

## COMMONWEALTH OF MASSACHUSETTS

## SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJC-12992

THE MASSACHUSETTS SENIOR COALITION, et al., Appellants

v.

WILLIAM FRANCIS GALVIN, in his Official Capacity  
as Secretary of the Commonwealth, Appellee.**ORDER**

On April 17, 2020, this court issued the decision in Goldstein v. Secretary of the Commonwealth, 484 Mass. 516 (2020), granting several forms of equitable relief to candidates seeking to appear on the September 1, 2020, primary election ballot due to the extraordinary restrictions on in-person contact arising from the COVID-19 pandemic. Id. at 517-518. Of relevance to the present matter, the court allowed candidates to collect the signatures required to appear on the ballot electronically, in addition to by the traditional wet-ink method. Id. at 531-532.

Ten days later, on April 27, 2020, the appellants in the present matter, The Massachusetts Senior Coalition and Deanna Milone-Bonanno, proponents of Initiative Petition 19-11: An Act Establishing Adequate Funding for Residents of Massachusetts Nursing Homes (Initiative Petition 19:11), along with the

proponents of three other initiative petitions,<sup>1</sup> commenced the present action in the Supreme Judicial Court for Suffolk County against the Secretary of the Commonwealth (Secretary). At that time, the sole relief sought by the appellants was to be allowed, akin to the candidates in Goldstein, to collect the signatures necessary to qualify their initiative petition for the November 3, 2020, general election ballot electronically. Subsequently, on April 29, 2020, the single justice (Lenk, J.) entered a judgment, agreed upon by all parties, establishing a procedure for "the signing, collection, verification, and certification of [electronic] signatures to be submitted to local election officials for certification on or before June 17, 2020 and thereafter filed with the Secretary on or before July 1, 2020." Judgment, ¶1. The single justice further retained jurisdiction to resolve any disputes arising out of or related to the agreed judgment. Id. at ¶7.

Under the Massachusetts Constitution, the appellants were required to, among other things, collect 13,374 certified signatures from registered voters in the Commonwealth and file them with the Secretary by the July 1 deadline. See Mass.

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<sup>1</sup>The other petitioners in the county court action, Gregory David Dennis, Karen Morey Kennedy, The Ranked Choice Voting 2020 Committee, The Massachusetts Right to Repair Committee, Glenn Wilder, The Committee for Safe and Fair Competition, and Matthew Durand, are not parties to the present appeal in the full court.

Const. Amend. Art. 48, The Init., Pt. V, § 1. As of July 1, they contend that they had collected 19,282 signatures, mostly by electronic means, but that local election officials rejected 7,468 of them, leaving the appellants with 11,814 certified signatures, or 1,560 short of the constitutionally-mandated number. Having concluded that it would be futile to proceed under the circumstances, the appellants chose not to file any of the collected signatures, certified or uncertified, with the Secretary by the July 1 deadline. Instead, over two weeks later, on July 17, 2020, they returned to the county court and asked the single justice to order the Secretary to place Initiative Petition 19:11 on the general election ballot. The single justice, in turn, reserved and reported the matter to the full court. For the reasons discussed below, we decline to grant the relief requested.

The appellants offer two arguments in support of their claim for relief. First, they argue that approximately 1,700 of the electronic signatures that were rejected by local election officials must be declared "certified" because the reasons given for rejecting them cannot withstand constitutional "strict scrutiny" analysis under the extraordinary circumstances arising from the COVID-19 pandemic, most notably, the inability to have in-person contact with registered voters residing in nursing homes, a key demographic relative to Initiative Petition 19:11.

Alternatively, they argue that, even assuming they fell short of the constitutionally required number of certified signatures (13,374), we should declare, as a matter of equity in light of the circumstances prevailing during the pandemic, that they have demonstrated sufficient support among the voting public to warrant the placement of Initiative Petition 19:11 on the ballot. In response, the Secretary suggests that the appellants' claim must fail for multiple, independent reasons. We agree, although we need not consider all of the grounds advanced by the Secretary. It suffices that the appellants' claim fails for the following reasons.

First and foremost, the appellants' decision to allow the constitutionally-mandated July 1 deadline to pass without filing any signatures, certified or uncertified, with the Secretary, is fatal to their claim. Nor did they take any other action to contest, or even make known their disagreement with, the decisions of local elections, until the filing of this action over two weeks after the July 1 deadline. Indeed, by their own account, the appellants made a conscious decision not to pursue Initiative Petition 19:11 any further once the July 1 deadline arrived and they found themselves short 1,560 certified signatures. At some point thereafter, they had a change of position, but by that time they had failed to take any steps to preserve their claim.

Even if the appellants had preserved their claim, they would still not be entitled to relief. Of the approximately 1,700 signatures the appellants now ask us to deem "certified," so that they can satisfy the threshold of 13,374, approximately 900 were rejected because the addresses provided by the signatories did not match the addresses of registered voters with that name. The appellants suggest that this is likely attributable to the fact that residents of nursing homes provided the address of their nursing home, not the address where they were registered to vote. They further suggest that, under normal circumstances when in-person contact with voters is possible, they would be able to detect and correct these problems on the spot, but that was not possible due to the restrictions in place to prevent the spread of COVID-19. However, even if we were to accept all that as true, the addresses the signatories provided would still be incorrect. There is no reasonable basis, therefore, for us to require the Secretary to accept those 900 signatures as certified. Without those certified signatures, it is not possible for the appellants to clear the threshold of 13,374, even assuming we deemed the remaining 866 contested signatures worthy of being certified.<sup>2</sup>

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<sup>2</sup>Regarding the other signatures at issue, approximately 477 were allegedly rejected because the signature was missing, illegible,

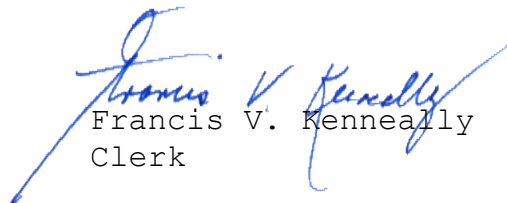
In addition, as the appellants acknowledge in their papers, the Center for Medicare and Medicaid Services ordered that all nursing homes be closed to outside visitors on March 13, 2020. See QSO 20-14 NH (Revised 3-13-20). The plaintiffs, therefore, were, or reasonably should have been, aware of the difficulties they would encounter as they sought to secure electronic signatures from nursing home residents when, forty-five days later, they moved in the county court for relief with respect to the electronic collection of signatures. Accordingly, they could have requested a reduction in the required number of certified signatures at that time. Since that time, at least two of the other initiative petitions have successfully collected the constitutionally-required number of certified signatures to appear on the ballot, despite facing similar restrictions on in-person contact as the appellants. For these reasons, it would not be equitable for the court, after the fact, to change the rules for the benefit of one initiative petition.

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or did not match the voter's signature. The appellants suggest this was likely attributable to the electronic signature gathering process they utilized. The other approximately 389 signatures were rejected because they were not received by local election officials until after the June 17, 2020, deadline. The appellants suggest this was likely attributable to local election offices not maintaining normal business hours during the pandemic and to delays in mail delivery.

As such, it is hereby ORDERED that the appellants' request for relief is denied.

BY THE COURT,



Francis V. Kenneally  
Clerk

Entered: July 24, 2020