

COMMONWEALTH OF MASSACHUSETTS  
**The Supreme Judicial Court**

Suffolk, ss.

No. SJC-12979

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HELEN BRADY,  
*Petitioner/Appellant,*

v.

WILLIAM FRANCIS GALVIN, in his Official Capacity as  
Secretary of the Commonwealth of Massachusetts,  
the STATE BALLOT LAW COMMISSION,  
the MASSACHUSETTS DEMOCRATIC PARTY, and  
LEON ARTHUR BRATHWAITE, II,  
*Respondents/Appellees.*

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ON APPEAL FROM A DECISION OF THE STATE BALLOT LAW COMMISSION  
AND ON RESERVATION AND REPORT FROM THE SINGLE JUSTICE  
OF THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

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**BRIEF OF THE MASSACHUSETTS DEMOCRATIC PARTY  
AND LEON ARTHUR BRATHWAITE, II, APPELLEES/INTERVENERS**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES . . . . . 3

ISSUES PRESENTED . . . . . 4

STATEMENT OF THE CASE . . . . . 4

STATEMENT OF FACTS . . . . . 6

    1. The Nomination Paper Requirement  
        For Candidates . . . . . 6

    2. The *Goldstein* Decision . . . . . 9

    3. The Appellant’s Certified Signatures . . . . . 15

    4. The Present Petition . . . . . 17

    5. The State Ballot Law Commission  
        Proceedings . . . . . 18

ARGUMENT . . . . . 23

    I. The Appellant’s Procrastination,  
        Not Covid-19, Is Responsible for  
        her Predicament. . . . . 24

    II. The Commission’s Decision Does  
        Not Violate the Equal Protection  
        Clause of the 14h Amendment. . . . . 27

    III. There Is Evidence of an Alternative  
        Method of Electronic Signature  
        Gathering that Was Used and Would  
        Meet the *Goldstein* Standards. . . . . 30

    IV. The Appellant’s Electronic Signature  
        Gathering System Provided No  
        Effective Way to Download, Print,  
        Scan, and Return Nomination Papers. . . . . 31

CONCLUSION . . . . . 34

ADDENDUM . . . . . 36

**TABLE OF AUTHORITIES**

**Cases**

American Party of Texas v. White,  
415 U.S. 767, 94 S.Ct. 1296 (1974) . . . 24

Brackett v. Civil Service Commission,  
447 Mass. 223 (2012) . . . . . 27

Goldstein v. Secretary of the Commonwealth,  
484 Mass. 519 (2020) . . . . . passim

Libertarian Association of Massachusetts  
v. Secretary of Commonwealth,  
462 Mass. 538, 557 (2012) . . . . . 24

Sinn v. Board of Selectmen of Acton,  
357 Mass. 606 (1970) . . . . . 28

**Statutes**

G.L. c. 50, § 1 . . . . . 25

G.L. c. 214, § 1 . . . . . 4

G.L. c. 231A, § 1 . . . . . 4

**United States Constitution**

Fourteenth Amendment to the United States  
Constitution, art. I, § 10, of the  
United States Constitution . . . . . 27

**Addendum**

Advisory from William F. Galvin,  
Secretary of the Commonwealth  
Concerning The Collection of  
Signatures for the 2020 State  
Primary and General Elections . . . ADD1-ADD2

### **ISSUES PRESENTED**

1. Whether the Appellant is entitled to the extraordinary relief that she seeks, which would expand the process for obtaining voter signatures when seeking public office far in excess of what this Court allowed in Goldstein v. Secretary of the Commonwealth, 484 Mass. 519 (2020).
2. Whether the Appellant has demonstrated that the Decision of the State Ballot Law Commission in the matter titled Leon Arthur Brathwaite, II, SBLC 20-06 (June 26, 2020) was not based on substantial evidence and was incorrect as a matter of law.

### **STATEMENT OF THE CASE**

Petitioners Rayla Campbell, Caroline Colarusso, Julie Hall, and Helen Brady ("the Appellant") (together, "the Petitioners") commenced this action on May 5, 2020 when they filed an Emergency Petition for Relief Pursuant to G.L. c. 214, § 1 and G.L. c. 231A, § 1 against William Francis Galvin, in his Official Capacity as Secretary of the Commonwealth of Massachusetts ("the Secretary"). In their Petition,

the Petitioners sought various forms of relief related to their efforts to obtain enough certified signatures to qualify for the September primary ballot.

The Petition sought an order to the effect that the Petitioners, as a matter of equity and in the unique circumstances of COVID-19, deserved to be placed on the September primary ballot even if they did not meet the statutory signature requirements, as altered by the Supreme Judicial Court in Goldstein v. Secretary of the Commonwealth, 484 Mass. 516 (2020), because they had demonstrated the necessary measurable quantum of community support. In the alternative, the Petition proposed narrower relief, such as permission to file electronic records of signatures gathered electronically, in lieu of filing nomination papers in hard copy as is required, and, inter alia, continuing oversight by the Court in the preparation and application of standards by the Secretary for review and approval of electronic signatures obtained by the Petitioners.

At the same time as that matter was pending, the Appellant filed certified signatures with the Secretary to which Appellee Leon Arthur Brathwaite, II ("Mr. Brathwaite"), filed objections before the State

Ballot Law Commission ("the Commission"). The Single Justice eventually dismissed the other three Petitioners from the proceedings but stayed any decision regarding the Appellant until after the conclusion of the proceeding involving the Appellant before the Commission. The Commission eventually upheld the Objection and ordered the Secretary not to print the Appellant's name on the ballot.

The Appellant filed an appeal of the Commission's Decision in Superior Court, after which the Single Justice allowed the motion of Mr. Brathwaite and the Massachusetts Democratic Party to intervene in the proceedings, as well as Appellant's Motion to Consolidate that action with the Petition pending before the Single Justice. The Single Justice then reserved and reported the matter to the full Supreme Judicial Court.

#### **STATEMENT OF FACTS**

##### **1. The Nomination Paper Requirement for Candidates**

1. The Appellant is a candidate who seeks the Republican party nomination for the office of Representative in the U.S. Congress from the Ninth

Congressional District. (JA p. 173, JSAF ¶ 2)<sup>1</sup>

2. The Appellant initially filed the Petition with three other Republican candidates for the office of Representative in Congress - i.e., Rayla Campbell ("Campbell"), Caroline Colarusso ("Colarusso"), and Julie Hall ("Hall") (together, with the Appellant, "the Petitioners"). (JA p. 7, Emergency Petition for Relief)

3. Initially, prior to April 16, 2020, in order to appear on the September 2020 primary ballot, the Appellant was required to file nomination papers with the Secretary's office bearing the certified signatures of at least 2,000 voters registered as Republicans or unenrolled in the Ninth Congressional District. (JA p. 173, JSAF ¶ 3)

4. The process for obtaining and certifying the required number of signatures commenced when the Secretary furnished the nomination papers to candidates on February 11, 2020. (Goldstein, pp. 519-

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<sup>1</sup> The Joint Appendix will be cited herein as "(JA p. )". The Joint Statement of Agreed Facts will be cited herein as "(JSAF ¶ )".

520)<sup>2</sup>

5. The candidates, or others working on their behalf, were required to gather voter signatures on the nomination papers or on exact copies of such papers. (Goldstein, p. 520)

6. Voters were required to sign the nomination papers in person as registered or substantially as registered. The Secretary historically interpreted this combination of requirements, that the voter sign in person on the original nomination papers or on exact copies thereof, to mean that the signatures eventually submitted and filed must be original handwritten or "wet" signatures. (Goldstein, p. 520)

7. However, any voter who is prevented by physical disability from writing may authorize some person to write his or her name and residence in his or her presence. (Goldstein, p. 520)

8. The statutorily driven timeline that followed the issuance of the nomination papers from the Secretary had two major deadlines affecting the Appellant's effort to obtain access to the ballot.

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<sup>2</sup> References to statements of facts set forth in Goldstein v. Secretary of Commonwealth, 484 Mass. 516 (2020) will be cited herein as "Goldstein, p. )".



The first was the deadline by which the Appellant had to submit the nomination papers to local election officials for certification, which was 5:00 p.m. on May 5, 2020, to allow local election officials to check each signature. The second major deadline was that the Appellant had to submit her nomination papers with certified voter signatures to the Secretary by June 2, 2020. (Goldstein, p. 520)

## **2. The Goldstein Decision**

9. On March 10, 2020, Governor Baker declared a state of emergency throughout the Commonwealth in response to the spread of COVID-19, where he invoked his statutory authority to “from time to time issue recommendations, directives, and orders as circumstances may require.” (Goldstein, p. 522)

10. On March 15, 2020, the Governor issued orders closing all public and private elementary and secondary schools, prohibiting public and private gatherings of more than twenty-five people, and prohibiting the on-premises consumption of food and drink at restaurants, bars, and other food establishments. (Goldstein, p. 522)

11. Then, on March 23, 2020, the Governor issued another executive order, further limiting

public and private gatherings to no more than ten people and requiring all nonessential businesses to close their physical workplaces and facilities.

(Goldstein, p. 522)

12. At the Governor's direction, the Department of Public Health ("DPH") issued a Stay-at-Home Advisory the following day, declaring that it was "critically important" for everybody to "[o]nly leave home for essential errands such as going to the grocery store or pharmacy," and that, when people do leave home, to "practice social distancing by staying [six] feet away from others." (Goldstein, p. 522)

13. On April 10, DPH issued another advisory recommending that people wear face coverings or masks when social distancing was not possible. (Goldstein, pp. 522-523)

14. These restrictions on everyday life, which were imposed in an effort to mitigate the spread of the virus, which can occur at an alarming rate, remained in effect during the time period in which many candidates seeking public office were trying to obtain voter signatures. (Goldstein, p. 523)

15. On April 8, 2020, a group of candidates seeking to be placed on the ballot for the September

1, 2020 primary filed an emergency petition in the Supreme Judicial Court for Suffolk County seeking relief under G. L. c. 214, § 1, and G. L. c. 231A, § 1. They requested a declaration that, in light of the emergency circumstances arising from the COVID-19 pandemic, the minimum signature requirements to be listed on the ballot for a party's nomination posed an "unconstitutionally severe burden on the fundamental rights" of all Massachusetts would-be candidates. (Goldstein, pp. 516-517)

16. These petitioners sought, by means of this declaration, to eliminate the minimum signature requirements for the September 1, 2020 primary election. In the alternative, they asked for various forms of equitable relief, such as substantially reducing the number of required signatures of certified voters, extending the applicable filing deadlines, and permitting electronic signatures, as a means of remedying the constitutional violation. (Goldstein, p. 517)

17. A single justice of the Supreme Judicial Court reserved and reported the petition to the full Court, which, on April 16, 2020, issued its decision, Goldstein v. Secretary of the Commonwealth, 486 Mass.

516 (2020) ("the Goldstein Decision"). (Goldstein, p. 517)

18. The Goldstein Court ordered three forms of relief. First, the Court ordered that the number of required signatures be reduced by fifty percent (50%), so that a candidate for Congress, such as the Appellant, would only have to obtain 1,000 certified voter signatures. Second, the Court extended the deadlines for candidates running for State district and county offices to submit their nomination papers to local election officials for certification and for the filing of certified nomination papers with the Secretary. Third, subject to the restrictions outlined later in the Decision, the Court ordered the Secretary to allow the submission and filing of nomination papers with electronic rather than wet-ink original signatures. (Goldstein, pp. 517-518)

19. Regarding the plaintiffs' request that the Court order State officials to explore "less stringent strategies" for the collection and submission of signatures, such as through the electronic collection of signatures, the Court first noted that the parties had been asked to address the logistics of, and potential problems with, collecting

and verifying electronic signatures. Those submissions convinced the Court that there were too many issues and unanswered questions to allow the Court confidently to impose a remedy that would transform a nomination system that required wet signatures into one that permitted a broad range of electronic signatures, including a printed name. (Goldstein, p. 531)

20. The Court then noted the Secretary's suggestion of a modest means of including electronic signature collection among the Court's equitable remedies, which the plaintiffs and the Court both found to be attractive. Specifically, the Secretary proposed that that the Court order that candidates seeking to be on the ballot for the September 1st primary election be allowed to scan and post or otherwise distribute their nomination papers online. (Goldstein, p. 531)

21. The Secretary's suggestion would allow voters to download the image of the nomination papers and either apply an electronic signature with a computer mouse or stylus directly on that image, or print out a hard copy and sign it by hand. The signed nomination paper could then be returned to the

candidate, or a person working on the candidate's behalf, either in electronic or paper form.

(Goldstein, p. 531)

22. The candidates would still have to submit the nomination papers to local election officials in hard copy paper format, but the proposed process would alleviate the need for, and the risk associated with, obtaining wet signatures. (Goldstein, pp. 531-532)

23. The Court then ordered the Secretary to provide clear guidance to prospective candidates as to how this electronic signature collection process could be accomplished effectively. (Goldstein, p. 532)

24. Pursuant to the Court's Order, the Secretary issued an advisory in which he advised that acceptable electronic signatures included signatures signed on a scanned nomination paper using a mouse, stylus, or finger, as well as signatures signed by hand on a nomination paper that was scanned and returned to the campaign electronically. Secretary Galvin's Advisory expressly states that:

Only signatures of voters or writings of authorized representatives who actually sign in person and in real

time using a stylus or mouse applied to the signature line on the electronic screen image of the nomination paper or by a "wet signature" or an authorized writing on the hard copy of the nomination paper are acceptable.

(Addendum)

### **3. The Appellant's Certified Signatures**

25. The Appellant, having run for political office in the past, such as her campaign for State Auditor in 2018, is very familiar with the process for obtaining voters' signatures on nomination papers. (JA p. 59-60, Brady Affidavit, ¶¶ 2&6)

26. Like all candidates seeking to be included in the primary election on September 1, 2020, the Appellant had 41 days, after the Secretary made nomination papers available to candidates on February 11, 2020, to obtain certified signatures from voters in the Ninth Congressional District before the Governor issued the emergency Order on March 23, 2020. (Goldstein, p. 528)

27. The Appellant did not file any signatures with local officials that were obtained during this 41-day period. (AR Vol. XIV, p. 4)<sup>3</sup>

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<sup>3</sup> References to the Administrative Record will be cited herein as "(AR Vol. , p. )" "

28. Additionally, the Appellant did not file any signatures with local officials that were obtained in the period from March 23, 2020 to the issuance of the *Goldstein* Decision on April 16, 2020. (AR Vol. XIV, p. 4)

29. Moreover, the Appellant did not file any signatures that she had obtained immediately after the issuance of the Goldstein Decision but, instead, waited eleven more days, until April 27, 2020, to obtain the first electronic signature of a voter, just eight days before the statutory deadline to submit signatures to local officials. (AR Vol. XIV, p. 4)

30. In the 84-day period in which candidates had to collect the necessary voter signatures to be placed on the September primary election, the Appellant waited until just slightly over one week - eight days - before the deadline to file the signatures with local officials to obtain her first voter signature. (AR Vol. XIV, p. 4)

31. The Appellant obtained all of her signatures electronically. Only two other candidates - i.e., Petitioners Hall and Colarusso - are known to have relied solely on that electronic signature process to



obtain voter signatures. (JA p. 32, Hall Affidavit, ¶ 10; JA pp. 37-38, Colarusso Affidavit, ¶ 10; JA p. 60, Brady Affidavit, ¶ 7)

#### **4. The Present Petition**

32. On May 5, 2020, the deadline to file nomination papers with local election officials, Petitioners filed the Petition seeking various forms of relief related to their efforts to obtain enough certified signatures to qualify for the September primary ballot. (JA p. 7, Emergency Petition for Relief)

33. The Petition sought an order to the effect that the Petitioners, as a matter of equity and in the unique circumstances of COVID-19, deserved to be placed on the September primary ballot even if they did not meet the 1,000 signature requirement because they had demonstrated the necessary measurable quantum of community support. In the alternative, the Petition proposed narrower relief, such as permission to file electronic records of signatures gathered electronically, in lieu of filing nomination papers in hard copy as is required, and, inter alia, continuing oversight by the Court in the preparation and application of standards by the Secretary for review

and approval of electronic signatures obtained by the Petitioners. (JA pp. 27-28)

34. The Single Justice eventually dismissed the other three Petitioners from the proceedings but stayed any decision regarding the Appellant until after the conclusion of a proceeding involving the Appellant before the State Ballot Law Commission. (JA pp. 5-6, Docket Nos. 11 & 19)

#### **5. The Ballot Law Commission Proceeding**

35. On June 2, 2020, the Appellant submitted 1,066 certified signatures to the Secretary. (JA p. 173, JSAF ¶ 4)

36. Mr. Brathwaite, the Objector in the Commission's proceedings is a registered voter from the Ninth Congressional District. (JA p. 173, JSAF ¶ 1)

37. On June 5, 2020, Mr. Brathwaite filed objections to the Appellant's signatures with the Commission. Mr. Brathwaite challenged over 500 individual signatures as well as all of the Appellant's 1,066 electronic signatures. (AR Vol. I, pp. 4-15)

38. All the signatures contained on the Appellant's nomination papers submitted to the

Secretary were "electronic signatures." No so-called wet signatures were submitted. (JA pp. 173-174, JSAF ¶ 5)

39. For the task of collecting signatures for nomination papers, the Appellant engaged the services of Brian Fitzgibbons ("Mr. Fitzgibbons"), owner of VenueX Media to provide a website to sign the Appellant's nomination papers. (JA p. 174, JSAF ¶ 6)

40. At the hearing before the Commission on June 16, 2020, Mr. Fitzgibbons provided testimony concerning the system that he created to collect electronic signatures for candidates. (JA p. 174, JSAF ¶ 7)

41. At two points during his testimony, Mr. Fitzgibbons testified that his software system permitted people accessing a candidate's link on his website to download images of blank nomination papers onto their computers, to print hard copies of the downloaded blank nomination papers, sign those papers, and return them to the campaign. (AR Vol. XV, pp. 102-103, 118-119)

42. Mr. Fitzgibbons testified that he had explored the possibility of creating a process so that a voter could apply a signature directly onto the

nomination form line, but that those processes were multi-step, and would have required back and forth emails that placed a heavy burden on voters to complete the process:

We had started down that road but had intentionally set the structure of this system this way because the only third-party tools that we could find that would work to have that applied directly onto that line, created a pretty heavy burden on a voter to complete the process. Meaning - I'll use an example of either SignNow or DocuSign. DocuSign is one that I know some candidates had used that didn't work with us, and actually many of the candidates that ended up working with us had started with DocuSign. The issue there and the rationale behind our decision to do it this way was it required a multistep process where the user would enter their name and email, an auto generated invitation would go back to the email; many times it was going into spam or promotions or an updates folder, so it required a certain amount of proficiency of using those systems to actually get access to the document, then complete it.

And what we had seen in general was, you know, with our system if you hit - if you enter all the information in the field and hit the submit button, it's one hundred percent that you've completed demonstrating your support for X, Y, Z, candidate. With the other paths, you know, with some other vendor applications that had been used there - and this is anecdotal, but, you know, the data points that we have about 15,000 - 15 to 20,000 signatures and attempted or users attempted to be collected on DocuSign, that only about a third of those users were actually completing the process.

So two-thirds were starting it, you

know, entering their name, first name, last name, town and hitting, you know, create document and then not getting through to the multistep process.

(AR Vol. XV, pp. 117-118)

43. Mr. Fitzgibbons provided no instructions to individuals using his system as to how they could download nomination papers, print them, sign them, and return them to a campaign. (AR Vol. XV, p. 103)

44. There is no clear link on the webpage that would alert any voters to this possibility. The actual link, labeled "preview document," hardly gives notice to voters of this possibility. (AR Vol. XIII, pp. 4-7)

45. There is no evidence in the record that any voter was ever able to or did download, print, sign, and return such a nomination paper to the Appellant's campaign.

46. Mr. Fitzgibbons also testified that 39 other campaigns worked with his business in setting up his website application. (JA p. 175, JSAC ¶ 12)

47. Mr. Fitzgibbons provided no information as to the extent that any other campaign relied on his system.

48. The record indicates that Petitioner Campbell did not rely exclusively on Mr. Fitzgibbons' system,

in that approximately 300 of her signatures were "wet" signatures, not electronic signatures. (JA p. 45, Campbell Affidavit, ¶ 6)

47. There is no evidence that any candidates other than Petitioners Hall and Colarusso, and the Appellant relied on Mr. Fitzgibbons' system to obtain access to the ballot in this year's state primary election.

48. Regarding the Petitioners' utilization of Mr. Fitzgibbons' system, Petitioner Hall obtained at least 1,700 signatures through this system. (JA p. 33, Hall Affidavit, ¶ 13)

49. Petitioner Colarusso obtained at least 2,100 signatures through this system. (JA p. 39, Colarusso Affidavit, ¶ 16)

50. Petitioner Campbell obtained at least 1,300 signatures through this system. (JA p. 48, Campbell Affidavit, ¶ 20)

51. The Appellant obtained at least 1,400 signatures through this system. (JA p. 60, Brady Affidavit, ¶ 9)

52. Together, therefore, the Petitioners obtained 6,500 signatures, out of the 15,000 to 20,000 signatures that Mr. Fitzgibbons collected for 39

candidates. In other words, the Petitioners, 10% of Mr. Fitzgibbons' candidates, generated somewhere between 32% and 43% of his signatures. (AR Vol. XV, p. 118)

### **ARGUMENT**

Appellees Massachusetts Democratic Party and Mr. Brathwaite contend that there is no basis for awarding the Appellant the extraordinary relief that she seeks in the Petition, and that the Commission's Decision was based on substantial evidence and is correct as a matter of law. What the Appellant is actually seeking is an expansion of the revisions to the voter signature process that this Court allowed in the Goldstein Decision.

In the Goldstein Decision, this Court allowed a modest change to the signature gathering process to allow candidates to collect a limited form of electronic signatures. See Goldstein, 484 Mass. at 531. Indeed, the Court expressly stated that it would not "impose a remedy that would transform a nomination system that required 'wet' signatures into one that permitted a broad range of electronic signatures, including a printed name." See id. Yet that relief rejected by the Goldstein Court is precisely the

relief that the Appellant now seeks from this Court.

**I. The Appellant's Procrastination, Not Covid-19, Is Responsible for her Predicament.**

In the Petition, the Appellant contends that, as a matter of equity and in the unique circumstances of Covid-19, this Court should place her on the ballot for the September primary because she demonstrated a "measurable quantum of community support," despite that fact that her electronic signatures were not obtained in a manner consistent with state law, the Goldstein Decision, and the Secretary's Advisory.

As an initial matter, the phrase "measurable quantum of community support" comes from two court decisions that distinguish the automatic placement of certain major political parties on the ballot from the treatment of minor political parties which must obtain sufficient signatures to obtain ballot access. See American Party of Texas v. White, 415 U.S. 767, 782, 94 S.Ct. 1296, 1307 (1974); Libertarian Association of Massachusetts v. Secretary of Commonwealth, 462 Mass. 538, 557 (2012). In Massachusetts, the measurable quantum of community support is the number of voters a political party needs to attain ballot access, by either (1) having had a candidate for Statewide office



garner at least three per cent of the votes cast in the most recent biennial election, or (2) enrolling a number of voters "equal to or greater than one percent of the entire number of voters registered in the commonwealth." See G.L. c. 50, § 1.

That is a statutory standard, not a flexible generalized right of any political party or candidate. This Court has already taken a major step by reducing the number of certified signatures a candidate needs to attain ballot access, reducing the number that the Appellant required from 2,000 to 1,000. And this Court expanded the definition of signing nomination papers "in person" by allowing a modest change to the process, permitting voters to download, sign, and scan nomination papers or, in the alternative, to download nomination papers, sign them electronically, and return them to a campaign. The Appellant now wants to relax this requirement further, in an electronic signature process that this Court expressly rejected in the Goldstein Decision.

Moreover, the Appellant's present predicament is more the result of her own procrastination rather than Covid-19. The Secretary furnished nomination papers to candidates on February 11, 2020. The state of

emergency in the Commonwealth restricting the ability of candidates to freely seek voter signatures did not take effect until 41 days later, on March 23, 2020. Yet, during that 41-day period, the Appellant failed to collect any voter signatures.

Even after the imposition of the state of emergency on March 23rd, candidates had other means to collect voter signatures without violating the Governor's order, for example by mailing nomination papers to voters with return envelopes. It was 24 days later that this Court issued the Goldstein Decision, and the Appellant failed to collect any signatures through other safe alternatives during that period of time.

And even after the Goldstein Decision was issued on April 16, 2020, the Appellant waited until eleven days later, April 27, 2020, to collect her first voter signature. In other words, the Appellant waited until eight days before the deadline to submit signatures to local election officials, May 5, 2020, before collecting a single signature from any voter. Covid-19 may have affected many candidates for political office in many different ways, but the Appellant, in relying on Covid-19 for her signature problems, is clearly

shifting the blame away from her own procrastination.

**II. The Commission's Decision Does Not Violate the Equal Protection Clause of the 14th Amendment.**

The Appellant contends that the Commission's decision is an error of law because it violates the Equal Protection Clause of the 14th Amendment to the United State Constitution when it deprives a Republican candidate the right to appear on the ballot when the Commission applied its interpretation only to the Appellant, without any rational basis, knowing that approximately 15 Democratic and 24 other candidates used the same electronic signature gathering process.

The Fourteenth Amendment to the United States Constitution provides, in relevant part, that no State shall "deny to any person within its jurisdiction the equal protection of the laws." See Brackett v. Civil Service Commission, 447 Mass. 223, 243 (2012). The equal protection clause of the Fourteenth Amendment does not require that every citizen be treated identically but, rather, that an adequate explanation be given for treating citizens differently. See id. Put another way, the equal protection requirement precludes irrational treatment of people who are similarly situated. See Sinn v.

Board of Selectmen of Acton, 357 Mass. 606, 611

(1970).

In this case, the Appellant has largely failed to demonstrate that she and 35 out of the 38 other candidates using Mr. Fitzgibbons' system were similarly situated. The Appellant failed to provide information to how many of those other candidates relied on that system to get the requisite number of certified signatures to be placed on the ballot. There is nothing in the record reflecting the number of those candidates who, like Rayla Campbell, used that technology but failed to acquire the requisite number of signatures. Neither is there anything in the record about the number of those candidates who had sufficient "wet" signatures to attain ballot access, but who relied on the electronic signature system to boost the number of their voter signatures for political reasons. And there is nothing that reveals other motivations that candidates might have had to use the technology - for example, obtaining information on voters not otherwise available, such as email addresses and phone numbers, to use in the course of campaigning. The Appellant infers that all those 38 other candidates obtained ballot access by

use of the electronic signature, but that is a far leap from the actual evidence before the Commission and before this Court.

The only evidence in the record of any other candidates who relied on the technology to obtain ballot access is in the affidavits of Petitioners Colarusso and Hall, who both testified through their affidavits that they, like the Appellant, relied solely on the electronic signature system to obtain ballot access. Those facts was stated in the Petition but were not before the Commission. The only issue before the Commission was the Objections filed against the Appellant's signatures. Although the Appellant contends that the Commission should have dug deeper and questioned Mr. Fitzgibbons about these other candidates, the Appellant herself had a sufficient opportunity to ask those questions but failed to do so.

The Appellant contends that the Commission should have heard Mr. Fitzgibbons' testimony in the light most favorable to the Appellant and should have allowed her ballot access because some other candidate may have achieved ballot access through this technology. The fact that no one challenged the

signatures of any other candidates, who may have inappropriately achieved ballot access, is a thin foundation for the Appellant's equal rights claim - it is akin to a speeding driver claiming that equal protection was violated by singling that driver out for a speeding ticket. The Commission addressed only the Appellant's signatures because she was the only candidate whose signatures were subject to an objection, and there is nothing irrational about the Commission's treatment of the Appellant.

**III. There Is Evidence of an Alternative Method of Electronic Signature Gathering that Was Used and Would Meet the Goldstein Standards.**

In her Complaint for Judicial Review and Declaratory Relief, the Appellant makes the assertion that "[t]he Objector provided no evidence of an alternative method of electronic signature gathering that was used and would meet the Goldstein standards." Beyond this admission by the Appellant that her electronic signature gathering method did not meet the Goldstein standards, it is simply wrong.

Mr. Fitzgibbons testified that he had started down a road that would have met the Goldstein standards but that he had intentionally set the structure of his system a different way because other

methods used by other vendors created a pretty heavy burden on a voter to complete the process. The processes used by other vendors, that complied with the Goldstein standards, required a multistep process where the users would enter their names and email addresses, auto generated invitations would go back to the email, which many times went into spam or promotions or an updates folder. So these processes used by other vendors required a certain amount of proficiency of using those systems to actually get access to the document, then complete it. And what Mr. Fitzgibbons had seen was that only about a third of those users were actually completing the process.

It is clear, therefore, in contrast to the Appellant's assertion, that the Objector provided evidence of an alternative method of electronic signature gathering that was used and would meet the Goldstein standards. The problem as Mr. Fitzgibbons saw it was not that other systems did not meet the Goldstein standards, but that they did not produce the results that his system provided.

**IV. The Appellant's Electronic Signature Gathering System Provided No Effective Way to Download, Print, Scan, and Return Nomination Papers.**

The Commission's Decision found that Mr.

Fitzgibbons' website did not have a function to allow a nomination paper with the Appellant's information, but that was otherwise blank, to be downloaded and printed and then signed by hand. The Appellant, however, insists that the theoretical possibility that a voter may have been able to download, print, sign, and return a nomination paper to the Appellant meets the *Goldstein* standards.

As an initial matter, this factual issue is completely irrelevant. It is clear from the record that no voter downloaded, printed, signed, and returned any of Appellant's nomination papers. The Appellant apparently contends that the possibility that a voter might have been able to go through this process, although clearly no voter did so, is sufficient to comply with the Goldstein standards.

The Commission's finding would have been more accurate had it said that Mr. Fitzgibbons' website did not have an effective function that would allow voters to download, print, and sign a blank nomination paper. The website provided the people using the system with no direction or instruction as to how to download a nomination paper. Nor was there any information on the website about signing such a downloaded nomination



paper, or what to do with such a nomination paper. The link itself - "preview document" - was completely misleading.

It is worthwhile to take note too of Mr. Fitzgibbons' testimony regarding how difficult it was for the average voter to complete this process, and the obstacles that other campaigns had with such a process. Is it possible that voters who, when provided with clear instructions as to how to download, print, sign, and return nomination papers, as other vendors instructed voters, which resulted in a success rate of only one-third, would have been able to handle this process without any direction or instruction?

Mr. Fitzgibbons' system was designed expressly to allow voters to avoid the burden of downloading a nomination paper, printing that nomination paper, signing it, and then returning it to the Appellant's campaign. The theoretical possibility that a voter might ignore the actual instructions on the website, and unilaterally go through a process that was as opaque as such a process could be, is hardly sufficient evidence that this process followed the Goldstein standards.

**CONCLUSION**

Appellees Massachusetts Democratic Party and Leon Arthur Brathwaite, II, respectfully request that this Court dismiss the Emergency Petition to which the Appellant is the only remaining Petitioner, and that this Court affirm the Decision of the State Ballot Law Commission ordering the Secretary not to print the Appellant's name on the primary election to be held on September 1, 2020.

Respectfully submitted,

MASSACHUSETTS DEMOCRATIC  
PARTY and LEON ARTHUR  
BRATHWAITE, II  
By their attorney,

/s/ Gerald A. McDonough

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July 9, 2020

CERTIFICATE OF COMPLIANCE WITH THE RULES

I Gerald A. McDonough, Counsel for Appellees  
Massachusetts Democratic Party and Leon Arthur  
Brathwaite, II, hereby certify that the foregoing  
brief complies with the rules of the Court that  
pertain to the filing of briefs, including, but not  
limited to: Rule 16(a)(3); Rule 16(e); Rule 18; Rule  
20, and Rule 21. Compliance with the applicable  
length limit of Rule 20 was ascertained by use of  
Courier New font, 12-point size, monospaced.

/s/ Gerald A. McDonough

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July 9, 2020

ADDENDUM

Advisory from William F. Galvin, Secretary of the  
Commonwealth Concerning The Collection of Signatures  
for the 2020 State Primary and General Elections

Pages ADD001 to ADD002

**ADVISORY**  
FROM  
**WILLIAM F. GALVIN**  
**SECRETARY OF THE COMMONWEALTH**  
CONCERNING  
THE COLLECTION OF SIGNATURES FOR THE 2020 STATE PRIMARY AND  
GENERAL ELECTIONS<sup>1</sup>

The Massachusetts Supreme Judicial Court has ruled that, due to the difficulty of obtaining signatures on nomination papers during the current pandemic, certain accommodations shall be made for the 2020 State Primary and State Election.

On Friday April 17, 2020, the Supreme Judicial Court of Massachusetts in the case of [Goldstein v. Secretary of the Commonwealth \(SJC 12931\)](#), adopted alternative signature gathering procedures recommended by Secretary William F. Galvin and has directed the Secretary to issue, consistent with the Court's decision, guidance as to the type of signatures and nomination papers that are acceptable for submission to the local election officials and the Secretary's Office under these extraordinary circumstances.

**NOMINATION PAPERS**

Nomination papers originally printed by the State Secretary may be reduced to a letter sized document, as long as the document is an EXACT copied image of the state issued nomination paper and is printed double-sided.

The nomination papers may be transmitted to the voter for their signature by mail or electronic transmission. Electronic transmission includes email or by posting on a website. If the exact copied image of the nomination paper is transmitted electronically, it is understood that both the front and back will be transmitted to the voter and returned to the campaign. Thereafter and prior to submission to the local election officials and the Secretary's Office, the respective campaigns must reproduce the two pages of the signed nomination paper to a single, double-sided sheet of paper and submit each such nomination paper sheet to local election officials in a double-sided, hard copy paper format. Single-sided sheets or two sheets stapled or otherwise attached together ARE NOT ACCEPTABLE.

Please note that any nomination papers provided by candidates must contain the necessary information before being transmitted to a voter for their signature. This

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<sup>1</sup> This advisory is limited to party and non-party candidates for district and county offices and party candidates for federal offices. This advisory does not apply to non-party candidates for federal offices.

includes the candidate's name, street number and name, city or town of residence or some clearly identifiable reference thereto, the office sought, district name, and party, if running in a party primary. Failure to complete the nomination papers with the required information prior to circulation shall result in disqualification of any voter signatures contained thereon.

**SIGNATURES ACCEPTABLE FOR SUBMISSION**

Nomination papers transmitted to voters electronically must be signed by the voter. The voter can sign by either a) using a computer mouse or stylus applied to the signature line of the nomination paper screen image to sign their actual original signature in person and in real time or b) printing out the transmitted nomination paper and affixing their original signature by hand ("wet signature"). The signed nomination paper can then be returned to the campaign electronically by computer transmission, scan, facsimile, or by mail.

Those authorized to sign on behalf of a disabled voter may write the name of the voter in the same manner as described above with the authorized person writing the name of the voter using a computer mouse or stylus applied to the signature line of the nomination paper screen image, in person and in real time, or by printing out a hard copy of the nomination paper for the authorized person to write the name of the voter in by hand.

**NOTE:** Only signatures of voters or writings of authorized representatives who actually sign in person and in real time using a stylus or mouse applied to the signature line on the electronic screen image of the nomination paper or by a "wet signature" or an authorized writing on the hard copy of the nomination paper are acceptable.

**Computer generated generic signatures of a voter's name ARE NOT ACCEPTABLE.** For example, the following is not acceptable:

	CHECK	I. SIGNATURE to be made in person with name substantially as registered (except in case of physical disability as stated above)	II. NOW REGISTERED AT (street, number and apartment number, if any) (city or town will be the same as stated below)	WARD	PREC.
1		George Washington	1 Main Street		
2		<i>Abraham Lincoln</i>	<i>12 Cherry Tree Lane</i>		
3					