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' MOTION FOR SUMMARY DECISION

I. INTRODUCTION

This case may have weighty political implications, but it is legally simple. The facts are essentially undisputed, and (like the central legal issues) have already been decided in open court in parallel litigation. This Commission need only apply well-established state law to these settled facts and legal determinations.

As set forth at length in Objectors' Petition, the undisputed facts establish that during the 2020 presidential election, the then incumbent president, Respondent Donald J. Trump devised and implemented a plot to prevent the peaceful transfer of power to the duly elected winner of that election, Joseph Biden, by falsely and fraudulently claiming that Trump and not Biden had in fact won and that the election had been "stolen." After exhausting various other lawful and unlawful means to overturn the 2020 election, and in concert with his illegal plan to submit fraudulent electoral vote certificates from states where Trump had lost the vote, Trump engaged in a last-ditch effort to prevent the electoral college vote from being certified by the United States Congress at a joint session presided over by his own Vice President, Mike Pence. Trump gathered an angry and armed mob — including known violent extremists — in Washington, D.C., on January 6, 2021, incited them, and sent them to the Capitol. They stormed the Capitol, threatened to kill Vice President Pence and Members of Congress, prevented the certification of the election results, and — for the first time in our nation's history — disrupted the peaceful transfer of power. In so doing, he "engaged in insurrection or rebellion against [the United States Constitution and gave] aid or comfort to [its] enemies." He is thus disqualified under the federal constitution from again holding public office, including the office of the presidency.

Trump's actions to use his powers and influence as the sitting president to undermine the peaceful transfer of power were unprecedented. As a current candidate for president, Trump has repeatedly promised to disregard his constitutional obligations in service of his own personal and political aims should he once again be elected to serve as Commander in Chief. Section 3 of the Fourteenth Amendment to the United States Constitution provides a straightforward remedy to protect the Republic from this kind of threat. As the only two tribunals to reach the merits of Trump's eligibility to be a presidential candidate in 2024 have concluded, Trump is disqualified from holding office for betraying his solemn oath to our Constitution and engaging in insurrection against it. As a result, he may not appear on the Massachusetts ballot.

Objectors, and this Commission certainly, recognize the urgency of resolving Trump's eligibility for the office he seeks *before* primary and general elections, as prescribed by Massachusetts General Laws Chapter 55B. Fortunately, the factual and legal issues underlying this objection have already been fully and fairly litigated by Respondent Trump in Colorado and Maine (the only states in which tribunals have reached the merits on a challenge, such as this one, to Trump's candidacy under the Fourteenth Amendment). Federal and state law, therefore, require this Commission to give those decisions full faith and credit. In short, the factual and constitutional issues of this Objection have already been decided: Trump engaged in insurrection and is unable to assume the presidency. Massachusetts law is clear as well: this Commission has a mandate to order that an ineligible candidate be removed from the primary ballot. Accordingly, Objectors are entitled to summary decision in their favor and urge the Commission to grant this motion.

II. LEGAL STANDARD

"In proceedings before the Commission, the objector[s] ha[ve] the burden of going forward." *Bean v. Uyterhoeven*, SBLC 20-04 (June 26, 2020) (citing *Hamill v. Sawyer*, SBLC 90-14 (June 27, 1990)). "The objector[s] must meet [their] burden of proof by proving [their] allegations by a preponderance of the evidence." *Id.* (*citing DeJong v. Owens*, SBLC 90-10 (June 22, 1990)). The Commission bases its findings on substantial evidence, "which is defined as 'such evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (citing M.G.L. ch. 30A § 1(6)) (additional citations omitted).

Under Massachusetts regulations, Objectors may file a motion, such as this one, to "secure a just and speedy determination" of their Petition. 950 CMR 59.01(2). In support of such a motion, a party may submit evidence "consist[ing] of facts which are presented orally by sworn testimony, supported by allowable affidavits, or which appear in records, files, depositions, or answers to interrogatories." 950 CMR 59.03(2)(a)(3). The Regulations also provide that: "Unless otherwise provided by any law, the Commission need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law." 950 CMR 59.05(g)(2) (emphasis added). "All Parties shall have the right to present evidence, cross-examine, make objections, bring motions and make oral arguments." 950 CMR 59.05(f)(1). But "[e]vidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs." 950 CMR 59.05(g)(2)(a). "Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference." 950 CMR 59.05(h). The "[w]eight

to be given evidence presented will be within the discretion of the Commission." 950 CMR 59.05(g)(2)(b).

Further:

> The Commission or presiding officer may take notice of any fact which may be judicially noticed by the courts of the Commonwealth or of general technical or scientific facts within the Commission's or presiding officer's specialized knowledge only if the parties are notified of the material so noticed and are given an opportunity to contest the facts so noticed.

950 CMR 59.05(i). In the Commonwealth's courts, "a judge may take judicial notice of the court's records in a related action….[A] court may also take judicial notice of the records of other courts." *Jarosz v. Palmer*, 766 N.E.2d 482, 487 (Mass. 2002) (quoting P.J. Liacos, Massachusetts Evidence § 2.8.1, at 26 (7th ed. 1999)); *see also In re Segal*, 719 N.E.2d 480, 486 (Mass. 1999) (concluding that under the State Administrative Procedure Act,[1] an agency conducting adjudicatory proceedings properly relied on transcripts from separate court proceedings).

The relevant regulations expressly permit the Commission to hear a motion for summary decision, making a trial on factual issues unnecessary:

> Any party may, with or without supporting affidavits, move for summary decision in his favor, as to all or part of a matter. If the motion is granted as to part of the matter and further proceedings are necessary to decide the remaining issues, a hearing shall so be held.

950 CMR 59.03(2)(f). "Because a motion for summary decision is the administrative equivalent of a motion for summary judgment, principles applicable to summary

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[1] This Commission is bound by the State Administrative Procedure Act, *see* M.G.L. ch. 55B, § 4 ("The commission shall establish rules of procedure in conformance with the provisions of chapter thirty A governing the conduct of hearings and investigations….").

judgment decisions" in court are applicable to summary decisions before the Commission. *Martignetti Grocery Co., Inc. v. Alcoholic Beverages Control Comm'n*, 138 N.E.3d 446, 449 (Mass. App. 2019) (internal citations and quotations omitted). "A party seeking summary judgment may satisfy its burden of demonstrating the absence of triable issues by showing that the party opposing the motion has no reasonable expectation of proving an essential element of its case." *Boazova v. Safety Ins. Co.*, 968 N.E.2d 385, 389–90 (Mass. 2012) (internal citation omitted). "If the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts which would establish the existence of a genuine issue of material fact in order to defeat a motion for summary judgment." *Pederson v. Time, Inc.*, 532 N.E.2d 1211, 1213 (Mass. 1989).

Where "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.*, 993 N.E.2d 725, 727 (Mass. 2013); *see also In re Goldstone*, 839 N.E.2d 825, 833 (Mass. 2005) (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 and avoid estoppel effect of prior decision).

III. TRUMP IS LEGALLY BARRED FROM APPEARING ON THE MASSACHUSETTS BALLOT

The underlying legal and factual issues before this Commission have already been decided by tribunals whose decisions are entitled to preclusive effect.[2] And Massachusetts law makes clear that this Commission possesses the authority and duty to bar Trump from appearing as a candidate for president. Accordingly, there are no "triable issues," *Boazova*, 968 N.E.2d at 389–90, and Objectors are entitled to a summary decision.

A. The Commission Should Take Notice of, and Adopt the Factual Findings of, the Colorado and Maine decisions

1. The Colorado and Maine decisions were the only cases decided on the merits

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,[3] two different states (Colorado and Maine) have adjudicated the question of Trump's disqualification under Section 3—and both found

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[2] The full transcripts from the Colorado trial, *Anderson v. Griswold*, 2023 WL 8770111 (Colo. 2023), from which the trial judge concluded that Trump had engaged in insurrection and which resulted (following appeal) in Trump being removed from the ballot in Colorado, are attached as exhibits to Petitioners' Objections.

[3] *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/.

him disqualified. Crucially, *no* federal or state court anywhere in the country has decided the contrary; those courts that have declined to enjoin his ballot placement have done so on procedural grounds, such as (in federal court) lack of standing,[4] or (in state courts) based on purely procedural or state law grounds that are inapplicable here.[5] Only two cases have 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 trial below (*see* Ex. B to Objection), 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.

This Commission is bound by the Full Faith and Credit Clause to give credence to *Anderson*, a court case that was adjudicated and decided on the merits, and to reach the same holding in Massachusetts.[6]

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[4] *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).

[5] *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)).

[6] The Commission is required by Massachusetts regulations to decide this Objection fully. 950 CMR 59.06(1). Unlike the court in Oregon, which opted to deny

2. Trump is estopped from relitigating the facts and legal issues decided in *Anderson v. Griswold* (the Colorado decision)

After extensive briefing and consideration of a voluminous evidentiary record produced in a five-day trial, the Colorado Supreme Court in *Anderson v. Griswold* determined, among other things, 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.
>
> • Judicial review of President Trump's eligibility for office under Section Three is not precluded by the political question doctrine.
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> • Section Three encompasses the office of the Presidency and someone who has taken an oath as President. . . .[7]
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> • The district court did not abuse its discretion in admitting portions of Congress's January 6 Report into evidence at trial.
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> • 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.

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mandamus without prejudice pending a decision from the U.S. Supreme Court in the Colorado case (*Anderson*), the Commission does not have the option to defer a decision. Pursuant to M.G.L. ch. 55B § 10, the Commission must issue a decision on the Petitions no later than 5:00 p.m. on January 29, 2024.

[7] 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.

Anderson, 2023 WL 8770111, at *1–3.

In assessing the preclusive effect of these determinations against Trump here, the Commission 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).

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).

This case raises the same issues that were fully litigated and decided by the Colorado courts in *Anderson*: whether Trump is disqualified under Section 3 from the presidency because he engaged in an insurrection or rebellion against the Constitution, after taking the oath of office as president to support the Constitution. Trump had an opportunity, as party intervenor, to fully and fairly litigate the issues, which were briefed, tried, and vigorously litigated in both the Colorado trial court and the Colorado Supreme Court. The Colorado 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 resulted in a final judgment on the merits 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 thorough 134-page opinion addressing and resolving whether Trump engaged in insurrection. Finally, the determination of the issue was "necessary to judgment." *Huffman v. Westmoreland Coal Co.*, 205 P3d 501, 507 (Colo Ct App 2009).

The Colorado Supreme Court's opinion in *Anderson* represented its "final decision" with respect to the issues considered therein. *Rantz v. Kaufman*, 109 P3d 132, 138 (Colo. 2005). The fact that the opinion provides that it would be stayed by filing a petition for Supreme Court certiorari, *see Anderson*, 2023 WL 8770111, at *3, or that the Colorado Supreme Court has adopted a rule that a "pending appeal" prevents a prior judgment from being "final" for preclusion purposes, *Rantz*, 109 P3d at 141, does not defeat issue preclusion here. The Full Faith and Credit Clause obligates this Court to give the *Anderson* judgment "at least" the preclusive effect it would receive in Colorado, *Durfee*, 375 US at 109, which sets a floor, not a ceiling. *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). In fact, Massachusetts, most other states, and federal courts follow the opposite rule: that a decision is final for preclusion purposes notwithstanding the pendency of an appeal. *See O'Brien v. Hanover Ins. Co.*, 692 N.E.2d 39, 44 (Mass. 1998); *see also So. Pac. Commc'ns Co. v. Am. Tel. & Tel. Co.*, 740 F.2d 1011, 1018-19 (D.C. Cir. 1984);

Restatement (Second) of Judgments § 13 cmt. f (1982).[8] *See also* RESTATEMENT (SECOND) OF JUDGMENTS § 13 cmt. f (1982). Applying Massachusetts law to determine that the *Anderson* judgment is final and binding here best advances the purpose of issue preclusion and the public policy of this state.

In applying offensive nonmutual issue preclusion, courts consider four factors in addition to the basic elements of issue preclusion: (1) whether the party seeking preclusion could have joined the first action but opted for a "wait and see" approach; (2) the extent to which the party sought to be precluded had an incentive to litigate vigorously in the prior case; (3) whether the prior court decision is inconsistent with another decision involving the party to be precluded; and (4) whether the second case affords the party sought to be precluded procedural protections that were unavailable in the first case. *Vanderpool v. Loftness*, 300 P3d 953, 958 (Colo. Ct. App. 2012).

Here: (1) Objectors could not have joined the Colorado proceeding because they do not live in Colorado, are not Colorado voters, and do not have any interest in Colorado ballots that would have allowed them to intervene in an action under Colo. Rev. Stat. § 1-1-113(1); (2) Trump had every incentive to litigate vigorously and did so; (3) the Colorado proceeding afforded him significant procedural protections and a fair opportunity to be heard; and (4) those procedural protections were akin to what he would receive in Massachusetts.

The remedies and procedures available in *Anderson* are not substantially different from those in this case. *Compare* Colo. Rev. Stat. § 1-1-113 (establishing procedure to

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[8] Indeed, the Commission's regulations repeatedly instruct the tribunal to mirror the rules of the Commonwealth's courts in several different respects. *See* 950 CMR 59.05.

promptly resolve election-related disputes), *with* M.G.L. ch. 55B, § 4; *cf. In re Tonko*, 154 P.3d 397, 407 (Colo. 2007) (declining to give preclusive effect where a prior proceeding addressed a different legal issue).

Indeed, the remedy sought here — removal of a disqualified candidate from the ballot — is identical to the remedy sought in Colorado. And as already described, the Colorado trial court adopted a robust case-management approach that afforded Trump "the opportunity to be heard on a wide range of substantive issues," including "sufficient time for extensive prehearing motions in which all parties vigorously engaged." *Anderson*, 2023 WL 8770111, at *18. And while the SBLC's process under Chapter 55B and 950 CMR 59.00 offers more than sufficient process, including procedural protections for challenged candidates to reach fair decisions on candidate eligibility, the procedures employed in *Anderson* provided, if anything, *more* process than Chapter 55B typically involves. As just one example, while the BLC's regulations provide that "the Commission need not observe the rules of evidence observed by courts," 950 CMR 59.05(g)(2), Colorado conducted a full five-day trial, presided over by a regular judge in a court of general jurisdiction, in which rules of evidence *were* enforced.

As the Colorado Supreme Court observed, Trump's arguments throughout the case focused on legal issues, and he "made no specific offer of proof regarding other discovery he would have conducted or other evidence he would have tendered." *Id.* Trump cannot reasonably argue that the Colorado proceeding was "so inadequate or so narrow in focus as to deprive [him] of his . . . due process rights" should he be precluded from relitigating the issues here. *Bebo Const. Co.*, 990 P.2d at 87.

Lastly, no inconsistent judicial decisions involving Trump would make it unfair to bind him to the Colorado Supreme Court's determinations. To date, two other state court actions seeking Trump's removal from a state primary ballot have been dismissed, but those actions turned on issues of *state* law, and those courts did not issue judgments on any of the federal issues that grounded the *Anderson* decision.[9] *See LaBrant v. Benson*, No. 166470 (Mich Dec. 27, 2023) (mem), *leave to appeal denied*, No. 368628 (Mich Ct App Dec. 15, 2023) (finding pre-primary challenge unavailable under state law, but expressly declining to address federal constitutional issues); *Growe v. Simon*, No. A23-1354, 997 NW 2d 81 (mem) (Minn Nov. 8, 2023). No court anywhere in the United States has determined that Trump did *not* engage in insurrection.[10]

B. Trump Is Ineligible to Serve as President and Is Thus Barred from Appearing on The Massachusetts Ballot

Given that Trump is ineligible to serve as President under Section 3 of the Fourteenth Amendment to the United States Constitution, *see supra*, Massachusetts law and decades of this Commission's well established precedent makes clear that this Commission has a duty to order his name be removed from the ballot. Indeed, as the Supreme Judicial Court has recognized as far back as 1942, "The statute relating to

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[9] Several cases involving similar allegations were dismissed for lack of standing in federal court. *E.g., Caplan v. Trump*, No. 23-CV-61628, 2023 WL 6627515 (SD Fla Aug. 31, 2023). They are not inconsistent with *Anderson* because — by definition — they did not reach the merits. *See Peabody Sage Creek Mining, LLC v. Colo. Dep't of Pub. Health & Env., Water Quality Control Div.*, 484 P3d 730 (Colo Ct App Aug. 2020) (dismissal for lack of subject matter jurisdiction "is not an adjudication on the merits, but rather is the result of a court lacking the power to hear the claims asserted").

[10] These unpublished Michigan decisions are available at https://freespeechforpeople.org/michigan-voters-challenge-trumps-ballot-eligibility-under-14-3-insurrectionist-disqualification-clause.

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).

First, it is the plain statutory responsibility of this Commission upon a valid objection to "render a decision on… the statutory and constitutional qualifications of any nominee for… national… office," M.G.L. ch. 55B § 4, and if a candidate is statutorily or constitutionally ineligible for the office, to "[s]ustain the objection on the merits, and order the Secretary not to print on the ballot the name of the respondent candidate," 950 CMR 59.06(2)(c). And the challenge statute specifically authorizes objections to "candidates at a presidential primary." M.G.L. ch. 55B § 5.

Indeed, for decades, this Commission has interpreted its mandate as such. It would be a gross and unwarranted departure — and contrary to the plain language of its enabling statutes — to change tack and suddenly narrow this Commission's charge to enforcing only signature requirements. Indeed, as the Commission has often repeated: "Throughout its history, the Commission has considered numerous cases dealing with the issue of inhabitancy as it relates to a candidate's qualification to seek elective office." *Cote v. Meas*, SBLC 18-01 (June 22, 2018) (collecting cases); *Bean v. Uyterhoeven*, SBLC 20-04 (June 16, 2020) (same); *Dwyer v. Sarnowski*, SLBC 22-01 ("Throughout the years, the Commission has considered numerous cases dealing with the issue of inhabitancy as it relates to a candidate's qualification to seek elective office.") (collecting cases); *see also Thompson v. Romney* SBLC 02-05 (June 25, 2002) (Ex. D to Objection) ("The Commission therefore finds, rules and concludes that the Respondent has met the inhabitancy qualification of the Massachusetts Constitution and is therefore eligible to

appear on the ballot as candidate for the office of governor of the Commonwealth of Massachusetts. 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.").

Like Second 3 of the Fourteenth Amendment to the federal Constitution, the text of the state Constitution's inhabitancy requirements (of which the Commission has such a thorough history of adjudicating) speak to a person's ability to *take* office, not their ability to stand as a candidate for such office. In a section of its decisions commonly titled "Legal Standards Applicable to the Inhabitancy for the Office of State Representative," this Commission has explained:

> The Constitution of the Commonwealth of Massachusetts requires that an individual who seeks the office of State Representative shall be an inhabitant of the district for at least one year preceding the date of the election for that office. The Constitution of the Commonwealth of Massachusetts states, in pertinent part, that:
>
> > [e]very representative, for one year at least immediately preceding his election, shall have been an inhabitant of the district for which he is chosen . . .
>
> Mass. Const. Amend. Art. 101, § 1…. The Commission has consistently concluded that the relevant inhabitancy requirements relate to the date of the general election, not the primary election. Accordingly, the Objector must prove, by a preponderance of the evidence, that the Respondent has not been an inhabitant of the district since November 3, 2019.
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> The term "inhabitant" appears throughout numerous constitutional and statutory provisions relating to a person's right to vote and seek electoral office. It is long settled that the term "inhabitant" in the context of voting is directly applicable when determining inhabitancy in the context of a candidate's qualification to hold office. Mass. Const. Pt. 2, C. 1, § 2, Art. 2; Opinion of the Justices, 240 Mass. 601 (1922).

Bean v. Uyterhoeven, SBLC 20-04; *accord Dwyer v. Sarnowski*, SLBC 22-01 (using identical language, save for the date); *Cote v. Meas*, SBLC 18-01 (June 22, 2018) (same). These decisions all uniformly go on to state: "To seek the office of [office at issue], the Respondent must have been an "inhabitant" of that district "for one year at least immediately preceding his election" which, in this case, is from [date]." *Id.* (citing Mass. Const. Amend. Art. 101, § 1).

Thus, "[t]hroughout its history, the Commission has," *id.*, interpreted its role exactly as the statutes provide: determining "the statutory and constitutional qualifications of any nominee," M.G.L. 55B § 4. This Commission cannot suddenly change the rules because the respondent is Donald Trump:

> The Constitution created a government dedicated to equal justice under law. The Fourteenth Amendment embodied and emphasized that ideal….The[se] principles…and the obedience of the States to them, according to the command of the Constitution, are indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us. Our constitutional ideal of equal justice under law is thus made a living truth.

Cooper v. Aaron, 358 U.S. 1, 19–20 (1958). The rule of law, even predating the Constitution, requires this Commission to treat each person that comes before it equally:

> This principle dates back at least eight centuries to Magna Carta, which proclaimed, "To no one will we sell, to no one will we refuse or delay, right or justice." The same concept underlies the common law judicial oath, which binds a judge to "do right to all manner of people ... without fear or favour, affection or ill-will," and the oath that each of us took to "administer justice without respect to persons, and do equal right to the poor and to the rich."

Williams-Yulee v. Fla. Bar, 575 U.S. 433, 445 (2015) (internal citations omitted). This principle is put even more succinctly by the legal maxim *lex non a rege est violanda* — the law must not be violated, even by the King.

Even still, were this Commission's elementary duty to ensure candidates be qualified for the offices they seek not so clearly laid out in the foregoing statutory commands and deeply rooted precedent, there are three other (entirely separate and independent) legal authorities providing the Commission with this authority and mandate, including for candidates seeking a place on the ballot pursuant to M.G.L. ch. 53 § 70E.

First, M.G.L. ch. 55B § 4 provides: "The commission may investigate upon objection made in accordance with the provisions of this chapter the legality, validity, completeness and accuracy of all…actions required by law to give candidates access to a state ballot." For a candidate to be given access to the ballot under § 70E, the Secretary, and in some cases a party chair, must perform "actions required by law to give candidates access to a state ballot." Pursuant to § 70E:

> The state secretary shall cause to be placed on the official ballot for use at presidential primaries the names of those candidates or potential candidates for the office of president of the United States whom he shall have determined to be generally advocated or recognized in national news media throughout the United States…

M.G.L. ch. 53 § 70E. Both causing a candidate "to be placed on the official ballot" and making a determination that a candidate is "generally advocated or recognized in national news media throughout the United States" are both "actions required" under statute for a candidate's name to be placed on the ballot. If such actions were not required of the Secretary, either no names would appear on the ballot pursuant to this section, or all persons who wanted their name to appear on the ballot would be able to make this happen under this statute. Furthermore, under this statute:

> The state secretary shall cause to be placed on the official ballot for use at presidential primaries… the names of those candidates or potential candidates for nomination for president whose names appear on written

> lists signed by the chairman of the state committees of the political parties….

Id. Thus, a state party chair's submission of a list of names is an additional "action[] required" for candidates' names to appear on the ballot; absent this list's submission, and absent another "action[] required" by the statute being performed, a candidate's name cannot appear on the ballot pursuant to § 70E. And furthermore, under § 70E:

> The 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 and shall notify each such candidate forthwith, by registered mail, of the presence of his name on said lists.

Id. This, too, is an "action[] required by [§ 70E] to give candidates access to a state ballot." Thus, the Secretary's determination, the state party chair's submittal of names, and the submittal and preparation of lists of candidates by both are all "actions required by law to give candidates access to a state ballot" and are therefore properly before the Commission for its determination of their "legality, validity, completeness and accuracy."

Secondly, and entirely independently, "[t]he commission may investigate upon objection made in accordance with the provisions of this chapter the legality, validity, completeness and accuracy of all nomination papers… required by law to give candidates access to a state ballot," and "[t]he commission shall have jurisdiction over and render a decision on any matter referred to it, pertaining to…the certificates of nomination or nomination papers filed in any presidential… primary." M.G.L. ch. 55B § 4. Under the plain meaning of these terms, the Commission has a duty to adjudicate "the legality, validity, completeness and accuracy" of names submitted by the party chair and Secretary, as these lists constitute "nomination papers" or "certificates of nomination."

Indeed, the Supreme Judicial Court has already made clear that when parties nominate candidates to be on the ballot, their transmission of such names is in the form of "certificates of nominations." In *Atty. Gen. v. McOsker*, 84 N.E. 472, 473 (Mass. 1908) (emphasis added), the Court wrote:

> It is agreed that in 1907 there was a sharp contest in the Democratic Party for the nomination of Governor. The party included two contending factions which divided in the state convention, organized separately and chose two sets of candidates for officers of the state. Each organization professed to represent the Democratic Party, and filed a list of its candidates with the Secretary of the Commonwealth and demanded a place for them on the official ballot as candidates of the Democratic Party. Each faction objected to the **certificate of nominations** of the other, and the matter in dispute was referred to the ballot law commission, under St. 1907, p. 633, c. 560.

Moreover, the phrase "the certificates of nomination or nomination papers filed in any presidential… primary" is written broadly, and under canons of construction, the legislature's use of both "nomination papers" and "certificates of nomination" means both that these terms must be given distinct meanings. If nomination papers are the vehicle for candidates not designated by the Secretary or a party chair to gain access to the presidential primary ballot under § 70E, then certificates of nomination are the vehicle for those chosen by the Secretary or party chair.

Third, and independently, the Supreme Judicial Court has already instructed that candidates appearing on the Massachusetts primary ballot — including those nominated by a party — must be qualified to hold the offices they seek in order to appear on the ballot:

> 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….
>
> 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).

Thus, lest there be any doubt, the Commonwealth's highest court has already spoken on the issue: whether by way of collecting signatures, being nominated by political parties, or otherwise, candidates appearing on the ballot must be capable of filing the offices they seek. It is, of course, the Commission's manifest duty to ensure this principle is actualized.

In sum, Trump has already been found to have engaged in insurrection and to be disqualified from assuming the Office of President of the United States by Section 3 of the Fourteenth Amendment. The decisions so holding are properly before the Commission, and they are entitled under the Full Faith and Credit Clause to preclusive effect. At the same time, this Commission has the duty to order the Secretary to remove from the ballot the name of any candidate who is not eligible to hold the office they seek. Accordingly, there are no triable facts, and Objectors are entitled to summary decision.

IV. ALTERNATIVELY, THE COMMISSION COULD GRANT PARTIAL SUMMARY DECISION, ADOPTING THE FACTUAL FINDINGS FROM *ANDERSON* AND *IN RE: CHALLENGES OF ROSEN ET AL*, BUT ALLOWING THE PARTIES TO ARGUE THE LEGAL ISSUES AT A HEARING

Despite the authorities and argument cited above, should the Commission disagree with Objectors that *Anderson* should have preclusive effect here, Objectors seek in the alternative a partial summary decision, which would adopt the factual findings from those cases but allow the parties to argue any pertinent legal issues at a hearing. As explained above, there is no need for the Commission to repeat the entire trial that was already held in *Anderson* or the extensive fact-finding conducted in *In re: Challenges of Rosen et al.* Requiring the witnesses to appear again, and hearing the evidence anew, would be an unnecessary waste of time and resources and would cause delay when rapid resolution is paramount. And, as noted above, the Massachusetts regulations specifically allow and provide for a more expedient process for deciding a challenge such as this one. 950 CMR 59.01(2).

However, should the Commission believe it necessary to allow Trump additional opportunity to present any further evidence he was not able to present in those prior cases, the Commission should hold such a hearing, admit the evidence that was entered in the *Anderson* trial (which is attached as exhibits to these Petitions), allow Trump to offer additional evidence, and allow Petitioners to respond to any such additional evidence.[11]

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[11] By law, such hearing would have to begin no sooner than January 22, 2024, and the Commission must issue its decision no later than 5:00 p.m. on January 29, 2024. M.G.L. ch. 55B §§ 9–10.

Or, should the Commission disagree with Objectors' arguments herein and require a full-blown trial to be held in this case, Objectors will call witnesses necessary to (re-)establish what has already been established in the Colorado and Maine cases.[12]

In the event that the Commission were to determine that a full trial is needed, or additional evidence is allowed to be introduced beyond what was admitted in *Anderson*, Objectors reserve their right to pursue and offer any appropriate additional evidence. *See generally* 950 CMR 59.04.[13]

V. CONCLUSION

For the foregoing reasons, the Commission should grant Objectors' motion for summary decision. 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.[14]

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[12] Objectors would in that event request that the hearing begin on January 22, 2024, in order to allow for the full presentation of evidence.

[13] Given the limited timeline, a rapid schedule would need to be put into place for discovery, so that Objectors could complete it prior to the beginning of the hearing.

[14] Should the Commission disagree and believe Trump should be permitted to submit additional evidence he did not submit in the Colorado case, Objectors request opportunity to respond to such new evidence. If the Commission believes a full hearing

Objectors request that oral argument be held on their Petition and this Motion prior to the Commission's rendering a decision.

Respectfully submitted,

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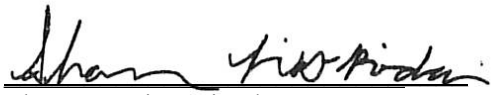
MICHAEL S. ROBERTSON, JR., KEVIN BATT, THERESA MASON, and STEPHANIE SANCHEZ,

By their attorneys and authorized representatives,

January 16, 2024



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is necessary (despite the authorities cited above), Objectors are prepared to retry the case beginning January 22, 2024 (following prompt discovery).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY under the pains and penalty of perjury that:

A copy of this motion was sent by electronic mail on January 16, 2024, to Counsel for Respondent Donald J. Trump: Marc R. Salinas, marc@silvasalinas.com.

Further, not later than January 17, 2024, a true and correct copy of the foregoing will be hand delivered to the Commission, as well as to Respondent's Counsel at:

Marc R. Salinas
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North Andover, MA 01845

Further, not later than January 17, 2024, a true and correct copy of the foregoing will also be sent by United States Postal Service certified mail, return receipt requested, to:

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January 16, 2024

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