COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. **STATE BALLOT LAW COMMISSION**
SBLC Docket Nos. 24-1, 24-2

BRUCE CHAFEE, KIM JANEY, MARK BRODIN, ELIZABETH BARTHOLET, and AUGUSTA MCKUSICK,

Objectors

v.

DONALD JOHN TRUMP,

Respondent

MICHAEL S. ROBERTSON, JR., KEVIN BATT, THERESA MASON, and STEPHANIE SANCHEZ,

Objectors

v.

DONALD JOHN TRUMP,

Respondent

OBJECTORS' MEMORANDUM OF LAW IN SUPPORT OF THE STATE BALLOT LAW COMMISSION'S JURISDICTION

Massachusetts law is clear: the State Ballot Law Commission ("SBLC") possesses the authority, and indeed the duty, to determine whether Respondent Donald J. Trump is

eligible to appear on the Republican party primary ballot for the office of President of the United States. This conclusion is consistent with the plain text of the SBLC authorizing statutes, the statutes governing primary nominations, and longstanding precedent applying the requirements for holding office to candidates appearing on primary ballots when seeking that office.

By contrast, the opposite conclusion—that the body tasked with protecting the integrity of the ballot must accede to a political party's nomination of a candidate who is patently ineligible to hold the office he seeks—would produce absurd results and invite electoral chaos.

Accordingly, the SBLC should acknowledge its jurisdiction, authority, and obligation to rule in this matter. Donald Trump should be excluded from the Republican presidential primary ballot because he engaged in an insurrection against the United States Constitution in violation of Section 3 of the Fourteenth Amendment.

"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 the Objectors' challenge to Respondent Trump's placement on the Republican 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 Objectors' challenge.

There are three ways for a candidate to appear on a Massachusetts ballot in a presidential primary. The secretary of state "shall cause to be placed on the official ballot for use at presidential primaries the names of those candidates or potential candidates": (1) who the secretary of state has determine are "generally advocated or recognized in national news media throughout the United States"; (2) who have been "proposed therefor by nomination papers prepared and furnished by the state secretary"; or (3) who "appear on written lists signed by the chairman of the state committees of the political parties." M.G.L. ch. 53, § 70E.

Each of these three routes plainly involves "actions required by law to give candidates access to" the presidential primary ballot, the legality of which can—and, on a proper objection, must—be resolved by the SBLC. *See "Action"*, Black's Law Dictionary (11th ed. 2019) ("1. The process of doing something; conduct or behavior. 2. A thing done."). And there is no other way for a candidate to appear on a Presidential primary ballot. Thus, no matter how Respondent Trump has been "give[n] . . . access to" the Presidential primary ballot, the legality of those actions is necessarily subject to SBLC review pursuant to M.G.L. ch. 55B, § 4.

If there were any remaining doubt about the SBLC's jurisdiction, it was resolved by Respondent Trump's acknowledgment in his motion to dismiss that he was placed on the Republican presidential primary ballot "at the request of the State Republican Party ('MassGOP')." Trump Motion to Dismiss, at p. 2. Under settled precedent, the Secretary's placement of a political party's requested candidate(s) on a primary ballot, by necessity, 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, Objectors are permitted to lodge their objection to the legality and validity of Respondent Trump's "certificate[] of nomination" in accordance with the procedure set forth in

M.G.L. ch. 55B § 5, and the SBLC "shall have jurisdiction over and render a decision on" Trump's "constitutional qualifications" to appear on the ballot pursuant to M.G.L. ch. 55B § 4.

Indeed, 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). As described above, and as Respondent Trump acknowledges, there are only three ways to get on a presidential ballot pursuant to M.G.L. ch. 53 § 70E: (1) by being "generally advocated or recognized in national news media throughout the United States" as recognized by the Secretary; (2) through the submission of "nomination papers prepared and furnished by the state secretary"; or (3) by "appear[ing] on written lists signed by the chairman of the state committees of the political parties."

If the reference in M.G.L. ch. 55B § 5 to "nomination papers" encompasses route two under § 70E,[1] 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, the meaning of M.G.L. ch. 55B § 5's

[1] 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.")

provision for objections to "certificates of nomination" 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).[2] 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, 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)).

Moreover, were the SBLC to conclude that it has jurisdiction to resolve eligibility challenges to primary candidates nominated in one way but not in another, the SBLC would be running headlong into a 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 likely run afoul of the Equal Protection Clause. *See*

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[2] 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."

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."). Yet 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").

Application of the plain statutory language and commonsense conclusion that the SBLC has jurisdiction over this objection is consistent with the SBLC's historical practice of adjudicating objections to candidates nominated to appear on a ballot based on that candidate's alleged constitutional ineligibility to hold elected 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. SBLC 02-05 at p. 41 (June 25, 2002) (Ex. D to Objection) ("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." (emphasis added)). 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 Thompson v. Romney*, SBLC 02-05 at p. 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.").[3]

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.[4] Indeed, as counsel quoted during the prehearing conference yesterday, the Supreme Judicial 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).

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[3] Throughout the years, the Commission has consistently adjudicated on the merits objections to candidates nominated to appear on a ballot arising from constitutional provisions addressing qualifications for *holding* office. *See, e.g.*, *Dwyer v. Sarnowski*, SLBC 22-01 (June 23, 2022); *Bean v. Uyterhoeven*, SBLC 20-04 (June 16, 2020); *Cote v. Meas*, SBLC 18-01 (June 22, 2018).

[4] Regardless, the argument that constitutional requirements for holding office do not apply to those seeking office in a primary goes to the merits of the Objectors' challenge to Respondent Trump's eligibility, not to the SBLC's jurisdiction to resolve this dispute. In addition to the Supreme Judicial Court's interpretation of state constitutional requirements for office, this precise 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*, 485 Fed Appx 947, 2012 WL 3798182 (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*. 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*.

Not only has the SJC already answered this question – making clear that candidates on a ballot must be eligible to hold office – the opposite conclusion would flagrantly contravene "[t]he general purpose of the Legislature in enacting the statutes regulating primaries and elections," which 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*." *Id.* at 190 (emphasis added). 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." *Pereira v. Sec'y of Com.*, 29 Mass. App. Ct. 499, 502 (1990). In the context of a presidential primary ballot, respect for the Legislature's intent requires placing all eligible candidates on the ballot but barring those candidates who—be they non-citizens, 12-year-olds or, as in this case, an insurrectionist—are ineligible to serve as President of the United States.

Respondent's claim that Donald Trump may appear on the Massachusetts primary ballot, even if he is not eligible to serve as president, flies in the face of longstanding SJC precedent. It also would allow for an absurd result, i.e. see if the voters elect him and, if they do, *next January 6 – 2025* – have the nation face the question of whether the election results may be implemented. Clearly, the intent of the Legislature was not to have such uncertainty in our elections. As described above, the Massachusetts statutory and regulatory framework clearly allows and requires – for good reason – such legal challenges to be adjudicated before elections take place.

The argument that this 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 SBLC's authorizing statutes and is contrary to legislative intent. The phrase "presidential primary" in ch. 55B section 5 must be given 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.

Trump's argument also appears to conflate two different senses of the words "nominate," "nomination," and "nominee." He relies on the sense in which a major party presidential primary candidate is technically only "nominated" at a national party convention after the conclusion of all states' presidential primaries. But Chapter 55B uses the term in its plain meaning, which obviously encompasses one who has been formally nominated (by parties, voters' signatures, or otherwise) to stand as a candidate for office. *See Nominee*, Black's Law Dictionary (11th ed. 2019) ("An individual seeking nomination, election, or appointment is a *candidate*. A candidate for election becomes a *nominee* after being formally nominated."). For example, Section 5 refers to "certificates of nomination and nomination papers for candidates at a presidential primary." That necessarily means that Chapter 55B refers to being placed on a presidential primary ballot as "nomination" for the presidential primary.

Interpreting "nominee" to exclude all primary election candidates would lead to absurd and illogical results. It would be irrational to deny 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.* Given the time constraints inherent to elections and the chaos late-stage disqualifications can cause, this high potential for uncertainty further renders Trump's reading of the statute contrary to its legislative purpose.

This Commission clearly has jurisdiction to hear these Objections. Objectors request that the Commission therefore proceed with these matters, rule on Objectors' Motion for Summary Decision, and if needed hold a hearing next week, so that the Commission can comply with its statutory duty to reach a decision in this matter no later than 5:00 p.m. on January 29, 2024.[5]

[5] Yesterday, Objectors filed an Administrative Motion requesting the Commission to rule on its jurisdiction no later than noon on Monday, January 22, 2024, so as to allow time for a hearing before the deadline for the Commission to rule or to allow time for Objectors to pursue such judicial relief as may be necessary.

Respectfully submitted,

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January 19, 2024

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY under the pains and penalty of perjury that a copy of this motion will be sent by electronic mail on January 19, 2024, to Counsel for Respondent Donald J. Trump: Marc R. Salinas, marc@silvasalinas.com. Further, a true and correct copy of the foregoing has been sent by United States Postal Service first class mail, postage prepaid, to:

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