STATE OF MAINE **SECRETARY OF STATE**

In re: Challenge to Primary Nomination Petition of Donald J. Trump, Republican Candidate for President of the United States

MOTION TO VACATE DECEMBER 28, 2023 RULING

I. Introduction

The Secretary's purported March 4, 2023, "Modification Ruling of the Secretary of State" fails to conform to binding United States Supreme Court precedence. On March 4, 2024, the Supreme Court of the United States ruled that Congress—and only Congress—can enforce Section 3 of the Fourteenth Amendment against federal candidates and officeholders. *See Trump v. Anderson*, Case No. 23-719, 601 ___ (2024). States, including state officers and state courts, have no authority to independently evaluate federal candidate qualifications under Section 3. Since states have no authority to evaluate federal candidate qualifications under Section 3, it follows that they also have no authority to hold evidentiary hearings, admit evidence, and make factual and legal findings regarding a federal candidate's qualifications under Section 3. In light of *Anderson*'s clarification of the law, it is clear that the Secretary had no authority to conduct a substantive evidentiary hearing regarding President Trump's qualifications under Section 3, nor to issue a ruling admitting evidence and making factual and legal findings. Under the *Anderson* framework, all portions of the Secretary's December 28, 2023, Ruling evaluating President Trump's qualifications under Section 3 of the Fourteenth Amendment were *ultra vires* and *must* be withdrawn.[1]

[1] That is, all parts of the Secretary's Ruling except for Section C, dismissing a purported Twenty-Second Amendment challenger.

II. Procedural Background and Rulings

President Trump timely filed a "Presidential Primary Candidate's Consent" form with the Secretary of State. Three challenges were made 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"). The Secretary construed the Royal Challenge as raising the same Section 3 challenge as the Rosen Challenge.

On December 28, 2023, Secretary Bellows issued a thirty-four-page opinion concerning the three challenges. Secretary Bellows concluded that Section 337 is an appropriate process by which to adjudicate a *Presidential* candidate's qualification challenge based on Section 3 of the Fourteenth Amendment and that "the record demonstrates that the events of January 6, 2021 were an insurrection" and that "the record demonstrates that Mr. Trump engaged in the insurrection of January 6, 2021," And therefore concluded that President Trump's primary petition was invalid because he did not meet the qualifications for President of the United States

President Trump timely appealed the Secretary's ruling to the Superior Court and after briefings by the parties, Justice Murphy remanded the case:

> to the Secretary for further proceedings as necessary in light of the United States Supreme Court's forthcoming decision in *Trump v. Anderson*. As part of this remand, the Secretary is ordered to await the Supreme Court's decision in *Anderson*, and no later than thirty days after *Anderson's* issuance, to issue a new Ruling modifying, withdrawing, or confirming her prior Ruling dated December 28, 2023.

On March 4, 2024, the Supreme Court of the United States issued its decision in *Trump v. Anderson*. In *Anderson*, and the Supreme Court concluded that the "responsibility for enforcing Section 3 against federal officeholders and candidates rests with Congress and not the States" thereby reversing the judgment of the Colorado Supreme Court. *Trump v. Anderson*, No. 23-719, 601 ___ (2024), slip op. at 13.

On March 4, 2024, Secretary Bellows modified her December 28, 2023, Ruling and "specifically withdr[ew] Part D.2" (which provided that Section 3 of the Fourteenth Amendment is Self-Executing Without Congressional Action and Applies to the President) and concluded that "the *Anderson* decision prohibits me from finding Mr. Trump's statement that he is qualified for the presidency to be false by operation of Section Three of the Fourteenth Amendment."

By only withdrawing Part D.2, Secretary Bellows allowed the rest of her December 28, 2023, Ruling to remain in place, including Parts A (allowing the admission of most the evidence presented by the Rosen Challengers), D.1 (concluding section 337 is an appropriate process by which she could adjudicate a Presidential candidate based on Section 3 of the Fourteenth Amendment), D.3 (concluding that the events of January 6, 2021 were an insurrection), and D.4 (concluding that President Trump engaged in an insurrection).

III. The Secretary has no authority to disqualify a candidate for federal office pursuant to Section 3 of the Fourteenth Amendment.

In *Trump v. Anderson*, the Supreme Court of the United States concluded that "States may disqualify persons from holding or attempting to hold *state* office. But the States have no power under the Constitution to enforce Section 3 with respect to federal offices, especially the Presidency." *Trump v. Anderson*, No. 23-719, 601 ___ (2024), slip op. 6. The authority to enforce Section 3, rests solely with Congress pursuant to Section 5 of the Fourteenth Amendment. *Id.* at 5. The Supreme Court concluded that Section 3 is not self-executing, and to enforce Section 3, Congress must prescribe the

enforcement mechanism to detail how that determination should be made. *Id.* Congress has yet to provide the states with that authority.

The Supreme Court not only held that states lack the enforcement authority of Section 3, but that only Congress can prescribe the mechanisms for when Section 3 may be enforced against a federal candidate. The Court further concluded that neither the Amendment nor Congress has granted the States the power to disqualify a candidate for federal office. *Id.* at 8.

When faced with the Rosen Challenge and the Royal Challenge to remove President Trump from the primary ballot pursuant to Section 3 of the Fourteenth Amendment, the Secretary of State should have simply issued a short ruling that she doesn't have the power to rule on such petitions. To entertain those petitions, she would need to have received that authority from Congress, yet Congress has not provided her with such power.

Accordingly, it was error for the Secretary to hold a hearing on December 15, 2023, and entertain evidence to determine whether in her opinion President Trump had engaged in insurrection and should be excluded from the ballot pursuant to Section 3 of the Fourteenth Amendment. The Secretary did not have the power from Congress to hold such a hearing. Similarly, the Secretary lacked the power to admit evidence on this issue and she had no authority to issue a thirty-four-page opinion making factual findings and rulings on whether the events of January 6, 2021, were an insurrection and whether President Trump had engaged in an insurrection. Without that authority from Congress, Secretary Bellows had no power or jurisdiction to issue her lengthy opinion. Her entire opinion, particularly section A and all of section D, should be withdrawn in its entirety.

IV. The Secretary lacks jurisdiction and authority from Congress to hold proceedings and issue a decision regarding Section 3 of the Fourteenth Amendment, and therefore, her decision must be vacated.

The Law Court has stated that "a governmental action may be challenged at any time, as ultra vires, when the action itself is beyond the jurisdiction or authority of the administrative body to act."

Sold, Inc. v. Town of Gorham, 2005 ME 24, ¶ 12. "An administrative agency 'cannot clothe itself with a jurisdiction it does not possess. Jurisdiction may be conferred only by law.'" *Id.* (quoting *Girouard v. Bates Mfg. Co.*, 71 A.2d 682, 683 (Me. 1950)).

When a judgment is void, Rule 60(b)(4) requires a court to vacate that judgment. *Cummings v. Bean*, 2004 ME 93, ¶ 7 ("A challenged judgment is either valid or void and thus a motion for relief pursuant to M.R. Civ. P. 60(b)(4) is not subject to the discretion of the court."). A judgment is void if the court that issued the judgment lacked subject matter jurisdiction over the proceedings that resulted in the judgment. *In Re Estate of Hiller*, 2014 ME 2, ¶ 19. "[T]he existence of subject matter jurisdiction can be challenged at any time, even sua sponte by an appellate court." *Luongo v. Luongo*, 2023 ME 75, ¶ 11 (quoting *Tomer v. Me. Hum. Rts. Comm'n*, 2008 ME 190, ¶ 8 n.3).

In this case, it is clear that the Secretary does not have the power to disqualify President Trump from running for federal office. Congress has never bestowed on the Secretary the authority to adjudicate a candidate's qualifications under Section 3 of the Fourteenth Amendment. Because she lacks that jurisdiction, her opinion is void and should be vacated in its entirety.

Indeed, it is entirely *ultra vires* for the Secretary to (1) keep section A of her Ruling where she admits evidence submitted by the Rosen Challengers, (2) keep section D.1 of her Ruling which incorrectly rules that section 337 is an appropriate process by which to adjudicate a challenge to a presidential candidate based on Section 3 of the Fourteenth Amendment, (3) keep section D.3 of her Ruling where she gratuitously concludes that the events of Section 6, 2021 were an insurrection, and (4) keep section D.4 of her Ruling where she concludes, without authority, that President Trump engaged in an insurrection. The Secretary has no authority to do any of these things under the Constitution of the United States.

The Secretary's December 28, 2023, Ruling was not issued pursuant to any congressional grant of authority, as required by *Anderson*. Accordingly, the entire Ruling is *ultra vires* and should be immediately withdrawn.

Respectfully submitted the 6th day of March 2024

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Certificate of Service

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