DISTRICT COURT **CITY AND COUNTY OF DENVER, COLORADO** 1437 Bannock Street, Room 256 Denver, CO 80202 Phone: (303) 606-2300	
NORMA ANDERSON, MICHELLE PRIOLA, CLAUDINE CMARADA, KRISTA KAFER, KATHI WRIGHT, and **CHRISTOPHER CASTILIAN**, **Petitioners**, v. **JENA GRISWOLD,** in her official capacity as Colorado Secretary of State, and **DONALD J. TRUMP** **Respondents**.	▲ COURT USE ONLY ▲
Attorneys for Respondent Donald J. Trump: Scott E. Gessler (28944), sgessler@gesslerblue.com Geoffrey N. Blue (32684), gblue@gesslerblue.com Justin T. North (56437), jnorth@gesslerblue.com Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Tel. (720) 839-6637 or (303) 906-1050	Case Number: 2023CV32577 Division:
RESPONDENT DONALD J. TRUMP'S MOTION TO DISMISS	

Certification under C.R.C.P. 121 § 1-15(8)

The undersigned counsel has conferred with the Petitioners' counsel regarding this motion, who oppose the relief requested.

Introduction

As this Court ordered on September 18, 2023, this current *Motion to Dismiss* covers all applicable issues not addressed in President Trump's *Special Motion to Dismiss* or his previous

motion to dismiss, which focused on (1) C.R.S. § 1-1-113 (2) C.R.S. § 1-4-1204, and (2) lack of standing to bring a declaratory action.

This *Motion* raises substantial federal jurisdictional and substantive arguments that require dismissal of Petitioner's claims. Dismissal would place this Court squarely within the legal doctrines developed by other courts that have also dismissed qualification challenges under U.S. Const. amend XVI, Sec. 3. Indeed, to undersigned counsel's knowledge, *every* court considering Section Three issue has dismissed *every* Section Three challenge brought against President Trump – and every other federal candidate or officeholder – arising from the events of January 6, 2021. Likewise, both federal and state courts have uniformly rejected *every* presidential qualification challenge in the 2008, 2012, 2016, and 2020 election cycles.

Argument

I. This Court Lacks Power to Decide the Nonjusticiable Political Questions Presented Here.

The U.S. Constitution commits to Congress and the Electoral College exclusive power to determine presidential qualifications and whether a candidate can serve as President. Courts cannot decide the issue at the heart of this case. Federal and state courts presented with similar cases challenging the qualifications of presidential candidates have uniformly held that they present nonjusticiable political questions reserved for those entities. This Court should do likewise.

Political questions are nonjusticiable and are therefore not cases or controversies.[1] The Supreme Court set out broad categories that should be considered nonjusticiable political questions:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; [2] a lack of judicially discoverable and manageable standards for resolving it; [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; [5] an unusual need for unquestioning adherence to a political decision already made; [and 6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.[2]

For its part, Colorado has also adopted a version of the political question doctrine applicable when the courts of this state must determine whether to decide questions of *state* law that may have been entrusted to coordinate branches of *state* government.[3] In approaching those questions, the courts of this State have generally considered the *Baker* factors, albeit taking into account the greater jurisdiction granted trial courts in this State as compared to their federal counterparts.[4] Here, the U.S. Constitution reserves exclusively to the United States Congress the power under Section Three to determine whether a person may take office. The Petitioners ask this Court to strip Congress of its power to make that

---

[1] *Baker v. Carr*, 369 U.S. 186, 217 (1962).

[2] *Id.*

[3] *See, e.g. Markwell v. Cooke,* 482 P.3d 422 (Colo. 2021).

[4] *Id.* at 427.

determination, including waiver of disqualification by a two-thirds vote. Federal and state courts have uniformly ruled that challenges to the qualifications of presidential candidates are non-justiciable, taking into account considerations of comity and the deference due federal law under the Constitution's Supremacy Clause. This Court should likewise avoid infringing upon Congress' exclusive prerogatives.

Numerous courts have held that similar challenges to the qualifications of presidential candidates present nonjusticiable political questions. During the 2008 and 2012 presidential election cycles, a spate of lawsuits were filed either asking state elections officials to enforce citizenship qualifications on Barack Obama or John McCain, or challenging their qualifications outright. In resolving one such challenge, the Third Circuit stated that this was a non-justiciable political question outside the province of the judiciary.[5] Multiple district courts also formally ruled that lawsuits challenging presidential qualifications presented nonjusticiable political questions. For example, in a case brought before the 2008 election seeking to remove Senator McCain from the California ballot on grounds that he did not qualify as a "natural-born citizen" within the meaning of Article II of the Constitution, Judge Alsup explained why, even if the plaintiff could demonstrate standing, the court must dismiss the challenge:

> It is clear that mechanisms exist under the Twelfth Amendment and 3 U.S.C. § 15 for any challenge to any candidate to be ventilated when electoral votes are counted, and that the Twentieth Amendment provides guidance regarding how to proceed if a president elect shall have failed to qualify. Issues regarding

[5] *See Berg v. Obama*, 586 F.3d 234, 238 (3d Cir. 2009).

> qualifications for president are quintessentially suited to the foregoing process. Arguments concerning qualifications or lack thereof can be laid before the voting public before the election and, once the election is over, can be raised as objections as the electoral votes are counted in Congress. The members of the Senate and the House of Representatives are well qualified to adjudicate any objections to ballots for allegedly unqualified candidates. Therefore, this order holds that the challenge presented by plaintiff is committed under the Constitution to the electors and the legislative branch, at least in the first instance. Judicial review—if any—should occur only after the electoral and Congressional processes have run their course.[6]

And in a scholarly opinion five years later resolving a challenge to President Obama's natural born citizenship, another federal court held that "the Constitution assigns to Congress, and not to federal courts, the responsibility of determining whether a person is qualified to serve as President of the United States. As such, the question presented by Plaintiffs in this case—whether President Obama may legitimately run for office and serve as President—is a political question that the Court may not answer."[7] Likewise, in 2009 another court rejected a challenge to President Obama's qualifications because, among other things, the claim was "barred under the 'political question doctrine' as a question demonstrably committed to a coordinate political department," because "[t]he Constitution commits the selection of the President to the Electoral College in Article II, Section 1, as amended by the

---

[6] *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1147 (N.D. Cal. 2008).

[7] *Grinols v. Electoral College*, No. 2:12–cv–02997–MCE–DAD, 2013 WL 2294885, at *5-7 (E.D. Cal. May 23, 2013).

Twelfth Amendment and the Twentieth Amendment, Section Three," and that "[n]one of these provisions evince an intention for judicial reviewability of these political choices."[8]

In rejecting another challenge to President Obama's qualifications, another federal court observed the Twelfth and Twentieth Amendments charged the legislative branch with responsibility for the presidential electoral and qualification process.[9] That court held that "these matters are entrusted to the care of the United States Congress, not this court" and that the plaintiffs' disqualification claims were therefore nonjusticiable."[10]

Multiple state courts have also held that secretaries of state had no such power to disqualify a presidential candidate from a ballot because of the doctrine of separation of powers. A New York court denied the Secretary of State authority to check qualifications because that authority presented a political question and a separation of powers issue:

> If a state court were to involve itself in the eligibility of a candidate to hold the office of President, a determination reserved for the Electoral College and Congress, it may involve itself in national political matters for which it is institutionally ill-suited and interfere with the constitutional authority of the Electoral College and Congress.[11]

And the California Court of Appeals wrote:

---

[8] *Kerchner v. Obama*, 669 F. Supp. 2d 477, 483 n.5 (D.N.J. 2009).

[9] *Taitz v. Democrat Party of Mississippi*, No. 3:12-CV-280-HTW-LRA, 2015 WL 11017373 (S.D. Miss. Mar. 31, 2015).

[10] *Id.*

[11] *Strunk v. New York State Bd. Of Elections*, No. 6500/11, 2012 WL 1205117, * 12 (Sup. Ct. Kings County NY, Apr. 11, 2012).

> In any event, the truly absurd result would be to require each state's election official to investigate and determine whether the proffered candidate met eligibility criteria of the United States Constitution, giving each the power to override a party's selection of a presidential candidate. The presidential nominating process is not subject to each of the 50 states' election officials independently deciding whether a presidential nominee is qualified, as this could lead to chaotic results. Were the courts of 50 states at liberty to issue injunctions restricting certification of duly-elected presidential electors, the result could be conflicting rulings and delayed transition of power in derogation of statutory and constitutional deadlines. Any investigation of eligibility is best left to each party, which presumably will conduct the appropriate background check or risk that its nominee's election will be derailed by an objection in Congress, which is authorized to entertain and resolve the validity of objections following the submission of the electoral votes.[12]

This Court should follow this well-established body of constitutional law, and Colorado case law is clear that "the Supremacy Clause mandates that state law give way when it conflicts with federal law."[13] Accordingly, that clause "counsels against this Court's invading Congress' exclusive province as do basic principles of comity."[14]

Finally, Section Three itself contains an exclusive grant of jurisdiction to Congress. Even if a presidential candidate were to be disqualified from holding office under Section Three, "Congress may, by a vote of two-thirds of each House, remove such disability."[15] By asking this Court to bar President Trump from even appearing on the ballot, the Petitioners

---

[12] *Keyes v. Bowen*, 189 Cal.App.4th 647, 660 (2010); accord *Jordan v. Secretary of State Sam Reed,* No. 12-2-01763-5, 2012 WL 4739216, at *1 (Wash.Super., Aug. 29, 2012).

[13] *Middleton v. Hartman*, 45 P.3d. 721, 731 (Colo. 2002), *as modified on denial of reh'g* (May 13, 2002).

[14] *See, e.g., Duffy v. Grogan Energy Corp.*, 708 P.2d 809, 811 (Colo. App. 1985).

[15] U.S. Const. amend XIV, § 3.

also ask this Court to effectively strip Congress of its constitutional power to remove any disability under the Fourteenth Amendment, at any time. Under the plain language of the Constitution, even if a presidential candidate were found to "engage" in insurrection or rebellion, and even if that candidate were elected to office, Congress could still remove that disability. But prohibiting a candidate from even standing for election would short-circuit this process and remove from Congress its ability to remove the disability from a presidential candidate or officeholder.

II. Congressional action is required to enforce Section Three, because it is not self-executing when used to prohibit a candidate from standing for election.

Even if this Court were not deterred by the political question doctrine, the case still would not properly be before it because Section Three of the Fourteenth Amendment is not self-executing and cannot be applied to support a cause of action seeking judicial relief absent Congressional enactment of a statute authorizing Plaintiffs to bring such a claim in court. A recent article by scholars Joshua Blackman and Seth Barrett Tillman summarizes the question of whether Section Three is self-executing as follows:

> In our American constitutional tradition there are two distinct senses of self-execution. First, as a shield—or a defense. And second, as a sword—or a theory of liability or cause of action supporting affirmative relief. The former is customarily asserted as a defense in an action brought by others; the latter is asserted offensively by an applicant seeking affirmative relief.
>
> For example, when the government sues or prosecutes a person, the defendant can argue that the Constitution prohibits the government's action. In other words, the Constitution is raised defensively. In this first sense, the Constitution does not require any further legislation or action by Congress. In these circumstances, the Constitution is, as Baude and Paulsen write, self-executing.

> In the second sense, the Constitution is used offensively–as a cause of action supporting affirmative relief. For example, a person goes to court, and sues the government or its officers for damages in relation to a breach of contract or in response to a constitutional tort committed by government actors. As a general matter, to sue the federal government or its officers, a private individual litigant must invoke a federal statutory cause of action. It is not enough to merely allege some unconstitutional state action in the abstract. Section 1983, including its statutory antecedents, *i.e.*, Second Enforcement Act a/k/a Ku Klux Klan Act of 1871, is the primary modern statute that private individuals use to vindicate constitutional rights when suing state government officers.
>
> Constitutional provisions are not automatically self-executing when used offensively by an applicant seeking affirmative relief. Nor is there any presumption that constitutional provisions are self-executing.[16]

Importantly, Blackman and Tillman's article has substantially refuted the Baude and Paulsen article cited by the Petition. The strength of their arguments has caused Baude and Paulsen to substantially modify their own analysis.[17] And Stephen Calabresi, a well-respected constitutional scholar and dean of the Northwestern University Law School, fully reversed his earlier agreement with Baude and Paulsen and has now concluded that Section Three does not prevent President Trump from serving as President.[18]

---

[16] **Ex. A**. Blackman and Tillman, *Sweeping and Forcing the President Into Section 3: A Response to William Baude and Michael Stokes Paulsen*, at 12, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4568771 (emphasis in original; internal footnote omitted), last visited Sept. 29, 2023.

[17] **Ex. B**. Baude and Paulsen, *The Sweep and Force of Section Three*, 172 U. Pa. L. Rev. (forthcoming 2024) redlined comparison version.

[18] **Ex. C**. Prof. Steven G. Calabresi, *Donald Trump Should be on the Ballot and Should Lose*, https://reason.com/volokh/2023/09/16/steve-calabresi-donald-trump-should-be-on-

Ample precedent supports Blackman and Tillman's conclusions. As those authors show, one year after ratification, the Chief Justice of the Supreme Court of the United States ruled that Section Three was not self-executing and that it could only be enforced through specific procedures prescribed by Congress or the United States Constitution.[19] He reasoned that a different conclusion would have created an immediate and intractable national crisis. In response to this ruling, Congress almost immediately enacted legislation suggested by the Chief Justice.

In 1870, Congress passed a law, entitled the "Enforcement Act," which allowed federal district attorneys – but not state election officials – authority to enforce Section Three. The Enforcement Act allowed U.S. district attorneys to seek writs of *quo warranto* from federal courts to remove from office people who were disqualified by Section Three, and it further required the courts to hear such proceedings before "all other cases on the docket." The Act provided for separate criminal trials in *federal* court of people who took office in violation of Section Three, and federal prosecutors immediately started exercising *quo warranto* authority, bringing charges against Jefferson Davis and others. These actions,

---

the-ballot-and-should-lose/, last visited Sept. 29, 2023; *see also* **Ex. D.** Steven Calabresi, *President Trump Can Not be Disqualified*, Wall Street Journal, September 12, 2023.

[19] *See In re Griffin*, 11 F.Cas. 7 (C.C.Va 1869).

however, waned after a few years,[20] and the Amnesty Act of 1898 completely removed all Section Three disabilities incurred to that date.

In 1925, the Enforcement Act was repealed entirely. This made sense, because nearly every participant in the Civil War had by then passed away. A century later, in 2021, legislation was introduced in Congress to create a cause of action to remove individuals from office who were engaged in insurrection or rebellion, but that bill died in Congress.[21] Thus, there is presently no statute authorizing any person to bring actions seeking disqualifications under Section Three of the Fourteenth Amendment. Chief Justice Chase's order and the subsequent legislative history shows that Section Three is not self-executing unless Congress takes action to make it so and that it does not give secretaries of state the authority to remove a presidential candidate from the ballot. A successful challenge would create a patchwork of 51 state (and district) election laws, orders, and rulings that would likely conflict with one another, thus contradicting established precedent, constitutional tradition, and common sense. It would cause the exact crisis Justice Chase feared.

III. Congress Has Preempted the States from Judging Presidential Qualifications.

Under the doctrine of field preemption, Congress has left no room for states to pass their own laws or enforce their own laws regarding the determination of presidential

[20] *See* Amnesty Act of 1872 (removing most disqualifications in the manner provided by Section Three; Pres. Grant Proclamation 208 (suspending *quo warranto* prosecutions).

[21] *See* H.R. 1405, 117th Cong. 2021.

qualifications. On this, the Colorado Supreme Court has spoken, citing the Supreme Court of the United States:

> Under the field preemption doctrine, in turn, "the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance." [] Congress's intent to preempt a particular field may be inferred "from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'"[22]

As explained above, the manner of counting electoral college votes is dictated by federal statute and the United States Constitution.[23] Further, "mechanisms exist under the Twelfth Amendment and 3 U.S.C. § 15 for any challenge to any candidate to be ventilated when electoral votes are counted," and that "the Twentieth Amendment provides guidance regarding how to proceed if a president-elect shall have failed to qualify."[24]

Because federal constitutional and statutory law has already occupied the field on presidential qualifications, federal law must reign supreme. Additionally, states may not add additional requirements for federal office beyond those listed in the Constitution, including

---

[22] *Fuentes-Espinoza v. People*, 408 P.3d 445, 448-449 (Colo. 2017) (citing *Arizona v. United States*, 567 U.S. 387, 399 (2012)); *see also Department of Health v. The Mill,* 887 P.2d 993, 1004 (Colo.1994), *cert. denied,* 515 U.S. 1159, 115 S.Ct. 2612, 132 L.Ed.2d 855 (1995).

[23] *See e.g.*, 3 U.S.C. § 15.

[24] *Bowen*, 567 F. Supp. at 1146-47.

eligibility requirements.[25] Field preemption applies here, which means states cannot meddle with issues of such magnitude.

IV. Section Three does not apply to President Trump.

President Trump is not subject to Section Three, under which a person is disqualified only if he "previously [took] 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 . . . ."[26] Because President Trump was never a congressman, state legislator, or state officer, Section Three applies only if he was an "officer of the United States."[27] But as that term was used in Section Three, it did not cover the President. Furthermore, Section Three can disqualify someone only if his oath was "to support the Constitution of the United States."[28] But the Constitution prescribes a different oath for president.

---

[25] *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 805 (1995).

[26] U.S. Const. amend. XIV, § 3.

[27] *Id.*

[28] *Id.*

The phrase "Officers of the United States," as used in the Constitution of 1788, does not refer to elected positions.[29] This established meaning had not changed by 1868, when the Fourteenth Amendment was ratified.[30] Shortly following ratification of Section Three:

> In 1876, the House of Representatives impeached Secretary of War William Belknap. During the trial, Senator Newton Booth from California observed, "the President is not an officer of the United States." Instead, Booth stated, the President is "part of the Government." Two years later, David McKnight wrote an influential treatise on the American electoral system. He reached a similar conclusion. McKnight wrote that "[i]t is obvious that . . . the President is not regarded as 'an officer of, or under, the United States,' but as one branch of 'the Government.'[31]

Very recent U.S. Supreme Court case law affirms this historical precedent. Interpreting the Appointments Clause, Chief Justice Roberts observed that "[t]he people do not vote for the 'Officers of the United States.'"[32] And again Chief Justice Roberts wrote "Article II distinguishes between two kinds of officers—principal officers (who must be appointed by the President with the advice and consent of the Senate) and inferior officers (whose appointment Congress may vest in the President,

---

[29] *See* Josh Blackman & Seth Barrett Tillman, *Is the President an "Officer of the United States" for Purposes of Section 3 of the Fourteenth Amendment?,* 15(1) N.Y.U. J.L. & LIBERTY 1 (2021).

[30] *Id.*

[31] *Sweeping and Forcing the President Into Section 3*, *supra* at 106.

[32] *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 497-98 (2010).

courts, or heads of Departments)."[33] Neither category includes the President, but instead refers to those whom he appoints.

In addition to historical precedent, three provisions in the U.S. Constitution shows that the President is not "an officer of the United States":

> "*First*, presidents fall under the scope of the Impeachment Clause precisely because there is express language in the clause providing for presidential impeachments; the Impeachment Clause does not rely on general "office"- or "officer"-language to make presidents impeachable. We think this is the common convention with regard to drafting constitutional provisions. When a proscription is meant to control elected positions, those positions are expressly named, as opposed to relying on general "office"- and "officer"-language. Congress does not hide the Commander in Chief in mouseholes or even foxholes. For example, in 1969, future-Chief Justice William H. Rehnquist, then an Executive Branch attorney, addressed this sort of clear-statement principle. Statutes that refer to "officers of the United States," he wrote, generally "are construed not to include the President unless there is a specific indication that Congress intended to cover the Chief Executive." Five years later, future-Justice Antonin Scalia, then also an Executive Branch attorney, reached a similar conclusion with regard to the Constitution's "office"-language. These Executive Branch precedents would counsel against deeming the President an "officer of the United States."[34]
>
> *Second*, as to the Appointments Clause, which uses "Officers of the United States"-language, Presidents do not appoint themselves or their successors. The Supreme Court hears a never-ending stream of cases that ask if a particular position is a principal or inferior officer of the United States—even though the Appointments Clause does not even distinguish between those two types of positions. Where has the Court ever suggested that the President falls in the ambit of the Appointments Clause's "Officers of the United States"-language? . . .

---

[33] *Seila Law LLC v. CFPB*, 140 S. Ct. 2183, n. 3 (2020).

[34] *Sweeping and Forcing the President Into Section 3*, *supra* at 106.

> *And, finally*, as to the Commissions Clause, which also uses "Officers of the United States"-language, Presidents do not commission themselves, their vice presidents, their successor presidents, or successor vice presidents.[35]

And finally, the structure of Section Three itself shows that it does not apply to the office of the President.

> The second clause does not expressly list several categories of positions: *e.g.*, presidential electors, appointed officers of state legislatures, members of state constitutional conventions, and state militia officers. The first clause does not expressly list several categories of positions: *e.g.*, members of the state legislatures, and members of state constitutional conventions. Neither list expressly mentions the President and Vice President.[36]

Even if this Court were to determine that President Trump was an officer of the United States, Section Three of the 14th Amendment does not, by its terms apply to all officers of the United States, but rather only to those who have taken "previously taken an oath…to *support* the Constitution of the United States." (emphasis supplied). President Trump did not, and could not, take the specified oath; instead, the oath President Trump took is required of all presidents by Article II of the Constitution:

> Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:– I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and *will to the best of my Ability, preserve, protect and defend the Constitution of the United States*.[37]

This oath differs from the oaths other members of the federal and state governments take:

> The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the

---

[35] *Id.* at 106-07.

[36] *Id.* at 115.

[37] U.S. Const, art. II, cl. 8 (emphasis supplied).

> United States and of the several States, shall be bound by Oath or Affirmation, *to support this Constitution* . . . .[38]

And Section Three contains the identical, emphasized, phrase:

> 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* . . .[39]

On one hand, the Constitution requires members of Congress and those appointed to offices under the United States to take an oath to "support" the Constitution. On the other hand, the Constitution requires the President to take an oath to "preserve, protect and defend" the Constitution. This difference is significant for two reasons. First, it shows that the drafters of the Fourteenth Amendment did not understand or intend the President to be an Officer of the United States, because his oath does not require "support" of the Constitution. Second, taking an oath to *support* the Constitution further limits the class the people to whom Section Three applies, and President Trump (who never took such an oath) is *not* one of those people.

Finally, Section Three's reliance on an oath to "support" the Constitution is no accident, but rather rooted in Framer's robust debate and careful wordsmithing of the U.S. Constitution itself. When drafting the Impeachment Clause, the Framers initially referred to

---

[38] *Id.* at art. VI, cl. 3 (emphasis added).

[39] U.S. Const., amend. XIV, § 3.

the President, Vice President, and "other civil officers of the U.S."[40] But upon further deliberation, the Framers changed the Impeachment Clause to remove the word "other."[41] This change shows that the Framers understood that the President was not an "other" officer of the United States, but rather that he stood apart in a category separate from "officers of the United States."

The words that both the Framers and the drafters of the Fourteenth Amendment chose must be given their proper meaning, and where they chose different phrases, those phrases must be accorded different meanings.[42] The Framers described the President different than "officers" of the United States and chose a different oath for the President compared to senators, representatives, state legislators, and executive and judicial officers. The framers of Section Three followed these established conventions. They used a phrase—officer of the United States— that was understood to exclude the President, and they further limited the scope of any disability to those officers who had taken the Article VI oath to "support" the Constitution. President Trump was not an officer of the United States and

[40] 2 The Records of the Federal Convention of 1787, at 545 and 552 (Farrand ed., 1911).

[41] *Id.* at 600.

[42] *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 4, 334, 4 L. Ed. 97 (1816) ("From this difference of phraseology, perhaps, a difference of constitutional intention may, with propriety, be inferred. It is hardly to be presumed that the variation in the language could have been accidental.").

never took the Article VI oath. Section Three therefore does not apply to him by its own terms.

V. The Petition fails to state a claim that violence on January 6, 2020, constituted an "insurrection," or that President Trump "engaged" in an insurrection.

The *Petition*'s factual allegations solely involve Section Three claims alleging that President Trump engaged in an insurrection, not that he engaged in a rebellion or provided aid and comfort to our nation's enemies. Despite 105 pages and 452 paragraphs, however, the *Petition* lacks any factual basis for finding that President Trump "engaged" in "insurrection."

The Petition's deficient allegations fall into five broad categories. First, Petitioners rely on President Trump's statements before the 2020 election.[43] None of these statements referred to a rally on January 6th and were far removed from any potential "insurrection."

Second, are statements and actions taken by others.[44] These are not President Trump's actions or statements.

Third, after the 2020 election cycle, President Trump made various statements and took various legal actions questioning the fairness or accuracy of the announced results.[45]

---

[43] *See Verified Petition,* at ¶¶ 49, 50, 51, 52, 53, 54, 55, 56, 57, 72, 73, and 74.

[44] *Id.* at ¶¶ 123, 364, 393, 408, and 418.

[45] *Id.* at ¶¶ 1, 2, 6, 7, 8, 19, 75, 95, 114, 116, 118, 119, 121, 136, 138, 159, 162, 163, 166, 173, 178, 214, 218, 222, 233, 234, 235, 236, 259, 260, 261, 262, 263, 264, 277, 279, 281, 282, 283, 284, 285, 302, 325, 326, 331, 335, 409, 416, and 419.

But he is hardly the first politician to do that—and Petitioners identify no facts that could convert this political controversy into an insurrection against the government.

Fourth, on January 6, 2021, President Trump gave a speech that called for his supporters to protest "peacefully and patriotically." And his speech urged Congress and Vice President Pence to fulfill what he considered to be their appropriate constitutional duties.[46] He made these comments after violence had begun, and in front of his audience at the Ellipse, 1.8 miles from the Capitol. Later that day, he repeatedly and publicly urged rioters at the Capitol to be "peaceful" and to "go home."[47] Petitioners identify no fact that could remotely suggest that this course of conduct amounted to "engaging in insurrection."

Fifth, the Petitioners allege that President Trump failed to take certain actions.[48] The term "engage" means to do something,[49] not (as Petitioners allege) to fail to do something. Thus, watching some of a riot on television, and then asking that it end, simply is not and could not amount to engaging in insurrection.

---

[46] *Id.* at ¶¶ 323, 327, 331, 332, 425.

[47] *Id.* at ¶ 425; *see also Id.* at ¶¶ 14, 330, 331, and 332.

[48] *Id.* at ¶¶ 12, 16, 76, 181, 300, 316, 319, 424, and 428.

[49] *See, e.g.,* "Engage", Merriam-Webster.com Dictionary, Merriam-Webster (to begin and carry on an enterprise or activity), available at https://www.merriam-webster.com/dictionary/engage, last visited Sept. 29, 2023.

Finally, the Petition contains opinions about and characterizations of President Trump's actions.[50] Although for the limited purposes of a C.R.C.P. 12(b)(5) motion a Court must take Petitioner's factual allegations as true, "a court need not accept as true legal conclusions couched as factual allegations…[and], a complaint may be dismissed under Rule 12(b)(5) if the claims are unsupported under the applicable substantive law."[51]

A. Petitioners' alleged facts do not support a finding that the riot on January 6th constituted an "insurrection" under Section Three.

Conspicuously absent from the *Petition* is any definition or legal standard for what constitutes an "insurrection" under Section Three. To be sure, the *Petition* states that many people opined, in a conclusory fashion, that January 6th was an "insurrection."[52] And the Petition claims that it was a "matter of public record" that January 6th was an insurrection.[53] But opinions and a nebulous "public record" do not a legal standard make.

And Petitioners avoid this crucial step because their voluminous allegations fail to meet Section Three's commonly understood definition of "insurrection." Section Three did not pull the terms "insurrection" or "rebellion" out of thin air. When passing the Fourteenth Amendment in 1868, Congress modeled Section Three partly on the original Constitution's

---

[50] *See Verified Petition* at ¶¶ 1, 2, 6, 7, 8, 19, 75, 95, 114, 116, 118, 119, 121, 123, 148, 154, 172, 181, 214, 351, 378, 392, 400, 406, 407, 412, 414, 415, 418, and 421.

[51] *Nikoo Inc. v. Denver Realty Group LLC*, 2018 Colo. Dist. LEXIS 4807, * 5 (*citing W. Innovations, Inc. v. Sonitrol Corp.*, 187 P.3d 1155, 1158 (Colo. App. 2008).

[52] *See Verified Petition* at ¶ 393; *see also Id.* at ¶¶ 21, 364 and 393.

[53] *Id.* at ¶ 7.

Treason Clause, and partly on the Second Confiscation Act that it had previously enacted in 1862. The Confiscation Act punished anyone who "shall hereafter incite, set on foot, assist, or engage in any rebellion or insurrection against the authority of the United States … or give aid or comfort thereto."[54] Section Three, ratified six years later with the rest of the Fourteenth Amendment, similarly covers "insurrection or rebellion."[55] But unlike the Confiscation Act, Congress consciously excluded from Section Three any penalty for 'incit[ing] or "assist[ing]" an insurrection, and penalized only actually "engag[ing] in" insurrection.[56]

Indeed, when Congress debated the Act, it discussed the meaning of "insurrection" and "rebellion" at length. And it confirmed that those terms described two types of treason, not lesser crimes.[57] After ratification, Congress reinforced these same conclusions when debating enforcement of Section Three.[58] The Congress that had just drafted Section Three believed that someone committed "insurrection" or "rebellion" if he led uniformed troops in battle against the United States, but not if he or she merely voted to support secession with violent force, recruited for the Confederacy, provided wartime aid, or held offices in the

---

[54] 12 Stat. 589 & 627 (1862); *see* 18 U.S.C. § 2383.

[55] U.S. Const., amend. XIV, § 3.

[56] *Id.*

[57] 37 Cong. Globe 2173, 2189, 2190-91, 2164-2167 (1862).

[58] 41 Cong. Globe 5445-46.

rebel government. The drafters chose words that encompassed at least the main actors in that act of treason, but no more. They were not trying to legislate with an eye toward lesser political riots.

One year after the Confiscation Act became law, in 1863, Chief Justice Chase— a Lincoln appointee —construed Section Three's terms and held the Act prohibits only conduct that "amount[s] to treason within the meaning of the Constitution," not any lesser offense.[59] Indeed, the Chief Justice concluded that not just any form of treason would do: he held that the Act only covered treason that "consist[ed] in engaging in or assisting a rebellion or insurrection."[60] Writing in the same case, a second judge confirmed and clarified that, for these purposes, "engaging in a rebellion and giving it aid and comfort[] amounts to a levying of war," and that insurrection and treason involve "different penalt[ies]" but are "substantially the same."[61]

Contemporary dictionaries confirm this understanding. John Bouvier's 1868 legal dictionary defined *insurrection* as a "rebellion of citizens or subjects of a country against its government," and *rebellion* as "taking up arms traitorously against the government."[62]

---

[59] *United States v. Greathouse*, 26 F. Cas. 18, 21 (C.C.N.D. Cal. 1863).

[60] *Id.*

[61] *Id.* at 25 (Hoffman, J.).

[62] *A Law Dictionary, Adapted to the Constitution and Laws of the United States of America, and of the Several States of the American Union* (Philadelphia, G.W. Childs, 12th ed., rev. and enl. 1868).

So "insurrection," as understood at the time of the passage of the Fourteenth Amendment, meant the taking up of arms and waging war upon the United States. When considered in the context of the time, this makes sense. The United States had undergone a horrific civil war in which over 600,000 combatants died, and the very survival of the nation was in doubt. Focusing on war-making was the logical result. And as shown by the omission of the word "incitement" in Section Three, Congress did not intend that provision to encompass those who merely encouraged an insurrection, but instead limited its breadth to those who actively participated in one.

The *Petition* is short on specific facts to allow this Court to find that the rioters on January 6, 2021, were waging war against the United States of America,[63] thus constituting an "insurrection or rebellion" under Section Three. Indeed, not a single fact in the *Petition* supports a finding that the rioters were waging war, or anything approaching an insurrection as understood by the drafters of Section Three, when they rioted on January 6. And it is entirely devoid of any support for the notion that President Trump engaged in an insurrection.

B. "Aid or comfort to the Enem[y]" under Section Three requires assistance to a foreign power.

[63] *Greathouse*, 26 F. Cas. at 21 and 25; *A Law Dictionary, Adapted to the Constitution and Laws of the United States of America, and of the Several States of the American Union* (Philadelphia, G.W. Childs, 12th ed., rev. and enl. 1868).

The prohibition on providing aid or comfort to the enemy also confirms that Section Three incorporated standards from Constitution's Treason Clause, rather than created a new standard incorporating generalized claims of violence. Section Three does not incorporate the Confiscation Act's criminalization of giving "aid or comfort" to a "rebellion or insurrection." Instead, it replicates the language of the original Constitution's Treason Clause, which defines treason as "adhering to [the United States'] Enemies, giving them Aid and Comfort."[64]

It was well known that the "enemies" prong of the Treason Clause almost exactly replicated a British statute defining treason.[65] But "enemies," as used in that statute, referred only to "the subjects of foreign powers with whom we are at open war," not to "fellow subjects."[66] Blackstone was emphatic that "an enemy" was "always the subject of some foreign prince, and one who owes no allegiance to the crown of England."[67]

Blackstone's view was also the American view. Four years after the original Constitution was ratified, Justice Wilson explained that "enemies" are "the citizens or subjects of foreign princes or states, with whom the United States are at open war."[68] The

---

[64] U.S. Const., amend. XIV, §3.

[65] *See* 4 Blackstone, *Commentaries on the Laws of England* 82 (1769).

[66] *Id.* at 82-83.

[67] *Id.*

[68] 2 *Collected Works of James Wilson* 1355 (1791).

1910 version of *Black's Law Dictionary* agrees, defining "enemy" as "either the nation which is at war with another, or a citizen or subject of such nation." At the outset of the Civil War, the Supreme Court had recognized that the Confederate states should be "treated as enemies," under a similar definition of that word, because of their "claim[] to be acknowledged by the world as a sovereign state," and because the Confederacy was *de facto* a foreign power (a claim rejected by the United States) that had "made war on" the United States,[69] it made sense that Section Three, enacted in response to the Civil War, referred to support for the Confederacy as "aid and comfort to … enemies," and treated "enemies" as foreign powers in a state of war with the United States.

On top of that, "aid and comfort to the enem[y]" involves only assisting a foreign government (or its citizens or subjects) in making war against the United States. Petitioners do not, and could not, allege that the January 6 attack involved any foreign power, or that the attackers constituted any sort of *de facto* foreign government.

C. Congressional action immediately following adoption of Section Three shows that words alone do not rise to the level of "engaging" in insurrection.

As explained above, the framers of the Fourteenth Amendment made a deliberate choice that Section Three should cover only actual "engage[ment] in" insurrection or rebellion (or assisting a foreign power), not advocating rebellion or insurrection. Mere words, unaccompanied by actions or legal effect, cannot meet that standard – especially in

[69] *See The Prize Cases*, 67 U.S. 635, 673-74 (1862).

this case, because President Trump's words and speeches cannot qualify as incitement under established First Amendment principles.[70]

Congressional action interpreting Section Three shows that "engaging" in an insurrection or rebellion meant far more than words. The same representatives who voted for the Fourteenth Amendment understood that, under its terms, even strident and explicit antebellum advocacy for a future rebellion was not "engaging in insurrection" or providing "aid or comfort to the enem[y]." By the same token, even accepting Petitioner's inaccurate characterization of subtle or implicit advocacy for a future riot or attack upon the Capitol, subtle and implicit advocacy does not qualify as "engaging" under Section Three.

Furthermore, Congress's immediate post-ratification consideration of Section Three itself recognized that mere words fall far short of "engaging" in an insurrection or rebellion. In 1870—just two years after the Fourteenth Amendment was ratified—Congress considered whether Section Three disqualified a Representative-elect from Kentucky when, before the Civil War began, he had voted in the Kentucky legislature in favor of a resolution to "resist [any] invasion of the soil of the South at all hazards."[71] The House found that this was not disqualifying.[72] Similarly, in 1870 the House also considered the qualifications of a Representative-elect from Virginia who, before the Civil War, had voted in the Virginia

---

[70] *See Brandenburg v. Ohio*, 395 U.S. 444 (1969).

[71] 41 Cong. Globe at 5443.

[72] *Id.* at 5447.

House of Delegates for a resolution that Virginia should "unite" with "the slaveholding states" if "efforts to reconcile" with the North should fail, and stated in debate that Virginia should "if necessary, fight," but who after Virginia's actual secession "had been an outspoken Union man."[73] The House found that this did not disqualify him under Section Three.[74] By contrast, the House *did* disqualify a candidate who "had acted as colonel in the rebel army" and "as governor of the rebel State of North Carolina."[75]

D. Not only does "inciting" fall well short of "engaging," the but the *Petition's* allegations also fall short of "inciting."

"[T]he free discussion of governmental affairs of course includes discussions of candidates, structures and forms of government, the manner in which government is operated, and all such matters relating to political processes."[76] "Indeed, the First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office."[77] There is no exception to this rule for allegedly disloyal speech. In *Bond v. Floyd*, the U.S. Supreme Court considered the Georgia legislature's refusal to seat an elected candidate, on the ground that his strident criticisms of the Vietnam War "gave aid

---

[73] *Hinds' Precedents of the House of Representatives of the United States*, 477 (1907).

[74] *Id.* at 477-78.

[75] *Id.* at 481, 486.

[76] *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966).

[77] *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989).

and comfort to the enemies of the United States" and were inconsistent with an oath to support the Constitution.[78] The Court held that the candidate's speech was protected by the First Amendment and could not be grounds for disqualification.[79]

Thus, "dissenting political speech" remains "within the First Amendment's core," even where it is alleged to be "mere advocacy of illegal acts" or "advocacy of force or lawbreaking."[80] As shown in President Trump's *Special Motion to Dismiss,* which is incorporated here by reference, the Constitution values and protects such speech unless it qualifies as "advocacy of the use of force or law violation" that "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[81]

Under the *Brandenburg* test,[82] Trump's comments did not come close to "incitement," let alone "engagement" in an insurrection. As the Sixth Circuit recognized in analyzing President Trump's public speech, "the fact that audience members reacted by using force does not transform Trump's protected speech into unprotected speech. Thus, where "Trump's speech … did not include a single word encouraging violence … the fact that

---

[78] *Bond v. Floyd,* 385 U.S. 116, 118-23 (1966).

[79] *Id.* at 133-37.

[80] *Counterman v. Colorado*, 143 S. Ct. 2106, 2115, 2118 (2023).

[81] *Brandenburg,* 395 U.S., at 447.

[82] *See Special Motion to Dismiss, passim.*

audience members reacted by using force does not transform" it into incitement.[83] And as a D.C. Circuit judge remarked at argument last year, "you just print out the speech … and read the words … it doesn't look like it would satisfy the [*Brandenburg*] standard."[84] And the Supreme Court, for instance, has concluded that a call to "take the f[***]ing streets later" does not meet the standard.[85]

President Trump's words were not inflammatory. None of the statements attributed to President Trump in the *Petition* implicitly or explicitly advocated illegal conduct. His only explicit instructions called for protesting "peacefully and patriotically,"[86] to "support our Capitol Police and law enforcement,"[87] to "[s]tay peaceful,"[88] and to "remain peaceful."[89] President Trump's calls for peace and patriotism notwithstanding, the courts have made clear that angry rhetoric falls far short of an implicit call for lawbreaking.

---

[83] *Nwanguma v. Trump*, 903 F.3d 604, 610 (6th Cir. 2018).

[84] *Blassingame v. Trump*, No. 22-5069 (D.C. Cir. Dec. 7, 2022), Argument Tr. at 64:5-7 (Katsas, J.).

[85] *Hess v. Indiana*, 414 U.S. 105, 107 (1973); *accord Nwanguma*, 903 F.3d at 611-12 (responding to a political protestor by repeatedly telling a crowd to "get 'em out of here" but "don't hurt 'em" was not incitement).

[86] *See, Id.,* at 74:21-25 (Rogers, J.) ("[T]he President didn't say break in, didn't say assault members of Congress, assault Capitol Police, or anything like that.").

[87] *Verified Petition* at ¶ 327.

[88] *Id.*

[89] *Id.*

Second, none of President Trump's speeches that took place before January 6th can possibly meet *Brandenberg's* imminence requirement. It is utterly impossible to regard statements like "stand back and stand by[90]" as advocacy of immediate illegal conduct. As the Ninth Circuit concluded from *Hess*, "a state cannot constitutionally sanction advocacy of illegal action at some indefinite future time."[91]

Finally, there is no evidence that President Trump intended any acts of violence. Both his language and his actions show the contrary. The *Petition* refers vaguely to descriptions of the planned protest by "Trump and extremists"[92] but does not allege any facts that show he supported their description. Other claims fall short. The *Petition* alleges:

- that various people planned and executed crimes that were committed at the Capitol on that day,[93] but does not connect this planning to President Trump or suggest that he supported it in any way.
- that some in the January 6th crowd advocated an attack on the Capitol,[94] but does not suggest that President Trump could even hear or understand them. Indeed, the lone

---

[90] *Verified Petition* at ¶ 65.

[91] *McCoy v. Stewart*, 282 F.3d 626, 631 (9th Cir. 2002) (cleaned up); *See also Special Motion to Dismiss*.

[92] *Verified Petition* at ¶ 110.

[93] *Id.* at ¶¶ 99-101.

[94] *Id.* at ¶¶ 158, 163.

video cited by the *Petition* shows only scattered shouts in a remote portion of the crowd that watched the speech on a distant video screen—and those shouts ended abruptly when the President called for the crowd to act "peacefully and patriotically."[95]

- that some of the January 6 perpetrators discussed the potential for violence online in the days before the protest and brought weapons to the vicinity of the protest.[96] Again, the Petition does not allege or show that President Trump supported or condoned this behavior.

The Petition shows that President Trump explicitly instructed the crowd to behave "peacefully and patriotically." That is the opposite of engaging in insurrection.

VI. This case should be moved to Washington D.C., under Colorado's *forum non conveniens* statute.

The Court should dismiss this action under C.R.S. § 13-20-1004, because Colorado is an inconvenient forum. The doctrine of *forum non conveniens* is meant to provide a mechanism by which a party can challenge a forum that presents hardship and expense when another forum is more convenient.[97] While a plaintiff normally should get the choice of the forum, a "plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the

---

[95] *Id.* at ¶ 331. This cites to a broken weblink. It appears that the video referred to can be found at https://vimeo.com/504444733, with the relevant clip appearing from 2:15 to 2:39.

[96] *Verified Petition* at ¶¶ 122-128, 134, 146-47, and 154.

[97] *Allison Drilling Co. v. Kaiser Steel Corp.*, 502 P.2d 967, 968 (Colo. Ct. App. 1972) (superseded by federal statute on other grounds).

defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy."[98]

Under C.R.S. § 13-20-1004 provides five elements a case must be dismissed if:

(a) The claimant or claimants named in the motion are not residents of the state of Colorado;

(b) An alternative forum exists;

(c) The injury or damage alleged to have been suffered occurred outside of the state of Colorado;

(d) A substantial portion of the witnesses and evidence is outside of the state of Colorado; and

(e) There is a significant possibility that Colorado law will not apply to some or all of the claims.[99]

Except in "the most unusual circumstances," a resident plaintiff's choice of forum is honored.[100] First, if ever unusual circumstances existed, they appear in this case. But the Colorado Supreme Court has noted that such "unusual circumstances" have been found in other jurisdictions when the plaintiff is merely a nominal party.[101]

---

[98] *Id., citing Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947).

[99] C.R.S. § 13-20-1004(1).

[100] *Cox v. Sage Hospitality Res., LLC*, 2017 COA 59 ¶11 (*citing McDonnell-Douglas Corp.*, 557 P.2d at 374).

[101] *Id.,* n. 1, *citing Universal Adjustment Corp. v. Midland Bank,* 281 Mass. 303, 184 N.E. 152 (1933); *Atchison, Topeka & Santa Fe Ry. Co. v. District Court,* 298 P.2d 427, 429-430 (Okla. 1956) (dismissing case for *forum non conveniens* where the plaintiff, the sole resident of Oklahoma, was only a nominal party).

A nominal party is someone who is a party to a case but "has no real interest in the outcome of the proceedings."[102] Petitioners have admitted, in a filing in the federal court, that they have no legal interest in the outcome of this case. In opposing remand, Petitioners argued that their claim in this case was a "paradigmatic 'generalized grievance' … based on an "abstract injury" to the "generalized interest" of voters in "constitutional governance."[103] In fact, they base their standing solely on their status as "eligible electors" and Colorado law that purportedly gives them standing to sue.[104] In other words, they do not have a real injury or interest in the results of this case and are nominal plaintiffs.[105] As nominal plaintiffs, this Court can ignore their status as residents of Colorado when applying the *Forum Non Conveniens* statute.[106]

---

[102] *Breeden v. Stone (In re Estate of Breeden)*, 992 P.2d 1167, 1175 n. 13; *see also Squire v. Livezey*, 85 P. 181, 182 (Colo 1906), *Taylor v. Arneill*, 268 P. 2d 695, 695 (Colo. 1954), *Marriott v. Clise*, 21 P. 909, 912 (Colo 1889).

[103] **Ex. B to Respondent's Motion to Dismiss filed September 22, 2023**, *Petitioners' Unopposed Motion to Remand, Anderson, et. al v. Griswold, et. al*, No. 1:23-cv-02291-PAB at 7 (Sept. 8, 2023).

[104] *Id.* at 8.

[105] *Breeden* 992 P.2d at 1175, n3.

[106] *See McDonnell-Douglas Corp. v. Lohn*, 557 P.2d 373, 374 n.1 (Colo. 1976).

After establishing that this case does not include a real petitioner who is a resident of Colorado, President Trump must only show one of the other four elements exists.[107] In fact, all of them do.

Three alternative forums exist to bring this matter. First, Petitioners can petition Congress, where the real issue lies, to declare that President Trump is ineligible because he participated in an insurrection. Second, they can seek federal criminal prosecution in Washington D.C. under the insurrection statute.[108] Or, three, they can go to federal court in Washington, D.C., if they can overcome their problems with standing and the political question doctrine.

There are almost no witnesses or evidence for this matter in Colorado other than, possibly, the Colorado Delegation to Congress or unknown Colorado residents who attended President Trump's speech, participated in the protest outside the Capital, or who participated in the riot and entry into the Capital on January 6, 2021. As such, they are outside the power of this Court to compel participation in the hearing in this matter, severely handcuffing President Trump's ability to defend himself.

Finally, while Petitioners claim to bring this case under Colorado law in fact the only contested and substantive issues rely on the interpretation of Section Three and actions that took place in Washington, D.C.

---

[107] C.R.S. § 13-20-1004(2).

[108] 18 U.S.C. § 2383.

Conclusion

FOR THESE REASONS, the court should dismiss this action, award attorney fees, and grant President Trump all such further relief as is just, proper or appropriate.

Respectfully submitted this 29th day of September 2023,

GESSLER BLUE LLC

s/ *Scott E. Gessler*
Scott E. Gessler

Certificate of Service

I certify that on this 29th day of September 2023, the foregoing was electronically served via e-mail or CCES on all parties and their counsel of record.

By: *s/ Joanna Bila*
Joanna Bila, Paralegal