

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2022-0240

JAMES LYONS in his capacity as Chairman of the Massachusetts Republican Party,
RAYLA CAMPBELL, EVELYN CURLEY, RAYMOND XIE, and ROBERT MAY,

Plaintiffs,

v.

Secretary of State WILLIAM GALVIN,

Defendant.

RESERVATION AND REPORT

On June 22, 2022, the Governor signed into law An Act Fostering Voter Opportunities, Trust, Equity, and Security (VOTES act), which became chapter 92 of the Acts of 2022. The following day, the plaintiffs¹ filed this complaint alleging that the VOTES act is unconstitutional and seeking various equitable, declaratory, mandamus, and certiorari relief. The plaintiffs also filed an emergency motion for a temporary restraining order, seeking to enjoin the Secretary of State from putting the VOTES act into effect for the September 2022 primary election and the November 2022 general election. On June 28, 2022, the defendant filed a combined motion to dismiss the plaintiffs' complaint and opposition to the motion for a temporary restraining order. The plaintiffs have since filed three affidavits in support of their claims.

¹ The plaintiffs include the chairman of the Massachusetts Republican Party, candidates for State and Federal office in Massachusetts, a member of the Massachusetts Republican State Committee, and a member of a ballot question committee. In addition, all plaintiffs allege that they are registered voters in Massachusetts.

One of the flagship features of the new election law is to make permanent an expanded version of the process -- first enacted in 2014 and expanded during the COVID-19 pandemic in 2020 -- allowing any voter to vote early, in person or by mail. Because the plaintiffs seek to enjoin this process from occurring in connection with the September 2022 primary election, the time for us to consider and resolve such a challenge is extremely short. In order to implement early voting by mail in connection with the September 2022 primary election, the Secretary of State is required to mail out applications to all registered voters forty-five days prior to the September 6 election date, that is, all applications must be mailed by July 23, 2022. Moreover, because there are more than 4.7 million registered voters in Massachusetts, the United States Postal Service has requested that the Secretary of State not mail the applications on a single day. In order to accommodate this request, some portion of the applications would need to be mailed before the July 23 deadline.

Due to the significant time constraints in this matter, and because the complaint raises wide-ranging and novel constitutional challenges to the new election law implicating the fundamental right to vote, I hereby exercise my discretion to reserve and report the matter to the full court for decision. The plaintiffs shall be deemed the appellants, and the defendant shall be deemed the appellee. The parties shall use their best efforts to prepare a comprehensive statement of agreed facts necessary to resolve the issues raised in the plaintiffs' complaint and motion for a temporary restraining order, and in the defendant's motion to dismiss. In the papers filed in this matter to date, the parties have made conflicting factual assertions regarding certain aspects of what the VOTES act provides or requires. To the extent possible, the parties should attempt to reach agreement on those facts and specifically identify those facts upon which they disagree. The plaintiffs-appellants shall have responsibility for initiating the statement of facts.

Because time is of the essence, the parties' statement of agreed facts and the brief of the plaintiffs-appellants shall be filed with the Clerk of the Supreme Judicial Court for the Commonwealth no later than 8:30 a.m. on Tuesday, July 5, 2022. The brief of the defendant-appellee shall be filed no later than 1:30 p.m. on Tuesday, July 5, 2022. In their briefs, the parties are asked to address whether, and if so to what extent, the constitutional provisions at issue limited the Legislature's authority to enact the provisions of the VOTES act as applied to a primary election, as differentiated from a final election (e.g., State biennial election). See, e.g., Opinion of Justices, 359 Mass. 775 (1971); Opinion of the Justices to the House of Representatives, 368 Mass. 828 (1975). Oral argument will be heard by Zoom teleconference on Wednesday, July 6, 2022, at 10 a.m.

Dated: June 29, 2022

By the Court, (Kafker, J.)

/s/ Maura S. Doyle
Clerk