COMMONWEALTH OF MASSACHUSETTS.

Supreme Judicial Court.

FOR THE COMMONWEALTH OF MASSACHUSETTS.

NO. 08677.

SUFFOLK COUNTY.

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,
PLAINTIFFS-APPELLANTS,

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,
DEFENDANTS-APPELLEES.

ON A RESERVATION AND REPORT.

REPLY BRIEF FOR THE PLAINTIFFS-APPELLANTS.

JOHN H. HENN (BBO# 230520)
VERNE VANCE (BBO# 507540)
STEVEN G. TIDRICK (BBO# 649708)
FOLEY, HOAG & ELIOT, LLP
One Post Office Square
Boston, Massachusetts 02109
(617) 832-1000

JOHN C. BONIFAZ (BBO# 562478)
BONITA P. TENNERIELLO*
BRENDA WRIGHT*
LISA J. DANETZ (BBO# 645998)
NATIONAL VOTING RIGHTS INSTITUTE
One Bromfield Street, Third Floor
Boston, Massachusetts 02108
(617) 368-9100

**Admitted Pro Hac Vice*

[*Additional counsel*]

EDWARD V. COLBERT III (BBO#566187)
LOONEY & GROSSMAN, LLP
101 Arch Street
Boston, Massachusetts 02110
(617) 951-2800

RICHARD L. NEUMEIER (BBO# 369620)
MCDONOUGH, HACKING & NEUMEIER, LLP
11 Beacon Street, Suite 1000
Boston, Massachusetts 02108
(617) 367-0808

Of Counsel:
Donald J. Simon
Sonosky, Chambers, Sachse,
ENDRESON & PERRY, LLP
1250 Eye Street, NW, Suite 1000
Washington, D.C. 20005
(202) 682-0240

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

CONSTITUTIONAL PROVISIONS AND STATUTES:

MISCELLANEOUS:

[This page is intentionally left blank.]

INTRODUCTION

The Appellees' arguments echo the arguments made nearly four decades ago by the State of Alabama in the landmark "one person, one vote" U.S. Supreme Court case of *Reynolds v. Sims*, 377 U.S. 533 (1964). In *Reynolds*, the defendant State of Alabama claimed that the matter of apportioning representation in a state legislature was solely a political one and did not belong in the courts. *Id.* at 566. In this case, the Appellees argue that "the people's remedy for any legislative inaction under art. 48 is not in court but at the ballot box," and that "[t]he Legislature... remains subject to the people's control." Def. Br. at 9, 10.

This is as Orwellian an argument today as it was nearly four decades ago. The very reason for the passage of the Massachusetts Clean Elections Law and the filing of this lawsuit is that the Massachusetts Legislature today is not subject to the people's control. Massachusetts ranks second to last among states in the nation with respect to contested legislative races. (A. 80-89, SAF, Ex. L; A. 92-116,

SAF, Ex. M).[1] Less than one-third of the legislative races in this state are contested. *Id.* In those races that are contested, candidates with a significant financial advantage win nine out of ten times. (A. 82, 85).

Massachusetts voters overwhelmingly approved the Massachusetts Clean Elections Law, pursuant to art. 48, precisely because they sought to reclaim control of their state government. The Clean Elections Law fundamentally restructures the electoral process in this Commonwealth to re-establish political power with whom it belongs: the voters. It ignores reality to suggest that those same voters should now find their remedy through the very political system which excludes them and which they have sought to overhaul with the Clean Elections Law. Art. 48, which preserves for the citizens a check on an unresponsive legislature, was tailor-made to overcome this impasse.[2]

---

[1] The Appellees have not stipulated to the truth of the matters asserted in these reports.

[2] The Appellants continue to suffer immediate and irreparable harm by the Appellees' failure to implement fully the Clean Elections Law. That harm will soon be exacerbated when Appellant Warren Tolman is certified as a clean elections candidate. On November 26, 2001, Appellant Tolman, a gubernatorial candidate, filed with the Appellee OCPF Director his

Given the extraordinary urgency of this case and the fact that, until next year, the Legislature will only be back in session for one day on December 5, 2001, the Appellants respectfully ask this Court to grant immediately the requested relief. The Appellants have attached to this brief suggested language for an order directed at the Appellee OCPF Director and, in the alternative, suggested language for an order directed at the Appellee Secretary of the Commonwealth. Addendum, Ex. 2, 3.

---

application for certification along with supporting documentation of the more than 6,000 qualifying contributions his campaign has gathered from registered voters throughout the state. Addendum, Ex. 1. In accordance with the Clean Elections Law, the Appellee OCPF Director must, within a seven-business-day period (no later than December 5, 2001), either issue a certification or a denial of certification to Appellant Tolman. M.G.L. c. 55A, § 5(e). If Appellant Tolman is certified for public financing, the Appellee OCPF Director must distribute $811,050 to him as a first installment within five business days after certification (no later than December 12, 2001). M.G.L. c. 55A, § 8(a)(1).

The Appellee OCPF Director has notified Appellant Tolman's campaign that it intends to complete this certification process by November 30, 2001. If Appellant Tolman is certified by November 30, 2001, as a clean elections candidate, he will be owed his first installment of public funds on December 7, 2001 (five business days following certification).

I. The Appellees Are Bound By Article 48

The Appellees argue that art. 48 applies only to the legislature. If that were true, then art. 48 would be nothing more than an aspirational amendment to the Massachusetts Constitution. To the contrary, the purpose of art. 48 is to preserve for the citizens the power to create laws, not aspirations, at the ballot box. Such laws are "measure[s] with binding effect," *Mazzone v. Attorney General*, 432 Mass. 515, 530 (2000), on executive branch officials charged with carrying out their mandates.

In making their argument, Appellees point only to one sentence of art. 48, rather than reading the constitutional amendment as a whole. Art. 48 states that the legislature may amend or repeal a law approved by the people, art. 48, Initiative and Referendum Pt. VI, but if it does not do so, the legislature "shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect." art. 48, Initiative and Referendum Pt. II, § 2. Art. 48 also states that "the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the

people for approval or rejection..." art. 48, Initiative and Referendum Pt. 1, § 1. Appellees' narrow reading of art. 48 contravenes this Court's longstanding principle that a constitutional amendment should be interpreted in accordance with its underlying purpose. "The aim of all interpretation is to give effect to the dominating idea of the instrument. Statements in the Constitution and its Amendments must be given effect in consonance with the end they are designed to accomplish." *Citizens for a Competitive Massachusetts*, 413 Mass. 25, 30 (1992) (quoting *Town of Washington v. Cook*, 288 Mass. 67, 70 (1934)). As this Court has said, the "fundamental purpose" of art. 48 "is to permit the people to make law directly where the Legislature has failed or has refused to act." *Id.* at 30-31.

A finding by this Court that the Appellees are not bound by art. 48 would render the amendment effectively meaningless. The voters of Massachusetts have created a law, via art. 48, which the legislature has neither repealed nor amended. If this Court were to state that Appellees, the executive branch officials charged with carrying out the mandate of this law, are not bound by art. 48, then it would be

stripping the citizens of their power "'to initiate and adopt laws.'" *Id.* at 30 (quoting *Yankee Atomic Elec. Co. v. Secretary of the Commonwealth*, 403 Mass. 203, 211 (1988)). For what would be the purpose of creating a law at the ballot box if the citizens could never seek redress in court for the implementation of that law when faced with legislative inaction? In such an instance, the law would simply become a legal fiction.

As stated earlier, the Appellees' suggestion that the voters return to the ballot box for their remedy is not an answer to the violation of their constitutional rights. Art. 48 "was intended to provide both a check on legislative action and a means of circumventing an unresponsive General Court." *Buckley v. Secretary of the Commonwealth*, 371 Mass. 195, 199 (1976). In passing the Clean Elections Law, the voters utilized art. 48 for that very purpose, establishing a new campaign finance system which would break the dominance of monied interests on state government and create a more responsive legislature. The remedy of returning to the ballot box under the current exclusionary campaign finance system is not a real remedy. As in *Reynolds*, judicial intervention is

needed to protect voters' basic constitutional rights in the political process.

Consistent with its purpose, art. 48 is binding on all executive branch officials charged with carrying out the laws created via the ballot initiative process. In this case, art. 48 is binding on the Appellees.

II. This Court Has the Authority to Order Injunctive Relief Against the OCPF Director

The Appellees argue that this Court lacks the authority to order the OCPF Director to implement fully the Massachusetts Clean Elections Law and to make available all necessary funds to all qualified candidates. As Appellants showed in their opening brief, Pl. Br. at 26-32, this Court has repeatedly held that a state agency can be ordered to carry out its constitutional obligations regardless of the lack of appropriated funds.[3]

[3] The fact that the Clean Elections Law includes the "subject to appropriation" language does not release the Appellees of their constitutional responsibilities under art. 48. The words "subject to appropriation" in a statute "may serve as a useful reminder, but they are supererogatory." *Milton v. Commonwealth*, 416 Mass. 471, 474 (1993). In accordance with art. 48, the Legislature had the power to repeal the Clean Elections Law; it did not exercise that power. If a law created by art. 48 is not repealed, then it is enforceable. Otherwise, it would

Appellees concede that the legislative power to appropriate, as enunciated in art. 63, cannot be allowed to trump a constitutional mandate. Appellees argue, however, that "the reverse is also true: other constitutional mandates...do not 'trump' art. 63." Def. Br. at 35. Yet, both, in fact, cannot be true. This Court has already held that a constitutional mandate requiring the expenditure of funds trumps art. 63 in instances where such funds have yet to be appropriated. If the reverse were true, then those cases would have gone the other way.[4]

In *Michaud v. Sheriff of Essex County*, 390 Mass. 523 (1983), this Court ordered improvements to the

---

not really be a law, "a measure with binding effect." *Mazzone*, 432 Mass. 515, 530 (2000).

[4] Appellees also argue that since Article 48 and Article 63 were ratified by the people on the same day, the drafters of Article 48 could not have "intended to authorize expenditures without appropriations in the event the Legislature neither repealed nor appropriated funds for an initiative law" since "surely such an intent would be reflected more clearly in art. 48, or art. 63, or both." In fact, the drafters of Article 48 did not imagine that the Legislature would actually ignore the constitutional mandate of the amendment. During the debates in the 1917-1918 Constitutional Convention that led to the adoption of Article 48, Mr. Quincy of Boston stated, in response to a question, that he did "not believe we need to consider seriously … a defiance of the provisions of the amendment by either of these two branches of the General Court." 2 *Debates in the Constitutional Convention of 1917-1918* at 685 (1918).

sanitary conditions in county jail facilities, despite the absence of a legislative appropriation to pay for such improvements. Art. 26 of the Massachusetts Declaration of Rights and the Eighth Amendment to the U.S. Constitution were effectively held to trump art. 63. *See also Blaney v. Commissioner of Correction*, 374 Mass. 337, 342 n.3 (1978)(While there was no showing that existing appropriations were inadequate, if that had been the case "the unavailability of funds would not be a defense" to constitutional claims against correction officials.).

The Appellees attempt to distinguish *Michaud* from this case by arguing that "the precise means of remedying the defendants' constitutional violations were left to the defendants themselves..." This is not true. In *Michaud*, the Court clearly stated: "[W]e give the defendants until June 1, 1984, to complete alterations at the jail sufficient to pass constitutional scrutiny...The defendants should remedy the unconstitutional conditions at the jail in whole or in part as soon as possible." *Michaud*, 390 Mass. at 535-536. This remedy clearly involved the expenditure of funds, funds which the defendants had demonstrated to the Court had yet to be appropriated.

Id. The fact that the Court transferred jurisdiction of the case to the single justice for the issuance of further orders, including the potential closing of jails, does not change the nature of the initial order to make improvements to the jail cells.

Appellees also try to distinguish *Michaud* from this case by arguing that this Court "did not even consider ordering expenditures in excess of appropriations." Yet, there is no qualitative difference between ordering a state agency to take actions which involve the expenditure of money and ordering a state agency to spend money. As in this case, the defendants in *Michaud* argued that they were not violating a constitutional mandate because they lacked the appropriated money for meeting that mandate. *Michaud*, 390 Mass. at 532. The Court's answer was clear: "We flatly reject the notion that an arm of the State may be allowed to violate an individual's constitutional rights because funds have not been appropriated to remedy the wrong." *Id*. The Court ordered relief involving the expenditure of money with full recognition that such money had yet to be appropriated.

Like *Michaud*, this Court's ruling in *O'Coin's, Inc. v. Treasurer of the County of Worcester*, 362 Mass. 507 (1972), also held that a separate constitutional mandate can trump art. 63. In *O'Coins*, this Court upheld a superior court judge's expenditures "to secure the full and effective administration of justice": "It is not essential that there have been a prior appropriation to cover the expenditure." *Id.* at 511, 514. Art. 11, 29 and 30 of the Massachusetts Declaration of Rights were effectively found to supersede art. 63. *See also County of Barnstable v. Commonwealth*, 422 Mass. 33, 45-46 (1996) ("[I]t remains clear that proof of deficiencies in the physical plant, or in the essential maintenance or security staff in a particular courthouse in one of the counties, would justify the exercise of our inherent power to ameliorate conditions in that facility.")

Appellees try to distinguish *O'Coins* from this case by arguing that *O'Coins* represents a narrow "exception to the appropriation requirement" because it involved "the functioning of the judiciary as a separate and co-equal branch of government." Def. Br. at 33. Yet, by that same reasoning, this narrow

exception must also extend to the ballot initiative process which allocates to the citizenry the power to serve as a branch of government in the enactment of laws. The integrity of that process and of art. 48 itself requires the same result as in *O'Coins*.

Appellees cite this Court's discussion of *O'Coins* in *Bromfield v. Treasurer and Receiver-General*, 390 Mass. 665 (1983) to argue that the *O'Coins* exception should not apply in this case. *Bromfield* involved a small group of landowners who were earning interest on debts owed to them for the taking of their property by eminent domain. This case, like *O'Coins*, involves the essence of our state government. The power of the entire citizenry of Massachusetts to "circumvent[] an unresponsive General Court" and "to enact statutes regardless of legislative opposition," *Buckley*, 371 Mass. at 199, is as critical to our governmental structure as the functioning of our judiciary.

Even if this Court finds that the *O'Coins* exception does not apply in this case, *Bromfield* makes clear that alternative relief is available for effectuating the necessary disbursements of funds in this case. While the Court in *Bromfield* found that the plaintiff landowners had not suffered

"unreasonable delay" in receiving their compensation, the Court also stated that the plaintiffs were not "relegated to standing idly by, left only to consider, as reasonable compensation, the vague hope that on some unascertainable future date their judgment will be satisfied." *Bromfield*, 390 Mass. at 669. The Court held that "[i]f the Legislature should fail to make an appropriation sufficient to meet the Commonwealth's obligation," it would consider taking action to satisfy the judgment, including a "levy of execution upon the Commonwealth's property." *Id.* at 670.[5] The voters of Massachusetts are as deserving of such relief in this case to vindicate their constitutional rights as were the group of landowners in *Bromfield*.

III. This Court Has the Authority to Order Injunctive Relief Against the Secretary of the Commonwealth

The Appellees first argue that because neither art. 48 nor the Clean Elections Law explicitly make elections contingent on compliance with either provision, elections may not be enjoined. But a

[5] It is worth noting here that in their discussion of the Court's consideration of remedies in *Bromfield*, Appellees highlight only the potential remedy of reconveying the property and choose not to mention this one. Def. Br. at 28.

constitutional provision or statute need not anticipate its own violation in order to deserve the Court's protection. There is nothing in the text of either the Fourteenth Amendment to the U.S. Constitution or Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, *et seq.* which makes elections contingent on a state's compliance with these provisions, and yet courts have repeatedly forbidden elections which violate these provisions.[6]

The Appellees assert that the relief the Appellants seek would infringe constitutional provisions guaranteeing the right of the people to elect public officials at regular intervals, namely Mass. Const. amend. art. 64 and Mass. Const. Declaration of Rights, art. 8. However, this neglects the damage done to this very right by the obstruction of the ballot initiative process and evisceration of the Clean Elections Law. Appellants seek relief

[6] For Fourteenth Amendment violations see, e.g., *Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *Parsons v. Buckley*, 379 U.S. 359 (1965); *Hamer v. Campbell*, 358 F.2d 215 (5th Cir. 1966); *Latino Political Action Committee v. City of Boston*, 568 F.Supp. 1012 (D. Mass. 1983) *stay denied*, 716 F.2d 68 (1st Cir. 1983). For a Voting Rights Act violation, *see Smith v. Clinton*, 687 F. Supp. 1310, 1317 (E.D. Ark. 1988)(three-judge court),*aff'd mem. sub nom. Clinton v. Smith*, 488 U.S. 988 (1988).

precisely in order to safeguard "the basic constitutional mechanisms by which the people control their state government." Def. Br. at 43-44. The polling dates set in the constitution anticipate *lawful* elections. Similarly, the statutory provisions setting election dates, G.L. c. 54, §§ 62 and 150, cannot be read to mandate that an unlawful election be held on the given date.[7]

It is far from certain that an injunction would actually delay elections. If, in response to the injunction, public financing were made available soon enough for campaigns to be conducted as anticipated by the Clean Elections Law, the elections could be held on schedule. Regardless, the need to remedy an unconstitutional electoral process clearly takes precedence over election timetables set by

[7] It is precisely because "equity follows the law," *Rossi Bros. Inc. v. Commissioner of Banks*, 283 Mass. 114, 119 (1933) that equitable relief is appropriate in this case, where the Appellants are being deprived of rights guaranteed by the Constitution – the highest law of the Commonwealth. Appellees' citation of *Knight v. Town of Gloucester, Rhode Island*, 831 F.2d 30, 32 (1st Cir. 1987), Def. Br. at 41-42, does not advance their cause. In that case, the district court was held to have erred in ordering equitable relief for an employee, where the district court itself acknowledged that the employee's legal rights were not violated. *Id.*

constitutional or statutory provisions. This is the necessary implication of each of the cases cited *supra* at n.6 and in Appellants' opening brief, where courts have enjoined elections due to constitutional or statutory violations. This Court itself has not hesitated to strike a legislative apportionment even though the injunction might prevent the holding of scheduled elections. *Attorney General v. Suffolk County Apportionment Com'rs*, 224 Mass. 598, 610-11 (1916).

Appellees' observation that "no statute — even an initiative law such as the Clean Elections law — could alter the constitutionally prescribed time for the holding of elections," Def. Br. at 45-46, is misplaced. It is not the Clean Elections Law, but rather the state's violation of the constitutional rights of voters, which may render it impossible to hold lawful elections on the prescribed date.[8]

Appellees misconstrue Appellants' claims when they argue that "[t]he 'repeal or appropriate'

[8] For this reason, the holding in *League of Women Voters v. Secretary of the Commonwealth*, 425 Mass. 424, 428-31 (1997), that a statute may not alter the constitutional requirements for office, does not apply to the injunctive relief sought here. (The Appellees have not argued that the Clean Elections Law is or was an impermissible subject for ballot initiative.)

provision of art. 48 simply does not govern elections." Def. Br. at 46. While the legislature has violated this provision in failing to appropriate funds for the Clean Election Law, Appellees' conduct itself violates the broader command of art. 48, establishing the people's right to the ballot initiative. Art. 48, Initiative and Referendum Pt. 1 §1. Art. 48 clearly does govern the right and power of the people to pass valid statutes governing the conduct of elections and election officials.

The Court in *Lamson v. Secretary of the Commonwealth*, 341 Mass. 264 (1960) did not, as Appellees imply, reject the possibility of a judicial remedy for an electoral process made unconstitutional through the legislature's action or inaction. Rather, the Court held that while the legislature had violated one provision governing the time within which a reapportionment must be made, to invalidate the late apportionment would do greater damage by requiring elections to be held under an outdated and unconstitutional apportionment scheme:

> The Constitution does not contemplate that the Legislature, by failing to act when it should, can impose on the people for ten years an apportionment which changes in population have

> made unequal and hence constitutionally inappropriate.

Id. at 270. The Court thus gave priority to the substantive constitutional right to equal apportionment over the constitutional requirements governing the timing of apportionments. Here, similarly, the integrity of the ballot initiative and the electoral process must take priority over provisions governing the timing of elections. The legislature, by "failing to act when it should" to provide Clean Election funding, cannot "impose on the people" a campaign finance regime which the people have rejected by exercise of their constitutional right to the ballot initiative.

Appellees turn this case on its head by suggesting that, "[p]articularly where the people's remedy for any legislative inaction in violation of art. 48 is at the ballot box...it would be perverse to enjoin the very elections at which the people may employ that remedy." Def. Br. at 48, citing *League of Women Voters*, 425 Mass. at 432. By withholding the public financing which would permit meaningful electoral competition, the legislature is protecting incumbency and *preventing* a remedy at the ballot box.

See supra at 1-2. Thus a judicial remedy would permit electoral competition rather than protect incumbent officeholders as Appellees suggest.

An order enjoining further elections is appropriate because it typically prompts the state legislature to take the necessary steps to remedy an unlawful electoral process. *See Gingles v. Edmisten*, 590 F. Supp. 345, 376 (E.D.N.C. 1984) (three-judge court)(court enjoined further elections under districting plan that violated Voting Rights Act and state responded by remedying the violation), *aff'd in part, rev'd in part on other grounds sub nom. Thornburg v. Gingles*, 478 U.S. 30 (1986). *See also, Parsons v. Buckley*, 379 U.S. 359, 361 (1965); *Latino Political Action Committee,* 568 F. Supp. at 1019.[9]

[9] The cases enjoining elections and voiding apportionments refute Appellees' suggestion that an injunction should not issue if its impact is uncertain. *See, e.g., Attorney General v. Suffolk County Apportionment Com'rs*, 224 Mass. at 609 (apportionment void even though defendants argued that "grave results" would follow). In fact, Appellees elsewhere acknowledge that this Court has issued injunctions where the practical result was not certain; for instance in discussing *Blaney v. Commissioner of Correction*, 374 Mass. 337 (1978), Appellees state, "[t]he remedy, as in *Michaud*, might well be to enjoin the defendants from maintaining the unconstitutional conditions, leaving it to the defendants to determine how to achieve compliance…." Def. Br. at 31 n.11. *See also,* Def. Br. at 31

As this Court has long recognized, "[t]he circumstance that political considerations may be connected with rights affords no justification to courts for refusal to adjudicate causes rightly pending before them." *Attorney General v. Suffolk County Apportionment Com'rs*, 224 Mass. at 602; *see also Reynolds*, 377 U.S. at 566 ("We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office requires no less of us.").

CONCLUSION

For the foregoing reasons, the Court should immediately grant Appellants' request for declaratory and permanent injunctive relief.

(discussing *Michaud v. Sheriff of Essex County*, 390 Mass. 523 (1983)).

Similarly, while Appellees suggest that declaratory relief against the Secretary should not be granted because it will not "terminate a controversy or uncertainty," Def. Br. at 49 n. 25, they elsewhere suggest that declaratory relief can be appropriate even when not terminating a controversy. *See* Def. Br. at 30(discussing *McDuffy v. Secretary of the Executive Office of Education*, 415 Mass. 545 (1993)).

Respectfully submitted,

John C. Bonifaz (BBO# 562478)
Bonita P. Tenneriello*
Brenda Wright*
Lisa J. Danetz (BBO# 645998)
NATIONAL VOTING RIGHTS INSTITUTE
One Bromfield Street, Third Floor
Boston, Massachusetts 02108
(617) 368-9100

*Admitted Pro Hac Vice

John H. Henn (BBO# 230520)
Verne Vance (BBO# 507540)
Steven G. Tidrick (BBO# 649708)
FOLEY, HOAG & ELIOT, LLP
One Post Office Square
Boston, Massachusetts 02109
(617) 832-1000

Edward V. Colbert III (BBO#566187)
LOONEY & GROSSMAN, LLP
101 Arch Street
Boston, Massachusetts 02110
(617) 951-2800

Richard L. Neumeier (BBO# 369620)
McDONOUGH, HACKING & NEUMEIER, LLP
11 Beacon Street, Suite 1000
Boston, Massachusetts 02108
(617) 367-0808

Of Counsel:
Donald J. Simon
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP
1250 Eye Street, NW, Suite 1000
Washington, D.C. 20005
(202) 682-0240

[This page is intentionally left blank.]