COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. _____

BRUCE CHAFEE, KIM JANEY, MARK BRODIN, ELIZABETH BARTHOLET, AUGUSTA MCKUSICK, MICHAEL S. ROBERTSON, JR., KEVIN BATT, THERESA MASON, and STEPHANIE SANCHEZ,

Petitioners,

v.

MASSACHUSETTS STATE BALLOT LAW COMMISSION; DONALD JOHN TRUMP; WILLIAM FRANCIS GALVIN, in his official capacity as Secretary of the Commonwealth of Massachusetts; and the MASSACHUSETTS REPUBLICAN PARTY ("MASS GOP"),

Respondents

EMERGENCY PETITION FOR RELIEF
PURSUANT TO M.G.L. c. 214 § 1; M.G.L. c. 231A § 1;
M.G.L. 249 § 5; AND M.G.L. c. 56 § 59

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January 23, 2024

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INTRODUCTION[1]

Petitioners are nine Massachusetts voters[2] who have filed objections with the State Ballot Law Commission ("SBLC") asserting that Donald John Trump is constitutionally ineligible to appear on the Massachusetts primary ballot for President because he engaged in an insurrection in violation of Section 3 of the Fourteenth Amendment to the United States Constitution.[3] As set forth in detail in Objectors' Petitions (attached as Exhibits 1 and 2), Trump violated his oath to uphold the Constitution by engaging in systematic effort to deny the results of the 2020 presidential election, culminating with his fomenting of a violent assault on the nation's capital aimed at preventing the peaceful transfer of power, constituting engagement in insurrection against the Constitution and thus disqualifying him from public office under Section 3 of the Fourteenth Amendment. As a candidate, Trump has openly stated that he will ignore the Constitution if doing so is necessary to

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[1] Given the significant constitutional questions implicated by this petition, Petitioners respectfully request that the Single Justice reserve ruling and immediately report this matter to the full Court.

[2] Objectors span the political spectrum, consisting of Republican, Democratic, and unaffiliated voters.

[3] The first Objection (attached here as Exhibit 1), *Chafee v. Trump*, SBLC 24-1, was filed by Bruce Chafee, the Hon. Kim Janey, Professor Mark Brodin, Professor Elizabeth Bartholet, and Gussie McKusick on January 4, 2024. The second Objection (attached here as Exhibit 2), *Robertson v. Trump*, SBLC 24-2, was filed by Michael S. Robertson, Jr., Kevin Batt, Theresa Mason, and Stephanie Sanchez on January 8, 2024. The SBLC consolidated these Objections, and they are being consolidated for the purpose of this Petition as well. Because both Objections contained identical exhibits (consisting of the full transcript of the trial proceedings giving rise to the appeal in *Anderson v. Griswold*, 2023 WL 8770111 (Colo., 2023)), which are voluminous, Petitioners only attach the exhibits to Exhibit 1 here.

achieve his own political aims. Obtaining a timely, conclusive answer to the question of Trump's constitutional eligibility to appear on the upcoming Massachusetts primary ballot (for which voting is scheduled to begin on February 24, 2024, and to conclude on March 5, 2024) is thus of paramount importance to Petitioners and the entire Commonwealth: Trump's appearance on the primary ballot for an office for which he is constitutionally ineligible will violate Massachusetts law, undermine the integrity of the electoral process and the U.S. Constitution, and potentially engender political chaos.

Reflecting the urgent need for resolution[4], Petitioners have moved as rapidly as possible under the applicable Massachusetts statutes and regulations to have their Objections adjudicated by the appropriate officials, namely the members of the SBLC. The SBLC has the authority, and indeed the express obligation, to issue a final decision on the merits of Petitioners' Objections by January 29, 2024. M.G.L. ch. 55B § 10. Adherence to this deadline is not only required by statute, but it is also necessary in order to provide the Secretary of the Commonwealth with adequate time

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[4] Petitioners request that the Court move as rapidly as possible to decide this matter. Massachusetts law provides that, if the SBLC "fails to render its decision within the time required in this chapter on any matter so referred, the state secretary shall, notwithstanding such failure, proceed forthwith to cause to be printed the ballots for such primaries or elections." M.G.L. ch. 55B § 4. This deadline is January 29, 2024, at 5:00PM. See M.G.L. ch. 55B § 10 (although this Court may extend it, *see infra* n. 6).

Trump should not prevail in being placed on the Massachusetts primary ballot – despite his ineligibility under the U.S. Constitution and thus Massachusetts law – simply because the clock has run down (as discussed further below). Thus, Petitioners respectfully request that the Court hear this matter on an extremely expedited schedule. Petitioners suggest that Respondents be required to respond to this Petition by noon on January 25, 2024, and that this Court hear argument in the matter on January 26, 2024.

to ensure the ballot process complies with the Constitution, in advance of voting, which commences on February 24, 2024.[5] Yet the SBLC has disregarded its obligation to resolve this question by erroneously concluding that it lacks jurisdiction to adjudicate objections to candidates nominated to appear on a presidential primary ballot. *See* Exhibit 19 (SBLC Order Denying Jurisdiction). It reached this hasty conclusion, despite the Legislature's clear grant of authority to the SBLC to resolve constitutional challenges to "candidates at a presidential primary." M.G.L. ch. 55B § 5. Based on its incorrect assumption that it does not have jurisdiction to decide such an issue, the SBLC has taken none of the actions necessary to resolve these Objections on their merits by the statutory deadline.

Although these circumstances are unprecedented, the legal issues are straightforward. Donald Trump has already been found to have engaged in insurrection (in the only decisions to have addressed this challenge head-on, on the merits and after extensive proceedings in which he had a full and fair opportunity to

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[5] While this Court possesses the authority to extend this statutory deadline, *see Goldstein v. Sec'y of Commonwealth*, 484 Mass. 516, 532 (2020), time is of the essence for this issue to be decided promptly so that appropriate ballots can be prepared.

While Secretary of the Commonwealth William F. Galvin has asserted that it is now *too late* for any changes to be made to the ballots which have already been sent to the printer, such assertion cannot be correct, given that Petitioners timely filed their Objections by the statutory deadlines (and indeed were not permitted under the statutory framework to file their Objections earlier), *see* M.G.L. ch. 55B § 5. Indeed, Massachusetts law expressly provides for the removal of a candidate who, having been nominated to appear on a ballot and whose name has already been printed on the ballot, subsequently becomes ineligible or otherwise unable to serve. *See, e.g.*, M.G.L. ch. 53, §§ 49, 62, 101.

participate). He is thus ineligible to hold the Office of President of the United States under Section 3 of the Fourteenth Amendment.[6] Indeed, Trump has not contested — and has thus forfeited the right to file any opposition to — Petitioners' request that collateral estoppel be applied here, based on the prior Colorado findings of fact and decision prohibiting him from appearing on the ballot in Colorado in *Anderson v. Griswold*, 2023 WL 8770111.[7]

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[6] *See Anderson v. Griswold*, 2023 WL 8770111 (Colo. 2023) (Ex. A to Objections); *see also In re Challenges of Rosen et al.* (ME Sec. of State, Dec. 28, 2023), available at https://www.maine.gov/sos/news/2023/Decision%20in%20Challenge%20to%20Trump%20Presidential%20Primary%20Petitions.pdf. *But see Trump v. Bellows*, Dkt. No. AP-24-01 (ME Sup. Ct. Jan. 17, 2024), available at https://www.courts.maine.gov/news/trump/order-and-decision.pdf (noting that, unlike here, Objectors in that case agreed to a remand of the case to the Secretary of State, in light of Supreme Court's grant of certiorari in *Anderson*). Petitioners here do not agree to any stay of this matter, in view of the fact that Massachusetts law requires a decision on the merits by January 29, 2024 – and thus there is not time under state law to await the outcome of the Supreme Court's ruling in *Anderson* (which, in any event, may or may not address the issues pertinent to this Massachusetts challenge). Moreover, staying any proceedings here would prejudice Petitioners, as the statute mandates: "In the event that said commission fails to render its decision within the time required in this chapter on any matter so referred, the state secretary shall, notwithstanding such failure, proceed forthwith to cause to be printed the ballots for such primaries or elections." M.G.L. ch. 55B § 4. At the same time, there is no telling when the U.S. Supreme Court would rule, or on what basis. It is entirely possible that it would not rule until after the Commonwealth's primary has already occurred, or that it will resolve the issues on the basis of Colorado state law or procedures leaving the ultimate merits undecided, or that it will hold that each state must adjudicate these challenges under the Elections Clause. As such, Petitioners have not agreed to such a stay.

[7] Objectors filed with the SBLC a Motion for Summary Decision (Exhibit 5). The SBLC ordered any response to any then-pending motions be submitted by Friday, January 19, 2024, at 5:00 PM. Neither Trump, the Massachusetts Republican Party, nor any other party submitted a response or opposition to Objectors' motion.

Consequently, this case is straightforward: pursuant to Massachusetts law, which prohibits ineligible candidates from appearing on primary ballots, this Court should order that Trump's name not appear on the upcoming Republican primary ballot. In the alternative, this Court should declare that the SBLC has jurisdiction to hear these Objections, order the SBLC to hear them forthwith, and order the SBLC to render a decision on the merits (entitled to subsequent judicial review by any losing party) no later than the statutorily imposed deadline of January 29, 2024, at 5:00 PM (or as soon thereafter as this Court finds appropriate).

This matter merits immediate consideration, given the impending primary election and the profoundly important constitutional issues at the heart of this case. The fact that an appeal raising similar issues in the challenge to Trump's candidacy brought in Colorado is currently pending before the United States Supreme Court[8] only heightens the need for urgent action to resolve Petitioners' Objections here under Massachusetts state law. It is not yet known when the Supreme Court will rule (it is not hearing argument until February 8, 2024); nor is it known if the Supreme Court will address the issues broadly or narrowly in that case. It is well within the realm of possibility that the Supreme Court could ultimately rule narrowly in a way that preserves the authority of states to adjudicate presidential ballot qualifications, meaning that such a challenge could only succeed if it were properly adjudicated under state-mandated procedures.[9]

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[8] *See Trump v. Anderson*, Docket No. 23-719 (U.S. S.Ct.).

[9] It could also be very helpful to the Supreme Court to have the guidance of other states' highest courts, such as this Court, in addressing the constitutional issue in *Anderson*.

Accordingly, to preserve their rights as voters and to ensure that a constitutionally ineligible candidate does not appear on the primary ballot here in violation of Massachusetts law, Petitioners hereby seek emergency relief pursuant to M.G.L. ch. 56 § 59; M.G.L. ch. 231A, § 1; and M.G.L. ch. 249, § 5, requesting that this Court: (1) declare that Trump is ineligible to appear on the Republican primary ballot for president and order the SBLC and the Secretary of the Commonwealth to take all actions necessary to effectuate Trump's removal from the ballot; or, in the alternative (2) declare that the SBLC possesses jurisdiction to adjudicate Petitioners' Objections to Trump's candidacy and order the Commission immediately to conduct all proceedings necessary to issue a final decision on the merits of Petitioners' Objections by January 29, 2024, at 5:00 P.M (or as soon thereafter as this Court finds appropriate).

PROCEDURAL BACKGROUND

In Massachusetts, there are three ways in which "candidates or potential candidates" can gain access to a Presidential primary ballot: (1) they can submit "nomination papers prepared and furnished by the state secretary, signed in the aggregate by at least twenty-five hundred voters"; (2) the Secretary can make a formal determination that they are "generally advocated or recognized in national news media throughout the United States"; or (3) their names can be submitted "on written lists signed by the chairman of the state committees of the political parties." M.G.L. ch. 53 § 70E. The statute further provides that, for these two latter categories, "[t]he chairman of the state committee of a political party and the state secretary shall

submit lists or prepare lists of candidates for president, as aforesaid, no later than the first Friday in January." *Id.*

On January 2, 2024, Secretary of the Commonwealth William F. Galvin publicly drew names to determine the order in which candidates would appear on the Massachusetts presidential primary ballot.[10] At the same time, he reiterated his belief that Trump is entitled to appear on the ballot (despite challenges to him appearing on the ballot having been lodged in states across the country).[11] This January 2, 2024, drawing was the first time that Massachusetts' presidential primary candidates' names were revealed to the public.

Just two days later, on January 4, 2024, five Republican, Democrat, and unenrolled registered Massachusetts voters — five of the nine petitioners here — filed a formal Objection pursuant to M.G.L. ch. 55B §§ 4–5 with the SBLC challenging the inclusion of Trump's name on the ballot on the basis that he is ineligible to serve as President or appear on the ballot under Section 3 of the Fourteenth Amendment to the U.S. Constitution. *See* Exhibit 1 (First Objection).[12]

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[10] Secretary Galvin even went so far as to predict that Trump would also appear on the ballot in Maine — which holds its primary the same day as Massachusetts — because the tight timeline for adjudicating the Maine Secretary of State's determination that Trump is ineligible would render the question moot before a court could review that decision. Matt Stout, *Trump likely to still appear on Maine ballot despite ruling, Massachusetts' top elections official says*, BOSTON GLOBE (Jan. 2, 2024, 3:14 PM), https://www.bostonglobe.com/2024/01/02/metro/william-galvin-secretary-of-state-shenna-bellows-donald-trump/.

[11] *Id.*

[12] Petitioners included their certificates of voter registration with their Objection, as required by M.G.L. ch. 55B § 5.

The Secretary, who "serve[s] as the secretary of the commission," M.G.L. ch. 55B § 1, is tasked by the statute with forwarding all objections to the SBLC, M.G.L. ch. 55B § 5, and the regulations promulgated pursuant to these statutes further designates that the Secretary delegates these duties to "[a] member of the Elections Division or designee, as determined by the Secretary of the Commonwealth," 950 CMR § 59.01(5).[13]

On January 4, 2024, when an attorney for the Objectors attempted to file the first Objection, he was initially told by the First Deputy Secretary and Director/Legal Counsel of the Elections Division, Michelle Tassinari,[14] that the SBLC did not have jurisdiction over challenges to Trump's eligibility to appear on the primary ballot and that the Objection could not be accepted. Exhibit 17 (Declaration of Jack Bartholet). When the Objectors' attorney insisted that the SBLC did have jurisdiction and that jurisdiction was for the Commission, and not the Secretary, to determine, Tassinari responded that the ballots were already being printed and that the Attorney General's office had agreed with the Secretary's position. *Id.* Ultimately, the attorney responded that the statutory deadline for Objections had not yet passed and that if the SBLC determined it lacked jurisdiction, it could provide an appealable order to that effect. *Id.* Eventually, the Objection was accepted for filing. *Id.*

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[13] Petitioners complied with all regulations for filing such an Objection, including filing the Objection via hand delivery. 950 CMR § 59.01(3)(d).

[14] Tassinari is the Secretary's designee, serving as "clerk to the commission." Exhibit 18 (transcript of SBLC pre-hearing conference).

Four days later, on January 8, 2024, four additional Objectors — the remaining Petitioners here — filed an Objection that was identical to the first, save for the names and descriptions of Objectors. Exhibit 2 (Second Set of Objections).

On Wednesday, January 10, 2024, six days after the first Objection was filed and two days after the second Objection was filed — and after considerable media attention[15] — the SBLC notified the Objectors, Respondent Trump, the Massachusetts Republican Party, and the six other Republican presidential primary candidates "pursuant to 950 CMR §§ 59.01(5) and 59.02(4)" that these "Objections have been received" by the SBLC.[16] Exhibit 3 (Notice of Objections). However, the SBLC failed to comply with both its own regulations[17] and the statute. The regulations provide:

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[15] *See, e.g.*, Michael Casey, *Massachusetts voters become latest to try and keep Trump off ballot over Jan. 6 attack*, ASSOCIATED PRESS (Jan. 5, 2024, 5:58 PM), https://apnews.com/article/trump-insurrection-14th-amendment-supreme-court-4aa5b0505c997c5e06a9f9fcc23fc536; Chris Van Buskirk, *Advocacy group challenges Donald Trump's ballot eligibility in Massachusetts*, BOSTON HERALD (Jan. 4, 2024 5:57 PM), https://www.bostonherald.com/2024/01/04/advocacy-group-challenges-donald-trumps-ballot-eligibility-in-massachusetts/; Matt Stout, *Liberal group files challenge to remove Trump from Massachusetts primary ballot*, BOSTON GLOBE (Jan. 4, 2024, 7:24 PM), https://www.bostonglobe.com/2024/01/04/metro/donald-trump-primary-ballot-free-speech-for-people-william-galvin/; Neal Riley, *Legal challenge filed to remove Trump from Massachusetts presidential ballot*, CBS NEWS (Jan. 5, 2024, 9:16 AM), https://www.cbsnews.com/boston/news/trump-ballot-massachusetts-presidential-primary-insurrection-clause-legal-challenge/.

[16] This notice listed both objections together, seemingly consolidating them pursuant to 950 CMR § 59.03(2)(h). This consolidation was later confirmed by the SBLC's Chair. Exhibit 18(transcript of pre-hearing conference).

[17] The regulations "may be amended at any time, but unless provided otherwise, the amendment shall not affect any pending proceeding," and "[a]ll amendments shall be effective as of the date of publication thereof unless otherwise specifically

> The Secretary shall give written notice to all parties[18] by registered or certified mail, return receipt requested. The notice shall contain a copy of the objection, the date, time, and place of the hearing, and a summary of commission procedures. In addition, the Secretary shall make a reasonable effort to notify all parties by telephone or email at once. The written notice must be given not later than 5:00 p.m. of:
> 1. The Wednesday after the last day to file objections to nomination papers or certificates of nomination for regular elections, or state initiative or referendum petitions;
> 2. The Friday after the last day to file objections to supplemental signatures necessary to place a state initiative question on the ballot after rejection by the general court;
> 3. The Tuesday after the last day to file objections to nominations made by regular state primaries.

950 CMR § 59.02(4)(b). Likewise, M.G.L. ch. 55B § 8 provides:

> The commission with respect to objections to certificates of nominations or nomination papers except those for a special primary or election shall by five o'clock post meridian of the Wednesday following the last day for filing such objections notify all parties involved that objection has been made to their certificates of nomination or nomination papers….
>
> The commission with respect to objections to nominations at state primaries, except special primaries shall by five o'clock post meridian of the Tuesday following the last day for filing such objections notify all candidates affected thereby that objection has been made to their nomination….
>
> Notification shall be by registered or certified mail, return receipt requested. All notifications shall contain in detail the objections made, as well as the date, time, and the location of said hearing….In addition, such notification shall also contain the rules or procedure that will be used in conducting said hearings.

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provided." 950 CMR 59.07(3). These regulations have not been amended during the pendency of these proceedings.

[18] These regulations define "Party" as, inter alia, "the objector, the respondent, all other candidates for the office (but at a primary for nomination), and the state committee of any affected political party." 950 CMR § 59.01(3)(g).

M.G.L. ch. 55B § 8. But contrary to both the regulations and the statute, the SBLC's January 10, 2024, notice did not "contain in detail the… date, time, and the location of [the] hearing."

Instead, two days after the SBLC's initial notice, on January 12, 2024, the SBLC sent notice that it would hold a "pre-hearing conference" on January 18, 2024 — a full two weeks after receiving the first Objection[19] — but did not specify what was to be discussed during this pre-hearing conference. Exhibit 4 (Notice of Pre-Hearing Conference). Per the regulations, these conferences may be called to consider:

> (a) the simplification or clarification of the issues;
> (b) the possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreement which will avoid unnecessary proof;
> (c) the limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
> (d) the possibility of agreement disposing of all or any of the issues in dispute; and
> (e) such other matters as may aid in the disposition of the adjudicatory proceeding.

950 CMR § 59.05(1)(a) ("Pre-Hearing Conference").

On January 16, 2024, Objectors filed a "Motion for Summary Decision" with the SBLC pursuant to 950 CMR § 59.03(2)(f). Exhibit 5 (Objectors' Motion for Summary

[19] M.G.L. ch. 55B § 9 provides: "Hearings on objections to certificates of nomination or nomination papers, except for special primaries and elections, shall not be held prior to the second Monday following the Friday for filing such objections." Here, that date is January 22, 2024. But the regulations further provide: "The date of the hearing contained in the Secretary's notice may be the dated of an assignment session, at which the Commission may dispose of preliminary matters and continue the hearing to a later date." 950 CMR § 59.02(4)(d).

Decision). On January 17, 2024, Trump and the Massachusetts Republican Party each filed motions to dismiss.[20]

On January 18, 2024, at 10:10 AM, the SBLC held its pre-hearing conference (which lasted 15 minutes). Exhibit 18 (Transcript of Pre-Hearing Conference). After introducing Tassinari, calling the case, swearing the stenographer, and having attorneys make their appearances, the SBLC Chair explained the purpose of the pre-hearing conference:

> [T]he Commission must first determine the threshold legal issue as to whether or not the objection relates to matters within the jurisdiction of the Commission. As such we'll take this matter for further review by the Commission under -- at the conclusion of the hearing we'll take that issue under advisement. Before that we'll ask to see if either counsel, first for the Objectors and then for the Respondent, wish to be heard on just the issue of jurisdiction. And we'll give each counsel five minutes to address the Commission on the issue of jurisdiction and jurisdiction only under Mass General Laws 55B.

Id. at 5. Each counsel was allowed five minutes to discuss statutory jurisdiction solely under the provisions of M.G.L. ch. 55B; any time counsel spoke about any matter not related specifically to jurisdiction under this chapter, the Chair admonished them to confine their remarks to this topic. *Id.* at 6, 8, 9, 12, 13. Following each party's brief arguments, the Chair stated: "This is a pretrial hearing. This Commission as I said has the threshold issue of whether or not we have jurisdiction. Each counsel have will have [sic] leave to file any other responses to yesterday's filings by tomorrow." *Id.* at 13. The Chair set the close of business the next day as the deadline by which

[20] These motions were both signed by the same counsel, who has appeared for both Trump and the Massachusetts Republican Party. The Party's Motion to Dismiss was substantively identical to a portion of Trump's Motion to Dismiss. *See* Exhibit 6 (Trump Motion to Dismiss); Exhibit 7 (MassGOP Motion to Dismiss).

Objectors must respond to the outstanding motions — including Trump's motion to dismiss and the Massachusetts Republican Party's motion to dismiss, both of which had been filed less than 24 hours earlier — as well as submit additional briefing on the SBLC's jurisdictional concerns, 31 hours later. *See* Exhibit 18 at 13; Exhibit 8 (Email from Michelle Tassinari).

The Chair then abruptly declared the conference over, stating: "Those will be before the Commission if we get beyond the issue of jurisdiction. This is a pretrial. We're not taking testimony today. This Commission will adjourn. Thank you all very much." Exhibit 18 at 13. As he did so, Counsel for Objectors attempted to raise issues related to a possible hearing, *see* 950 CMR § 59.05(1)(a), but was prevented from doing so:

> MS. LISS-RIORDAN: Commissioner, if we may[—] given that any hearing in this case must be concluded and a decision rendered by a week from Monday, if there is going to be a hearing we need to be able to prepare for it right now. I was hoping that we could discuss or find out –
>
> MR. CRIMMINS [SBLC Chair]: There will be no other discussion on anything other than what I just said. We're adjourned. Everybody will be notified if they need to be.

Id. at 13-14. The conference then adjourned at 10:25 a.m., just 15 minutes after it began. *Id.* at 14.

That same day, recognizing the grave potential for prejudicial delay given the looming, mandatory deadline requiring the SBLC to "render a decision … not later than five o'clock post meridian on the twenty-first day after the last day fixed for filing objections to such certificates or papers," M.G.L. ch. 55B § 10 — here, January

29, 2024, by 5:00 PM — the Objectors filed an administrative motion requesting that the SBLC:

> issue a determination on the question of its own statutory jurisdiction to hear these Objections, and inform the parties whether a hearing will proceed (or whether the Commission will dispose of this matter through Objectors' Motion for Summary Decision) no later than Monday, January 22, 2024, at 12:00 noon Eastern Standard Time.

Exhibit 9 at 1 (Objectors' Administrative Motion). The motion further requested that the SBLC "set Friday, January 19, 2024, as the deadline for other parties to respond to this motion so that the Commission is able to make an informed decision on this motion before noon on Monday." *Id.*

As a basis for their request, the Objectors explained:

> [T]he Commission is required to render its final decision on the merits in this matter by January 29, 2024, at 5:00PM. If this Commission determines — as the plain text of the statutes unmistakably requires — that it has jurisdiction to hear this challenge, before January 29, 2024, it would still need to: (1) adjudicate Objectors' motion for summary decision; (2) adjudicate Respondent's and the Massachusetts Republican Party's motions to dismiss; and if these motions are denied in whole or in part, it would further need to: (3) address any issues related to discovery; (4) address any pre-hearing matters in advance of a hearing; (5) either grant Objectors' Motion for Summary Decision or set and hold a hearing on the merits; and (6) issue a decision on the merits that "contain[s] a statement of the reason therefor, including a determination of every issue of fact or law necessary to the decision." Parties also have the right to oral argument on their motions. 950 CMR 59.05(1)(f).
>
> If the Commission dismisses this Petition for lack of jurisdiction, the parties need sufficient time to appeal such a decision, and if a court of law reverses the dismissal, all parties need sufficient time to present their respective cases in order for a decision to be made by the Commission as required by 5:00 p.m. on January 29, 2024. Likewise, if the Commission grants in full either Objectors' motion for summary decision or one of Respondent's/Massachusetts Republican Party's motions to dismiss, any non-prevailing party similarly needs sufficient time with which to seek appellate relief.

> Appellate courts, too, need sufficient time to adjudicate disputes before the primary election.
>
> Thus, delaying adjudication of the jurisdictional determination any later than Monday, January 22, 2024 at noon would have cascading effects on other deadlines and processes and has the potential to harm all parties as well as the public interest.
>
> Therefore, because doing so is necessary not only "to secure a just and speedy determination," but also to ensure parties are afford their constitutional "right to be heard at a meaningful time and in a meaningful manner," and avoid committing reversible error, Objectors request that this Commission grant this administrative motion to rule on its statutory jurisdiction – and inform the parties whether and when it will hold a hearing (or dispose of this matter by granting Objectors' Motion for Summary Decision) by Monday, January 22, 2024, at 12:00 noon Eastern Standard Time.

Id, at 2–4 (footnotes omitted).

The Objectors' administrative motion further explained: "In the Colorado proceedings, 'The evidentiary portion lasted five days, with closing arguments almost two weeks later, on November 15. During those two weeks, the Electors, the Secretary, President Trump, and CRSCC submitted proposed findings of fact and conclusions of law.'" *Id.* at 3, n.11 (quoting *Anderson v. Griswold*, 2023 WL 8770111, at *5 (Ex. A of Objections)). And the administrative motion underscored that "[d]ue process includes the right to be heard at a meaningful time and in a meaningful manner," and that "it is reversible error wherever 'the substantial rights of any party may have been prejudiced because the agency decision is in violation of constitutional provisions; or…made upon unlawful procedure; or…arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Id.* at 3–4 (alterations omitted) (first quoting *In re Guardianship of V.V.*, 470 Mass. 590, 592 (Mass. 2015); then quoting M.G.L. ch. 30A § 14; then citing M.G.L. 55B § 4

(mandating Commission "establish rules of procedure in conformance with the provisions of chapter thirty A")).

The next day, on Friday, January 19, 2024, Objectors filed Oppositions to the Motions to Dismiss, as well as the requested memorandum in support of the SBLC's statutory jurisdiction. *See* Exhibit 10 (Objectors' Opposition to Trump's and MassGOP's Motion to Dismiss); Exhibit 12 (Objectors' Memorandum in Support of Jurisdiction). Trump filed a memorandum in opposition to the SBLC's statutory jurisdiction but did not oppose Objectors' Motion for Summary Decision.[21] On January 22, 2024, the SBLC entered an order dismissing Petitioners' Objections for lack of jurisdiction. Exhibit 19 (Order Denying Jurisdiction).

JURISDICTION

Jurisdiction over this Emergency Petition is proper pursuant to Mass. Gen. Laws ch. 56, § 59, which provides that "[t]he supreme judicial court . . . shall have jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and may award relief formerly available in equity or by mandamus."

In addition, jurisdiction is also proper pursuant to M.G.L. c. 214, § 1, which confers on this Court "original and concurrent jurisdiction of all cases and matters of equity cognizable under the general principles of equity jurisprudence," and M.G.L. c. 231A § 1, which establishes that this Court "may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby."

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[21] An "issue not raised in [an] administrative proceeding may not be raised on judicial review of [the] proceeding." *Town Of Middleborough v. Hous. Appeals Comm.*, 449 Mass. 514, 519 (2007) (citing *Hingham v. Department of Telecommunications & Energy,* 433 Mass. 198, 215 (2001)).

Because Petitioners initially sought review before the SBLC, the administrative tribunal empowered to resolve their Objections, and because the SBLC has entered a final order dismissing these Objections for lack of jurisdiction, Petitioners have exhausted all administrative remedies and there is no barrier to resolution on the merits by this Court. *See, e.g.*, *Robinson v. State Ballot L. Comm'n*, 432 Mass. 145, 148 (2000) (single justice had jurisdiction over election law challenge where "[o]n learning that any administrative remedies were foreclosed, [petitioner] timely prepared and filed a petition.").

This Court's equitable and declaratory jurisdiction exists precisely for this kind of emergency situation. This Petition challenges the placement on the presidential primary ballot of an individual who is constitutionally ineligible to hold elected office because he engaged in an insurrection against the United States Constitution. Because of the many interlocking legal and administrative requirements for conducting a primary election, Massachusetts law requires that all objections before the SBLC to the placement of individuals on a presidential primary ballot be adjudicated on the merits by January 29, 2024. 950 C.M.R. 59.02(3)(a); 59.06(3). The SBLC regulations provide for the possibility of extensive briefing and a hearing, which help ensure that all parties' due process rights are respected before the merits of an objection are resolved. Yet the SBLC has dismissed Petitioners' objections on jurisdictional grounds and, as a result, has refused to take any of the steps necessary to resolve the merits prior to the statutory deadline. At this point, without review and an order from this Court, the SBLC cannot conduct the necessary proceedings in

accordance with its own regulations and the requirements of due process and issue a decision on the merits by its statutory deadline, January 29, 2024.

If Petitioners' challenge to Trump's eligibility is not resolved prior to the statutory deadline, Secretary Galvin has indicated Trump will appear on the primary ballot, despite these serious challenges to his constitutional ineligibility to serve as president or appear on the Massachusetts ballot.[22] Were that to occur, Petitioners' Objections – which seek the removal of Trump from the ballot due to his constitutional ineligibility – would be rendered moot. Accordingly, Petitioners seek emergency relief from this Court in order to secure expeditiously a ruling on the merits and to provide guidance for election officials and clarity for voters in light of an impending election, a function this Court has performed in an exercise of its equitable and declaratory jurisdiction on numerous occasions. *See, e.g., Goldstein v. Sec'y of Commonwealth*, 484 Mass. 516 (2020); *Libertarian Ass'n of Massachusetts v. Secretary of Com.*, 462 Mass. 538 (2012); *Wyler v. Secretary of the Commonwealth*, 441 Mass. 22 (2004).

Given the impending primary election, Petitioners have no other adequate or effective remedy. *Coach & Six Restaurant, Inc. v. Public Works Comm'n*, 363 Mass. 643, 644 (1973). They have exhausted all administrative remedies by making every effort to obtain relief at the SBLC consistent with Massachusetts election law. *Gordon v. Hardware Mut. Cas. Co.*, 361 Mass. 582, 587 (1972). They do not seek

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[22] Matt Stout, *Trump likely to still appear on Maine ballot despite ruling, Massachusetts' top elections official says*, BOSTON GLOBE (Jan. 2, 2024, 3:14 PM), https://www.bostonglobe.com/2024/01/02/metro/william-galvin-secretary-of-state-shenna-bellows-donald-trump/.

this Court's review "lightly." *Commonwealth v. Richardson*, 454 Mass. 1005, 1006 (2009).

ARGUMENT

I. This Court should declare that Trump is ineligible to appear on the presidential primary ballot and order the SBLC and the Secretary of the Commonwealth to take all actions necessary to effectuate Trump's removal from the ballot

As noted above, this Court is specifically empowered in "civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and may award relief formerly available in equity or by mandamus." M.G.L. ch. 56 § 59. In passing this statute, "the Legislature intended that a [party]… should have opportunity for meaningful judicial review, speedily available, under G.L. c. 56, s 59," which this Court has construed "to afford full and adequate judicial review." *McCarthy v. Sec'y of Com.*, 371 Mass. 667, 680 (1977). As such:

> With or without a finding of jurisdiction in the commission, the [Supreme Judicial] Court has broad equity power to enforce the election laws under G.L. c. 56, s 59, and could, therefore, conduct a completely de novo hearing with respect to the dispute regardless of the action taken by the commission. Particularly given the complicated nature of disputes regarding failures to certify, the stringent time limitations within which the commission must render its decision, and the relatively brief span of time between the petition filing deadline and the time when the ballot preparation process must begin, one single review procedure…seems the more appropriate mechanism.

Id. at 677.

At the same time, this Court need not engage in any of the intensive fact-finding that ballot disputes usually require. This is because there is already a voluminous, extensive factual record — which was developed through full and fair court proceedings that Trump himself actively participated in through counsel and

which were subjected to appellate review by one of this Court's sister states' courts. *See Anderson*, WL 8770111, at *4–5 (recounting the extensive motions practice, legal briefings and memoranda, 5-day trial full of live witnesses and other evidence, and appellate processes). Indeed, not only did Trump have the full and fair opportunity to challenge the factual findings and legal conclusions before the Colorado trial court and Colorado Supreme Court; he also had the opportunity to challenge their applicability here in this matter, through a properly noticed Motion for Summary Decision, where Petitioners sought to apply collateral estoppel, before the SBLC. He failed to take any action to oppose that motion – despite the SBLC expressly declaring that responses to any then-pending motions were due by January 19, 2024. *See* Exhibit 2, at 13; Exhibit 8 (Email from Michelle Tassinari).

Accordingly, this Court should adopt the factual findings as affirmed by the Colorado Supreme Court in *Anderson*, hold that Trump is therefore ineligible under Section 3 of the Fourteenth Amendment to the United States Constitution to serve as president, hold that he is thus barred under Massachusetts law from appearing as a candidate on the upcoming Massachusetts presidential primary ballot, and order the Secretary to remove his name from the ballot and order the Commission to order the Secretary to remove his name from the ballot.

A. The Colorado Supreme Court's decision in *Anderson* should be given preclusive effect, and Trump is estopped from relitigating the facts and legal issues decided therein

In the SBLC proceedings, Objectors filed a Motion for Summary Decision,[23] arguing:

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[23] *See* 950 CMR § 59.03(2)(f) (authorizing such motions).

> The legal and factual issues underlying these Petitions have already been established, and the Commission can and should give preclusive effect to Anderson. In the alternative, the Commission should at the very least adopt the factual findings of Anderson and In re: Challenges of Rosen et al and hear argument restricted to legal issues. The Massachusetts regulations are designed to ensure prompt resolution of such challenges, and there is no reason for the Commission to require relitigation of the full trial that has already been held in Colorado.

Exhibit 5 at 22. The SBLC gave Trump and all other parties until January 19, 2024, at 5:00 PM to respond to all pending motions, but no responses were filed to this motion. Exhibit 2 at 13 (transcript). As such, Trump and the Republican Party have forfeited the opportunity to oppose Petitioners' motion, which seeks the application of collateral estoppel. *See Albert v. Municipal Court of City of Boston*, 388 Mass. 491, 493 (1983) ("A party is not entitled to raise arguments on appeal that he could have raised, but did not raise, before the administrative agency."); *M. H. Gordon & Son, Inc. v. Alcoholic Beverages Control Commission*, 386 Mass. 64, 68 (1982) (citing *Charron's Case*, 331 Mass. 519, 523 (1954)) ("The general rule is that it is too late to raise a claim before a reviewing court if the point had not been raised before the administrative agency."). Therefore, this Court has full power to apply collateral estoppel to give preclusive force to the Colorado Supreme Court's decision in *Anderson*.[24]

Even if the Court chose not to apply the standard waiver rules, *Anderson* should nevertheless be given preclusive force. This Court has explained that where

[24] Objectors-Petitioners incorporate by reference all additional arguments contained in their Motion for Summary Decision before the SBLC, attached here as Exhibit 5.

"the issue central to" a party's claims has been decided in a prior action and the requirements for collateral estoppel are satisfied, "application of the doctrine of issue preclusion… prevents [a party] from relitigating the issue," and a "motion for summary judgment [i]s properly allowed." *Alicea v. Com.*, 466 Mass. 228, 229 (2013); *see also In re Goldstone*, 445 Mass. 551, 560–61 (2005) (explaining a party cannot present evidence that could have been, but was not, offered in prior proceeding in order to create genuine issue at summary judgment stage to avoid estoppel effect of prior decision).

Here, in addition to a very diverse array of leading legal scholars from all ideological persuasions who agree that Trump is disqualified from seeking the presidency under Section 3 of the Fourteenth Amendment,[25] two different states (Colorado and Maine) have adjudicated the question of Trump's disqualification under Section 3—and both found him disqualified. At the same time, and importantly, *no* federal or state court anywhere in the country has come to a contrary conclusion on the merits. Those courts that have declined to order he be removed from the ballot have done so on procedural grounds, such as lack of standing,[26] or (in

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[25] *E.g.*, William Baude & Michael Stokes Paulsen, *The Sweep and Force of Section Three*, 147 U. Pa. L. Rev. __ (2023) (forthcoming); J. Michael Luttig & Laurence H. Tribe, *The Constitution Prohibits Trump From Ever Being President Again*, Atlantic (Aug. 19, 2023), https://www.theatlantic.com/ideas/archive/2023/08/donald-trump-constitutionally-prohibited-presidency/675048; Mark S. Brodin, *Trump's insurrection should disqualify him for office*, Commonwealth Mag. (Sept. 4, 2023), https://commonwealthbeacon.org/opinion/trumps-insurrection-should-disqualify-him-for-office/.

[26] *See, e.g., Castro v. Scanlan*, 86 F.4th 947, 953 (1st Cir. 2023) (ruling that plaintiff lacked standing, while expressly declining to entertain trial court's musings about political question doctrine).

state courts) based on purely procedural or state law grounds that are inapplicable here (*see infra*).[27]

Only two cases have actually been decided on the merits: *Anderson v. Griswold*, 2023 WL 8770111 (Colo. 2023) (Ex. A to Objection), decided by the Colorado Supreme Court after a full and extensive trial below, and *In re: Challenges of Rosen et al* (Ex. C to Objection), decided by the Maine Secretary of State. Both of these decisions — following full and fair opportunities for both Trump and the challengers to be heard — concluded that Trump is ineligible to stand for election pursuant to Section 3 of the Fourteenth Amendment. As a result, the federal Full Faith and Credit Clause instructs that this Court should give credence to its sister state's decision in *Anderson*.

In *Anderson*, after extensive briefing and consideration of a voluminous evidentiary record produced in a five-day trial (the full transcript of which is attached as exhibits to Petitioners' Objections, and thus were included in the record at the SBLC, *see* exhibits to Exhibit 1), the Colorado Supreme Court determined that:

> • Congress does not need to pass implementing legislation for Section Three's disqualification provision to attach, and Section Three is, in that sense, self-executing.

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[27] *See LaBrant v. Sec'y of State*, __ N.W.2d __, 2023 WL 8656163, *16 & n.18 (Mich. Ct. App.) (holding challenge unripe at primary election stage under state law), *leave to appeal denied*, No. 166470 (Mich. Dec. 27, 2023) (mem.); *Growe v. Simon*, 997 N.W.2d 81, 83 (Minn. 2023) (dismissing on grounds of state law but noting that dismissal was "without prejudice as to the general election"); *State ex rel Nelson et al. v. Griffin-Valde*, No. S070658 (Or. Jan. 12, 2024) (declining without prejudice discretionary mandamus petition in light of U.S. Supreme Court's grant of certiorari in *Donald J. Trump v. Norma Anderson, et al.* (No. 23-719)).

> • Judicial review of President Trump's eligibility for office under Section Three is not precluded by the political question doctrine.
>
> • Section Three encompasses the office of the Presidency and someone who has taken an oath as President. . . .[28]
>
> • The district court did not abuse its discretion in admitting portions of Congress's January 6 Report into evidence at trial.
>
> • The district court did not err in concluding that the events at the U.S. Capitol on January 6, 2021, constituted an "insurrection."
>
> • The district court did not err in concluding that President Trump "engaged in" that insurrection through his personal actions.
>
> • President Trump's speech inciting the crowd that breached the U.S. Capitol on January 6, 2021, was not protected by the First Amendment.
>
> The sum of these parts is this: President Trump is disqualified from holding the office of President under Section Three.

Anderson, 2023 WL 8770111, at *1–3. This Court must give them *at least* as much preclusive effect as would the courts of Colorado in which the judgment was rendered. *Durfee v. Duke*, 375 US 106, 109 (1963) ("Full faith and credit . . . requires every State to give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it."); *see also Heron v. Heron*, 703 N.E.2d 712, 715 (Mass. 1998) (applying Nevada law to determine preclusive effect of Nevada judgment). But this is, of course, a ceiling and not a floor. *See Dancor Const., Inc. v. FXR Const., Inc.*, 64 NE 3d 796, 810 (Ill Ct App 2016) (stating that forum state can apply its own law to preclude relitigation of issues even where the rendering state's law would not).

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[28] The trial court in Colorado had ruled that Section 3 does not encompass the presidency or someone who took their oath as President; the Colorado Supreme Court reversed the trial court on these points alone.

Under Colorado law, as elsewhere, the party seeking to bar relitigation of an issue must show:

> (1) the issue is identical to an issue actually litigated and necessarily adjudicated in the prior proceeding; (2) the party against whom [preclusion] was sought was a party to or was in privity with a party to the prior proceeding; (3) there was a final judgment on the merits in the prior proceeding; and (4) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issues in the prior proceeding.

Stanton v. Schultz, 222 P3d 303, 307 (Colo 2010). Issue preclusion does not require mutuality and "can be invoked defensively or offensively." *Foster v. Plock*, 394 P3d 1119, 1124-26 & n5 (Colo 2017). Here, as explained more fully in Objectors-Petitioners' Motion for Summary Decision at the SBLC (which Objectors hereby incorporate by reference), *see* Exhibit 5, these criteria are all met. These Objections raise identical issues that were fully litigated and decided by the Colorado courts in *Anderson* — namely, whether Trump is disqualified under Section 3 from the presidency because he engaged in an insurrection against the Constitution after taking the presidential oath to support the Constitution. At the same time, Trump had a full and fair opportunity, as party intervenor, to litigate the issues, which were briefed, tried, and robustly litigated in both the Colorado district court and the Colorado Supreme Court. The trial "took place over five days and included opening and closing statements, the direct- and cross examination of fifteen witness, and the presentation of ninety-six exhibits," all of which culminated in a final judgment on the merits as contained in the trial court's "comprehensive, 102-page order." *Anderson*, 2023 WL 8770111, at *18. The parties *further* litigated the issues before the Colorado Supreme Court, which issued a final judgment on the merits in a detailed 134-page opinion addressing and resolving the central issue here: whether Trump engaged in

insurrection and is legally barred from the presidency as a result. Finally, the determination of the issue was "necessary to judgment." *Huffman v. Westmoreland Coal Co.*, 205 P3d 501, 507 (Colo Ct App 2009). Accordingly, this Court should give credence to the decision reached in *Anderson* and limit its review to Massachusetts-specific issues.[29]

B. Because Trump is ineligible to serve as President, he is barred from appearing on the Massachusetts ballot as a primary candidate for this office

Given that Trump is ineligible to serve as President under Section 3 of the Fourteenth Amendment to the United States Constitution, Massachusetts law and decades of historical precedent make clear that his name must be removed from the Massachusetts primary ballot.

Indeed — as this Court has recognized for the last 100 years — only candidates eligible for the office they seek may be placed on Massachusetts ballots, whether nominated by parties, signature collection, or otherwise:

> The general purpose of the Legislature in enacting the statutes regulating primaries and elections was to make a reasonably consistent and harmonious body of law which should afford to qualified citizens an opportunity to cast votes efficient to express their preferences **and which should have the final result of filling the offices required by law**. Plain omissions in the law to provide for exigencies which may arise cannot be supplied by those charged with administering the law or by the courts in construing and interpreting the statutes. It is the duty of the courts to discover the real meaning contained in the words used in a statute, to elucidate the signification of those words, and to correlate the several parts of a complicated enactment so as to give a rational and workable effect to the whole so far as practicable….

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[29] As Petitioners argued to the SBLC in their Motion for Summary Decision, alternatively, this Court could adopt the factual findings from *Anderson* and issue its own ruling on the legal issues presented here. Or the Court could take notice of the facts developed at trial in *Anderson* (through the transcripts attached as exhibits to Petitioners' Objections) and draw its own legal conclusions from those facts.

> The provisions of G. L. c. 53, §§ 1, 24, must be read in the light of that dominant requirement. We interpret all of these provisions to mean as applied to the facts of the case at bar that at a primary of any political party for the nomination of candidates where two or more persons are to be elected to an office, such political party may nominate as many candidates with such qualifications as to residence or otherwise as may be elected to such office. **The party nominations must be effective to the end of an election so that any party may nominate as many such candidates only as may be elected under the law**. **More narrowly stated the word 'candidates' in the first sentence of G. L. c. 53, § 1, signifies 'candidates capable under the law of being elected.**'

Thacher v. Cook, 250 Mass. 188, 190–91 (Mass. 1924) (emphasis added).

Further, the General Court has created an explicit statutory scheme for ensuring that candidates meet the constitutional requirements for the offices they seek through its establishment of the SBLC. *See* M.G.L. ch. 55B § 1 *et. seq.*; *see also infra*. As this court has long recognized, "The statute relating to objections to nominations for State offices that are to be considered by the State ballot law commission is [written] in broad terms." *Compton v. State Ballot L. Commn.*, 42 N.E.2d 288, 294 (Mass. 1942). It provides: "The commission may investigate upon objection made in accordance with the provisions of this chapter the legality, validity, completeness and accuracy of all nomination papers and actions required by law to give candidates access to a state ballot or to place an initiative or referendum on a state ballot." M.G.L. ch. 55B § 4. It goes on to read: "The commission shall have jurisdiction over and render a decision on any matter referred to it, pertaining to the statutory and constitutional qualifications of any nominee for state, national or county office [and] the certificates of nomination or nomination papers filed in any presidential or state primary…" *Id.* And, when proper objections asserting candidates do not possess the requisite qualifications to hold the offices they seek is sustained,

the SBLC must "order the Secretary not to print on the ballot the name of the respondent candidate." 950 CMR § 59.06(2)(c).

Here, however, the SBLC has shirked its responsibility to effectuate these statutes. This has left the Objectors-Petitioners with no choice but to invoke this Court's jurisdiction over the matter pursuant to M.G.L. ch. 56, § 59, which provides that "[t]he supreme judicial court . . . shall have jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and may award relief formerly available in equity or by mandamus." *See also Robinson v. State Ballot L. Comm'n*, 432 Mass. 145, 148 (2000) (single justice had jurisdiction over election law challenge where, "[o]n learning that any administrative remedies were foreclosed, [petitioner] timely prepared and filed a petition."). Accordingly, Objectors-Petitioners respectfully petition this Court to order the Secretary to remove Donald John Trump's name from the presidential primary ballot and to order the SBLC to order the Secretary to do the same.

II. Alternatively, this Court should declare that the SBLC has jurisdiction over Petitioners' Objections

In the alternative to issuing the full relief Petitioners request, the Court should at the very least declare that the SBLC has jurisdiction over these Objections and order it to decide these Objections on the merits – post haste.

In its decision concluding that it did not have jurisdiction over these Objections, the SBLC ignores the plain text of the statute and bends over backwards to arrive at its forgone conclusion that it is not required or permitted to adjudicate Donald Trump's eligibility. But the luxury of avoiding their duty to administer the

laws equally without fear or favor — whether cloaked in pretenses of jurisdiction or otherwise — is foreclosed to public officials. Indeed:

> It is a principle lying at the foundation of all well ordered jurisprudence, that every judge, whether of a higher or lower court exercising the jurisdiction vested in him by law, and deciding upon the rights of others, should act upon his own free, unbiassed convictions, uninfluenced by any apprehension of consequences.

Pratt v. Gardner, 56 Mass. 63, 68–69 (1848); *see also In re Enf't of Subpoena*, 463 Mass. 162, 171, 972 N.E.2d 1022, 1030 (2012). Here, this Court is once again asked to step in and breathe life into these principles.

This is because the SBLC's jurisdiction over petitioners' objection is indisputable. The plain text of the statutory provisions defining the scope of the SBLC's authority and structuring the objection process establish that the SBLC can, and indeed must, adjudicate challenges to the constitutional eligibility of a candidate who has been nominated by a political party to appear on a presidential primary ballot. On the flip side, adopting the SBLC's contorted conception of its jurisdiction — wherein it converts a clear legal regime into a statutory jigsaw puzzle to thread the needle just so and avoid having to rule on these particular Objections — produces absurd and illogical results that contravene the clear intentions of the Legislature.

Accordingly, this Court should either grant the relief Objectors seek and order that Trump not appear on the Republican primary presidential ballot - or issue a declaratory judgment holding that the SBLC possesses jurisdiction over Petitioners' Objections and order the SBLC to immediately conduct all proceedings necessary to issue a final decision on the merits of petitioners' objections by January 29, 2024 (or as soon thereafter as this Court finds appropriate).

A. The plain text of the applicable statutes demonstrates that the SBLC has jurisdiction over a challenge to the eligibility of a candidate nominated by a political party to appear on a presidential primary ballot

"A fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." *Sullivan v. Town of Brookline*, 435 Mass. 353, 360 (2001). "Agency expertise or policy preference cannot alter the plain meaning of unambiguous statutory language." *Herrick v. Essex Reg'l Ret. Bd*., 77 Mass. App. Ct. 645, 649 (2010). Here, the plain meaning of the statutory language defining the scope of the SBLC's authority and the process for objecting to a candidate's eligibility is readily apparent, and the result is fully consistent with the Legislature's intent: the SBLC has jurisdiction over petitioners' challenge to Trump's placement on the Republican presidential primary ballot.

1. The SBLC has jurisdiction over challenges to the legality of a party's certificate of nomination to appear on a presidential primary ballot

The scope of the SBLC's authority is defined by M.G.L. ch. 55B, § 4, which provides in relevant part:

> The commission may investigate upon objection made in accordance with the provisions of this chapter *the legality, validity, completeness and accuracy of all nomination papers and actions required by law to give candidates access to a state ballot* or to place an initiative or referendum on a state ballot.
>
> The commission *shall* have jurisdiction over and render a decision on any matter referred to it, pertaining to the statutory and *constitutional qualifications* of any nominee for state, national or county office [and] *the certificates of nomination or nomination papers filed in any presidential or state primary*, state election, or special state primary or election…

M.G.L. ch. 55B, § 4 (emphasis added). The next section specifies where and when "[o]bjections to *certificates of nomination and nomination papers for candidates at a presidential primary* . . . shall be filed." M.G.L. ch. 55B § 5 (emphasis added). There is no logical way to read these provisions as depriving the SBLC of jurisdiction to resolve the petitioners' challenge without rendering the entire statutory scheme either illogical and absurd, or facially unconstitutional.

Under M.G.L. ch. 53 § 70E, there are three ways for an individual to appear on a presidential primary ballot: (1) the Secretary of the Commonwealth places that person on the ballot because they are "generally advocated or recognized in national news media throughout the United States"; (2) the Secretary "prepare[s] and furnishe[s]" "nominating papers"; or (3) by "appear[ing] on written lists signed by the chairman of the state committees of the political parties." As he acknowledged in the proceedings below, Trump appears on the primary ballot pursuant to route three: he was "placed on the presidential primary ballot at the request of the State Republican Party . . . pursuant to M.G.L. c. 53 sec. 70E." Exhibit 13 at 2 (Trump Supplemental Memorandum in Support of Motion to Dismiss).

The SBLC argues that "[w]hile some provisions of chapter 55B, when read independently, may appear to give the Commission plenary power to hear all election matters relating to candidates seeking ballot access, a complete reading shows otherwise" because, in their view, a portion in M.G.L. ch. 55B § 5 that **sets timelines** for "[o]bjections to certificates of nomination and nomination papers for candidates at a presidential primary" showcases the Legislature's intent to entirely foreclose any other objections. Exhibit 19 at 5–8 (SBLC decision). But the portion of M.G.L. ch.

55B § 5 that the SBLC cites only provides timelines for objections; it does not provide the bases for such objections.[30] Those are contained in the preceding section, M.G.L. ch. 55B § 4.[31] Accordingly, the *most* the SBLC's arguments that "there is no 'nomination' or 'nomination papers'" could hope to establish with respect to § 5 is that there is *no* statutory deadline for such challenges, which are indisputable authorized by § 4. But this contention only bolsters Objectors' arguments: it is far more likely that the terms "certificates of nomination and nomination papers" encompass all vehicles by which a candidate can gain access to the "presidential primary" ballot. M.G.L. ch. 55B § 5; *see infra*. Otherwise, there exists this class of

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[30] "Objections to certificates of nomination and nomination papers for candidates at a presidential primary, state primary, or state election shall be filed with the state secretary within seventy-two hours succeeding five o'clock post meridian of the last day fixed for filing nomination papers." M.G.L. ch. 55B § 5.

[31] It bears repeating that this section explicitly provides:

> The commission may investigate upon objection made in accordance with the provisions of this chapter the legality, validity, completeness and accuracy of all nomination papers and actions required by law to give candidates access to a state ballot or to place an initiative or referendum on a state ballot.
>
> The commission shall have jurisdiction over and render a decision on any matter referred to it, pertaining to the statutory and constitutional qualifications of any nominee for state, national or county office [or] the certificates of nomination or nomination papers filed in any presidential or state primary….

M.G.L. ch. 55B § 4. Objectors incorporate by reference all arguments made herein, as well as in their Objections, Motion for Summary Decision, and Memorandum of Law in Support of the State Ballot Law Commission's Jurisdiction, *see* Exhibit 1; Exhibit 2; Exhibit 5; Exhibit 11, as to why these provisions — read together and in their separate component parts — clearly establish the Commission's jurisdiction.

presidential primary candidates whose eligibility to appear on the ballot can be challenged at *any* time.

But by necessity, the Secretary's placement of a political party's requested candidate(s) on a primary ballot, requires the party to convey a "certificate of nomination." *Att'y Gen. v. McOsker*, 198 Mass. 340, 343 (1908); *see also Indep.-Progressive Party v. Sec'y of Commonwealth of Massachusetts*, 266 Mass. 18, 20 (1929) (describing political party's request to secretary to place nominee on ballot as involving "certificates of nomination"); *Libertarian Ass'n of Massachusetts v. Secretary of Com.*, 462 Mass. 538, 542 (2012) ("With regard to presidential and vice-presidential candidates, the party's State committee need only submit a certificate of nomination to the Secretary bearing the surnames of the party's chosen candidates" to place those candidates on the ballot,"). Thus, the SBLC possesses jurisdiction over petitioners' challenge to Trump's placement on the primary ballot: M.G.L. ch. 55B, § 4 expressly provides that the SBLC "shall have jurisdiction over and render a decision on any matter referred to it, pertaining to . . . the certificates of nomination . . . filed in any presidential or state primary," and M.G.L. ch. 55B § 5 sets forth a procedure for raising "[o]bjections to certificates of nomination . . . .for candidates at a presidential primary." On this issue, the relevant statutes could hardly speak in a clear voice.

Even if the meaning of "certificates of nomination" was not fixed by prior precedent, the term "certificates of nomination" as used in M.G.L. ch. 55B § 5 must have *some* meaning. In general, the Legislature means what it says: interpretations of statutes that render certain phrases to be "unnecessary surplusage" should be avoided.

See, e.g., *City Elec. Supply Co. v. Arch Ins. Co.*, 481 Mass. 784, 790 (2019). If the reference in M.G.L. ch. 55B § 5 to "nomination papers" encompasses the signature collection route to ballot placement under § 70E,[32] then the reference in M.G.L. ch. 55B § 5 to "certificates of nomination" must refer to route three under § 70E, given how that phrase has been interpreted by Massachusetts courts. Otherwise, M.G.L. ch. 55B § 5's express provision for objections to "certificates of nomination and nomination papers for candidates at a presidential primary" is either duplicative or meaningless. "Such an interpretation of relationship between the two provisions would . . . controvert the established principle of statutory construction that every word in a statute should be given meaning." *Matter of Yankee Milk, Inc.*, 372 Mass. 353, 357–58 (1977).[33] By contrast, a reading that harmonizes chapter 53 and chapter 55B—which both address the same subject matter—would be consistent with established principles of construction. *Green v. Wyman-Gordon Co.*, 422 Mass. 551,

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[32] Alternatively, because the statute does not define the phrase "nomination papers," that phrase must be given its ordinary meaning. *Hallett v. Contributory Ret. Appeal Bd.*, 431 Mass. 66, 68 (2000) ("[A]bsent contrary legislative intent, words in statute should be accorded their plain and ordinary meaning."). The "plain and ordinary meaning" of the phrase "nomination papers" would certainly include the "lists of candidates for president" submitted by the state party chairs and prepared by the Secretary. *See "Nomination",* Black's Law Dictionary (11th ed. 2019) ("1. The act of proposing a person for election or appointment."); *cf. Court Paper*, Black's Law Dictionary (11th ed. 2019) ("A document that a party files with the court.").

[33] For the same reason, the express provision of a right to object to "nomination papers, initiative and referendum petitions *or primary nominations*" in M.G.L. ch. 55B § 5 must be read to provide a right to object to the placement of candidates on a primary ballot by some mechanism other than nomination papers. In addition to respecting basic principles of statutory construction, this interpretation would also give meaning to the phrase "actions required by law to give candidates access to a state ballot" as used in M.G.L. ch. 55B § 4, as it recognizes that individuals may be placed on a primary ballot without the use of "nomination papers."

554, 664 N.E.2d 808, 811 (1996) ("[W]e attempt to interpret statutes addressing the same subject matter harmoniously, 'so that effect is given to every provision in all of them.'" (quoting B Singer, Sutherland Statutory Construction § 51.02, at 122 (5th ed. 1992)).

Yet this entire argument pretends that M.G.L. ch. 55B § 4 does not explicitly provide:

> The commission may investigate upon objection made in accordance with the provisions of this chapter the legality, validity, completeness and accuracy of all nomination papers and actions required by law to give candidates access to a state ballot or to place an initiative or referendum on a state ballot.
>
> The commission shall have jurisdiction over and render a decision on any matter referred to it, pertaining to the statutory and constitutional qualifications of any nominee for state, national or county office…

M.G.L. ch. 55B § 4. The very first sentence grants the SBLC jurisdiction over objections to "the legality, validity, completeness and accuracy" of all "actions required by law" — here, M.G.L. ch. 53 § 70E — "to give candidates access to a state ballot." This, alone, provides ample jurisdiction over these Objections.

Yet even still, the next sentence — that the SBLC "shall have jurisdiction over and render a decision on any matter referred to it, pertaining to the statutory and constitutional qualifications of any nominee for state, national or county office," is another stand-alone basis.

The SBLC argues that the phrase "nominations" renders this sentence inapplicable to all primaries, not just presidential ones, because there are no "nominees" at the primary stage. But the notion that this Commission cannot

adjudicate objections to nominations for candidates to appear on a primary ballot is disputed by the statutory text itself and runs contrary to the legislature's intent. In two different places, the statutes expressly contemplate objections to "certificates of nomination or nomination papers" filed in a "presidential . . . primary." M.G.L. ch. 55B, §§ 4-5. Moreover, the plain meaning of the phrase "nominees" encompasses candidates in primary elections. The Supreme Judicial Court has instructed that "[s]tatutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." *Commonwealth v. Rossetti*, 489 Mass. 589, 593 (Mass. 2022) (quoting *Randolph v. Commonwealth*, 488 Mass. 1, 5 (Mass. 2021)). Here, the plain meaning of the term "nominee" in its context is clear: one who has been nominated (by parties, voters' signatures, or otherwise) to stand as a candidate in primary election.

Yet even if this was not so clear — indeed, even if the plain meaning of the term "nominee" would generally *exclude* primary candidates — the term *as used in the statute* necessarily includes them. This is because, when interpreting statutory terms, this Court has instructed:

> Our primary duty in interpreting a statute is 'to effectuate the intent of the Legislature in enacting it. Ordinarily, where the language of a statute is plain and unambiguous, it is conclusive as to legislative intent. That said, we do not adhere blindly to a literal reading of a statute if doing so would yield an absurd or illogical result. See *Attorney Gen. v. School Comm. of Essex,* 387 Mass. 326, 336, 439 N.E.2d 770 (1982) ("We will not adopt a literal construction of a statute if the consequences of such construction are absurd or unreasonable"); 2A N.J. Singer & S. Singer, Statutes and Statutory Construction § 46:7 (7th ed. rev. 2014) ("if the literal text of an act is inconsistent with legislative meaning or intent, or leads to an absurd result, a statute is construed to agree with the legislative intention").

Com. v. Peterson, 476 Mass. 163, 167–68 (Mass. 2017) (internal quotations and citations omitted).

Here, it is indisputable that interpreting "nominee" to exclude all primary election candidates would indeed lead to absurd and illogical results as well as frustrate the Legislature's purpose in passing the statute. It would be flatly irrational to refuse the Commission jurisdiction to adjudicate qualifications at the *primary* stage, when voters have many more choices and could pivot to support a primary candidate that more closely aligns with their preferences if there top choice is disqualified, while simultaneously *providing* jurisdiction for the Commission to disqualify candidates at the *general election* stage, which — for most elections — would require essentially a new primary election if time permits. *See* M.G.L. ch. 53 § 14. And, if time does not permit, such a scheme has the effect of curbing democratic choice by removing the choice of a replacement general election candidate from the primary voters. *See id.* Moreover, given the extreme time constraints inherent to elections and the chaos that late-stage disqualifications can cause, this high potential for uncertainty further renders Trump's reading of the statute absurd, illogical, and contrary to its legislative purpose. In contrast, Objectors' interpretation avoids this absurdity and allows the Commission to fulfill the statute's intended purpose: keeping ineligible candidates off the ballot.

Second, Trump's view that primary election candidates' statutory and constitutional qualifications are outside the Commission's jurisdiction is directly in conflict with the Commission's well established precedents. For example, in *Thomson v. Romney*, SBLC 02-05 (June 25, 2002), voters filed objections challenging Mitt

Romney's eligibility to stand as a candidate in the Republican *primary* election for Governor, arguing that he failed to meet the constitutional residency qualifications.[34] Despite the objection challenging a *primary* election candidate *on the basis that he lacked the "statutory and constitutional qualifications" to hold the office* for which he sought the Republican general election nomination, this Commission held, "The State Ballot Law Commission (Commission) has jurisdiction to hear such objections pursuant to General Laws chapter 55B, section 4." *Accord Cote v. Meas*, SBLC 18-01 (June 22, 2018) (as to candidate in primary election, "The State Ballot Law Commission (Commission) has jurisdiction to determine whether he meets that [constitutional] qualification.") (citing G. L. c. 55B, § 4 (2016 ed.)); *Bean v. Uyterhoeven*, SBLC 20-04 (June 16, 2020) (as to candidate in primary election, "The State Ballot Law Commission (Commission) has jurisdiction to determine whether she meets that [constitutional] qualification.") (citing G. L. c. 55B, § 4 (2018 ed.)); *Dwyer v. Sarnowski*, SLBC 22-01 (June 23, 2022) (as to candidate in primary election, "The State Ballot Law Commission (Commission) has jurisdiction to determine whether the Respondent meets that [constitutional] qualification.") (citing G. L. c. 55B, § 4 (2020 ed.)); *see also Swig v. State Ballot Law Commission*, 265

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[34] The relevant language of the Massachusetts Constitution describes one's ability to become Governor and does not explicitly speak to their ability to stand as a candidate for Governor. *See* MASS. CONST. Pt. 2, C. 2, § 1, Art. 2 ("[N]o person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this commonwealth for seven years…"). *Cf.* U.S. CONST. Amend. XIV § 3 ("No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office…"). But because M.G.L. ch. 55B § 4 provides that the State Ballot Law Commission is tasked with adjudicating the "statutory and constitutional qualifications" of candidates for office, the Commission determined it had jurisdiction over the objection.

Mass. 19, 21 (Mass. 1928) (noting single justice held Commission had "jurisdiction to consider and determine the objections to the nomination of" petitioner who was disqualified from primary ballot).[35]

To adopt Trump's position that the Commission lacks jurisdiction to adjudicate his constitutional qualifications in this primary election would, inherently, require overturning an unbroken history of this Commission's decisions. And there would be only one rationality for it: the fact that this case concerns Donald Trump, and as such, animates considerable passions across the political spectrum. But the Commission, when interpreting the Commonwealth's election statutes, has a solemn obligation to remain faithful to the law, irrespective of political repercussions.

And it bears emphasizing that the Commission's purported lack of jurisdiction to resolve eligibility challenges to primary candidates nominated in accordance with one provision of § 70E but not other provisions would create an obvious federal constitutional problem. Under this interpretation of M.G.L. ch. 55B §§ 4 and 5, primary candidates who are hand-picked by party chairs and/or the Secretary would be immune from legal challenge (even if they were legally ineligible to hold the office they sought), but candidates who gain ballot access by way of signatures would be subject to objections. This differential application of ballot access rules would

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[35] Trump cites *Collins v. Gorman*, SBLC 06-01, for the erroneous proposition that objections challenging a primary candidate's qualifications for office are "premature, and not ripe for adjudication" like they were in that case. Trump's Mot. at 3–4. But this case is entirely inapposite and stands for the uncontroversial position that where only one candidate may be elected from the same town to a multi-member body, it is premature and unripe to contest one's candidacy if two members from the same town have not yet been elected. In contrast, here, Trump's eligibility is not dependent on some future event occurring; he is already ineligible to hold the office he seeks.

almost certainly run afoul of the Equal Protection Clause. *See Libertarian Party of Me. v. Diamond*, 992 F.2d 365, 370 (1st Cir.1993) ("Ballot access restrictions that fall unequally on similarly situated candidates or parties may threaten the right to equal protection of the laws guaranteed by the Fourteenth Amendment."). Statutes should be construed to avoid constitutional problems, not to unnecessarily create them. *See, e.g.*, *Oracle USA, Inc. v. Comm'r of Revenue*, 487 Mass. 518, 525 (2021) (rejecting interpretation of statute that would "raise[] separation of powers concerns and, thus, run[] counter to the canon of constitutional avoidance"). There is no reason to create a constitutional problem by ignoring the plain text.

The argument that the Commission cannot resolve challenges to nominations for candidates to appear on a primary ballot also flies in the face of the plain language of the Commission's authorizing statutes and is contrary to legislative intent. The phrase "presidential primary" in ch. 55B section 5 must be given some meaning. Trump contends that a candidate's qualifications cannot be challenged at the presidential primary stage. But Section 5 specifically provides for objections to "candidates at a presidential primary" election. Trump's argument—that a statute which specifically authorizes objections to "candidates at a presidential primary" does not authorize objections to candidates at a presidential primary—cannot be reconciled with the plain text of Section 5 and would improperly render one of its provisions nugatory.

B. <u>A candidate who is ineligible to serve as president cannot appear on a presidential primary ballot under Massachusetts law</u>

Trump also argued that the SBLC lacked jurisdiction petitioners' challenge because candidates who appear on a primary ballot need not be eligible for the

ultimate office being sought. Exhibit 13 at 4. This argument goes to the substance of the petitioners' challenge to Respondent Trump's eligibility, not to the SBLC's jurisdiction. Regardless, this argument is meritless. This Court's precedent, the SBLC's consistent historical practice, and the basic purpose of Massachusetts' election laws clearly establishes that an individual who is constitutionally ineligible to hold an elected office may not lawfully appear on a primary ballot in connection with seeking that office.

The notion that the constitutional requirements for holding office are irrelevant in determining a candidate's eligibility to appear on a primary ballot is irreconcilable with longstanding precedent. This Court answered this question in *Thacher v. Cook*, explaining that when political parties nominate candidates to appear on a primary ballot, "[t]he party nominations must be effective to the end of an election . . . . More narrowly stated the word 'candidates' in the first sentence of G. L. c. 53, § 1, signifies *candidates capable under the law of being elected*." 250 Mass. 188, 190–91 (Mass. 1924) (emphasis added).[36] This commonsense rule is consistent with the basic purpose of primaries under Massachusetts' election laws, which is to "afford to qualified citizens an opportunity to cast votes efficient to express their preferences and *which should have the final result of filling the offices required by*

[36] This same argument has been considered and expressly rejected in the context of federal constitutional requirements for the presidency by then-judge, now-Justice Gorsuch in *Hassan v. Colorado*, 495 F. App'x 947 (10th Cir. 2012). Hassan argued that "even if Article II properly holds him ineligible to assume the *office* of president," it was unlawful "for the state to deny him *a place on the ballot*." *Id*. at 948. The court rejected this distinction, concluding that "a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office." *Id*.

law." *Id.* at 190 (emphasis added); *see also Pereira v. Sec'y of Com.*, 29 Mass. App. Ct. 499, 502 (1990) (explaining that election laws must "be read with an eye to the legislative purpose of their enactment," which in the primary context is twofold: "giving voters the opportunity to express their preferences *and* effectively nominate only as many candidates as could be elected"). In light of this purpose, it would be nonsensical to require election officials to let voters "choose" a candidate in a primary election who cannot possibly hold office should he or she ultimately prevail in a general election.

Moreover, the SBLC has throughout its history maintained a consistent practice of adjudicating the merits of objections to candidates nominated to appear on a ballot based on that candidate's alleged constitutional ineligibility to hold office. For example, in *Thompson v. Romney*, the SBLC exercised jurisdiction over, and resolved on the merits, an objection to then-candidate for Governor Mitt Romney's placement on the Republican primary ballot. Exhibit 14 at 41 (SBLC 02-05, *Thompson v. Romney* (June 25, 2002)) ("The Objections are OVERRULED on the merits and the Secretary is ordered to print the Respondent's name on the Republican state primary ballot as a candidate for governor."). The basis for the objection was that candidate Romney was not an inhabitant of Massachusetts, as required under Mass. Const., Pt. 2, C. 2, § 1, Art. 2. The inhabitancy requirement is, by its plain terms, a requirement for holding elected office in the Commonwealth. *See In re Opinion of the Justs.*, 240 Mass. 601, 607 (1922) (describing constitutional requirements, including inhabitancy requirement, as pertaining to "the question whether one has a right to hold office under the Constitution"). Nevertheless, the

SBLC (correctly) recognized that only those candidates who may lawfully hold an office are lawfully eligible to appear on a primary ballot when seeking that office. *See* Exhibit 14 at 20 ("The inhabitancy requirement established in the Massachusetts Constitution is an essential qualification for those who seek the office of Governor, and it is by no means a mere technicality.").[37]

C. <u>The parties were properly served below</u>

As a separate basis for its refusal to reach the merits, the SBLC briefly notes that the Objections "failed to comply with the Commission's mandatory statutory and procedural notice requirements thereby subjecting them to dismissal." Exhibit 19 (Order Denying Jurisdiction). This conclusion is irreconcilable with the plain text of the relevant statutes and regulations. The service requirements for filing an objection are first set forth in M.G.L. ch. 55B § 5, which provides:

> Anyone filing an objection under this section shall not later than the day after which it is filed, mail by registered or certified mail, return receipt requested, a copy of such objection as filed with the commission *to the candidate against whose nomination papers, initiative and referendum petition or primary nomination, such objection is made*. Failure to do so shall invalidate any objection filed with the commission.

(emphasis added). No one disputes that Petitioners timely served Trump with a copy of their objections.

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[37] Throughout the years, the Commission has consistently adjudicated the merits of similar objections to candidates nominated to appear on a ballot. *See, e.g.*, *Dwyer v. Sarnowski*, SBLC 22-01 (June 23, 2022) (attached as Exhibit 15); *Bean v. Uyterhoeven*, SBLC 20-04 (June 16, 2020) (attached as Exhibit 16); *Cote v. Meas*, SBLC 18-01 (June 22, 2018) (attached as Exhibit 17).

Instead, the SBLC appears to have accepted Trump's erroneous conflation of the service requirements for the filing of the initial Objection (which must be served on the candidate) and the service requirements for the filing of subsequent documents in an Objection proceeding (which, pursuant to 950 CMR 59.02(10), must be served on all parties). But the notice requirements for an initial filing of Objections are spelled out in detail in the regulations and make clear that it is the Secretary's obligation to serve the initial Objection on all parties, not the Objectors':

> (a) Not later than the day after an objection is filed, the objector shall mail a copy of the objection to the *respondent* by registered or certified mail, return receipt requested.
> (b) *The Secretary shall give written notice to all parties* by registered or certified mail, return receipt requested. The notice shall contain a copy of the objection, the date, time, and place of the hearing, and a summary of commission procedures. In addition, the Secretary shall make a reasonable effort to notify all parties by telephone or email at once. The written notice must be given not later than 5:00 p.m. of:
>
> 1. The Wednesday after the last day to file objections to nomination papers or certificates of nomination for regular elections, or state initiative or referendum petitions;
> 2. The Friday after the last day to file objections to supplemental signatures necessary to place a state initiative question on the ballot after rejection by the general court;
> 3. The Tuesday after the last day to file objections to nominations made by regular state primaries.
>
> (c) Any person that does not file an appearance at or before the first hearing in the proceeding shall not become a party until that person files an appearance.
> (d) The date of the hearing contained in the Secretary's notice may be the dated of an assignment session, at which the Commission may dispose of preliminary matters and continue the hearing to a later date.

950 CMR 59.02(4) (emphasis added). Thus, for the initial filing of the Objection, which "initiates the adjudicatory proceeding," 950 CMR 59.01(3)(f), it is the Secretary who is tasked with noticing those parties other than the respondent candidate.

When Objectors filed their Objections, no one besides Trump was a "part[y] to the proceeding," 950 CMR 59.02(10), for two separate reasons. First, until the Objection was filed to initiate the proceedings, there were no proceedings to be a party to, as it is the objector who "initiates the adjudicatory proceeding by filing an objection." 950 CMR 59.01(3)(f). Second, the regulations are clear: "Any person that does not file an appearance at or before the first hearing in the proceeding shall not become a party until that person files an appearance." 950 CMR 59.02(4)(c). The Massachusetts Republican Party did not file an appearance before Objectors filed their Objection (and could not have), and thus, they were most certainly not "parties to the proceedings."

Even if the regulations Trump and the MassGOP cite for their argument that Objectors' entire Petition should be dismissed because they did not send copies to parties who were going to be notified later by the Secretary via both certified mail and phone or email, that would still not result in automatic dismissal. The regulations are permissive and merely state that failure to send copies to parties to the proceedings is a "*ground* for refusal the Commission to accept papers for filing." 950 CMR 59.02(10) (emphasis added). It does not require the Commission to refuse to accept the filings, and indeed, the Commission did in fact accept the filing of these Objections. *See* Exhibit 3 (Notice of Objections) ("Notice is hereby given on behalf

of the STATE BALLOT LAW COMMISSION by the Secretary of the Commonwealth's Elections Division pursuant to 950 CMR §§ 59.01(5) and 59.02(4) that the above captioned Objections have been received."). Moreover, in accordance with its own regulations, the SBLC cannot dismiss the Objections on the basis of improper service without first issuing an order to show cause and providing the Objectors the opportunity to be heard. 950 CMR 59.03(2)(d)(2); 59.03(2)(a)(1)(d). Accordingly, the SBLC's conclusion in the alternative that Petitioners' objections must be dismissed for improper service is incorrect and should be reversed.

D. If the Court does not rule on the merits itself, it should order the SBLC to conduct immediately all proceedings necessary to issue a final order on the merits by January 29, 2024 (or as soon thereafter as practicable)

The plain meaning of the relevant Massachusetts election laws, this Court's precedents, the SBLC's consistent historical practice, and respect for legislative intent all point in the same direction: in the context of a presidential primary, the Secretary of the Commonwealth must place all *eligible* candidates on the ballot but bar those candidates who—be they non-citizens, 12-year-olds or, as in this case, insurrectionists—are *ineligible* to serve as President of the United States. Accordingly, if this Court chooses not to fully resolve the merits of Petitioners' Objections, the Court should in the alternative issue an emergency declaratory judgment holding that the SBLC can, and indeed must, accept jurisdiction over Petitioners' Objections and issue a final ruling on the merits before the statutory deadline of January 29, 2024, at 5:00 PM (or as soon thereafter as this Court deems appropriate).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court grant emergency relief by: (1) declaring that Trump is ineligible to appear on the Massachusetts presidential primary ballot; (2) ordering the Secretary of the Commonwealth to remove Donald Trump's name from the Massachusetts ballot; and (3) ordering the SBLC to order the Secretary to remove Donald Trump's name from the Massachusetts ballot. Alternatively, Petitioners respectfully request that this Court declare that the SBLC has jurisdiction to decide these Objections and order the SBLC to proceed forthwith to set a hearing and render a decision no later than its statutory deadline of January 29, 2024, at 5:00 PM (or as soon thereafter as this Court deems appropriate).

Respectfully submitted,

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By their attorneys and authorized representatives,

Date: January 23, 2024

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CERTIFICATE OF SERVICE

I, Shannon Liss-Riordan, a member of the bar of this Court, hereby certify that on this day, January 23, 2024, the foregoing Petition and accompanying documents were served by email on the State Ballot Law Commission and Secretary of the Commonwealth and on Donald John Trump and the Massachusetts Republican Party, and will be hand delivered to the same parties at the opening of business tomorrow, January 24, 2024, through their representatives as follows:

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