

COMMONWEALTH OF MASSACHUSETTS.  
**Supreme Judicial Court.**  
FOR THE COMMONWEALTH OF MASSACHUSETTS.

No. 08769.

SUFFOLK COUNTY.

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KELLY BATES, RON BELL, DEREK BOK, BRIAN CORR, MARC D. DRAISEN, RICHARD ELRICK, ROBERT A. FEUER, KATHLEEN E. GRADY, ARNOLD S. HIATT, FRANK N. JONES, SUMNER Z. KAPLAN, GIOVANNA NEGRETTI, GALEN NELSON, WILLIAM O'CONNELL, GIBRAN X. RIVERA, DAVID C. ROBBINS, ALICE C. SWIFT, JOHN W. SEARS, JOHN J. TEMPLETON, NANCY TURNER, ERNEST WINSOR, SARAH CANNON HOLDEN, JAMES O'KEEFE, DOUGLAS PETERSEN, EVAN SLAVITT, STEPHEN SPAIN, JILL STEIN, WARREN TOLMAN, COMMON CAUSE MASSACHUSETTS, MASSACHUSETTS VOTERS FOR CLEAN ELECTIONS, MASSACHUSETTS REPUBLICAN STATE COMMITTEE, AND MASSACHUSETTS GREEN PARTY,  
PLAINTIFF-APPELLANTS, AND

MICHAEL ALEO, KATHRYN BROOKINS, ROBERT COLLAMORE, JAMES ELDRIDGE, PAUL LACHELIER, JONATHAN LEAVITT, AND THOMAS H. STOKES,  
PLAINTIFF-APPELLANT-INTERVENORS,

v.

MICHAEL J. SULLIVAN, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE OFFICE OF CAMPAIGN AND POLITICAL FINANCE, AND WILLIAM FRANCIS GALVIN, IN HIS OFFICIAL CAPACITY AS THE SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS,  
DEFENDANT-APPELLEES.

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ON APPEAL FROM TWO SEPARATE JUDGMENTS OF THE SINGLE JUSTICE FOR  
THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY.

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**BRIEF AND APPENDIX FOR THE PLAINTIFF-APPELLANTS  
AND PLAINTIFF-APPELLANT-INTERVENORS.**

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## **STATEMENT OF THE ISSUES**

- I. Whether the single justice erred in exempting cash accounts of the Commonwealth from a levy of execution to satisfy monetary judgments issued to certified clean elections candidates when such cash accounts are subject to execution under Chapter 235 of the General Laws of the Commonwealth and when common law clearly provides for the attachment of cash accounts.
- II. Whether the single justice erred in denying plaintiffs' motion for the appointment of a receiver to hold surplus money from the levies of execution of current judgments for the satisfaction of future judgments, when such appointment is necessary to preserve the meaning of the matching funds provision of the Massachusetts Clean Elections Law.
- III. Whether the single justice erred in denying plaintiffs' motion for an expedited seven-day notice period for execution sale of real property to ensure effective and timely satisfaction of all judgments issued to certified clean elections candidates.

## **STATEMENT OF THE CASE**

This case is before the full Court on an appeal of two separate orders issued by the single justice concerning further relief to ensure effective and timely satisfaction of all judgments issued to certified clean elections candidates. Plaintiff-appellants and plaintiff-appellant-intervenors appeal, in full, the single justice's order dated March 12, 2002, denying plaintiffs' motion for further relief in the form of a levy of execution on any and all

accounts containing money belonging to the Commonwealth, including the Commonwealth's Clean Elections Fund. Plaintiff-appellants and plaintiff-appellant-intervenors also appeal, in part, the single justice's order dated April 5, 2002, denying plaintiffs' request for an expedited seven-day notice period for execution sale of real estate and denying plaintiffs' request for a receivership to hold any surplus from execution for future monetary judgments.

On January 25, 2002, this Court "issued a memorandum and order stating in part that '[u]nless the Legislature has repealed a law that has been enacted by way of initiative, the Legislature is mandated by art. 48 to raise by taxation or otherwise and to appropriate such money as may be necessary to carry the law into effect.'" *Bates v. Director of the Office of Campaign and Political Finance*, 436 Mass. 144, 148, n.8 (2002) (quoting the Court's memorandum and order).

On February 25, 2002, this Court issued a ruling remanding this case to the single justice with directions to enter a monetary judgment for plaintiff Warren Tolman against the defendant Director of Office of Campaign and Political Finance (OCPF) in the amount

of \$811,050. *Id.* at 178. The Court further directed the single justice to "retain jurisdiction to award such other and further relief to Tolman to which he is or may become entitled under the clean elections statute..." and "to grant relief to any other candidate plaintiff who is or may become entitled to relief under the clean elections statute..." *Id.* at 178-179. The Court stated: "'The presumption exists that the Commonwealth will honor its obligations.'" *Id.* (quoting *Bromfield v. Treasurer & Receiver Gen.*, 390 Mass. 665, 669). "Should Tolman's judgment remain unsatisfied," the Court continued, "he may apply for relief to the single justice...To the extent that any further proceedings in this case are required, the single justice has broad discretion to consider such other and further remedies as she deems necessary and appropriate." *Id.*

The concurring opinion of Justice Greaney (with whom Justice Ireland joined) to the Court's February 25, 2002 ruling stated: "The grant of executions is appropriate to expedite payments. It is assumed that the Legislature will promptly appropriate funds to pay the judgments. If not, the executions may be used to satisfy the judgments out of Commonwealth property."

*Id.* at 187 (Greaney, J. concurring, joined by Ireland, J.).

On February 26, 2002, this Court issued a monetary judgment in favor of plaintiff Tolman against the defendant Director of OCPF in the amount of \$811,050.

On February 28, 2002, plaintiff Tolman received partial satisfaction of that judgment, in the amount of \$582,093.75, leaving a remainder of \$228,956.25 due on the judgment. "It is undisputed that the \$582,093.75 payment was made from the Commonwealth's duly-appropriated judgments and settlements account (St. 2001, c. 177, §2, item 1599-3384), thereby exhausting that account." Defendant Director's Opposition to Plaintiffs' Motion for Further Relief at 2.

On March 12, 2002, the single justice issued a memorandum of decision and order denying plaintiffs' motion for further relief in the form of a levy of execution on any and all accounts containing money belonging to the Commonwealth, including the Commonwealth's Clean Elections Fund. (A. 25-31). In her decision, the single justice noted the urgency and time-sensitive nature of the plaintiffs' need for

relief in this case, given that the clean election funds are needed for ongoing campaigns, and that “[f]unds received too late can no longer help the candidates” overcome the series of hurdles and deadlines in campaigns. (A. 27).

On April 5, 2002, the single justice issued a memorandum of decision and order granting plaintiffs the issuance of executions on outstanding judgments in the case and allowing the plaintiffs to levy on non-cash property of the Commonwealth to satisfy such judgments. The single justice, however, denied plaintiffs’ request to appoint a receiver for the purpose of holding surplus money from the levies of execution for current judgments for the satisfaction of future judgments. The single justice also denied plaintiffs’ request for an expedited seven-day notice period for execution sale of real estate. (A. 32-39).

Since this Court’s February 25, 2002 ruling, several clean elections legislative candidates have intervened in this case and have received judgments for the amounts to which they are entitled under the Clean Elections Law. In accordance with her April 5, 2002 order, the single justice has issued executions simultaneously with the issuance of such judgments.

These plaintiff-intervenors include: Michael Aleo, Kathryn Brookins, Robert Collamore, James Eldridge, Paul Lachelier, Jonathan Leavitt, and Thomas H. Stokes. Plaintiff Kathleen E. Grady, a clean elections legislative candidate, also has received a judgment and execution. Plaintiff-intervenors Kathryn Brookins, Robert Collamore and James Eldridge have received additional judgments and executions for money to which they are entitled under the Clean Elections Law as certified candidates in a primary with an opponent.<sup>1</sup> M.G.L. c. 55A, § 8(a)(2).

Further, on June 10, 2002, plaintiff Warren Tolman received an additional judgment and execution for \$811,050 as a certified gubernatorial candidate in a primary with an opponent. On June 18, 2002, OCPF issued a letter to plaintiff Tolman informing him that, in accordance with the matching funds provision of the Clean Elections Law, he is entitled to an

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<sup>1</sup> Mr. Eldridge received his first judgment on March 5, 2002. David L. Westerling, a legislative candidate, also received a judgment, but subsequently withdrew as a clean elections participant. Other than Ms. Grady's judgment, all other judgments for clean elections legislative candidates have been issued after May 28, 2002, the end of the qualifying period for legislative candidates.

additional allocation in the amount of \$1,632,195, for which he is seeking another judgment and execution.

On April 28, 2002, the court-appointed constable held an auction of state-owned vehicles, satisfying, in full, James Eldridge's first judgment for \$8,100, and satisfying another part of the amount of Warren Tolman's judgment issued on February 28, 2002.

On June 7, 2002, the court-appointed constable noticed for sale real estate properties owned by the Commonwealth in the following communities: Boylston (120 acres); Concord (5.2 acres and 2 acres); Grafton (242.73 acres); Lakeville (72 acres); Raynham (31.17 acres); Shrewsbury (167.80 acres); Sterling (30 acres); and Sutton (31 acres). The constable has scheduled an auction of these properties for July 10, 2002.

On June 15, 2002, the court-appointed constable held a second auction of state-owned vehicles, satisfying, in part, the judgments owed to the clean elections legislative candidates.

#### **STATEMENT OF FACTS**

As of the writing of this brief, the Massachusetts Legislature continues to resist the clear mandate of this Court's rulings in this case, of

the single justice's rulings, of the Massachusetts Constitution, and of the Clean Elections Law itself.<sup>2</sup> The Clean Elections Law has not been repealed. Yet, the House has continued to refuse to appropriate any money for clean elections candidates. The Legislature has also left the judgments and settlements account depleted since the partial satisfaction of plaintiff Tolman's first judgment on February 28, 2002. In fact, in May 2002, the Legislature bypassed appropriating any money into the judgments and settlements account. Instead, the Legislature appropriated money to the Office of the Comptroller for numerous specific payments owed on judgments totaling \$1,366,326 for persons *other* than clean elections candidates.<sup>3</sup> This legislative action ensured

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<sup>2</sup> On June 13, 2002, the Massachusetts Senate voted in favor of a bill to appropriate \$9.6 million into the Clean Elections Fund to cover all certified clean elections candidates for the 2002 election. The bill would also place a nonbinding referendum on the ballot this November asking voters whether they "support taxpayer money being used to fund political campaigns for public office in Massachusetts." The bill is part of the Senate's overall budget plan for fiscal year 2003, which must now be reconciled with the House plan which does not appropriate any money into the Clean Elections Fund. See "\$9.6m OK'd for Clean Elections," by Rick Klein, *The Boston Globe*, June 14, 2002, A1.

<sup>3</sup> In a letter dated May 10, 2002, defendants' counsel informed the single justice that on May 8, 2002, the

that the remaining amount owed on plaintiff Tolman's first judgment would remain unsatisfied without the sale of additional Commonwealth property.

If allowed to stand, the single justice's orders denying further relief will effectively eliminate the matching funds provision of the Clean Elections Law for the 2002 election cycle. Under that provision, clean elections candidates become entitled to matching funds at intervals as short as forty-eight hours during the fourteen-day period before the primary and general elections, and intervals of seven days before

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Governor had filed with the Legislature "a request to appropriate \$2 million for OCPF to provide Clean Elections funds to certified candidates...The request also included a proposed appropriation of \$2,533,674 for the Commonwealth's settlements and judgments account..." Defendants' counsel further informed the court that "on April 23, 2002, the Governor filed a separate request, House Bill No. 5038, that sought, inter alia, an appropriation of \$1,366,326 to pay specified settlements and judgments, other than Clean Elections judgments, that were outstanding as of that date." See Addendum, Letter to Justice Martha B. Sosman from Peter Sacks, Assistant Attorney General, dated May 10, 2002, and attachments.

The Legislature approved the Governor's request of April 23, 2002, to pay non-Clean Elections judgments that were outstanding as of that date. See Section 2A of Chapter 118 of the Acts of 2002, [www.state.ma.us/legis/laws/seslaw02/sl020118.html](http://www.state.ma.us/legis/laws/seslaw02/sl020118.html) The Legislature did not approve the Governor's May 8, 2002 request with respect to Clean Elections funds and with respect to an appropriation for the Commonwealth's judgments and settlements account.

that point, depending upon the campaign expenditures of their non-participating opponents. G.L. c. 55A, § 11. A separate levy in execution of each judgment will render the matching funds provision meaningless.

This fact is especially relevant to plaintiff Tolman. Tolman will be a candidate for governor in the general election if he wins the Democratic primary election on September 17, 2002. As a clean elections candidate in the general election, Tolman would be entitled to matching funds in addition to the amounts allotted under the Clean Elections Law to any participating gubernatorial candidate in the general election. The matching funds provision of the law is designed, in part, to ensure that clean elections candidates remain competitive during the critical seven-week period between the primary and general election.

OCPF data from the 1998 election in Massachusetts demonstrates that campaign spending in a gubernatorial race reaches a feverish pace in the short time period between the primary and general election. The Celluci campaign spent approximately \$2.4 million during the general election period in 1998. The Harshbarger

campaign spent approximately \$2.2 million during that same period. See [www.massvoters.org/1998Governor.html](http://www.massvoters.org/1998Governor.html)

Given the amounts of matching funds to which clean elections candidates running for governor are entitled under the law, only execution sales of Commonwealth real estate property could conceivably raise the necessary money to satisfy such judgments. Yet, with such execution sales, any matching funds owed to Tolman in October or November would not be distributed until after the general election, making such distribution pointless and nullifying any court judgments issued during that time period. In essence, the Commonwealth's debt obligations with respect to such judgments would simply be erased by the passage of time. Without the meaningful application of the matching funds provision for clean elections candidates during the general election, the single justice's remedy is no remedy at all.<sup>4</sup>

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<sup>4</sup> Steve Grossman, one of plaintiff Tolman's opponents in the Democratic gubernatorial primary, has already exceeded the total base amount allotted to Tolman as a clean elections candidate, thereby triggering Tolman's entitlement to matching funds in the primary cycle. It is likely that Grossman's expenditures will continue at the same or at a faster pace, resulting in another matching funds judgment for Tolman in July. Given Grossman's expenditures to date, the amount of such a judgment is likely to bring Tolman to the

## ARGUMENT

### **I. The Single Justice Erred in Exempting Cash Accounts of the Commonwealth from a Levy of Execution to Satisfy Monetary Judgments Issued to Certified Clean Elections Candidates.**

Cash accounts are subject to execution under Chapter 235 of the General Laws of the Commonwealth.

All property which by common law is liable to execution is subject to levy of execution under this

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maximum amount of matching funds to which he is entitled in the primary period.

These factual circumstances may allow Tolman, through the existing judicial remedy, to receive, prior to the primary election, all of the matching funds to which he is entitled during the primary period. (Under different factual circumstances where the matching funds entitlement is triggered closer to the primary election, that might not be the case.) Plaintiffs still state, however, that the single justice's remedy, as currently constructed, does not allow for effective and timely relief, even in this primary election. In the midst of this hotly-contested gubernatorial primary, the matching funds provision will not be effectively implemented with Tolman having to wait in excess of thirty days beyond the time requirement in the statute to receive such funds.

Given that this appeal will not be heard until September at the earliest, plaintiffs place particular emphasis in this brief on the existing judicial remedy's impact on the matching funds provision as applied to the general election. Even if Tolman does not win the Democratic primary election, the questions raised in this appeal will remain ripe given the potential for the underlying constitutional violation in this case to persist into future election cycles. This Court should ensure that, if it is not repealed, the Clean Elections Law is fully implemented through judicial relief, if necessary, not only for the 2002 election but for future elections.

statute, except as otherwise expressly provided. G.L. c. 235, § 31. Cash accounts are not exempted from execution by statute except for the first \$125 held by a judgment debtor, G.L. c. 235, § 34, and the common law clearly provides for the attachment of cash accounts. See *Sheldon v. Root*, 33 Mass. 567, 16 Pick. 567 (1935); *Lipsitt v. Walmsley*, 289 Mass. 43 (1935); *Thompson v. Brown*, 17 Pick. 462 (Mass. 1835); *Maxwell v. McGee*, 66 Mass. 137 (1853). See also, *Wright v. Guilmette*, 111 A. 459, 461 (Vermont 1920); *Gibson v. National Park Bank of New York*, 98 N.Y. 87 (1885). Further, a rule exempting cash accounts from attachment would permit a judgment debtor to avoid execution merely by converting all property to cash. See *Lawson v. Lang*, 169 S.E. 455, 456 (W. Va. 1933).

The defendants have conceded that “[i]t would be within the Court’s power to abrogate sovereign immunity to execution upon the Commonwealth’s property, whether real or personal.” Letter of Peter Sacks to Susan Mellen, Clerk, February 7, 2002 (emphasis in original). “Personal property includes money...” *Black’s Law Dictionary*, Fifth Ed., at 1096. However, the defendants maintain that the Court’s judgment may not be satisfied out of any Commonwealth

fund which has not been appropriated for the purpose of satisfying judgments against the Commonwealth. *Id.* This argument fails because there is no principled distinction between cash accounts and other property held by the Commonwealth, none of which was acquired for the specific purpose of satisfying court judgments. If other real or personal property which was not acquired for the purpose of satisfying judgments may be used for this purpose, then cash which is similarly not held for this purpose may also be so used.

The single justice erred in ruling that the Commonwealth's property in the form of cash is exempt from a levy of execution to satisfy monetary judgments. In her ruling, the single justice stated that a levy on Commonwealth funds is "functionally equivalent" to an order compelling the Treasurer to pay a judgment in the absence of an appropriation. (A. 26).

Yet, if that were the case, why would any levy of Commonwealth property be permissible? On April 28, 2002, and on June 15, 2002, the court-appointed constable held auctions on state-owned vehicles to satisfy, in part, outstanding judgments in this case.

The Commonwealth presumably purchased such vehicles with funds appropriated for that specific purpose and no other. There is no substantive distinction between a levy on Commonwealth funds and a levy on Commonwealth vehicles. Neither is connected to an appropriation for monetary judgments. If the Massachusetts Constitution allows for a levy on property of the Commonwealth purchased through an account with appropriated funds, then it allows for a levy on the account itself.<sup>5</sup>

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<sup>5</sup> In her March 12, 2002 ruling, the single justice stated the assumption that judgments for certified clean elections candidates would eventually be paid by the Commonwealth: "Judgments against the Commonwealth are ordinarily paid from the judgments and settlements account, an account that is periodically replenished with a new appropriation for that purpose. These judgments will eventually be satisfied in the same manner, and, notwithstanding the absence of any appropriation for the Clean Elections law itself, judgments representing public funds for Clean Elections candidates will ultimately be paid from a future appropriation to the judgments and settlements account." (A. 26-27). That assumption has, to date, unfortunately, proven to be untrue.

In fact, as discussed *supra* at pages 8-9 and note 3, in May 2002, the Legislature appropriated money for numerous specific payments owed on non-clean elections judgments but left unpaid the remaining amount owed on plaintiff Tolman's first judgment. There was no rational basis for the difference in treatment accorded to plaintiff Tolman's judgment versus judgments owed to persons other than clean elections candidates. This intentional and arbitrary discrimination is an independent constitutional

Further, in art. 63 matters, this Court has long held that separation of powers questions involve a careful balancing process which ensures that the legislative power to appropriate does not intrude on the powers of the other branches of government. In its opinion of the justices upholding the governor's line-item veto power, this Court stated:

[I]f through the appropriation process, the Legislature were able to compel the Governor either to accept general legislation or to risk forfeiture of appropriations for a department of government, the careful balance of powers struck in Article 63 would be destroyed, and the fundamental principle of separation of powers, preserved in art. 30 of the Declaration of Rights, would be substantially undermined.

*Opinion of the Justices*, 384 Mass. 828, 832 (1981).

See also *Opinion of the Justices*, 375 Mass. 851 (1978)

(proposed bills subjecting all federal grant money to legislative appropriation were unconstitutional intrusions on executive power); cf *Opinion of the Justices*, 397 Mass. 1201 (1986) (proposed bill which would have required legislative approval of the executive branch's licensing of low-level radioactive

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violation under both the Massachusetts and United States Constitutions. See *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (holding that intentional discrimination against a class of one, without any legitimate or rational basis, is actionable under the equal protection clause).

waste facilities impermissibly encroached on executive power).

Here, that careful balancing process strikes in favor of a levy on the Commonwealth's cash accounts, ensuring that the legislative power to appropriate does not intrude on the judicial branch's power to issue meaningful relief for a constitutional violation. This is particularly true with respect to the Commonwealth's Clean Elections Fund and its General Fund. As this Court has stated, "[t]he Legislature exercises [its appropriation] power by setting apart from public revenues a specific amount of money to be used by officers of the executive branch for particular purposes to implement and maintain programs the Legislature has established." *Opinion of the Justices*, 375 Mass. at 853 (other citations omitted). While the Legislature has yet to appropriate any money to be paid out of the Clean Elections Fund, the money it has already transferred into that fund and set aside has not subsequently been set aside for any other specific purpose. Similarly, the money in the General Fund has yet to be set aside for any specific purpose. Under a careful balancing analysis, a levy on either fund is not "functionally

equivalent" to an intrusion on the legislative power to appropriate. Rather, it is consistent with this Court's power under art. 30 to ensure that the rule of law be respected by all and that the Massachusetts Constitution be upheld.

**II. The Single Justice Erred in Denying Plaintiffs' Motion for the Appointment of a Receiver to Hold Surplus Money From the Levies of Execution of Current Judgments for the Satisfaction of Future Judgments.**

Given the reasonable expectation of future judgments in this case, especially via the matching funds provision, and the need for timely satisfaction of these judgments, money remaining from the levies in execution of current judgments should be preserved for the satisfaction of future judgments. This Court's February 25, 2002 order clearly anticipated the entry of future judgments: "The single justice shall retain jurisdiction to grant relief to any other candidate plaintiff who is or may become entitled to relief under the clean elections statute, consistent with this opinion. She may allow motions to amend or motions to intervene to add additional candidate plaintiffs who may seek relief under the clean elections statute." *Bates*, 436 Mass. at 179.

A receivership is, therefore, appropriate to preserve assets for future judgments in this case. "Receivership...is resorted to for the purpose of conserving the property and assets of the respondent pending adjudication of these rights." *Willson v. Waltham Watch Co.*, 293 F. Supp. 811, 814 (D. Mass. 1923). Such a measure is appropriate where the Court anticipates that future intervenors may become entitled to judgments. See *Altman v. Vogue Internationale*, 366 Mass. 176, 179 (1974).

Receiverships have been ordered over public agencies, where there is "a reasonable forecast that the mere continued insistence by the court that these officials perform the decree would lead only to 'confrontation and delay.'" *Perez v. Boston Housing Authority*, 379 Mass. 703, 736 (1980) (ordering a receivership over the Boston Housing Authority); see also, *Judge Rothenberg Educational Center v. Commissioner of the Department of Mental Retardation*, 424 Mass. 430, 464 (1997) (ordering receivership over the Department of Mental Retardation).

In her ruling denying plaintiffs' motion for the appointment of a receiver, the single justice stated: "After any outstanding judgments are satisfied,

surplus funds from an execution sale are returned to the debtor. Here, excess funds (if any) must be returned to the Commonwealth.” (A. 38). The single justice’s analysis lacks the citation to any caselaw. In particular, the ruling fails to address *Altman*, which plaintiffs cited in their memorandum of law in support of their motion.

In *Altman*, the defendant, Vogue Internationale, Inc., argued that “because Altman’s execution was satisfied, it was error for a judge [ ] to appoint a temporary receiver, to allow other creditors to intervene.” *Altman*, 366 Mass. at 177. This Court rejected that argument: “A receivership is not solely for the benefit of the petitioning creditor or creditors...It has been held that the appointment of a receiver is not barred where the judgment of the original petitioning creditor has been paid if other creditors have intervened.” *Id.* at 179 (internal citations omitted). The appointment of a receiver in this case is consistent with that precedent.

**III. The Single Justice Erred in Denying Plaintiffs' Motion for an Expedited Seven-Day Notice Period for Execution Sale Of Real Property.**

As explained *supra*, the judicial remedy of execution sales will render the matching funds provision of the Clean Elections Law meaningless during the general election. Plaintiff Tolman, if he wins the Democratic primary election, will be entitled to significant amounts of matching funds. Judgments for those amounts of money will not be satisfied through the sale of personal property of the Commonwealth. Execution sales of real property for any judgments issued beginning in October 2002 (two weeks into the general election cycle) will result in payment on such judgments after the election.

In light of these unique circumstances, the statutory requirement of thirty-day notice before the execution sale of real property, G.L. c. 236, § 28, should be shortened to seven days. Compliance with the thirty-day notice period, combined with possible adjournments of sale, G.L. c. 238, § 29, would delay satisfaction of judgment in such a manner as to deny effective relief to plaintiff Tolman and, possibly, to other certified clean elections candidates.

In denying plaintiffs' motion for an expedited execution sale of real property, the single justice stated that "even the most recalcitrant debtors are still given the statutory notice period prior to sale, without regard to how much time they have already had to satisfy the debt." (A. 37). Yet, this is not like any debtor case. Here, the Legislature's recalcitrance will effectively eliminate the application of the matching funds provision during the general election without an additional judicial remedy. In so doing, the Commonwealth will be relieved by the passage of time of its debt obligations with respect to judgments issued for matching funds. What other debtor could escape from paying a judgment by the passage of time in the same year that the judgment enters?

The single justice also ruled that the thirty-day notice period is necessary for "securing purchasers for the property so as to obtain a fair price at the auction." (A. 37). Yet, G.L. c. 238, § 29, allowing for possible adjournments of sale, would still be in effect even with an expedited seven-day notice period. Further, elsewhere in her ruling, the single justice recognizes that "distress sale prices . . . tend to

prevail at such auction sales" and that this remedy of execution "unquestionably inflicts needless damage on the Commonwealth," thereby accepting that a below-market price is the inevitable result of the Legislature's continued defiance of the rule of law. (A. 38). Since the Legislature may, at any time, avoid such consequences by complying with its obligations under the Massachusetts Constitution, and since the Clean Elections Law cannot meaningfully be implemented without expediting the notice period, the mandate of the entire Clean Elections Law, including its matching funds provision, must prevail here. The remedy of an expedited seven-day notice period for execution sales of real property, combined with the appointment of a receiver, is necessary to preserve the matching funds provision.

#### **CONCLUSION**

For the foregoing reasons, this Court should reverse the single justice's exemption of cash accounts of the Commonwealth from a levy of execution in this case. In the alternative, this Court should allow for the appointment of a receiver and an expedited seven-day notice period for execution sales of real property of the Commonwealth.

Respectfully submitted,

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