

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

Suffolk, ss

No. SJ-2020-

BRIAN CHARLSON, KIM CHARLSON, DEANN ELLIOTT, TANJA
MILOJEVIC, CORY KADLIK, BARBARA RIVERO, BAY STATE COUNCIL
OF THE BLIND, and BOSTON CENTER FOR INDEPENDENT LIVING,

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. 249, § 5, G.L. c. 214, § 1, AND G.L. c. 231, § 1**

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Dated: August 21 , 2020

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INTRODUCTION

Petitioners seek emergency relief to ensure that Massachusetts voters who require an accessible electronic ballot in order to vote safely, privately, and independently in the upcoming elections may do so, as anticipated and required by recently passed Massachusetts legislation,¹ Article 114 of the Massachusetts Constitution, the Massachusetts Equal Rights Amendment (MERA), G.L. c. 93, § 103, and Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131 et seq.² The Secretary of the Commonwealth ("Secretary") is charged with providing this accessible electronic ballot.

There is readily available technology that the Secretary could acquire and make available to Petitioners and similarly situated voters who are blind or have other disabilities that prevent them

¹ "An Act relative to voting options in response to COVID-19," Acts of 2020, Chapter 115 (enacted July 6, 2020).

² These laws exist to address the "'pervasive unequal treatment' of individuals with disabilities," who "have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society." Adjartey v. Cent. Div. of Hous. Court Dep't, 481 Mass. 830, 847 (2019), quoting In re McDonough, 457 Mass. 512, 514, 528 (2010).

from effectively reading or writing print ("print disabilities"). While Petitioners understand that the Secretary's Office may be reviewing technology options in earnest, unfortunately, with just 12 days until the September 1, 2020 primary election, the Secretary has not secured the necessary technology to provide these voters accessible electronic vote by mail, or even implemented mechanisms to allow people with disabilities to request access to it as an accommodation.

Because all Massachusetts voters without disabilities have the option this year to cast their votes by mail privately, independently, and effectively, Article 114 the ADA require the Secretary to provide individuals with disabilities an equal opportunity to do the same. See Shedlock v. Dep't Of Correction, 442 Mass. 844, 854 (2004). While this equal opportunity is afforded by "An Act relative to voting options in response to COVID-19" ("the Act"),³ current circumstances will force the individual

³³ "Notwithstanding section 25B of chapter 54 of the General Laws or any other general or special law to the contrary, there shall be early voting by mail for the primary election and general election." Id. at §§ 6(b), 6(i).

Petitioners and members of the organizational
Petitioners to make a choice for the fast-approaching
primary election that other Massachusetts voters need
not - either forfeit their fundamental right to vote
privately and independently or risk their health and
the health of their loved ones by voting in person at
the polls during the COVID-19 pandemic.

Petitioners respectfully request that this Court
issue an order requiring the Secretary to make an
accessible, private, and independent electronic method
of vote by mail available for Petitioners, and other
registered voters with print disabilities, in time for
use in the September 1, 2020 primary election.
Ensuring meaningful availability of this method
further requires that the Secretary make a good faith
effort to publicly notify local election officials and
individuals with print disabilities that an
accessible, private, and independent method of voting
by mail exists and can be accessed promptly as a
disability-based accommodation.

PETITIONERS

Petitioner Brian Charlson is a resident of
Watertown, Massachusetts and registered Massachusetts

voter who plans to vote in the primary election on September 1, 2020. Although Mr. Charlson usually votes in person using an accessible voting machine, he wants to vote by mail due to health and safety concerns related to COVID-19. Mr. Charlson is blind and uses a cane to assist him in navigation. He is diagnosed with Type 2 diabetes, placing him at higher risk of serious complications from COVID-19, and has severe vertigo that impairs his ability to safely ambulate. Because he is blind, a paper vote by mail ballot is inaccessible to Mr. Charlson. In order to vote by mail privately and independently, he needs an accessible electronic ballot that can be read out loud with screen-reading technology and completed electronically. Mr. Charlson serves as President of the Bay State Council of the Blind ("BSCB"). See B. Charlson Aff., ADD. 34-36.

Petitioner Kim Charlson is a resident of Watertown, Massachusetts and registered Massachusetts voter who wants to vote by mail in the upcoming primary election due to health and safety concerns related to COVID-19. Mrs. Charlson is blind and also has asthma, placing her at higher risk of complications were she to contract COVID-19. Because

Mrs. Charlson is blind, a paper mail-in ballot is inaccessible to her. In order to vote by mail privately and independently, she needs an accessible electronic ballot can be read out loud with screen-reading technology and completed electronically. See K. Charlson Aff., ADD. 37-38.

Petitioner DeAnn Elliott is a registered Massachusetts voter residing in Cambridge, Massachusetts who wants to vote by mail in the upcoming primary election due to safety concerns related to COVID-19. Ms. Elliott is blind and has relied on accessible voting machines to mark her ballots since 2002. To privately and independently vote by mail, she requires an accessible electronic ballot. Ms. Elliot serves as the Legislative Chairperson for BSCB. See D. Elliot Aff., ADD 39-41.

Petitioner Tanja Milojevic is a registered Massachusetts voter who resides in Peabody, Massachusetts. Ms. Milojevic wants to vote by mail in the primary election, rather than go to the polls, due to COVID-19. Ms. Milojevic is blind and uses a guide dog whenever she leaves her residence. To privately and independently vote by mail, she requires an accessible electronic ballot. This year's election is

particularly important to Ms. Milojevic as it falls on the thirtieth anniversary of the ADA. See T. Milojevic Aff., ADD. 42-44.

Petitioner Cory Kadlik is a registered Massachusetts voter who resides in Natick, Massachusetts. Mr. Kadlik wants to vote by mail due to health concerns related to COVID-19. Because Mr. Kadlik is blind, he requires an accessible electronic ballot in order to privately and independently vote by mail. See C. Kadlik Aff., ADD. 45-46.

Petitioner Barbara Rivero is registered voter who resides in Boston, Massachusetts. Ms. Rivero wishes to vote by mail privately and independently in the upcoming primary election. She is quadriplegic, ventilator dependent, and uses a wheelchair pushed by her personal care attendant. She is among the high-risk category of serious or fatal complications due to COVID-19. Although Ms. Rivero cannot use her hands, she adept at using her computer with assistive technology, which would allow her to complete an electronic ballot. See B. Rivero Aff., ADD. 47-48.

Petitioner Bay State Council of the Blind is the Massachusetts state affiliate of the American Council of the Blind, and the leading consumer and advocacy

organization of people with visual impairments in Massachusetts. BSCB is a membership organization of approximately 220 blind, visually impaired, and sighted individuals committed to an enhanced quality of life for Massachusetts' blind and visually impaired residents. BSCB is headquartered in Watertown, Massachusetts. BSCB works to improve access for people who are blind or visually impaired in many areas of life, including voting, employment, education, rehabilitation, technology access, transportation, and civil rights. Representatives of BSCB have provided testimony at public hearings and engaged in other advocacy work related to the ADA and other disability-related legislation, including the legislation that gave rise to the Act. BSCB brings this Petition on behalf of itself and its members who cannot effectively, privately, or independently vote by mail during the 2020 elections if the Secretary does not implement accessible electronic vote by mail technology and processes.

Petitioner Boston Center for Independent Living (BCIL) is a 501(c)(3) non-profit organization in Boston, Massachusetts that has provided services to people with disabilities since 1974, when it became

the second independent living center in the country. The organization was created by people with disabilities seeking full integration into society. BCIL accomplishes this by empowering people of all ages with a wide range of disabilities with the practical skills and self-confidence to take control over their lives and become active members of the communities in which they live. Over 4,000 people annually receive BCIL services. At the same time, BCIL engages in advocacy and community organizing to promote access and change within society. In addition to having a membership of approximately 500 people, approximately 70% of BCIL's staff and board are people with disabilities. BCIL brings this Petition on behalf of itself and its members with print disabilities who cannot effectively, privately, or independently vote by mail during the 2020 elections if the Secretary does not implement accessible electronic vote by mail technology and processes.

Respondent William Francis Galvin is the Secretary of the Commonwealth of Massachusetts and is being sued in his official capacity. The Secretary is responsible for overseeing elections in Massachusetts

and ultimately responsible for implementation of the Act. Acts of 2020, Chapter 115.

**REASONS RELIEF IS APPROPRIATE IN THIS COURT
PURSUANT G.L. c. 249, § 5, G.L. c. 214, § 15,
AND G.L. c. 231, § 1**

Petitioners do not seek this Court's review "lightly." Commonwealth v. Richardson, 454 Mass. 1005, 1006 (2009). This Petition seeks to prevent Massachusetts voters with print disabilities from being denied an equal opportunity to exercise their fundamental constitutional right vote safely and independently during the COVID-19 pandemic on the basis of those disabilities and in violation of state and federal law. See Chelsea Collaborative, Inc. v. Sec'y of Commonwealth, 480 Mass. 27, 32-33 (2018). Petitioners will suffer this irreparable harm by the September 1, 2020 primary election absent swift and conclusive action by this Court due to the Secretary's failure to fully implement and provide adequate notice concerning how to gain access to accessible electronic vote by mail.

Statutory provisions in the Act explicitly obligate the Secretary to process and grant requests for accommodations from voters with disabilities

wishing to vote my mail in the primary and provide accommodations that include "an authorized accessible blank electronic ballot that can be filled out electronically, printed and signed." Acts of 2020, Chapter 115, § 6(i). Moreover, as the Legislature realized, instituting processes for vote by mail only for persons able to complete the paper ballot by hand for the primaries, despite existent auxiliary aids and services to allow access to people with print disabilities, runs afoul of state law and the ADA's broad prohibition of disability-based exclusion from participation in and denial of benefits of the services, programs, or activities of a public entity. See Article 114 of the Massachusetts Constitution; G.L. c. 93, § 103; 42 U.S.C. § 12132.

Accordingly, without other means of adequate recourse, Petitioners respectfully invoke this Court's jurisdiction under G. L. c. 249, § 5 to obtain extraordinary relief in the nature of mandamus compelling the Secretary to implement accessible electronic vote by mail without further delay. See Lutheran Serv. Ass'n of New England, Inc. v. Metropolitan Dist. Comm'n, 397 Mass. 341, 344 (1986); Coach & Six Rest., Inc. v. Pub. Works Comm'n, 363

Mass. 643, 645 (1973) ("mandamus would not lie where a judge, by statute, could order similar relief in his discretion"); Attorney Gen. v. Sec'y of Commonwealth, 306 Mass. 25, 29-30 (1940) ("[T]he purpose of the proceeding is to control the conduct of a public officer in the performance of his official duties....").

In addition, Petitioners seek the Court's intervention pursuant to G. L. c. 214, § 1 conferring "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" so that the Court may settle completely this controversy and order alternative, equitable relief should the Secretary aver that accessible electronic vote by mail cannot now be accomplished in time for the September 1, 2020 primary.

The Court has previously invoked these authorities to adjudicate disputes relating to the Commonwealth's election laws. See Goldstein v. Sec'y of Commonwealth, 484 Mass. 516 (2020); Libertarian

Ass'n of Mass. v. Sec'y of Commonwealth, 462 Mass. 538 (2012); Wyler v. Sec'y of the Commonwealth, 441 Mass. 22 (2004).

FACTUAL BACKGROUND

I. RISKS OF VOTING DURING THE COVID-19 PANDEMIC

The 2020 primary and general elections come when Massachusetts - like the rest of the country - remains in the dangerous and unpredictable grips of COVID-19. The Commonwealth's state of emergency first declared on March 10, 2020 remains in effect. See Executive Order No. 591. Despite a series of Executive Orders since then placing restrictions on residents, businesses, and public entities alike,⁴ Massachusetts has now had over 114,000 positive COVID-19 cases and suffered over 8,500 total deaths among confirmed COVID-19 cases, with newly reported confirmed cases continuing to come in by the hundreds.⁵

⁴ See Goldstein, 484 Mass. at 522-23 (describing the COVID-19 state of emergency in Massachusetts through mid-April 2020); see generally COVID-19 State of Emergency - Updates, emergency orders, and guidance associated with the COVID-19 State of Emergency, <https://www.mass.gov/info-details/covid-19-state-of-emergency>.

⁵ Massachusetts Department of Public Health COVID-19 Dashboard, August 16, 2020, <https://www.mass.gov/doc/covid-19-dashboard-august-16-2020/download>.

The best way to prevent the spread of COVID-19 is to avoid exposure to it.⁶ Thus, aside from staying at home and avoiding crowds, key infection control measures include wearing face coverings and maintaining a distance of six feet from others while out in the community. Id. Strict observance of these practices is all the more important for people who are elderly, those who have medical conditions that place them at risk of serious illness or death if they contact COVID-19, and individuals who live with, care for, or otherwise routinely interact with people in high-risk groups.⁷ Nevertheless, “[b]ecause it has been shown that one can carry and spread the COVID-19 virus without any apparent symptoms, every encounter with another person, especially a stranger, poses a risk of infection.” Goldstein, 484 Mass. at 526.

The dangers posed by COVID-19 are no different in polling places, where people must congregate in order

⁶ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19): How to Protect Yourself & Others (July 31, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁷ See Centers for Disease Control and Prevention, People with Certain Medical Conditions (August 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

to exercise their right to vote.⁸ Many voters must also take public transportation or ride shares in order to get to polling places.⁹

Massachusetts has approximately 130,000 residents with visual disabilities.¹⁰ Still more have other print disabilities due to mobility/dexterity impairments.

Many voters with print disabilities, like Petitioners Charlson, Charlson, Elliot, Milojevic, and Kadlik, must utilize an AutoMARK voting machine in order to access the content of written ballot at the polling place, which brings with it additional risks related to COVID-19.¹¹ See ADD. 35 at ¶¶ 11-13; 38 at

⁸ See, e.g., DeWitt, de St. Maurice, & Rios, Voting and Infection Prevention of COVID-19, The UCLA Voting Rights Project (Apr. 1, 2020), <https://latino.ucla.edu/wpcontent/uploads/2020/04/UCLA-VBM-Health-Safety-Report-2.pdf>.

⁹ *Id.*

¹⁰ According to the National Federation for the Blind, based on estimates from the most recent American Community Survey the number of non-institutionalized Massachusetts residents with visual disabilities was 129,800 in 2016. Blindness Statistics, <https://www.nfb.org/resources/blindness-statistics>.

¹¹ Per the Secretary's website, in light of "federal law and state requirements mandat[ing] that voting systems be equipped for voters with disabilities allowing such voters to have the same opportunity to vote privately and independently. . . every precinct must have at least one accessible voting machine available." In Massachusetts polling places, AutoMARK Voter Assist Terminals are utilized. "The AutoMARK

¶¶ 8-9; 40 at ¶ 8; 43 at ¶ 8; 46 at ¶ 8. For blind voters, this process necessarily involves a considerable amount of touching to navigate the temporary set up of the polling site and voting equipment. See ADD. 35 at ¶¶ 11-13. For instance, there is physical contact with poll workers and common surfaces when they are directed where to sign in and collect their ballot, escorted to AutoMark, put on the headset used by other voters, touch the AutoMark to navigate through the ballot, and escorted back to the table to turn in the ballot. See ADD. 35 at ¶¶ 12-13; 38 at ¶ 8. Notably also, many voters who utilize the AutoMark will not have the physical ability to observe safety measures put in place to support social distancing - e.g., taped lines on the ground.¹² See ADD. 35 at ¶ 11; 38 at ¶ 9; 46 at ¶ 8.

Voter Assist Terminals are marking devices that use audio cue capacity for visually impaired voters." The AutoMARK also allows for the ballot to be magnified or displayed in high contrast and can "produce an oral report to the voter as the choices selected prior to the voter printing the ballot." Secretary of the Commonwealth of Massachusetts, Voting for Persons with Disabilities - Accessible Voting Equipment, <https://www.sec.state.ma.us/ele/eleaccessible/accessib leidx.htm>, ADD. 49.

¹² Even before the public health crisis, voter turnout rates among voters with disabilities has been lower than voters without disabilities. Schur & Kruse, Fact sheet: Disability and Voter Turnout in the 2018

Voters with mobility/dexterity impairments may face similar safety issues accessing poll sites during the pandemic. Wheelchair users may not be able to maintain a six-foot distance from other voters and staff at polling sites that are not designed for wheelchairs and may experience crowding. Petitioner Rivero would require assistance marking her ballot and, due to her underlying health conditions, it would be unsafe to expose her to the polling site. ADD. 47-48 at ¶¶ 3, 6.

Here in Massachusetts, the Secretary was quick to recognize the need to expand voting options in the face of COVID-19 so that Massachusetts voters “will be able to fully participate in the democratic process in a safe and convenient manner.”¹³ In a May 2020

Elections, Rutgers Sch. of Mgmt. & Labor Relations (July 2019), <https://smlr.rutgers.edu/sites/default/files/2018disabilityturnout.pdf>. As voter turnout among people without disabilities in Massachusetts increased from 47.5% to 56.5% between the 2014 and 2018 midterm elections, people with disabilities went from 42.3% to 47.8%. *Id.*

¹³ Solis, In response to coronavirus, Massachusetts Secretary of State William Galvin releases early voting, vote-by-mail package, MassLive (May 6, 2020), <https://www.masslive.com/coronavirus/2020/05/in-response-to-coronavirus-massachusetts-secretary-of-state-william-galvin-releases-early-voting-vote-by-mail-package.html>.

memorandum to top Legislative officials, the Secretary included "a plan to offer a vote-by-mail option for the September primary," allowing voters "to request a mail-in ballot online or submit a paper application distributed by the secretary's office." However, no version of these measures took effect until the passage of the Act.

II. EXPANDED VOTE BY MAIL CREATED BY THE ACT

A. Access to Vote by Mail for All for the 2020 Elections in the Interest of Public Health and Convenience

"An Act Relative to Voting Options in Response to COVID-19" became law on July 6, 2020 and established the right of all registered Massachusetts voters to cast ballots by mail in both the 2020 primary and general elections. See Acts of 2020, Chapter 115, §§ 6(b), 10, 15, 16, 17. The Legislature incorporated the following into the first paragraph of the Act, in recognition of the purpose and urgency of its implementation:

The deferred operation of this act would tend to defeat its purpose, which is to forthwith provide for increased voting options in response to COVID-19, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

**B. Statutory Language Guaranteeing Access to Vote
by Mail for Voters with Disabilities**

The Legislature made specific provision for the needs of voters with disabilities, like Petitioners. Per Section 6(i), "a voter wishing to apply to vote early by mail in the primary or general election and who needs accommodation by reason of disability may request such accommodation from the state secretary." *Id.* at § 6(i) (emphasis added). After the Secretary receives information from the voter "pursuant to the application in this section either by phone or electronically," the Secretary "shall grant accommodations to the voter." *Id.* The Act requires that these accommodations must include, but not be limited to, "an authorized accessible blank electronic ballot that can be filled out electronically, printed and signed." ¹⁴ *Id.* at § 6(i)(ii). The voter may then return the ballot by personally delivering or mailing it to the office of the appropriate city or town clerk or dropping it in a secured municipal drop box. *Id.* at § 6(i).

¹⁴ The assessment as to feasibility referenced in Section 9(c) (related to the and Section 14 of the Act is not applicable to the Secretary's obligation to provide access to an accessible electronically fillable ballot. *Id.* at §(6)(i)(ii).

Crucial for accessibility, the Legislature made the clear in Section 6(i) the legal and technical requirements that must be followed in devising the accommodations:

The electronic instructions and accommodations in this section shall comply with requirements contained in Title II of the federal Americans with Disabilities Act and shall conform to the Web Content Accessibility Guidelines (WCAG) 2.1 AA and the National Institute of Standards and Technology report titled "Principles and guidelines for remote ballot marking systems."

Id.

III. THE SECRETARY'S IMPLEMENTATION OF VOTE BY MAIL

A. Vote by Mail Paper Applications and Ballots

Following passage of the Act, the Secretary mailed a Vote By Mail Application to every person who was registered to vote - all 4.5 million - in July to ensure that they would have the option to receive a paper ballot to complete at home.¹⁵ As of a briefing by the Secretary on August 18, 2020, "[m]ore than one million Massachusetts voters have asked to receive a ballot in the mail for the 2020 Election," more than

¹⁵ See Secretary of the Commonwealth of Massachusetts, COVID-19 Elections Update - Voting by Mail, <https://www.sec.state.ma.us/ele/covid-19/covid-19.htm>, ADD. 50; Van Buskirk, SJC Case To Be Dismissed If Galvin Finishes Sending Mail-In Ballot Applications By Tuesday (July 17, 2020), <https://www.wbur.org/news/2020/07/17/sjc-case-galvin-vote-mail-ballot-applications>.

949,000 ballots had already been mailed to residents, and the state had received 149,000 completed ballots from people who already voted in the primaries.¹⁶

B. Accessible Electronic Vote by Mail

To date, the Secretary appears to have made no significant steps toward implementation of accessible electronic vote by mail necessary for Massachusetts voters with print disabilities. Indeed, there is no information publicly available on the Secretary's website indicating that voters can request disability-based accommodations for vote by mail, how to make such a request, or that accessible electronic vote by mail must be provided as an option.¹⁷ Notably, the Vote by Mail Application available for download on the Secretary's website¹⁸ does not include any space for a voter with a print disability to request an

¹⁶ CBS Boston, Over 1 Million Massachusetts Voters Have Requested Mail-In Ballots For 2020 Election (August 18, 2020), <https://boston.cbslocal.com/2020/08/18/massachusetts-vote-by-mail-election-2020-galvin/>.

¹⁷ See, e.g., Secretary of the Commonwealth of Massachusetts, Voting for Persons with Disabilities , <https://www.sec.state.ma.us/ele/eleaccessible/accessibleidx.htm>, ADD. 49; Secretary of the Commonwealth of Massachusetts, Vote by Mail, <https://www.sec.state.ma.us/ele/eleev/early-voting-by-mail.htm>, ADD. 54.

¹⁸ The form that appears on the Secretary's website is at <https://www.sec.state.ma.us/ele/elepdf/2020-Vote-by-Mail-Application.pdf>, ADD. 54.

accommodation, instead including a space for a person assisting the voter in completing the application "due to physical disability" to write his or her own name and address.¹⁹

Petitioners want to access vote by mail like other voters. ADD. 34 at ¶ 3; ADD. 37 at ¶ 3; ADD. 39 at ¶ 3; ADD. 42 at ¶ 3-4; ADD. 45 at ¶ 3; ADD. 47 at ¶ 3. Disability advocates, including Petitioner BSCB, have been continuously reaching out to the Secretary's office seeking updates and offering assistance about implementation of the Act's provisions regarding accommodations for voters with disabilities.²⁰ All of

¹⁹ As described by Petitioners, the Vote by Mail Application available online was not appropriately screen reader accessible earlier this month; even now it may only be accessible to experienced screen reader users. See ADD. 35-36 at ¶¶ 14-16; ADD. 38 at ¶¶ 10-11; ADD. 40 at ¶ 10; ADD. 43 at ¶ 12; ADD. 46 at ¶ 11.

²⁰ After nearly a month of advocacy following the passage of the Act, the Disability Law Center ("DLC") sent correspondence to the Secretary's counsel via email on August 3, 2020 making clear DLC's position that accessible electronic vote by mail must be made available for the primary election and requesting a meeting "to discuss in detail [the Secretary's] efforts to date in securing an accessible vote by mail product, what [his] office must do in order to make the product...fully functional, and the office's timeline for implementation." See Letter from DLC to Secretary's Counsel (August 3, 2020), ADD. 55-56. The Director and Legal Counsel of the Elections Division responded indicating that the Secretary's efforts to acquire assessable vote by mail systems were continuing and she would share additional information

the Petitioners, with the exception of Ms. Rivero, have reached out directly to government officials in hopes of getting access to the accommodation request process and, ultimately, to accessible electronic vote by mail, with no success. See ADD. 35-36 at ¶ 15-19; ADD. 38 at ¶ 13; ADD. 40 at ¶ 12-15; ADD. 43 at ¶ 13; ADD. 46 at ¶ 9-10. For example, on Friday, August 14, 2020, Mr. Charlson called the Secretary's office to inquire about the process for receiving an accessible electronic Vote by Mail ballot. ADD. 36 at ¶ 19. After being placed on hold, the receptionist returned to inform Mr. Charlson that the request for an accessible ballot would have to be submitted via email, contrary to the language of the Act. Id.; Acts of 2020, Chapter 115 § 6(i) (permitting voters with disabilities to make requests for accommodations to the Secretary "either by phone or electronically") (emphasis added). That same day, Mrs. Charlson emailed the Secretary's office to request an accessible ballot. See ADD. 38 at ¶ 13. As of the date of this filing, neither has

with DLC as soon as it was available. See Email from Director and Legal Counsel of Elections Division to DLC (August 3, 2020), ADD. 57. To date, DLC has not received confirmation that the Secretary has acquired an accessible vote by mail system.

received any response from the Secretary's office. Similarly, Petitioner Elliott contacted the Secretary's office both by phone and by email, most recently on August 13, 2020, to alert staff to the apparent lack of an accessible vote by mail option. ADD. 40-41 at ¶ 12-15. The Secretary's office has not provided a substantive response to Ms. Elliott's inquiries. ADD. 40-41 at ¶ 15.

With only 12 days left until the primary and widely reported delays with the United States Postal Service,²¹ Petitioners can no longer simply wait to see if the accommodation procedures and accessible technology will become available by election day.

**ACCESSIBLE ELECTRONIC VOTE BY MAIL IS REQUIRED BY
MASSACHUSETTS AND FEDERAL LAW AND IS NECESSARY TO
GUARANTEE PETITIONERS ACCESS TO THEIR
CONSTITUTIONAL RIGHT TO VOTE**

I. INACCESSIBLE PAPER BALLOTS CURRENTLY OFFERED AS THE ONLY OPTION TO VOTERS BY THE SECRETARY VIOLATE THE ACT, ARTICLE 114, AND THE ADA

As discussed above, the unavailability of an accessible electronic ballot as a disability-based accommodation for the primary election violates the

²¹ See, e.g., Broadwater, et al., Postal Crisis Ripples Across Nation as Elections Loom, NY Times (August 15, 2020), <https://www.nytimes.com/2020/08/15/us/post-office-vote-by-mail.html>.

express terms of the Act and infringes upon
Petitioners' exercise of their right to vote under the
Massachusetts Declaration of Rights. See Art. 9 of the
Declaration of Rights of the Massachusetts
Constitution; Acts of 2020, Chapter 115. It likewise
violates state and federal antidiscrimination law. See
Art. 114 of the Massachusetts Constitution, G.L. c.
93, § 103; 42 U.S.C. § 12101-12213.

Paper vote by mail ballots are not accessible to
Petitioners and other people who have print
disabilities. Filling out the paper vote by mail
ballot requires assistance from another person to
read, to complete it, or both. For people who are
blind, there is an added layer of concern - they have
no way of personally verifying the content of the
ballot. Thus, in the best-case scenarios in which
someone is safely available to help, voters with print
disabilities are denied the opportunity to vote
privately and independently due to their disabilities.
In addition, getting someone to help may require the
voter with print disabilities to seek assistance
outside of their household, counterintuitively, in
order to complete the vote by mail process instituted
to avoid unnecessary COVID-19 exposure. For some

voters with print disabilities, getting help may simply be too difficult, leaving them with no opportunity to cast their vote by mail. Each one of these scenarios is unreasonable and certainly unequal to the opportunity that people without disabilities have to vote by mail during the upcoming primary election.

Vote by mail is a program provided to Massachusetts voters and implemented by the Secretary.²² As discussed above, the Act recognizes the Commonwealth's obligations to voters with disabilities and directs the Secretary to provide an accessible electronic ballot. Unfortunately, the Secretary has not yet implemented those key provisions to make the vote by mail program accessible to print-disabled voters for the primary.

Without accessible electronic vote by email, the Secretary affords Petitioners and others like them "an

²² While Petitioners and other voters with print disabilities may still go to the polls to utilize the AutoMARK, accessibility to vote by mail, rather than the Commonwealth's entire voting program is the "appropriate object of scrutiny for compliance with the ADA." Nat'l Fed'n of the Blind v. Lamone, 813 F.3d 494, 504 (4th Cir. 2016). This is all the more valid during the COVID-19 pandemic.

opportunity to participate in or benefit from the aid benefit or services that is not equal to that afforded others" and provides "an aid, benefit, or service that is not as effective in affording equal opportunity" to gain the same result or benefit as provided to others. 28 C.F.R. § 35.130(b)(1)(ii)-(iii); see also Disabled in Action v. Bd. of Elections in City of New York, 752 F.3d 189, 200 (2d Cir. 2014) ("The right to vote should not be contingent on the happenstance that others are available to help."); Cal. Council of the Blind v. Cty. of Alameda, 985 F.Supp.2d 1229, 1239 (N.D.Cal.2013) ("[R]equiring blind and visually impaired individuals to vote with the assistance of a third party, if they are to vote at all, at best provides these individuals with an inferior voting experience 'not equal to that afforded others.'").

At the same time, the Secretary fails to furnish requisite "auxiliary aids and services when necessary to afford individuals with disabilities...an equal opportunity to participate in, and enjoy the benefits of a service, program, or activity of a public entity." 28 C.F.R. § 35.160(b)(1). Critically, for an auxiliary aid or service to provide effective communication, it "must be provided in accessible

formats, in a timely manner, and in such a way as to
protect the privacy and independence of the
individuals with a disability.” 28 C.F.R. §
35.160(b)(2) (emphasis added).

II. AUXILIARY AIDS AND SERVICES ARE AVAILABLE TO
FACILITATE ACCESSIBLE ELECTRONIC VOTE BY MAIL

Auxiliary aids and services are available and in
use in a number of other states that would afford
Petitioners and other blind and print-disabled voters
an equal opportunity to vote by mail privately and
independently.

For example, the Maryland State Board of
Elections has developed and implemented an online
ballot marking tool that allows voters to view and
mark their ballots using screen access software and
then print out their completed ballots.²³ Maryland
makes this ballot marking software available to other
states for free. In addition, there are third-party
vendors that provide online or electronic ballot
marking systems used by jurisdictions across the

²³ The State Board of Elections of Maryland, Access by
Voters with Disabilities,
[https://elections.maryland.gov/voting/accessibility.ht
ml](https://elections.maryland.gov/voting/accessibility.html).

country, including Prime III,²⁴ Democracy Live,²⁵ Five Cedars Group,²⁶ and Dominion Voting.²⁷

A number of states have also implemented accessible absentee or vote by mail in light of the pandemic. These include New York, which stipulated to a temporary measure for its June 23, 2020 primary allowing voters with print disabilities to request and receive accessible absentee ballots via email, mark the ballots on their computers and print and return the ballots by mail.²⁸ Michigan also provides a good example of a solution devised for an imminent election. The parties to a lawsuit announced a temporary solution days ahead of local elections - the Michigan Bureau of Elections agreed to extend to blind voters the option of receiving a Uniformed and Overseas Citizens Absentee Voting (UOCAVA) ballot and ensure that the UOCAVA ballots were screen reader

²⁴ See <http://primevotingsystem.com/>.

²⁵ See <https://democracylive.com/>.

²⁶ See <http://www.fivecedarsgroup.com/>.

²⁷ See <https://www.dominionvoting.com/>.

²⁸ Stipulation of Settlement & Order for the Withdrawal of the Motion for Temporary Restraining Order & Preliminary Injunction, Hernandez v. N.Y. State Bd. of Elections, Case No. 1:20-cv-04003-LJL (S.D.N.Y. June 2, 2020), ECF No. 38, ADD. 59.

accessible and available on its website.²⁹ Shortly thereafter Michigan voluntarily entered into a consent decree requiring it to “acquire a remote accessible vote-by-mail system (‘RAVBM’) that shall allow voters with print disabilities to review and mark vote-by-mail ballots electronically, privately and independently” in time for its August 2020 election.³⁰

CONCLUSION

Petitioners seek to ensure that they, and other people with print disabilities, have the opportunity to cast their votes and have their voices heard during the primary election without having to risk their health and that of their loved ones during the public health crisis. Without immediate relief from this Court ordering the Secretary to implement accessible electronic vote by mail, this will not happen.

²⁹ Press Release, Blind Voters and Michigan Secretary of State Reach Interim Settlement to Provide Accessible Absentee Ballots for Tuesday’s Elections, <https://www.browngold.com/wp-content/uploads/Final-Third-Release-ACE.pdf>, ADD. 67.

³⁰ Consent Decree, Powell v. Benson, Case No. 2:20-cv-11023-GAD-MJH (E.D. Mich. May 19, 2020), ECF No. 31, ADD. 69.

REQUESTED RELIEF

Petitioners respectfully request that this Court:

- A. Accept this Emergency Petition. Petitioners respectfully request a hearing and expedited treatment;
- B. Issue appropriate relief in the nature of mandamus ordering the Secretary to comply with the requirements of the Act making accessible electronic vote by mail available to voters for the September 1, 2020 primary election;
- C. Issue a declaratory judgement that the Secretary is required under Massachusetts and federal law to afford Massachusetts voters with print disabilities access to vote by mail for the 2020 elections;
- D. If appropriate, exercise its equitable jurisdiction to craft effective alternative relief, such as ordering the Secretary to utilize the Commonwealth's UOCAVA voting system³¹ as a means of providing voters with print disabilities an accessible electronic means of voting for the September 1, 2020 primary;
- E. Require the Secretary to make a good faith effort to notify Massachusetts voters with print disabilities that such relief has been ordered and facilitate their access to said relief;
- F. Ensure compliance with any order through status update(s) by the Secretary; and
- G. Order any other relief this Court deems appropriate.

³¹ Secretary of the Commonwealth of Massachusetts, Voting for Military and Overseas U.S. Citizens, <https://www.sec.state.ma.us/ele/elemil/milidx.htm>, ADD 79.

Respectfully Submitted,

/s/ Tatum A. Pritchard
Tatum A. Pritchard
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Disability Law Center
11 Beacon St., Suite 925
Boston, MA 02108
617-723-8455

Dated: August 21, 2020

CERTIFICATE OF SERVICE

I, Tatum A. Pritchard, hereby certify that on this date the foregoing Petition and Addendum were electronically served on counsel for the Secretary of the Commonwealth, Director and Legal Counsel of Elections Division, Michelle K. Tassinari via e-mail.

Dated: August 21, 2020

/s/ Tatum A. Pritchard
Tatum A. Pritchard

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**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

Suffolk, ss

No. SJ-2020-

BRIAN CHARLSON, KIM CHARLSON, DEANN ELLIOTT, TANJA MILOJEVIC,
CORY KADLIK, BARBARA RIVERO, BAY STATE COUNCIL OF THE BLIND, and
BOSTON CENTER FOR INDEPENDENT LIVING,

Petitioners,

v.

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

Respondent.

**AFFIDAVIT OF BRIAN CHARLSON IN SUPPORT
OF EMERGENCY PETITION FOR RELIEF**

I, Brian Charlson, do hereby state that the following is true to the best of my knowledge and belief:

1. I am a registered voter in Massachusetts.
2. I am 64 years old and reside in Watertown, Massachusetts.
3. I voted in the 2016 general election and the 2018 midterm election and plan to vote in the upcoming primary election on September 1, 2020 and the general election on November 3, 2020.
4. I am blind as the result of a chemical accident when I was 11 years old and use a cane to assist me in navigation.
5. I serve as the President of the Bay State Counsel of the Blind.
6. Because of my disability, I am unable to fill out a paper vote by mail ballot privately and independently.
7. Due to the coronavirus pandemic, I have limited my outings in the community and avoid leaving the house as much as possible.

8. When I do leave the house, I am assisted by my sister, who has full sight.

9. In past elections, I marked my ballots at the polling site using voting machine.

10. Due to the current coronavirus pandemic, I prefer to vote by mail. I have Type 2 Diabetes, which puts me at higher risk for serious complications if I contract the coronavirus. In addition, I suffer from severe vertigo, which makes it difficult for me to safely get around. I also live with two people who would be at a higher risk for complications if they contracted the coronavirus.

11. It is nearly impossible to maintain social distance at a polling place due to my blindness. The polling place will likely have social distancing measures that I will not be able to detect, such as floor markers indicating six feet of distance and one-way signs. Due to my blindness, I will not be able to detect how close I am to other people, nor will I be able to detect if people are wearing the appropriate face masks and/or gloves.

12. Moreover, in previous elections, I have required a poll worker to assist me through the use of physical touch in order to vote. The poll worker physically escorts me from the line to the appropriate voting machine and back to the table to turn in my ballot.

13. Using the voting machine also requires touching common surfaces, including the headset used by other voters to hear the voting machine and touching the machine itself to navigate through the ballot.

14. I attempted to complete the online Vote by Mail Application form available on the Secretary of the Commonwealth's website earlier this month. I used Adobe screen reader technology. However, the online PDF application had significant accessibility problems and I was unable to complete it.

15. Along with several other members, in my capacity as President of the Bay State Counsel of the Blind, I contacted the Secretary of the Commonwealth to inform him of the problems with the online application.

16. Although the Secretary attempted to solve the problems, the online PDF is still not ideal for blind or visually impaired people.

17. Concerned about the deadline to apply for Vote by Mail, and given the current uncertainty within the US Postal Service, I completed my paper application for Vote by Mail with the help of my sister.

18. I received my paper ballot in the mail during the week of August 14. The ballot is inaccessible to me as a blind person. To fill it, I will need the assistance of another person, which will compromise my privacy and independence.

19. On August 14, 2020, I called the Secretary of the Commonwealth's office to ask what I must do to receive an accessible electronic vote by mail ballot because I am blind. The person answering the phone said he did not know anything about that, but he would find out if I would hold. He came back about ten minutes later to inform me that I needed to make my request via email at elections@sec.state.ma.us. When I asked if my request by phone would not count, and the person indicated that a request had to be via email.

20. In order for vote by mail to be accessible to me, I need the option fill out a digital ballot that can be submitted online or printed and mailed.

Signed under penalty of perjury this 20th day of August, 2020.

/s/ Brian Charlson
Brian Charlson

Signed w/ approval
/s/ Matthew Steele (BBO #676711)

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

Suffolk, ss

No. SJ-2020-

BRIAN CHARLSON, KIM CHARLSON, DEANN ELLIOTT, TANJA MILOJEVIC,
CORY KADLIK, BARBARA RIVERO, BAY STATE COUNCIL OF THE BLIND, and
BOSTON CENTER FOR INDEPENDENT LIVING,

Petitioners,

v.

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

Respondent.

**AFFIDAVIT OF KIM CHARLSON IN SUPPORT
OF EMERGENCY PETITION FOR RELIEF**

I, Kim Charlson, do hereby state that the following is true to the best of my knowledge and belief:

1. I am a registered voter in Massachusetts.
2. I am 63 years old and reside in Watertown, Massachusetts.
3. I voted in the 2016 general election and the 2018 midterm election and plan to vote in the upcoming primary election on September 1, 2020 and the general election on November 3, 2020.
4. I am blind.
5. Because of my disability, I am unable to fill out a paper ballot privately and independently.
6. I currently work at the Library of the Perkins School for the Blind. Due to the coronavirus pandemic, I have reduced the amount of time I spend in the office. When I do go into the office, a coworker with the same schedule drives me.
7. Due to the current coronavirus pandemic, I prefer to vote by mail. I have asthma, which puts me at a higher risk for

complications if I contract the coronavirus. Others in my household also have health conditions that place them at a higher risk, and I am also concerned for their health.

8. Because of my blindness, I will not be able to tell if I am maintaining proper social distance with other voters. I will not be able to detect how close I am to other people, nor will I be able to detect if people are wearing the appropriate face masks and/or gloves.

9. The polling place will likely have social distancing measures that I will not be able to detect, such as floor markers indicating six feet of distance and one-way signs. I will not be able to verify how often high-touch surfaces such as doorknobs, tables, pens, and voting machines are sanitized.

10. I was unable to complete the online Vote by Mail application when I attempted earlier this month due to its inaccessibility for blind people.

11. As a result of the application's inaccessibility, I completed the application for Vote by Mail using the paper postcard sent to all households with the assistance of my housemate.

12. I received my Vote by Mail ballot in the mail during the week of August 14, 2020. However, the ballot is entirely inaccessible to me, and I am not able to fill it out privately or independently.

13. Per my Town Clerk's instructions, I contacted the Secretary of the Commonwealth on August 14, 2020 via email to request an accessible Vote by Mail ballot for the September 1, 2020 primary election. I have not received any correspondence from the Secretary of the Commonwealth in return.

14. In order to vote by mail to be accessible to me, I need a system that allows me to retrieve the ballot online, mark the ballot, verify it, print it, and mail it in an envelope with signature markers.

Signed under penalty of perjury this 20th day of August, 2020.

/s/ Kim Charlson
Kim Charlson

Signed w/ approval
/s/ Matthew Steele (BBO #676711)

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

Suffolk, ss

No. SJ-2020-

BRIAN CHARLSON, KIM CHARLSON, DEANN ELLIOTT, TANJA MILOJEVIC,
CORY KADLIK, BARBARA RIVERO, BAY STATE COUNCIL OF THE BLIND, and
BOSTON CENTER FOR INDEPENDENT LIVING,

Petitioners,

v.

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

Respondent.

**AFFIDAVIT OF DEANN ELLIOT IN SUPPORT
OF EMERGENCY PETITION FOR RELIEF**

I, DeAnn Elliott, do hereby state that the following is true to the best of my knowledge and belief:

1. I am a registered voter in Massachusetts.
2. I am 59 years old and reside in Cambridge, Massachusetts.
3. I voted most recently in the November 2019 Cambridge Municipal Election and intend to vote in the upcoming primary on September 1, 2020 and general election on November 3, 2020. The 2020 elections are particularly important to me due to the United States senatorial primary and the Presidential election.
4. I became blind in 2002 and have no useable vision.
5. Because of my disability, I am unable to fill out a paper ballot privately and independently.
6. I serve as the Legislative Chairperson for the Bay State Council of the Blind.
7. Until last month, I worked as the Lead Accessibility Reviewer in the User Research Center at Harvard University. I

worked entirely remotely since the onset of the coronavirus pandemic.

8. In past elections, I marked my ballots at the polling site using a voting machine.

9. Due to the current coronavirus pandemic, I prefer to vote by mail. I have a chronic health condition that may make me more susceptible to serious complications from contracting COVID-19.

10. In or around late July of 2020, I attempted to complete the online Vote by Mail Application form available on the Secretary of the Commonwealth's website. I used the screen reader program Jobs Access with Speech ("JAWS") 2020 but was unable to complete the form accurately because it was not fully accessible. I made a recording of my attempt to complete the form.

11. I asked my daughter to submit a paper Vote by Mail Application for me in order to get the ballot as quickly as possible.

12. On August 7, 2020, I called the Secretary of the Commonwealth's office to ask about the procedures for accessible voting by mail. I informed the office that I was participating in a radio show later that day where I would be discussing this topic with listeners with print disabilities.

13. I spoke to the Director of Communications, who informed me that voters would need to request an accommodation to receive a digital ballot. This was in addition to submitting the Vote by Mail Application. When I asked how voters with print disabilities could request a digital ballot, the Director of Communications stated she did not know and referred me to Bridget Murphy, Election Specialist, to ask about procedures for requesting an accommodation.

14. I emailed Ms. Murphy at the Secretary's office on August 13, 2020, providing my recorded attempt to complete the online Vote by Mail Application and inquiring about procedures for accessible voting by mail. To date, I have not received a response.

15. I also contacted my local election office on August 7, 2020 to inquire about procedures for requesting an accommodation. The local election commission responded on August 12, 2020 that the Secretary's office indicated it was working on

a "technical solution" and a "decision will be made soon and information disseminated." The election commission stated it would keep me informed of developments. To date, I have not received any additional communication.

16. In order for vote by mail to be accessible to me, I would need the option of online voting or a digital ballot that can be completed, printed, and mailed without needing assistance from a sighted person.

Signed under penalty of perjury this 20th day of August, 2020.

/s/ DeAnn Elliott
DeAnn Elliott

Signed w/approval
/s/ Matthew Steele (BBO 676711)

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

Suffolk, ss

No. SJ-2020-

BRIAN CHARLSON, KIM CHARLSON, DEANN ELLIOTT, TANJA MILOJEVIC,
CORY KADLIK, BARBARA RIVERO, BAY STATE COUNCIL OF THE BLIND, and
BOSTON CENTER FOR INDEPENDENT LIVING,

Petitioners,

v.

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

Respondent.

**AFFIDAVIT OF TANJA MILOJEVIC IN SUPPORT
OF EMERGENCY PETITION FOR RELIEF**

I, Tanja Milojevic, do hereby state that the following is true to the best of my knowledge and belief:

1. I am a registered voter in Massachusetts.
2. I am 31 years old and reside in Peabody, Massachusetts.
3. I voted in the 2019 elections and intend to vote in the upcoming primary on September 1, 2020 and general election on November 3, 2020.
4. This election is particularly important to me because it falls on the 30th anniversary of the Americans with Disabilities Act. I believe that if I do not seek to exercise the right to accessible voting that my predecessors with disabilities fought for, I risk losing these rights.
5. I am blind with extremely limited vision and use a guide dog whenever I go out in the community.
6. Because of my disability, I am unable to fill out a paper vote by mail ballot privately and independently.

7. I work as a librarian at the Perkins School for the Blind primarily doing Braille production. At present, I am working remotely due to the coronavirus pandemic, visiting my workplace approximately one day per week to limit risk of exposure. When traveling to work I primarily use The Ride or a ride share company rather than taking the train, bus, or subway.

8. In past elections, I marked my ballots at the polling site using a voting machine.

9. Due to the current coronavirus pandemic, I prefer to vote by mail.

10. On August 12, 2020, I contacted the Elections Division of the Secretary of the Commonwealth of Massachusetts at the designated email address for accessibility issues. I identified myself as a blind user of screen reading software, braille, and voice over technology and requested an accessibility accommodation to vote in the September 1, 2020 primary.

11. To date, I have not received a response to my inquiry from the Elections Division of the Secretary of the Commonwealth.

12. On August 14, 2020, I attempted to complete the online Vote by Mail Application form available on the Secretary of the Commonwealth's website. I used the screen reader program JAWS 2020 to fill in the required fields, selecting to vote by mail for both the primary and general elections. While using my screen reader, I encountered problems with the form such as not being able to select the city where I reside. Because I am an experienced JAWS user, I was able to figure out an alternative means of selecting this information.

13. On August 19, 2020, I emailed my local election official identifying myself as a person who is blind and requesting the board accept my application by email and provide an accessible ballot for the upcoming primary and general elections. On August 19, 2020, I received a call from my local election official letting me know a paper ballot would be mailed to me.

14. In order for vote by mail to be accessible to me, I would need the option of online voting or a digital ballot that can be completed, printed, and mailed without needing assistance from a sighted person.

Signed under penalty of perjury this 20th day of August, 2020.

/s/ Tanja Milojevic
Tanja Milojevic

Signed w/approval
/s/ Matthew Steele (BBO 676711)

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

Suffolk, ss

No. SJ-2020-

BRIAN CHARLSON, KIM CHARLSON, DEANN ELLIOTT, TANJA MILOJEVIC,
CORY KADLIK, BARBARA RIVERO, BAY STATE COUNCIL OF THE BLIND, and
BOSTON CENTER FOR INDEPENDENT LIVING,

Petitioners,

v.

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

Respondent.

**AFFIDAVIT OF CORY KADLIK IN SUPPORT
OF EMERGENCY PETITION FOR RELIEF**

I, Cory Kadlik, do hereby state that the following is true to the best of my knowledge and belief:

1. I am a registered voter in Massachusetts.
2. I am 29 years old and reside in Natick, Massachusetts.
3. I voted in the 2019 elections and intend to vote in the upcoming primary on September 1, 2020 and general election on November 3, 2020.
4. I am blind with no useable vision and use a white cane whenever I go out in the community.
5. Because of my disability, I am unable to fill out a paper ballot privately and independently.
6. I work as an Assistive Technology Specialist at the Perkins School for the Blind. Due to the coronavirus pandemic, I am working remotely unless there is a specific task that I need to perform in the office, which is typically not more than once per week.

7. In past elections, I marked my ballots at the polling site using a voting machine.

8. Due to the current coronavirus pandemic, I prefer to vote by mail. While I do not have any serious underlying health conditions, I have had health problems in the past and have concerns about how my body would respond to COVID-19. I would have difficulty maintaining social distancing due to my blindness and the fact that my polling station is unlikely to have distancing demarcations that I am able to detect.

9. On August 12, 2020, I contacted the Elections Division of the Secretary of the Commonwealth at the designated email address for accessibility issues to request an accessible online ballot for the September 1, 2020 primary.

10. To date, I have not received a response to my inquiry from the Elections Division of the Secretary of the Commonwealth.

11. I attempted to complete the online Vote by Mail Application form available on the Secretary of the Commonwealth's website. I used the screen reader program JAWS 2020 fill in the required fields on the application, selecting to vote by mail for both the primary and general elections. While using my screen reader, I encountered problems with the form such as certain words being read out of order, thereby making the form difficult to decipher. Because I am an experienced JAWS user, I was able to figure out the issues such that I could complete the application form.

12. In order for vote by mail to be accessible to me, I would need the option of online voting or a digital ballot that can be printed and mailed without needing assistance from a sighted person.

Signed under penalty of perjury this 20th day of August, 2020.

/s/ Cory Kadlik
Cory Kadlik

Signed w/approval
/s/ Matthew Steele (BBO 676711)

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

Suffolk, ss

No. SJ-2020-

BRIAN CHARLSON, KIM CHARLSON, DEANN ELLIOTT, TANJA MILOJEVIC,
CORY KADLIK, BARBARA RIVERO, BAY STATE COUNCIL OF THE BLIND, and
BOSTON CENTER FOR INDEPENDENT LIVING,

Petitioners,

v.

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

Respondent.

**AFFIDAVIT OF BARBARA RIVERO IN SUPPORT
OF EMERGENCY PETITION FOR RELIEF**

I, Barbara Rivero, do hereby state that the following is true to the best of my knowledge and belief:

1. I am a registered voter in Massachusetts.
2. I am 36 years old and reside in South Boston, Massachusetts.
3. I plan on voting in both the primary and general elections this year. I typically vote at my local polling site, but must bring someone to assist me with completing the paper ballot.
4. I have been quadriplegic since I was involved in a serious car accident in 1997 and am not able to use my hands. I use a manual wheelchair pushed by my personal care attendant ("PCA") for transportation. With assistive technology, I use a computer for many activities and would be able to independently complete an electronic ballot. Specifically, I use the Jouse2, which is a joystick that I operate with my mouth by "sipping" and "puffing" air into it.
5. I am a member of the Boston Center for Independent Living ("BCIL") and an active participant in BCIL's committee work on PCA issues. I am an active advocate for the rights of people with disabilities, meeting with elective officials and

providing public testimony. I also belong to several support groups in the Greater Boston area, including a group for women with spinal cord injuries.

6. I am completely ventilator dependent for breathing. This makes me very high risk for serious complications or death if I contract COVID-19.

7. Due to the coronavirus pandemic and associated risks with voting outside my home, I recently applied to vote by mail. If I am mailed a paper ballot, I will not be able to complete it privately and independently. I will need to request assistance from a friend or family member to complete it.

8. In order for vote by mail to be accessible to me, I would need the option of can electronic ballot that can be completed using my computer, printed, and mailed without needing assistance.

Signed under penalty of perjury this 20th day of August, 2020.

/s/ Barbara Rivero
Barbara Rivero

Signed w/approval
/s/ Matthew Steele (BBO 676711)



William Francis Galvin
Secretary of the Commonwealth of Massachusetts



Voting for Persons with Disabilities

Working to ensure equal access for all voters

The Elections Division of the Secretary of the Commonwealth of Massachusetts office is committed to:

- Surveying every Massachusetts polling place to ensure polling places are accessible by meeting state regulations.
- Working with and helping train Election Day workers on sensitivity to all voters as well as the proper procedures and testing to ensure the polling location is accessible and the accessible voting equipment is made available to all voters.
- Working with outreach organizations to ensure voters are familiar with the accessible voting equipment and availability of such equipment at every polling location.

Accessible Polling Places

All polling locations in Massachusetts are required to be accessible. All polling places must provide access on a permanent or temporary basis on Election Day. Voting assistance and absentee voting offer options that persons with disabilities may use to vote, but are not considered substitutes actual accessibility to the voting location. Accessible voting provides the same opportunity for access and participation to persons with disabilities as for other voters.

Accessible Voting Procedures

A voter can choose someone to assist entering the polling location, checking in, entering the voting booth, preparing the ballot, exiting the booth and checking out.

Voting via mail-in absentee ballot at home is another option used by elderly and disabled voters. For more information regarding absentee voting, [click here](#) or you may contact your [local election official](#).

Accessible Voting Equipment

Both federal law and state requirements mandate that voting systems be equipped for voters with disabilities allowing such voters to have the same opportunity to vote privately and independently. It is required that every precinct must have at least one accessible voting machine available.

There is at least one accessible marking unit in every polling place in Massachusetts. The AutoMARK Voter Assist Terminals are marking devices that use audio cue capacity for visually impaired voters. The AutoMark also has a feature that will greatly magnify the ballot or display the ballot high-contrast for voters that have limited visual impairment. The AutoMark can also produce an oral report to the voter as the choices selected prior to the voter printing the ballot.

For more information on the AutoMARK Voter Assist Terminal, please visit [AutoMARK Video](#).

Contact us if we can help

The Elections Division of the Secretary of the Commonwealth of Massachusetts is committed to making voting as accessible for all voters. Please let us know how we can improve accessibility by calling us at 800-462-VOTE (8683) (toll free) or 617-727-2828. For deaf, hard of hearing, or speech-impaired please contact us at TTY: 617-878-3889. You may also e-mail us at elections@sec.state.ma.us.

William Francis Galvin, Secretary of the Commonwealth of Massachusetts

[Terms and Conditions](#)

[Accessibility Statement](#)



COVID-19 Elections Updates

The Elections Division of the Secretary of the Commonwealth's office remains open to serve voters and candidates.

We are aware that the ongoing COVID-19 pandemic may change the ways that you vote or run for office. Below, please find information on how COVID-19 is affecting elections and what changes you may expect in the coming weeks.

Voting By Mail

In July, a new law was passed to allow all registered voters in Massachusetts to vote by mail in any 2020 election, with no excuse needed.

As required by the new law, a Vote by Mail application will be mailed to every person who was registered to vote by July 1 and who had not already requested an absentee ballot for the State Primary or for all elections this year. A second mailing will be sent out in September to all voters who have not already applied for a Vote by Mail ballot for the November election. The applications are pre-addressed to your local election official and no postage is necessary.

Vote by Mail applications must be delivered to your local election office no later than 4 business days before the election. For a State Primary ballot, your application must reach your local election office no later than August 26. For a State Election ballot, your application must reach your local election office no later than October 28.

If you wish to vote by mail, you are strongly encouraged to return your application as early as possible, to make sure that you will receive your ballot in time to return it and have it be counted.

Vote by Mail applications are available for [download](#) and may also be requested by [contacting the Elections Division](#).

You can find more information on voting by mail on our [Voting by Mail FAQs](#) page.

(Updated 7/6/20)

Voter Registration

We encourage those who need to register to vote to use our [online voter registration system](#). If you cannot register online, you may still register without leaving your home by sending a [mail-in voter registration form](#) to your [local election office](#). If you need to register to vote in person, contact your [local election official](#) about their ability.

The voter registration deadline for all elections in 2020 will be 10 days before any election.

(Updated 7/6/20)

Early Voting

To assist with limiting crowding at polling places, there will be additional days of early voting this year.

In-person voting for the September 1 State Primary will take place over 8 days, with 7 days of early voting being held August 22-28. All cities and towns will be required to offer early voting on Saturday, August 22 and Sunday, August 23.

In-person voting for the November 3 State Election will take place over 15 days, with 14 days of early voting being held October 17-30. All cities and towns will be required to offer early voting on Saturday, October 17, Sunday, October 18, Saturday, October 24 and Sunday, October 25.

Early voting schedules and locations will be posted at www.MassEarlyVote.com at least one week before early voting begins.

(Updated 7/6/20)

Emergency Ballots

If you have been admitted to a healthcare facility within 7 days of an election, or you have been instructed by a medical professional or public health official to self-quarantine in your home within 7 days of an election, you

ADD. 050

may use the [absentee ballot application](#) to designate someone to pick up your emergency absentee ballot, deliver it to you, and return it to your local election official.

There is no deadline to submit an application for an emergency ballot, but your ballot must be returned to your local election office by the close of polls.

(Updated 7/6/20)

Town Elections

A new law has been passed which allows towns to reschedule their annual town elections, which are usually held between February 1 and June 30. Town elections must now be held on or before August 1. You should [contact your town clerk](#) for more information about the date of your town election.

No-excuse early voting by mail is allowed for all local elections being held on or before August 1, 2020. You may [apply now for your mail-in early ballot](#).

If your town's election has been moved, ballots for the original election date will still be valid. If you have already submitted an absentee ballot, that ballot will be counted.

(Updated 6/9/20)

Candidate Nomination Papers

The Massachusetts Supreme Judicial Court has ruled that, due to the difficulty of obtaining signatures on nomination papers during the current pandemic, the following accommodations shall be made for non-party candidates for federal office:

- The number of required signatures for ballot access will be cut in half;
- An "electronic signature," which is the voter's hand-written signature, either on paper or using a mouse or stylus on an electronic document, will be accepted on printed nomination papers.

Number of Signatures Required

In accordance with the SJC ruling, the number of certified signatures required for non-party candidates for federal office to be placed on the 2020 State Election ballot shall be:

President and Vice President — 5,000

U.S. Senator — 5,000

U.S. House of Representatives — 1,000

Electronic Signature Gathering

The Supreme Judicial Court has ruled that signatures gathered electronically may be acceptable for certification, though the nomination papers must still be submitted to local election officials and the Secretary of the Commonwealth on paper.

Acceptable "electronic signatures" include signatures signed on a scanned nomination paper using a mouse, stylus, or finger. Signatures are also acceptable if they are signed by hand on a nomination paper which has been scanned and returned to the campaign electronically. Typed signatures are not acceptable.

Please note that nomination papers cannot be submitted to local election officials or the Secretary of the Commonwealth's office electronically. Papers must still be printed, back-to-front, and must be exact copies of nomination papers provided by this office.

Additional guidance on "electronic signatures" can be obtained from the Elections Division.

Submission

Because some city and town halls are currently closed to the public, candidates are encouraged to submit nomination papers to their local election offices by mail, if enough time remains before the deadline. If you are mailing nomination papers, we recommend the use of some tracking service, in case they are mis-delivered. If you would like the papers returned to you by mail, include a pre-addressed postage paid envelope for the clerk to use to return them to you.

Remember that postmarks are not sufficient for nomination paper deadlines. The papers must be in the local election office by 5 p.m. on the date of the deadline!

If you need to file your papers in person, you should contact the local election official for information on their availability. They may ask you to call when you arrive, so they can meet you outside, or they may request that you leave your nomination papers in a drop box. If you are leaving nomination papers in a drop box, be sure to include your contact information, so the clerk can get in touch with you when the papers are ready to be picked up.

The Secretary of the Commonwealth's office remains open to the public during regular business hours for the filing of nomination papers.

(Updated 6/29/2020)

William Francis Galvin, Secretary of the Commonwealth of Massachusetts

[Terms and Conditions](#)

[Accessibility Statement](#)



Voting by Mail



Download a Vote by Mail Application

Voting by mail is available to all voters for all elections in 2020. You do not need an excuse to vote by mail this year.

To vote by mail, all you need to do is:

1. **Complete** a [Vote by Mail Application](#);
2. **Deliver** your application to your [local election office](#);
3. **Vote** when your ballot arrives;
4. **Return** your ballot.

Applications must reach your local election office by **August 26** for the State Primary. Applications must reach your local election office by **October 28** for the State Election.

State Primary ballots need to be back at your local election office by 8 p.m. on September 1.

State Election ballots need to be postmarked no later than November 3 and must be back at your local election office no later than November 6.

Apply early, in order to have enough time to return your ballot.

For more information on voting by mail, see our page on [Voting by Mail FAQs](#).

- [Solicitud de Voto por Correo 2020](#)
- [2020年郵寄投票申請表](#)
- [ទម្រង់សាកលក្បួនបោះឆ្នោតតាមសំបុត្រឆ្នាំ 2020](#)
- [Đơn Xin Bầu Bằng Thư 2020](#)

William Francis Galvin, Secretary of the Commonwealth of Massachusetts

[Terms and Conditions](#)

[Accessibility Statement](#)

2020 Vote by Mail Application



William Francis Galvin
Secretary of the Commonwealth

Voter Information

1

Name: _____

Address of Voter Registration: _____

Date of Birth: _____ Telephone Number: _____

E-mail Address: _____

Ballot Information

2

Ballot Requested For:

- ☐ September 1, 2020 Primary*
☐ November 3, 2020 Election
☐ All 2020 Elections*

* Independents – Choose Your Primary Ballot:

- ☐ Democratic
☐ Republican
☐ Green-Rainbow
☐ Libertarian

Mail Ballot to: _____

Assistance (If applicable)

3

- ☐ Voter required assistance in completing application due to physical disability.

Assisting person's name: _____

Assisting person's address: _____

Signed (under penalty of perjury): _____ Date: _____

Eligibility

Any registered voter may use this application to request a mail-in ballot for any election being held in 2020.

Completing the Application

1. Voter Information – Provide your name, the address where you are registered to vote, and date of birth. Telephone number and e-mail address are optional.
2. Ballot Information – Choose which election(s) in which you want to vote by mail. **If you are voting by mail in the State Primary and you are Unenrolled (Independent), choose one party ballot.** Also provide the address where you want the ballots mailed.
3. Assistance – If you are assisting a voter in completing this application, complete this section.
4. Sign your name – If you require assistance in signing the application, you may authorize someone to sign your name in your presence. That person must complete the assisting person's information in Section 3.

Submitting the Application

Send the completed application to the local election official at your city or town hall.

Find contact information for local election officials at www.sec.state.ma.us/ele or by calling 1-800-462-VOTE (8683).

Applications can be mailed or hand-delivered. Applications may also be submitted electronically by fax or e-mail, as long as your signature is visible.

If you're applying for a State Primary ballot, this application must arrive at your local election office by **August 26**.
For November 3 State Election ballots, the application must arrive by **October 28**.



11 Beacon Street, Suite 925
Boston, Massachusetts 02108
(617) 723-8455 *Voice*
(800) 872-9992 *Voice*
(617) 723-9125 *Fax*
<http://www.dlc-ma.org>

Western Office
32 Industrial Drive East
Northampton, MA 01060
(413) 584-6337 *Voice*
(800) 222-5619 *Voice*
(413) 584-2976 *Fax*
mail@dlc-ma.org

August 3, 2020

Via Electronic Mail

Michelle Tassinari, General Counsel
Secretary of the Commonwealth
1 Ashburton Place, Rm 1705
Boston, MA 02108

Re: Accessible Vote by Mail in Massachusetts

Dear Attorney Tassinari:

The Disability Law Center (“DLC”) writes regarding implementation of accessible vote by mail for the upcoming state primaries scheduled to take place on September 1, 2020. In our role as the Commonwealth’s Protection and Advocacy agency (“P&A”) for people with disabilities, DLC is statutorily mandated under federal law to protect and advocate for the human and legal rights of individuals with disabilities, including the right to vote.

DLC greatly appreciates all of the time and effort the Secretary of the Commonwealth and every member of his team has thus far put into ensuring that Massachusetts citizens can safely vote during this unprecedented public health crisis. Unfortunately, it remains unclear whether accessible vote by mail will be implemented in time for citizens with disabilities, including people with vision and dexterity disabilities, to exercise their right to vote safely, privately, and independently in the primaries.

As you know, An Act Relative to Voting Options in Response to COVID-19 became law on July 6, 2020 and instituted the right of all registered Massachusetts voters to cast ballots by mail in both the primary election and the general election.¹ It is DLC’s position that the Act clearly requires that accessible vote by mail be made available for the primaries. Per the statutory language, the Secretary shall provide disability-related accommodations to voters who wish “to apply to vote...by mail in the

¹ Acts of 2020, Chapter 115(6)(b), <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter115>.

The Protection and Advocacy System for Massachusetts

primary or general election.”² These accommodations explicitly include “an authorized accessible blank electronic ballot that can be filled out electronically, printed and signed.”³ Further, the calculation as to feasibility referenced in Section 9(c) and Section 14 of the Act is not applicable to the Secretary’s obligation to provide access to an accessible electronically fillable ballot.⁴

Based on the foregoing, DLC requests a meeting no later than August 7, 2020 with the Secretary or his designee to discuss in detail his office’s efforts to date in securing an accessible vote by mail product, what the office must do in order to make the product ultimately acquired fully functional, and the office’s timeline for that implementation. We look forward to hearing from you as soon as possible about scheduling this meeting.

DLC thanks you very much for your time and continuing attention to this important issue.

Sincerely,



Tatum A. Pritchard
Director of Litigation

² *Id.* at Chapter 115(6)(i) (emphasis added).

³ *Id.* at Chapter 115(6)(i)(ii).

⁴ *Id.* at Chapter 115(6)(i)(ii).

RE: Disability Law Center - Accessible Vote by Mail

Tassinari, Michelle (SEC) <michelle.tassinari@state.ma.us>

Mon 8/3/2020 8:19 AM

To: Tatum Pritchard <tpritchard@dlc-ma.org>

Cc: Marlene Sallo <msallo@dlc-ma.org>

Good Morning Tatum-

Thank you for your letter. Even before the law was passed on July 6th, this Office has been contacting vendors of accessible vote by mail systems for possible solutions to implement here in Massachusetts. Unfortunately, some of those vendors did not meet the standards set forth in the law while others simply did not have the capacity to implement in Massachusetts given their other obligations. We have a couple of vendors that appear to meet the standards (or at least they claim they do) and appear to be willing to work with us. At this point they have submitted their technical specification for review by our IT team to see what can work with our existing infrastructure. We should have an update this week on whether these solutions will work here.

As soon as I have additional information, I will be sure to share with you.

Michelle K. Tassinari
Director and Legal Counsel
Elections Division
One Ashburton Place, Room 1705
Boston, MA 02108
617-727-2828

From: Tatum Pritchard <tpritchard@dlc-ma.org>
Sent: Monday, August 3, 2020 6:27 AM
To: Tassinari, Michelle (SEC) <Michelle.Tassinari@sec.state.ma.us>
Cc: Marlene Sallo <msallo@dlc-ma.org>
Subject: Disability Law Center - Accessible Vote by Mail

Dear Attorney Tassinari:

Please see the attached correspondence from DLC urgently requesting a meeting concerning accessible vote by mail.

Kind regards,

Tatum A. Pritchard
Director of Litigation
Disability Law Center
11 Beacon Street, Suite 925
Boston, MA 02108
Tel: 617 723 8455, ext 138
tpritchard@dlc-ma.org
Pronouns: she/her/hers

<http://www.dlc-ma.org>



United Way Code: M361888

[Support DLC on Amazon.com](#)



CONFIDENTIALITY NOTICE: The information contained in this electronic message is confidential and solely for the use of the recipient(s) and the Disability Law Center. Its contents may be protected from disclosure by attorney-client privilege, the work-product doctrine, or federal law governing the confidentiality of information held by the Protection and Advocacy System. See, e.g., 45 C.F.R. sec. 1326.28; 42 U.S.C. 10806(a); 42 C.F.R. 51.45(a).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE HERNANDEZ; KEITH GURGUI;
RASHETA BUNTING; KAREN LUXTON
GOURGEY, ED.D; DISABILITY RIGHTS
NEW YORK; NATIONAL FEDERATION
OF THE BLIND OF NEW YORK STATE,
INC.; AMERICAN COUNCIL OF THE
BLIND OF NEW YORK, INC.; and
CENTER FOR INDEPENDENCE OF THE
DISABLED, NEW YORK,

CASE NO: 1:20-cv-4003 (LJL)

**STIPULATION OF SETTLEMENT AND
ORDER FOR THE WITHDRAWAL OF
THE MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Plaintiffs,

-against-

THE NEW YORK STATE BOARD OF
ELECTIONS, DOUGLAS A. KELLNER,
Co-Chair and Commissioner, ANDREW
SPANNO, Commissioner, PETER S.
KOSINSKI, Co-Chair and Commissioner,
TODD D. VALENTINE, Co-Executive
Director, and ROBERT A. BREHM, Co-
Executive Director, in their official capacities
at the New York State Board of Elections.

Defendants.

WHEREAS, Plaintiffs filed a Complaint dated May 22, 2020, alleging that Defendants' Absentee Voting program is inaccessible to individuals with disabilities and therefore in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (Dkt. 1); and

WHEREAS on May 27, 2020, Defendant New York State Board of Elections ("NYSBOE") adopted a number of measures toward improving access to absentee ballots including but not limited to providing an accessible request form and instructions on its website

and providing directions to county boards of election concerning accessible absentee ballots;

WHEREAS, the parties are interested in resolving the issues raised in Plaintiffs' Motion for Preliminary Injunction and Temporary Restraining Order ("PI/TRO Motion") regarding the June 23, 2020 Elections (Dkt. 8), and have negotiated in good faith for that purpose; and

WHEREAS, the parties intend to resolve matters addressed in the PI/TRO Motion, exclusively; and

WHEREAS, nothing in this Stipulation shall be deemed an admission by either party and the parties further agree that this Stipulation is without precedential value, and without prejudice to the assertion of any claims, arguments, contentions and defenses whether or not otherwise alleged in the Complaint; and

WHEREAS, none of the parties is an infant or incompetent person;

IT IS HEREBY STIPULATED AND AGREED, by and between the parties and their respective counsel as followed:

1. Defendants agree to instruct county boards of elections to provide by email an accessible fillable PDF absentee ballot ("accessible absentee ballot") to voters who have a disability that prevents them from privately and independently using a paper absentee ballot.

2. Defendants agree to announce the new accessible absentee ballot program in a press release and on the NYSBOE website by June 3, 2020.

3. Defendants agree to issue written mandatory instructions on or before Wednesday, June 3, 2020 that comprehensively instruct county boards of elections how to 1) provide the accessible absentee ballot request form on their respective websites, 2) process accessible absentee ballot requests, and 3) deliver and receive accessible absentee ballots. These written mandatory instructions to all county boards of elections will include a copy of this

Stipulation.

4. Defendants agree to ensure that county boards of election begin to process accessible absentee ballot requests on or before Friday, June 5, 2020.

5. Defendants agree that voters may submit the accessible absentee ballot request form via United States mail, fax or email. If a county board of elections chooses to create an html webform for absentee ballot requests that includes the accessibility component, Defendants agree such format is acceptable.

6. Defendants agree that voters may submit an electronic request for an accessible absentee ballot at any time up until June 16, 2020, seven (7) days prior to the June 23, 2020 Elections.

7. Defendants agree that a typed or electronic signature is an acceptable signature on the absentee ballot request form. The form of the accessible absentee ballot application shall be as provided in Exhibit “A” and its associated metadata, as provided to Plaintiffs by Defendants on June 2, 2020, at 2:05 p.m.

8. Defendants agree that the form to request an accessible ballot and instructions for submitting the same or otherwise requesting an accessible absentee ballot shall be available on the website of the NYSBOE in an accessible format by no later than June 3, 2020.

9. The accessible absentee ballot application form and instructions shall be made available on the front page of the NYSBOE’s website, as well as in the “Absentee Voting” and “Meeting Voter Access Needs” sections of the NYSBOE’s website.

10. Defendants agree to instruct county boards of elections to make available to the voter an accessible absentee ballot “as soon as practicable” upon the voter’s request, pursuant to N.Y. Election Law § 8-406.

11. Defendants agree that upon receipt of a voter's request for an accessible absentee ballot, county boards of elections or their agents will, pursuant to mandatory directive of the NYSBOE, generate a ballot that is screen readable using common assistive technology, such as Job Access with Speech "JAWS" software, Apple VoiceOver, and Android TalkBack, which shall include insertion of tags and fillable objects so that it can be completed independently and privately by the requesting individual using standard, accessible technology, namely a screen reader program. The accessible absentee ballot shall meet WCAG 2.0 AA standards for a PDF.

12. Defendants agree that it will instruct county boards of elections that the ballot will be accompanied with accessible instructions on how to return the ballot, including instructions to place the ballot in an envelope and sign the back of the envelope. Defendants will further instruct county boards of elections that a postage paid envelope and oath envelope will be provided by mail to voters who request an accessible absentee ballot any day up until June 16, 2020, seven (7) days prior to the June 23, 2020 Primary Election.

13. Defendants shall ensure that an envelope template that can be printed shall be provided by email to all voters who request an accessible absentee ballot. To the extent practicable, the accessible absentee ballot and electronically provided envelopes shall be in the same general form as provided to UOCAVA voters.

14. Defendants agree to instruct county boards of election to accept a signature anywhere on the absentee ballot envelope.

15. Defendants agree that the attestation on the accessible ballot oath envelope will be the same as the paper ballot oath envelope.

16. Defendants agree that upon completion of the ballot, the voter may return the printed accessible absentee ballot using the United States Postal Service or hand delivery to the

county board of elections.

17. Defendants agree that submission deadlines for accessible absentee ballots shall be the same as for paper absentee ballots.

18. Defendants agree that any accessible absentee ballot requested, completed, and returned pursuant to this Stipulation shall be canvassed in accordance with N.Y. Election Law.

19. Defendants agree that this Stipulation pertains only to the June 23, 2020 Primary Election, and that this Stipulation does not apply to any subsequent elections or resolve issues that may remain in Plaintiffs' Complaint.

20. Within 45 days after the June 23, 2020 Primary Election, Defendants shall publish a publicly-available report containing the following information:

- a. The number of individuals with disabilities who requested an accessible absentee ballot;
- b. The number of individuals who were provided an accessible absentee ballot; and
- c. Descriptions of any complaints or feedback received from voters with disabilities regarding accessible absentee ballots and descriptions of how any complaints were resolved.

21. In consideration for entering into this Stipulation, Plaintiffs hereby agree to withdraw their PI/TRO Motion.

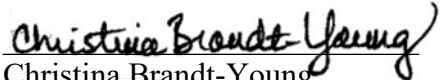
22. The parties agree that the Court shall have authority to enforce this Stipulation and to resolve disputes that arise under it.

23. This Stipulation embodies the entire agreement of the parties as it relates to the PI/TRO Motion.

Dated: June 2, 2020



Amanda B. Pearlstein
DISABILITY RIGHTS NEW YORK
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Phone: 518-512-4841
Fax: 518-427-6561 (not for service)
Amanda.Pearlstein@drny.org



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Attorneys for Plaintiffs

NEW YORK STATE BOARD OF ELECTIONS

By: _____

By: _____

Todd D. Valentine Co-Executive Director
Robert A. Brehm Co-Executive Director
New York State Board of Elections
40 North Pearl Street -Floor 5
Albany, New York 12207

(518) 474-6367

Dated: June 2, 2020

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DISABILITY RIGHTS NEW YORK
25 Chapel Street, Suite 1005
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Amanda.Pearlstein@drny.org

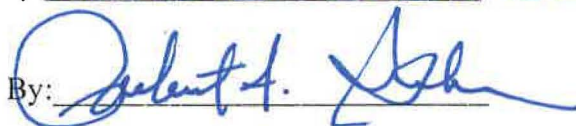
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Attorneys for Plaintiffs

NEW YORK STATE BOARD OF ELECTIONS

By: 

By: 

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Robert A. Brehm Co-Executive Director
New York State Board of Elections
40 North Pearl Street -Floor 5
Albany, New York 12207

(518) 474-6367

LETITIA JAMES
Attorney General, State of New York
Attorney for Defendants

By: *Seth J. Farber*
Seth J. Farber
Assistant Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-8029
Seth.Farber@ag.ny.gov

SO ORDERED:

IT IS FURTHER ORDERED that the conference
previously set for June 4, 2020 is CANCELLED.

A handwritten signature in black ink, appearing to read "L. Liman", is written above a horizontal line.

Honorable Lewis J. Liman
United States District Judge

Dated: New York, New York

June 2, 2020

For Immediate Release – May 1, 2020
Contact: T.J. Bucholz, 517.898.4641

Blind Voters and Michigan Secretary of State Reach Interim Settlement to Provide Accessible Absentee Ballots for Tuesday's Elections

The Parties will Continue to Pursue a Permanent Solution for all Future Elections

(Southfield, Michigan) – The parties to a lawsuit alleging that the Michigan Bureau of Elections has failed to provide accessible absentee ballots for the blind announced a temporary solution ahead of Tuesday's local elections. In accordance with the terms of the agreement, the Bureau of Elections will extend blind voters the option of receiving a Uniformed and Overseas Citizens Absentee Voting (UOCAVA) ballot, which are typically reserved for overseas voters and members of the military. The Bureau of Elections has agreed to ensure that these ballots can be completed by blind individuals independently by using electronic screen reader software. Forms for requesting accessible electronic ballots will be available on the Bureau's website. All requests for accessible UOCAVA ballots must be submitted by Tuesday May 5, 2020 at 4 pm, along with a declaration that the individual requesting the ballot is blind or otherwise disabled, leaving them unable to complete a traditional paper absentee ballot. Disabled voters may then return the ballots to their local clerk by, among other methods, requesting that they be picked up by their local clerk's office. The deadline to request such a pickup is 4pm on Election Day. Ballots sent by mail must be postmarked on Election Day or before.

"We are thrilled that the Bureau of Elections was willing to work with us to come up with a solution for Tuesday's elections in such a short period of time," said Michael Powell, President of the National Federation of the Blind of Michigan. "The State's efforts to ensure everyone, including people with disabilities, have an opportunity to cast a ballot gives hope to the blind community."

The solution for May 5th does not end the lawsuit. The Plaintiffs will continue to pursue a permanent solution to the lack of an accessible absentee ballot for the August and November 2020 elections, as well as for all future elections.

"Actions speak louder than words, and while the State's lack of progress on voting accessibly has been and continues to be a major concern, Secretary of State Benson has proven herself today to be a progressive Secretary of State and open to expanding access to disabled voters, and for that we thank her," said Attorney Jason Turkish, who represented plaintiffs Michael Powell and Fred Wurtzel in the lawsuit. "Her decisive action to guarantee blind voters have access to the polls in the midst of a pandemic should serve as a model for the rest of the country as we navigate these uncertain times."

“The blind continue to face barriers to full-participation in the democratic process,” said Attorney Eve Hill, counsel for Plaintiff The National Federation of the Blind of Michigan. “Secretary Benson has taken the time to hear my clients’ concerns and worked to ensure the Bureau of Elections could provide an interim solution for the May 5th elections. We look forward to a permanent and sustainable solution for all future elections.”

Information related to requesting an accessible absentee ballot can be found on the Bureau of Election’s website. <https://www.michigan.gov/elections/> Eligible voters may also contact their city or township clerk to obtain additional information regarding requesting an accessible absentee ballot.

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN**

MICHAEL POWELL, and
FRED WURTZEL,
individually and on behalf of those
similarly situated,

Case No. 20-11023

and,

Hon. Gershwin A. Drain
Mag. Judge Michael J. Hluchaniuk

THE NATIONAL FEDERATION OF THE
BLIND OF MICHIGAN,

Plaintiffs,

v.

JOCELYN BENSON,
MICHIGAN SECRETARY OF STATE,
in her official capacity, and

JONATHAN BRATER,
MICHIGAN DIRECTOR OF ELECTIONS,
in his official capacity,

Defendants.

CONSENT DECREE

JURISDICTION AND VENUE

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1331 and 1343.

Venue is appropriate in this District pursuant to 28 U.S.C. § 1391.

BACKGROUND

1. On April 25, 2020, Plaintiffs, Michael Powell and Fred Wurtzel, individually and on behalf of others similarly situated, and the National Federation of

the Blind of Michigan (“NFBMI”) filed a Complaint and Motion for Preliminary Injunction against Defendants, Michigan Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater (“Defendants”), in their official capacities, alleging that Defendants were violating Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 *et seq.*, and the Michigan Persons with Disabilities Civil Rights Act, MCL § 37.2301 *et seq.*, by failing to provide an absentee/mail-in voting system that is fully accessible to individuals who are blind or have print disabilities for Elections scheduled for May, August, and November, 2020, and thereafter.

2. Defendants deny the allegations in the Amended Complaint and Motion for Preliminary Injunction and assert that their entry into this Consent Decree does not constitute an admission of liability, wrongdoing, or violation of the ADA, or any other statute, regulation, or provision of any federal or state law.

3. Plaintiffs Powell and Wurtzel are blind individuals who are registered to vote in Michigan, and desire to exercise their right to vote by absentee ballot in an accessible and independent manner.

4. Plaintiff NFBMI is the Michigan affiliate of the National Federation of the Blind, an organization of individuals who are legally blind. The NFBMI is a 501(c)(3) non-profit corporation made up of blind Michiganders and their families and friends. The organization promotes the general welfare of the blind by assisting the blind in their efforts to integrate themselves into society on terms of equality and by removing barriers that result in the denial of opportunity to blind persons in virtually

every sphere of life.

5. Defendant Secretary Benson is the chief election officer of the State of Michigan and has supervisory control over local election officials in the performance of their duties under the Michigan Election Law, MCL 168.1 *et seq.* In this capacity, she oversees Michigan's absentee voting program and maintains and operates the Secretary of State's voter information website.

6. Defendant Director Brater is vested with the powers and shall perform the duties of the Secretary of State under the Secretary's supervision with respect to the supervision and administration of elections laws.

7. This Consent Decree is entered into by Plaintiffs and Defendants (collectively "the Parties") and resolves the allegations set forth above.

8. The parties agree it is in their collective best interest to resolve this lawsuit on mutually agreeable terms without further litigation. Accordingly, the Parties agree to the entry of this Consent Decree, subject to the approval of this Court, without trial or further adjudication of any issues of fact or law raised in Plaintiffs' Amended Complaint.

In resolution of this action, the Parties hereby **AGREE** and the Court expressly **APPROVES, ENTERS, AND ORDERS** the following:

I. DEFINITIONS

The following terms shall have the following meanings with respect to this

Agreement. All other terms shall be interpreted according to their plain and ordinary meaning:

1. Unless otherwise provided in this Agreement, technical terms used in this Agreement have the same meaning as provided in the Web Content Accessibility Guidelines (“WCAG”) 2.0 published by the World Wide Web Consortium (“W3C”), available at www.w3.org/TR/WCAG/. The term “WCAG 2.0 AA” as used in this Agreement incorporates the WCAG 2.0 Level A and Level AA Success Criteria. “Accessible Forms” are forms, applications, ballots, or transactions that are electronically fillable and submittable, produce a savable confirmation of submission for users, are provided in an HTML format option, and are compliant with WCAG 2.0 AA.
2. “Print disabilities” are disabilities that interfere with the effective reading, writing, or use of printed material. This definition includes persons who are visually impaired, those with learning disabilities, as well those with a physical disability that interferes with holding and manipulating paper or a pen or pencil.
3. “Conformance” and “conform” have the same meaning as used in WCAG 2.0 AA.
4. “Effective Date” is the date of the last signature on this Agreement.
5. “Voting Program” includes, but is not limited to: (i) the opportunity provided to Michigan residents to vote privately and independently in-person at designated Polling Places or to vote by mail/absentee in lieu of voting in person; (ii) the provision of sample ballots to Michigan residents in advance of Elections; and (iii) the processes for Michigan voters to request, receive, mark and submit ballots.

II. REQUIREMENTS

Pursuant to the terms of this Consent Decree, by June 25, 2020, Defendants will implement the following:

1. Shall not exclude individuals with print disabilities, including Plaintiffs

and their members, from participation in, or deny them the benefits of, the Voting Program's services, programs, or activities, or subject them to discrimination with respect to Michigan's Voting Program, 42 U.S.C. § 12132, unless the individual is otherwise ineligible from participating in the Voting Program under state or federal law.

2. Shall not provide individuals with print disabilities, including Plaintiffs and their members, an unequal opportunity to participate in or benefit from aids, benefits, or services, or provide an aid, benefit, or service that is not as effective in affording equal opportunity to gain the same result or benefit as provided to others with respect to Michigan's Voting Program, 28 C.F.R. § 35.130(b)(1)(ii)-(iii), unless the individual is otherwise ineligible from participating in the Voting Program under state or federal law.
3. Shall take the necessary and timely steps to ensure that it furnishes appropriate auxiliary aids and services where necessary to afford individuals with print disabilities, including Plaintiffs and their members, an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of Michigan's Voting Program, 28 C.F.R. § 35.160(b)(1), unless the individual is otherwise ineligible from participating in the Voting Program under state or federal law. Nothing in this order should be interpreted to require the Defendants to provide software or hardware technical support.
4. **Voting at Polling Places.** Defendants shall continue to ensure that all persons with print disabilities have an opportunity that is equal to the opportunity the State affords to all other persons to vote privately and independently at their designated, local Polling Place, by using an accessible voting machine.
5. **Voting by Mail.** Defendants shall ensure that all persons with print disabilities have an opportunity that is equal to the opportunity Michigan affords to all other persons to vote privately and independently by mail,

subject to the provisions of this paragraph.

- a. So that it may be used for the August 2020 Election, Defendants shall acquire a remote accessible vote-by-mail system (“RAVBM”) that shall allow voters with print disabilities to review and mark vote-by-mail ballots electronically, privately and independently, in accordance with the following:
 - i. At least 15 days before purchasing any RAVBM for the August 2020 election, Defendants shall notify Plaintiffs in writing of which RAVBM they intend to acquire, including identifying information such as the name, model number, and vendor, a summary description of the system and how it achieves accessibility, how accessibility will be monitored and maintained, and how complaints regarding accessibility will be addressed; provided that, if it is impractical to provide 15 days notice prior to purchasing a system for use in the August 2020 Election, Defendants shall notify Plaintiffs as far in advance of the purchase as possible. Defendants and Plaintiffs will commit to seeking a protective order in the event that Defendants need to share draft purchasing and other materials prior to those materials being made public.
 - ii. If unforeseen circumstances beyond the state’s control make it impracticable to acquire a RAVBM in time for the August 2020 Election, Defendants will inform plaintiffs immediately and no later than June 29, of the unforeseen circumstances and their impact on acquisition of the RAVBM. In such an event, Defendants will implement an expansion of the state’s UOCAVA voting system to people with print disabilities, in a manner similar to that described in the Stipulation and Consent Order Resolving Plaintiffs’ Motion for Temporary Restraining Order in this Action dated May 1, 2020, for the August 2020 Election. All other requirements of this Consent Decree that are not impracticable will remain in effect.

- b. Beginning with the August 2020 Election, and in each Election thereafter for the term of this Agreement, unless a change in federal law requires otherwise, Defendants shall, consistent with the time frame for providing absent voter ballots:
 - i. Provide accessible, electronic forms in HTML format through which voters with disabilities can independently request vote-by-mail ballots and certify that they are voters with disabilities. Such certification shall be no more burdensome for voters with disabilities than is required by the laws and regulations that govern RAVBM;
 - ii. Provide a mechanism for voters who certify that they are voters with disabilities and that their disability is unlikely to improve in the foreseeable future to be placed on a Permanent Accessible Absent Voter Application List if their jurisdiction of residence maintains a Permanent Absent Voter Application List and be provided prior to all future elections an electronic application form to apply for ballots that can be marked using the RAVBM, on the same terms and conditions as members of the jurisdiction's Permanent Absent Voter Application List;
 - iii. Notify the public of the availability of the accessible request system and the RAVBM, and post information about the RAVBM in the same locations where Defendants provide information about other means of mail-in/absentee voting, including posting step-by-step instructions for how to use the RAVBM on the Secretary of State Website;
 - iv. Train all county and local Election officials regarding the accessible request and RAVBM through the same methods by which they train county and local Election officials on other voting processes;
 - v. Send or train local or county election officials to send voters with disabilities electronic ballots that can be marked using the RAVBM, along with instructions on how to use the

RAVBM to mark and print their ballots;

- vi. Permit voters with disabilities to use the acquired RAVBM to review and mark their vote-by-mail ballots electronically and to print and return those marked ballots for counting; and
- vii. Train local election officials to accept and tabulate all ballots properly completed using the RAVBM that are received by the time polls close on the day of the election.

6. Reporting. Within 45 days after the August 4, 2020, Primary Election, and within 90 days after the November 3, 2020 Election, Defendants will provide Plaintiffs a report for the preceding Election containing the following information:

- a. The number of individuals with disabilities who requested an accessible ballot;
- b. The number of individuals who accessed the RAVBM; and
- c. Descriptions of any complaints or feedback received from voters with disabilities regarding attempts to use or use of the RAVBM and descriptions of how any complaints were resolved.

III. NOTICE TO PUBLIC

Within 10 days of the Effective Date of this Consent Decree, Defendants shall issue a press release, in accordance with their ordinary procedures for doing so, regarding the Consent Decree, and post a copy of this Consent Decree on the Secretary of State Website, along with a summary of its requirements.

IV. ATTORNEYS' FEES AND COSTS

Within 30 days of the Effective Date of this Agreement, Defendants shall pay \$124,258.25 to the trust account of Nyman Turkish PC for Plaintiffs' attorneys fees and costs. Payment will be sent to Plaintiffs' attorneys at the following address: 20750 Civic Center Drive, Suite 290, Southfield, Michigan 48076.

V. RELEASE

Plaintiffs waive and release any claims against Defendants and their agents, successors, and assigns, including claims for declaratory and injunctive relief and attorneys' fees and costs, that are based on the allegations raised, or which could have been raised, in the complaint or amended complaint.

VI. TERM OF AGREEMENT

The term of this Agreement shall be 30 months from the Effective Date.

VII. NOTICES

Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by way of the U.S. Postal Service, private commercial carrier, hand delivery, facsimile transmission, or electronic mail to the addresses below or to such other addresses as may be specified in writing by any Party:

1. To Plaintiff National Federation of the Blind of Michigan: Eve L. Hill, Brown, Goldstein & Levy LLP, 120 East Baltimore Street, Suite 1700, Baltimore, Maryland 21202, ehill@browngold.com
2. To Plaintiffs Michael Powell and Fred Wurtzel: Jason M. Turkish, Nyman Turkish PC, 20750 Civic Center Drive, Suite 290, Southfield, Michigan 48076. Jason.Turkish@nymanturkish.com
3. To Defendants: Erik A. Grill, Assistant Attorney General, P.O. Box 30736, Lansing, MI 48909. grille@michigan.gov

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have caused this Consent Decree to be executed as of the date set forth below.

SO ORDERED this 19th day of May 2020.

s/Gershwin A. Drain
Hon. Gershwin A. Drain
United States District Judge

The signatories represent that they have the authority to bind the respective Parties identified below to the terms of this Consent Decree.

AGREED AND CONSENTED TO:

/s/ Eve Hill
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Counsel for Plaintiffs Powell and Wurtzel



William Francis Galvin
Secretary of the Commonwealth of Massachusetts



Voting for Military and Overseas U.S. Citizens

If you are a Massachusetts citizen, you have the right to vote in all elections, even if you are deployed, stationed outside the Commonwealth, or residing overseas.

Military voters, dependent family members of military voters, and overseas citizens are protected by the [Uniformed and Overseas Citizens Absentee Voting Act \(UOCAVA\)](#), a federal law which guarantees your voting rights.

If you are a military or overseas voter, you are exempt from voter registration requirements in Massachusetts. In order to get your ballot, you simply need to submit an absentee ballot application.

Military Voters

If you are a member of the United States military on active duty, or if you are the dependent family member of active duty personnel, you qualify to vote as a UOCAVA military voter.

Military voters who are stationed in Massachusetts have the option of registering to vote where they are stationed. Military voters who resided in Massachusetts before being called to active duty have the right to continue to vote from their Massachusetts address, as long as they do not register or vote elsewhere.

Eligible military voters include those on active duty in the Army, Navy, Air Force, Marine Corps, and Coast Guard (including reservists), as well as members of the merchant marine.

Overseas Citizens

United States citizens who reside outside the United States may vote from their last residence in the country. If you are a United States citizen who has never resided in the country, your address for voting purposes would be your qualifying parent's last address in the country. This address may differ from the address you use for other purposes.

Your local election official may ask for additional or supporting information to locate a record of your previous residence in their city or town.

Applying for your Ballot

Your absentee ballot application should be submitted to your local election official. Your absentee ballot application will be valid until December 31st of this year. Submit a new application each year in which you wish to vote.

The best application to use is the [Federal Post Card Application \(FPCA\)](#), which is an application designed by the federal government specifically for military and overseas voters.

Like other absentee voters, you also have the option of using the [Massachusetts Absentee Ballot Application](#) or any other written request for an absentee ballot.

Applications may be submitted by mail, e-mail, or fax. Your local election official must be able to view your hand-written signature. For e-mailed applications, you must submit a scan or other image of your application.

Voting

You will receive the same ballot as all other Massachusetts voters.

For federal elections, you can choose to receive your ballot by e-mail, fax, or mail. There is a space on the FPCA in which you can indicate how you would like to receive your ballot.

For federal elections, you may choose to return your ballot by mail, fax, or e-mail.

For city and town elections, you will receive your ballot by mail. If you do not receive your ballot in time, you have the option of submitting a [Federal Write-in Absentee Ballot \(FWAB\)](#) by e-mail or fax.

Below is a table of deadlines for returning your ballot. Deadlines differ depending on the type of election and how you return it. All deadlines are Eastern Time.

Election Type	Mailed Inside USA	Mailed Outside USA	E-mailed/ Faxed
State/Federal	8 p.m.	Postmarked: Election Day Received: 5 p.m., the 10th day after Election Day	8 p.m.
City	Close of polls	Postmarked: Election Day Received: 5 p.m., the 10th day after Election Day	Close of polls
Town	Close of polls	Close of polls	Close of polls

Federal Write-in Absentee Ballot

The [Federal Write-in Absentee Ballot \(FWAB\)](#) is a ballot of last resort. If you were not able to apply or receive your ballot in time, you may submit a FWAB.

The FWAB is a blank ballot, which you may use to vote for any candidates or ballot questions.

You may use a FWAB for any election, whether or not you have applied for a ballot. A FWAB may be submitted by e-mail or fax.

Resources

The Federal Voting Assistance Program (FVAP) is a federal agency which exists to help military and overseas citizens exercise their voting rights. Visit www.FVAP.gov for information and forms, including the Federal Post Card Application and the Federal Write-in Absentee Ballot.

William Francis Galvin, Secretary of the Commonwealth of Massachusetts

[Terms and Conditions](#)

[Accessibility Statement](#)