5.05(1) explains that the elections commission shall have the responsibility for the administration all campaign laws other than laws relating to campaign financing. The WEC has the responsibility to enforce every election law and it is failing to do so.

Wis. Stat. § 7.75(1) provides additional guidance on this matter as it instructs Wisconsin's Presidential Electors "When all electors are present, or the vacancies filled, they shall perform their required duties under the constitution and laws of the United States." When Wis. Stat. § 7.75(1) is read in conjunction with Section Three of the Fourteenth Amendment to the Constitution of the United States it becomes clear that an unqualified candidate cannot receive Wisconsin's ten electoral votes. Ultimately, the WEC has a legal and constitutional duty to remove a presidential

candidate who is unqualified for the office of the president and unqualified to receive Wisconsin's ten electoral votes from participating in a presidential primary or election.

Wis. Stat. § 5.06 similarly creates a private right of action for Wisconsin's electors to challenge the qualifications of a candidate and creates a legally protectable interest in keeping unqualified candidates off Wisconsin's ballots. Plaintiffs now bring their motion for a Temporary Injunction, to enforce Wis. Stat. § 5.06 and order the Wisconsin Elections Commission and the six Wisconsin Elections Commissioners to conform their conduct to law by withdrawing TRUMP as a candidate in Wisconsin's Republican presidential preference primary.

CONCLUSION

Section Three of the Fourteenth Amendment imposes a qualification for holding public office in the United States and bars from office any person who swore an "oath … to support the Constitution of the United States" as a federal or state officer and then "engaged in insurrection or rebellion against the same, or [gave] aid or comfort to the enemies thereof," unless Congress "remove[s] such disability" by a two-thirds vote. U.S. Const. amend XIV, § 3. It embodies the Fourteenth Amendment's framers' recognition of the grave threat that insurrection against the Constitution poses to the existence and integrity of our Union. "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), appeal dismissed sub nom. *Worthy v. Comm'rs*, 76 U.S. 611 (1869). TRUMP broke his oath and failed that test.

TRUMP took an of office when he was inaugurated on January 20, 2017, and after losing the presidential election on November 3, 2020, engaged in an insurrection against the United States

on, and for some time prior to January 6, 2021, forever disqualifying himself from holding the public office again. Now in 2024, TRUMP again seeks the office of President and to unconstitutionally and unlawfully participate in the Wisconsin Republican presidential preference primary. Plaintiffs bring their action and this motion to right that wrong.

Plaintiffs first ask this Court for the following declaratory relief:

1. Plaintiffs first request this Court declare that Donald J. Trump after taking an oath of office engaged in an insurrection against the United States and is disqualified from serving as President of the United States.
2. Plaintiffs additionally ask to declare that constitutionally unqualified candidates are not allowed to participate in the Wisconsin elections or primaries.

Additionally, Plaintiffs request this Court grant Plaintiffs an injunction against the Wisconsin Elections Commission enforcing Wis. Stat. § 5.06 and ordering the Wisconsin Elections Commission and the six Wisconsin Elections Commissioners to conform their conduct to law by withdrawing TRUMP as a candidate in Wisconsin's Republican presidential preference primary.

Dated: February 9, 2024.

Frederick Melms
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"Electronically signed by"
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