

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

JAMES LYONS, RAYLA CAMPBELL, EVELYN CURLEY,
RAYMOND XIE, AND ROBERT MAY

Plaintiffs,

vs.

SECRETARY OF THE COMMONWEALTH WILLIAM GALVIN

Defendant.

Original Petition to the Single Justice

BRIEF OF AMICUS CURIAE JOHN PAUL MORAN

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Cases

Moran v. Galvin

Docket No. 2085-cv-1417-A
(Worcester Super. Ct. 2020) 5

Docket No. 2021-P-0609
(Mass. App. Ct. 2022) 6,17-18

State Statutes

G. L. c. 54 §24B 8

G. L. c. 54 §§86-103 12

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St. 2022, c. 92 *En Passim*

Federal Statutes

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Constitutional Provisions

Article of Amendment CV (105) 8,11,12,14,16

Identity Statement of Amicus

Amicus curiae, John Paul Moran, former 2020 Candidate and Republican Nominee for US Congress in the MA 6th Congressional District, is a natural person and a registered Massachusetts voter who opposes An Act Fostering Voter Opportunities, Trust, Equity, and Security (VOTES act), which became chapter 92 of the Acts of 2022, signed into law by Governor Baker on June 22, 2022, a law which will allow any voter to vote early, in person, by mail or by unsecured municipal drop boxes in violation of the election safeguards and provisions prescribed in the Massachusetts Constitution.

On December 29, 2020, amicus Moran and four other candidates who ran for office in the 2020 general election, challenged the Act Relative To Voting Options In Response to COVID-19, Bill H.4820, signed into law Governor Charlie Baker on July 6, 2020, which eliminated the concept of a "qualified voter" voting on "the day on which such an election is to be held" and absentee voting set out in Amendment Article CV (105) of the Massachusetts Constitution, through the expiration of that law on December 31, 2020. The VOTES act seeks to make permanent an expanded version of this temporary 2020 law in clear violation of the Massachusetts Constitution. Amicus has a strong interest in the outcome of this case, and in the

underlying issues raised being carefully considered by this Court.

Declaration of Authorship

Amicus John Paul Moran is personally submitting this brief on behalf of himself *pro se* and has received formatting assistance of the brief by Plaintiff's counsels Michael Walsh and David Carr. No persons or entities contributed money to fund this amicus brief.

Amicus was a party to another case involving similar issues, having filed a complaint in Court, Moran et al vs. the Commonwealth of Massachusetts et al, Civil Action No. 2085 cv-1417-A on December 29, 2020, which was dismissed by the Court and subsequently appealed to the Commonwealth of Massachusetts Appeals Court 2021-P-0609, on Appeal from Judgement from Dismissal of the Worcester Superior Court, and the appeal was subsequently dismissed by the Court on the grounds of mootness and entered on April 13, 2022.

Summary of the Argument

Amicus John Paul Moran had alleged in his December 29, 2020 complaint, joined by four other 2020 candidates for federal and state office, Caroline Colarusso, Steven R. Hall, Ingrid

Centurion and Craig Valdez, Civil Action No. 2085 cv-1417-A, that Bill H.4820 an Act Relative To Voting Options In Response to COVID-19, signed into law July 6, 2020 by Defendant Charles D. Baker ("Governor Baker"), which added and amended various early voting, absentee voting, municipal drop box voting and mail-in voting provisions in the Massachusetts Election Code, was unconstitutional and void ab initio because it contravened the requirements of the Massachusetts Constitution and thereby infringed on the powers granted to the Massachusetts state legislature under Article I § 4.

The above-mentioned Civil Action No. 2085 cv-1417-A was appealed in Case 2021-P-609, and subsequently dismissed on April 13, 2022, by the Appeals Court on the grounds of mootness; it is noteworthy that the Court wrote in its dismissal: "Indeed, we do not see why a similar challenge, brought in advance of a future election, could not be resolved before election day, as occurred in cases leading up to the 2020 elections."... As "the controversy . . . need not evade review if parties show even minimal resoluteness in carrying on litigation".

An Act Fostering Voter Opportunities, Trust, Equity, and Security (VOTES act), which became chapter 92 of the Acts of 2022, signed into law by Governor Baker on June 22, 2022, will similarly allow any voter to vote early, in person or by mail in

direct violation of the election safeguards and provisions prescribed in the Massachusetts Constitution. Plaintiffs' complaint highlights the ways this law violates the requirements detailed in Article CV (105) of the state's Constitution.

The VOTES act, which demonstrably violates both the spirit and the letter of the Massachusetts Constitution, must be vacated and Secretary of State enjoined from putting the VOTES act into effect for the September 2022 primary election, the November 2022 general election, and all future elections.

Argument

Plaintiffs' complaint asserts that Article CV (105) of the Massachusetts Constitution provides a mechanism by which a qualified elector may cast his or her vote by absentee ballot in an election, only if the qualified voter satisfies the conditions precedent to meet the requirements of one of three limited exclusive circumstances under which absentee voting is authorized under the Massachusetts Constitution, only by qualified voters of the Commonwealth who, at the time of such an election, are (1) absent from the city or town of which they are inhabitants, or (2) are unable by reason of physical disability to cast their votes in person at the polling places, or (3) who hold religious beliefs in conflict with the act of voting on the

day on which such an election is to be held; there is no provision for expanding these exclusive circumstances, and this can only be done with a constitutional amendment.

The Plaintiffs are bringing their complaint against Defendant Massachusetts Secretary of State William Galvin, who seeks to allow and promote early voting, mail-in voting and absentee voting, under provisions of Chapter 92 of the Acts of 2022, which will encourage unqualified individuals to vote, and will not ensure that the elections will be either free or fair.

Defendant seeks to implement the voting schemes set out in Chapter 92 of the Acts of 2022, which expanded on Mass. Gen. Laws c. 54 § 25B, do not require verification of signatures or identity, and violate Amendment Article CV (105) of the Massachusetts Constitution, which requires votes to be cast on a single election day by only "qualified" individuals, with narrow exceptions for well-regulated absentee voting.

Election Procedures Have Been Changed in Violation of Article CV (105) of the Massachusetts Constitution

1. In 2014, Section 25B was added to Chapter 54 of the Massachusetts General Laws, effective as of the 2016 election, and allowed early voting in Massachusetts for the first time.

2. On July 6, 2020, Chapter 115 of the Acts of 2020, entitled An Act Relative To Voting Options In Response to COVID-19 ("Chapter 115") was approved by the Massachusetts General Court and signed into law by Governor Baker, and has since expired as of December 31, 2020. Chapter 115 added and amended various early voting, mail-in voting, and absentee voting provisions in the Massachusetts Election Code, as well as adding other procedures and changes, such as eliminating the necessity to check voter rolls, allowing mail-in ballots to be sent to any address, and allowing ballots to be placed in municipal drop boxes, among others.
3. If the Massachusetts General Court wished to ensure that all qualified voters could still cast ballots despite concerns for COVID during the 2020 election cycle, it could have easily defined a case of COVID or risk of COVID as a qualified physical disability which would then qualify a voter for an absentee ballot, and it could have authorized additional polling places to allow voters to maintain distance from others rather than permitting early voting before election day, neither of which would have violated constitutional constraints and would have acted to help keep voters safe from COVID.
4. On June 22, 2022, Chapter 92 of the Acts of 2022, entitled An Act Fostering Voter Opportunities, Trust, Equity, and

Security" (VOTES act), was approved by the Massachusetts General Court and signed into law by Governor Baker. Chapter 92 allows any voter to vote early, in person, by mail or by unsecured municipal drop boxes in direct violation of the election safeguards and provisions prescribed in the Massachusetts Constitution and added other procedures and changes almost identical to the changes temporarily implemented in Chapter 115 of the Acts of 2020 detailed in Section (2) above. Additionally, if Massachusetts General Court wishes to ensure that all qualified voters could still cast ballots despite continuing concerns for COVID during the 2022 election cycle or any future elections, it can easily define a case of COVID or risk of COVID as a qualified physical disability which would then qualify a voter for an absentee ballot, and it can authorize additional polling places to allow voters to maintain distance from others rather than permitting early voting before election day, neither of which would violate constitutional constraints and would act to help keep voters safe from COVID.

5. In early 2019, prior to the passage of Chapter 115, several members of the General Court recognized that changes to election laws set out in Chapter 115 could only be made by an actual constitutional amendment, not by legislation.

They introduced a bill to amend Amendment Article CV on January 18, 2019, to allow the General Court itself to determine election procedures. This amendment was not adopted by the legislature. On February 12, 2021, two members of the General Court introduced another bill with the same language to amend Amendment Article CV to allow the General Court itself to determine election procedures, and this proposed bill is currently under consideration.

6. Prior to the changes in Section 25B of Chapter 54, Chapter 115 and then Chapter 92, most voters voted in person at a designated polling place, except for a small number of authorized absentee voters.
7. Prior to the changes in election law described, the potential voter (except a qualified absentee voter) went to a polling place in person, was identified by name and address, had the name compared with the official voter roll and a clerk checked the name on the list, before being allowed to take a paper ballot. After marking the ballot, but before being allowed to place the ballot in a box or machine, the voter had to be identified and compared to the voter roll a second time, and the name again checked on the list.

8. Article CV/105 allows a qualified elector to cast an absentee vote in an election only if the voter meets one of the three limited circumstances:

- a. 1) The voter is, at the time of the election, absent from the city or town of which they are inhabitants;
- b. 2) The voter is unable, due to physical disability, to cast a vote in person at the polling place; or
- c. 3) The voter holds religious beliefs in conflict with the act of voting on the day on which such an election is to be held.

9. Chapter 92 of the Acts of 2022, despite being duly passed by the General Court, cannot validly change the constitutional constraints on voting set out in Article CV of the Massachusetts Constitution ("Article CV/105").

10. Article CV/105 specifies that the Commonwealth must establish a clear singular "day on which an election is to be held".

11. Absentee voting, as set out in Massachusetts General Laws Chapter 54, Sections 86-103, prior to modification by chapter 92, also contemplated an actual singular "election day", when absentee ballots would be tabulated along with all votes cast in person.

12. The changes set out in chapter 92 of the Acts of 2022 will change the entire structure of the voting system,

which almost completely obliterates the concept of an "election day", extending it for many weeks before the election.

13. As a result of the changes implemented in Chapter 115 of the Acts of 2020, only about 35% of voters voted in person on election day in the November 2020 elections.

Specific Changes in the Law

14. Chapter 92 of the Acts of 2022 requires the Secretary of State to promote early voting and mail-in voting to the citizens of the Commonwealth but eliminates almost any reasonable safeguards against voter fraud.

15. Section 25(B) of Chapter 92 allows no-excuse early voting by mail, which liberalizes the early voting scheme already set out in Mass. General Laws Chapter 54, § 25B, first passed in 2014 to take effect for the 2016 election.

16. Section 25(B) of Chapter 92 allows a putative voter to submit an application for a ballot for the primary or for the general election electronically, without adequate identity or signature verification, allowing anyone to order multiple mail-in ballots fraudulently without detection.

17. Section 25(B) of Chapter 92 allows a potential voter to drop an early voting ballot in a "municipal drop box" for

the primary and general elections, but such drop boxes are manifestly not secure, since they are unattended, and thus subject to theft, tampering, or destruction of ballots. Voter ballots held in a Copley Square, Boston municipal drop box were in fact burned and destroyed by fire in a widely reported arson attack on October 24, 2020, according to Boston city officials.¹

18. Drop boxes described in Section 25(B) of Chapter 92 provide no certainty of validity that each ballot deposited in them is valid, or has been properly accounted for, as they are not time or date stamped, and there is no method for checking whether they were deposited timely.
19. Section 25(B) of Chapter 92 allows a potential voter to request an early or absentee ballot to by making a request on the Secretary of State's web site, without adequate verification of identity, and to send a ballot to any address specified by the potential voter, without any control or verification with voter rolls. This would allow someone to easily request multiple ballots undetected.

¹ <https://apnews.com/article/election-2020-fires-boston-90032616f4dae24e0b6e209ef14077dc>

20. Section 25(B) of Chapter 92 allows applications for early and absentee ballots to be submitted electronically, without adequate signatures or identity being verified.

Qualification of Voters Not Assured Under New Law

21. The foregoing portions of Chapter 92 omit a requirement that voters adequately verify their identity to election officials or ensure that they have "qualifications" to vote, as the term is used in Article IX of the Massachusetts Declaration of Rights and Article CV/105, even though these same voters would be required to produce identification to purchase liquor, cigarettes, airline tickets, or to get bank accounts, and much else.

20. In the 2020 election, vote-by-mail applications were sent to 4.5 million inhabitants of the Commonwealth, ensuring that a high percentage of these applications were returned as undeliverable, while others were sent to ineligible voters, deceased residents, and former residents, inviting potential fraudulent votes; on information and belief, several hundred thousand vote-by-mail applications were returned to sender.

21. Defendant is responsible for removing ineligible persons from the voter rolls, per the National Voter

Registration Act of 1993, as amended, but on information and belief, failed to make a good faith effort to do so during the 2020 election, and there is concern Defendant will do the same again in 2022 and future elections.

22. Each of the procedures adopted under Chapter 92 of the Acts of 2002 - early voting, mail-in voting, easy absentee voting, and unsecured municipal drop boxes, substitutes a goal of "convenience" for the long-held goal and beliefs reflected in the constitution and laws of the Commonwealth that election processes should be transparent, predictable, and in the "public eye" on election day.

23. Mail-in, drop box and early voting allows for family pressure on a voter, potentially eliminates privacy for the voter casting a ballot, and allows for "ballot harvesting" by unscrupulous operatives who pressure groups of voters to vote a certain way.

In Summary

Amendment Article CV/105 of the Massachusetts Constitution provides for a singular "election day" on which qualified voters are to vote in person, with three limited categories of persons who are allowed to vote absentee. The Plaintiffs' complaint supports the clear constitutional restrictions on voting

absentee and the critical need for a specific and singular "voting day."

Article IX of the Massachusetts Declaration of Rights provides that "elections ought to be free" and that only those who have "such qualifications as they shall establish by their frame of government" have the right to vote.

Defendant's adoption of early voting, drop-box voting and no-excuse mail-in voting schemes set out in Chapter 92 of the Acts of 2022 circumvents these constitutional requirements in an effort to fundamentally overhaul the Massachusetts voting system and permit universal, no-excuse, mail-in and early voting, and unsecured municipal drop box voting, without any reasonable safeguard that the potential voter is "qualified" to vote or that ballots of qualified voters will get to election officials and be properly counted.

As a result of these unconstitutional laws and the actions of Defendant Secretary Galvin, the citizens and voters of the Commonwealth are deprived of the certainty of free and fair elections.

As a result of these unconstitutional laws and the actions of Defendant Secretary Galvin, the citizens of the Commonwealth are

deprived of the certainty that only qualified voters cast their votes.

As a result of these unconstitutional laws and the actions of Defendant Secretary Galvin, the citizens of the Commonwealth are deprived of the certainty that the ballots of all qualified voters have been transmitted to election officials and accurately counted.

As a result of these unconstitutional laws and the actions of Defendant Secretary Galvin, the citizens of the Commonwealth have no certainty that the candidates who have been certified as winning the elections involving the Plaintiffs were actually selected as the winners by lawfully qualified voters.

Importantly, the April 2022 dismissal of amicus curiae Moran et al.'s appeal to the Court of Appeals states in its ruling: "The live controversy in such cases is whether the laws in question may properly be applied to the upcoming election, and this question is rendered moot once the election ends....The appropriate time to challenge election rules is before the elections, not after....The Plaintiffs are left to contend that even if their case is moot, we should nonetheless exercise our discretion to decide the case, because the constitutionality of the challenged election statutes is a question of public

importance that is likely to arise again in future elections. Even if the Plaintiffs' claims are "capable of repetition" -- a proposition undermined by the expiration of many of the provisions of the Act -- the Plaintiffs, critically, fail to explain why such claims would "evade review"....Indeed, we do not see why a similar challenge, brought in advance of a future election, could not be resolved before election day, as occurred in cases leading up to the 2020 elections....As "the controversy . . . need not evade review if parties show even minimal resoluteness in carrying on litigation".

In this spirit, amicus is carrying on litigation in support of his original 2020 complaint and the Plaintiff's complaint.

Conclusion

The unimpeachability of our elections requires clear procedures of administration so that everyone gets a fair shake and that all future elections are free, fair, secure and lawful. The Plaintiffs have raised important questions as to the constitutionality and legality of the law being challenged, An Act Fostering Voter Opportunities, Trust, Equity, and Security (VOTES act), which became chapter 92 of the Acts of 2022.

Amicus hopes that this additional background to the events and circumstances that have occurred in the Commonwealth of

Massachusetts, which have given rise to this lawsuit, will aid the Court in resolving this matter expeditiously.

Wherefore this Honorable Court should rule for the Plaintiffs for the foregoing reasons; amicus respectfully requests that this Court carefully consider the constitutional and procedural issues and questions raised by the Plaintiffs concerning the implementation the VOTES act signed into law June 22, 2022.

Respectfully Submitted,
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Certificate of Compliance

I, the above signed *amicus*, hereby certify that this brief complies with Mass. R. App. Pro. Rule 20, by being in monospaced font and being less than 35 pages long as counted under Mass. R. App. Pro. Rule 20(a)(3).

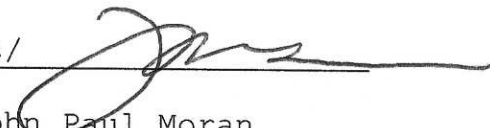
/s/

John Paul Moran

Certificate of Service

I, the undersigned, hereby certify that I have on this 5th day of July, 2022, served a copy of this brief upon Attorney Michael Walsh, PO Box 9, Lynnfield, MA 01940 and upon Attorney General Maura Healey, 1 Ashburton Place, Boston, MA 02108, by first class mail postage prepaid (or by email).

/s/


John Paul Moran

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