

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJC-12931

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

Petitioners,

v.

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

Respondent.

JOINT STATEMENT OF FACTS

Petitioners Robert Goldstein, Kevin O’Connor, and Melissa Bower Smith, as well as Defendant William F. Galvin, in his official capacity as Secretary of the Commonwealth, (the “Secretary” and, together with Petitioners, the “Parties”) hereby submit this Joint Statement of Facts, pursuant to the April 9, 2020, Reservation and Report Order entered in the single justice session. The Parties agree that the following facts are undisputed for purposes of this litigation. A party’s agreement that a particular fact is undisputed does not constitute an agreement that the fact is necessarily relevant to the matter being litigated:

AGREED FACTS

I. The Process by Which Candidates Submit Nominating Papers to Appear on the September Ballot

A. Deadlines Leading up to the Deadline to File Nominating Papers with the Secretary's Office.

1. General Laws chapter 53, §§ 10 and 48, establish the deadlines for candidates who wish to appear on the state primary ballot to file nomination papers with the Secretary's office. For district and county offices, the deadline to file nomination papers is the last Tuesday in May, which this year will be on May 26, 2020. G.L. c. 53, §§ 10, 48. For party candidates for statewide and federal office the deadline to file nomination papers is the first Tuesday in June, which this year will be on June 2, 2020. G.L. c. 53, § 48. For non-party candidates for statewide and federal office, the deadline to file nomination papers is the last Tuesday in August, which this year will be on August 25, 2020. G.L. c. 53, § 10.

2. Chapter 53 also sets forth other deadlines that are calculated in relation to a candidate's deadline to file nomination papers with the Secretary's office. For ease of comprehension, the parties provide the following table summarizing the relevant deadlines and the dates on which they fall this year.

	Deadline for Party and Non-Party Candidates for District and County Offices in 2020	Deadline for Party Candidates for Federal and Statewide Offices in 2020	Deadline for Non-Party Candidates for Federal and Statewide Offices in 2020¹	Statutory Authority
Nomination papers become available on the 15 th Tuesday before the deadline to file with the Secretary.	February 11, 2020	February 11, 2020	February 11, 2020	G.L. c. 53, § 47
The deadline for candidates to enroll in or unenroll from a political party is 90 days before deadline to file with the Secretary.	February 25, 2020	March 3, 2020	March 3, 2020	G.L. c. 53, §§ 6, 48
The deadline for candidates to submit nomination papers to local election officials is 28 days before the deadline to file with the Secretary.	April 28, 2020	May 5, 2020	July 28, 2020	G.L. c. 53, §§ 7, 46
The deadline for local election officials to complete certification of all signatures	May 19, 2020	May 26, 2020	August 18, 2020	G.L. c. 53, §§ 7, 46

¹ None of the plaintiffs in this action are seeking to be placed on the ballot as non-party candidates for federal or statewide offices. The parties have provided these deadlines in order to provide the Court with a complete picture of the deadlines that may apply to candidates seeking public office in Massachusetts in 2020.

submitted is 7 days before the deadline to file with the Secretary.				
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B. The Process by Which Local Election Officials Certify Signatures.

3. General Laws chapter 53, § 7, requires a voter signing nomination papers to “sign in person as registered or substantially as registered,” unless the voter has a disability that prevents him or her from being able to sign, in which case the voter may authorize another person to sign in the voter’s presence. *Id.*

4. Candidates must submit the signatures they have gathered in support of their nomination to the local election officials of the cities or towns where the voters are registered. G.L. c. 53, §§ 7, 46.

5. Local election officials have 21 days between the deadline for candidates to submit signatures to local election offices and the deadline for local election officials to complete certification of all signatures. G.L. c. 53, §§ 7, 46.

6. Local election officials must check every signature submitted to determine whether the voter who signed is currently registered to vote in the city, town, or district for which the candidate seeks office. G.L. c. 53, §§ 7, 46. Local election officials must also check to ensure that the voter is not enrolled in any political party other than the one for which the candidate seeks nomination and that they have not already been certified as signing for the same candidate. G.L. c. 53, § 46.

7. For any signature certified, local election officials must place a check mark to the left of the voter’s name. 950 C.M.R. § 55.02(2). For any signature not certified, local election officials must place a symbol to the left of the voter’s name

indicating why that name was not certified. G.L. c. 53, §§ 7, 46. The Secretary's office determines the symbols that the local election officials are to use. G.L. c. 53, § 7; 950 C.M.R. §§ 55.02(2), 55.03(1).

8. Candidates often submit more than the minimum number of certified signatures to the registrars for their review. Local election officials must continue reviewing all signatures that were timely submitted until the election officials have certified the "number of names that are required to make a nomination, increased by two fifths thereof." G.L. c. 53, § 7.

C. The Process for Withdrawals and Objections to Signatures.

9. General Laws chapters 53 and 55B set forth processes whereby candidates may withdraw their nominations or request review by local registrars or the State Ballot Law Commission ("SBLC") of any signatures that were not certified.

	Deadline for Party and Non-Party Candidates for District and County Offices in 2020	Deadline for Party Candidates for Federal and Statewide Offices in 2020	Deadline for Non-Party Candidates for Federal and Statewide Offices in 2020	Statutory Authority
The deadline for candidates to request review by local election officials of non-certified signatures is 48 hours after the certification deadline.	May 21, 2020	May 28, 2020	August 20, 2020	G.L. c. 55B, § 6
The deadline for local election officials to complete review	May 22, 2020	June 1, 2020	August 24, 2020	G.L. c. 55B, § 6

under G.L. c. 55B, § 6, is 24 hours before the deadline for the candidate to file with the Secretary.				
The deadline to file withdrawals of nomination papers is 72 hours after the deadline to file with the Secretary.	May 29, 2020	June 5, 2020	August 28, 2020	G.L. c. 53, § 53A; G.L. c. 55B, § 5
The deadline to file objections to nomination papers with the State Ballot Law Commission is 72 hours after the filing deadline.	May 29, 2020	June 5, 2020	August 28, 2020	G.L. c. 55B, § 5
The deadline to fill vacancies caused by withdrawals is 72 weekday hours after the deadline to file withdrawals.	June 3, 2020	June 10, 2020	September 2, 2020	G.L. c. 53, § 14
State Ballot Law Commission hearings shall not be heard prior to the second Monday after the Friday deadline to file objections.	June 8, 2020	June 15, 2020	September 8, 2020	G.L. c. 55B, § 9
The deadline for the SBLC to render decisions on any objections is the 21 st day after the deadline to file objections	June 19, 2020	June 26, 2020	September 18, 2020	G.L. c. 55B, § 10

10. Voters registered in the district for which a candidate seeks a nomination may also file objections to certified signatures with the SBLC. G.L. c. 55B, § 5.

II. The COVID-19 Emergency in Massachusetts

11. Measures imposed by the government to limit the spread of the novel coronavirus that causes the COVID-19 disease have, since their introduction, limited opportunities for large numbers of people to congregate in Massachusetts.

12. In order to comply with the COVID-19 response measures and limit potential exposure to the virus, many individuals in Massachusetts are practicing “social distancing” and limiting interactions with other members of the public to the greatest extent reasonably possible.

13. While scientific understanding of the virus’s transmission continues to evolve, public health officials have cautioned that the virus can spread from person to person via respiratory droplets produced when an infected person coughs or sneezes, though exposure may also occur by coming into contact with the virus by touching contaminated surfaces.

14. There is scientific evidence that the virus can exist on hard surfaces for hours while retaining its ability to infect humans.

15. In Massachusetts, active civic and governmental efforts to contain the spread of the coronavirus and COVID-19 infection commenced in mid-March, and accelerated quickly thereafter.

16. On March 10, 2020, Massachusetts Governor Charles D. Baker Jr. declared a state of emergency in Massachusetts due to the spread of COVID-19, “a contagious, and at times fatal, respiratory disease.”

17. On March 11, the Boston Public Health Commission and Boston Public Schools announced that three campuses of the Eliot K-8 School would close until March 19.

18. On March 13, Boston Public Schools announced the closure of all schools from March 17 until April 27, and the City of Boston announced that the Boston Marathon would be postponed from April 20 to September 14.

19. On March 15, the Governor announced that all Massachusetts public and private primary and secondary schools would be closed from March 17 until April 6, and later extended the closure until May 4.

20. Also on March 15, the Governor issued an emergency order limiting gatherings to twenty-five people and prohibiting on-premises consumption of food or drink at bars and restaurants.

21. On March 23, the limitation on gatherings was expanded to preclude gatherings of ten or more people in any confined indoor or outdoor space, and the Commonwealth ordered the closure of the physical workplaces and facilities of all organizations and businesses that do not provide “COVID-19 Essential Services.” These requirements remain in effect until May 4. The Governor’s March 23 Executive Order stated that the restrictions being imposed were “in order to minimize all unnecessary activities outside of the home during the state of the emergency.” The Governor separately promulgated an “Essential Services List” designating which business and organizations provide services deemed “essential” during the COVID-19 emergency.

22. Campaigns for elected office have not been identified by the Governor as providers of “essential services,” pursuant to his executive orders.

23. On March 23, 2020, at the direction of the Governor, the Massachusetts Department of Public Health (“DPH”) issued guidance implementing the terms of the Governor’s March 23 Executive Order (“DPH Guidance”). The DPH Guidance was renewed and restated on March 31, 2020, with its terms being extended until May 4, 2020. The DPH Guidance stated a number of exceptions to the prohibition on gatherings of over 10 people, but such exceptions did not encompass the operations of political campaigns. The DPH Guidance stated that “all persons are urged to maintain social distancing (six feet away from other people) whenever possible”. On March 24, at the direction of the Governor, the DPH issued a “Stay-at-Home Advisory,” advising individuals to only leave their homes for essential errands or “for focused time for exercise and fresh air”, and to stay at least six feet away from others. This advisory remains in effect through May 4. The Advisory asks that residents only “leave home for essential errands such as going to the grocery store or pharmacy,” and that when residents “do leave home,” that they “practice social distancing by staying 6 feet away from others.” According to the Advisory: “You can still go outside to get fresh air, but make sure you practice social distancing and avoid touching surfaces frequently touched by others. Don’t participate in close contact activities such as pick-up sports games.”

24. On April 5, Boston Mayor Martin J. Walsh issued new guidance encouraging residents to take efforts to cover their mouth and nose each time they leave their residence.

25. Beginning April 6 and continuing through May 4, the Boston Public Health Commission has advised individuals in Boston to stay in their homes between the hours of 9 P.M. and 6 A.M. unless they are providing or receiving COVID-19 Essential Services.

26. In prior years, party candidates for elected office had eleven to twelve weeks during which to collect signatures.

27. This year, there was a period of four weeks between the date when nomination papers became available (February 11) and the Governor's state of emergency declaration (March 10); there was a period of 33 days between February 11 and the date of the Governor's Executive Order on March 15th (limiting assemblies to 25 people); and 41 days between February 11 and the date of the Governor's Executive Order on March 23 (limiting assemblies to 10 people and closing physical offices of non-essential businesses and organizations).

28. Massachusetts political campaigns have not been designated as providers of "essential services." Thus, in order to comply with the Governor's executive orders, they are required to close any physical workplaces and facilities they may have established ("brick-and-mortar premises"), and to comply with the prohibition against gatherings of more than 10 people in any confined indoor or outdoor space.

III. Collecting Signatures in Massachusetts

29. Often, gathering signatures on nomination papers entails frequent in-person interactions, often in public spaces or in areas where large numbers of people congregate.

IV. Petitioners

30. Petitioners are candidates for elected office in Massachusetts.

31. Petitioner Robert Goldstein is a candidate for United States Congress in Massachusetts' Eighth Congressional District, seeking the Democratic Party's nomination.

32. The deadline for Goldstein to file his nomination papers with the Secretary's office June 2, 2020. G.L. c. 53, § 48.

33. The deadline for Goldstein to submit collected signatures to municipal registrars for certification is May 5, 2020. G.L. c. 53, § 46.

34. To be nominated as a party candidate for the office of United States Congress in Massachusetts' Eighth Congressional District, Goldstein must include 2,000 certified signatures of registered voters on his nomination papers. G.L. c. 53, § 44.

35. Petitioner Kevin O'Connor is a candidate for the United States Senate, seeking the Republican Party's nomination.

36. The deadline for O'Connor to file his nomination papers with the Secretary's office June 2, 2020. G.L. c. 53, § 48.

37. The deadline for O'Connor to submit collected signatures to municipal registrars for certification is May 5, 2020. G.L. c. 53, § 46.

38. To be nominated as a party candidate for the office of United States Senator from Massachusetts, O'Connor must include 10,000 certified signatures of registered voters on his nomination papers. G.L. c. 53, § 44.

39. Petitioner Melissa Bower Smith is a Democratic candidate for State Representative in Massachusetts' Fourth Norfolk District.

40. The deadline for Smith to file her nomination papers with the Secretary's office is May 26, 2020. G.L. c. 53, § 10.

41. The deadline for Smith to submit collected signatures to municipal registrars for certification is April 28, 2020. G.L. c. 53, § 46.

42. To be nominated as a party candidate for the office of State Representative in Massachusetts' Fourth Norfolk District, Smith must include 150 certified signatures of registered voters on her nomination papers. G.L. c. 53, § 44.

IV. Other Candidates' Experiences Collecting Signatures

43. An article published in the Boston Globe on April 7, 2020, stated that incumbent United States Senator Edward Markey's reelection campaign currently has collected only about 7,000 signatures, of the 10,000 certified signatures of Democratic or unenrolled voters it needs to achieve ballot access. McGrane, Ed Markey falling short of signatures ahead of May deadline, Boston Globe (Apr. 7, 2020). The article attributed that statement to Senator Markey's campaign manager. Id.

V. The Secretary's Response to the COVID-19 Emergency

44. The Secretary maintains a "COVID-19 Elections Updates" webpage conveying updated to various state election laws precipitated by the COVID-19 crisis. This website is available at: <https://www.sec.state.ma.us/ele/covid-19/covid-19.htm>. As of filing, under the subheading "Candidate Nominating Papers," that page currently conveys the following information:

As the deadlines and requirements for ballot access are set by state law, nomination paper deadlines and signature requirements cannot be waived without an act of the Legislature or a court order.

Candidates and volunteers should take appropriate precautions as they continue to gather signatures. If you are interacting with voters, be sure

to have hand sanitizer or disinfectant wipes available and wash your hands frequently. If possible, consider providing signers with fresh pens and sheets of paper. Try to use a nearby flat surface so that signers can avoid handling a clipboard that you have been touching.

If you need additional nomination papers because you are mailing papers to voters or because you are trying to limit the number of signers touching pages, contact the Elections Division. You may also make exact copies of blank nomination papers you already have. Be sure to have copies printed back-to-front on legal-sized paper. If you are mailing papers, make sure the gray areas of the papers are completed before they are mailed to voters.

Because many city and town halls are currently closed to the public, we are encouraging candidates to submit nomination papers to their local election offices by mail. If you are mailing nomination papers, we recommend the use of some tracking service, in case they are misdelivered. 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! (PDF)

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.

Any changes to the laws regarding nomination paper deadlines or ballot access requirements will be posted here.

PETITIONERS' PROPOSED ADDITIONAL FACTS AS TO WHICH THE SECRETARY DOES NOT AGREE

I. Collecting Signatures in Massachusetts

1. According to the sworn affidavit submitted in connection with the Apr. 8, 2020, Emergency Petition for Relief (the "Petition"), Petitioner Robert Goldstein stated that "the process of gathering signatures requires engaging in many short face-

to-face conversations, handing over a clipboard with a pen to secure the voters' signature, and shaking hands with each person." Goldstein Aff.

2. Petitioner Kevin O'Connor stated in his affidavit that, in his experience, "the process of gathering signatures usually involves a meaningful conversation between the person gathering the signatures and the person asked to sign." Petitioner O'Connor stated that, "[q]uite understandably, most people are careful about giving their signature to an unfamiliar person. The petition gatherer usually needs to introduce themselves to each potential signer, identify the candidate, and explain the purpose and potential use of the signature petition. Some people will sign without asking for more information, but many people want to discuss issues of importance to them or hear more information about the campaign. Once a voter agrees to sign, the petitioner typically passes the voter a clipboard and a pen, which the voter uses to complete the nomination paper." O'Connor Aff.

IV. Petitioners Experiences Collecting Signatures

A. Petitioner Robert Goldstein

3. Petitioner Goldstein and his campaign have not yet been able to collect a quantity of signatures adequate to ensure that his nomination papers include at least the minimum number of certified signatures. Goldstein Aff.

4. Petitioner Goldstein and his campaign had committed significant resources to the in-person collection of signatures and canvassing, focusing their efforts on venues where large numbers of registered voters would congregate, such as local Democratic town committee meetings, public transportation hubs, caucuses, house parties, grocery store parking lots, and polling locations on Super Tuesday. Goldstein Aff.

5. According to Petitioner Goldstein's affidavit, since the imposition of social-distancing measures, his campaign has reoriented its collection strategy to focus on remote efforts to gather signatures. This new strategy includes a plan to invest significant resources in a mailing operation. His campaign is poised to commence on a mass mailing effort, whereby they will send blank nomination forms alongside self-addressed, postage-paid envelopes and campaign literature to Democrats throughout the Eighth Congressional District. Petitioner Goldstein's campaign is also identifying potential nomination signatories through a web form. This has required dedicating staff time to create a functioning website through which people can sign up. Goldstein Aff.

6. Petitioner Goldstein expects that, even with an investment of significant time and money, these activities will yield a fraction of the signatures collected by earlier in-person attempts. Goldstein Aff.

7. Petitioner Goldstein asserts that the remote signature collections efforts now consume more time and money than any other campaign activity that he, or his campaign team, is engaged in. Goldstein Aff.

8. According to his affidavit, Petitioner Goldstein's best estimate is that in order to fund a mailing operation of sufficient scope to capture the signatures he requires, his campaign will spend several thousand dollars, not accounting for lost staff time. Goldstein Aff.

9. As of April 14, 2020, Petitioner Goldstein and his campaign have collected approximately 1,064 signatures.

B. Petitioner Kevin O'Connor

10. To date, Petitioner O'Connor's campaign has spent well over ten thousand dollars on a remote signature collection operation. Despite this outlay,

Petitioner O'Connor acknowledges that a failure to collect sufficient signatures may prevent him from reaching the ballot. O'Connor Aff.

11. Petitioner O'Connor and his campaign engaged in an in-person collection and canvassing process aided by volunteers. O'Connor Aff.

12. Petitioner O'Connor and his campaign engaged in concerted collection efforts outside of various retail establishments and public facilities, including supermarkets, restaurants, convenience stores, public parks, municipal dumps, and town halls. O'Connor's campaign had volunteer signature gatherers outside of polling places during the March 3, 2020 "Super Tuesday" primary. In addition, O'Connor's campaign volunteers conducted "signing parties" in homes and went door-to-door to collect signatures from neighbors. O'Connor Aff.

13. Since the government prohibited group gatherings and mandated social isolation, Petitioner O'Connor campaign has suspended all in-person campaign activity, including the collection of signatures. O'Connor Aff.

14. Petitioner O'Connor's campaign is making best efforts and investing substantial resources in alternative methods to collect signatures, including by commencing a mass-mailing operation to reach tens of thousands of voters, establishing virtual phone banks through which volunteers are able to call individuals from home and encourage voters to mail in signed nomination papers, following up every mailing with a phone call for each addressee, and asking voters through social media and traditional media to sign up online to receive a pre-paid envelope with nomination papers. O'Connor Aff.

15. In his affidavit, Petitioner O'Connor states that:

- a. In mid-March, he learned that his 86-year-old father had contracted COVID-19.
- b. O'Connor's father was eventually hospitalized for nine days due to the virus.
- c. O'Connor's father has been released from the hospital and is now recovering at home.
- d. O'Connor's 82-year-old mother, who lives with his father, and had gathered signatures for O'Connor in February and March, is now confined to her home and caring for O'Connor father. O'Connor Aff.

16. As of April 14, 2020, Petitioner O'Connor and his campaign have collected approximately 5,300 signatures.

C. Petitioner Melissa Bower Smith

17. Petitioner Melissa Bower Smith is a Democratic candidate for State Representative in Massachusetts' Fourth Norfolk District. Smith Aff.

18. Under state law, Petitioner Smith is required to submit nomination papers accompanied by at least 150 certified signatures to the Secretary on May 26, 2020, which requires her to submit a larger quantity of collected signatures to local election officials by April 28, 2020. Smith Aff.

19. Petitioner Smith was familiar with signature collection requirements by virtue of her prior participation in other political campaigns, and viewed the task of collecting 150 certifiable signatures as a relatively modest and achievable one. However, the rapid onset of the COVID-19 pandemic, accompanied by strict

government-ordered social distancing measures, has presented serious and unforeseen challenges to Petitioner Smith's signature collection efforts. Smith Aff.

20. Petitioner Smith is currently recovering from an acute respiratory illness that places her at higher risk of developing severe symptoms should she contract COVID-19, and also made it difficult for to go door-to-door seeking signatures in the cold weather in February and early March. Smith Aff.

21. According to Petitioner Smith's affidavit, partly as a result her physical limitations, Petitioner Smith's campaign made the strategic decision to defer its in-person push for signatures until late March and April, when the weather would be warmer. Petitioner Smith's campaign decided to focus its efforts in February and early March on other campaign activities, such as engaging volunteers in postcarding campaigns, planning springtime events, and participating in community-led voter turn out initiatives, school district budgeting, and environmental conservation efforts. Smith Aff.

22. Petitioner Smith and her campaign did conduct some signature collection during the first few weeks after nomination papers became available on February 11. Petitioner Smith attended democratic caucuses, connected with community members at local grocery stores, and handed out blank nomination papers to be signed by her friends and acquaintances. Smith Aff.

23. Although Petitioner Smith's campaign had initially delayed signature-gathering until warmer months due to my health precautions, she is now at a higher risk of experiencing complications related to COVID-19 due to her recent respiratory illness. Therefore, instead of collecting signatures through the traditional means of

attending events where large numbers of registered voters would likely be present, Petitioner Smith and her campaign have been attempting to collect signatures remotely through a combination of volunteer phone banks and postage-paid mailings. Smith Aff.

24. Petitioner Smith states that these alternative efforts carry an associated financial cost and divert volunteer efforts from other important aspects of the campaign. Volunteers must spend time phone banking, preparing mailing packets, and traveling to and from the post office. The campaign must pay to send nomination papers with pre-paid first-class return postage, only some of which are likely to be returned in time for the deadline. Smith Aff.

25. Petitioner Smith states that these alternative methods are consuming scarce campaign resources, and Petitioner Smith is uncertain as to whether she will be able to collect enough signatures before the relevant deadlines to qualify for the ballot. Smith Aff.

26. As of April 14, 2020, Petitioner Smith and her campaign have collected approximately 110 signatures.

IV. Other Candidates' Experiences Collecting Signatures

27. An article published through the State House News Service on April 9, 2020, at 12:38 P.M. stated that State Senate President Karen Spilka had not yet collected the 300 certified signatures she would need to appear on the primary ballot. Lannan, Spilka Still Seeking "Consensus" To Address Ballot Access Concerns, State House News Service (Apr. 9, 2020). According to the article, Senate President Spilka's "supporters have been leaving nomination papers on their porches and using social media to encourage others to come sign them, while taking health precautions." Id.

V. Petitioners Experiences Submitting Signatures for Certification

28. As a result of emergency measures introduced in response to COVID-19, many local election officials are maintaining irregular work hours and/or accepting signatures for verification via mail.

29. Petitioner Goldstein's campaign manager, Christina Knowles, conducted a survey of the twenty-four town and city clerk's offices within the Eighth Congressional District. Knowles Aff.

30. According to that survey, to which twenty-one offices responded, nearly all offices have been affected by the COVID-19 response measures. None of the officers are conducting normal operations during normal business hours. Some offices are closed, others are operating at limited capacity. All of the offices which responded to Knowles accept signatures by mail. Some prefer to receive signatures by mail, and several accept physical drop-offs of collected signatures. Knowles Aff.

31. Petitioner Goldstein's campaign, acting on advice received from the Secretary's office, resolved to mail all of its collected signature to local officials. Knowles Aff.

32. The process of mailing in collected signatures caused Knowles to recently make four different trips to post offices and stationery stores in order to secure the stamps, envelopes, and paper copies needed to mail nomination papers for voters to sign, which they then must send to the town clerks. Knowles Aff.

33. According to Knowles' affidavit, this year's process for submitting signatures is far more cumbersome and unresponsive than in previous years. Typically, campaigns will receive much quicker feedback on what percentage of collected signatures have been certified by local officials. As a result of COVID-19, Knowles

states that it has been harder to engage with municipal election officials in a real-time exchange of information regarding the yield of a given batch of collected signatures, and more difficult to ascertain the magnitude of signatures that their campaign has collected. Further, since many clerks are working from home or keeping irregular hours, Knowles states that she is uncertain as to how rapidly the clerks have been able to verify and tabulate the signatures they have submitted. Knowles Aff.

**SECRETARY’S PROPOSED ADDITIONAL FACTS AS TO WHICH THE
PETITIONERS DO NOT AGREE**

I. The Process by Which Candidates Submit Nominating Papers to Appear on the September Ballot.

A. Obtaining Nomination Papers

1. The Secretary’s office provides a calendar of relevant deadlines and a booklet with instructions to all candidates when they obtain their nomination papers. Affidavit of Michelle Tassinari (“Tassinari Affidavit”).

B. The Process by Which Local Election Officials Certify Signatures.

2. Local election officials perform signature checks using the Voter Registration Information System (“VRIS”), a statewide, electronic database of registered voters. Tassinari Affidavit.

3. VRIS is a closed system: it is not connected to the internet. Tassinari Affidavit.

4. Access to VRIS is limited to computers that the Secretary’s office provides to local election officials. Tassinari Affidavit. These computers are connected to the VRIS database through a hardwired system. *Id.* There is no way to access these computers or the database remotely. *Id.*

5. Thus, local election officials must manually check each name submitted on a candidate's nominating papers against the voter registration records maintained in the VRIS. Tassinari Affidavit.

6. VRIS tracks the total number of names that have been certified in support of each candidate's nomination. Tassinari Affidavit; 950 C.M.R. § 55.04(4).

7. Every city and town in Massachusetts has a local chief election official. Tassinari Affidavit. These officials have varying professional backgrounds; many also perform other local administrative duties, including keeping vital records. *Id.*

8. The Secretary's office provides technical support and training to local election officials on how to perform their duties, including how to check the signatures on nominating papers and how to use the VRIS database. Tassinari Affidavit.

9. Creating and implementing an electronic process for the submission of signatures to be checked by the registrars would require training all local election officials to use this process. Tassinari Affidavit.

C. The Process for Withdrawals and Objections to Signatures.

10. Common objections to signatures include that a signature was forged or fraudulent, or that a voter was not in fact registered to vote in the district for which the candidate seeks nomination. *See* Tassinari Affidavit; G.L. c. 55B, § 5.

D. The Process for Producing Ballots.

11. The 2020 September primary includes district, county and federal races, in which candidates seek the nomination of one of four political parties in the general election in November. Tassinari Affidavit. Due to overlapping districts for congressional, Governor’s Council, county, and state Legislature races, each political party requires 550 different ballot styles. *Id.* This creates a total of 2,200 unique ballot styles that the Secretary’s office must prepare for the primary. *Id.*

12. All of the ballots must be proofread, and some must be translated into other languages, before they are ready for distribution to local election officials. Tassinari Affidavit.

13. Once the ballots are prepared and printed, they must be distributed to the appropriate local election official for use in the election. Tassinari Affidavit.

14. It takes approximately three weeks between the time that the Secretary finalizes the ballot contents to when the preparation is complete and the ballots are provided to the local election officials. Tassinari Affidavit.

E. The Deadline for Local Election Officials to Receive the Ballots

15. Once local election officials receive the ballots, they may begin transmitting the ballots to absentee voters. Tassinari Affidavit.

16. In 1986, Congress enacted the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) to consolidate and improve laws that allow military servicemembers and other overseas U.S. citizens (“UOCAVA voters”) to vote. *See* Pub. L. No. 99-410, 100 Stat. 924.

17. In 2009, Congress enacted the Military and Overseas Voter Empowerment (“MOVE”) Act, which requires that states transmit ballots to UOCAVA voters at least 45 days before any federal election. *See* Pub. L. No. 111-84, § 579, codified at 52 U.S.C. § 20302(a)(8)(A).

18. The September primary includes federal races. Tassinari Affidavit.

19. The September primary will be held on September 1, 2020. Tassinari Affidavit.

20. Therefore, for the September 2020 primary, the MOVE Act requires that local election officials transmit ballots to UOCAVA voters no later than July 18, 2020.

II. Electronic Signatures

A. Lack of Definition of Phrase “Electronic Signatures”

21. The Commonwealth’s election laws, General Laws Chapters 50-57, contain no definition of the term “electronic signatures.”

22. The term “electronic signatures,” as used in the Court’s April 9, 2020, Reservation and Report, could mean a variety of different things: scanned, electronic copies of documents signed by hand; electronic images of signatures dropped or pasted into electronic documents; images of signatures created using software such as DocuSign or by electronically signing with a finger, stylus, or mouse; or typed names on electronic forms. Tassinari Affidavit.

B. Concerns Regarding Proposals that Would Authorize Typed Signatures

23. A large portion of the challenges the SBLC receives to certified signatures raise concerns regarding allegedly forged or fraudulent signatures. Tassinari Affidavit. For example, since 2008, the SBLC has received 20 total objections related to party and non-party candidates for district and county office and to party candidates for federal office. Of these objections, 11 were challenges that signatures collected in support of nominations were forged or fraudulent. Tassinari Affidavit.

24. If voters are permitted to sign nomination papers by typing their name into a form, rather than signing by hand, it would be difficult for someone to challenge the signature as fraudulent or forged, and likewise for the SBLC to adjudicate claims of fraud or forgery. Tassinari Affidavit. This could generate additional disputes before the SBLC, possibly leading to further litigation. Tassinari Affidavit.

C. Concerns Regarding Proposals That Would Authorize Submission of Electronic Documents to Local Election Officials

25. Local election officials throughout the Commonwealth have varying technological capabilities, depending on factors such as the size of the municipalities they serve and the geographic area in which they are located. Tassinari Affidavit.

26. Local election officials would have to use their municipal email accounts in order to accept emails with electronic copies of signatures attached. Tassinari Affidavit. Municipal email systems may vary in terms of the size of attachments they can accept, the systems they use for cybersecurity, and their level of expertise in maintaining cybersecurity. *Id.*

27. Some local election officials, particularly in Western Massachusetts, may have slower internet speeds due to limited broadband access in the area. Tassinari Affidavit.

28. Advising local elections officials to open attachments from campaigns may make municipal offices vulnerable to malicious software such as viruses or ransomware attacks. Tassinari Affidavit.

29. Law enforcement agencies such as the Department of Homeland Security (“DHS”) Cybersecurity and Infrastructure Security Agency (CISA) and the U.S. Treasury Financial Crimes Enforcement Network (“FinCEN”) have advised state and local government officials to be wary of opening unsolicited email attachments, even from known senders. Tassinari Affidavit. For example, FinCEN issued an advisory in July 2019 that specifically warned government entities about their vulnerability to schemes that compromise email systems used to do business. *Id.* CISA has also issued warnings regarding the increased threat of cyberattacks such as phishing during the current pandemic. *Id.*

30. DHS has also designated the infrastructure used to implement United States elections as “critical,” recognizing that “its incapacitation or destruction would have a devastating effect on the country.” Tassinari Affidavit.

31. The extent to which there may be unique technological impediments or security risks associated with requiring local election officials to open email attachments in order to process nomination signatures has not been studied. Tassinari Affidavit.

32. Local election officials process signatures on nomination papers in hard copy. Tassinari Affidavit; 950 C.M.R. § 55.02. Local election officials' offices may lack resources, such as staff time and paper, to sort through and print large quantities of emailed signatures. Tassinari Affidavit.

D. New Jersey's Experience

33. The Secretary's office is familiar with one state, New Jersey, where the Governor has issued an executive order that allowed campaigns for party candidates to submit nomination signatures "electronically" in light of the current public health emergency. Tassinari Affidavit; New Jersey Executive Order No. 105, ¶¶ 1-3; [New Jersey Division of Elections Candidate Information](#).

34. The New Jersey executive order permits candidates to submit petitions containing nomination signatures electronically. New Jersey EO, ¶ 1. Pursuant to the order, the New Jersey Division of Elections permits candidates to submit forms on which the image of a signature appears; the image may be created by signing in hard copy and scanning, copying from an existing scanned signature, or by the voter creating a digital "handwritten" signature using software such as DocuSign or using their finger, stylus, or mouse. Tassinari Affidavit. New Jersey does not accept nomination papers containing just the typed name of a voter. Tassinari Affidavit.

35. In New Jersey, nomination papers are filed only with county election officials (for district or county offices) or state election officials (for statewide offices). Tassinari Affidavit.

36. New Jersey does not have a certification process for voter signatures, but instead requires a witness to the signature. Tassinari Affidavit. Due to the current pandemic, New Jersey has deemed it sufficient for the witness to be the individual who distributes the nomination papers to the voter by email and receives back the electronically signed copy. Tassinari Affidavit

37. Since the implementation of the executive order, election officials in New Jersey have reported problems with receiving files that exceed the maximum file size each county is capable of receiving. Tassinari Affidavit. In addition, some candidates have submitted files via a link to an online storage site such as Google Drive or Dropbox, rather than sending the pages as attachments. Tassinari Affidavit. When county officials would not click on the links to retrieve the papers, resulting in those candidates not being placed on the ballot, litigation has ensued. Tassinari Affidavit.

III. Candidates that Have Continued to Collect Signatures While Complying with Social Distancing Mandates

38. Recognizing that most or all in-person signature gathering is now impossible due to social distancing mandates, some candidates have devised creative approaches to gathering signatures. Tassinari Affidavit.

39. For example, the Secretary's office is aware of at least one candidate, State Representative Shawn Dooley, who placed blank signature pages on a table outside his house with boxes of clean pens. Tassinari Affidavit. Representative Dooley then posted on social media that the signature pages were available for supporters to stop by and sign, using a clean pen each time. *Id.* He

posted on social media the following day that he had received more than 200 signatures. *Id.*

40. The Secretary's office is aware of other candidates who also left signature pages in places accessible to the public and used social media to encourage registered voters to sign them.

41. Senator Markey's reelection campaign created an online form where registered voters could request a paper copy of Markey's nomination papers. After signing the papers, the voters returned the papers to Markey's campaign in a prepaid, preaddressed envelope that the campaign had provided. "Ed Markey falling short of signatures ahead of May deadline." *Boston Globe*, April 7, 2020.

42. Padraic Rafferty, a first-time candidate for Governor's Council in the 7th district, has qualified for the Democratic Primary ballot by filing 1,109 certified signatures and additional required paperwork with the Secretary's office. Tassinari Affidavit. In the Ninth Hampden Representative District, two first-time candidates, Denise Marie Hurst and Orlando Ramos, have qualified to appear on the Democratic Primary ballot, having filed over 150 certified signatures, a written acceptance, an enrollment certificate and a receipt from the State Ethics Commission showing they have filed a statement of financial interest with that agency. *Id.*

43. Padraic Rafferty, a first-time candidate for Governor's Council in the 7th district, has qualified for the Democratic Primary ballot by filing 1,109 certified signatures and additional required paperwork with the Secretary's office. Tassinari Affidavit. In the Ninth Hampden Representative District, two first-time candidates, Denise Marie Hurst and Orlando Ramos, have qualified to appear on the

Democratic Primary ballot, having filed over 150 certified signatures, a written acceptance, an enrollment certificate and a receipt from the State Ethics Commission showing they have filed a statement of financial interest with that agency. *Id.*

44. The Secretary's office provides blank nomination papers on paper that is eight and one-half inches by fourteen inches (legal size). Tassinari Affidavit; G.L. c. 53, § 17. Candidates may make exact photocopies or scanned images of the blank nomination papers, so long as they are no larger eight and one-half inches by fourteen inches. G.L. c. 53, § 17; *Robinson v. State Ballot Law Comm'n*, 432 Mass. 145, 151-52 (2000). In response to inquiries from candidates, the Secretary's office has advised that local election officials will accept photocopies of nomination of papers that are identical to the originals in all respects, except that the photocopies have been shrunk to fit on paper that is eight and one-half inches by eleven inches (letter size). Tassinari Affidavit.

IV. Facts Regarding the Plaintiffs Named in the Petition

45. The Secretary's office maintains records of which candidates have obtained or "pulled" nomination papers from the Secretary's office. Tassinari Affidavit.

46. Each of the plaintiffs named in the petition pulled their nominating papers on February 11, 2020, the first day that papers became available. Tassinari Affidavit.

47. The Secretary's office can determine how many signatures have been certified on behalf of each candidate by accessing that information in VRIS.

48. As of April 13, 2020, Robert Goldstein had 251 certified signatures in support of his nomination, according to VRIS data. Tassinari Affidavit.

49. As of April 13, 2020, Kevin O'Connor had 173 certified signatures in support of his nomination, according to VRIS data. Tassinari Affidavit.

50. As of April 13, 2020, Melissa Bower Smith had zero certified signatures in support of her nomination, according to VRIS data. Tassinari Affidavit.

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Dated: April 14, 2020

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2020, I filed with the Supreme Judicial Court and served the above document by email and through the Court's electronic filing system, on the following:

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