STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-24-01

DONALD J. TRUMP,

Petitioner,

v.

SHENNA BELLOWS, *in her official capacity as* **Secretary of State, State of Maine**,

Respondent,

KIMBERLEY ROSEN, THOMAS SAVIELLO, and ETHAN STRIMLING,

Parties-in-Interest.

OPENING BRIEF OF DONALD J. TRUMP

AUGUSTA COURTS
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INTRODUCTION

It is a "'fundamental principle of our representative democracy,' embodied in the Constitution, that 'the people should choose whom they please to govern them.'"[1] For the first time in our nation's history, a Secretary of State has taken it upon herself to take away the choice of who should be a major party's nominee for President of the United States from the people, based on Section Three of the Fourteenth Amendment. This usurpation of the power of the people of Maine to choose their own political leaders is contrary to both state and federal law, including the Constitution of the United States.

The adjudication and challenge process under Sections 336 and 337 was never designed for a challenge like this, involving complex constitutional and factual issues. And in fact, Section 336 does not allow a challenge under Section Three of the Fourteenth Amendment. In applying Sections 336 and 337 to disqualify President Trump, the Secretary has exceeded her statutory authority under Maine law.

In addition, the *Ruling of the Secretary of State*, (the "*Ruling*") transgresses the federal Constitution. The Constitution commits decisions about Presidential qualifications to the voters and Congress—not individual Secretaries of State or other statewide election officials. Section Three of the Fourteenth Amendment is not self-enforcing and there is no currently operative enforcement statute that provides the Secretary—or anyone else save Congress—authority to enforce it. Moreover, Section Three neither restricts the presidency, nor applies

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[1] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783 (1995) (quoting *Powell v. McCormack*, 395 U.S. 486, 547 (1969)).

to President Trump, who did not serve as an "officer of the United States" or take an oath to "support" the Constitution. And, even if it could apply to President Trump, Section Three only restricts individuals from *holding* office—it does not prevent them from running for or being elected to office.

Finally, the Secretary applied the wrong legal standard in assessing whether the events of January 6, 2021, were an "insurrection" and whether President Trump "engaged" in insurrection. When the proper standards are applied, it becomes clear that the facts relied upon by the Secretary are woefully insufficient to support her broad legal and factual conclusions.

To make matters worse, the Secretary herself should never have considered the challenges. The *Ruling* issued from a biased decisionmaker who had repeatedly made statements prejudging the central issue of this case and expressing an intent to "protect" elections against people such as President Trump.

Accordingly, the *Ruling* should be vacated, this Court should declare that the Secretary has no authority to continue, maintain, or begin proceedings concerning President Trump's alleged disqualification as a candidate under Section Three of the Fourteenth Amendment, and this Court should require the Secretary to place President Trump on the Republican Presidential Primary ballot. Alternatively, the Court should remand the matter with instructions that Secretary transfer the matter to an unbiased official who has not pre-judged controlling law or President Trump's actions.

FACTUAL AND PROCEDURAL BACKGROUND

President Trump timely filed a "Presidential Primary Candidate's Consent" form ("Consent") (attached as Exhibit A), which was dated October 20, 2023, and received by the Secretary of State on November 17, 2023. The Consent lists three "Qualifications of President of the United States under U.S. Constitution, Article II, Section 1: Be a natural born U.S. Citizen[;] Have been a resident of the United States for at least 14 years[; and] Be at least 35 years of age." The Consent states "I further declare that my residence is in the municipality and state listed above; that I am enrolled in the party name on this consent; that I meet the qualifications to hold this office as listed above; and that this declaration is true."

The Secretary of State's office received three timely challenges to the nominating petition of President Trump. One, by Paul Gordon, alleged that President Trump is barred from office based on his claims to have won the 2020 election and the term limits provisions of the Twenty-Second Amendment ("Gordon Challenge"). A second, by Kimberly Rosen, Thomas Saviello, and Ethan Strimling (collectively, "Rosen Challengers"), alleged that President Trump was disqualified to hold office based on Section Three of the Fourteenth Amendment ("Rosen Challenge"). And the third, by Mary Ann Royal, alleged that President Trump violated his oath of office by engaging in insurrection ("Royal Challenge"). Notwithstanding the facial differences, the Secretary construed the Royal Challenge as raising the same Section Three challenge as the Rosen Challenge.[2]

On Monday, December 11, 2023, the Secretary issued a *Notice of Hearing* setting a hearing date on all three challenges for Friday, December 15, 2023. The *Notice of Hearing*

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[2] *Ruling* at 2.

further directed the parties to "exchange and file by email...lists of expected exhibits and witnesses no later than 5:00 pm on Wednesday, December 13, 2023." It further instructed any parties wishing to intervene to file a written request no later than 3:00 on Thursday, December 14, 2023. On December 14, 2023, the Secretary granted pro hac vice status to two attorneys, Mr. Scott Gessler and Mr. Gary Lawkowski, to appear at the hearing, along with Mr. Ben Hartwell, as counsel for President Trump.

On December 15, 2023, the Secretary granted intervention to Representative Mike Soboleski, granted limited intervention to Citizens for Responsibility and Ethics in Washington, and granted intervention to Mark Graber for the limited purpose of filing an amicus brief. The Secretary also denied intervention to John Fitzgerald and Michael Lake, but accepted their submissions as amicus briefs.

Also on December 15, the Secretary held a consolidated hearing on all three challenges. At that time, the Challengers had not provided President Trump their expected exhibits; President Trump objected to all but five exhibits, but the Secretary provisionally accepted all exhibits pending further briefing to resolve objections. The Secretary allowed President Trump to provide written evidentiary objections by 5:00 on Monday, December 18, 2023, and required responses by Tuesday, December 19, 2023, at 5:00. President Trump filed timely evidentiary objections and the Rosen Challengers filed a timely response brief. The Secretary also requested simultaneous closing argument briefs from the parties by 5:00 on Tuesday, December 19, 2023. President Trump and the Rosen Challengers submitted timely closing briefs.

On December 20, 2023, the Secretary requested additional briefing addressing the impact of the decision of the Colorado Supreme Court in *Anderson v. Griswold*, Case No. 23SA300, 2023 CO 63, 2023 WL 877011 (Dec. 19, 2023) on the proceedings at issue. President Trump and the Rosen Challengers filed briefs addressing this issue on December 21, 2023.

On December 27, 2023, President Trump filed a *Request to Disqualify the Secretary*, seeking the Secretary's recusal under 5 M.R.S. § 9063.

On December 28, 2023, the Secretary issued her *Ruling*, which:

- Rejected the *Request to Disqualify the Secretary* as untimely, and alternatively denied the Request on the basis that the Secretary was not biased;
- Held "most of the evidence submitted by the Rosen Challengers, and objected to by Mr. Trump, is admissible under 5 M.R.S. § 9057;"
- Denied the Gordon Challenge;
- Invalidated President Trump's consent form based on Section Three of the Fourteenth Amendment; and
- Suspended the effect of the Secretary's Ruling until such time as the Superior Court rules on any appeal or the time to appeal has expired.

On January 2, 2023, President Trump timely filed this appeal.

ARGUMENT

President Trump's arguments generally fall within two categories. First, the Secretary had no jurisdiction to disqualify President Trump under Section 336, and the Secretary should have recused herself due to her public, demonstrated bias.

Second, President Trump asserts that as a matter of federal, constitutional law, Section Three cannot apply. This second category raises the same federal issues considered by multiple state and federal courts across the country (including *Anderson v. Griswold*), and is currently under consideration by the United States Supreme Court.

This Court need not address the multiple federal issues, because the plain text of Section 336 does not allow the Secretary to bar President Trump under Section Three. Indeed, other courts and state officials have properly held that their state laws do not allow Section Three challenges, just as Maine law does not allow such challenges. Even assuming, solely for argument's sake, that Section 336 does apply, this court should reverse and remand the *Ruling* with instructions that the Secretary transfer the matter to an unbiased official for consideration of the Section Three issues.

I. State Law does not authorize the Secretary to consider Section Three Challenges to President Trump's candidacy.

The challenge procedures in 21-A.M.R.S. §§ 336 & 337 were never designed for a case like this. As this state's highest court held in *Arsenault v. Secretary of State*, the Secretary may not disqualify a candidate unless authorized by an express grant of power by the Legislature.[3] That Court reversed the Secretary's actions, ruling "[g]iven the fundamental importance of the right to vote and the right to participate in the political process, and given the painstaking detail of the election statutes, if the Legislature had intended to delegate to the Secretary the authority to add restrictions to this process, it would have done so explicitly." The narrow scope of Section 336's requirements, the limited review available

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[3] *Arsenault v. Secretary of State*, 905 A.2d 285, 290 (Me. 2006).

under Section 337, and the unambiguous words of the form drafted by the Secretary and executed by President Trump, show that the Maine Legislature did not authorize the Secretary to consider Section Three challenges under either Sections 336 or 337. Since there was no grant of authority from the legislature, there is no basis for the Secretary's *Ruling*, and it must be vacated.

As an initial matter, Section 337 itself permits only a challenge to a candidate's petition or the signatures it contains. The Challengers did not bring a challenge on either ground, and the Secretary likewise did not base her decision on either ground. Accordingly, no cognizable challenge under Section 337 has been raised.

Next, Section 336 adopts Section 337's procedures to govern challenges to a candidate's consent but authorizes only a single basis for a challenge: when "any part of the declaration is found to be false."[4] This requirement imposes two substantive limits on challenges to a candidate's consent: first, one may only challenge the "declaration" portion of a candidate's consent form; and second, a challenge is limited to the veracity of the declaration. The Secretary's *Ruling* disregards these limitations and is thus beyond the scope of her authority.

A. Review Under Section 336 is Limited to a Candidate's "Declaration," Not a Candidate's Statement of Qualifications.

The word "declaration" is significant. Section 336 draws a textual distinction between a candidate's "declaration," which includes only a candidate's place of residence and party designation, and his or her "statement," which is "a statement that the candidate meets the

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[4] 21-A.M.R.S. § 336(3).

qualifications of the office the candidate seeks."[5] Grammatically, Section 336 treats the "declaration" and the "statement" as two different things. The declaration does not include "a statement that the candidate meets the qualifications of the office the candidate seeks." If the drafters had wanted to include the "statement" as part of the declaration, it would have written that the "consent must contain a declaration of the candidate's place of residence, party designation, and a statement . . ." thereby treating the "statement" the same as "residence" and "party designation." But the statute is not written that way.

Likewise, the challenge provision of Section 336 treats "declaration" as separate from "statement." Specifically, under Section 336(3), one may challenge only the "declaration," not the "statement." Consistent with the *expressio unius est exclusio alterius* canon of statutory construction,[6] the inclusion of the "declaration" and the omission of the "statement" is significant and means that the challenge provisions of Section 336 are limited to challenges to the declaration—*i.e.*, residency and party designation.

Moreover, this limitation makes sense. The procedures set forth in Section 337 require challenges to take place on a highly expedited timeline. These procedures are designed to adjudicate simple factual disputes that can be resolved in a matter of days. Challenges to a candidate's residency or party designation generally present straightforward questions of fact, where the respondent knows—and already has possession of—all relevant

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[5] 21-A.M.R.S. § 336(3).

[6] *See, e.g., Violette v. Leo Violette & Sons, Inc.*, 597 A.2d 1356, 1358 (Me. 1991)("In construing the language of a statute, it is appropriate to apply the maxim '*expressio unius est exclusio alterius est.*'").

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