

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: SJ-2026-0295

STATE BALLOT LAW COMMISSION

vs.

MICHAEL WALSH

MEMORANDUM OF DECISION AND JUDGMENT

This matter came before the court, Gaziano, J., on the State Ballot Law Commission's (SBLC) petition for emergency relief pursuant to G. L. c. 211, § 3. The SBLC seeks relief from an order of the Essex County Superior Court, entered on July 10, 2026, allowing plaintiff Michael Walsh's motion, and denying defendant SBLC's cross-motion, for judgment on the pleadings. For the reasons discussed below, the SBLC has failed to demonstrate that it is entitled to relief and the petition therefore must be denied.

Background. This matter arises from an action for judicial review, pursuant to G. L. c. 55B, § 4, and G. L. c. 30A, § 14, challenging a decision of the SBLC. The underlying SBLC proceedings began after an objection was filed to Respondent Walsh's nomination papers for the Republican Party primary ballot for the Office of Attorney General. The SBLC conducted an evidentiary hearing and, based on the evidence presented,

issued a decision invalidating 1,021 fraudulent signatures within the nomination papers. As a result, Walsh no longer met the 10,000-signature threshold required to qualify, and the SBLC ordered that Walsh's name not appear on the Republican primary ballot. Thereafter, Walsh sought judicial review in the Superior Court under G. L. c. 30A.

After review of the extensive administrative record, and in a thoughtful memorandum, a Superior Court judge determined that the SBLC's finding of signature fraud was supported by substantial evidence. Despite reaching this determination, the judge nonetheless concluded that he was "constrained to rule" that the objector's failure to strictly comply with the mailing and notice provisions set forth in G. L. c. 55B, § 5, ninth par., invalidated his objection and the administrative proceeding before the SBLC. Thereafter, the SBLC filed this petition under G. L. c. 211, § 3, seeking relief from the Superior Court judge's order.¹ In light of the plain language of

¹ In a filing submitted to the Superior Court in a companion case, the Secretary of the Commonwealth has represented that any final determination concerning the names to be printed on the Republican primary ballot must be made no later than July 14, 2026, in order to ensure compliance with Federal deadlines for absentee ballots. See 52 U.S.C. § 20302(a)(8)(A) (ballots must be transmitted to military and overseas voters no later than forty-five days in advance of election). Given the extremely time-sensitive nature of this matter, as well as the legal questions raised, I deem it appropriate to exercise my discretion to reach the merits of the petition.

the statute, which rendered the objection void from its inception, I affirm the judge's decision.

The facts relevant to the judge's decision are not in dispute. As the SBLC concedes, the objector sent his objection to Walsh's nomination papers by regular, rather than certified mail, contrary to the requirements of G. L. c. 55B, § 5. It is also undisputed that Walsh cannot demonstrate prejudice from this statutory violation because he admittedly received timely notice of the objection via regular mail and email. The only question, therefore, is one of law: whether the objector's failure to comply with the mailing and notice requirements of G. L. c. 55B, § 5, ninth par., invalidated his objection to the nomination papers. Where a question of law is raised, as in this case, a reviewing court exercises de novo review. See Hartnett v. Contributory Ret. Appeal Bd., 494 Mass. 612, 616 (2024) (agency determination involving issues of statutory interpretation presents question of law, for which court exercises de novo review).

Discussion. The SBLC, created by statute in 1889, is charged, inter alia, with expeditiously adjudicating the merits of an objection to nomination papers before the time for printing of ballots. See Goldstein v. Secretary of the Commonwealth, 484 Mass. 516, 521-522 (2020); McCarthy v. Secretary of Commonwealth, 371 Mass. 667, 673 n.6 (1977); Madden

v. Secretary of the Commonwealth, 337 Mass. 758, 764 (1958).

Pursuant to G. L. c. 55B, § 4, the SBLC "may investigate upon objection made in accordance with the provisions of this chapter the legality, validity, completeness and accuracy of all nomination papers and actions required by law to give candidates access to a state ballot." Toward that end, the SBLC is authorized to "summons witnesses, administer oaths, and require the production of books, records and papers at a hearing before it upon any matter within its jurisdiction." Id.

The process of raising an objection to the nomination of a candidate for statewide offices is governed by G. L. c. 55B, § 5. See Goldstein, 484 Mass. at 521-522. Section 5 affords "[r]egistered voters from the district in which a candidate seeks nomination . . . three days from the filing deadlines with the Secretary [of the Commonwealth] to file objections to nomination papers" with the SBLC. Id. See G. L. c. 55B, § 5. Most importantly for purposes of this appeal, the mailing and notice provision of this section states as follows:

"Anyone filing an objection under this section shall not later than the day which it is filed, mail by registered or certified mail, return receipt requested, a copy of such objection as filed with the commission to the candidate against whose nomination papers, initiative and referendum petition or primary nomination, such objection is made. Failure to do so shall invalidate any objection filed with the commission."

G. L. c. 55B, § 5, ninth par.

As the judge noted, this provision has two components: "a method component, i.e., that the method of service must be by registered or certified mail with a request for a return receipt, and a timing component, i.e., that the certified mail must be mailed by the end of the day following the filing of the objection with the SBLC." I add that the Legislature included a third component in paragraph 9 setting forth the consequences of noncompliance -- i.e., that failure to abide by the mail and notice requirements "shall invalidate" any objection filed with the SBLC.

I agree with the judge's conclusion that the objector's "failure to strictly comply with the certified mail requirement invalidated" the objection filed with the SBLC "by operation of law." See Kelly v. State Ballot Law Commission, 316 Mass. 512, 515-516 (1944) (because statutory language prohibiting consideration of objections submitted without certificate of enrollment was "clearly mandatory," it "must be regarded as expressing the legislative intention" and court could not "read into the statutory provision any exception on the ground of the probable purpose of the Legislature in enacting it"). The petitioner, in essence, asks the court to ignore the last sentence of G. L. c. 55B, § 5, ninth par., which clearly and unambiguously states that failure to comply with the certified mail requirement "shall invalidate any objection filed with the

commission." I am unwilling to do so. See Broadard v. Hubbard Reg'l Hosp., 388 Mass. 1012, 1012 (1983) ("We are not free to ignore the plain words of the statute"). See also Commonwealth v. Zucchino, 493 Mass. 747, 749 n.6 (2024) ("the most basic canon of statutory construction" is that "words in a statute are presumed to mean what they say").

The petitioner argues that Swift v. Board of Registrars of Voters of Quincy, 281 Mass. 271 (1932) is directly on point, and requires reversal. In Swift, the court considered whether "uncancelled" ballots cast in a statewide election "must be rejected and not counted." Id. at 275. Due to a lack of ink fed into a "cancelling device" used to count ballots, and through no fault of voters or election officials, "an appreciable number of ballots that were duly cast and received into the ballot box" were not cancelled, and thus not counted. Id. at 272-273. See G. L. c. 54, § 33, as amended through St. 1913, c. 835, §§ 250, 503 ("Ballot boxes . . . shall contain mechanical devices for receiving, registering and cancelling every ballot deposited therein"). Under G. L. c. 54, § 106, "[i]f the use of a state ballot box is required, no ballot shall be counted unless it has been deposited in and cancelled by such ballot box." Notwithstanding the positive command of § 106, the court interpreted the word "shall" in light of "the main design of the election laws." Swift, supra at 276. Whether the word

shall is mandatory or permissive is ultimately a question of legislative intent. See id. The court, confining itself "strictly to the facts of the case at bar, where every human step was manifestly innocent and taken as directed by the statute and the only default was by a machine," held that the uncanceled ballots ought to be counted. Id. at 281-282.

The petitioners are correct that, although the common meaning of the word "shall" is mandatory, it is sometimes construed as permissive or directory, as in Swift, 281 Mass. at 276. See Plumb v. Casey, 469 Mass. 593, 598 (2014); Wilson v. Commissioner of Transitional Assistance, 441 Mass. 846, 853 (2004) (construing word "shall" in directive sense to reconcile two statutory provisos so that provisos would "work together harmoniously to effectuate the legislative purpose"). Moreover, as recognized by the Swift court, the "regnant design of all election laws is to provide expeditious and convenient means for expression of the will of the voters free from fraud." Swift, supra. Indeed, if G. L. c. 55B, § 5, ninth par., merely provided that "[a]nyone filing an objection under this section shall not later than the day after which it is filed, mail by registered or certified mail, return receipt requested, a copy of such objection," Swift might compel a different result. The problem with the petitioner's reliance on Swift is that the Legislature in § 5, ninth par., went on to explicitly declare

that failure to comply with this provision "invalidate[s] any objection" filed with the SBLC. This is a clear expression of legislative intent, missing from Swift, to void the proceedings before the SBLC as a consequence of noncompliance. See Kelly, 316 Mass. at 515 ("In the absence of a 'certificate of enrolment' in conformity with the statutory requirement, the State ballot law commission had no jurisdiction to consider the objections").

The SBLC argues, in the alternative, that failure to comply with the certified mail requirement should not provide a basis for affording Walsh relief because he comes to court with "unclean hands." The doctrine of unclean hands provides that one "who comes into equity must come with clean hands." Fidelity Mgt. & Research Co. v. Ostrander, 40 Mass. App. Ct. 195, 200 (1996), quoting United States v. Perez-Torres, 15 F.3d 403, 407 (5th Cir. 1994). Here, however, the Superior Court judge provided relief pursuant to G. L. c. 30A, § 14, which authorizes relief from an agency decision that exceeds "the statutory authority or jurisdiction of the agency," or is "[b]ased upon an error of law." As discussed, the judge concluded that the SBLC's decision ran afoul of the plain language of G. L. c. 55B, § 5, ninth par., and afforded relief on this basis. Thus, Walsh did not "come into equity," but received relief on a basis that "was statutory in nature." P.F.

v. Department of Revenue, 90 Mass. App. Ct. 707, 713-714 (2016).

The SBLC has not directed the court to any case in which relief under G. L. c. 30A from an agency decision that runs afoul of a clear statutory mandate has been denied under the equitable doctrine of unclean hands, and this court has found none.

Conclusion. For the aforementioned reasons, I hereby deny the emergency petition.

By the Court,

/s/ Frank M. Gaziano
Frank M. Gaziano
Associate Justice

Dated: July 13, 2026