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

Steven Daniel Anderson; Charles J. Holley;
Jack L. Hickman; Ralph E. Cintron;
Darryl P. Baker,

Petitioners-Objectors,

v. Case No. 24 SOEB GP 517

Donald J. Trump,

Respondent-Candidate.

OBJECTORS' EXCEPTION TO HEARING OFFICER REPORT AND RECOMMENDED DECISION AND RECOMMENDATION OF THE GENERAL COUNSEL

Petitioners-Objectors Anderson, Holley, Hickman, Cintron, and Baker ("Objectors"), by their attorneys, pursuant to Rule 5(d) of the SOEB 2024 Rules of Procedure, submit this Exception to the report and recommended decision issued by the Hearing Officer and state as follows:

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION AND RECOMMENDATION OF THE GENERAL COUNSEL

On January 4, 2024, Objectors filed Objectors' Petition, asking the State Officers Electoral Board (the "Board") to bar Candidate Donald Trump from the Illinois ballot on the basis that he submitted invalid nomination papers under 10 ILCS 5/7-10, because he falsely swore in his Statement of Candidacy that he is "qualified" for the office of presidency when he is, in fact, disqualified under Section 3 of the Fourteenth Amendment. In addition to the Objection itself, the parties filed two motions: (1) Objectors' Motion to Grant Objectors' Petition, or in the Alternative for Summary Judgement; and (2) Candidate Trump's Motion to Dismiss Objectors' Petition. On January 27, 2024, the Hearing Officer, Judge Clark Erickson, issued a Report and Recommended Decision that recommended the Board: (1) deny summary judgment on the basis there are disputed material facts; (2) grant the motion to dismiss on the basis that the Board does not have statutory authority under the Illinois Election Code to hear the Objection because it requires the Board to engage in constitutional analysis; and (3) otherwise determine that the evidence presented by the parties proves by a preponderance of the evidence that Candidate Trump, while President, engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment, and should have his name removed from the March 2024 primary ballot in Illinois. On January 29, 2024, the General Counsel issued her recommendation to the Board, arguing that both parties' motions should be denied and the Board should overrule the Objection because, in her view, the Board can only disqualify an unqualified candidate from the ballot if there is evidence that the candidate

affirmatively knew they did not meet the qualifications for office at the time they filed their nominating papers and "knowingly lied" when attesting to the qualification.

EXCEPTION

Objectors file this Exception regarding: (1) the Hearing Officer's finding that the Board does not have statutory authority under the Illinois Election Code to resolve the Objection; and (2) the General Counsel's recommendation that Illinois law limits the Board's assessment of Candidate qualifications to whether a Candidate knowingly lied when attesting to their qualifications for office in their nomination papers. Both conclusions are contrary to Illinois law and would create unworkable procedures for this Board.

A. Exception to Hearing Officer's Recommendation

Objectors file this Exception regarding *only* the recommendation to grant the motion to dismiss on the basis that the Board does not have statutory authority under the Illinois Election Code. While Objectors understand that the decision of the Hearing Officer generally is given substantial deference, they respectfully request that the Board reject the recommendation to find they do not have authority under Illinois law to hear this Objection, as this finding is clearly contrary to controlling legal authority.

The Illinois Supreme Court has recognized, in both *Delgado v. Board Of Election Commisioners of City of Chicago*, 224 Ill. 2d 481 (2007), and *Goodman v. Ward*, 241 Ill. 2d 398 (2011), the well-established and uncontroversial principle that electoral boards, like any administrative board, cannot declare a statute unconstitutional, or otherwise assess the constitutionality of statutes. Under our tripartite system of government, only courts may declare a legislative enactment to be unconstitutional. That does *not* mean, however, that the Electoral Board may not apply and analyze constitutional provisions. Indeed, like all governmental entities, they

must act and rule in accordance with constitutional mandates. *See Zurek v. Peterson*, 2015 IL App (1st) 150456, ¶ 33-35 (unpublished) (recognizing direction in Section 10-10 of the Election Code to determine if petitions are "valid" includes authority to apply constitutional standards to objections because "to determine . . .whether the objections should be sustained or overruled, the Board was required to determine if the referendum was authorized by a statute or the constitution").

The Hearing Officer read *Goodman* to mean that "an electoral board goes too far not just when it holds a statute unconstitutional but also goes too far when it enters the realm of constitutional analysis," (Hearing Officer Decision at 8) and thus reasoned the Board is prohibited from applying Section 3 of the Fourteenth Amendment. Objectors respectfully disagree.

In *Goodman*, the Electoral Board rejected an objection that a judicial candidate did not meet the residency requirement mandated by the Election Code, instead disregarding the Code's residency requirements as unconstitutional based on their analysis of the Illinois Constitution. *Id.* at 410-11. The Illinois Supreme Court found:

> Implicit in the electoral board majority's approach was that the Constitution's eligibility requirements differed from those contained in the Election Code and that to the extent of the difference, the provisions of the Election Code were unconstitutional and could be disregarded. This was a determination the electoral board had no authority to make.

Id.[1] Thus when the Illinois Supreme Court stated "the electoral board overstepped its authority when it undertook this constitutional analysis. It should have confined its inquiry to whether Ward's nominating papers complied with the governing provisions of the Election Code," *id.* at

[1] The *Goodman* decision tracked with the Illinois Supreme Court's decision in *Delgado*, which held that the Board of Elections exceeded its authority when it rejected objections to a candidate's nomination papers on the basis that the underlying statute was unconstitutional and thus unenforceable. In that case, rather than apply a statutory standard to a set of candidate facts, the electoral board decided that *in spite of* the facts applicable to the candidate, the underlying statute that precluded him from running was unconstitutional and proceeded to direct his inclusion on the ballot. 224 Ill. 2d at 486. Again, as in *Goodman*, this is an application of the well-established principle that boards and other administrative bodies have no authority to declare statues to be unconstitutional.

414-15, it meant that the Board overstepped by evaluating the constitutionality of the Election Code instead of applying it. In contrast, here, Objectors do not ask the Electoral Board to declare any statute to be unconstitutional. Rather they ask the Board to comply with its statutory mandate to determine whether the candidate is qualified to serve for office based on qualifications specified in the U.S. Constitution. In order to do so, it must construe and apply the Constitution – but that is a far cry from finding a statue to be unconstitutional. *Compare Delgado*, 224 Ill. 2d at 485 (board cannot "question the validity" of a statute). "Constitutional analysis" means something very different in the context of this Objection.

Indeed, *Goodman* also explicitly recognized that the Board's mandate to evaluate candidate objections *extends to candidate qualifications*:

> The statutory requirements governing statements of candidacy and oaths are mandatory. If a candidate's statement of candidacy does not substantially comply with the statute, the candidate is not entitled to have his or her name appear on the primary ballot. Though [the candidate] did sign the statutorily required statement of candidacy and submit it with his nomination petition in the case before us, the statement did not satisfy statutory requirements. As we have discussed, his representation that "I am legally qualified to hold the office of Circuit Court Judge, 12th District [*sic*], 4th Judicial Subcircuit" was untrue. Ward did not meet the qualifications for office.

The Court held that the objection should have been sustained because the candidate did not meet requirements set out in the Election Code *and in the Illinois Constitution*. *Goodman*, 241 Ill. 2d at 409-10.

Consistent with *Goodman* and as mandated by the Election Code, electoral boards, including this Board have a long history of *applying* constitutional requirements when called for. These decisions support Objectors' interpretation of the governing law.

For example, this Board determined it had the authority to apply the natural born citizen requirement set out in Article II, Section 1, Clause 5 of the U.S. Constitution and rule on the constitutional merits of an objection to Marco Rubio's presidential candidacy. In that case,

Candidate Rubio challenged the Board's statutory authority to hear the objection as outside of its subject matter jurisdiction. The Board rejected the challenge: "the Objector alleges that the Statement of Candidacy is invalid because the Candidate is not legally qualified to hold the office of President. . . [but] the Board is acting within the scope of its authority in reviewing the adequacy of the Candidate's Statement of Candidacy." *Graham v. Rubio*, No, 15 SOEB GP 528 (Hearing Officer Findings and Recommendations, adopted by the Electoral Board); *Graham v. Rubio*, No, 16 SOEB GP 528 (Feb. 1, 2016) (adoption by SOEB).[2]

In other words, Rubio raised the same argument that Trump raised (and the hearing officer recommended) here, but the Board rejected it, affirming that the Board *does* have jurisdiction over challenges to presidential candidates' constitutional qualifications. Thus, the hearing officer's recommendation to dismiss cannot be squared with this Board's precedent. *See also Freeman v. Obama*, No. 12 SOB GP 103 (Feb. 2, 2012) (evaluating objection that candidate did not meet qualifications for office of President of the United States set out in Article II, Section 1 of the United States Constitution); *Jackson v. Obama*, No. 12 SOEB GP 104 (Feb. 2, 2012) (same); *Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109, 113 (N.D. Ill. 1972) (approving Electoral Board's decision not to place presidential candidate who did not meet constitutional age qualification on ballot and denying motion for preliminary injunction to enjoin decision). This is consistent with other electoral board decisions that have required boards to *apply* constitutional provisions. *See Harned v. Evanston Mun. Officers Electoral Bd.*, 2020 IL App (1st) 200314, ¶ 23 ("While petitioner is correct that electoral boards do not have authority to declare statutes unconstitutional, they are required to decide, in the first instance, if a proposed referendum is

[2] At the January 26, 2024 hearing, Candidate Trump's counsel stated that while the Electoral Board had evaluated objections to presidential candidates, its authority to hear the objection had never been challenged by the candidate. This is not accurate, as *Graham v. Rubio* demonstrates.

permitted by law, even where constitutional provisions are implicated."); *Zurek v. Peterson*, 2015 IL App (1st) 150456, ¶ 33-35 (unpublished) (recognizing that while "the Board does not have the authority to declare a *statute* unconstitutional[, this] does not mean that the Board had no authority to consider the constitutionally-based challenges" and that to determine whether the referendum "was valid and whether the objections should be sustained or overruled, the Board was required to determine if the referendum was authorized by statute or the constitution").

In sum, while Objectors agree that electoral boards cannot engage in statutory or constitutional analysis *for purposes of declaring a statute unconstitutional or invalid*, "constitutional analysis" itself is not and cannot be prohibited. Such a decision would mean that this Board would never have authority to sustain an objection to a candidate who clearly violated candidacy requirements set out in the U.S. or Illinois constitution. This would contravene the Election Code's mandate, a history of diligently evaluated objections presented in presidential elections, and the practical need to safeguard Illinois ballots in presidential and other elections.

B. Exception to General Counsel Recommendation

This Board should reject the General Counsel's invitation to require an objector to prove not only that a candidate falsely swore he was "qualified" for office under 10 ILCS 5/7-10, but also that the candidate did so *knowingly*. This new and unworkable proposed standard is not supported by Illinois law and would wreak havoc on electoral boards' obligation to safeguard Illinois ballots and voters from the intrusion of unqualified candidates.

The Illinois Supreme Court's decision in *Welch v. Johnson*, 147 Ill. 2d 40 (1992), in no way establishes a scienter defense to candidates' inaccurate Statements of Candidacy. Because that case involved the requirement that a candidate file a statement of economic interest as required by the Illinois Governmental Ethics Act, the Court analyzed the language of the Ethics Act, which

provides that removal from the ballot under the Ethics Act is an appropriate sanction only for those who "willfully" file a false or incomplete statement of economic interest. *Id.* at *51-52. *Welch* says *absolutely nothing* about the Statement of Candidacy requirement in the Election Code. The General Counsel offers no other case law to support the recommended addition of a scienter requirement and departure from controlling Supreme Court decisions that clearly state the Board's role is to evaluate candidate qualifications. *See e.g. Goodman*, 241 Ill.2d at 409-10.

Furthermore, the General Counsel's proposal runs counter to the purpose of the Statement of Candidacy in 10 ILCS 5/7-10, which is not to punish candidates for lying, but to protect the legitimacy of Illinois elections by keeping unqualified candidates off the ballot. *Geer v. Kadera*, 173 Ill. 2d 398, 406, 671 N.E.2d 692, 696 (1996) ("The purpose of [10 ILCS 5/7-10] and similar provisions is to ensure an orderly procedure in which only the names of qualified persons are placed on the ballot."). Unsurprisingly, this Board frequently removes candidates from the ballot who *believe* they are qualified but turn out to be wrong, and Illinois courts approve those decisions. *See, e.g., Gercone v. Cook Cnty. Officers Electoral Bd.*, 2022 IL App (1st) 220724-U (affirming electoral board decision finding candidate unqualified for the office of sheriff and removing her from the ballot because she lacked the required training, despite her belief that her training was adequate. Indeed, as the Board is well aware, hearings over a candidate's residency can often last several days, at the end of which the Board decides whether to remove the candidate from the ballot based on factual findings about his residency—not on factual findings about his mental state in connection with his residency. Even in Goodman, the candidate believed he was qualified. Though he did not dispute that he lived outside the subcircuit, "his contention was that he was not obligated to meet the residency requirement until the time of the election." 241 Ill. 2d at 408. The

Illinois Supreme Court rejected that argument and affirmed the decision to remove his name from the ballot.

If the unsupported scienter requirement the General Counsel proposes were the law, the Board would see no end to candidates defending objections on the basis that objectors cannot prove that they were aware of their disqualification. An individual could run for judgeship falsely believing that she was registered as an attorney in Illinois, not knowing that her registration had lapsed. An individual could run for office believing he was a registered voter in the applicable district, and later find that he had been dropped from the rolls. And under the General Counsel's proposed scienter standard, the Board—and Illinois voters—would have no recourse.

In sum, the General Counsel has outlined a legal path to resolving the Objection that has no basis in law and, if adopted, would create precedent that would have a problematic impact far beyond this case. It should be rejected.

CONCLUSION

At the core of the General Counsel's recommendation is a guiding principle with which Objectors agree: the Board should avoid a decision that results in a reviewing court remanding the matter for further consideration. (General Counsel Decision at 7). The one sure way the Board can accomplish that outcome—a deeply important one given the upcoming March 19, 2024 primary and ballot deadlines that precede it—is to adopt the Hearing Officer's detailed and reasoned factual findings based on the evidence presented by the parties. Dismissing Objectors' Petition on either of the improper recommended bases without adopting the Hearing Officer's detailed findings leaves open the possibility that the appellate court will reverse the Board's decision for the reasons outlined above and remand to the Board to address the merits of Objectors' Petition.

With that in mind, Objectors respectfully request that the Electoral Board: (1) determine that it has the authority to hear this Objection; (2) decline the General Counsel's invitation to impose the new and unworkable standard that review of candidate qualifications are limited to whether their statement of qualification is knowingly false; and (3) adopt the Hearing Officer's finding that the evidence presented by Objectors proves by a preponderance of the evidence that Candidate Trump engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment.

Respectfully submitted,

By: /s/ Caryn C. Lederer
One of the Attorneys for Petitioners-Objectors

HUGHES SOCOL PIERS RESNICK & DYM, LTD.
Matthew Piers (ARDC: 2206161)
Caryn Lederer (ARDC: 6304495)
70 W. Madison St., Ste. 4000
Chicago, IL 60602
clederer@hsplegal.com

MULLEN LAW FIRM
Ed Mullen (ARDC: 6286924)
1505 W. Morse Ave.
Chicago, IL 60626
ed_mullen@mac.com

FREE SPEECH FOR PEOPLE
Ronald Fein (ARDC: 6347001)
John Bonifaz (ARDC: 6347003)
Ben Clements (ARDC: 6347002)
Courtney Hostetler (ARDC: 6346967)
Amira Mattar (ARDC: 6347004)
1320 Centre St. #405
Newton, MA 02459
rfein@freespeechforpeople.org

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PROOF OF SERVICE

Counsel for Objectors hereby certifies that Objectors' Exception to Hearing Officer Report and Recommended Decision was filed with the State Officers Electoral Board via email at generalcounsel@elections.il.gov and Hearing Officer Judge Clark Erickson via email at ceead48@icloud.com, and served on Candidate Trump via his counsel at AMerrill@watershed-law.com, before 5:00 p.m. on January 29, 2024.

/s/ Caryn C. Lederer__
Caryn C. Lederer