

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

No. SJ-2024-0032

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

Appellants,

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”),

Appellees.

**PETITIONERS’ NOTICE OF APPEAL, REQUEST FOR SUSPENSION OF
THE APPELLATE RULES, AND REQUEST FOR EMERGENCY RELIEF**

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January 29, 2024

I. Notice of appeal pursuant to M.G.L. ch. 231, § 114

Bruce Chaffee, Kim Janey, Mark Brodin, Elizabeth Bartholet, Augusta McKusick, Michael S. Robertson, Jr., Kevin Batt, Theresa Mason, and Stephanie Sanchez (“Appellants”) hereby give notice of appeal pursuant to M.G.L. ch. 231, § 114 from the judgement entered on January 29, 2024 by Associate Justice Gaziano denying their emergency petition.

Appellants’ emergency petition raises a constitutional issue of paramount importance: whether Donald John Trump, a candidate for President of the United States, is ineligible to appear on the Massachusetts primary ballot because he engaged in an insurrection against the U.S. Constitution in violation of Section 3 of the Fourteenth Amendment. It also raises numerous issues regarding the proper interpretation and application of Massachusetts’ election laws. Given the administrative realities of conducting an election, and the compressed timeline for attendant litigation, these issues must be resolved with finality by this Court to ensure the proper application of Massachusetts election laws in this and future elections.

Justice Gaziano, and the State Ballot Law Commission before him, did not reach the merits of Trump’s constitutional eligibility under Section 3. But every court that has addressed the merits of this question has concluded that Trump cannot appear on the ballot. Accordingly, it is critical that this Court decide whether, under Massachusetts law and the U.S. Constitution, a candidate who is constitutionally ineligible to serve as President may nevertheless appear on the ballot in the upcoming presidential primary election set to occur on March 5, 2024.

II. Request for suspension of the appellate rules and expedited decision pursuant to Mass. R. App. P. 2.

Additionally, pursuant to Mass. R. App. P. 2, Appellants respectfully ask this Court to suspend the appellate rules and enter an order providing for briefing, hearing, and resolution of this case as rapidly as the Court deems practicable. As explained in their emergency petition, Appellants assert that their objections to Trump’s placement on the presidential primary ballot are governed by M.G.L. ch. 55B, which directs the State Ballot Law Commission to issue a final decision on the merits of their objections by today, January 29, 2024, at 5:00PM. Should the SBLC fail to comport with the statutory deadline for rendering a decision, which it almost certainly will, ch. 55B instructs that “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. While this Court undoubtedly 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.

This Court need not and cannot wait on the U.S. Supreme Court’s resolution of Trump’s appeal from the decision of the Colorado Supreme Court holding him ineligible under Section 3 of the Fourteenth Amendment. *See Anderson v. Griswold*, 2023 CO 63, *cert. granted sub nom. Trump v. Anderson*, No. 23-719, 2024 WL 61814 (U.S. Jan. 5, 2024). Oral argument in *Trump v. Anderson* is set for February 8, 2024. It is not yet known when the Court will issue its final decision, and it is impossible to predict the scope of any potential decision. The Court may not rule until after the Commonwealth’s primary has already occurred, or it may resolve the issues solely based on Colorado state law or procedures leaving the ultimate merits undecided, or it

may affirm on the merits but hold that each state must adjudicate these challenges individually consistent with their own laws and procedures. If the Court ultimately issued a decision leaving Section 3 challenges to be adjudicated on a state-by-state basis, there might not be enough time after that decision for officials in Massachusetts to adjudicate the merits of Trump’s eligibility before the primary, creating the risk that a constitutionally ineligible candidate will appear on a Massachusetts ballot in violation of Massachusetts law. As such, a decision on Trump’s eligibility under Section 3 cannot be delayed: depending on how the U.S. Supreme Court rules, a decision from this Court resolving the merits of Appellants’ challenge to Trump’s eligibility under Section 3 may be necessary to allow state officials adequate time to prepare appropriate ballots and to mitigate the risk of voter confusion.

III. Request for immediate emergency relief pursuant to M.G.L. ch. 211, § 3.

In the alternative, Appellants request that the full Court exercise jurisdiction pursuant to M.G.L. ch. 211, § 3 to immediately issue the relief requested in their emergency petition.¹ This Court has “allowed review under c. 211, § 3, in cases where alternate appellate procedures were available to the petitioning party,” under circumstances where “the alternate appellate process might not be able to place the petitioning party in statu quo, due to the possible delay.” *Planned Parenthood League*

¹ In their emergency petition, Appellants asked the Single Justice to “reserve ruling and immediately report this matter to the full court.” Accordingly, Appellants believe that this case is ripe for adjudication by the full court based on their emergency petition and subsequent motions, the Appellees’ responses, and the record of the proceedings below. Should the full court require further briefing or argument on the issues presented in their emergency petition, Appellants reiterate their request for an order establishing a schedule for briefing, hearing, and resolution of this case as rapidly as the Court deems practicable.

of Massachusetts, Inc. v. Operation Rescue, 406 Mass. 701, 708 (1990). As the Court explained,

[t]hese cases illustrate the principle that certain substantive rights may not survive the delays inherent in the normal appellate process. In certain circumstances, the practical effect may be that these rights are lost during the process of appeal and review to which a party ordinarily must turn for protection. The dilemma posed by such a situation presents an appropriate case for c. 211, § 3, review.

Id. at 708; *see also Wright v. Dep't of Correction*, 487 Mass. 1025, 1026 (2021)

(“[T]he court’s power of superintendence is reserved for those cases where either there is no alternative remedy or the alternative is truly inadequate.”).²

Here, Appellants have moved as rapidly as possible to avail themselves of the ballot objection provisions provided under Massachusetts law. They filed their objections within 48 hours of the Secretary of the Commonwealth’s announcement of the candidates appearing on the primary ballot and petitioned a single Justice for

² Pursuant to its powers under M.G.L. ch. 56, § 59—which this Court has construed “to afford full and adequate judicial review” of decisions to place candidates’ names on the Massachusetts ballot—the Court

is not limited by the restriction on the scope of judicial review of administrative action contained in the State Administrative Procedure Act, G.L. c. 30A. The broad equity powers given to the court by G.L. c. 56, s 59, override those limitations on the scope of judicial review, and most significantly override those provisions limiting the court to consideration of the record before the administrative agency, G.L. c. 30A, s 14(5), and the limitations as to grounds for overturning an agency decision, G.L. c. 30A, s 14(7).

McCarthy v. Sec'y of Com., 371 Mass. 667, 677–680 (1977). Thus, this Court reviews Appellants’ petition *de novo*.

emergency relief immediately after the SBLC's ruling that it lacked jurisdiction over their challenge to Trump's eligibility, as this Court has instructed. *See Robinson v. State Ballot L. Comm'n*, 432 Mass. 145, 148–49 (2000) (“Robinson followed the correct course of action by pursuing a remedy before the commission prior to filing a complaint in court. . . . On learning that any administrative remedies were foreclosed, Robinson timely prepared and filed a petition before a single justice of this court.”). Despite moving as rapidly as possible, the ordinary appellate process cannot protect Appellants' rights given the various administrative deadlines and tasks that must occur prior to the primary election. *See generally Goldstein*, 484 Mass. at 520–22 (discussing compressed timeframe for litigating election-related disputes).

Once Trump's name appears on the presidential primary ballot that is provided to Massachusetts voters, Appellants' ability to enforce their rights under Massachusetts law and vindicate Section 3 of the Fourteenth Amendment may be significantly undermined. The fact that Appellants may subsequently challenge Trump's inclusion on the general election ballot in no way obviates the need for an adjudication of their challenge to Trump's inclusion on the primary ballot. While Justice Gaziano suggested that Appellants could challenge Trump's eligibility to appear on the general election ballot, the SBLC has, in this and prior cases, taken the position that voters may object to *electors* but not to presidential *candidates*. *See State Ballot Law Commission*, Docket Nos. 24-01, 24-02 at 8 (“While the Commission's jurisdiction . . . includes objections to certificates of nomination, the Commission has previously determined that the electors are the only candidates subject to challenge. *Grennon v. Anderson*, SBLC 80-17 (June 26, 1980); *Reade v. Harris*, SBLC 20-08

(September 21, 2020).”). Accordingly, without expedited resolution of this case by the full court, Appellants will be left without any adequate and complete remedy at law. *See, e.g., Parkway, Inc. v. U.S. Fire Ins. Co.*, 314 Mass. 647, 651 (1943).

Respectfully submitted,

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By their attorneys and authorized
representatives,

Date: January 29, 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 29, 2024, the foregoing brief was served by email on the State Ballot Law Commission and Secretary of the Commonwealth and on Donald John Trump and the Massachusetts Republican Party through their representatives as follows:

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