

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

Suffolk, ss.

No. SJ-2020-

ROBERT GOLDSTEIN, KEVIN O'CONNOR, MELISSA BOWER SMITH,
on behalf of themselves and others similarly situated,

PETITIONERS,

V.

WILLIAM FRANCIS GALVIN, in his Official Capacity as
Secretary of the Commonwealth of Massachusetts,

RESPONDENT.

**EMERGENCY PETITION FOR RELIEF
PURSUANT TO G. L. C. 214, § 1 AND G. L. C. 231A, § 1**

ROBERT G. JONES, BBO 630767
PATRICK T. ROATH, BBO 690603
ROPES & GRAY LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 951-7564
Robert.Jones@ropesgray.com
Patrick.Roath@ropesgray.com

Counsel for Petitioners

Dated: April 8, 2020

TABLE OF CONTENTS

INTRODUCTION	1
PETITIONERS	6
REASONS RELIEF IS APPROPRIATE IN THIS COURT	10
FACTUAL BACKGROUND	11
I. Ballot Access and Signature Collection in Massachusetts	11
II. Signature Collection and COVID-19	15
a. Petitioners' Experiences Collecting Signatures	18
b. Attempts to Seek Non-Judicial Relief	22
CONSTITUTIONAL BASES FOR RELIEF	27
I. The In-Person Signature Requirements of G. L. c. 53, §§ 6-7 Trigger, and Do Not Withstand, Strict Scrutiny	29
a. The Current Signature Requirements Impose Insurmountable Burdens on Petitioners in Light of COVID-19 Restrictions and Safety Concerns	30
b. The Signature Threshold Is Not Narrowly Drawn to a Compelling State Interest, Given the Circumstances	34
1. The State's Interest Is Legitimate, but not Compelling	34
2. Other, Less Stringent Restrictions Could Adequately Address the Commonwealth's Interest	35
II. Even if Lesser Scrutiny Were to Apply, the Signature Requirement Would Not Survive	37
III. Courts Routinely Waive Deadlines During Crises and Should Do So Here	39
CONCLUSION	40
REQUESTED RELIEF	40

TABLE OF AUTHORITIES

Page(s)

Cases

<u>American Party of Texas v. White</u> , 415 U.S. 767 (1974).....	32, 33
<u>Barr v. Galvin</u> , 626 F.3d 99 (1st Cir. 2012).....	28, 35
<u>Batchelder v. Allied Stores International, Inc.</u> , 388 Mass. 83 (1983).....	passim
<u>Chelsea Collaborative, Inc. v. Secretary of the Commonwealth</u> , 480 Mass. 27 (2018).....	6, 34, 37
<u>Commonwealth v. Richardson</u> , 454 Mass. 1005 (2009).....	10
<u>Cooper v. Raffensperger</u> , No. 1:20cv1312 (N.D. Ga. filed Mar. 26, 2020).....	27
<u>Democratic National Committee et al. v. Bostelmann et al.</u> , No. 3:20-cv-00249-WMC (W. D. Wis. Mar. 20, 2020).....	27
<u>Esshaki v. Whitmer</u> , No. 2:20cv10831 (E.D. Mich. filed Mar. 31, 2020).....	27
<u>Florida Democratic Party v. Scott</u> , 215 F. Supp. 3d 1250 (N.D. Fla. 2016).....	39
<u>Georgia Coalition for the People’s Agenda, Inc. v. Deal</u> , 214 F. Supp. 3d 1344 (S.D. Ga. 2016).....	39
<u>Glovsky v. Roche Bros. Supermarkets</u> , 469 Mass. 752 (2014).....	17
<u>Illinois State Board of Elections v. Socialist Workers Party</u> , 440 U.S. 173 (1979).....	3

<u>Libertarian Associationn of Massachusetts v. Secretary of the Commonwealth,</u> 462 Mass. 538 (2012).....	passim
<u>Libertarian Party of Illinois et al. v. Pritzker et al.,</u> No. 1:20-cv-02112 (N. D. Ill. filed Apr. 3, 2020).....	27
<u>Lyman v. Baker,</u> No. 18-2235, 2020 WL 1527758 (1st Cir. Mar. 31, 2020).....	32
<u>McClure v. Galvin,</u> 386 F.3d 36 (1st Cir. 2004).....	32, 37
<u>Omari Faulkner for Virginia v. Virginia Department of Elections,</u> No. CL 20-1456 (Va. Cir. Mar. 25, 2020).....	27
<u>Opinion of the Justices,</u> 413 Mass. 1201 (1992)	29
<u>Perez-Guzman v. Garcia,</u> 346 F.3d 229 (1st Cir. 2003).....	passim
<u>Storer v. Brown,</u> 415 U.S. 724 (1974).....	33
<u>Williams v. Rhodes,</u> 393 U.S. 23 (1968).....	29
<u>Wyler v. Secretary of the Commonwealth,</u> 441 Mass. 22 (2004).....	11
 Constitutional Provisions	
First Amendment to the United States Constitution.....	3, 29
Fourteenth Amendment to the United States Constitution.....	3, 29
Massachusetts Declaration of Rights, Article 9	3, 28
 Statutes	
Ariz. Rev. Stat. §16-315(e)	26

G. L. c. 53, § 6	passim
G. L. c. 53, § 7	passim
G. L. c. 53, § 8	14
G. L. c. 53, § 9	10, 14
G. L. c. 53, § 10	10, 12
G. L. c. 53, § 11	10
G. L. c. 53, § 48	10
G. L. C. 214, § 1	10
G. L. C. 231A, § 1	10
S. 2608, 191st Gen. Court (Mass. 2020)	6, 26
Va. Code § 24.2-521(1)	27
Va. Code § 24.2-522(C)	27
Other Authorities	
950 Code Mass. Regs. § 55.03(1)(d)	13
950 Code Mass. Regs. § 55.03(5)(b)(2)	14
950 Code Mass. Regs. § 55.04(2)	14
Mass. R. Civ. P. 23, as amended, 471 Mass. 1491 (2015)	7

INTRODUCTION

This petition seeks emergency relief to cure a serious Constitutional defect in the Commonwealth's election laws resulting from the COVID-19 pandemic. States and localities across the nation face an unprecedented crisis due to the spread of the novel coronavirus that causes COVID-19, and the challenge posed by that crisis extends to our democratic institutions. Election laws and practices which ordinarily are unobjectionable stand, in the current environment, as barriers to democratic participation as a consequence of measures imposed by state and local governments to limit the spread of the deadly virus. In response, states and localities nationwide have taken emergency measures to ensure that voting and participation rights that serve as the foundation of democratic self-government are protected.

Candidates for elected office in the Commonwealth confront these same challenges. In this election year, Massachusetts law requires candidates for elected office to collect, in some instances, thousands of signatures of registered Massachusetts voters. See G. L. c. 53, §§ 6-7. Candidates must submit those signatures to local election officials as early as April 28, 2020, and then to the

Secretary of the Commonwealth by as early as May 26, 2020.¹ This statutory scheme has operated in the past--importantly and necessarily--to require candidates to go to the people of the Commonwealth to request their support, as evidenced by their signatures on nomination papers.

But satisfying this requirement is now practically impossible for many candidates, given the unprecedented restrictions enacted to combat the spread of COVID-19.² Prior to the introduction of stay-at-home measures beginning in mid-March, Massachusetts candidates had about a month from the time nominations papers were first made available to collect signatures unimpeded. Since strict social-distancing rules were imposed from mid-March onward, candidates have been unable to rely on volunteers and supporters to collect signatures in person and, indeed, much of the activity required to collect signatures would

¹ As explained further below, see infra Factual Background, Part I, deadlines vary depending on party affiliation and which office a candidate is seeking. These deadlines apply to party candidates for state district offices, including Petitioner Smith. G. L. c. 53, §§ 6-7. For Petitioners Goldstein and O'Connor, the operative deadlines fall on May 5 and June 2.

² See COVID-19 Order No. 13, Office of the Gov., Mass., (Mar. 23, 2020), <https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download> (closing all non-essential businesses and prohibiting gatherings of more than ten people).

violate social-distancing guidelines established at the federal and state levels. As this Court has recognized, there is no real alternative to in-person petitioning: attempting to collect signatures by mail is an expensive, time-consuming, and inefficient process. See Batchelder v. Allied Stores Int'l, Inc., 388 Mass. 83, 92 (1983). Absent relief, the result is that many candidates who would otherwise be on the ballot this fall will be excluded for failure to submit sufficient certified signatures. Many voters, too, will be denied the opportunity to vote for their preferred candidate.

Under the present circumstances, the signature requirements for ballot access under Massachusetts law impermissibly burden the fundamental rights of these candidates and cannot be reconciled with the Massachusetts and United States Constitutions. The equal right to access the ballot is a "fundamental right" protected by Article 9 of the Massachusetts Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution. See Libertarian Ass'n of Mass. v. Secretary of the Commonwealth, 462 Mass. 538, 560 (2012); Illinois State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979). This Court has previously found that Massachusetts' ballot access signature requirements are

justified as a method for ensuring candidates who appear on the ballot have a “measurable quantum of community support.” Libertarian Ass’n of Mass., 462 Mass. at 556–557. But, as applied today, those rulings no longer pertain.

Today, the law will not only exclude individuals from the ballot who lack community support--it will operate to exclude individuals who could demonstrate such support, but who did not complete their signature gathering in the few weeks before widespread social distancing took hold. These candidates simply do not have the ability to collect the required numbers of signatures from voters unable to leave their homes and advised to limit contact with others. Moreover, the practical effect of the signature requirement will be to entirely preclude individuals who resolved to run for office after the lockdown measures were imposed. Candidates for federal office with higher signature requirements and non-incumbents unable to rely on a well-developed pool of existing supporters may feel this burden most acutely, but these requirements undermine the rights of all candidates in Massachusetts and the rights of the Massachusetts citizens who desire to vote for them.

The statute also poses a threat to public health, as the experiences of the Petitioners--who are candidates for

elected office--vividly demonstrate. Petitioner Kevin O'Connor's elderly parents may well have been exposed to the virus because his 82-year old mother was energetically gathering signatures to help him qualify for the Republican ballot in the U.S. Senate race. Petitioner O'Connor's father was hospitalized due to COVID-19 for nine days, and is now recovering at home. Petitioner Melissa Bower Smith, afflicted with an underlying respiratory illness, has had to completely retool her campaign for State Representative to accommodate the virus's impact. And Petitioner Robert Goldstein, an infectious disease doctor at Massachusetts General Hospital running for U.S. Congress, has been actively addressing the impact of the novel coronavirus in the community.

The Secretary of the Commonwealth is charged with enforcing the signature requirements, but lacks the administrative power to waive them. Nothing prevents the General Court (the "Legislature") from passing a bill to address the emergency caused by this law. Yet with just 20 days to go before many candidates are expected to submit their signatures to local election officials, the Legislature has not indicated that it will act in a timely manner to grant candidates and voters relief from the current signature collection regime. An emergency COVID-

19 election response package already passed by the Legislature and signed into law by the Governor did not address the signature collection features at issue in this Petition.³

This Court has previously acknowledged that “voting regulations once considered constitutionally permissible may come to significantly interfere with the fundamental right to vote in light of conditions existing in contemporary society.” Chelsea Collaborative, Inc. v. Secretary of the Commonwealth, 480 Mass. 27, 37 (2018). As explained in further detail below, Petitioners respectfully ask this Court to find that, in the context of the current emergency, G. L. c. 53, §§ 6–7 (collectively, the “Minimum Signatures Law”) unduly burdens fundamental rights secured by the Massachusetts and United States Constitutions.

PETITIONERS

Petitioners are three candidates for elected office, representing both of the major political parties, running for state and local offices, and petitioning on behalf of

³ See S. 2608, 191st Gen. Court (Mass. 2020).

all candidates currently running for office, or eligible to run for office, in Massachusetts this year.⁴

Petitioner Robert Goldstein resides in Boston, Massachusetts. See Goldstein Aff. Ex. A, at ¶ 1. He is a physician at Massachusetts General Hospital specializing in the treatment of infectious diseases and is currently a candidate for the United States Congress in Massachusetts' Eighth Congressional District, seeking the Democratic Party's nomination. Id. at ¶¶ 2, 3. Petitioner Goldstein wishes to appear on the ballot for the upcoming Massachusetts primary election on September 1, 2020, and, pending the outcome of that election, the ballot for the general election. Id. at ¶ 3. Under state law, Petitioner Goldstein is required to submit nomination papers accompanied by at least 2,000 verifiable certified signatures to local election officials on May 5, 2020. G.

⁴ To the extent this Court deems it necessary to certify a class in order to grant the relief sought by this Petition, the subject matter of this action and the identity of the Petitioners satisfy the criteria for proceeding as a class under Massachusetts law. See Mass. R. Civ. P. 23, as amended, 471 Mass. 1491 (2015). Here, the class of potential plaintiffs (all candidates or potential candidates) is so numerous that joinder of all members is impracticable. The question of the constitutionality of the Minimum Signatures Law is common to all. As established below, the claims of the named Petitioners are typical of the entire class, and Petitioners are well positioned to fairly and adequately protect the interests of the class.

L. c. 53, §§ 6-7. Petitioner Goldstein and his campaign have been working diligently to collect the necessary signatures, but have not yet been able to collect a quantity of signatures adequate to ensure that his nomination papers include at least the minimum number of certified signatures. Ex. A at ¶ 5.

Petitioner Kevin O'Connor resides in Dover, Massachusetts. See O'Connor Aff. Ex. B, at ¶ 1. He is an attorney and is currently a candidate for the United States Senate, seeking the Republican Party's nomination. Id. at ¶ 2. Petitioner O'Connor wishes to appear on the ballot for the upcoming Massachusetts primary election on September 1, 2020, and, pending the outcome of that election, the ballot for the general election. Id. Under state law, Petitioner O'Connor is required to submit nomination papers accompanied by at least 10,000 verifiable certified signatures to local election officials on May 5, 2020. G. L. c. 53, §§ 6-7. Petitioner O'Connor and his campaign have been working diligently to collect the necessary signatures, but have not yet been able to collect a quantity of signatures adequate to ensure that his nomination papers include at least the minimum number of certified signatures. Ex. B at ¶ 6.

Petitioner Melissa Bower Smith resides in Hingham, Massachusetts. See Smith Aff. Ex. C, at ¶ 1. She is currently a candidate for State Representative in the Fourth Norfolk District, seeking the Democratic Party's nomination. Id. at ¶¶ 2-3. Petitioner Smith wishes to appear on the ballot for the upcoming Massachusetts primary election on September 1, 2020, and, pending the outcome of that election, the ballot for the general election. Id. Under state law, Petitioner Smith is required to submit nomination papers accompanied by at least 150 verifiable certified signatures to local election officials on April 28, 2020. G. L. c. 53, §§ 6-7. Petitioner Smith and her campaign have been working diligently to collect the necessary signatures, but have not yet been able to collect a quantity of signatures adequate to ensure that her nomination papers include at least the minimum number of certified signatures. Ex. C at ¶¶ 12-16.

Defendant William Francis Galvin is the Secretary of the Commonwealth of Massachusetts (the "Secretary"), and is being sued in his official capacity. The Secretary is responsible for overseeing elections in Massachusetts, and is ultimately responsible for determining whether candidates seeking to appear on a ballot have submitted nomination papers "in apparent conformity" with the

statutory requirements. G. L. c. 53, § 11; see also id. §§ 9, 10, 48.

**REASONS RELIEF IS APPROPRIATE IN THIS COURT PURSUANT TO
G. L. C. 214, § 1 AND G. L. C. 231A, § 1**

This Petition challenges the constitutionality of a state election law which imposes an imminent deadline, in the midst of an unprecedented public health crisis. Petitioners seek relief from this Court in order to expeditiously secure a conclusive ruling on the merits, and provide guidance for candidates and election officials. Petitioners do not seek this Court's review "lightly." Commonwealth v. Richardson, 454 Mass. 1005, 1006 (2009).

Jurisdiction over this Petition is proper in this Court pursuant to G. L. c. 214, § 1, conferring on this Court "original and concurrent jurisdiction of all cases and matters of equity cognizable under the general principles of equity jurisprudence," and G. L. c. 231A § 1, establishing that this court "may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby." This Court has previously invoked these authorities to adjudicate disputes relating to the Commonwealth's election laws. See, e.g., Libertarian Ass'n of Mass., 462

Mass. at 540; Wylar v. Secretary of the Commonwealth, 441 Mass. 22, 24 (2004).

FACTUAL BACKGROUND

I. BALLOT ACCESS AND SIGNATURE COLLECTION IN MASSACHUSETTS

In Massachusetts, candidates seeking to appear on the ballot must submit a legally-prescribed minimum number of certified signatures alongside their nomination papers to the Secretary by a certain date. The law applies to candidates for both state and federal offices. See generally Libertarian Ass'n of Mass., 462 Mass. at 543 (describing in detail the statutory “two-step process” for reaching the ballot in Massachusetts). This year, nomination papers for all offices were first made available on February 11, 2020. See Secretary of the Commonwealth, *Don't Just Stand There... Run: A Candidate's Guide to the 2020 State Election 6* (Rev. Ed. 2020) (the “Candidate Guide”).⁵ The precise timeline of the ensuing deadlines varies based on the office sought and the candidates' party affiliation--the summary below focuses on the dates applicable to candidates for state district offices who belong to an established political party, such as

⁵ The Candidate Guide is available online at <https://www.sec.state.ma.us/ele/elepdf/Candidates-Guide-2020.pdf>.

Petitioner Smith. Petitioners Goldstein and O'Connor have slightly more time.

Candidates are required to submit nomination papers accompanied by sufficient certified signatures to the Secretary on May 26. See G. L. c. 53, § 10; Candidate Guide at 6. But, in practice, that deadline is effectively on April 28--almost a month earlier--when candidates are required to submit nomination papers and signatures to local election officials for certification. See G. L. c. 53, § 7; Candidate Guide at 6. Indeed, the Secretary encourages candidates to file even earlier, recommending that "candidates file early, prior to the deadline for submitting papers to local election officials," as "[t]his allows time for errors to be identified and for candidates to gather additional signatures, if necessary." Candidate Guide at 11.

The number of signatures required varies based on which office the candidate is seeking. G. L. c. 53, § 6. A candidate to be the Register of Probate for Dukes County, for example, need only collect twenty-five signatures, whereas a candidate for U.S. Senate must collect 10,000. Id. Candidates for State Representatives must submit 150, whereas candidates for U.S. Representatives must submit 2,000. Id. Beyond assigning different requirements to

different offices, the Minimum Signatures Law does not draw a distinction between state and federal offices: all requirements are included in the same paragraph of the same statute. See id. For candidates who are seeking the nomination of a recognized political party, only the signatures of registered voters who are either (i) unenrolled, or (ii) enrolled in the same political party as the candidate are eligible for certification. See id.; see also 950 Code Mass. Regs. § 55.03(1)(d). The statute requires “in person” signatures. G. L. c. 53, § 7.

Once signatures are submitted, local election officials have until May 19 to complete their review and certification. See G. L. c. 53, § 7; Candidate Guide at 6. After this date, some candidates who are close to satisfying the statutory minimum, but haven’t quite cleared the threshold, have a limited right to seek review of additional signatures during a brief window of time. See G. L. c. 53, § 7; Candidate Guide at 6. Candidates must then collect their certified papers from local election officials, and submit those papers to the Secretary by 5 P.M. on May 26. See G. L. c. 53, § 7; Candidate Guide at 6. Unsurprisingly, in the process of certifying hundreds or thousands of signatures, local elected officials disqualify many collected signatures as invalid or

indecipherable (e.g., because a voter has failed to update his or her registration to reflect a current address). As a result, the Secretary advises candidates to “collect more signatures than required because many may be disallowed either in the certification process or through challenges,” noting that “[r]egistrars are required by law to certify two-fifths more than the number of signatures required.” Candidate Guide at 16.

Candidates seeking to appear on election ballots must also satisfy other statutory requirements unrelated to the collection of signatures. Party candidates must submit to the Secretary nomination papers containing their basic contact information, G. L. c. 53, §§ 6, 8, a certificate proving the candidate has been enrolled in a political party for at least ninety days prior to the filing deadline, and has not been enrolled in the other party for one year before, id. § 9, 950 Code Mass. Regs. § 55.03(5)(b)(2), a written acceptance of nomination from the candidate, 950 Code Mass. Regs. § 55.04(2), and a receipt from the State Ethics Commission confirming that the candidate has submitted a Statement of Financial Interest, G. L. c. 53, § 9; see also Candidate Guide at 13. This Petition does not challenge the constitutionality

or propriety of these provisions of Massachusetts' ballot access scheme.

II. SIGNATURE COLLECTION AND COVID-19

As this Court has observed, "a person needing signatures for ballot access requires personal contact with voters. He or she cannot reasonably obtain them in any other way." Batchelder, 388 Mass. at 92. As in-person congregation and social activity in the Commonwealth has been progressively constrained over the past several weeks in response to the pandemic, conducting in-person contact with voters has become increasingly challenging, to the point of becoming practically impossible. On March 10, 2020, the Governor of the Commonwealth announced a state of emergency in Massachusetts.⁶ Schools began to close soon after.⁷ By March 15, the Governor issued an emergency

⁶ See Exec. Order No. 591, Office of the Gov., Mass., (Mar. 10, 2020), <https://www.mass.gov/executive-orders/no-591-declaration-of-a-state-of-emergency-to-respond-to-covid-19>.

⁷ See, e.g., Boston Public Health Commission, Boston Health Officials Announce Closure of Eliot K-8 School Due to Coronavirus Concerns (Mar. 11, 2020), <https://www.bphc.org/onlinenewsroom/Blog/Lists/Posts/Post.aspx?ID=1287>. On March 15, the Governor announced that all public and private schools would be closed from March 17 until April 6, and later extended the closure until May 4. See Exec. Order Temporarily Closing All Public and Private Elementary and Secondary Schools, Office of the Gov., Mass., (Mar. 15, 2020), <https://www.mass.gov/doc/march-16-2020-k-12-school-closing-order/download>; COVID-19 Order 16, Office of the

order limiting gatherings to twenty-five people and prohibiting on-premises consumption of food or drink at bars and restaurants.⁸ On March 23, the limitation on gatherings was expanded to preclude gatherings of ten or more people, and the Commonwealth ordered the closure of all non-essential businesses and workplaces until Monday, May 4--the day before statewide and federal candidates are required to submit collected signatures to local registrars, and several days after local and district officials must submit papers to local officials.⁹ See G. L. c. 53, § 7. In ordinary times, party candidates have eleven to twelve weeks in which to collect signatures. This year, candidates had about four.

Gov., Mass., (March 25, 2020), <https://www.mass.gov/doc/march-25-school-closure-extension-order/download>.

⁸ See Exec. Order Prohibiting Gatherings of More than 25 People and On-Premises Consumption of Food or Drink, Office of the Gov., Mass., (Mar. 15, 2020), <https://www.mass.gov/doc/march-15-2020-large-gatherings-25-and-restaurants-order/download>.

⁹ See COVID-19 Order No. 13, Office of the Gov., Mass., (Mar. 23, 2020), <https://www.mass.gov/news/governor-charlie-baker-orders-all-non-essential-businesses-to-cease-in-person-operation>. The closures were later extended to May 4. See COVID-19 Order No. 21, Office of the Gov., Mass., (Mar. 23, 2020), <https://www.mass.gov/doc/march-31-2020-essential-services-extension-order/download>.

All this puts candidates in an impossible situation. Virtually all Massachusetts political campaigns have suspended in-person activities in compliance with government orders. Yet, as this Court has previously found, while “[i]deas and views can be transmitted through the press, by door-to-door distributions, or through the mail, without personal contact . . . a person needing signatures for ballot access requires personal contact with voters.” Batchelder, 388 Mass. 83 at 92; accord Glovsky v. Roche Bros. Supermarkets, 469 Mass. 752, 755 (2014) (“This right of ballot access encompasses an individual’s right to solicit signatures in support of a candidate’s nomination to public office.”). The experience of Petitioners, as described below in Part II.A., and other candidates currently running bears this out: attempting to collect hundreds or thousands of signatures of verifiable Massachusetts voters by mail in this environment is prohibitively expensive, inefficient, and not reasonably viable.

Circumstances are even more dire for candidates who decided to seek elected office after the stay-at-home measures were imposed. For these candidates--whose decision may have been delayed for any number of reasons, including because the incumbent occupant of the office they

are seeking had not announced her or his reelection plans¹⁰-the path to the ballot may well be foreclosed by the Minimum Signatures Law. Further, enforcing the Minimum Signatures Law in this environment jeopardizes the health and safety of local election officials. Administering the current scheme would require these individuals to accept stacks of signature pages, either in person or through the mail, and then--at a minimum--handle pieces of paper that have been recently touched by hundreds of voters, and which may contain traces of the virus.¹¹

a. Petitioners' Experiences Collecting Signatures

To summarize the foregoing, the key requirements for each candidates are as follows:

¹⁰ For example, State Representative. Elizabeth Poirier of North Attleboro announced that she would not be running for re-election on March 26, 2020. See Reilly, Veteran North Attleboro State Representative Poirier Won't Run Again, The Sun Chronicle (Mar. 26, 2020), https://www.thesunchronicle.com/news/local_news/veteran-north-attleboro-state-representative-poirier-won-t-run-again/article_26a5489f-a800-5d1c-a659-074bfbd4600b.html. And on April 7, 2020, State Representative Angelo Scaccia of Readville announced his retirement after serving for twenty-three terms. See Doran, House Dean Scaccia Leaving Beacon Hill, State House News Service (Apr. 7, 2020).

¹¹ See News Release, National Institutes of Health, New Coronavirus Stable for Hours on Surfaces, (Mar. 17, 2020), <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (sharing conclusion that "people may acquire the virus through the air and after touching contaminated objects").

Petitioner	Office	Minimum Certified Signatures	Local Deadline	Secretary Deadline
Goldstein	U.S. Congress	2,000	May 5	June 2
O'Connor	U.S. Senate	10,000	May 5	June 2
Smith	State Rep.	150	Apr. 28	May 26

Prior to the introduction of stringent stay-at-home measures, Petitioner Goldstein and his campaign had committed significant resources to in-person collection of signatures, focusing their efforts on venues where large numbers of registered voters would congregate, such as local Democratic town committee meetings, public transportation hubs, and grocery store parking lots. Ex. A at ¶ 7. Petitioner Goldstein is a practicing physician specializing in the study and treatment of infectious diseases. Id. at ¶ 2. Given this professional background, Petitioner Goldstein was acutely aware of the public health risks associated with in-person signature collection, and, once the impact of the virus in Massachusetts became clear, instructed his campaign staffers and volunteers to proceed with extreme caution and cease all in-person attempts at collection. Id. at ¶¶ 10-11. Since the imposition of socially-distancing measures, Petitioner Goldstein's campaign has invested significant resources into efforts

to collect signatures via mail. Id. at ¶ 13. Petitioner Goldstein expects this effort to cost thousands of dollars, yield fewer signatures than were collected in person, and consume more time than any other campaign activity. Id. at ¶¶ 13-15.

Petitioner O'Connor is a first-time candidate running for United States Senate. Ex. B at ¶ 2. Recognizing that collecting 10,000 certified signatures would be a key priority, Petitioner O'Connor was conscious from the outset of his campaign of the need to expend significant resources on collecting the signatures of both registered Republicans and unenrolled (i.e. independent) voters. Id. at ¶¶ 4-5. Petitioner O'Connor expects his campaign to spend more than more than \$10,000 in an effort to compensate for the inability to gather signatures through traditional means for most of the signature-gathering period. Id. at ¶ 12. Unfortunately, the signature-gathering process may well have introduced COVID-19 into his family. Id. at ¶¶ 13-14. Petitioner O'Connor's 82-year-old mother was one of his campaign's most productive signature gatherers in February and early March. Shortly thereafter, Petitioner O'Connor's 86-year-old father, who lives with Mrs. O'Connor, was hospitalized with COVID-19 for nine days.

Thankfully Petitioner O'Connor's father is now recovering at home from his illness. Id.

Petitioner Smith, who is running to be the State Representative for her district, has also personally confronted the difficult conflict between health and democracy now imposed by the signature requirement. Petitioner Smith has participated in numerous political campaigns. Ex. C at ¶¶ 2, 6. As a result, Petitioner Smith was fully aware of the Minimum Signatures Law's requirements, but viewed the task of collecting 150 signatures to appear on the ballot as a relatively modest and achievable one. Id. at ¶ 7. Given that, and due to the fact she was recovering from a serious respiratory illness, Petitioner Smith chose to invest time in other community and voter engagement activities in February and early March. Id. at ¶¶ 10-11. Since measures designed to address COVID-19 rendered in-person signature collection effectively impossible, from mid-March onward, Petitioner Smith and her campaign scrambled to pivot to a remote collection strategy, focusing on mailings and volunteer phone banks. Id. at ¶¶ 13-16. These methods are expensive, time-consuming, and may not ultimately be successful. Id. at ¶ 16.

b. Attempts to Seek Non-Judicial Relief

Members of the public have consistently petitioned the state Legislature to pass a bill that would ease the burden on candidates seeking to comply with state law. On March 16, eleven Massachusetts candidates submitted a letter to state leaders asking the state to delay the deadline to submit signatures.¹² In response to the letter, the Secretary told a reporter that “[s]ince there has been no legislative action on this, we would recommend the candidates proceed as they normally would, but with appropriate precautions.”¹³ The Secretary opined that “[c]andidates may consider making exact copies of nomination papers in order to give voters a fresh sheet of paper to sign. They may also provide signers with new pens, so they do not have to use a shared pen to sign the papers.”¹⁴ Advocacy from candidates was echoed in a Boston Globe editorial dated March 25, which called on the

¹² Rep. Kennedy III et al., Letter to Gov. Baker et al., (Mar. 16, 2020), <https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Ascde%3AUS%3A0a2f10b7-c095-4ddc-b870-c43ec1e6526c>.

¹³ Murray, Campaigns Sweat Signature Collection – Ordinary Life Is Over For Now, Politico (Mar. 17, 2020), <https://www.politico.com/newsletters/massachusetts-playbook/2020/03/17/campaigns-sweat-signature-collection-ordinary-life-is-over-for-now-baker-proposes-10m-small-biz-loan-fund-488602>.

¹⁴ Id.

Legislature to “reduce the number of signatures required in this electoral cycle,” noting that “the precise number of signatures required is arbitrary in the first place.”¹⁵ On social media, Attorney General Maura Healey’s Office retweeted the editorial, stating, “I support reducing the number of signatures candidates need to be placed on the ballot.”¹⁶ The official “COVID-19 Election Updates” website overseen by the Secretary currently states: “As the deadlines and requirements for ballot access are set by state law, nomination paper deadlines and signature requirements cannot be waived without an act of the Legislature or a court order.”¹⁷

Other states faced with a similar challenge have taken legislative and executive action to reduce the burdens

¹⁵ Protecting the 2020 Election Starts with Easing Ballot Access, Boston Globe (Mar. 25, 2020), <https://www.bostonglobe.com/2020/03/25/opinion/protecting-2020-election-starts-with-easing-ballot-access/> (Globe reported that, as of the date of publication, the Secretary was “encourag[ing] candidates to submit whatever signatures they already have, so that his office can assess the impact of the coronavirus” but “didn’t rule out revisiting the requirements,” quoting the Secretary as saying: “If things get worse, we’ll change. I’m not hesitant, when circumstances require, to take action”).

¹⁶ @MassAGO Tweet, (Mar. 25, 2020), <https://twitter.com/MassAGO/status/1242815379296137216?s=20>.

¹⁷ COVID-19 Elections Updates, (Mar. 25, 2020) <https://www.sec.state.ma.us/ele/covid-19/covid-19.htm>.

candidates face. The below table summarizes recent actions taken by officials in other states to ameliorate burdensome signature gathering requirements.

Date	State	Official Action
Mar. 14	New York	New York's Governor exercised emergency authority to reduce primary petition requirements to 30% of normal levels, and delay the submission deadline from March 17 to April 2. ¹⁸
Mar. 20	Georgia	Georgia's Secretary of State extended the petitioning deadline for minor party and independent candidates from July 14 to August 14. ¹⁹
Mar. 25	New Jersey	New Jersey's Governor issued an executive order requiring all petitions to be circulated electronically only. ²⁰

¹⁸ See Exec. Order Temporarily Modifying Election Procedures to Reduce Spread of Coronavirus, Office of the Gov., N.Y., (Mar. 14, 2020), <https://www.governor.ny.gov/news/amid-covid-19-pandemic-governor-cuomo-signs-executive-order-temporarily-modifying-election>.

¹⁹ Galloway, Bluestein, & Mitchell, The Jolt: Third-Party Candidates Say State Law Requiring Thousands Of Signatures Puts Their Lives At Risk, Atlanta Journal Constitution, Political Insiders Blog (Mar. 27, 2020), <https://www.ajc.com/blog/politics/the-jolt-third-party-candidates-say-state-law-requiring-thousands-signatures-puts-their-lives-risk/BstBmD77tJu2fuedXXzSzI/>.

²⁰ Exec. Order No. 105, Office of the Gov., N. J., (Mar. 19, 2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-105.pdf>.

Date	State	Official Action
Mar. 26	Utah	Utah's Governor suspended numerous rules to relax requirements related to petition circulation. ²¹
Mar. 27	Michigan	Michigan's Secretary of State formally requested that the Governor issue an executive order extending the signature submission deadline from April 21 to May 12. ²²
Mar. 28	Connecticut	Connecticut's Secretary of State formally requested that the Governor take action to suspend the need for petitions for the general election. ²³
Mar. 31	Vermont	Vermont's legislature passed a law removing entirely the requirement to submit signatures in order to access the ballot. ²⁴
Apr. 3	Florida	Florida's Secretary of State signed an emergency order allowing candidates for state office and

²¹ Exec. Order Suspending Certain Provisions of the Utah Code Regarding Signature Gathering, Office of the Gov., Utah, (Mar. 26, 2020), <https://utahpolicy.com/index.php/features/today-at-utah-policy/23387-gov-herbert-suspends-sections-of-utah-statute-regarding-signature-gathering>.

²² Gibbons, Without Deadline Extension, Coronavirus Could Keep Some Michigan Political Candidates Off The Ballot, Michigan Live (Mar. 27, 2020), <https://www.mlive.com/public-interest/2020/03/without-deadline-extension-coronavirus-could-keep-some-michigan-political-candidates-off-the-ballot.html>.

²³ Merrill, Letter from Conn. Sec'y of State to Gov. Ned Lamont et al., (Mar. 28, 2020), <http://ballot-access.org/wp-content/uploads/2020/03/CT-SOS-Letter.pdf>.

²⁴ Vermont Changes Election Laws Amid Coronavirus Outbreak, WCAX3 (Mar. 31, 2020), <https://www.wcax.com/content/news/Changes-coming-to-Vermont-election-laws-amid-coronavirus-outbreak-569244711.html?ref=711>.

Date	State	Official Action
		collectors of ballot question petitions to electronically submit qualifying documents. ²⁵

In Massachusetts, with 20 days to go, the Legislature has not acted.²⁶ As discussed, the emergency election measures enacted into law on March 23 in response to the pandemic did not address ballot access.²⁷

Where policymakers have not acted in other states, private litigants have successfully sued to vindicate constitutional rights. In Virginia, a state court considering a challenge to a similar law requiring U.S. Senate candidates to amass 10,000 signatures in support of

²⁵ Axelrod, Florida Candidates Allowed To Collect Petition Signatures Online, The Hill (Apr. 3, 2020), <https://thehill.com/homenews/state-watch/491131-florida-candidates-allowed-to-collect-petition-signatures-online>.

²⁶ On March 23, 2020, according to media reports, state legislative leaders responded to a media inquiry related to the Minimum Signatures Law by stating, “we’re talking about [it]” and “we’re having ongoing discussions about that.” Young, Signature Requirements Unchanged Amidst Health Crisis, State House News Service (Mar. 23, 2020). Other states already recognize that public support may be measured by either in-person or electronic signatures, and therefore have not had to adjust their requirements during this public health crisis. See, e.g., Ariz. Rev. Stat. §16-315(e) (Arizona statute explicitly authorizing the Secretary of State to permit “the creation, use and submission of petitions . . . in electronic form if those petitions provide for an appropriate method to verify signatures of petition circulators and signers”).

²⁷ See S. 2608, 191st Gen. Court (Mass. 2020).

their candidacy ruled that the law violated the U.S. Constitution as applied, finding that it imposed a significant burden on candidates' constitutional rights by "preclud[ing] them from freely associating at the highest level with the political party of their choice."²⁸ Similar litigation is pending in Georgia, Michigan, and Illinois.²⁹ Other courts have granted motions seeking constitutional relief from election constraints in recent weeks, "[i]n light of the ongoing impact of the COVID-19 crisis." Order at 1, Dkt. 37, Democratic National Committee et al. v. Bostelmann et al., No. 3:20-cv-00249-WMC (W. D. Wis. Mar. 20, 2020) (order granting plaintiffs' request to extend Wisconsin's deadline by which an individual can register to vote electronically).

CONSTITUTIONAL BASES FOR RELIEF

Petitioners recognize the Commonwealth's interest in regulating elections to ensure that "our democratic

²⁸ Omari Faulkner for Va. v. Virginia Dep't of Elections, No. CL 20-1456, at *2-4 (Va. Cir. Mar. 25, 2020) (order granting emergency motion for preliminary injunction, finding Va. Code §§ 24.2-522(C), 24.2-521(1) unconstitutional as applied).

²⁹ See Libertarian Party of Ill. et al. v. Pritzker et al., No. 1:20-cv-02112 (N. D. Ill. filed Apr. 3, 2020); Esshaki v. Whitmer, No. 2:20cv10831 (E.D. Mich. filed Mar. 31, 2020); Cooper v. Raffensperger, No. 1:20cv1312 (N.D. Ga. filed Mar. 26, 2020).

processes remain fair, honest, and orderly.” Libertarian Ass’n of Mass., 462 Mass. at 560 (2012), quoting Storer v. Brown, 415 U.S. 724, 730 (1974). As applied under normal conditions, Petitioners do not question the constitutionality of the Commonwealth’s statutory scheme requiring candidates to collect signatures from voters “in person,” G. L. c. 53, § 7, to ensure that “the candidates who appear on the statewide ballot have demonstrable support among the voting public,” Barr v. Galvin, 626 F.3d 99, 111 (1st Cir. 2012). But these are not normal times. The public health crisis posed by COVID-19 and the measures enacted to mitigate its spread render the in-person signature requirements of G. L. c. 53, §§ 6-7 unconstitutional under both the Massachusetts and United States Constitutions.

State-enacted ballot-access restrictions like the in-person signature requirements here trigger scrutiny under the Massachusetts and United States Constitutions. Article 9 of the Massachusetts Declaration of Rights protects two “fundamental” and “intertwine[d]” sets of rights: those of candidates who have a “right to participate equally in the electoral process and [to] associate with one another to achieve policy goals,” Libertarian Ass’n of Mass., 462 Mass. at 560, quoting Barr v. Ireland, 575 F. Supp. 2d 747,

755 (S.D. W. Va. 2008), and those of “voters ‘to associate with one another and cast their ballots as they see fit,’” id., quoting Barr, 575 F. Supp. 2d at 755. Equal access to the ballot is a “basic right,” Opinion of the Justices, 413 Mass. 1201, 1210 (1992), that is “of fundamental importance in our form of government because through the ballot the people can control their government,” Batchelder, 388 Mass. at 91. The First and Fourteenth Amendments to the United States Constitution protect the same sets of rights. See Williams v. Rhodes, 393 U.S. 23, 30 (1968) (ballot access restrictions implicate “two different, although overlapping, kinds of rights--the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively”).

I. THE IN-PERSON SIGNATURE REQUIREMENTS OF G. L. C. 53, §§ 6-7 TRIGGER, AND DO NOT WITHSTAND, STRICT SCRUTINY

When considering a challenge to a state election law, this Court has used a “sliding scale” approach, balancing the “‘character and magnitude’ of the burden the State’s rule imposes on [the plaintiffs’] rights against the interests the State contends justify that burden, and consider[ing] the extent to which the State’s concerns make

the burden necessary.” Libertarian Ass’n of Mass., 462 Mass. at 560, quoting Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997) (citation omitted).

Regulations imposing “severe burdens” on a candidate’s right to access the ballot must survive strict scrutiny by being “narrowly tailored and advance[ing] a compelling state interest.” Id., quoting Timmons, 520 U.S. at 358. In contrast, “[l]esser burdens” on ballot access trigger “less exacting review, and a State’s ‘important regulatory interests’ will usually be enough to justify ‘reasonable, nondiscriminatory restrictions.’” Id. (citation omitted). As applied in this public health crisis, the Minimum Signatures Law imposes severe burdens on candidates and therefore demands strict scrutiny.

a. The Current Signature Requirements Impose Insurmountable Burdens on Petitioners in Light of COVID-19 Restrictions and Safety Concerns

The permissibility of ballot access restrictions turns on whether they provide sufficient “flexibility” and a reasonable opportunity to access the ballot, or if they instead make that task virtually impossible, “preclud[ing] full participation” and “freez[ing] the status quo.” Libertarian Ass’n of Mass., 462 Mass. at 566-567. When evaluating the severity of a ballot access restriction, courts recognize that “[t]raditionally, the act of

circulating a petition has been viewed as a ‘one-on-one communication.’” Perez-Guzman v. Garcia, 346 F.3d 229, 239 (1st Cir. 2003), quoting Buckley v. American Constitutional Law Found., 525 U.S. 182, 199 (1999).

Petitioners here face requirements that are not merely “difficult to achieve” but unsafe and impossible. Id. at 233, citing Cruz v. Melecio, 204 F.3d 14, 22 (1st Cir. 2000). In a standard election cycle, Massachusetts law requires Petitioner O’Connor to obtain 10,000 in-person signatures, and Petitioner Goldstein to obtain 2,000, over the course of about 80 days. As established above, see supra Factual Background, Part II, with social distancing in place through at least May 4, 2020, Petitioners and other similarly-situated candidates now face trying to meet this signature threshold by prohibitively expensive means. This is not merely impractical: As the experience of Petitioners O’Connor and Smith bear out, it is also dangerous and potentially ruinous to public health. See Perez-Guzman, 346 F.3d at 229 (recognizing that requirements that are “prohibitively expensive or otherwise difficult to achieve” impose severe restrictions on ballot access (citation omitted)); Batchelder, 388 Mass. at 92 (noting that petitioners “cannot reasonably obtain”

signatures “in any other way” other than through face-to-face contact).

Every form of indicia that courts consider to evaluate the burden imposed by signature restrictions weigh in favor of Petitioners here. Courts have considered, among other factors, the number of signatures required and over what time period; the expense needed to obtain signatures; the mechanism of obtaining signatures and pool of available voters; and whether the burden of a restriction falls unevenly on specific groups. See, e.g., American Party of Texas v. White, 415 U.S. 767 (1974) (number of signatures required and pool of available voters); Lyman v. Baker, No. 18-2235, 2020 WL 1527758, at *4 (1st Cir. Mar. 31, 2020) (expressing concern where states purposely subject a group of voters or their party to disfavored treatment); Perez-Guzman, 346 F.3d at 239 (number of signatures required, and mechanism and cost of procuring signatures); McClure v. Galvin, 386 F.3d 36 (1st Cir. 2004) (assessing whether restrictions “equally burden” political parties or whether they favor state-wide and federal officials but disfavor in-state officials); Libertarian Ass’n of Mass., 462 Mass. at 566-567 (considering average number of signatures candidate needed to obtain over a 176-day period).

Here, as established above in Factual Background, Part II.A., Petitioners have been forced to expend unplanned time, money, and effort on collecting signature in a manner consistent with public health requirements. The amount of time available to meaningfully conduct in-person gathering of signatures was reduced by approximately two-thirds. And attempting to satisfy the Minimum Signatures Law's requirements has exposed Petitioners and their family members to serious personal health risk.

Where courts have permitted signature requirements in excess of these thresholds and time periods like those available to Petitioners, those decisions (and laws) operated on an assumption so obvious that it never needed to be stated, until now: that candidates or parties--and, critically, their volunteers--were able to get to voters and seek their support in-person. See Perez-Guzman, 346 F.3d at 239; Batchelder, 388 Mass. at 92; cf. Storer, 415 U.S. at 786-90 (55-day period for 22,000 signatures not "unduly short"). Like so many aspects of life under COVID-19, that premise no longer holds true. With that process unavailable to them, the burden on Petitioners' rights is unquestionably severe, and the State is called upon to demonstrate that these requirements are narrowly tailored to a compelling interest, which it cannot do.

b. The Signature Threshold Is Not Narrowly Drawn to a Compelling State Interest, Given the Circumstances

1. The State's Interest Is Legitimate, but not Compelling

The Commonwealth has a well-recognized interest in protecting the integrity of the state's elections and requiring candidates to demonstrate the necessary "measurable quantum of community support" to get on the ballot. Libertarian Ass'n of Mass., 462 Mass. at 556-557 (citation omitted). That interest is the same today as it was six weeks ago, and Petitioners do not dispute its legitimacy. In the world of COVID-19, however, "the conditions existing in contemporary society" have drastically changed. Chelsea Collaborative, 480 Mass. at 37.

Present conditions sever the link between a legitimate justification and the drastic burden of the law. A candidate's ability to collect in-person signatures is no measure of "community support" support at all; nor is a candidate's failure to do so evidence of anything other than sound judgment, concern for public health, and adherence to the directives given by the Governor and other state public officials. For Petitioners, the barrier imposed by the Minimum Signatures Law is driven by nothing

other than the exigency of pushing to meet a signature collection deadline with approximately one-third the amount of time typically available to candidates to conduct in-person signature collection.

2. Other, Less Stringent Restrictions Could Adequately Address the Commonwealth's Interest

If the Commonwealth desires to condition ballot access on demonstration of community support, it bears the responsibility to use a measure that, as applied during a public health crisis, is neither arbitrary nor impossible to meet. Cf. Barr, 626 F.3d at 109. That is particularly true where the Commonwealth's paramount interest is the well-being of its citizens, which, in these unprecedented circumstances, is irreconcilable with public petitioning. In these conditions, disallowing candidates who would otherwise appear on the ballot because they cannot obtain enough in-person signatures without violating public-health directives, is not an approach that can be reconciled with the Declaration of Rights, the Constitution, or common sense.

Even assuming the signature restrictions continue to serve the Commonwealth's interests as applied during a public health crisis--which Petitioners do not concede--the Court must determine whether these restrictions add

anything “over and above” other available means to achieve the relevant government interests. Perez-Guzman, 346 F.3d at 246. Here, the experience of other states instructs that there are many other ways to demonstrate the “quantum of support necessary to appear on the ballot,” Libertarian Ass’n of Mass., 462 Mass. at 556-557 (citation omitted), such as a full removal of all signature requirements (Vermont), an across-the-board reduction in the number of signatures required that is proportional to the amount of time lost due to the pandemic (New York), including an extension of the applicable deadlines (numerous states), and/or a shift to the electronic circulation and certification of signatures (New Jersey).

Where serious candidates pulled papers, began collecting signatures in earnest, but were cut off by social distancing restrictions, it is remarkable to insist on requiring hundreds, if not thousands, of unattainable signatures by mail. It simply does not add anything “over and above” other available means of achieving the Commonwealth’s interests of a fair, orderly election with candidates who can demonstrate sufficient public support. Perez-Guzman, 346 F.3d at 246. And, as discussed, administering the scheme as it exists today severely jeopardizes public health.

II. EVEN IF LESSER SCRUTINY WERE TO APPLY, THE SIGNATURE REQUIREMENT WOULD NOT SURVIVE

Ultimately, whether this Court applies strict scrutiny is not dispositive: even if the Court were to review the Minimum Signatures Law applying a rational basis standard, it would fail. "As a matter of due process, rational basis analysis requires that statutes 'bear[] a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare.'" Chelsea Collaborative, 480 Mass. at 40, quoting Commonwealth v. Wilbur W., 479 Mass. 397, 403 (2018). Here, "public health" and "safety" cannot conceivably be squared with the Minimum Signatures Law. It is arbitrary to use wet signatures as a measure of public support during a public health emergency when petitioning-behavior is practically impossible. Forcing candidates to defy public-health directives and risk both their safety and the safety of voters just to get a signature in-person is not reasonable; using the success or failure of such defiance as a benchmark of public support is less reasonable still.

Moreover, these restrictions do not "fall evenly on all political groups." McClure, 386 F.3d at 42. As the Court can imagine, incumbents--who have a well-developed network of campaign contributors and supporters who are

well-versed in the signature-gathering process--have a much easier time meeting these thresholds. On the other hand, new candidates who are either challenging incumbents or running for a vacant seat--and who already face an uphill battle to get on the ballot--have been cut off at the knees without warning. Similarly, the law operates to preclude campaigns launched by individuals who resolved to run after the introduction of stay-at-home measures. Considered in this light, the Legislature's decision to take emergency action on election issues without removing these restrictions appears to be an intentional incumbent-protection measure. The current restrictions are both unreasonable and discriminatory, and fail rational basis review.³⁰

³⁰ The irreconcilable conflict between the signature collection requirements and the emergency measures also violates state law--providing further indicia of the law's arbitrary, unreasonable impact. State law provides that "[a]ny provision of any general or special law . . . to the extent that such provision is inconsistent with any order or regulation issued or promulgated under this act shall be inoperative while such order or such last-mentioned regulation is in effect." An Act to Provide for the Safety of the Commonwealth During the Existence of an Emergency Result from Disaster or from Hostile Action, Title III, Civil Defense Acts (Acts 1950, Ch. 639), Ch. S31 § 8A (1950). Here, the obligations imposed on candidates by the Minimum Signatures Law are flatly inconsistent with the directives of the Governor's emergency order, which renders political campaigns "non-essential" and prohibits them from operating until May 4, 2020. See supra n.2.

III. COURTS ROUTINELY WAIVE DEADLINES DURING CRISES AND SHOULD DO SO HERE

Many states, including Massachusetts, do not have “election emergency” laws that allow officials to respond to crises’ effect on elections. Instead, courts are often called to step into the breach to adjudicate constitutional challenges during these emergencies. See Morley, Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks, 67 Emory L.J. 545, 545 (2018). In the past, such emergencies have included well-known crises like the attacks of September 11, 2001 and Hurricanes Katrina, Sandy, and Matthew. Id. at 546.

In such crises, courts routinely waive election-related deadlines. See, e.g., Georgia Coalition for the People’s Agenda, Inc. v. Deal, 214 F. Supp. 3d 1344 (S.D. Ga. 2016) (ordering extension of voter registration deadline where hurricane caused elections office to close, delayed mail service, and forced citizens to take shelter); Florida Democratic Party v. Scott, 215 F. Supp. 3d 1250 (N.D. Fla. 2016) (extending voter registration deadline after hurricane foreclosed in-person and by-mail voter registration). The Court should step in here, as courts have been called upon to do in the past, and address the deadlines and signature requirements contained in G. L. c.

53, §§ 6-7 that impose an unconstitutionally severe burden on the fundamental rights of all Massachusetts candidates.

CONCLUSION

Massachusetts is currently experiencing a severe public health crisis, in which people have been directed to stay at home and minimize in-person contact to contain COVID-19. All of our systems, processes, and regulations, including our elections laws, must adapt accordingly.

Without immediate relief from this Court, Petitioners and all other candidates similarly situated will face an impossible choice: risk their health and the health of voters in a futile effort to satisfy unjustifiable and unachievable ballot restrictions--or give up on their candidacy. That is an “unreasonably high price” on the exercise of constitutional rights and a shameful incumbent-protection measure. It is no way to conduct an election, not in a Commonwealth that has declared that all elections ought to be free.

REQUESTED RELIEF

Given the patent constitutional violations identified herein, and in light of the Legislature’s failure to act in a timely manner, this Court should:

- A. Accept this Emergency Petition. Petitioners respectfully request a telephonic hearing and expedited treatment.

- B. Issue a declaratory judgment that, in light of the emergency circumstances brought about by the COVID-19 pandemic, the per-office signature requirements contained in G. L. c. 53, §§ 6-7 impose an unconstitutionally severe burden on the fundamental rights of all Massachusetts candidates, would-be candidates, and voters, and is thus void.
- C. In the alternative, the Court should exercise its equitable jurisdiction to craft narrower relief, such as:
 - a. Substantially reducing the number of signatures required;
 - b. Declaring that candidates who have pulled nomination papers and commenced a good-faith effort to collect signatures by the date of this Court's order should not be excluded from the ballot for lack of certified signatures;
 - c. Extending the deadline for submission of signatures; and/or
 - d. Ordering state officials to explore less stringent strategies, such as the electronic collection of signatures, as a means of remedying the constitutional violation.
- D. Relief should apply to all candidates, to prevent serial litigation and achieve a global resolution of the burden imposed on fundamental rights by the Minimum Signatures Law's operation.
- E. At a minimum, this Court should relax the signature requirements as they apply to Petitioners, on the basis of the showing made in the Petition.
- F. Issue appropriate injunctive relief to effectuate its declaratory judgment in advance of the upcoming ballot access deadlines, including enjoining the Secretary from enforcing the requirements that candidates submit a certain quantum of certified signatures.

G. Order any other relief this Court deems appropriate.

Respectfully submitted,

/s/ Robert Jones

Robert G. Jones, BBO 630767
Patrick T. Roath, BBO 690603
Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 951-7564
Robert.Jones@ropesgray.com

Counsel for Petitioners

Dated: Apr. 8, 2020

CERTIFICATE OF SERVICE

I, Robert Jones, a member of the Bar of this Court, hereby certify that on this day, April 8, 2020, the foregoing Petition and accompanying documents were electronically served on counsel to the Secretary of Commonwealth by emails sent to Assistant Attorney General Anne Sterman and Assistant Attorney General Elizabeth Kaplan.

/s/ Robert Jones

Robert G. Jones

ADDENDUM TABLE OF CONTENTS

Affidavit of Robert Goldstein in Support of
Emergency Petition for Relief.....Exhibit A

Affidavit of Kevin O'Connor in Support of
Emergency Petition for Relief.....Exhibit B

Affidavit of Melissa Bower Smith in Support of
Emergency Petition for Relief.....Exhibit C

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

ROBERT GOLDSTEIN, KEVIN O'CONNOR, MELISSA BOWER SMITH,
on behalf of themselves and others similarly situated,

Petitioners,

v.

WILLIAM FRANCIS GALVIN, in his Official Capacity as
Secretary of the Commonwealth of Massachusetts,

Respondent

AFFIDAVIT OF ROBERT GOLDSTEIN
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Robert Goldstein, state the following based upon
my own personal knowledge and belief:

1. I reside in Boston, Massachusetts.
2. I am a physician practicing at Massachusetts General Hospital, where I am a specialist in the field of infectious diseases.
3. I am running in the Democratic Primary to be the United States Representative for Massachusetts' Eighth Congressional District.
4. I understand that state law requires me to submit nomination papers accompanied by at least 2,000 certified signatures of registered voters to the Secretary of the

Commonwealth's office by June 2, 2020. I am aware that doing so requires me to submit a higher volume of collected signatures to local election officials in various towns for certification by May 5, 2020.

5. I, along with my campaign staff, have been working diligently to collect the necessary signatures, but have not yet been able to collect a quantity of signatures adequate to ensure that my nomination papers include at least the minimum number of certified signatures.

6. Our ability to collect signatures has been negatively impacted by the ongoing COVID-19 pandemic.

7. Prior to the introduction of stringent stay-at-home measures, my campaign and I had committed significant resources to the in-person collection of signatures and canvassing, focusing our efforts on venues where large numbers of registered voters would congregate, such as local Democratic town committee meetings, public transportation hubs, caucuses, house parties, grocery store parking lots, and polling locations on Super Tuesday.

8. I personally collected signatures. In my experience, the process of gathering signatures requires engaging in many short face-to-face conversations, handing over a clipboard with a pen to secure the voters'

signature, and shaking hands with each person. I enjoyed these conversations, and meeting voters in my district in this way was a helpful form of engagement with the electorate.

9. Now, given the outbreak of the novel coronavirus that causes COVID-19, it is no longer possible to responsibly engage in these activities. Doing so would also violate government orders, and enable the spread of the virus.

10. My campaign, like many others, has suspended all in-person activities, and is currently conducting all campaign activity and engagement virtually, through the mail, and over the phone.

11. Once the impact of the virus in Massachusetts became clear, I instructed my campaign staffers and volunteers to proceed with extreme caution and cease all in-person attempts at collection.

12. Taking prompt action to limit the transmission of the virus was particularly important to me, given my professional background in the treatment of infectious diseases and my role as a physician responding to the pandemic.

13. Since the imposition of social-distancing measures, my campaign has reoriented our collection

strategy to focus on remote efforts to gather signatures. This new strategy includes a plan to invest significant resources in a mailing operation. We are poised to commence on a mass mailing effort, whereby we will send blank nomination forms alongside self-addressed, postage-paid envelopes and campaign literature to Democrats throughout the Eighth Congressional District. We are also identifying potential nomination signatories through a web form. This has required dedicating staff time to create a functioning website through which people can sign up.

14. We suspect that these activities will yield a fraction of the signatures collected by earlier in-person attempts. These efforts now consume more time and money than any other campaign activity that I, or my campaign team, is engaged in.

15. My best estimate is that in order to fund a mailing operation of sufficient scope to capture the signatures we require, my campaign will spend several thousand dollars. That amount does not account for lost staff time.

16. Above all, I view the burden imposed by the signature requirement as a public health risk: it is untenable and dangerous to expect candidates and their supporters to seek thousands of in-person signatures, given

the crisis. I believe it is similarly irresponsible to expect local and state administrators to physically handle signature forms and interact with members of the public to receive and deliver certified nomination papers.

Signed under the pains and penalties of perjury this
8th day of April, 2020.



Robert Goldstein

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

ROBERT GOLDSTEIN, KEVIN O'CONNOR, MELISSA BOWER SMITH,
on behalf of themselves and others similarly situated,

Petitioners,

v.

WILLIAM FRANCIS GALVIN, in his Official Capacity as
Secretary of the Commonwealth of Massachusetts,

Respondent.

AFFIDAVIT OF KEVIN O'CONNOR
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Kevin O'Connor, state the following based upon my
own personal knowledge and belief:

1. I am an attorney residing in Dover,
Massachusetts. I have been a member of the Massachusetts
Bar for more than 30 years.

2. I am also a candidate for the United States
Senate, currently seeking the Republican Party's
nomination. This is my first campaign for elected office.

3. On the first possible date, February 11, 2020, I
pulled nomination papers from the Secretary of the
Commonwealth's office. I formally announced my candidacy
on February 19, 2020.

4. I understand that state law requires me to submit nomination papers accompanied by at least 10,000 certified signatures of registered Republican and/or unenrolled (i.e. independent) voters to the Secretary of the Commonwealth's office by June 2, 2020. In order to do so, each signature submitted to the Secretary must first be submitted to the local election officials of the city or town in which the voter is registered for verification of the voter's name, address, and registration. The deadline for submitting each signature to the proper local election official is May 5, 2020.

5. Based on my personal research and communications with others who have run for office or worked on political campaigns in Massachusetts, I recognized from the outset that collecting 10,000 certified signatures would be a significant task. I also learned through my research and communications that, due to inevitable human error on the part even the most diligent signature gatherers, people who sign, and the numerous local and state officials involved in the gathering and certification process, campaigns always need to gather substantially more signatures than the threshold amount in order to qualify for the ballot.

6. To that end, my campaign and I have been working diligently since the first possible day to collect the necessary signatures.

7. Prior to the imposition of strict social distancing measures in Massachusetts, my campaign engaged in a robust in-person collection and canvassing process aided by volunteers who spent large quantities of time collecting signatures. We engaged in concerted collection efforts outside of various retail establishments and public facilities, including supermarkets, restaurants, convenience stores, public parks, municipal dumps, and town halls. We also had volunteer signature gatherers outside of polling places during the March 3, 2020 "Super Tuesday" primary. In addition, our volunteers conducted "signing parties" in homes and went door-to-door to collect signatures from our neighbors. Our volunteer signature gatherers range in age from 17 to 82 years old.

8. I personally collected nomination signatures. In my experience, the process of gathering signatures usually involves a meaningful conversation between the person gathering the signatures and the person asked to sign. Quite understandably, most people are careful about giving their signature to an unfamiliar person. The petition gatherer usually needs to introduce themselves to

each potential signer, identify the candidate, and explain the purpose and potential use of the signature petition. Some people will sign without asking for more information, but many people want to discuss issues of importance to them or hear more information about the campaign. Once a voter agrees to sign, the petitioner typically passes the voter a clipboard and a pen, which the voter uses to complete the nomination paper.

9. Since the government prohibited group gatherings and mandated social isolation, my campaign has suspended all in-person campaign activity, including the collection of signatures.

10. In lieu of in-person collection, we are making best efforts and investing substantial resources in alternative methods. We have commenced a mass-mailing operation to reach tens of thousands of voters. We have established virtual phone banks through which volunteers are able to call individuals from home and encourage voters to mail in signed nomination papers. We have tried to follow up every mailing with a phone call for each addressee, and have asked voters through social media and traditional media to sign up online to receive a pre-paid envelope with nomination papers.

11. The signature-gathering process is time-consuming and expensive in the best of times, and in the absence of the most proven and effective ways of gathering signatures, the process has become extraordinarily burdensome. Notwithstanding our campaign's sustained efforts and expenditures in the face of office shutdowns and vital social-distancing guidance and directives, the signature requirement amidst this public health crisis could well have the effect of keeping me--and countless other candidates seeking office at the federal, state, and county levels--off the ballot.

12. My campaign has so far spent well over ten thousand dollars on our remote signature collection operation and we are far from done with our efforts and expenditures.

13. COVID-19 has directly impacted my family during my campaign. In mid-March, we learned that my 86-year-old father had contracted COVID-19. He was eventually hospitalized for nine days due to the virus. Fortunately, he has been released from the hospital and is now recovering at home. My 82-year-old mother, who lives with my father, had been one of my most prolific signature gatherers in February and much of March. She is now confined to her home and caring for my father.

14. I understand and believe it is entirely possible that COVID-19 was introduced to my family through the petition-gathering process.

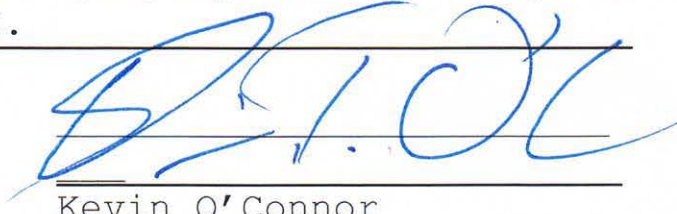
15. Based on my experience and that of my campaign, I believe attempting to collect signatures in person through traditional face-to-face means in this environment poses severe health risks to candidates, their supporters, and to the public at large. In my opinion, the substantially-compromised time window available to candidates for petition gathering as a result of the virus makes the need for relief urgent.

16. But for the signature collection requirement, I am confident I would satisfy the other qualifications for appearing on the ballot for the September primary.

17. In the interests of justice, public health, and democracy, I respectfully request that the Court grant the relief requested in the accompanying petition.

Signed under the pains and penalties of perjury this 8th day of April, 2020.

Signed under the pains and
penalties of perjury this 8th day of
April, 2020.

A handwritten signature in blue ink, appearing to read "K. O'Connor", is written over a horizontal line.

Kevin O'Connor

EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

ROBERT GOLDSTEIN, KEVIN O'CONNOR, MELISSA BOWER SMITH,
on behalf of themselves and others similarly situated,

Petitioners,

v.

WILLIAM FRANCIS GALVIN, in his Official Capacity as
Secretary of the Commonwealth of Massachusetts,

Respondent.

AFFIDAVIT OF MELISSA BOWER SMITH
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Melissa Bower Smith, state the following based upon
my own personal knowledge and belief:

1. I reside in Hingham, Massachusetts.
2. I am a candidate for State Representative in the
Fourth Norfolk District.
3. That office is currently occupied by an
incumbent, who has been in office since 2001. The
incumbent officeholder is a member of the Democratic Party;
I hope to challenge that individual in the Democratic
primary election.
4. I announced my candidacy in late 2019 and pulled
nomination papers on February 11, 2020.

5. I understand that state law requires me to submit nomination papers accompanied by at least 150 certified signatures to the Secretary of the Commonwealth's office by May 26, 2020. I am aware that doing so requires me to submit a higher volume of collected signatures to local election officials in Weymouth and Hingham for certification by April 28, 2020.

6. I have previously participated in numerous political campaigns, so was well aware of the signature requirements at the outset of the campaign.

7. Given this experience, I viewed the task of collecting 150 certifiable signatures as a relatively modest and achievable one.

8. However, the rapid onset of the COVID-19 pandemic, accompanied by strict government-ordered social distancing measures, has presented serious and unforeseen challenges to my signature collection efforts.

9. I am particularly conscious of the public health risks associated with attempting to collect signatures in person in the midst of the pandemic because I am currently recovering from an acute respiratory illness that places me at higher risk of developing severe symptoms should I contract COVID-19.

10. On February 14, 2020, three days after I pulled my nomination papers, I was thankful to learn from my doctors that my respiratory system had partially recovered from my illness. However, important follow-up appointments with my doctors have been delayed due to hospital policies prioritizing the treatment of patients suffering from COVID-19. My recovery from this illness made it difficult to go door-to-door seeking signatures in the cold weather in February and early March.

11. Partly as a result of my physical limitations, my campaign made the strategic decision to defer our in-person push for signatures until late March and April, when the weather would be warmer. We decided to focus our efforts in February and early March on other campaign activities, such as engaging volunteers in postcarding campaigns, planning springtime events, and participating in community-led voter turn out initiatives, school district budgeting discussions, and environmental conservation efforts.

12. That said, during the first few weeks after nomination papers became available on February 11, and before the Declaration of a State of Emergency on March 10, I did perform some outreach to collect signatures in person. I attended democratic caucuses, connected with

community members at local grocery stores, and handed out blank nomination papers to be signed by supportive friends and acquaintances.

13. COVID-19 has forced us to completely reevaluate this signature collection strategy, and has turned what I believed to be a relatively straightforward task into a highly burdensome and time-consuming exercise.

14. Although my campaign had initially delayed signature-gathering until warmer months due to my health precautions, I am unfortunately now at a higher risk of contracting COVID-19 due to my recent respiratory illness. Therefore, instead of collecting signatures through the traditional means of attending events where large numbers of registered voters would likely be present, we have been attempting to collect signatures remotely through a combination of volunteer phone banks and postage-paid mailings.

15. These alternative efforts carry an associated financial cost and divert volunteer efforts from other important aspects of the campaign. Volunteers must spend time phone banking, preparing mailing packets, and traveling to and from the post office. The campaign must pay to send nomination papers with pre-paid first-class

return postage, only some of which are likely to be returned in time for the deadline.

16. These alternative methods are consuming scarce campaign resources. I am uncertain as to whether we will be able to collect enough signatures before the relevant deadlines to qualify for the ballot.

17. But for the signature collection requirement, I am confident that I would satisfy the other qualifications for appearing on the ballot for the September primary.

Signed under the pains and penalties of perjury this 8th day of April, 2020.

A handwritten signature in dark ink, appearing to read 'MB Smith', is positioned above a horizontal line.

Melissa Bower Smith