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 for the State of Maine,

Respondent,

and

KIMBERLEY ROSEN, THOMAS SAVIELLO, and ETHAN STRIMLING,

Parties-in-Interest.

ORDER AND DECISION
(M.R. Civ. P. 80C)

Petitioner former President Donald J. Trump ("President Trump") has appealed the Ruling of Secretary of State Shenna Bellows, dated December 28, 2023 ("the Ruling"), on three challenges to President Trump's petition to appear on the Maine Republican presidential primary ballot. In her Ruling, the Secretary of State ("the Secretary") concluded that President Trump's primary petition was invalid because his candidate consent form contained a false statement and because he was disqualified from holding the office of President of the United States under Section Three of the Fourteenth Amendment to the United States Constitution, which provides as follows:

> 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, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

U.S. Const. amend. XIV, § 3.

On appeal, President Trump makes a number of arguments as to why the Ruling should be reversed. He claims the Secretary exceeded her authority under state law; that he did not receive due process in the administrative proceeding in which he was found to have engaged in insurrection; that the Secretary is biased; and that Section Three of the Fourteenth Amendment cannot be interpreted as a matter of law to invalidate his primary petition. He has also filed a Motion to Supplement the Record pursuant to Rule 80C(e) of the Maine Rules of Civil Procedure to permit the introduction of evidence relevant to the issue of bias, along with a Motion to Stay Proceedings in this Court pending the anticipated decision of the United States Supreme Court on President Trump's appeal from a decision of the Colorado Supreme Court that the Secretary specifically referenced in her Ruling, *Anderson v. Griswold*, 2023 CO 63, ___ P.3d ___, *cert. granted, Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024).

The Court would note at the outset that the Secretary and all the parties in this case, in light of the United States Supreme Court's acceptance of President Trump's petition for writ of certiorari for review of the Colorado Supreme Court's decision, have agreed that the Secretary's Ruling should continue to be stayed pending the United States Supreme Court's decision in *Trump v. Anderson*, No. 23-719. Legally speaking, a stay of an administrative ruling is a rare event in Maine,[1] but the Court agrees that under these circumstances it is appropriate. The Court therefore

[1] *See* 5 M.R.S. § 11004 ("The filing of a petition for review shall not operate as a stay of the final agency action pending judicial review. Application for a stay of an agency decision shall ordinarily be made first to the agency, which may issue a stay upon a showing of irreparable injury to the petitioner, a strong likelihood of success on the merits, and no substantial harm to adverse parties or the general public. A motion for such relief may be made to the Superior Court, but the motion shall show that application to the agency for the relief sought is not practicable, or that application has been made to the agency and denied, with the reasons given by it for denial, or that the action of the agency did not afford the relief which the petitioner had requested. . . .").

accepts this agreement and orders that the Ruling of the Secretary shall be stayed until the Supreme Court renders its decision in *Anderson*.

Maine's primary election is March 5, 2024, and the agreement by all the parties to stay the Secretary's decision until *Anderson* is decided is important. Unless the Supreme Court before that date finds President Trump disqualified to hold the office of President, eligible Maine voters who wish to cast their vote for him in the primary will be able to do so, with the winner being determined by ranked-choice voting.

The Court has reviewed the filings from all parties in this matter and has considered the statutory and constitutional arguments presented. For the reasons stated below, the Court concludes that it lacks authority to stay judicial proceedings as requested by President Trump. The Court concludes, however, that it does have authority under the Maine Administrative Procedure Act ("APA") to remand the matter to the Secretary and order her to issue a new Ruling once the Supreme Court issues its decision in *Anderson*. *See* 5 M.R.S. § 11007(4)(B) (permitting the Court to "[r]emand [a] case for further proceedings, findings of fact or conclusions of law or direct the agency to hold such proceedings or take such action as the court deems necessary"). Because many of the issues presented in this case are likely to be resolved, narrowed, or rendered moot by the Supreme Court's decision in *Anderson*, the Court concludes that a remand is necessary within the meaning of the APA under these unique circumstances.

More specifically, the Secretary will be ordered on remand to await the Supreme Court's decision in *Anderson* and to issue, within thirty days thereafter, a new Ruling modifying, withdrawing, or confirming her December 28 Ruling. The Court concludes that the Secretary should have the first opportunity to assess the effect on her Ruling of the Supreme Court's forthcoming decision in *Anderson*. Given the statutory deadline she faced in issuing her Ruling,

she could not know on December 28, 2023 whether President Trump's petition for certiorari would be granted, much less what the Supreme Court will or will not decide in *Anderson.*

The Court has also concluded that because there are so many federal issues in *Anderson,* it would be imprudent for this Court to be the first court in Maine to address them. Put simply, the United States Supreme Court's acceptance of the Colorado case changes everything about the order in which these issues should be decided, and by which court. And while it is impossible to know what the Supreme Court will decide, hopefully it will at least clarify what role, if any, state decision-makers, including secretaries of state and state judicial officers, play in adjudicating claims of disqualification brought under Section Three of the Fourteenth Amendment to the United States Constitution.

What follows are the Court's findings supporting its conclusion that a remand is necessary, and its decision as to pending motions.

BACKGROUND

On November 17, 2023, the Secretary received President Trump's "Presidential Primary Candidate's Consent" form, dated October 20, 2023, in support of his petition to appear on the Maine Republican presidential primary ballot.

The Secretary received three timely challenges to President Trump's primary petition pursuant to 21-A M.R.S. § 337 (2023). Paul Gordon challenged the primary petition on the basis that President Trump is barred from office under the term limit provision of Section One of the Twenty-Second Amendment to the United States Constitution because President Trump claims to have won the 2016 and 2020 general elections ("the Gordon Challenge"). Parties-in-Interest Kimberly Rosen, Thomas Saviello, and Ethan Strimling (collectively, "the Parties-in-Interest") challenged President Trump's primary petition on the basis that he is disqualified from office under

Section Three of the Fourteenth Amendment ("the Rosen Challenge"). The third challenge, by Mary Ann Royal, similarly asserted that President Trump is disqualified because he violated his oath of office by engaging in insurrection ("the Royal Challenge"). Although the Royal Challenge did not specifically reference Section Three of the Fourteenth Amendment, the Secretary construed the Royal Challenge and Rosen Challenge as raising the same challenge.

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

After hearing and briefing, the Secretary issued her Ruling on December 28, 2023. In her Ruling, the Secretary (1) rejected President Trump's Request to Disqualify the Secretary; (2) ruled on several evidentiary objections raised by President Trump; (3) denied the Gordon Challenge; and (4) invalidated President Trump's primary petition based on her finding that he was disqualified under Section Three of the Fourteenth Amendment because he had "engaged in insurrection" on January 6, 2021, and his statement on his consent form that he met the qualifications of the office of President of the United States was therefore false. The Secretary, in her Ruling, suspended the effect of her decision until completion of the appellate process before the Superior Court.

On January 2, 2024, President Trump timely filed this appeal. In his Complaint, President Trump raised numerous grounds for relief, which may be summarized as follows: (1) the Ruling was affected by bias; (2) the Secretary exceeded her authority under state law by finding that President Trump was disqualified under Section Three of the Fourteenth Amendment; (3) the Secretary abused her discretion by relying on untrustworthy evidence; (4) disqualification under Section Three of the Fourteenth Amendment presents a political question reserved for the Electoral College and United States Congress; (5) Section Three of the Fourteenth Amendment is not self-

executing; (6) Section Three of the Fourteenth Amendment does not apply to President Trump because he has never served as an "officer of the United States," and the presidency is not an "office . . . under the United States"; (7) Section Three of the Fourteenth Amendment cannot apply to bar an individual from a primary ballot because it may only disqualify an individual from *holding* office, not running for office; (8) President Trump did not engage in insurrection within the meaning of Section Three of the Fourteenth Amendment; and (9) President Trump's speech relied on by the Secretary in finding that he engaged in insurrection was protected by the First Amendment to the United States Constitution.

Similar challenges to President Trump's efforts to appear on presidential primary ballots have been brought in many other states. Most notably, in Colorado, registered voters filed a petition in the District Court for the City and County of Denver to prohibit the Colorado Secretary of State from placing President Trump on the Colorado Republican presidential primary ballot. *Anderson v. Griswold*, 2023 CO 63, ¶¶ 1-2, ___ P.3d ___, *cert. granted*, *Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024). The Colorado petitioners, like the Parties-in-Interest in this matter, argued that President Trump was disqualified from appearing on the ballot under Section Three of the Fourteenth Amendment. *Id.* ¶ 2.

After trial, the Denver District Court found, "by clear and convincing evidence, that the events of January 6 constituted an insurrection and President Trump engaged in that insurrection," but concluded that Section Three does not apply to President Trump because he has never been "an officer of the United States," and the presidency is not an "office . . . under the United States." *Id.* ¶ 22 (quotation marks omitted). President Trump and the petitioners both appealed the district court's decision to the Colorado Supreme Court. *Id.*

On December 19, 2023, the Colorado Supreme Court issued its decision reversing the district court's judgment. *Id.* ¶ 257. The Colorado Supreme Court concluded that Section Three of the Fourteenth Amendment does apply to President Trump and that "because President Trump is disqualified from holding the office of President under Section Three, it would be a wrongful act under [Colorado's] Election Code for the Secretary to list President Trump as a candidate on the presidential primary ballot." *Id.*

On January 3, 2024, President Trump filed a petition for writ of certiorari in the United States Supreme Court for review of the decision of the Colorado Supreme Court in *Anderson v. Griswold*. Pet. for Writ of Cert., *Trump v. Anderson*, No. 23-719 (U.S. Jan. 3, 2024). In his petition for writ of certiorari, President Trump raised a number of grounds for reversal of the Colorado Supreme Court's decision under federal constitutional law that are identical to, or overlap substantially, with grounds he has raised for reversing the Secretary's Ruling, including: (1) President Trump's eligibility is a political question suited for resolution only by Congress; (2) Section Three of the Fourteenth Amendment is not self-executing; (3) Section Three of the Fourteenth Amendment is inapplicable to President Trump because the presidency is not an "office . . . under the United States," he has never served as an "officer of the United States," and he has never taken an oath "to support the Constitution of the United States"; (4) President Trump did not engage in insurrection within the meaning of Section Three of the Fourteenth Amendment; and (5) Section Three of the Fourteenth Amendment cannot bar President Trump from the primary ballot because it may only disqualify individuals from holding office, not running for office. *See id.*

On January 5, 2024—eight days after the Secretary issued her Ruling—the United States Supreme Court granted President Trump's petition for writ of certiorari. *Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024).

STANDARD OF REVIEW

Pursuant to 21-A M.R.S. § 337, an action seeking review of the Secretary's decision on a primary petition "must be conducted in accordance with the Maine Rules of Civil Procedure, Rule 80C, except as modified by this section." 21-A M.R.S. § 337(2)(D); *see also Palesky v. Sec'y of State*, 1998 ME 103, ¶¶ 5-6, 8, 711 A.2d 129 (interpreting analogous provision governing judicial review of decisions on direct initiative petitions and concluding that Rule 80C provides the procedural framework; "full de novo trial" is not permitted).[2] Under Rule 80C, the court may either affirm, remand, reverse, or modify the agency's decision. 5 M.R.S. § 11007(4). The Court is not permitted to overturn an agency's decision "unless it: violates the Constitution or statutes; exceeds the agency's authority; is procedurally unlawful; is arbitrary or capricious; constitutes an abuse of discretion; is affected by bias or error of law; or is unsupported by the evidence in the record." *Kroger v. Dep't of Env't Prot.*, 2005 ME 50, ¶ 7, 870 A.2d 566; 5 M.R.S. § 11007(4). The party seeking to vacate a state agency decision has the burden of persuasion on appeal. *Anderson v. Me. Pub. Emps. Ret. Sys.*, 2009 ME 134, ¶ 3, 985 A.2d 501.

DISCUSSION

I. President Trump's Motion to Supplement the Record

President Trump moves pursuant to Rule 80C(e) for the Court to take additional evidence regarding alleged bias of the Secretary. President Trump seeks to introduce evidence that the

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[2] *Compare* 21-A M.R.S. § 337(2)(D) ("This action must be conducted in accordance with the Maine Rules of Civil Procedure, Rule 80C, except as modified by this section. . . . The court shall issue a written decision containing its findings of fact and conclusions of law and setting forth the reasons for its decision within 20 days of the date of the decision of the Secretary of State"), *with* 21-A M.R.S. § 905(2) ("This action must be conducted in accordance with the Maine Rules of Civil Procedure, Rule 80C, except as modified by this section. . . . The court shall issue its written decision containing its findings of fact and stating the reasons for its decision before the 40th day after the decision of the Secretary of State.").

Secretary had personal and professional relationships with Parties-in-Interest Ethan Strimling and Thomas Saviello.

Rule 80C(e) permits a party "to request that the reviewing court take additional evidence or order the taking of additional evidence before an agency as provided by 5 M.R.S. § 11006(1)." Rule 80C(e) requires the moving party to file with the motion "a detailed statement, in the nature of an offer of proof, of the evidence intended to be taken."

Section 11006(1) in turn contemplates that a court may take additional evidence in cases of "alleged irregularities in procedure before the agency which are not adequately revealed in the record" and when "it is shown that the additional evidence is material to the issues presented . . . , and could not have been presented or was erroneously disallowed in proceedings before the agency." 5 M.R.S. § 11006(1)(A)-(B). Arguments and evidence related to bias in the proceedings before the agency that could have been raised at the agency level cannot be introduced for the first time on appeal through a Rule 80C(e) motion. *Narowetz v. Bd. of Dental Prac.*, 2021 ME 46, ¶ 22 n.9, 259 A.3d 771 (summarily rejecting petitioner's argument that the Superior Court erred in denying her motion to take additional evidence where "the aspect of her motion asserting Board bias was not preserved because she failed to raise it before the Board, and none of the bases she cited for requesting to take the additional evidence was unknown to her at the time of the hearing"); *York Hosp. v. Dep't of Hum. Servs.*, 2005 ME 41, ¶ 20, 869 A.2d 729 ("[Rule 80C(e)] is not available to present evidence that the applicant should have presented to the agency, and is most appropriately asserted when there is evidence relevant to bias or prejudice, or, in some instances, an equitable defense or claim that could not have been addressed to the agency during the administrative proceedings.").

As an offer of proof regarding the Secretary's alleged relationship with Ethan Strimling, President Trump submitted (1) a 2015 tax form filed by LearningWorks, a non-profit organization, listing Shenna Bellows as "Interim Exec" and "principal officer" in 2015 and Ethan Strimling as CEO; (2) a 2015 news article reporting that Shenna Bellows would temporarily serve as executive director of LearningWorks after Ethan Strimling had been sworn in as Mayor of the City of Portland; (3) a LinkedIn page and a Wikipedia page for Ethan Strimling that mention his involvement in LearningWorks; and (4) a State of Maine Noncommercial Registered Agent Statement of Appointment or Change filed in 2017 listing Ethan Strimling as the registered agent for LearningWorks. In support of his allegation that the Secretary has a personal and professional relationship with Thomas Saviello, President Trump submits no exhibits and claims only that in an interview with CNN on January 2, 2024, Mr. Saviello said, "I know her very well personally," in reference to the Secretary.

Except for Mr. Saviello's statement on January 2, 2024, all the evidence offered by President Trump could have been discovered and offered in support of his Request to Disqualify the Secretary during proceedings before the Secretary. As to Mr. Saviello's statement, it, standing alone, is not sufficient to warrant further hearing on the motion. *See Carl L. Cutler Co., Inc. v. State Purchasing Agent,* 472 A.2d 913, 917-18 (Me. 1984). Moreover, the basis for the statement and nature of their relationship could also have been discovered and presented during proceedings before the Secretary.[3] President Trump's Rule 80C(e) motion is therefore denied.

II. President Trump's Motion to Stay Proceedings

President Trump has requested that this Court stay judicial proceedings on his appeal

[3] Parties-in-Interest suggest that Mr. Saviello served in the Maine Senate with the Secretary from 2016 to 2018. (Parties-in-Interest Br. 38.)

pending the forthcoming ruling of the United States Supreme Court in *Anderson*. The Secretary and the Parties-in-Interest have opposed the Motion to Stay Proceedings. Generally, the decision to grant a stay "rests in the sound discretion of the court," and the Court may grant a stay whenever it is "satisfied that justice will thereby be promoted." *Cutler Assocs., Inc. v. Merrill Tr. Co.*, 395 A.2d 453, 456 (Me. 1978).

The Maine State Legislature, however, has set a statutory deadline for the Superior Court to act on a petition for review of the Secretary's decision on a challenge to the validity of a primary petition as follows:

> A challenger or a candidate may appeal the decision of the Secretary of State by commencing an action in the Superior Court. . . . The court shall issue a written decision containing its findings of fact and conclusions of law and setting forth the reasons for its decision within 20 days of the date of the decision of the Secretary of State.

21-A M.R.S. § 337(2)(D). Twenty days after the date of the Ruling, December 28, 2023, is January 17, 2024. The Supreme Court is not expected to issue an opinion until sometime after oral argument, which is scheduled for February 8, 2024. To grant the Motion to Stay Proceedings, the Court would have to disregard the statutory deadline.

Section 337 does not expressly provide for a remedy or other consequence if the Superior Court fails to act on a petition within twenty days after the date of the Secretary's decision. *See* 21-A M.R.S. § 337(2)(D). The twenty-day deadline might, therefore, be interpreted as directory rather than mandatory. *See Doe v. Bd. of Osteopathic Licensure*, 2020 ME 134, ¶ 11, 242 A.3d 182 ("In the context of agency procedural deadlines, and in the absence of a clear manifestation in a statute to the contrary, statutory language such as 'shall' is directory, not mandatory, and does not wrest from the agency jurisdiction to act if the deadline is not met.").

Section 337, however, must be read in the broader context of Title 21-A. Importantly, 21-A M.R.S. § 7 provides as follows: "When used in this Title, the words 'shall' and 'must' are used in a mandatory sense to impose an obligation to act in the manner specified by the context." Despite the absence of an express remedy or consequence for failing to meet the twenty-day deadline, the Legislature's intent to create a mandatory deadline for the Superior Court to issue a written decision is clear. *See McGee v. Sec'y of State*, 2006 ME 50, ¶¶ 14-17, 896 A.2d 933 (relying on 21-A M.R.S. § 7 in concluding that the one-year filing deadline for initiative petitions in a former version of 21-A M.R.S. § 903-A was mandatory and could not be extended).

The Court agrees with President Trump that proceeding to the merits of this case without the benefit of the United States Supreme Court's forthcoming ruling in *Anderson* would be imprudent. The Court, however, agrees with the Secretary that it lacks authority to ignore the twenty-day deadline in contravention of clear legislative intent. Accordingly, the Court denies the Motion to Stay Proceedings.

III. Order of Remand

As noted above, although the Court declines to stay the proceedings in this matter, the APA permits the Court to "[r]emand [a] case for further proceedings, findings of fact or conclusions of law or direct the agency to hold such proceedings or take such action as the court deems necessary." 5 M.R.S. § 11007(4)(B); *see also Reed v. Sec'y of State,* 2020 ME 57, ¶ 8, 232 A.3d 202. The Court recognizes that a remand under these circumstances will have practical consequences similar to those that might result from a stay of this entire case. However, this is not a regular civil action where the Superior Court's authority to issue a stay may indeed be broad. This is a Rule 80C appeal of an administrative decision, and the Superior Court's authority under the APA is deferential and limited. *Friends of Lincoln Lakes v. Bd. of Env't Prot.,* 2010 ME 18, ¶

12, 989 A.2d 1128. In addition, the Superior Court's authority in this case is further constrained by the deadlines set by the Legislature in Section 337. A remand would not run afoul of those timelines, and the Court's finding that a remand is necessary constitutes a decision under Section 337 and the APA. *See* 21-A M.R.S. § 337(2)(D); 5 M.R.S. § 11007(4) (referring to a remand as a "decision" (bolding omitted)).

Multiple considerations also counsel against judicial intervention by this Court prior to the resolution of *Anderson* and before the Secretary has an occasion to assess *Anderson*'s impact on her Ruling. First and foremost, President Trump's appeals to this Court and the United States Supreme Court raise many important—and purely legal—issues of federal law. All are questions of first impression, including:

- Whether President Trump's eligibility under Section Three of the Fourteenth Amendment is a political question suited for resolution only by Congress;
- Whether Section Three of the Fourteenth Amendment is self-executing;
- Whether Section Three of the Fourteenth Amendment is inapplicable to President Trump because the presidency is not an "office . . . under the United States," he has never served as an "officer of the United States," and he has never taken an oath "to support the Constitution of the United States";
- The meanings of "insurrection" and "engaged in insurrection" under Section Three of the Fourteenth Amendment;
- Whether Section Three of the Fourteenth Amendment may disqualify individuals from *running* for office, as opposed to *holding* office; and
- Most importantly to this Court, what role, if any, state actors have in determining eligibility for office under Section Three of the Fourteenth Amendment.[4]

[4] Other related and important questions lacking legal consensus or precedent include what the proper fact-finding forum would be to determine eligibility for office under Section Three of the Fourteenth Amendment. This question directly implicates the level of due process that should be afforded in whatever forum might be determined to be proper. The forum options include Congress, federal courts, state courts, trial by jury in federal or state court, and state administrative

As discussed above, the federal constitutional arguments raised by President Trump in *Anderson* mirror the federal constitutional arguments raised in this appeal. It is likely—although, admittedly, not certain—that *Anderson* will resolve many questions raised in this appeal. However, because litigation is pending in multiple states challenging President Trump's candidacy under Section Three of the Fourteenth Amendment, including Massachusetts, Illinois, and Wisconsin, the Court does not share the Secretary's confidence about the likelihood of the Supreme Court resolving *Anderson* only on Colorado-specific points of law.

Even with regards to some of the issues that the parties have characterized as "state law" issues, *Anderson* may provide helpful guidance. For example, President Trump has asserted that the Secretary has exceeded her authority under state law because, among other reasons, Sections 336 and 337 do not give the Secretary authority to consider challenges under Section Three of the Fourteenth Amendment. To determine whether the Secretary acted within her authority under state law, the Court would need to determine whether Section Three of the Fourteenth Amendment sets forth a "qualification" for office—a question which *Anderson* may answer. Even if the Court could decide select state law issues without addressing federal issues, taking a piecemeal approach to this litigation risks generating inconsistencies and creating voter confusion.

The Oregon Supreme Court, presented with a challenge to President Trump's candidacy under Section Three of the Fourteenth Amendment, very recently reached a parallel conclusion and denied without prejudice a petition for a writ of mandamus on the basis that a decision in

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hearings. The burden of proof that would apply in any forum deemed appropriate is also completely unsettled. In this matter, the issue was tried to the Secretary, who applied a preponderance of the evidence standard. In Colorado, however, the issue was tried to a state District Court, which is similar to Maine's Superior Court. That court applied a clear and convincing evidence standard.

Anderson "may resolve one or more contentions" made by the relators in that proceeding. *State ex rel. Nelson v. Griffin-Valade*, No. S070658 (Or. Jan. 12, 2024).

The Secretary confronted an uncertain legal landscape when she issued her Ruling. By virtue of 21-A M.R.S. § 337(2)(C)'s strict timelines, the Secretary also had to issue her Ruling without the benefit of the Supreme Court's input on critical issues of constitutional law presented. Under these unusual circumstances, the Court believes that the Secretary, the chief elections officer (*see* 21-A M.R.S. §§ 1-1208), should be afforded the opportunity to assess the effect and application of the *Anderson* decision on her Ruling. *See Ne. Occupational Exch., Inc. v. Bureau of Rehab.*, 473 A.2d 406, 409 (Me. 1984) (noting the interest in favor of "'allow[ing] administrative agencies to correct their own errors, clarify their policies, and reconcile conflicts before resorting to judicial relief'" (quoting *Kenilworth Ins. Co. v. Mauck*, 365 N.E.2d 1051, 1053 (Ill. App. Ct. 1977))); *see also Johnson v. City of Salem*, 43 P.3d 464, 465 (Or. App. 2002) (remanding to Worker's Compensation Board where the board "did not have the benefit of [certain critical state appellate court decisions] when it issued its order" and where the court "d[id] not have the benefit of the board's consideration and application of those precedents" in that case); *Genesco, Inc. v. T. Kakiuchi & Co., Ltd.*, 815 F.2d 840, 853, 856 (2d Cir. 1987), *abrogated on other grounds as recognized by Rodriguez-Depena v. Parts Auth., Inc.*, 877 F.3d 122 (2d Cir. 2017) (remanding to district court for further proceedings in light of a "forthcoming" United States Supreme Court decision on a critical point of law).

The Secretary and Parties-in-Interest nevertheless insist that Maine should not await *Anderson*, urging this Court to decide the merits now so that the issues surrounding Trump's candidacy will be resolved sufficiently in advance of the primary election. This position may appear inconsistent with their agreement that the Court stay the Secretary's December 28 Ruling

until after *Anderson* is decided. The Court does, however, understand and agree with their assertions that Maine voters are entitled to as much certainty and clarity as possible. It also agrees with the Secretary that Maine is prepared to provide a measure of certainty through its existing statutory procedures. *See* 21-A M.R.S. § 371(4)-(5). Among these statutory procedures are those set forth in 21-A M.R.S. § 371(5), which establishes a process for notifying voters of a candidate's disqualification in instances where "a candidate dies or becomes disqualified less than 70 days before the primary election." Accordingly, no significant harm will result from forgoing a decision on the merits of this matter at this time.[5]

The Court concludes that a remand to the Secretary pending a decision by the Supreme Court on these unprecedented issues will promote consistency and avoid voter confusion in the weeks before the primary election. In *Purcell v. Gonzalez*, the Supreme Court instructed lower courts to weigh "considerations specific to election cases" in deciding whether to issue an injunction or stay in the period close to an election. 549 U.S. 1, 4 (2006); *see also Nken v. Holder*, 556 U.S. 418, 434 (2009) ("[T]here is substantial overlap between [the factors governing stays pending appeal] and the factors governing preliminary injunctions"). While *Purcell* arose in a different procedural posture, the Court believes that its underlying principle—avoiding judicially-created confusion—is applicable to the Court's analysis here. *Purcell,* 549 U.S. at 4-6; *see also Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020). Indeed, as the *Purcell* Court cautioned, "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Purcell*, 549 U.S. at 4-5.

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[5] If President Trump is disqualified after the primary, it is the Court's understanding that the Republican Party would be primarily responsible for addressing the vacancy before the Republican National Convention, or before the general election in November of 2024.

The Court believes it essential to factor in the risk of voter confusion should multiple administrative or judicial decisions addressing President Trump's eligibility to appear on the primary ballot issue before the Supreme Court rules in *Anderson*. While much remains uncertain, the Court concludes that the agreement of the parties regarding the stay of the Secretary's Ruling, in conjunction with this remand, minimizes any potentially destabilizing effect of inconsistent decisions and will promote greater predictability in the weeks ahead of the primary election. The Court therefore concludes that its remand of this matter is in the public interest.

CONCLUSION

Based on the foregoing, the Court:

(1) **Denies** President Trump's Motion to Supplement the Record;

(2) **Denies** President Trump's Motion to Stay Proceedings;

(3) With the express agreement of the parties, **stays** the Secretary's Ruling (dated December 28, 2023) pending issuance of a final decision by the United States Supreme Court in *Trump v. Anderson*, Docket No. 23-719; and

(4) **Remands** this matter 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.

The clerk is directed to incorporate this order on the docket by reference pursuant to M.R. Civ. P. 79(a).

DATED: 1/17/24

Michaela Murphy
Justice, Superior Court

Entered on the Docket: 1/17/2024