STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-2024-01

DONALD J. TRUMP,

Petitioner,

v.

SHENNA BELLOWS, *in her official capacity as* Secretary of State, State of Maine

Respondent,

and

KIMBERLEY ROSEN, THOMAS SAVIELLO, and **ETHAN STRIMLING**

Parties-in-Interest.

PARTIES-IN-INTEREST OPPOSITION TO MOTION TO STAY PROCEEDINGS

INTRODUCTION

Parties-in-Interest Kimberley Rosen, Thomas Saviello, and Ethan Strimling (collectively, the "Challengers") oppose Petitioner's Motion to Stay Proceedings, because an indefinite stay until the United States Supreme Court disposes of *Trump v. Anderson, et al.*, Case No. 23-719 (U.S. 2024), would harm Challengers' interests—and indeed the interests of all voters wishing to cast ballots in the March 5 Republican presidential primary—in the event that Trump loses that appeal. For

this reason, such a stay would directly contravene the Legislature's policy goals in setting out expeditious timelines in 21-A M.R.S. § 337 (2023) providing for the swift resolution of judicial review in ballot access challenges, and should be denied.

ARGUMENT

I. A stay would pose at least a fair possibility of harm to Challengers' interests.

Petitioner Trump selectively cites *Landis v. N. Am. Co.*, 299 U.S. 248 (1936), and *Cutler Assoc., Inc. v. Merrill Trust Co.*, 395 A.2d 453 (Me. 1978), for the proposition that a stay rests within "sound discretion of the court. It will only be granted when the court is satisfied that justice will thereby be promoted." *Id.* at 456. But Petitioner neglects to mention the countervailing premise that "[a] stay of proceedings . . . is not a matter of right but a matter of grace." *Id.* Nor does Petitioner acknowledge that if there is "even a fair possibility" of harm to the opposing party, the moving party "must make out a clear case of hardship or inequity in being required to go forward." *Landis* at 255; *see also Cutler*, 395 A.2d at 457 (denying stay of proceedings where moving party failed to "demonstrate on the record a hardship or inequity so great as to override" the Legislature's policy goals). Petitioner makes no mention of any hardship or inequity he will suffer if this case is allowed to proceed, averring only that a stay is warranted, "in the interest of judicial economy." (Mot. 2.)

But while Petitioner is no doubt hopeful that the United States Supreme Court will resolve the Colorado matter in former President Trump's favor, there is at least "a fair possibility" that the Supreme Court will *affirm* the Colorado

Supreme Court's holding in *Anderson v. Griswold*, 2023 CO 63 (2023). The Supreme Court's briefing and argument schedule appear to allow for final resolution of the Colorado matter prior to Colorado's March 5 primary—a contest being held the same day as Maine's Republican presidential primary. Yet, even if the Supreme Court were to affirm the Colorado Supreme Court, and hold that Trump *is* disqualified from the office of President, thus permitting him to be removed from Colorado's primary ballot, a stay in the proceedings here would prevent the Superior Court from being any closer to resolving state law issues in *this* matter, preventing his removal from *Maine's* primary ballot. Challengers cannot abide by such harm to their interests.

Petitioner confuses the effect of a stay in execution of the Secretary's Decision, which would allow ballots to be *printed* with his name included—a stay to which Challengers have not objected—with final resolution of whether he could eventually be disqualified from the Republican primary. (Mot. 9.) But, the procedures contained in 21-A M.R.S. § 371(5) ensure that even if Trump is disqualified up to or on March 5, the Secretary is required to "*immediately* prepare and distribute to the local election officials . . . a notice informing voters that the candidate has . . . become disqualified and that a vote for that candidate will not be counted." *Id.* (emphasis added). Trump has not—and indeed cannot—show that it would be impossible for the Supreme Court to rule in the Colorado case prior to that date, instead appearing to concede the opposite, arguing "[a]ny stay will be of a short duration in light of the U.S. Supreme Court's urgent action." (Mot. 9.)

II. A stay would undermine the Legislature's policy goals in enacting the expedited timelines contained in 21-A M.R.S. § 337.

Maine has an important state interest in minimizing voter confusion. *See e.g.* *Clements v. Fashing*, 457 U.S. 957, 965 (1982). The expeditious deadlines for judicial review contained in 21-A M.R.S. § 337 promote that interest by ensuring any ballot access challenge can be resolved as far in advance of the nominating contest as reasonably possible. Every extra day of delay in resolving a challenge risks additional confusion because voters will be unsure of which candidates' votes will be counted and which will not. Any departure from the statutory deadlines undermines the state's important interests and the Legislature's policy goals.[1]

III. The Law Court's reasoning in concluding that deadlines contained in 5 M.R.S. § 11002 are jurisdictional applies equally to the deadlines in 21-A M.R.S. § 337.

In *Brown v. State, Dep't of Manpower Affairs*, 426 A.2d 880 (Me. 1981), the Law Court expressly held that the Administrative Procedure Act's time limitations are jurisdictional, reasoning also that, "5 M.R.S.A. § 11001(1) (conferring jurisdiction on the Superior Court to review final agency action) must be read in light of the constitutional doctrine of separation of powers." *Id.* at 884. As such, "judicial enlargement of a statutorily provided period of appeal is not possible" where a statute granting jurisdiction to review executive action "makes no provision

[1] Trump appears to be confused about the Secretary's ruling under 21-A M.R.S. § 337(2)(C), which is expressly tied to the "completion of the hearing." *Id.* The Secretary stated on the record on December 15 that the hearing had not been completed, but was to be "continued . . . for the limited purpose of resolving the pending evidentiary objections." (R. 291.) Likewise, the Secretary stated on the record that she construed "the deadline for the decision following the close of the hearing [to be] . . . five *business* days." (R. 287 (emphasis added).) Petitioner objected to neither pronouncement.

for an extension of the time limitations on judicial review." *Id.* at 887-888 (citing *Reed v. Halperin*, 393 A.2d 160, 162 (1978)). For this exact reason, it would appear that the Superior Court lacks authority to judicially enlarge the period of review provided under 21-A M.R.S. § 337(2)(D).

CONCLUSION

For the forgoing reasons, Trump's Motion to Stay Proceedings should be denied.

Dated at Brunswick, Maine this January 8, 2024.

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