

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

Suffolk, ss.

No. SJC-12996

REBECCA GROSSMAN, BECKY GROSSMAN FOR CONGRESS,
JONATHAN LEVENFELD, SOPHIE KRIPP and SHIRLEY D.
GROSSMAN, 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 AGREED FACTS

Petitioners Rebecca Grossman, Becky Grossman for Congress, Jonathan Levenfeld, Sophie Kripp and Shirley D. Grossman, on behalf of themselves and others similarly situated (collectively, "Petitioners"), as well as Respondent 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 Agreed Facts, pursuant to the August 20, 2020 Reservation and Report Order entered in the single justice session and the August 21, 2020 scheduling order entered by this

Court. 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:

PETITIONERS AND VOTER AFFIANTS

1. Petitioners Rebecca Grossman, Jonathan Levenfeld, Sophie Kripp, and Shirley D. Grossman are registered Massachusetts voters.

2. Rebecca Grossman is a candidate running for the Democratic Nomination for Congress in Massachusetts' Fourth Congressional District, who is on the ballot for the September 1st Democratic primary.

3. Rebecca Grossman is running in the Democratic Primary to be the United States Representative for the Fourth Congressional District of Massachusetts, which encompasses thirty-four (34) cities and towns and over 501,000 registered voters.

4. Petitioners filed this Emergency Petition on behalf of a purported class of all Massachusetts voters on August 19, 2020.

5. Petitioner Becky Grossman for Congress is a principal campaign committee, established pursuant to 2 U.S.C. § 432(e).

6. Petitioner Shirley D. Grossman is 98 years old and is a registered voter in Massachusetts.

7. Petitioner Sophie Kripp is a registered voter in Massachusetts.

8. Petitioner Jonathan Levenfeld resides in Cambridge, Massachusetts and is a registered voter in Massachusetts.

THE EMERGENCY ACT

9. On July 2, 2020, the Massachusetts Legislature on passed an emergency law entitled "An Act relative to voting options in response to COVID-19" (the "Act"). H. 4820, 191st Gen. Ct. (Mass. 2020) (enacted July 6, 2020) (codified at See Mass. Stat. 2020, c. 115).

10. Governor Baker signed the Act into law on July 6, 2020.

11. Each registered voter who makes a request for a vote-by-mail ballot is entitled to be sent a ballot, by first class mail, along with instructions for completing and securely returning the ballot. See Mass. Gen. Laws c. 54, § 91B; Mass. Stat. 2020, c. 115 § 6(g)(i).

12. This year, the primary election will be held on September 1, 2020, see Mass. Stat. 2019, c. 142, § 83, and the general election will be held on November 3,

2020, see Mass. Gen. Laws c. 54, § 62.

13. After the September 1 primary election, results must be certified. See Mass. Gen. Laws c. 53, § 52.

14. Under the Act, any application to vote by mail in the primary election must be received by the local election official before 5 P.M. on Wednesday, August 26, 2020. Mass. Stat. 2020, c. 115 § 6(e)(1-2).

**THE INSTRUCTIONS TO THE BALLOT ISSUED BY THE
SECRETARY OF THE COMMONWEALTH**

15. The instructions on the mail-in voting applications that the Secretary sent to voters state in relevant part:

Dear Voter,

Below is an **Official 2020 Vote by Mail Application**. All registered voters may vote by mail this year. No excuse is needed.

To request a ballot by mail, follow the instructions below. To make sure you get your ballot in time, submit your applications as soon as possible.

You can use this application to apply for a mail-in ballot for the State Primary, the State Election, or both. For a State Primary, the State Election, or must be delivered to your local election office by **August 26**.

In-person voting will still be available for all elections. Remember, once you vote by mail, your vote is final.

JULY 30, 2020 LETTER FROM
THE U.S. POSTAL SERVICE TO SECRETARY GALVIN

16. On or about July 30, 2020, the General Counsel of the Postal Service sent a letter to the Secretary. A copy of this letter appears at Exhibit 1 to the Addendum to the Emergency Petition.

SECRETARY GALVIN'S PUBLIC
STATEMENTS

17. On Friday, August 21, 2020, the Secretary made a public statement about mail-in voting during which he stated, in part:

If you are able to do so, the best way to ensure that your ballot is counted is to deliver it in person. Ballots can be returned to early voting sites, ballot drop boxes, and local election offices.

18. In an Election Advisory issued on August 17, 2020, Secretary Galvin stated: "As Election Day approaches, election officials will be shifting from urging voters to mail their ballots to encouraging voters to hand-deliver their ballots to ensure timely delivery."

THE UNIFORMED AND OVERSEAS
CITIZENS ABSENTEE VOTING ACT

19. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) was enacted by Congress in 1986.

See Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. 99-410, 100 Stat. 924 (enacting UOCAVA). UOCAVA requires that the states and territories allow certain groups of citizens - so-called UOCAVA voters, including members of the United States Uniformed Services and merchant marine, their family members, and United States citizens residing outside the United States - to register and vote absentee in elections for Federal offices. UOCAVA was amended in 2010 by the federal Military and Overseas Voter Empowerment Act (MOVE) to establish new voter registration and absentee ballot procedures that states must follow in all federal elections. See Military and Overseas Voter Empowerment Act, Pub. L. 111-84, 123 Stat. 2190 (enacting MOVE).

20. MOVE requires that general election ballots be sent by local election officials to UOCAVA voters at least 45 days before any federal election. See 52 U.S.C. § 20302(a)(8). At the UOCAVA voters' request, such ballots can be sent by mail, e-mail, or fax. See 52 U.S.C. § 20302(a)(6)(A).

21. For the 2020 general election, the UOCAVA deadline is September 19, 2020, 45 days before the general election.

22. The United States Department of Justice

monitors the state's compliance with federal requirements under UOCAVA and MOVE.

23. The Secretary is required to report to the Department of Justice the number of UOCAVA voters who have requested ballots and to certify that Massachusetts has satisfied the requirements of MOVE by the Monday following the UOCAVA deadline. See 52 U.S.C. § 20302(a)(11).

PRIOR ELECTIONS

24. In 2018, there was a recount between candidates Lori Trahan and Dan Koh in connection with the September 4, 2018 primary to determine the Third Congressional District's Democratic nominee, which was not decided until September 17, 2018.

THE COMMONWEALTH'S LAWSUIT AGAINST THE U.S. POSTAL SERVICE

25. On August 21, 2020, the Commonwealth of Massachusetts, along with Pennsylvania, California, Delaware, District of Columbia, Maine, and North Carolina, brought a Complaint for Declaratory And Injunctive Relief in the United States District Court for the Eastern District of Pennsylvania against Louis DeJoy, in his official capacity as United States Postmaster General, Robert M. Duncan, in his official

capacity as Chairman of the Postal Service Board of Governors, and the United States Postal Service. A copy of this Complaint is in the Addendum to the Secretary's brief at page 118 and is appended as Exhibit 16 to the Supplemental Addendum to Petitioners' Reply Brief.

Respectfully submitted,

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Dated: August 25, 2020

CERTIFICATE OF SERVICE

I, Joseph D. Lipchitz, a member of the Bar of this Court, hereby certify that on this day, August 25, 2020, a copy of the foregoing was electronically served on counsel to the Secretary of Commonwealth by emails sent to Assistant Attorneys General Anne Sterman and Adam Hornstine.

/s/ Joseph D. Lipchitz