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 the **Secretary of State, State of Maine**

Respondent,

Kimberly Rosen, **Thomas Saviello**, and **Ethan Strimling**,

Parties-in-Interest

Brief Of Amicus Curiae

William Clardy

AUGUSTA COURTS
JAN 9 '24 PM1:09

Statement of Interest of Amicus Curiae

I am a registered voter in Maine interested in the proper application of election law, acting on the court's willingness to accept Amicus briefs.

Summary of Argument

Secretary Bellows' decision to exclude Donald J. Trump (Mr. Trump) from Maine's Republican Party ballot in the 2024 presidential primary is premised on an error of law, in that Secretary Bellows failed to properly distinguish between qualifications for running for office and qualifications for holding office compounded by a subjective assumption that any existing disqualification is irreversible.

Argument

Although she correctly identifies it as a threshold matter, Secretary Bellows makes an error of law in declaring that "the fact that Section Three refers to holding office, rather than

running for office, is not noteworthy." "Eligibility with reference to compatibility of office is determined as of the time of the commencement of the term of office." Lesieur v. Lausier, 148 Me. 500 (Me. 1953) Applying Secretary Bellows' interpretation of 21-A M.R.S. § 337 more broadly, all candidates who currently hold offices incompatible with the office they seek could be challenged and disqualified on the grounds they falsely swore to be qualified for the office they seek.

In addition, Secretary Bellows is Constitutionally constrained to evaluating Mr. Trump's qualifications or disqualifications which are known and unchangeable at the time of her decision. An alleged disqualification under Amendment 14, Section 3 is not unchangeable, as Congress has the power to explicitly waive that disqualification at any time prior to the winning candidate's taking the oath of office.

As further evidence that Amendment 14, Section 3 challenges are untimely before the date a candidate-elect takes office, the historical record shows both times a Section 3 challenge was raised against Congressional electees in the 20th century, it was raised on the day the electees were due to be sworn in. Victor Berger, the last member Congress refused to accept under the Section 3, was convicted of violating the Espionage Act (for "giving aid and comfort to an enemy" by publicly opposing the United States' entry into the First World War) and sentenced to 20 years in prison. In 1919, Congress declared him ineligible for office, and then refused him a second time after he won the special election held to fill the vacant seat. (Cannon's Precedents of the U.S. House of Representatives, Vol. 6, Chap. 157, §58) Mr. Berger went on to serve three more terms in Congress after the Supreme Court overturned his conviction because the trial judge had not properly recused himself. Berger v. United States, 255 U.S. 22, 28 (1921) The second

instance was Senator-elect William Langer. "He became Governor of the State in 1932 and took office in January 1933. In 1934 he was indicted for conspiring to interfere with the enforcement of federal law by illegally soliciting political contributions from federal employees, and suit was filed in the State Supreme Court to remove him from office. While that suit was pending, he called the State Legislature into special session. When it became clear that the court would order his ouster, he signed a Declaration of Independence, invoked martial law, and called out the National Guard. Nonetheless, when his own officers refused to recognize him as the legal head of state, he left office in July 1934. As with Adam Clayton Powell, however, the people of the State still wanted him. In 1937 they re-elected him Governor and, in 1940, they sent him to the United States Senate. During the swearing-in ceremonies, Senator Barkley drew attention to certain complaints filed against Langer by citizens of North Dakota." Powell v. McCormack, 395 U.S. 486, 554 (1969) Senator Langer was seated and re-elected multiple times.

As a threshold matter, absent an "objective fact" of Mr. Trump's disqualification, none of the evidence offered by the challengers can invalidate Mr. Trump's declaration that he is (or will be) qualified to serve as President next January, mooting Secretary Bellows' extensive discussion of whether or not Mr. Trump engaged in insurrection.

As an additional consideration, both Secretary Bellows and the Legislature do not have unlimited power to interfere in party nomination processes, not even to protect a party from nominating a candidate who may become unqualified for office. "[A] State may enact laws to prevent disruption of political parties from without but not from within." Eu v. San Francisco County Democratic Central Committee, 489 U.S. 214, 215 (1989) "States play a major role in structuring and monitoring the primary election process, but the processes by which political

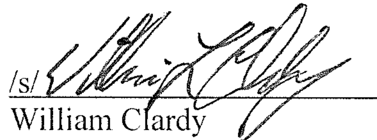
parties select their nominees are not wholly public affairs that States may regulate freely." California Democratic Party v. Jones, 530 U.S. 567 (2000) "A fundamental principle of our representative democracy is, in Hamilton's words, "that the people should choose whom they please to govern them." 2 Elliot's Debates 257. As Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself." Powell v. McCormack, 395 U.S. 486, 547 (1969) (emphasis added)

Conclusion

Secretary Bellows decision to exclude Mr. Trump from the 2024 Republican presidential primary ballot represents an error of law by the Secretary and should be overturned on those grounds.

Respectfully submitted,

Dated: January 8, 2024

/s/ 

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