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.

BRIEF FOR THE PLAINTIFFS-APPELLANTS ON THE QUESTION OF RELIEF.

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INTRODUCTION

In accordance with this Court's Memorandum and Order issued on January 25, 2002, the Plaintiffs-Appellants ("Appellants") hereby submit this brief in response to the question of the appropriate relief in this case.

The Appellants appreciate that this Court will consider on an expedited basis the relief that is appropriate. *Bates v. Director of OCPF*, No. SJC 08677, Memorandum and Order (January 25, 2002), at 3. The Appellants urge this Court to act immediately in light of the increasing severity of the harm which Appellants suffer with each passing day that the Massachusetts Clean Elections Law remains unfunded.[1]

[1] The extent of this harm can hardly be overstated. The election cycle is under way, but candidates wishing to run under the Clean Elections Law cannot run ads or send mailings because the law's contribution limits prevent them from raising the necessary private funds, and they have not yet received public funds to which they are entitled. Candidates who would like to enter the race have been deterred from running because of uncertainty about the law. Some candidates who have already committed to the Clean Elections system cannot pay their campaign workers and must consider imminent layoffs of campaign staff. *See also* Brief of Plaintiffs-Appellants at 13; statement of Agreed Facts, Appendix to Plaintiffs' Opening Brief at 30-34.

I. This Court Should Enter a Decree Providing that All Funds Necessary to Carry Into Effect the Clean Elections Law Are Deemed Appropriated as a Matter of Law.

This Court has ruled that unless the Legislature has repealed a law that has been enacted by way of initiative, the Legislature is constitutionally mandated by art. 48 to appropriate the funds necessary to carry the law into effect. *Bates v. Director of OCPF*, No. SJC 08677, Memorandum and Order (January 25, 2002), at 2. Only these two options, repeal or fund, are available; no third option, such as failing to take any action at all, is available under the Massachusetts Constitution. Accordingly, the Legislature's failure to repeal the Clean Elections Law in a timely manner constitutes a binding choice to fund the law for the current election cycle.[2] Under these circumstances, the appropriate remedy is for this Court to enter a decree providing that an appropriation of the necessary funds has been made as a matter of law, thus recognizing and giving legal

[2] In Section V, *infra*, plaintiffs explain why, in light of the passage of time since enactment of the law, the lengthy period since the start of the 2002 election cycle, and candidates' reliance on the law in conducting their campaigns, it is no longer open to the Legislature to repeal the Clean Elections Law for this election cycle.

effect to the de facto choice made by the Legislature under art. 48.

The availability of such relief is necessary to assure the rule of law.

> The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803). This Court consistently has recognized the inherent power and obligation of the courts to provide meaningful remedies for violations of constitutional rights. *See, e.g., Normand v. Barkei*, 385 Mass. 851, 852 (1982) (defendants' argument that plaintiff seeking to establish paternity has rights but no remedy "would raise significant constitutional questions").

The nature and scope of appropriate equitable relief is commensurate with the scope of the violation. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971). "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Id.* at 15. *Accord*, *The Judge*

Rotenberg Educational Center, Inc. v. Commissioner of Dep't of Mental Retardation, 424 Mass. 430, 463 (1997) ("A court with equity jurisdiction has broad and flexible powers to fashion remedies.")

Here, several factors combine to establish that this Court's powers to remedy the specific constitutional violation found here are at their broadest. First, the Court has found a violation of the people's sovereign right, guaranteed by the Massachusetts Constitution, to initiate and adopt laws in the face of entrenched legislative opposition. Memorandum and Order at 2-3. The fundamental importance of the political rights guaranteed to the people under art. 48, and the commensurate gravity of the continuing violation of these rights, are unquestionable. *Citizens for a Competitive Massachusetts v. Secretary of the Commonwealth*, 413 Mass. 25, 30 (1992); *Buckley v. Secretary of the Commonwealth*, 371 Mass. 195, 199 (1976); *see also* Brief for the Plaintiffs-Appellants at 17-24.

Second, the justification for relief is heightened because the subject of the voter-approved Clean Elections Law involves the very *form of government* itself – that is, how candidates for public

office are elected. The voters have used the process guaranteed by art. 48 not just for any purpose, but for the fundamental purpose of determining how their political process should operate. Surely, the rights established by art. 48 have their greatest importance when exercised by the people to determine how their government itself is constituted.

Third, and closely related to this, the justification for court-ordered relief is heightened because the Legislature not only has violated constitutionally guaranteed rights, but has done so in a context where the Legislature has a direct conflict of interest. The initiative which the Legislature is flouting directly affects the process by which the Legislature itself is elected and the ability of sitting legislators to remain in office. In no other context could it be clearer that the voters lack any political recourse at the ballot box. *See also* Brief for Plaintiffs-Appellants at 21-22.

Fourth, the need for a judicial remedy is also heightened in view of the harm that has been visited on Clean Elections candidates by the constitutional violation found here. The Clean Elections Law was enacted in 1998. For three years, the Legislature

took no action to repeal the law, and indeed the Legislature took affirmative steps to set aside $10 million to fund the law in each of two fiscal years, FY 2000 and FY 2001. Prospective Clean Elections candidates therefore justifiably relied upon their ability to run under the Clean Elections Law, forgoing private contributions and devoting untold hours and human resources to gather qualifying contributions and prepare a campaign based on the law.[3] The Legislature's actions have thus exacerbated the harm imposed on the plaintiff candidates and others similarly situated.

In view of all these circumstances, the Court has the broadest possible authority to exercise its equitable powers to provide a full and effective remedy.

Entry of a decree providing that the necessary funds shall be deemed appropriated as a matter of law is the remedy that will best effectuate the purposes of art. 48 and rectify the constitutional violation in this case. Such a decree is clearly within the broad equitable powers of the Court, and follows from the

[3] The harm suffered by Clean Elections candidates because of the constitutional violation found by this Court is detailed further in Part V of this Brief.

principle that "[i]n order to do justice equity regards that as done which ought to have been done." *Lonergan v. Highland Trust Co.*, 287 Mass. 550, 559, 192 N.E. 34 (1934). For example, in equity a court decree recognizing that a party holds title to land has the same effect as an actual conveyance of the title. *Hermanson v. Seppala*, 255 Mass. 607, 610 (1926) (noting that "[i]n equity a title may be obtained by a recorded decree"); *Eastern Savings Bank v. City of Salem*, 33 Mass. App. Ct. 140 (1992) (third parties entitled to rely upon entry of consent judgment transferring city's title to developer, regardless of fact that city officials had not exercised their power under city ordinance to approve the settlement). This principle of equity does not apply only to the transfer of title to real estate, but applies broadly when necessary to assure that a party receives a remedy for violation of a legal right. *See, e.g. Samia v. Central Oil Company of Worcester,* 339 Mass. 101, 109-110 (1959) (relying on principle to overcome absence of formal instrument transferring partnership assets and issuing shares); *Morris Gordon & Son, Inc. v. Totoni*, 324 Mass. 182, 185 (1949) (relying on principle to overcome

defendants' failure to execute conditional sale agreement and promissory note).[4]

Under the broad equitable powers possessed by this Court in remedying constitutional violations, this Court may apply the principle that "equity regards that as done which ought to be done" to grant meaningful relief to the plaintiffs. Applying that principle to this case requires that the Court enter a decree deeming the necessary funds to be appropriated as a matter of law, because such an appropriation is constitutionally mandated in the absence of a repeal of the law. The Court's decree should provide that, because the Legislature's inaction has caused the funds to be appropriated as a matter of law, all executive officials whose cooperation is needed are under the same duty to honor vouchers issued to certified candidates as would be the case in the event

[4] *See also City of Malvern v. Young*, 205 Ark. 886, 171 S.W.2d 470 (1943) (applying principle to assure proper distribution of funds by city and waterworks commission); *MacKnight Flintic Stone Co. v. Mayor, etc. of City of New York*, 160 N.Y. 72, 54 N.E. 661 (1899) (requiring payment on contract even though city superintendent refused to provide certificate required before contract could be deemed complete).

of a legislative appropriation.[5] The Court's decree should further provide that all state officials acting in good faith to carry out this Court's decree deeming the funds appropriated as a matter of law will not be subject to any liability that might otherwise attach for making an expenditure in the absence of a specific appropriation by the Legislature.

At present, there is approximately $23 million which has been set aside for the Clean Elections Fund, G.L. c. 10, § 42, but has not been released due to the Legislature's inaction.[6] Entry of this Court's decree would permit these funds to be used to honor vouchers submitted by certified candidates.

While this $23 million will be sufficient to supply the greater part of the necessary funding, the Court's decree should not be limited to apply only to

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[5] As plaintiffs explain in Section II, *infra*, all state officials are bound to act consistently with orders issued by this Court, whether or not they are specifically enjoined to do so.

[6] This includes $10 million authorized by the legislature in the general appropriations act for fiscal year 2000, 1999 Mass. Acts 127, line 0920-0302; another $10 million authorized by the legislature in fiscal year 2001, 2000 Mass. Acts 159, § 361; money received through a check-off on state tax returns, pursuant to G.L. c. 62, § 6C, and G.L. c. 10, § 42; fines and penalties paid into the fund pursuant to G.L. c. 55A; and interest.

those funds, but instead should extend to include all funds necessary for full implementation of the law.[7] Because *all* necessary funds must be deemed appropriated as a matter of law, the Court's decree should also permit executive officials to use funds in the General Fund, G.L. c. 29, § 2, for this purpose. To the extent a transfer of additional funds to the General Fund thereby becomes necessary, the Court's decree should also serve to make an appropriation as a matter of law allowing funds to be transferred from the Commonwealth Stabilization Fund, G.L. c. 29, § 2H(1), for that purpose.[8] This fund (popularly known as the "Rainy Day Fund") currently contains over $1.36 billion.[9]

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[7] The Director of OCPF initially estimated that $37.6 million would be needed for the 2002 election, R.A. 118, and subsequently revised this estimate to a lower figure of $30.3 million. *Id.*

[8] G.L. c. 29, § 2H(1) allows such funds to be appropriated "to make up any difference between actual state revenues and allowable state revenues in any fiscal year in which actual revenues fall below the allowable amount".

[9] This figure was provided to counsel for plaintiffs by the Comptroller's Office. According to the published Comprehensive Annual Financial Report for the fiscal year that ended June 30, 2001, the Commonwealth Stabilization Fund contained $1,714,990,000. According to the Comptroller's Office, the current amount available is $350 million less than that

In recognizing, through a court decree, that the necessary funds must be deemed appropriated as a matter of law, the Court will assure that the Legislature's inaction does not circumvent its clear constitutional duty under art. 48. *See Citizens for a Competitive Massachusetts*, 413 Mass. at 31 ("We cannot endorse a result that would permit the Legislature, by failing or refusing to comply with a mandatory provision of art. 48, to frustrate the right of the people to place a proposed law on the ballot."); *Bates v. Director of OCPF*, Memorandum & Order at 2-3 ("art. 48 commands that, for as long as that [Clean Elections] law remains in effect, the Legislature is constitutionally required to appropriate the funds necessary to its operation.")

Such relief is also consistent with this Court's precedents recognizing that legislative inaction concerning necessary appropriations cannot be permitted to overcome the constitutional rights of the plaintiffs. As this Court stated in *Michaud v. Sheriff of Essex County*, 390 Mass. 523 (1983), "We flatly reject the notion that an arm of the State may

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figure, plus interest yet to be calculated, meaning that the Fund currently contains more than $1,364,990,000.

be allowed to violate an individual's constitutional rights because funds have not been appropriated to remedy the wrong." *Id.* at 532. *See also Blaney v. Commissioner of Corrections*, 374 Mass. 337, 342 n. 3 (1978) (even if existing appropriations were inadequate, "the unavailability of funds would not be a defense" to constitutional claims against corrections officers); *O'Coins, Inc. v. Treasurer of the County of Worcester,* 362 Mass. 507, 514 (1972) (holding that absence of prior legislative appropriation did not prevent superior court judge's expenditures to secure full and effective administration of justice); *Boulet v. Cellucci*, 107 F. Supp. 2d 61, 79 (D. Mass. 2000), ("the Legislature's failure to make sufficient appropriations is not a defense to executive officials' failure to execute binding law.")

Moreover, nothing in *Limits v. President of the Senate*, 414 Mass. 31, 604 N.E.2d 1307 (1992), is inconsistent with the relief requested here. The *Limits* case rejected a request for an order of mandamus directing the Legislature to take specific action. The relief requested here, by contrast, does not order specific action by the Legislature, but

merely recognizes the legal effect of the Legislature's failure to repeal the Clean Elections Law – which is to mandate that the funds be deemed appropriated as a matter of law. The propriety of such relief is governed not by the *Limits* decision, but by the authorities cited above. Further, in the present case, unlike in *Limits*, the people have already adopted a law and candidates have already relied upon that law in conducting their campaigns for office.[10]

Indeed, in cases such as *Alliance, AFSCME/SEIU, AFL-CIO v. Commonwealth*, 427 Mass. 546 (1998), this Court has recognized that the separation of powers recognized by the Constitution must be interpreted consistently with the duty of the Court to provide remedies for violations of constitutional rights. In that case, the Court held that the separation-of-powers principle of art. 30 prevented entry of mandamus relief *where the plaintiffs had failed to demonstrate a concrete injury establishing standing*,

[10] Further, *Limits* did not hold that the remedy of mandamus directly against the Legislature would never be available to enforce the requirements of art. 48. Rather than finding an absolute bar to such relief, it held instead that the courts should be "most hesitant" in instructing the Legislature "when and how to perform its constitutional duties," 414 Mass. at 35.

but noted that art. 30 cannot provide an absolute bar to judicial action:

> Article 30 does, however, end by saying that the separation of powers must be observed "to the end [the government of this Commonwealth] may be a government of laws and not of men." And as Chief Justice Marshall once stated:
>
> > The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested right.

Id., 427 Mass. at 548-549; *see also Moe v. Secretary of Administration & Finance*, 382 Mass. 629, 642 (1981). Clearly, in this case the Court is presented with a concrete controversy brought by plaintiffs who have suffered direct and serious injury, and the entry of judicial relief will serve, not threaten, art. 30's purpose of assuring a government of laws, not of men. Entry of the relief requested here will not threaten to undermine the general principle that appropriations must be made by the Legislature. As noted above, the scope of appropriate equitable relief is dictated by the scope of the violation. Here, the Court's authority to deem the necessary funds appropriated as a matter of law is invoked not only because a violation of constitutional rights has been found, and

not only because that violation impairs the right of the people to exercise their sovereign powers of self-government under art. 48, but also because the subject matter of the initiative in question involves a direct conflict of interest on the part of the Legislature in carrying out its duties under art. 48. Such a confluence of factors creates a unique need and justification for the exercise of this Court's equitable powers to "regard that as done which ought to be done."

II. The Relief Sought By Appellants Does Not Require That Additional Parties Be Joined As Defendants.

No additional parties need be added as defendants in order to make the relief effective. Should the Court deem the funds to have been appropriated, all public officials will be required by law to take the steps necessary for the funds to be made available to qualified candidates. *See,* G.L. c. 29, § 9B ("The governor or the commissioner when designated in writing by the governor *shall* allot to each such state agency the amount which it may expend for each such period out of the sums made available to it *by appropriation or otherwise*)(emphasis added); G.L. c. 29, § 23 ("The state treasurer *shall* provide for

the funding of checks or drafts drawn by any state officer, department, institution or other agency which has received proper authority to expend money on behalf of the commonwealth.")(emphasis added).[11]

Because a Court order would place public officials under the same duties they would ordinarily hold if an appropriation were made, there is no need for any additional officials to be made a party to this lawsuit. There is no reason to assume that any state actor will resist its duty.[12] "[I]t has been our practice to assume that public officials will comply with the law declared by a court and that consequently injunctive orders are generally unnecessary." *Smith v. Commissioner of Transitional Assistance*, 431 Mass.

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[11] Because the Court's decree will establish that necessary funds are deemed appropriated as a matter of law, the provisions cited by defendants which forbid the Governor, Governor's Councillors, Comptroller and Treasurer from facilitating the release of funds without an appropriation, Def. Br. at 36-40, would have no effect. In addition, should the court permit a levy and then disburse funds from a Court-managed escrow account, *see* Section III, *infra*, no further action by any official would be necessary in order for the funds to be disbursed.

[12] Acting Governor Jane Swift has already stated publicly that she will fully comply with any order by this Court for relief in this case. *See* "Swift says she'll fund clean elections," Associated Press, 1/31/02 *at* http://www.boston.com/dailynews/031/region/Swift says she ll fund Clean E:.shtml.

638, 651 (2000)(quoting *Massachusetts Coalition for the Homeless v. Secretary of Human Services*, 400 Mass. 806, 825 (1987)); *see also Hoffer v. Commissioner of Corrections*, 397 Mass. 152, 156 (1986); *Board of Health of North Adams v. Mayor of North Adams*, 368 Mass. 554, 568 (1975); *Alves v. Town of Braintree*, 341 Mass. 6, 12 (1960); *Commonwealth v. Town of Hudson*, 315 Mass. 335, 343 (1943). *Cf. Dickinson v. Indiana State Election Board*, 933 F.2d 497 (1991)(legislature not a necessary party to lawsuit challenging legislative apportionment under the Voting Rights Act).

The Court has generally presumed that a decree establishing the legal duties of state and municipal bodies will be sufficient to cause officials of those bodies to act appropriately, *Massachusetts Coalition for the Homeless*, 400 Mass. at 825; *Board of Health of North Adams*, 368 Mass. at 568-569, though it has issued injunctive relief when public officials were on notice of their legal duties and continued to violate them, *Smith,* 431 Mass. at 653. While the legislature has already demonstrated its intent to flout Article 48's requirement that it fund the voter-approved law, there is no reason to believe that executive officials

would disobey a court order which required them to facilitate the payment of money as in any other appropriation.

For all of these reasons, Plaintiff-Appellants do not believe that additional parties must be added at this time. Nevertheless, to the extent that the Court disagrees and finds it necessary or advisable to join additional public officials as defendants, Plaintiff-Appellants do not object, and they request that the Court take any steps in that regard it deems necessary.

III. In the Alternative, The Court May Permit A Levy of Execution on Property of the Commonwealth To Satisfy Its Judgment.

Having ruled that the failure to fund the Clean Elections Law violates Article 48 of the Amendments to the Massachusetts Constitution, the Court may permit a levy of execution on the Commonwealth's property to satisfy its judgment. The Court has previously indicated its willingness to take such a step. In *Bromfield v. Treasurer and Receiver-General*, 390 Mass. 665 (1983), landowners sought to compel payment by the Commonwealth for a judgment that had been rendered in an eminent domain action, where no necessary

appropriation had been made to satisfy the judgment. The Court indicated that if the legislature failed to act by the end of the legislative session following the *Bromfield* decision, the Court would consider permitting a levy of execution upon the Commonwealth's property. *Id*. at 670.

The circumstances of this case merit such relief. The plaintiffs in the instant case have been held legally entitled to the benefits of full funding for the Clean Elections Law, just as the plaintiffs in *Bromfield* had received a judgment in their favor. While, in *Bromfield*, conditions justified awaiting legislative action before levying state assets, no such circumstances exist here. In *Bromfield*, the failure to appropriate funds could be attributed to "the ordinary delays inherent in the legislative process," *id*. at 669, whereas here there can be no doubt that the failure to appropriate the necessary funds stems from deliberate choice rather than ordinary delay. The legislature has failed to release the funds despite the clear command of Article 48, even after the law became effective on March 31, 2001, after statewide candidates began to collect qualifying contributions on August 1, 2001, and after legislative

candidates began to collect qualifying contributions on January 1,2002. While, in *Bromfield*, the delay in payment of approximately six months had not yet amounted to an impairment of the plaintiffs' constitutional rights, here the immediacy and seriousness of the injury to the plaintiffs' constitutional rights is not in doubt. *See* supra at 1, n. 1.

Should the Court find it necessary permit a levy of execution on property of the Commonwealth, the Plaintiff-Appellants submit that the appropriate course of action would be to remand this case to a single justice for expedited proceedings, including the determination of the amount of a money judgment necessary to implement the Clean Elections Law and which parties, if any, should be added as defendants. The funds obtained should be placed into an escrow account managed by the Court and disbursed by the Court to candidates certified as eligible by the OCPF Director.

IV. In the Alternative, The Appellants Are Entitled to Permanent Injunctive Relief Against the Secretary of the Commonwealth.

As the Appellants have argued in prior briefing before this Court, the Appellants are entitled, in the alternative, to permanent injunctive relief barring the Secretary of the Commonwealth from holding elections for state office in violation of Article 48 and the Massachusetts Clean Elections Law. *See* Brief for the Plaintiffs-Appellants at 33-40; Reply Brief for the Plaintiffs-Appellants at 13-20.

Elections without the full implementation of the Massachusetts Clean Elections Law will be illegal elections. This Court has the power and duty to prevent such illegal elections from taking place. *See Attorney General v. Suffolk County Apportionment Com'rs*, 224 Mass. 598, 609 (1916): "[W]hen once it becomes evident beyond a doubt that the Constitution has been infringed and that rights indisputably secured by it have been trampled, then there is no other way but to maintain the Constitution when relief is promptly sought. No consequence of adherence to the Constitution can be so evil as a failure to abide by its terms under the circumstances here disclosed." *See also Reynolds v. Sims*, 377 U.S. 533, 585 (1964):

"[O]nce a State's legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan."

If this Court finds that no other remedy is available to ensure the full implementation of the Massachusetts Clean Elections Law, then it should enjoin the 2002 elections for state office in Massachusetts until the necessary funds are made available for disbursement to all candidates who qualify for public campaign financing, as specified in M.G.L. c. 55A, §§ 7, 8, 11 and 13. In granting this relief, this Court should also order that a single justice of this Court shall retain jurisdiction over this case, and shall determine, at the time that the funds are made available, whether an adequate period of time remains for participating candidates to campaign with public financing, or whether elections shall be postponed to permit a full campaign.

Further, if this Court grants this relief, it should invite the Governor to submit briefing on whether she may invoke her emergency powers inherent

in the powers of the Office of the Chief Executive, as provided in the Massachusetts Constitution, Part 2, c. 2, § 1, to ensure the full implementation of the Massachusetts Clean Elections Law, thereby allowing for state elections to proceed.

V. The Legislature May Not Repeal All Or Any Part Of The Clean Elections Law For This Election Cycle.

A. A Repeal of All or Any Part of the Clean Elections Law for This Election Cycle Will Destroy Constitutionally Protected Property Rights, Thereby Violating the Guarantee of Due Process in the Massachusetts Constitution.

If the Legislature were to attempt and succeed in passing legislation that repeals all or part of the Clean Elections Law for the 2002 elections, that repeal would be an unconstitutional destruction of the property rights of the candidate-plaintiffs. The retroactive curtailment of vested property rights "raises serious questions" under the due process provisions of the Constitution of the Commonwealth and must be analyzed accordingly. *Digital Equipment Corp. v. Comm'r of Revenue*, 408 Mass. 18, 24 (1990).

"In order to determine whether a statute is retroactive, it is necessary to look at the rights and obligations of the parties as they existed immediately

before and after the effective date" of the statute at issue. *McCarthy v. Sheriff of Suffolk County*, 366 Mass. 779, 781 (1975). A statute operates retroactively when "vested substantive rights . . . have been adversely affected." *Id.; see also Nationwide Mutual Ins. Co. v. Comm'r of Insurance*, 397 Mass. 416, 421 n.6 (1986) ("A statute is deemed retroactive if it affects rights [that existed] . . . before the statute's enactment."). The Clean Elections Law sets up a system by which the candidate-plaintiffs have already elected to forego certain rights, abiding by contribution and expenditure limits, to become entitled to public funds for their election campaigns. Having signed declarations of intent and having begun (and in one instance, completed) the process of raising qualifying contributions, each of the candidate-plaintiffs would be adversely affected by the denial of such public funds in the event the law is repealed for the 2002 elections. Because a repeal of all or any part of the Clean Elections Law would deny the candidate-plaintiffs their already-existing rights to public funds -- which rights became irrevocable no later than August 1, 2001 and January 1, 2002 when statewide and

legislative Clean Elections candidates, respectively, began collecting qualifying contributions[13] -- repeal of all or any part of the Clean Elections Law would be retroactive in application and would implicate the due process guaranty of the Massachusetts Constitution.[14]

A retroactive statute is an unconstitutional violation of due process when, on a balancing of multiple considerations, it is deemed to be unreasonable. *American Manufacturers Mutual Ins. Co. v. Comm'r of Insurance*, 374 Mass. 181, 189-190 (1978). "Reasonableness" is determined by reference to the nature of the rights affected retroactively, the extent of the statutory effect, and the "nature of the public interest which concerned and motivated the Legislature in enacting" the retroactive statute. *Id.*

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[13] The Appellants offer August 1, 2001 and January 1, 2002, respectively, as the latest dates on which the property rights of statewide and legislative candidates vested. The Appellants do not intend to suggest that individual candidates cannot demonstrate that their individual rights vested earlier because of reliance on the Clean Elections Law prior to these two dates.

[14] The Appellants additionally note that, if the legislature were to repeal all or part of the Clean Elections Law for the 2002 elections, *amicus* James B. Eldridge, a legislative candidate who has been certified by the defendant OCPF Director, would suffer the same denial of his already-existing right to public funds.

at 191. "Fairness is the touchstone" of the due process analysis. *St. Germaine v. Pendergast*, 416 Mass. 698, 704 (1993). Because the nature of the candidate-plaintiffs' rights and the extent of the statutory effect would greatly outweigh any possible public interest in the repeal of all or part of the law for the 2002 elections, a repeal of the Clean Elections Law would be unconstitutional. *See, e.g. id.* at 703-704.

1. The nature of the right at issue strongly tilts the scale against the constitutionality of any repeal of the Clean Elections Law for this election cycle.

In this case, the nature of the candidate-plaintiffs' right -- a "property interest" -- strongly suggests that its retroactive destruction would violate due process. Property interests have always been given strong protection against laws that seek their destruction. *See Digital Equipment Corp.*, 408 Mass. at 24 ("[R]etroactive application of the limitation [on tax deductions] raises serious questions under the due process clause of the Federal Constitution and under parallel provisions of the Constitution of the Commonwealth."); *Pittsley v.*

David, 298 Mass. 552 (1937) ("[The repeal of a statute] cannot constitutionally be applied where its application would . . . deprive a party of property protected by the Fourteenth Amendment to [the federal] Constitution or articles 1, 10 and 12 of the Declaration of Rights of the Constitution of Massachusetts."); *Hill v. Duncan*, 110 Mass. 238, 239 (1872)("Property within the meaning of the Declaration of Rights . . . [is] entitled to protection against a law which attempts to destroy it by retrospective action.").

"It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Allen v. Bd. of Assessors of Granby*, 387 Mass. 117, 119 (1982). Indeed, precedent establishes that legislation that destroys vested property rights cannot survive constitutional scrutiny. *See Kumin v. Marean*, 283 Mass. 332 (1933) (statute could not repeal vested contractual right); *Casieri's Case*, 286 Mass. 50 (1934) (legislature cannot reopen final decision of judicial tribunal or quasi judicial board so far as decision affects private rights of property). Even cases in which the

court has denied the plaintiffs' claims that legislation has destroyed protected property interests recognize the strong protection given to vested rights. *See, e.g., Leibovich v. Antonellis*, 410 Mass. 568, 578 (1991); *City of Boston v. Keene Corp.*, 406 Mass. 301, 313 (1989).

It is clear that the candidate-plaintiffs' entitlement to Clean Elections funds is such a protected property interest.

> Property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state laws—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. . . . As a general rule, when State or Federal law entitles an individual meeting certain eligibility criteria to the receipt of a State or federally funded benefit, the individual has a property interest in the benefit.

Madera v. Sec'y of Exec. Office of Communities and Development, 418 Mass. 452, 459 (1994)(internal quotations and citations omitted). When the entity responsible for awarding the benefit possesses the discretion to deny it to the potential recipient, it is less likely that the potential recipient has a "constitutionally protected property interest." *Id.*

Here, the Clean Elections Law establishes clear eligibility requirements for the receipt of a state-funded benefit and there is no discretion in distributing the award. The law entitles candidates who sign a declaration of intent, who abide by specified contribution and expenditure limits, and who raise a minimum number of qualifying contributions and signed supporting forms during a "qualifying period," to public funding of their campaigns. The Director of OCPF has no discretion to deny the award of public money to the candidates who qualify.[15] The law therefore provides the candidate-plaintiffs with a constitutionally protected property interest. *See Madera*, 418 Mass. at 459 (finding eligibility for public housing is constitutionally protected property interest); *Allen*, 387 Mass. at 120 (recognizing property interests in welfare benefits, Social Security disability payments, employment under certain circumstances, drivers' licenses, and public education).

[15] Although the Director of OCPF has no discretion to deny Clean Elections funds to a qualifying candidate, after December 31, 2002, the budget may not allocate more than 0.1% of the total amount appropriated by the most recently enacted annual general appropriation act to implement the provisions of the Clean Elections law. *See* M.G.L. c. 55A, § 14(8)(d).

Because property interests are afforded vigorous constitutional protection, the nature of the interests at issue overwhelmingly tilts the scale against the constitutionality of a repeal applicable to the 2002 elections.

2. The substantial effects of a repeal of all or part of the Clean Elections Law for this election cycle weigh heavily against its constitutionality.

The substantial adverse effects on the candidate-plaintiffs of a repeal of all or part of the Clean Elections Law for the 2002 elections also dictate that such a repeal, at this late date, would be unconstitutional. A repeal of the Clean Elections Law would completely deprive the candidate-plaintiffs of their property interests in public funding for the 2002 campaigns. Because "fairness is the touchstone of due process," *St. Germaine*, 416 Mass. at 704, any repeal for the 2002 elections would be unconstitutional.

When plaintiffs act in reliance on the existing state of the law, that reliance is constitutionally protected. *Compare St. Germaine*, 416 Mass. at 703-704 (constitutional violation where defendant reasonably could have relied on existing law at time he acted);

Keniston v. Bd. Of Assessors of Boston, 380 Mass. 888, 905 (1980) (retroactive tax legislation unconstitutional insofar as it upset taxpayers reasonable expectations in reliance on previous existing law), *with Leibovich*, 410 Mass. at 578 (where no reliance by defendant, statute retroactively creating consortium rights not unconstitutional); *Nationwide Mutual Ins. Co. v. Comm'r of Insurance*, 397 Mass. 416 (1986) (where "element of reliance . . . is lacking," statute impairing contract rights in small degree is constitutional).

Here, the candidate-plaintiffs heavily relied on the existence of the Clean Elections Law in planning their campaign strategies. The candidate-plaintiffs not only asserted their intentions to participate as Clean Elections candidates but also expended time, energy, and resources in collecting qualifying contributions and agreed to *restrict* their rights by abiding by contribution and expenditure limits. Moreover, the legislature authorized $10 million for the Clean Elections Fund in each of two years, fiscal years 2000 and 2001. Because the legislature set aside sums of money for the Clean Elections Fund and took no action to repeal the law in the three-plus

years since it was approved overwhelmingly, the candidate-plaintiffs' reliance was reasonable.

The substantial effects that a repeal of all or part of the law would have on the candidate-plaintiffs' rights, completely denying their strongly protected property interests even though they reasonably relied on the state of the law, cannot be offset by any purported "public interest" the legislature may claim in repealing a popularly elected ballot initiative.

3. Any purported "public interest" that the legislature may claim in repealing all or part of the Clean Elections Law cannot outweigh the strong protection granted to the rights at issue or the substantial effects of a full or partial repeal applicable to the 2002 elections.

Normally, when the legislature enacts retroactive legislation, there is a presumption that any possible "public interest" that may have motivated the legislature will be given due consideration. *See Keniston*, 380 Mass. at 904. The Clean Elections Law, however, directly affects the ability of sitting legislators to remain in office as well as the process by which the legislature itself is elected. There is no reason to grant a presumption of "public interest"

when the legislature and individual legislators have a direct conflict of interest.

Indeed, the legislature's hostility to the Clean Elections Law notwithstanding the law's overwhelming popularity with the people has long been in evidence. Before the law passed overwhelmingly on the 1998 ballot, similar proposals had been introduced in legislative sessions between 1992 and 1998, and none was ever reported favorably out of the Joint Committee on Election Laws. Because the purpose of Article 48 "is to permit the people to make law directly where the Legislature has failed or has refused to act," *Citizens for a Competitive Massachusetts v. Sec'y of the Commonwealth*, 413 Mass. 25, 30-31 (1992), a court decision that the legislature's interest in repeal of this ballot initiative, notwithstanding the legislature's direct conflict of interest, outweighs the substantial adverse effects on strongly protected rights would render the balancing test meaningless.

A court decision that the legislature even has a "public interest" that could outweigh the substantial adverse effects on strongly protected rights would leave the people with no due process protection against retroactive legislation and would leave the

legislature free of any restriction to deny rights. Moreover, such a decision would run contrary to the intent of Article 48. Article 48 and the due process guaranty of the Massachusetts Constitution cannot countenance such a result.

Because a repeal of all or part of the Clean Elections Law for the 2002 elections, by a legislature that has a direct conflict of interest, would not just "substantially affect" but would effect, retroactively, a complete denial of strongly protected rights, such a repeal would be an unconstitutional violation of the due process guaranty of the Massachusetts Constitution.

B. A Repeal of All or Part of the Clean Elections Law for The 2002 Election Cycle Would Be Contrary to the Intent of Article 48.

The "fundamental purpose" of Article 48 "is to permit the people to make law directly where the Legislature has failed or has refused to act." *Citizens for a Competitive Massachusetts v. Secretary of the Commonwealth*, 413 Mass. 25, 30-31 (1992). There could not be a clearer example of the importance of the ballot initiative process, as created by Article 48, than this case. Exercising their rights

under Article 48, Massachusetts voters, by an overwhelming majority, have sought to restructure fundamentally and open up the state's political system in the face of opposition from members of the entrenched legislature -- the chief beneficiaries of the existing campaign finance regime.

A repeal of all or part of the Clean Elections Law at this point in the 2002 election cycle would undermine the intent of the framers of Article 48 that the will of the people not be "thwarted by legislative action." *Buckley v. Sec'y of the Commonwealth*, 371 Mass. 195, 199 (1976). Pursuant to Art. 48, the Clean Elections Law passed overwhelmingly on the 1998 ballot. In the three-plus years since, the legislature signaled its acquiescence to the implementation of the law by taking certain actions and refraining from others. Because the 2002 elections are the first in which candidates may run as "Clean Elections candidates," the legislature's authorization of $10 million for the Clean Elections Fund in each of the two years prior to the commencement of the 2002 election cycle -- fiscal years 2000 and 2001 -- indicated the legislature's intent not to repeal the law with respect to the 2002

elections. Moreover, the legislature's inaction while candidates filed declarations of intent and began (and in some cases, completed) the process of raising qualifying contributions further indicated its acquiescence in the implementation of the law. To allow the legislature to repeal all or part of the law now that there is a "risk" that elections may be more competitive would thwart the will of the people. Indeed, the people passed this law precisely to encourage and increase the number of candidates in elections, to level the playing field for candidates, to control the explosive growth of campaign spending, and to reduce the corrosive influence of money in politics.

This Court should not allow the legislature to thwart the will of the people by repealing all or part of the Clean Elections Law for the 2002 elections. In other cases in which the legislature attempted to bypass the will of the people, the Court prevented the legislature from doing so. For example, when the legislature passed a substitute for a voter initiative that was not a true alternative to the initiative, as required by Art. 48, Part III, § 2, the court ordered that the legislative alternative not be placed on the

ballot. *Buckley*, 371 Mass. at 202-03. The court held that the legislature's actions constituted "the emasculation of the initiative petition" and that to give effect to what the legislature had done "would be to fly in the face of the evident intent of the distinguished members of the Constitutional Convention who prepared the way for the passage of art. 48 by the people." *Id.; see also Citizens for a Competitive Massachusetts*, 413 Mass. at 31 (holding that failure of legislative committee to report on an initiative petition did not prohibit Secretary of the Commonwealth from placing the petition on the ballot: "We cannot endorse a result that would permit the Legislature, by failing or refusing to comply with a mandatory provision of art. 48, to frustrate the right of the people to place a proposed law on the ballot.").

Likewise, this Court should determine that a repeal of all or part of the Clean Elections Law for this election cycle would be an impermissible, because untimely, frustration of the right of the people to enact laws governing the Commonwealth.

CONCLUSION

In addition to the remedies discussed in this brief, the Appellants embrace any and all other remedies proposed by other parties or considered by this Court that will ensure the full implementation of the Massachusetts Clean Elections Law. For the foregoing reasons, the Court should immediately grant Appellants' request for declaratory and permanent injunctive relief. As the Court requested, attached to this brief are proposed orders for each of the remedies discussed above.

Respectfully submitted,

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ADDENDUM

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY — CIVIL ACTION No. SJC-08677

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

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

ON A RESERVATION AND REPORT

Order for Declaratory and Injunctive Relief Deeming Funds Appropriated As Matter of Law

After hearing and consideration of the merits of this case and the submissions regarding appropriate relief,

IT IS HEREBY ORDERED, ADJUDGED AND DECLARED that

1. Under art. 48 of the amendments to the Massachusetts Constitution, the Legislature was

obligated either to appropriate the funds necessary to implement the Massachusetts Clean Elections Law, G.L.c. 55A, for the current election cycle, or to repeal the Clean Elections Law prior to August 1, 2001.

2. Because the Legislature has elected not to repeal the Clean Elections Law in a timely manner, the necessary funds to implement the Clean Elections Law have been, and are hereby declared to be, appropriated as a matter of law, in accordance with the constitutional mandate of art. 48.

3. This decree declaring the necessary funds to have been appropriated as a matter of law shall have the same force and effect, and be binding on all state officials with responsibility for custody and administration of state funds to the same extent, as would a legislative appropriation of the funds necessary to implement the Clean Elections Law. All such officials shall be under the same duty to honor vouchers issued to certified Clean Elections candidates, and to take any other steps necessary to provide such candidates with the funding required by the Clean Elections Law, as would be the case in the event of a legislative appropriation. All state

officials acting in good faith to carry out this Court's decree deeming the funds appropriated as a matter of law will not be subject to any liability that might otherwise attach for making an expenditure in the absence of a specific appropriation by the Legislature, any contrary provision of Massachusetts law notwithstanding.

4. All funds currently in the Clean Elections Fund pursuant to G.L.c. 10, §42 shall be deemed among the funds appropriated as a matter of law pursuant to this decree. However, operation of this decree is not limited in its application to the monies in the Clean Elections Fund. All funds necessary to provide required funding to any and all certified Clean Elections candidates shall be deemed appropriated as a matter of law by this decree, and available for distribution to qualified Clean Elections candidates, whether or not such sums exceed the amounts present in the Clean Elections Fund. Such funds subject to this decree shall include, but not be limited to, funds in the General Fund, G.L. c. 29, §2. To the extent a transfer of additional funds to the General Fund thereby becomes necessary, this decree shall also serve to make an appropriation as a matter of law

allowing funds to be transferred from the Commonwealth Stabilization Fund, G.L. c. 29, §2H(1) for that purpose.

5. This case shall be remanded to the single justice, who shall retain jurisdiction over any further proceedings that may be necessary to effectuate the relief ordered in this decree or otherwise to allow full implementation of the Clean Elections Law.

An opinion of this Court, including disposition of other forms of relief not discussed in this order, will follow.

By the Court,

_____
Clerk

Dated:

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY CIVIL ACTION
No. SJC-08677

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

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

ON A RESERVATION AND REPORT

Order for Declaratory and Injunctive Relief
For Levy of Execution on Property of the Commonwealth

After hearing and consideration of the merits of this case and the submissions regarding appropriate relief,

IT IS HEREBY ORDERED, ADJUDGED AND DECLARED that

1. Under art. 48 of the amendments to the Massachusetts Constitution, the Legislature was

obligated either to appropriate the funds necessary to implement the Massachusetts Clean Elections Law, G.L.c. 55A, for the current election cycle, or to repeal the Clean Elections Law prior to August 1, 2001.

2. Adequate remedy for the violation of Plaintiff-Appellants' constitutional rights requires that necessary funds be made available so that all candidates qualifying for public campaign financing under the Clean Elections Law may receive the full amounts to which they are entitled.

3. The Plaintiff-Appellants who are or shall become certified as clean elections candidates, and others similarly situated, shall be entitled to a monetary judgment in the amount necessary to provide them with the funds to which they are entitled under the Clean Elections Law.

4. The Plaintiff-Appellants shall be permitted to place a levy in execution of this judgment upon property of the Commonwealth, with the money obtained by this levy to be placed into an escrow account from which candidates certified as eligible by the Director of the Office of Campaign and Political Finance will

be paid the amounts due to them under the Clean Elections Law.

5. A single justice of this court shall retain jurisdiction over this case, and shall determine in expedited proceedings (1) the amount of a money judgment necessary to implement the Clean Elections Law; (2) the property to be levied in execution of judgment, (3) which additional parties, if any, should be added as defendants; and (4) any additional matters that may be necessary to effectuate the relief ordered in this decree.

An opinion of this court, including disposition of other forms of relief not discussed in this order, will follow.

By the Court,

_____
Clerk

Dated:

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY CIVIL ACTION
No. SJC-08677

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

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

ON A RESERVATION AND REPORT

Order for Declaratory Relief against the Secretary of the Commonwealth of Massachusetts

After hearing and consideration of the merits of this case and the submissions regarding appropriate relief,

IT IS HEREBY ORDERED, ADJUDGED AND DECLARED that

1. Under art. 48 of the amendments to the Massachusetts Constitution, the Legislature was obligated either to appropriate the funds necessary to

implement the Massachusetts Clean Elections Law, G.L.c. 55A, for the current election cycle, or to repeal the Clean Elections Law prior to August 1, 2001.

2. The Secretary of the Commonwealth of Massachusetts shall be enjoined from conducting and holding elections for state office until the necessary funds are made available for disbursement to all candidates who qualify for public campaign financing, as specified in M.G.L. c. 55A, §§ 7, 8, 11 and 13, and

3. A single justice of this Court shall retain jurisdiction over this case, and shall determine at the time that the funds are made available whether an adequate period of time remains for participating candidates to campaign with public financing, or whether elections shall be postponed to permit a full campaign, in addition to any additional matters that may be necessary to effectuate the relief ordered in this decree.

4. The Court invites the Office of the Governor to submit briefing on whether the Governor may invoke her emergency powers inherent in the powers of the Office of the Chief Executive, as provided in the Massachusetts Constitution, Part 2, c. 2, § 1, to

ensure the full implementation of the Massachusetts Clean Elections Law, thereby allowing for state elections to proceed.

An opinion of this Court, including disposition of other forms of relief not discussed in this order and the grounds for the relief ordered, will follow.

By the Court,

_____
Clerk

Dated: