

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Suffolk, ss.

No. SJ-2020-

MARY BERTIN, CONCEPCIÓN PACAS, WILLIE ARTHUR SCOTT, JR., TU TO
TRAC, NOELIA RODRIGUEZ, YI HUI WEI, SHU HONG ZHANG,
COMMON CAUSE, and MASSVOTE,

PETITIONERS,

VS.

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

RESPONDENT.

**EMERGENCY PETITION FOR RELIEF IN THE NATURE OF MANDAMUS
PURSUANT TO G. L. C. 249, § 5**

OREN M. SELLSTROM, BBO 569045
LAURA MASLOW-ARMAND, BBO 563003
SOPHIA HALL, BBO 684541
JANELLE H. DEMPSEY, BBO 699379
LAWYERS FOR CIVIL RIGHTS
61 Batterymarch Street, Fifth Floor
Boston, MA 02110
(617) 988-0608
OSellstrom@lawyersforcivilrights.org

Counsel for Petitioners

ROBERT G. JONES, BBO 630767
PATRICK T. ROATH, BBO 690603
ROPES & GRAY LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 951-7564
Robert.Jones@ropesgray.com
Patrick.Roath@ropesgray.com

Dated: July 13, 2020

Counsel for Individual Petitioners

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
PETITIONERS	5
REASONS RELIEF IS APPROPRIATE IN THIS COURT PURSUANT TO G. L. c. 249, § 5	10
FACTUAL BACKGROUND	12
I. VOTING AND COVID-19	12
II. THE ACT	14
III. THE SECRETARY'S STATEMENTS	16
IV. THE CARES ACT AND EAC'S GUIDANCE	17
a. CARES Act Funding	17
b. EAC Guidance	19
BASES FOR RELIEF	20
I. THIS COURT SHOULD ORDER THE SECRETARY TO COMPLY WITH THE LAW IMMEDIATELY	20
II. THE ONLY EXCUSE PROVIDED BY THE SECRETARY FOR NOT COMPLYING WITH THE LAW LACKS A BASIS	25
a. EAC Guidance Clearly Allows Cares Act Funds to be Used to Cover the Cost of Sending Voters Applications for Absentee Ballots	26
b. Other States Are Currently Using CARES Act Funding to Send Applications to Voters During the Pandemic	28
CONCLUSION	29
REQUESTED RELIEF	30

TABLE OF AUTHORITIES

Page(s)

Cases

<u>Ames v. Attorney Gen.</u> , 332 Mass. 246 (1955).....	22
<u>Brady v. Board of Appeals of Westport</u> , 348 Mass. 515 (1965).....	22
<u>Brewster v. Sherman</u> , 195 Mass. 222 (1907).....	22
<u>Brooks v. Secretary of the Commonwealth</u> , 257 Mass. 91 (1926).....	22
<u>Chelsea Collaborative, Inc. v. Sec’y of Commonwealth</u> , 480 Mass. 27 (2018).....	5
<u>Coach & Six Rest., Inc. v. Pub. Works Comm’n</u> , 363 Mass. 643 (1973).....	11, 24
<u>Commonwealth v. Richardson</u> , 454 Mass. 1005 (2009).....	11
<u>Goldstein v. Sec’y of Commonwealth</u> , 484 Mass. 516 (2020).....	5, 11
<u>Harding v. Commissioner of Ins.</u> , 352 Mass. 478 (1967).....	24
<u>Libertarian Ass’n of Mass. v. Sec’y of the Commonwealth</u> , 462 Mass. 538 (2012).....	11
<u>Lutheran Serv. Ass’n of New England, Inc. v. Metropolitan Dist. Comm’n</u> , 397 Mass. 341 (1986).....	11, 21
<u>Massachusetts Soc. of Graduate Physical Therapists v. Bd. of Registration in Med.</u> , 330 Mass. 601 (1953).....	22
<u>Reading v. Attorney Gen.</u> , 362 Mass. 266 (1972).....	21

Simmons v. Clerk-Magistrate of Bos. Div. of
Hous. Court Dep't,
448 Mass. 57 (2006).....21, 24

Wyler v. Sec'y of the Commonwealth,
441 Mass. 22 (2004).....12

Statutes

15 U.S.C. § 9049 (2020)3

Coronavirus Aid, Relief, and Economic Security
(CARES) Act.....*passim*

G. L. c. 214, § 111

G. L. c. 231A § 111

G. L. C. 249, § 510, 11

H. 4820, 191st Gen. Ct. (Mass. 2020) (enacted
July 6, 2020).....*passim*

Other Authorities

Exec. Order No. 59112

INTRODUCTION

This is an emergency petition seeking relief in the nature of mandamus ordering the Secretary of the Commonwealth (the "Secretary") to comply with the requirements of a recently-enacted law providing residents of the Commonwealth with safer voting options during the COVID-19 pandemic. Immediate relief is necessary to prevent the Secretary from undermining the rule of law and to ensure that the Commonwealth's citizens may safely vote in the upcoming elections, despite the ongoing viral pandemic.

On July 2, 2020, the Massachusetts General Court (the "Legislature") 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); see ADD. 54-73. On July 6, the Governor of the Commonwealth signed the Act into law. The Act introduces a variety of temporary reforms that provide Massachusetts voters with alternatives to the traditional practice of voting in person on Election Day in the upcoming primary and general elections.

A key feature of the Act provides that the Secretary "shall" send every registered voter in the Commonwealth an application to request a mail-in ballot (an "Application")

to vote in the upcoming elections, and a postage-paid envelope pre-addressed to local election officials. Id. § 6(d)(1)-(2), (4). The Act requires the Secretary to send the Applications to voters by July 15. Id.

However, on July 7, the Secretary stated that he does not intend to send Applications to voters by July 15. See Chris Van Buskirk, Mail-in Voting Law Slams Into Dispute Over Postage Costs, State House News Service (July 7, 2020); see ADD. 74. Media reports quoted the Secretary as explaining his failure to comply on a lack of legislative funding, saying:

We had hoped to do it by that date. The legislation calls for it. But the Legislature has not sent the money. We can't pay for the postage. We can't pay for the printing until we have the postal permit. We can't buy the permit until we get the money.

Id. Asked by a reporter whether a pending bill in the Legislature which would appropriate \$5 million to his office would be sufficient, the Secretary responded that that sum "would probably get us going." Id.

The Secretary has not elaborated further on why he believes his office can ignore the law's clear mandates. Despite his claim that "the Legislature has not sent the money," the federal government provided his office with more than \$8 million for just such a purpose. In April 2020, in connection with the CARES Act, the federal

government appropriated \$8,325,918 to the Commonwealth in response to a request from the Secretary,¹ specifically earmarked "to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle." 15 U.S.C. § 9049 (2020). According to media reports, however, the Secretary has apparently taken the position that CARES Act funds cannot be used to mail applications to vote by mail to all registered voters. See Van Buskirk, supra.

That position is not consistent with the guidance from the Election Assistance Commission - the federal election administration agency which administers the funding (the "EAC"). The EAC's guidance makes clear that the CARES Act is designed to be flexible to meet the unprecedented nature of the pandemic, and that the funds can be used to support "all aspects of voting by mail"² including "[a]dditional mailing and postage costs".³ The Secretary's

¹ U.S. Election Assistance Commission, 2020 CARES ACT GRANTS, <https://www.eac.gov/payments-and-grants/2020-cares-act-grants> (last visited July 12, 2020).

² U.S. Election Assistance Commission, Guidance on Use of HAVA Funds for Expenses Related to CIVD-19, <https://www.eac.gov/election-officials/guidance-use-hava-funds-expenses-related-covid-19> (the "EAC Guidance & FAQ") (emphasis added); see ADD. 88-96.

³ U.S. Election Assistance Commission, RE: 2020 HAVA Coronavirus Aid, Relief and Economic Security (CARES) Act Grants, (April 6, 2020) <https://www.eac.gov/sites/default/>

interpretation of the restrictions on the CARES Act funding the State has received is incorrect.

In this emergency petition, Petitioners respectfully request that this Court issue relief in the nature of mandamus ordering the Secretary to comply with the Act.

Petitioners are registered voters, and groups representing their interests, seeking to participate in upcoming elections and exercise their right to safely vote, and who would benefit from the provisions of the Act requiring the Secretary to send them an Application. Indeed, the individual Petitioners typify those voters who will be most impacted if the Secretary is allowed to flout the law: low-income voters, voters of color, and elderly voters, all of whom are most likely to be disenfranchised if the law's requirements are not met. Because the Secretary's legal obligation to at least begin sending Applications ripens in two days, Petitioners respectfully request expedited emergency treatment from this Court.

Absent relief, the Secretary's refusal to execute the provisions of the Act will undermine the rule of law and jeopardize the safety of Massachusetts voters in the

files/paymentgrants/cares/CARESAwardInstructions.pdf (the "Apr. 6 Instructions"); see ADD. 79-86.

upcoming elections. Further, safety measures associated with the COVID-19 pandemic pose uniquely severe challenges to the orderly conduct of elections. "Because it has been shown that one can carry and spread the COVID-19 virus without any apparent symptoms, every encounter with another person, especially a stranger, poses a risk of infection." Goldstein v. Sec'y of Commonwealth, 484 Mass. 516, 526 (2020). Without the benefit of the Act's provisions, it will be more difficult and less safe for voters to participate in our democracy this fall - and the brunt of that impact will be felt by populations who are already most endangered by the deadly novel coronavirus.

This Court has repeatedly acknowledged that "the right to vote is a fundamental one protected by the Massachusetts Constitution." Chelsea Collaborative, Inc. v. Sec'y of Commonwealth, 480 Mass. 27, 33 (2018). To that end, as explained in further detail below, Petitioners respectfully ask this Court to order the Secretary to begin mailing Applications on July 15 as required by law.

PETITIONERS

Petitioners Mary Bertin, Concepción Pacas, Willie Arthur Scott, Jr., Tu To Trac, Noelia Rodriguez, Yi Hui Wei, and Shu Hong Zhang (the "Individual Petitioners") are registered and qualified Massachusetts voters who (i) wish

to participate in the upcoming elections, and (ii) would be particularly injured by the Secretary's failure to carry out the Act's requirement to send Applications to all registered voters. They exemplify the kinds of individuals who would be most harmed by non-enforcement of the Act's provisions. See ADD. 34-54 (Petitioner affidavits).

Petitioner Mary Bertin is a 73-year-old resident of Boston who has voted in every election since she was eighteen years old. Bertin Aff. at ¶¶ 1, 10. A descendant of enslaved persons, Petitioner Bertin witnessed voter disenfranchisement growing up in segregated Alabama, and prizes the right to vote. Id. at ¶¶ 3-10. Petitioner Bertin has a number of serious health ailments which make her more susceptible to severe illness or even death if she is infected by COVID-19, and she has been self-quarantined for months. Id. at ¶¶ 14-17. She wishes to vote but currently has limited access to the outside world. Id. at ¶¶ 15-17.

Petitioner Concepción Pacas is a 77-year-old resident of Chelsea who speaks only Spanish. Pacas Aff. at ¶¶ 2-3. She fled armed violence in her birth country of El Salvador in the 1980s and became a U.S. citizen in 2008. Id. at ¶¶ 4-6. Petitioner Pacas also has several underlying health conditions which make her especially

vulnerable to COVID-19. Id. at ¶ 9. Her family members have handled her grocery shopping during the pandemic to ensure she does not need to go outside. Id. at ¶ 11. Since she has limited mobility, Petitioner Pacas typically relies on rideshares to get to her polling place. Id. at ¶ 10. She does not own a computer or printer and fears she will not be able to vote due to COVID-19 unless she receives an application to vote by mail. Id. at ¶¶ 14-15.

Petitioner Willie Arthur Scott, Jr. is a 76-year-old resident of Boston. Scott Jr. Aff. at ¶¶ 1-3. Petitioner Scott Jr. believes it is his duty to vote out of respect and gratitude for those who fought for his right to vote as a Black man. Id. at ¶ 4. Petitioner Scott has several serious health conditions that put him at high risk of developing severe complications if he were to contract COVID-19. Id. at ¶ 8. He would like to vote in the upcoming elections but is afraid to vote in person for fear of contracting COVID-19. Id. at ¶ 10.

Petitioner Tu To Trac is a 78-year-old resident of Quincy who speaks only Cantonese and lives with his wife in senior housing. Trac Aff. at ¶¶ 1, 3. He has several underlying medical conditions, and has avoided going outside unless necessary since the onset of the COVID-19 pandemic. Id. at ¶ 5. Petitioner Trac wishes to vote but

likely will not do so if he cannot vote by mail. Id. at ¶ 7.

Petitioner Noelia Rodriguez is a primarily Spanish speaking resident of Chelsea who was born in 1954 and tries to vote every year to keep her elected officials accountable. Rodriguez Aff. at ¶¶ 2-4. She has avoided going outside unless necessary because she has several medical conditions that place her at a high risk of severe complications if she contracts COVID-19. Id. at ¶¶ 5-7. Petitioner Rodriguez would like to vote but will not be able to if she is not sent a vote-by-mail ballot application. Id. at ¶ 14.

Petitioner Yi Hui Wei is a 75-year-old resident of Quincy who speaks only Cantonese and lives with his wife. Wei Aff. at ¶¶ 1, 3. Petitioner Wei and his wife have avoided leaving their home due to their age and Petitioner Wei's medical conditions, which place them at a high risk for severe complications if they were to contract COVID-19. Id. ¶ 6. Petitioner Wei is worried that he will be unable to vote if he cannot vote by mail. Id. at ¶ 9.

Petitioner Shu Hong Zhang is a 69-year-old resident of Quincy who speaks only Cantonese and lives with his wife in senior housing. See Zhang Aff. at ¶¶ 1, 3-4. He has an underlying medical condition and severely limits his

trips outside due to COVID-19. Id. ¶¶ 5-6. His only income comes from Social Security, and he does not possess a computer or printer in his home. Id. at ¶¶ 4, 8. Petitioner Zhang wants to vote but likely will not due to safety concerns unless he can vote by mail. Id. at ¶ 9.

Common Cause is a non-partisan, nonprofit organization that works to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. With over one million members and supporters, Common Cause advocates for sound, effective campaign finance law to ensure a government that is accountable and responsible to the public that it serves. The leadership and membership of Common Cause Massachusetts - the Massachusetts affiliate of Common Cause - were critical in advocating for the passage of the Act.

MassVOTE is a non-partisan, nonprofit organization that works to promote a culture of active political participation by providing civic organizations the tools they need to organize, register, and educate voters, with an emphasis on historically disenfranchised communities. MassVOTE builds civic coalitions to advocate for democratic

reforms that make the electoral process more accountable and accessible to all people. MassVOTE participated in the coalition of organizations involved in advocating for passage of the Act, and works directly with voters who would benefit from the Act's provisions.

Defendant William Francis Galvin is the Secretary of the Commonwealth of Massachusetts, and is being sued in his official capacity. The Secretary is responsible for overseeing elections in Massachusetts and, under the Act, must "not later than July 15, 2020, mail to all registered voters who registered to vote before July 1 . . . an application for said voter to be permitted to vote early by mail for the primary election." H. 4820 §6(d)(1)-(2), 191st Gen. Ct. (Mass. 2020).

**REASONS RELIEF IS APPROPRIATE IN THIS COURT PURSUANT TO
G. L. C. 249, § 5**

This Petition is premised on the Secretary's announcement that he will not comply with a mandatory, non-discretionary statutory provision. Petitioners respectfully invoke this Court's jurisdiction under G. L. c. 249, § 5 to "to obtain relief formerly available by writ of mandamus." The common law writ of mandamus was historically invoked to compel government officials to take ministerial actions when no other recourse was left to

petitioners. Coach & Six Rest., Inc. v. Pub. Works Comm'n, 363 Mass. 643, 645 (1973) ("mandamus would not lie where a judge, by statute, could order similar relief in his discretion"). The same relief is now available through G. L. c. 249, § 5.

Petitioners do not seek this Court's review "lightly." Commonwealth v. Richardson, 454 Mass. 1005, 1006 (2009). Petitioners understand that "relief in the nature of mandamus is extraordinary and may not be granted except to prevent a failure of justice in instances where there is no other adequate remedy." Lutheran Serv. Ass'n of New England, Inc. v. Metropolitan Dist. Comm'n, 397 Mass. 341, 344 (1986). Here, because the Act requires the Secretary to mail Applications by July 15, there is no opportunity for petitioners to seek other adequate recourse. See H. 4820 §6(d)(1)-(2), 191st Gen. Ct. (Mass. 2020).⁴

⁴ This Court may, but need not, also accept pendent jurisdiction over this Petition pursuant to G. L. c. 214, § 1, conferring on this Court "original and concurrent jurisdiction of all cases and matters of equity cognizable under the general principles of equity jurisprudence," and G. L. c. 231A § 1, establishing that this court "may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby." This Court has previously invoked these authorities to adjudicate disputes relating to the Commonwealth's election laws. See, e.g., Goldstein, 484 Mass. at 516; Libertarian Ass'n of Mass. v. Sec'y of the

FACTUAL BACKGROUND

I. VOTING AND COVID-19

The COVID-19 pandemic continues to claim the lives of hundreds of thousands of Americans. As of the date of filing, approximately 8,110 Massachusetts residents have died as a result of the disease caused by the novel coronavirus. The Commonwealth has been in various gradations of lockdown since the Governor of the Commonwealth announced a state of emergency in Massachusetts on March 10, 2020.⁵ In recent weeks, numerous other states have suffered severe viral outbreaks, and the United States recently recorded its largest single-day spike in the number of individuals diagnosed with COVID-19.⁶ The nationwide increase in COVID-19 cases presents a grave risk to the health and welfare of Massachusetts residents, particularly the elderly and other at-risk populations, such as those with minimal

Commonwealth, 462 Mass. 538, 540 (2012); Wyler v. Sec'y of the Commonwealth, 441 Mass. 22, 24 (2004).

⁵ See Exec. Order No. 591, Office of the Gov., Mass., (Mar. 10, 2020), <https://www.mass.gov/executive-orders/no-591-declaration-of-a-state-of-emergency-to-respond-to-covid-19>.

⁶ Feur, U.S. reports record single-day spike of 63,200 new cases of coronavirus, CNBC (July 10, 2020), <https://www.cnbc.com/2020/07/10/us-reports-record-single-day-spike-of-63200-new-coronavirus-cases.html>.

access to adequate health care or preexisting medical conditions.⁷

The crowds associated with in-person voting pose obvious risks for the transmission of the virus among voters and poll workers.⁸ Reporting suggests that Wisconsin's April in-person election, for example, was responsible for a subsequent spike in reported infections in the state.⁹ Naturally, fear of contracting the virus further suppresses in-person turnout. For these reasons, many states and the federal government have taken steps to encourage voters to pursue alternatives to traditional in-person voting. Public reports suggest that at least 35 states have in some way modified voting procedures to encourage voting by mail in response to the outbreak.¹⁰

⁷ Centers for Disease Control and Prevention, People Who Are At Increased Risk for Severe Illness (updated June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>

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

⁹ Reimann, Coronavirus Infections Spiked In Wisconsin After In-Person Election, Study Says, Forbes (May 19, 2020), <https://www.forbes.com/sites/nicholasreimann/2020/05/19/coronavirus-infections-spiked-in-wisconsin-after-in-person-election-study-says/#6c8c4cc114b3>.

¹⁰ Ballotpedia, The Encyclopedia of American Politics, Changes to absentee/mail-in voting procedures in response

II. THE ACT

Recognizing the urgency of addressing these concerns before the upcoming fall election cycle, on July 2, the Legislature passed the Act and “declared [it] to be an emergency law, necessary for the immediate preservation of the public health and convenience.” H. 4820, 191st Gen. Ct. (Mass. 2020). By its terms, the Act is intended to “forthwith provide for increased voting options in response to COVID-19 . . . necessary for the immediate preservation of the public health and convenience.” Id. The Act temporarily suspends the requirement that a Massachusetts voter certify that she or he has an excuse before casting a ballot by mail, and virtually all of its provisions expire at the end of the year.¹¹

Given the importance of extending vote-by-mail options equally to all voters in the Commonwealth, the Act requires the Secretary to mail an Application to all

to the coronavirus (COVID-19) pandemic 2020, at [https://ballotpedia.org/Changes_to_absentee/mail-in_voting_procedures_in_response_to_the_coronavirus_\(COVID-19\)_pandemic,_2020](https://ballotpedia.org/Changes_to_absentee/mail-in_voting_procedures_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020) (last visited July 11, 2020).

¹¹ See, e.g., § 10 (“shall allow any qualified voter to vote early by mail for any city or town election held on or before December 31, 2020”); § 15 (“For an election held on or before December 31, 2020”); § 16 (“applications for early and absentee ballots for all elections held on or before December 31, 2020”); § 17 (“shall apply to . . . any election held on or before December 31, 2020”).

registered voters. In light of the quickly-approaching election dates - particularly the September 1 primary election - the Act requires that Applications be mailed by July 15, 2020. Specifically, Section 6(d)(1) of the Act provides that:

The state secretary shall, not later than July 15, 2020, mail to all registered voters who registered to vote before July 1 at their residential addresses or mailing addresses if different from their residential addresses listed in the central registry an application for said voter to be permitted to vote early by mail for the primary election; provided, however, that the state secretary shall not send an application to any voter whose previous application for an absent or early ballot for the primary election or for all elections in calendar year 2020 has been accepted.

(Emphasis added.) To further facilitate the process by which voters may opt to vote-by-mail, Section 6(d)(4) requires that the Application be pre-addressed to the appropriate local election official and that postage be guaranteed. Specifically, that section provides that:

The applications required pursuant to this subsection shall be in a form prescribed by the state secretary in accordance with state and federal law; provided, however, that said applications shall: (i) include clear instructions for completing and returning the application; (ii) allow a voter to designate the mailing address to which the ballot shall be sent; and (iii) be pre-addressed to the local election official with postage guaranteed. (Emphasis added.)

The importance of the July 15 mailing date for Applications is highlighted by the sequence of events that, under the

process envisioned by the Act, must occur for a voter to vote by mail in the September 1, 2020 primary. By that date, all of the following must occur: (1) the Secretary must send voters an Application and a postage-paid envelope, (2) if the voter chooses to vote by mail, the voter must send the Application to her or his local election official using the envelope provided, (3) the local election official must then send the voter a mail ballot, and (4) the voter then casts that ballot in advance of or on the day of the election by returning it to the local election official. In recognition of this tight timeline, the Legislature has included a specific mandatory date - July 15 - by which the Secretary must mail Applications.

III. THE SECRETARY'S STATEMENTS

On July 6, the official Twitter account of the Elections Division of the Secretary's Office tweeted that "Vote by Mail Applications will soon be sent to every registered voter."¹² That same day, the Secretary retweeted this post from his personal Twitter account.¹³

¹² @VotingInMass, Twitter (July 6, 2020, 4:18pm), www.twitter.com/VotingInMass.

¹³ @BillGalvin4MA, Twitter (July 6, 2020), www.twitter.com/BillGalvin4MA.

However, on July 7, according to media reports, the Secretary stated his office would not comply with the statutory deadline. See Van Buskirk, supra. The Secretary was quoted as saying:

We had hoped to do it by that date. The legislation calls for it. But the Legislature has not sent the money. We can't pay for the postage. We can't pay for the printing until we have the postal permit. We can't buy the permit until we get the money.

Id. The Secretary added that he thought a potential \$5 million grant from a proposed bill in the Legislature "would probably get us going." Id.

A spokesperson from the Secretary's office later added that the Secretary "does not believe CARES Act funds can be used to mail applications to all registered voters [] as a result of guidance from the Election Assistance Commission." Id. His office also later said that the Secretary believes the office could "use the [CARES Act] money to send the ballots themselves" but not to send Applications. Id.

IV. THE CARES ACT AND EAC'S GUIDANCE

a. CARES Act Funding

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") is a \$2 trillion federal stimulus bill

signed into law by the President on March 27, 2020.¹⁴ The CARES Act authorized \$400 million in funding to the EAC “to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.”¹⁵ The EAC then disbursed the funding to states in the form of grants.

On April 14, the Secretary submitted an application for Massachusetts to receive CARES Act funds in which he stated:

To address the effects of the coronavirus on the upcoming election cycle, we expect expanded voting by mail to be available for the state primary and state election. **As such, we will incur substantial expenses for implementing this process including printing of additional ballots and envelopes and more importantly for postage.** In addition, as our municipalities will likely have higher volumes of ballots by mail, additional scanners and systems support for timely processing will be required. We anticipate significant costs for notices and advertisements to ensure that voters are aware of vote-by-mail options and any other changes to the voting process. Further, funds are necessary to purchase cleaning supplies and protective equipment for poll workers. (Emphases added.)¹⁶

¹⁴ Cochrane & Stolberg, \$2 Trillion Coronavirus Stimulus Bill Is Signed Into Law, New York Times (March 27, 2020), <https://www.nytimes.com/2020/03/27/us/politics/coronavirus-house-voting.html>.

¹⁵ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat 281 (2020).

¹⁶ Letter from William Galvin, Secretary of the Commonwealth, to Mona Harrington, Acting Executive Director of the Election Assistance Commission (April 14, 2020) <https://www.eac.gov/sites/default/files/>

In April, Massachusetts received \$8,325,918 in funds from the EAC pursuant to the CARES Act.¹⁷

b. EAC Guidance

Following the enactment of the CARES Act, EAC promulgated extensive Guidance which addressed, among other things, how state election administrators could use the newly appropriated CARES Act funds. EAC has consistently emphasized that funds may be used for a broad range of additional voting expenses that States might incur as a result of the pandemic, and has repeatedly highlighted that it wants to provide states with maximum flexibility to meet the challenges of the current moment.

At the outset, the EAC stated that it "is committed to providing as much flexibility as possible to the states to access and expend funds appropriated under the [CARES] Act."¹⁸ In online guidance, the EAC states: "The EAC wants to provide flexibility to the states to meet unexpected needs related to the pandemic and will work with you to

paymentgrants/cares/MA_CARES_Disbursement_RequestLetter.pdf.

¹⁷ U.S. Election Assistance Commission, 2020 HAVA Funds, <https://www.eac.gov/payments-and-grants/2020-hava-funds>.

¹⁸ Apr. 6 Instructions.

determine if adjustments you want to make to your budgets and plans will require EAC prior approval.”¹⁹

The EAC has advised that:

- “Increased costs . . . related to all aspects of voting by mail are allowable to the extent that they represent expenditures you are incurring as a result of the pandemic and you are not supplanting funds already allocated under your state budget authority to cover the costs”;²⁰
- The funds may be used to cover “additional mailing and postage costs”;²¹
- Allowable costs include costs “associated with higher levels of absentee voting and voting by mail to ensure accessibility by all populations”;²² and
- The funds may be used to pay for “additional costs associated with the national emergency related to coronavirus and are to be spent to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.”²³

BASES FOR RELIEF

I. THIS COURT SHOULD ORDER THE SECRETARY TO COMPLY WITH THE LAW IMMEDIATELY

This Court should invoke its longstanding authority to order public officials to comply with the law to, here,

¹⁹ EAC Guidance & FAQ.

²⁰ Id.

²¹ Apr. 6 Instructions.

²² CARES Act Funding Webinar on April 9, 2020, YouTube (April 10, 2020) <https://www.youtube.com/watch?v=4vzrrrKT0T7Y> at 8:36.

²³ Apr. 6 Instructions.

order the Secretary to execute the mandatory provisions of the Act.

"A complaint in the nature of mandamus is 'a call to a government official to perform a clear cut duty,' and the remedy is limited to requiring action on the part of the government official." Simmons v. Clerk-Magistrate of Bos. Div. of Hous. Court Dep't, 448 Mass. 57, 59-60 (2006) (quoting Doe v. District Attorney for the Plymouth Dist., 29 Mass. App. Ct. 671, 675 (1991)). Such an action "is appropriate to compel a public official to perform an act which the official has a legal duty to perform." Lutheran Serv. Ass'n of New England, Inc. v. Metropolitan Dist. Comm'n, 397 Mass. 341, 344, 491 N.E.2d 255 (1986). "[M]andamus is a remedy for (administrative) inaction." Reading v. Attorney Gen., 362 Mass. 266, 269 (1972).

Here, the Act imposes a "clear cut duty," Simmons, 448 Mass. at 59-60, and Petitioners are challenging "[a]administrative[] inaction," Reading, 362 Mass. at 269. The Act provides that "the state secretary shall, not later than July 15, 2020, mail to all registered voters who registered to vote before July 1, 2020 . . . an application for said voter to be permitted to vote early by mail for the primary election" (emphasis added) H. 4820 § 6(d)(1)-(2), 191st Gen. Ct. (Mass. 2020). Both the duty

to mail applications and the timeline for doing so are mandatory features. “[S]hall,’ a word of command, is used in the statute.” Massachusetts Soc. of Graduate Physical Therapists v. Bd. of Registration in Med., 330 Mass. 601, 603 (1953) (granting mandamus relief). The Act does not confer upon the Secretary discretion in meeting the July 15 deadline to begin sending Applications to registered voters. Because the Secretary has plainly expressed his intention to not comply with this provision of the law, “mandamus would appear to be the only effective remedy.” Id. at 606.

This Court has previously granted petitions brought by private citizens seeking a judicial intervention when a state official refuses to undertake a “public duty.” See Brooks v. Secretary of the Commonwealth, 257 Mass. 91, 92-93 (1926); see also Brady v. Board of Appeals of Westport, 348 Mass. 515, 519 (1965); Brewster v. Sherman, 195 Mass. 222, 224 (1907). Such actions have been entertained “where the respondent owed a positive duty to the public as a whole to perform a certain act or series of acts which he had altogether refused or failed to perform, and individual members of the public were held to have standing to require such performance.” Ames v. Attorney Gen., 332 Mass. 246, 254 (1955).

Precisely those circumstances arise here. Petitioners share characteristics with groups of Massachusetts voters who would be disproportionately impacted if the provisions of the Act are not enforced. As Petitioner Bertin, a diabetic cancer survivor who "remember[s] segregated water fountains and bus stations," puts it: "Going out to vote can kill me." Bertin Aff. at ¶¶ 4, 14, 19. Referring to himself and his elderly wife, Petitioner Wei states: "If we are able to vote by mail this fall, we would definitely do that. If we could not vote by mail, I doubt we would go out to the polls to vote, because that would be too scary in light of the COVID-19 pandemic." Wei Aff. at ¶ 7. Each of the Petitioners is home-bound or otherwise limited in their ability to freely leave the house or use the internet to apply to vote by mail. These individuals, and many other voters like them in Massachusetts, likely share the sentiment offered by Petitioner Scott: "If the State does not send me the application to vote by mail, I am worried that I will not be able to safely exercise my right to vote out of fear of contracting COVID-19." Scott Aff. at ¶ 12.

This Court has previously granted similar relief in cases where public officials have refused to conform to the requirements of the law, even where compliance required

significant outlays of funds. In Attorney General v. Sheriff of Suffolk County, this Court declined to overturn a mandamus order issued by the single justice requiring the City of Boston to add four extra stories to a plan for a new building at the Charles Street Jail in order to comply with a legal requirement that it address overcrowding. 394 Mass. 624, 629-631 (1985). The Court noted that the new plan would require the "\$15.4 million already set aside by the city and \$28 million of expected State funds." (emphases added) Id. at 630.

This is not a case where an official has "acted" and a lawsuit has been brought "to command them to act in a new and different manner." Harding v. Commissioner of Ins., 352 Mass. 478, 480 (1967). The Secretary has stated in no uncertain terms that he will not be complying with the law by the date on which he is required to; full stop. Whether he may ultimately send some Applications to some voters at some future date is not relevant: the statute's commands are "clear cut," and exigent. Simmons, 448 Mass. at 59-60. Because of the pressing deadline, Petitioners have "no other adequate and effectual remedy," and the absence of relief from this Court will constitute a "failure of justice." Coach & Six Restaurant, Inc. v. Public Works Commn., 363 Mass. 643, 644 (1973).

II. THE ONLY EXCUSE PROVIDED BY THE SECRETARY FOR NOT COMPLYING WITH THE LAW LACKS A BASIS

The Secretary has not argued that the Act's provisions are not mandatory, that they are not binding on him, or that they are impossible to achieve. Indeed, the "shall" language of the Act and the specific date by which compliance is required are clear and unequivocal, and the Secretary has recognized as much. See Van Buskirk supra ("We had hoped to do it by that date. The legislation calls for it.").

The Secretary's stated reason for not complying with the law is that he does not have sufficient funding from the Legislature to do so. In not drawing down from the CARES Act funding, the Secretary is purportedly relying on a distinction between using the funds to send mail ballots to voters (permissible) and using CARES Act funding to send applications to receive mail ballots to voters (impermissible).

The narrow and cramped distinction that the Secretary is purportedly relying upon does not exist, and the Secretary's position lacks support. First, it does not accord with the actual guidance promulgated by the EAC, which is intended to provide "as much flexibility as possible to the states to access and expend funds

appropriated under the [CARES] Act” and specifically permits states to spend the money on “additional mailing and postage costs.” Second, this Court can take judicial notice of the abundant public evidence that other states are using the CARES Act funding to send applications (and not just ballots).

a. EAC Guidance Clearly Allows Cares Act Funds to be Used to Cover the Cost of Sending Voters Applications for Absentee Ballots

The EAC has been clear that it “is committed to providing as much flexibility as possible to the states to access and expend funds appropriated under the [cares] act”²⁴ and that it “wants to provide flexibility to the states to meet unexpected needs related to the pandemic.”²⁵ it has stated that “[i]ncreased costs . . . Related to all aspects of voting by mail are allowable to the extent that they represent [pandemic-related] expenditures.”²⁶

More specifically, the EAC has stated in formal guidance that funds appropriated pursuant to the CARES Act may be expressly used to pay for “additional mailing and postage costs” incurred by states as a result of a response

²⁴ Apr. 6 Instructions.

²⁵ EAC Guidance & FAQ.

²⁶ Id. (emphasis added).

to the COVID-19 pandemic.²⁷ The EAC has stated that allowable costs under the CARES Act include costs "associated with higher levels of absentee voting and voting by mail to ensure accessibility by all populations."²⁸ Critically, in this communication the EAC references both costs "associated with higher levels of absentee voting" and, separately, costs "associated with . . . voting by mail," acknowledging that associated costs of voting by mail is a category of expenses that exceeds purely the employment of "absentee voting."

Put simply, there is no support for the concept that CARES Act funds appropriated to EAC for disbursement to the states can be used to reimburse costs associated with the transmission of mail ballots but not applications for mail ballots. And, obviously, the expense associated with the Act is an "expenditure[the Commonwealth is] incurring as a result of the pandemic" and not "supplanting funds already allocated under your state budget authority to cover the costs."²⁹ The Act is a temporary, emergency

²⁷ Apr. 6 Instructions.

²⁸ CARES Act Funding Webinar on April 9, 2020, YouTube (April 10, 2020) <https://www.youtube.com/watch?v=4vzrrKT0T7Y> at 8:36.

²⁹ EAC Guidance & FAQ.

response to the pandemic, not a planned permanent change to the Commonwealth's voting systems.³⁰

b. Other States Are Currently Using CARES Act Funding to Send Applications to Voters During the Pandemic

Perhaps unsurprisingly, given how clear the law is, judicially noticeable public reports establish that numerous other states are currently using CARES Act funds precisely for the purpose that the Secretary claims is impermissible:

- According to the CARES Progress Narrative Reports submitted to the EAC, Iowa, New Mexico, and Rhode Island have used CARES funds to mail applications for absentee or mail in ballots.³¹
- Rhode Island's Secretary State has also publicly stated that she is using a portion of the \$3 million

³⁰ To the extent the Secretary is relying on non-public guidance from the EAC, Petitioners reserve all rights, including the right to amend or supplement this Petition.

³¹ See EAC Cares Progress Narrative Report, Iowa (June 22, 2020) https://www.eac.gov/sites/default/files/paymentgrants/cares/IA_20CARES_Progress_Report_062220.pdf ; EAC Cares Progress Narrative Report, New Mexico (June 15, 2020) https://www.eac.gov/sites/default/files/paymentgrants/cares/NM_20CARES_Progress_Report_061520.pdf ; EAC Cares Progress Narrative Report, Rhode Island (June 22, 2020) https://www.eac.gov/sites/default/files/paymentgrants/cares/RI_20CARES_Progress_Report_062220.pdf.

in CARES money Rhode Island received from the EAC for “mail ballot application postage.”³²

- Additionally, Michigan’s Secretary of State tweeted on May 19, 2020 commenting on an article announcing that all Michigan voters will be sent applications for absentee ballots that “[w]ith funding from the federal CARES Act, I am ensuring every registered voter has the tools to conveniently exercise” their right to vote (emphasis added).³³

CONCLUSION

This Court should issue an order in the nature of mandamus requiring that the Secretary comply with the Act by beginning to send Applications to voters. The Secretary has proffered one excuse for not doing so in advance of the statutory deadline; that excuse is manifestly unsupported by any existing law or set of facts. The Court should further order the Secretary to file regular reports with this Court attesting to his prompt and good-faith compliance with all provisions of the Act imposing on him a public duty.

Absent immediate relief from this Court, the Secretary will be permitted to flout the requirements of an enacted law, and voters wishing to participate to the upcoming

³² WPRI, RI Board of Elections Flooded with 85K Mail Ballot Requests and counting, YouTube (May 5, 2020) https://www.youtube.com/watch?v=DFyiw_lmQFk at 1:52.

³³ Jocelyn Benson, (@jocelynbenson), Twitter (May 19, 2020) <https://twitter.com/JocelynBenson/status/1262732174983299072?s=20>.

elections will face an unnecessarily severe burden that is inconsistent with the laws passed by their elected representatives.

REQUESTED RELIEF

Petitioners respectfully request that this Court:

- A. Accept this Emergency Petition. Petitioners respectfully request a hearing and expedited treatment.
- B. Issue appropriate relief in the nature of mandamus ordering the Secretary to comply with the July 15 deadline for the mailing of vote-by-mail ballot Applications by immediately taking all appropriate steps to prepare to transmit Applications to voters.
- C. Ensure compliance with this Court's order and the requirements of the Act by requiring the Secretary to file regular status updates on an ongoing basis with this Court.
- D. Order any other relief this Court deems appropriate.

Respectfully submitted,

/s/ Robert G. Jones

ROBERT G. JONES, BBO 630767
PATRICK T. ROATH, BBO 690603
ROPES & GRAY LLP
Prudential Tower
800 Boylston Street
Boston, MA 02199
(617) 951-7564
Robert.Jones@ropesgray.com
Patrick.Roath@ropesgray.com

Counsel for Individual Petitioners

OREN M. SELLSTROM, BBO 569045
LAURA MASLOW-ARMAND, BBO 563003
SOPHIA HALL, BBO 684541
JANELLE H. DEMPSEY, BBO 699379
LAWYERS FOR CIVIL RIGHTS
61 Batterymarch Street, Fifth Floor
Boston, MA 02110
(617) 988-0608
OSellstrom@lawyersforcivilrights.org

Counsel for Petitioners

Dated: July 13, 2020

CERTIFICATE OF SERVICE

I, Robert G. Jones, a member of the Bar of this Court, hereby certify that on this day, July 13, 2020, the foregoing Petition and accompanying documents were electronically served on counsel to the Secretary of Commonwealth by emails sent to Elizabeth Kaplan and Anne Sterman of the Office of the Massachusetts Attorney General.

/s/ Robert G. Jones

Counsel for Individual Petitioners

ADDENDUM

Affidavit of Petitioner Mary Bertin34

Affidavit of Petitioner Concepción Pacas37

Affidavit of Petitioner Willie Arthur Scott, Jr.40

Affidavit of Petitioner Tu To Trac42

Affidavit of Petitioner Noelia Rodriguez45

Affidavit of Petitioner Yi Hui Wei48

Affidavit of Petitioner Shu Hong Zhang51

H.4820, 191st Gen. Ct. (Mass. 2020) (enacted July 6, 2020). . .54

Chris Van Buskirk, Mail-in Voting Law Slams Into Dispute Over Postage Costs, State House News Service (July 7, 2020)74

Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat 281 (2020) (excerpted)77

U.S. Election Assistance Commission, RE: 2020 HAVA Coronavirus Aid, Relief and Economic Security (CARES) Act Grants, (April 6, 2020)79

U.S. Election Assistance Commission, Guidance on Use of HAVA Funds for Expenses Related to COVID-19, <https://www.eac.gov/election-officials/guidance-use-hava-funds-expenses-related-covid-19>88

Letter from William Galvin, Secretary of the Commonwealth, to Mona Harrington, Acting Executive Director of the Election Assistance Commission (April 14, 2020)97

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

MARY BERTIN, CONCEPCION PACAS, WILLIE ARTHUR SCOTT, JR., TU TO
TRAC, NOELIA RODRIGUEZ, YI HUI WEI, SHU HONG ZHANG,
COMMON CAUSE, and MASS VOTE,

Petitioners,

V.

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

Respondent.

AFFIDAVIT OF MARY BERTIN
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Mary Bertin, do hereby state that the following is
true to the best of my knowledge, information and belief:

1. I am a registered voter in Massachusetts.
2. I am a Black woman, and I was born on September 25,
1946.
3. I was born in Dadeville, Alabama. I am a descendant of
slaves.
4. I grew up in Anniston, Alabama during segregation. I
remember segregated water fountains and bus stations.
5. My mother was actively involved in the Civil Rights
Movement.
6. As a teenager, I remember seeing the local bus station
bombed by white supremacists and the Ku Klux Klan when
Freedom Riders arrived in Anniston.

7. Growing up in Alabama, I also remember the bombing of the 16th Street Baptist Church in Birmingham on Sunday, September 15, 1963.
8. As a teenager, I saw firsthand Black elders being taught how to vote, registering to vote, and casting their votes for the very first time.
9. I have also traveled extensively, including to African countries such as Ghana to visit historical sites related to the enslavement of Black people. I have also traveled to South Africa to visit historical sites related to Nelson Mandela and liberation from Apartheid.
10. I have voted in every election since I was 18 years-old. I have never missed an election. I vote because I saw Black disenfranchisement firsthand.
11. I have lived in Boston since 1964, and I attended Northeastern University in the 1960s.
12. For nearly thirty years, I worked in the telecommunications field. I have also worked for Massachusetts Institute of Technology (MIT) and the Commonwealth of Massachusetts. I retired in 2013.
13. I intend to vote in the Massachusetts State Primary on September 1, 2020 and the General Election on November 3, 2020.
14. In addition to my age, I have several health conditions that place me at the highest risk for developing serious complications if I were to contract COVID-19. I have a compromised immune system. I am a survivor of anaplastic thyroid cancer, one of the most aggressive forms of cancer. I receive advanced treatment at the Dana-Farber Cancer Institute. I am also an insulin-dependent diabetic. I depend on life-saving medical equipment, including both a continuous insulin drop and a glucose monitor connected directly to my body. I also suffer from other conditions such as hypertension and high cholesterol. I experience mobility issues that prevent me from walking very far.
15. Due to my health conditions, I have self-isolated and quarantined for months. To protect myself, I limit the time I spend outside of my apartment. I am a devout Southern Baptist, but I even stopped going to church. I

also leave my mail and packages out for three days to minimize the risk of COVID-19 infection.

16. I have been in close contact with my doctors, including my oncologist, diabetes specialist and primary care provider, throughout the pandemic for constant monitoring. Due to COVID-19, doctors are very worried about me. I follow their recommendations closely.
17. Since I am considered very high risk for COVID-19, I am scared of being in close proximity to other people and I am scared of voting in person this Fall. I would like to vote by mail in the State Primary and the General Election.
18. I own an old computer and printer, but I am not very computer-literate. My printer is not working. I am not able to print the vote-by-mail ballot application.
19. If the Commonwealth does not send me the application to vote by mail, I am very worried that I will not be able to exercise my right to vote due to the risk of life-threatening COVID-19 infection and illness. Going out to vote in-person can kill me.

I declare under the penalty of perjury of the United States that the foregoing is correct and executed this 11 day of July, 2020.

/s/ Mary Bertin
Mary Bertin

Signed w/approval
/s/Oren M. Sellstrom (BBO 569045)

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

MARY BERTIN, CONCEPCION PACAS, WILLIE ARTHUR SCOTT, JR., TU TO
TRAC, NOELIA RODRIGUEZ, YI HUI WEI, SHU HONG ZHANG,
COMMON CAUSE, and MASS VOTE,

Petitioners,

V.

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

AFFIDAVIT OF CONCEPCIÓN PACAS
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Concepción Pacas, do hereby state that the following is
true to the best of my knowledge, information and belief:

1. I am a registered voter in Massachusetts.
2. I am a Latina woman and mono-lingual Spanish speaker.
3. I was born on February 6, 1943, in Usulután, El Salvador.
4. In the 1980s, when the civil war broke out in El Salvador, I fled armed violence, shootings and death. I migrated to the United States seeking safety and refuge.
5. I am a U.S. Citizen. I proudly took my oath of citizenship in the federal court in Boston in 2008.
6. I became a U.S. Citizen to be able to fully participate in American democracy and to exercise all the rights and

responsibilities of U.S. citizenship, including the right to vote.

7. I vote in the Williams School in Chelsea, Massachusetts, the city where I live.
8. I love voting. It is an important part of being a U.S. citizen. But in this pandemic, the idea of leaving my home to vote scares me. When I think of crowds, it terrifies me. When I see people at all, I get frightened. My health makes me very vulnerable.
9. In addition to my age, I have significant underlying health conditions, including polymyositis and rheumatic disease, which severely limits my mobility. I also tend to experience painful falls. I last fell on Thursday, July 9, in my home.
10. Since I have limited mobility, I typically secure a car share ride to get to my polling site. With the pandemic, car shares scare me.
11. I live alone. Since the pandemic hit, I have been extremely cautious. My family members handle my grocery shopping and errands so I can avoid COVID-19 infection.
12. I intend to vote in the Massachusetts State Primary on September 1, 2020 and the General Election on November 3, 2020.
13. Since I am considered high risk for COVID-19, I am scared of being in close proximity to other people and I am scared of voting in person. I would like to vote by mail in the State Primary and the General Election.
14. I do not own a computer or printer. I am unable to access or print the vote-by-mail ballot application.
15. If the Commonwealth does not send me the application to vote by mail, I am afraid that I will not be able to exercise my right to vote due to COVID-19.
16. This affidavit was read to me in Spanish, and I swear it is true.

I declare under the penalty of perjury of the United States that the foregoing is correct and executed this 12 day of July, 2020.

/s/ Concepción Pacas
Concepción Pacas

Signed w/approval
/s/Oren M. Sellstrom (BBO 569045)

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

MARY BERTIN, CONCEPCION PACAS, WILLIE ARTHUR SCOTT, JR., TU TO
TRAC, NOELIA RODRIGUEZ, YI HUI WEI, SHU HONG ZHANG,
COMMON CAUSE, and MASS VOTE,

Petitioners,
V.

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

Respondent.

AFFIDAVIT OF WILLIE ARTHUR SCOTT, JR.
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Willie A. Scott, Jr., do hereby state that the following
is true to the best of my knowledge, information and
belief:

1. I am a registered voter in Massachusetts.
2. I am a Black man, and I was born in Georgia on June 30, 1944.
3. I have lived in Boston since 1954.
4. I try to vote in every election out of respect and gratitude for those who fought for my right as a Black man to vote. I grew up in a time when Black people were unable to vote, and I remember seeing news footage of people fighting for that right. Given the history, it is my duty to vote.
5. I intend to vote in the Massachusetts State Primary on September 1, 2020 and the General Election on November 3, 2020.

6. I receive Social Security and I currently live alone in Hampton House, a public housing development for elderly and disabled individuals leased under the Boston Housing Authority.
7. I previously worked as a truck driver until 1995 when I had to stop working due to a heart condition.
8. In addition to my age, I have several health conditions that put me at high risk for developing severe complications if I were to contract COVID-19. I received a heart transplant in 2002 and also suffer from diabetes and high blood pressure.
9. Due to my health conditions, I am very fearful to go out in public because people do not maintain the recommended six-foot distance. To protect myself, I limit the time I spend outside of my apartment and I try to run any errands at times when there will not be large crowds.
10. Because I am considered high risk for COVID-19, I am very fearful of voting in person this fall. I would like to vote by mail in the State Primary and the General Election.
11. I am not able to print the vote-by-mail ballot application. Although I own a computer, I do not know how to use it and I do not know if I have internet at home. Similarly, I have a printer, but because I am unable to use my computer, I do not use the printer. Others have tried to show me how to use the computer, but it is difficult for me to understand how to do it.
12. If the State does not send me the application to vote by mail, I am worried that I will not be able to safely exercise my right to vote out of fear of contracting COVID-19.

I declare under the penalty of perjury of the United States that the foregoing is correct and executed this 12th day of July 2020.

/s/ Willie Arthur Scott, Jr.
Willie Arthur Scott, Jr.

Signed w/approval
/s/Janelle H. Dempsey (BBO 699379)

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

MARY BERTIN, CONCEPCION PACAS, WILLIE ARTHUR SCOTT, JR., TU TO
TRAC, NOELIA RODRIGUEZ, YI HUI WEI, SHU HONG ZHANG,
COMMON CAUSE, and MASS VOTE,

Petitioners,

V.

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

AFFIDAVIT OF TU TO TRAC
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Tu To Trac, declare as follows:

1. I am a registered voter in the Commonwealth of
Massachusetts. I live with my wife at 71C Martensen Street
in Quincy, MA.
2. I became a US citizen in 2008. I registered to vote after
that and I have regularly voted in elections since then.
It makes me proud to be a US citizen when I can vote.
3. I am 78 years old and only speak Cantonese. I do not speak
or read English.

4. I live with my wife in senior housing. I used to work as a carpet installer and in a supermarket, but I have been retired for some time now. We receive Supplemental Security Income (SSI). It isn't much, but we are able to make do.
5. I would like to vote in the Primary and General Elections this Fall. However, because of the COVID-19 pandemic, I am very scared to leave my apartment these days. Basically, I try to avoid any place where people gather together. In addition to being older, I also have health problems that makes the prospect of getting infected with COVID-19 even more frightening for me. A number of years ago, I had an operation that removed a portion of my left lung, and I am overweight. I am very concerned that these conditions would place me at even higher risk of something bad happening if I got COVID-19, including the possibility that I might die from it.
6. My wife and I do not have a computer or a printer at our home. We have a smartphone but we don't use it to get onto the internet. We just use it for making phone calls and we really don't understand the internet. So we have no way of getting a vote-by-mail application off the internet. And even if we were able to do that, it would be hard for us to

pay for stamps to return the application. On our fixed income, any additional expense is a hardship.

7. I don't know what I would do if I am not able to vote-by-mail this Fall. I really want to vote like I have in the past but the idea of going out to the polls is just too scary right now. In all likelihood, if I can't vote-by-mail, I will just not vote. It doesn't seem right that I would have to choose between voting and keeping me and my wife healthy.

8. If I could vote-by-mail this Fall, I definitely would. I really hope the State sends me a vote-by-mail application in time for me to do that.

9. This affidavit was read to me in Cantonese, and I swear it is true.

I declare under penalty of perjury that the foregoing is true and correct and executed this 12th day of July 2020.

/s/ Tu To Trac
Tu To Trac

Signed w/approval
/s/Oren M. Sellstrom (BBO 569045)

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

MARY BERTIN, CONCEPCION PACAS, WILLIE ARTHUR SCOTT, JR., TU TO
TRAC, NOELIA RODRIGUEZ, YI HUI WEI, SHU HONG ZHANG,
COMMON CAUSE, and MASS VOTE,

Petitioners,

V.

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

AFFIDAVIT OF NOELIA RODRIGUEZ
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Noelia Rodriguez, do hereby state that the following is
true to the best of my knowledge, information and belief:

1. I am a registered voter in Massachusetts.
2. I am a Puerto Rican woman, and my primary language is Spanish.
3. I was born in 1954.
4. I have lived in Chelsea, Massachusetts for more than 30 years.
5. I suffer from respiratory problems and diabetes. I am being treated by physicians at the Massachusetts General Hospital HealthCare Center in Chelsea.

6. I also suffer from fibromyalgia and arthritis which affect my muscles and joints. Movement is painful for me. It hurts to walk.
7. I avoid leaving my home to prevent COVID-19 infection. My family runs my errands and helps with my grocery shopping.
8. I try to vote every year to exercise my rights and to keep elected officials accountable. My polling site is by the Prattville fire station near the corner Sagamore Avenue and Washington Avenue in Chelsea.
9. I intend to vote in the Massachusetts State Primary on September 1, 2020 and the General Election on November 3, 2020.
10. I usually take public transit – via an overcrowded bus – to go to vote. But I am not comfortable taking the bus during the pandemic. Due to my limited mobility, I would also have serious physical problems walking to the polling site.
11. Due to my compromised health and the risk of COVID-19 infection, I would like to vote by mail in the State Primary and the General Election.
12. I do not own a computer or printer. I am unable to access or print the vote-by-mail ballot application.
13. If the Commonwealth does not send me the application to vote by mail, I will not be able to exercise my right to vote due to COVID-19.
14. In telephone conversations with family members in Puerto Rico, I understand that mail-in voting is already underway. I do not understand why Puerto Rico can make mail-in voting arrangements but Massachusetts is delayed.
15. This affidavit was read to me in Spanish, and I swear it is true.

I declare under the penalty of perjury of the United States that the foregoing is correct and executed this 12 day of July, 2020.

/s/ Noelia Rodriguez

Noelia Rodriguez

Signed w/approval
/s/Oren M. Sellstrom (BBO 569045)

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

MARY BERTIN, CONCEPCION PACAS, WILLIE ARTHUR SCOTT, JR., TU TO
TRAC, NOELIA RODRIGUEZ, YI HUI WEI, SHU HONG ZHANG,
COMMON CAUSE, and MASS VOTE,

Petitioners,

V.

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

AFFIDAVIT OF YI HUI WEI
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Yi Hui Wei, declare as follows:

1. I am a registered voter in the Commonwealth of Massachusetts. I live with my wife at 63C Martensen Street in Quincy, MA.
2. I registered to vote soon after I became a US citizen over a decade ago. I vote regularly and am proud to be able to do so.
3. I am 75 years old and do not speak English, only Cantonese.
4. My wife and I are on a fixed income (Supplemental Security Income, or SSI). We do not own a computer or a printer.

We have a smartphone, but we only use it for making phone calls. We do not understand the internet.

5. I would very much like to be able to vote in this Fall's primary and general elections. However, because of the COVID-19 pandemic, I am very scared to go out to a polling place.
6. Because I am older, I know that I am at higher risk of severe illness or death if I were to contract COVID-19. I am also diabetic, so that increases my risk too. My wife is also elderly and at risk. For those reasons, my wife and I almost never leave our apartment to go out these days. We only go out when it is absolutely necessary, like to get groceries. We are extremely fearful of this virus and know that any time we leave our apartment, it increases the chance that we will become infected.
7. If we are able to vote by mail this Fall, we would definitely do that. If we could not vote by mail, I doubt we would go out to the polls to vote, because that would be too scary in light of the COVID-19 pandemic.
8. We have no way to get a vote-by-mail application off the internet, because we don't have a computer and don't understand the internet. Even paying for stamps to mail in a vote-by-mail application would be extremely difficult for

us. As stated above, we are on a fixed income and that means that every penny counts for us.

9. I hope that the State mails us a vote-by-mail application like I understand they are supposed to. If they do, we will fill out that application so that we can vote-by-mail this Fall. If we don't receive that application in the mail, or it comes too late, I am very worried that we will not be able to vote at all this year. That would be sad for us, because we consider voting to be an important part of being American.

10. This affidavit was read to me in Cantonese, and I swear it is true.

I declare under penalty of perjury that the foregoing is true and correct and executed this 12th day of July 2020.

/s/ Yi Hui Wei
Yi Hui Wei

Signed w/approval
/s/Oren M. Sellstrom (BBO 569045)

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJ-2020-

MARY BERTIN, CONCEPCION PACAS, WILLIE ARTHUR SCOTT, JR., TU TO
TRAC, NOELIA RODRIGUEZ, YI HUI WEI, SHU HONG ZHANG,
COMMON CAUSE, and MASS VOTE,

Petitioners,

V.

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

AFFIDAVIT OF SHU HONG ZHANG
IN SUPPORT OF EMERGENCY PETITION FOR RELIEF

I, Shu Hong Zhang, declare as follows:

1. I am a registered voter in the Commonwealth of Massachusetts. I live with my wife at 75C Martensen Street in Quincy, MA.
2. I became a US citizen in 2016. One of the first things I did after becoming a citizen was register to vote. I consider that an important part of being a US citizen, and it makes me proud when I vote.
3. I am 69 years old and only speak Chinese (Cantonese). I do not speak or read English.

4. I live with my wife in senior housing. We receive Social Security benefits, in addition to Supplemental Security Income (SSI). That doesn't add up to much money, and it is hard for us to make ends meet, but we manage.
5. I vote regularly and want to be able to vote in the Primary and General Elections this Fall. However, because of the coronavirus, I am very concerned about going out to vote. I am older, and I also have diabetes, both of which I know place me at higher risk of getting very sick or even dying if I get infected with coronavirus. My wife is also elderly, so she is at risk, too.
6. For this reason, my wife and I severely limit any trips out of our apartment right now. We go out to get groceries and medicine when we need to, but that's it. We will not go out unless it is absolutely necessary.
7. I usually go to the same polling station to vote. But I would be very afraid to do that this year, because that would mean leaving my apartment and exposing myself to other people. That would increase my risk of getting coronavirus.
8. My wife and I don't have a computer or a printer. We do have a smartphone, but we only use it to make phone calls. We don't use it for the internet, which we don't really understand anyway. So even if there is a vote-by-mail

application on the internet, we would not be able to get it. Also, if we had to pay for stamps to mail back a vote-by-mail application, even if we were able to get one off a computer, that would be very difficult. We are on a fixed income and every single penny is an additional burden.

9. I want to be able to vote in the Primary and General Elections this fall. If I can't get an application to vote-by-mail, or don't get one in time, I am worried that I won't be able to vote-by-mail. If I am not able to vote-by-mail, I don't think it will be safe for me to vote.

10. I want to vote this Fall, but I also need to think about the safety of me and my wife. I don't want us to have to choose between voting and our health and safety.

11. This affidavit was read to me in Cantonese, and I swear it is true.

I declare under penalty of perjury that the foregoing is true and correct and executed this 12th day of July 2020.

/s/ Shu Hong Zhong
Shu Hong Zhong

Signed w/approval
/s/Oren M. Sellstrom (BBO 569045)