

**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,

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.

PETITIONERS’ NOTICE OF SUPPLEMENTAL AUTHORITY

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January 28, 2024

Petitioners file this supplemental brief to call attention to a recommendation issued on January 28, 2024, by Judge Clark Erickson, a Republican former state judge acting in his capacity as a hearing officer for the Illinois State Board of Elections, in *Anderson et al. v. Trump*, No. 24 SOEB GP 517 (attached as Exhibit A). This recommendation is relevant to the merits question of whether Respondent Trump is disqualified from appearing on the Massachusetts presidential primary ballot under Section 3 of the Fourteenth Amendment and further illustrates the necessity of adjudicating the merits of Petitioners’ objections as rapidly as possible.

In *Anderson v. Trump*, a group of Illinois voters asserted that Donald John Trump was disqualified from appearing on the Illinois presidential primary ballot under Section 3 of the Fourteenth Amendment because he engaged in an insurrection culminating in the violent attack on the Capitol on January 6, 2021. Ex. A at 1. Judge Erickson concluded that, based on his interpretation of binding Illinois Supreme Court precedent, the Illinois legislature had not authorized the Illinois State Board of Elections to adjudicate constitutional issues. *Id.* at 8. However, recognizing that the Board might reject his recommendation on this threshold legal question, Judge Erickson proceeded to assess the merits of the voters’ objections. *Id.* at 12–17. Based on the voters’ evidence—which included the trial testimony underlying the Colorado Supreme Court’s decision in *Anderson v. Griswold* and Congress’s January 6 report—Judge Erickson concluded “that President Trump engaged in insurrection, within the meaning of Section 3 of the Fourteenth Amendment, and should have his name removed from the March 2024 primary ballot in Illinois.” *Id.* at 17.

Judge Erickson's recommendation regarding the Board's authority under Illinois law is of no relevance to these proceedings. While the parties dispute the Massachusetts State Ballot Law Commission's (and this Court's) jurisdiction to adjudicate Petitioners' Objections to Trump's candidacy, there is no question that the SBLC generally possesses the authority to weigh and resolve objections based on constitutional qualifications for office. By contrast, Judge Erickson's merits recommendation is significant for three reasons.

First, Judge Erickson recognized that evidence from the Colorado proceedings and the January 6 report were admissible and probative in an administrative hearing on Trump's eligibility in Illinois. With respect to the Colorado proceedings, Judge Erickson found that:

while the hearing/trial did not afford all the benefits of a criminal trial, (e.g., right to trial by jury; proponent bearing a burden of beyond a reasonable doubt), the proceedings was conducted in a fashion that guaranteed due process for President Trump: parties had the benefit of competent counsel, the right to subpoena witnesses and the right to cross-examine witnesses. The proceeding was conducted in an open and fair manner, with no undue time restrictions that would effect the length of testimony on direct or cross.

Id. at 15. With respect to the January 6 report, Judge Erickson found that:

the January 6 Report, including its findings, may properly be considered as evidence, as it was by the Colorado trial court, based on Illinois Rule of Evidence 803(8), as well as the relaxed rules of evidence at an administrative hearing. Hearing Officer further finds, after reviewing the Report, that it is a trustworthy report, the result of months of investigation conducted by professional investigators and a staff of attorneys, many of whom with substantial experience in federal law enforcement.

Id. at 16. Petitioners relied on the same evidence in challenging Trump’s eligibility under Massachusetts law in this case. As Judge Erickson correctly found, crediting it here is in no way unfair to Respondent Trump and in no way contrary to the requirements of due process.

Second, Judge Erickson recognized the need for the relevant Illinois state officials to act expeditiously to resolve voters’ challenges to Trump’s eligibility in Illinois, notwithstanding that Trump’s appeal of the Colorado Supreme Court’s decision in *Griswold* is currently pending at the U.S. Supreme Court. *Id.* at 12. Judge Erickson acknowledged that the Illinois State Board of Elections might ultimately reject his conclusion that it lacked authority to resolve constitutional issues. *Id.* at 15. Accordingly, given the timeline for conducting elections in Illinois, Judge Erickson found that it was “incumbent . . . [to] make[] findings on the evidence received at the hearing and make a **recommendation** . . . regarding a decision based on the evidence.” *Id.* Similarly, given the timeline for conducting elections in Massachusetts, it is imperative that the SBLC or this Court reach and resolve the merits of Petitioners’ objections. The SBLC and this Court cannot wait on the U.S. Supreme Court to act, because the U.S. Supreme Court may hold that state officials possess the authority to adjudicate Section 3 challenges consistent with their own state election laws.

Third, and most importantly, Judge Erickson recognized the inescapable conclusion that “even when giving the Candidate the benefit of the doubt wherever possible,” Trump engaged in insurrection within the meaning of Section 3 “in the context of the events and circumstances of January 6, 2024.” *Id.* at 16. On the central

question of Trump’s culpability for the violent scheme to disrupt the peaceful transfer of power to President Biden, Judge Erickson found that Trump:

understood the divided political climate in the United States. He understood and exploited that climate for his own political gain by falsely and publicly claiming the election was stolen from him, even though every single piece of evidence demonstrated that his claim was demonstrably false. He used these false claims to garner further political support for his own benefit by inflaming the emotions of his supporters to convince them that the election was stolen from him and that American democracy was being undermined. He understood the context of the events of January 6, 2021 because he created the climate. At the same time he engaged in an elaborate plan to provide lists of fraudulent electors to Vice President Pence for the express purpose of disrupting the peaceful transfer of power following an election.

Id. at 15–16. The same evidence and same undisputed facts underpinning Judge Erickson’s conclusion on the merits supports the same conclusion here: Under Section 3 of the Fourteenth Amendment, Respondent Trump is ineligible to serve as President of the United States, or to appear on the Massachusetts presidential primary ballot in connection with seeking that office, because he engaged in an insurrection against the U.S. Constitution.

Respectfully submitted,

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By their attorneys and authorized
representatives,

Date: January 28, 2024

/s/ Shannon Liss-Riordan

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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 28, 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, and will be hand delivered to the same parties at the opening of business tomorrow, January 29, 2024, through their representatives as follows:

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