

STATE OF WISCONSIN  
BEFORE THE ELECTIONS COMMISSION

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KIRK C. BANGSTAD  
727 Lorillard Ct,  
Madison, WI 53703

Complainant,

-vs-

Don M. Millis  
201 W Washington Ave Second Floor,  
Madison, WI 53703

Robert F. Spindell Jr.  
201 W Washington Ave Second Floor,  
Madison, WI 53703

Marge Bostelmann  
201 W Washington Ave Second Floor,  
Madison, WI 53703

Ann S. Jacobs  
201 W Washington Ave Second Floor,  
Madison, WI 53703

Mark L. Thomsen  
201 W Washington Ave Second Floor,  
Madison, WI 53703

Carrie Riepl  
201 W Washington Ave Second Floor,  
Madison, WI 53703

Respondents,

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## **COMPLAINT**

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The Complainant Kirk C. Bangstad alleges as follows;

### **INTRODUCTION**

1. Complainant Kirk C. Bangstad is a registered Wisconsin voter and qualifies as an elector within the meaning of Chapter 5 and 6 of the Wisconsin Statutes. Complainant Bangstad resides in the city of Madison, Dane County.
2. Respondents Don M. Millis, Robert F. Spindell Jr., Marge Bostelmann, Ann S. Jacobs, Mark L. Thomsen, Carrie Riepl are the current Wisconsin Elections Commission Commissioners and are responsible for enforcing election laws in Wisconsin as well as oversight and policy making for the commission.

### **JURISDICTION**

3. This case is brought against Respondents under Wis. Stat. § 5.06 which provides that:  
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**

4. Despite the President being the highest-ranking government official in the United States and arguably the most important head of state in the world, there are only four Constitutional requirements that a candidate must meet to serve as President of the United States of America. They must be a natural born citizen, have lived in the United States for at least 14 years, be over the age of 35 and have never engaged in an insurrection after having previously taken an oath of office. Donald J. Trump fails to meet those requirements and may not serve as President of the United States of America.
5. Section 3 of the Fourteenth Amendment to the Constitution of the United States Explains.

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;

6. Adopted in the wake of the Civil War, Section 3 of the Fourteenth Amendment imposes a qualification for holding public office in the United States. It 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.

7. Section 3 is a “measure of self-defense” designed to preserve and protect American democracy. Cong. Globe, 39th Cong., 1st Sess. 2918 (May 31, 1866) (statement of Sen. Willey). 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).
8. Like other constitutional qualifications based on age, citizenship, and residency, Section 3 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 3’s text nor precedent require a criminal conviction for “insurrection” before a candidate is disqualified.
9. Donald Trump disqualified himself and forfeited his right to serve as President of the United States of America by choosing power over the oath he took as an officer of the United States to uphold the Constitution of the United States and engaging in an insurrection against the Country he swore to protect.
10. Donald Trump’s insurrection against the United States of America occurred on multiple fronts and spanned several months. In fact, Trump and his co-conspirators started preparing to overturn the election results as early as the summer of 2020, with Donald

Trump and his seditious accomplices 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 before a single ballot had even been cast. Trump knew he was going to lose the 2020 elections months before November 3, 2020, and began plotting to remain in power by any means necessary.

11. After losing the election on November 3, 2020, Donald Trump put his seditious scheme into action. It began with a media blitz, with Trump and his top advisors spreading lies about voting machines, mail in ballots, and falsely declaring the election was rigged. Trump further demanded that elected official across the country, find him ballots and overturn election results.
12. Unfortunately, Trump and his fellow insurrectionists were not just telling lies about the election and demanding that state election officials break their oaths of office. Trump was also engaged in a conspiracy 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.
13. Wisconsin was front and center of Trump's fraudulent elector's scheme. Ten fraudulent electors from Wisconsin met at the State Capitol on December 14, 2020, where they knowingly prepared criminally false documents which asserted that they were duly and lawfully chosen electors from Wisconsin whose votes were entitled to be tallied in the Joint Session on January 6, 2021. The fraudulent electors then compounded their illegal conduct by sending their forged electoral votes to Pence in his capacity as President of

the Senate, without any reservation or condition stating the truth: that the fraudulent electors were not in fact duly and lawfully chosen pursuant to Wisconsin law.

14. 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 Mike 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.
15. Donald Trump is currently under Federal indictment for his role in the fraudulent electors plot.
16. 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.
17. On January 6, 2021, while Trump's co-conspirators were trying to defraud the American electorate inside the house chambers, Trump was outside at his "stop the steal" rally with his followers who had been enraged by the lies spread by Trump and his fellow insurrectionists over the previous months. After the rally one of the most shameful scenes in the history of the United States played out on Donald Trump's orders.
18. Until the January 6, 2021, the peaceful transition of presidential power had served as a hallmark of America's great democracy. For 231 years, even amidst the Civil War, no candidate for president had ever attempted to remain in power by ordering his followers to violently take control of the United States government. Trump ended that tradition.

19. Just shy of four years after taking an oath to “preserve, protect and defend” the Constitution as President of the United States, Trump tried to overthrow the results of the 2020 election, leading to a violent insurrection at the United States Capitol to stop the lawful transfer of power to his successor. By instigating this unprecedented assault on the American constitutional order, Trump violated his oath and disqualified himself under the Fourteenth Amendment from holding public office, including the Office of the President.
20. The core facts demonstrating Trump’s disqualification are a matter of public record. He dishonestly and unlawfully tried to overturn the 2020 election results through multiple avenues. When that failed, he summoned tens of thousands of enraged supporters for a 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.
21. Among those Trump mobilized for the January 6<sup>th</sup> insurrection were violent extremists and now convicted seditionists whom he famously 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 repeated that incendiary lie and directed them to march on the Capitol, knowing many were armed and prepared for violence. He urged them to “fight like hell” to “Stop the Steal”—i.e., stop Vice President Mike Pence and Congress from lawfully certifying the Electoral College votes designating Joseph R. Biden, Jr. the 46th President of the United States.
22. Before January 6th, Trump was told repeatedly by lawyers and top officials that Pence

could not lawfully overturn the election results. And Pence rebuked Trump's coercive demands to do so. Undeterred, Trump continued to exert public pressure on Pence on January 6th. He put his own Vice President in the crosshairs of what became a violent mob, stressing that "if Mike Pence does the right thing, we win the election."

23. President Trump's mob then 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.
24. By 1:21 p.m., President Trump knew the Capitol was under attack, and Vice President Pence had announced publicly he would not overturn the election results. While watching the assault unfold on television, Trump poured fuel on the fire. He sent a tweet at 2:24 p.m. targeting Pence for lacking the "courage" to overturn the election. The tweet caused the mob to surge and chant "hang Mike Pence!" It predictably exacerbated the violence that Trump knew was underway, something Trump knew full well would happen in response to the tweet.
25. Trump failed to take any action to stop the attack for nearly three hours as his mob ransacked the United States Capitol, brutally assaulted police officers, and called for the murder of elected officials. He refused to deploy a federal response or call off his mob despite his affirmative constitutional duty to "take Care that the Laws be faithfully executed" and his role as Commander-in-Chief of the military, U.S. Const. art. II, §§ 2, 3, including the D.C. National Guard.



26. Rather than defending the Capitol, President Trump exploited the violence and leveraged it to pressure Members of Congress to further delay the election certification.
27. It was only after three hours of barbaric violence broadcast on television and repeated pleas from his senior staff and family that Trump posted a video at 4:17 p.m. instructing his mob to “go home,” adding that he “love[d]” them and understood their “pain” over an “election that was stolen from us.” Many in the mob did not leave the Capitol grounds until Trump told them to. And Trump called off the mob only after it seemed clear they would not achieve his goal of stopping Congress’s certification of the election results. Later that night, the President of the United States justified this deadly attack on the seat of his own government, tweeting at 6:01 p.m.: “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots. ... Remember this day forever!”
28. President Trump was the mob’s leader, and the mob was his weapon. The mob traveled from throughout the country to Washington because the President summoned them there. He instructed the mob to march on the Capitol and they complied. Many in the mob left the Capitol grounds only when, after hours of violence against police officers and interference with Congress’s constitutionally-mandated duties, Trump belatedly told them to leave. Through their flags, banners, clothing, and chants, the mob made clear they were there for Trump.
29. President Trump’s weaponized mob carried out the most significant breach of the Capitol building since the War of 1812. Their attack led to deaths, injuries to more than one hundred law enforcement officers, and more than \$2.7 billion in property damage and

losses. A Capitol Police officer whom the mob had attacked died the next day, and four other officers died by suicide in the following months.

30. The January 6th attack was the culmination of a multi-part scheme to use lies, coercion, intimidation, and violence against government officials to overturn the 2020 election results. The threat was broad. It was directed at Republicans and Democrats alike. Targets included the Vice President of the United States, federal and state legislators, election officials, and the Supreme Court. 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.
31. On January 20, 2017, Trump took the Presidential Oath of Office, swearing to “faithfully execute the Office of President of the United States,” and “to the best of [his] Ability, preserve, protect and defend the Constitution of the United States.” U.S. Const. art. II § 1, cl. 8
32. Taking this oath made Trump subject to disqualification because the President of the United States is an “officer of the United States” within the meaning of Section 3 of the Fourteenth Amendment to the United States Constitution.
33. The conclusion that the President is an officer of the United States follows from the Constitution’s plain text. The Constitution refers to the President holding an “Office” 25 times, including in the Oath of Office Clause. See U.S. Const. art. I, § 3, art. II, §§ 1, 4, amends. XII, XXII, XV. Because that “Office” is within the federal executive branch, it is necessarily an office “of the United States.” And one who holds an “office” is an “officer.”

34. Further, Trump himself has conceded in court filings that “[t]he President of the United States” is an “officer . . . of the United States.” President Donald J. Trump’s Mem. of Law. in Opp. to Mot. to Remand, *People v. Trump*, 1:23-cv-3773-AKH, ECF No. 34, at 2–10 (S.D.N.Y., filed June 15, 2023); see also *K&D LLC v. Trump Old Post Off. LLC*, 951 F.3d 503 (D.C. Cir. 2020).
35. That an event constitutes an “insurrection” can be proven by widespread governmental recognition alone. A Civil War era jury charge by Supreme Court Justice Stephen Field, sitting as a circuit justice, explained that the “existence of the [Confederate] rebellion [was] a matter of public notoriety, and like matters of general and public concern to the whole country, may be taken notice of by judges and juries.” *United States v. Greathouse*, 26 F. Cas. 18, 23 (C.C.N.D. Cal. 1863). Justice Field explained that “public documents” such as “proclamations of the president” and “acts of congress” were “sufficient proof” of the Confederate rebellion’s existence for purposes of charges under a statute criminalizing participation in “rebellion or insurrection.” *Id.*
36. The existence of the January 6th insurrection is similarly a “matter of public notoriety” supported by bipartisan acts of Congress, congressional reports, presidential statements, judicial decisions, and other “public documents.”
37. All three branches of the federal government have referred to the January 6th attack as an “insurrection” and the participants as “insurrectionists,” including bipartisan majorities of both Houses of Congress during Trump’s impeachment and in legislation honoring police officers who defended the Capitol.
38. The January 6th Select Committee—a bipartisan congressional committee established to

“investigate and report upon the facts, circumstances, and causes relating to the January 6, 2021, domestic terrorist attack upon the United States Capitol Complex ... and ... interference with the peaceful transfer of power,” H. Res. 503, 117th Cong. § 3(1)—concluded in its final report that the January 6th attack was an insurrection within the meaning of Section 3 of the Fourteenth Amendment.

39. Although Section 3 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).
40. 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.
41. Finally, The Colorado Supreme Court ruled on December 19, 2023, in *Anderson v. Griswold* that Donald J. Trump previously took an oath as an officer of the United States, and then participated in an insurrection against the United States disqualifying him to

serve as President of the United States and appear on the Colorado Primary ballot under Section 3 of the Fourteenth Amendment to the United States Constitution. *See Generally* Exhibit 1, Colorado Supreme Court Decision in *Anderson v. Griswold*.

42. A bipartisan majority of the House of Representatives also 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.”
43. Since January 6, 2021, Trump has publicly affirmed his disloyalty to the Constitution and his allegiance to the insurrectionists who seized the Capitol for him. He has called the insurrectionists “patriots,”<sup>1</sup> vowed to give many “full pardons with an apology” if he becomes President again,<sup>2</sup> financially supported them,<sup>3</sup> and hugged on camera a convicted January 6th defendant who has said that Pence and Members of Congress who voted to certify Biden’s victory should be executed for treason.<sup>4</sup>
44. Trump also continues to propagate the lie he used to summon the mob to Washington: that the 2020 election was stolen. In December 2022, he disturbingly called for the “termination of ... the Constitution” to correct “Massive Fraud” in the election.<sup>5</sup> And he

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<sup>1</sup> David Cohen, Trump on Jan. 6 insurrection: ‘*These were great people*’, Politico, July 11, 2021, <https://www.politico.com/news/2021/07/11/trump-jan-6-insurrection-these-were-great-people499165>.

<sup>2</sup> Mariana Alfaro, *Trump vows pardons, government apology to Capitol rioters if elected*, Washington Post, Sept. 1, 2022, <https://www.washingtonpost.com/nationalsecurity/2022/09/01/trump-jan-6-rioters-pardon/>.

<sup>3</sup> *Id.*

<sup>4</sup> Ryan J. Reilly and Olympia Sonnier, *Donald Trump embraces Jan. 6 defendant who wants Mike Pence executed*, NBC News, Apr. 28, 2023, <https://www.nbcnews.com/politics/donaldtrump/donald-trump-embraces-jan-6-defendant-wants-pence-executed-rcna81958>.

<sup>5</sup> Kristen Holmes, *Trump calls for the termination of the Constitution in Truth Social post*, CNN, Dec. 4, 2022, <https://www.cnn.com/2022/12/03/politics/trump-constitution-truthsocial/index.html>.

continues to fan the flames of political violence among his supporters against judges, prosecutors, and other government officials.<sup>6</sup> He is precisely the threat to American democracy the Fourteenth Amendment’s framers had in mind when they adopted Section 3’s prohibition on constitutional oath-breakers holding office.

45. Trump swore an oath to “preserve, protect and defend” the Constitution upon assuming the Office of the President on January 20, 2017, and then engaged in insurrection against the Constitution on and around January 6, 2021, he is disqualified under Section 3 of the Fourteenth Amendment from “hold[ing] any office ... under the United States,” including the Office of the President.
46. Despite his constitutional disqualification, Trump is presently a “candidate” under Wisconsin and federal law for the 2024 Republican presidential primary election.
47. The presidential preference primary process begins on the second Tuesday in December before a presidential election year. By 5pm on that date “the state chairperson of each recognized political party listed on the official ballot at the last gubernatorial election whose candidate for governor received at least 10 percent of the total votes cast for that office may certify to the commission that the party will participate in the presidential preference primary” under Wis Stat. § 8.12(1)(a).
48. On January 2, 2024, a committee will be convened at the capitol from each party certified under Wis Stat. § 8.12(1)(a) consisting of, various elected officials and party leaders who select which candidates will appear on the presidential preference primary ballots. “The

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<sup>6</sup> See, e.g., Eric Garcia, *Trump attacks judge’s family and calls Alvin Bragg a ‘criminal’ at Mara-Lago despite court warning*, The Independent, Apr. 6, 2023, <https://www.independent.co.uk/news/world/americas/us-politics/donald-trump-alvin-bragg-wifespeech-b2315221.html>.

committee shall submit to the commission all candidates whose candidacy is generally advocated or recognized in the national news media throughout the United States” as well as any other candidates the committee believes would be appropriate under Wis Stat. § 8.12(1)(b).

49. Once an individual is selected to appear on a presidential preference primary ballot, they then have the opportunity to affirmatively opt out of participating in the Presidential Primary, but absent their affirmative decision to opt out, they will appear on the ballot under Wis Stat. § 8.12(1)(d).

50. As Donald J. Trump is a candidate whose candidacy is “generally advocated or recognized in the national news media throughout the United States his name will be provided to the Wisconsin Elections Commission for placement on the Republican presidential preference primary ballot.

51. Wis Stat. 505(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”

52. Section 3 of the Fourteenth Amendment to the United States Constitution is an election law as it speaks to the qualifications of individuals to hold office.

53. Similarly, as governmental officials of the State of Wisconsin, the Respondents have an obligation to support the Constitution of the United States.

54. As such, the Respondents have a duty to the Constitution of the United States and the Laws of Wisconsin to deny Trump access to Wisconsin ballots during the 2024 Republican presidential preference primary.

55. The Complainant believes the Respondents intend to illegally and unconstitutionally allow Donald Trump ballot access for the 2024 Republican presidential preference primary.

56. Wis Stat. § 8.30(1)(c) provides the Respondents with the authority to refuse ineligible candidates ballot access.

### **REQUEST FOR RELIEF**

WHEREFORE, the Complainant requests the following relief:

1. That Respondents Don M. Millis, Robert F. Spindell Jr., Marge Bostelmann, Ann S. Jacobs, Mark L. Thomsen, Carrie Riepl are the current Wisconsin Elections Commission Commissioners find that Donald J. Trump is disqualified from serving as President of the United States of America under Section 3 of the Fourteenth Amendment to the United States Constitution.
2. That Respondents Don M. Millis, Robert F. Spindell Jr., Marge Bostelmann, Ann S. Jacobs, Mark L. Thomsen, Carrie Riepl are the current Wisconsin Elections Commission Commissioners refuse Donald J. Trump access to the 2024 Republican presidential preference primary ballot.



**CERTIFICATION**

**I, Kirk C. Bangstad, being first duly sworn upon oath, state that I personally read the above complaint and that the above allegations are true and correct based on my personal knowledge and, as to those allegations stated on information and belief, I believe them to be true.**

Signature

State of Wisconsin )

) ss

County of \_\_\_\_\_ )

Signed and sworn to before me this \_\_\_\_ day of December, 2023.

Notary Public or Person Authorized  
to Administer Oaths

My commission expires  
Or, is permanent.

## Exhibit 1

Colorado Supreme Court Decision from *Anderson v. Griswold*