

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

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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

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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

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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-

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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
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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

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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
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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-

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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)

HOUSE No. 4820

The Commonwealth of Massachusetts

The committee of conference on the disagreeing votes of the two branches with reference to the Senate amendment (striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2764) of the House Bill relative to voting options in response to COVID-19 (House, No. 4778), reports recommending passage of the accompanying bill (House, No. 4820). June 30, 2020.

John J. Lawn, Jr.	Barry R. Finegold
Michael J. Moran	Cynthia Stone Creem
Bradford Hill	Ryan C. Fattman

HOUSE No. 4820

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act relative to voting options in response to COVID-19.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith provide for increased voting options in response to COVID-19, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (b) of section 25B of chapter 54 of the General Laws, as
2 appearing in the 2018 Official Edition, is hereby amended by striking out the last sentence and
3 inserting in place thereof the following sentence:- No application shall be deemed to be
4 seasonably filed unless it is received in the office of the city or town clerk or registrars of voters
5 before 5 P.M. on the fourth business day preceding the election.

6 SECTION 2. Said section 25B of said chapter 54, as so appearing, is hereby further
7 amended by striking out subsection (c) and inserting in place thereof the following subsection:-

8 (c) The voting period for in person early voting shall run from the eleventh business day
9 preceding the general election until the close of business on the business day preceding the
10 business day before the election; provided, however, that if the eleventh business day before the

11 election falls on a legal holiday the early voting period shall begin on the first business day prior
12 to the legal holiday. The voting period for early voting by mail shall begin as soon as all
13 necessary early voting materials have been received by the local election official pursuant to
14 subsection (h).

15 SECTION 3. Section 89 of said chapter 54, as so appearing, is hereby amended by
16 striking out the first paragraph and inserting in place thereof the following paragraph:-

17 Any form of written communication evidencing a desire to have an absent voting ballot
18 be sent for use for voting at an election shall be given the same effect as an application made in
19 the form prescribed by the state secretary. No application for an absent voting ballot to be sent by
20 mail shall be deemed to be seasonably filed unless it is received in the office of the city or town
21 clerk or registrars of voters on or before the fourth business day preceding the election for which
22 the ballot is being requested. No application for an absent voting ballot to be voted in person
23 shall be deemed to be seasonably filed unless it is received in the office of the city or town clerk
24 or registrars of voters on or before noon on the day preceding the election for which such absent
25 voting ballot is requested; provided, however, that if the day preceding such election is a Sunday
26 or legal holiday, then it shall be received by such clerk or registrars before 5 P.M. on the last
27 previous day on which such office is open. An application by a voter admitted to a health care
28 facility after noon of the seventh day before the relevant election, as provided in subsection (c) of
29 section 91B, may be received up until the time the polls close.

30 SECTION 4. Section 91B of said chapter 54, as so appearing, is hereby amended by
31 striking out, in line 21, the words “after noon of the fifth” and inserting in place thereof the
32 following words:- on or after the seventh.

SECTION 5. Section 92 of said chapter 54, as so appearing, is hereby amended by striking out, in line 11, the words “eighty-seven, or” and inserting in place thereof the following words:- 87; via a secured municipal drop box, where provided; or.

SECTION 6. (a) As used in sections 6 to 14, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Application”, an application to vote early by mail.

“Central registry”, the central registry of voters established pursuant to section 47C of chapter 51 of the General Laws.

“General election” or “election”, the general election scheduled for November 3, 2020.

“Primary election” or “primary”, the primary election scheduled for September 1, 2020.

“Qualified voter” or “voter”, a voter qualified pursuant to section 1 of chapter 51 of the General Laws.

“State secretary,” the secretary of the commonwealth.

(b) Notwithstanding section 25B of chapter 54 of the General Laws or any other general or special law to the contrary, there shall be early voting by mail for the primary election and general election.

(c) The election officers and registrars of every city or town shall allow any qualified voter to cast an early ballot by mail for the primary election and general election and any city or town election held at the same time.

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

58 (2) The state secretary shall, not later than September 14, 2020, mail to all registered
59 voters who registered to vote before September 1 at their residential addresses or mailing
60 addresses if different from their residential addresses listed in the central registry an application
61 for said voter to be permitted to vote early by mail in the general election; provided, however,
62 that the state secretary shall not be required to send an application to any voter whose previous
63 application for an absent or early ballot for the general election or for all elections in calendar
64 year 2020 has been accepted.

65 (3) The election officers and registrars of every city or town shall include an application
66 for a voter to be permitted to vote early by mail with the acknowledgement notice sent to any
67 person registering to vote or changing their voter registration address: (i) on or after July 1, 2020
68 and on or before August 22, 2020 for the primary election; and (ii) on or after September 1, 2020
69 and on or before October 24, 2020 for the general election.

70 (4) The applications required pursuant to this subsection shall be in a form prescribed by
71 the state secretary in accordance with state and federal law; provided, however, that said
72 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.

(5)(i) Each application mailed pursuant to this subsection shall be provided in any language required by the bilingual election requirements of the federal Voting Rights Act, 52 U.S.C. § 10503.

(ii) Each application mailed to a voter in the city of Boston pursuant to this subsection shall include an option, which shall appear prominently on the application, to request a ballot printed in any language available at the voter's polling location pursuant to chapter 166 of the acts of 2014.

(6) The applications required pursuant to this subsection shall be made available on the websites of the state secretary and the election officers and registrars of every city or town.

(e)(1) A voter wishing to vote early by mail in the primary election shall complete the application to vote early by mail and shall return said application to the appropriate city or town clerk. Any form of written communication evidencing a desire to have an early voting ballot be sent for use for voting for the primary election shall be given the same effect as an application made in the form prescribed by the state secretary. Applications to vote early by mail for the primary election shall be acceptable if they are signed or submitted electronically; provided, however, that any electronic signature shall be written in substantially the same manner as a handwritten signature.

(2) No application to vote early by mail in the primary election shall be deemed to be seasonably filed unless it is received in the office of the local election official before 5 P.M. on Wednesday, August 26, 2020.

95 (f)(1) A voter wishing to vote early by mail in the general election shall complete the
96 application and shall return said application to the appropriate city or town clerk. Applications to
97 vote early by mail for the general election shall be acceptable if they are signed or submitted
98 electronically; provided, however, that any electronic signature shall be written in substantially
99 the same manner as a handwritten signature.

100 (2) No application to vote early by mail in the general election shall be deemed to be
101 seasonably filed unless it is received in the office of the local election official before 5 P.M. on
102 Wednesday, October 28, 2020.

103 (g)(1) Early voting ballots authorized pursuant to this section shall be mailed by the city
104 or town clerk to voters as soon as such materials are available; provided, however, that said
105 mailing shall include: (i) instructions for early voting; (ii) instructions for completing the ballot;
106 (iii) an inner envelope where the ballot is placed after voting which contains an affidavit of
107 compliance to be filled out by the voter; and (iv) an outer envelope that is pre-addressed to the
108 local election official with postage guaranteed; provided, however, that a voter who has
109 seasonably filed an application may receive an early voting ballot in person at the office of the
110 city or town clerk. The state secretary shall seek to have included on the outer envelope with
111 postage guaranteed required by this section a system which generates a postmark for determining
112 the date upon which the envelope was mailed and, if such a postmark system cannot be
113 implemented, the state secretary shall inform the clerks of the senate and house of
114 representatives of efforts undertaken and impediments to developing such a system.

115 (2) Each early voting ballot authorized pursuant to this section shall be provided to the
116 voter in the language required pursuant to paragraph (5) of subsection (d).

117 (h)(1) A voter in receipt of an early voting ballot for the primary election pursuant to this
118 section may complete and return the ballot by: (i) delivering it in person to the office of the
119 appropriate city or town clerk; (ii) dropping it in a secured municipal drop box; or (iii) mailing it
120 to the appropriate city or town clerk.

121 (2) A voter in receipt of an early voting ballot for the general election pursuant to this
122 section may complete and return the ballot by: (i) delivering it in person to the office of the
123 appropriate city or town clerk; (ii) dropping it in a secured municipal drop box; or (iii) mailing it
124 to the appropriate city or town clerk.

125 (3) All early voting ballots submitted by mail, delivered in person to the office of the city
126 or town clerk or returned to a secured municipal drop box as provided by this section shall be
127 received by the city or town clerk before the hour fixed for closing the polls on the day of the
128 primary election or general election; provided, however, that an early voting ballot cast for the
129 general election that is received not later than 5 P.M. on November 6, 2020 and mailed on or
130 before November 3, 2020 shall be processed in accordance with the second paragraph of section
131 95 of chapter 54 of the General Laws. A postmark, if legible, shall be evidence of the time of
132 mailing.

133 (i) A voter wishing to apply to vote early by mail in the primary or general election and
134 who needs accommodation by reason of disability may request such accommodation from the
135 state secretary. Upon receiving information from the voter pursuant to the application in this
136 section either by phone or electronically, the state secretary shall grant accommodations to the
137 voter. Accommodations shall include, but not be limited to: (i) clear and electronic accessible
138 instructions for completion, printing and returning of the ballot; (ii) an authorized accessible

blank electronic ballot that can be filled out electronically, printed and signed; provided, however, that the accessible electronic ballot marking system the voter utilizes to access their blank electronic ballot shall not collect or store any personally identifying information obtained in the process of filling out the ballot; (iii) an envelope to return the ballot to the voter's town or city clerk; and (iv) hole punched markers in place of a wet signature required for certification. The electronic instructions and accommodations in this section shall comply with requirements contained in Title II of the federal Americans with Disabilities Act and shall conform to the Web Content Accessibility Guidelines (WCAG) 2.1 AA and the National Institute of Standards and Technology report titled "Principles and guidelines for remote ballot marking systems." Upon printing the ballot, the voter shall place the ballot in the envelope provided by the state secretary. A voter with accommodations in receipt of an early voting ballot for the primary or general election pursuant to this section may complete and return the ballot by: (i) delivering it in person to the office of the appropriate city or town clerk; (ii) dropping it in a secured municipal drop box; or (iii) mailing it to the appropriate city or town clerk.

SECTION 7. (a) Notwithstanding section 25B of chapter 54 of the General Laws or any other general or special law to the contrary, there shall be early voting in person for the primary election and the general election.

(b)(1) The election officers and registrars of every city or town shall allow any qualified voter to cast an early ballot in person for the primary election during the early voting period, which shall begin on Saturday, August 22, 2020 and end on Friday, August 28, 2020. Early voting in person shall also apply to any city or town election held at the same time.

160 (2) The election officers and registrars of every city or town shall allow any qualified
161 voter to cast a ballot in person for the general election during the early voting period, which shall
162 begin on Saturday, October 17, 2020 and end on Friday, October 30, 2020. Early voting in
163 person shall also apply to any city or town election held at the same time.

164 (3) Any qualified voter wishing to vote early in person in the primary or general election
165 may do so at the time, manner and location prescribed in this section.

166 (c)(1) Early voting in person for the primary election shall be conducted on Saturday,
167 August 22, 2020 and Sunday, August 23, 2020, as follows: (i) for municipalities with fewer than
168 5,000 registered voters, for a period of a minimum of 2 hours each day; (ii) for municipalities
169 with 5,000 or more registered voters but fewer than 20,000 registered voters, for a period of a
170 minimum of 4 hours each day; (iii) for municipalities with 20,000 or more registered voters but
171 fewer than 40,000 registered voters, for a period of a minimum of 5 hours each day; (iv) for
172 municipalities with 40,000 or more registered voters but fewer than 75,000 registered voters, for
173 a period of a minimum of 6 hours each day; and (v) for municipalities with 75,000 or more
174 registered voters, for a period of a minimum of 8 hours each day. For each other day during the
175 early voting period, early voting shall be conducted during the usual business hours of each city
176 or town clerk. A city or town may, in its discretion, provide for additional early voting hours
177 beyond the hours required by this paragraph.

178 (2) Early voting for the general election shall be conducted on Saturday, October 17,
179 2020, Sunday, October 18, 2020, Saturday, October 24, 2020 and Sunday, October 25, 2020 as
180 follows: (i) for municipalities with fewer than 5,000 registered voters, for a period of a minimum
181 of 2 hours each day; (ii) for municipalities with 5,000 or more registered voters but fewer than

20,000 registered voters, for a period of a minimum of 4 hours each day; (iii) for municipalities with 20,000 or more registered voters but fewer than 40,000 registered voters, for a period of a minimum of 5 hours each day; (iv) for municipalities with 40,000 or more registered voters but fewer than 75,000 registered voters, for a period of a minimum of 6 hours each day; and (v) for municipalities with 75,000 or more registered voters, for a period of a minimum of 8 hours each day. For each other day during the early voting period, early voting shall be conducted during the usual business hours of each city or town clerk. A city or town may, in its discretion, provide for additional early voting hours beyond the hours required by this paragraph.

(d)(1) Each city and town shall establish an early voting site for the primary election and an early voting site for the general election that shall include the election office for the city or town; provided, however, that if the city or town determines that the office is unavailable or unsuitable for early voting in either the primary election or general election, the registrars of each city or town shall identify and provide for an alternative centrally-located, suitable and convenient public building within that city or town as an early voting site. A city or town may also provide for additional early voting sites for the primary election or general election at the discretion of the registrars for that city or town. Each early voting site shall be accessible to persons with disabilities in accordance with federal law.

(2) The designation of early voting sites for the primary election shall be made not later than August 7, 2020. Not later than August 14, 2020, and at least once during the voting period, the registrars for each city or town shall post the location of the early voting sites as well as the applicable dates and hours. Notice shall be conspicuously posted: (i) in the office of the city or town clerk or on the principal official bulletin board of each city or town; (ii) on any other public

building considered necessary; (iii) on the city or town’s website, if any; and (iv) on the website of the state secretary.

(3) The designation of early voting sites for the general election shall be made not later than October 2, 2020. Not later than October 9, 2020, and at least once during the voting period, the registrars for each city or town shall post the location of the early voting sites as well as the applicable dates and hours. Notice shall be conspicuously posted: (i) in the office of the city or town clerk or on the principal official bulletin board of each city or town; (ii) on any other public building considered necessary; (iii) on the city or town’s website, if any; and (iv) on the website of the state secretary.

(e) A qualified voter voting early in person shall be provided with a ballot and an envelope where the ballot is placed after voting which contains an affidavit of compliance to be filled out by the voter. A qualified voter voting early in person shall complete an affidavit under the regulations promulgated pursuant to this act, which shall include a notice of penalties under section 26 of chapter 56 of the General Laws.

(f) Prior to the beginning of early voting, the registrars for each city or town shall prepare a list for the early voting sites, containing the names and residences of all persons qualified to vote at each voting site, as the names and residences appear upon the annual register, and shall reasonably transmit the applicable list to the election officers at each early voting site designated by the registrars.

(g) The registrar or presiding official at the early voting site shall cause to be placed on the voting lists opposite the name of a qualified voter who participates in early voting the letters “EV” designating an early voter.

226 (h) The registrars shall prepare lists of all voters casting ballots pursuant to this section or
227 section 6 during the early voting period and update the voter list in a manner prescribed by the
228 state secretary.

229 (i) A city or town may opt to detail a sufficient number of police officers or constables
230 for each early voting site for the primary election at the expense of the city or town to preserve
231 order, protect the election officers and supervisors from any interference with their duties and aid
232 in enforcing the laws relating to elections.

233 (j)(1) The absentee or early ballot of any voter who was eligible to vote at the time the
234 ballot was cast shall not be deemed invalid solely because the voter became ineligible to vote by
235 reason by death after casting the ballot. For the purposes of this section, the term “cast” shall
236 mean that the voter has: (i) deposited the absentee or early ballot in the mail for ballots mailed;
237 (ii) returned the absentee or early ballot to the appropriate election official either by hand or by
238 depositing in the municipal drop box, where available; or (iii) completed voting in person at the
239 clerk’s office or an early voting location.

240 (2) Section 100 of chapter 54 of the General Laws shall not apply to the primary election
241 or general election or any other municipal election held at the same time.

242 (k) Notwithstanding any general or special law to the contrary, any absent ballot cast
243 pursuant to section 86 of chapter 54 of the General Laws or any early voting ballot cast pursuant
244 to this section or section 6 may be deposited into a tabulator or a ballot box in a municipality or
245 precinct that uses paper ballots, in advance of the date of the primary or the general election. All
246 ballots received pursuant to this section or section 6 may be opened in advance of the date of the
247 primary or the general election, in accordance with regulations promulgated by the state

secretary; provided, however, that such ballots shall be kept secured, locked and unexamined, and that no results shall be determined or announced until after the time polls close on the date of the primary or the general election. Disclosing any such result before such time shall be punished as a violation of section 14 of chapter 56 of the General Laws. Not later than August 1, 2020, the state secretary shall promulgate emergency regulations regarding the advance depositing of ballots.

SECTION 8. (a) Not later than August 3, 2020, the state secretary shall deliver to each city or town, in quantities as the state secretary determines necessary, the following papers: (i) official absentee and early voting ballots for the primary election, similar to the official ballot to be used at the primary election; provided, however, that a sufficient quantity of such ballots are printed in the languages necessary to accommodate the selection of a bilingual ballot by voters pursuant to paragraph 5 of subsection (d) of section 6; (ii) envelopes of sufficient size to contain the ballots specified in clause (i) bearing on their reverse the voter's affidavit in compliance with the requirements of subsection (j) of section 25B of chapter 54 of the General Laws; (iii) return envelopes for any ballot requested for voting by mail pre-addressed to the local election official with postage guaranteed; and (iv) instructions for voting by mail to be sent to each voter who requests to cast a ballot by mail.

(b) Not later than October 9, 2020, the state secretary shall deliver to each city or town, in quantities as the state secretary determines necessary, the following papers: (i) official absentee and early voting ballots, for the general election, similar to the official ballot to be used at the general election; provided, however, that a sufficient quantity of such ballots are printed in the languages necessary to accommodate the selection of a bilingual ballot by voters pursuant to paragraph 5 of subsection (d) of section 6; (ii) envelopes of sufficient size to contain the ballots

specified in clause (i) bearing on their reverse the voter's affidavit in compliance with the requirements of subsection (j) of said section 25B of said chapter 54; (iii) return envelopes for any ballot requested for voting by mail pre-addressed to the local election official with postage guaranteed; and (iv) instructions for voting by mail to be sent to each voter who requests to cast a ballot by mail.

SECTION 9. (a) Sections 37 and 38 of chapter 53 of the General Laws shall apply to unenrolled voters and voters enrolled in political designations voting early in the primary election. The registrar or presiding official at the early voting site shall cause the name of the party of the ballot being voted to be recorded on the voting list. Once the party selection has been recorded on the voting list, a voter cannot request or vote on the ballot of another party.

(b) The counting of early voting ballots including, but not limited to, informing election officers and any challengers present under section 85A of chapter 54 of the General Laws shall be set by 950 C.M.R. § 47.00, so far as applicable. All envelopes referred to in this section shall be retained with the ballots cast at the primary election and shall be preserved and destroyed in the manner provided by law for the retention, preservation or destruction of official ballots.

(c) The provisions of 950 C.M.R. § 47.00 shall apply to early voting at the primary election to the extent feasible; provided, however, that the state secretary shall promulgate rules to accommodate the dates set forth herein.

SECTION 10. Notwithstanding section 25B of chapter 54 of the General Laws or any other general or special law to the contrary, the election officers and registrars of every city or town shall allow any qualified voter to vote early by mail for any city or town election held on or before December 31, 2020.

SECTION 11. Notwithstanding section 24 of chapter 54 of the General Laws or any other general or special law to the contrary, the select board, board of selectmen, town council or city council may, by recorded and public vote, change any polling place to be used at the primary election or the general election at least 20 days prior to the date of the primary election or general election if it is determined that the public convenience or public health would be better served. If the select board, board of selectmen or town council determines that the public convenience or public health would be better served, they may house all polling places in a single building within the municipality, if such building is suitably equipped; provided, however, that alcoholic beverages shall not be served or consumed in that portion of a building used as a polling place, during voting hours or while ballots are being counted therein. In cities, the city council may designate polling places in non-adjacent precincts if they determine the public convenience or public health would be better served. In making a decision to change a polling place, the select board, board of selectmen, town council or city council shall evaluate and report on whether such change would have a disparate adverse impact on access to the polls on the basis of race, national origin, disability, income or age, and not later than 3 days prior to changing a polling place, shall make publicly available on its website and at the office of the town or city clerk a report on its evaluation. When the polling places have been designated pursuant to this section, the board of registrars shall post on the municipal website and at other such places as it may determine, a description of the polling places and shall notify voters by using an electronic means, to the extent available, such as via email or reverse 911 call.

SECTION 12. Notwithstanding section 29 of chapter 53 of the General Laws and sections 11, 11B, 12 and 13 of chapter 54 of the General Laws or any other general or special law to the contrary, for the primary election and general election, if the city or town clerk

determines in writing that there is a deficiency in the number of required election officers, then the appointing authority may appoint election officers without regard to political party membership, voter status, residence in the city or town or inclusion on a list filed by a political party committee pursuant to said sections 11B and 12 of said chapter 54. If the position of the warden, clerk or inspector, or the deputy of any such officer, if any, is vacant within the 3 weeks preceding the primary or general election, the city or town clerk may fill the vacancy by appointing a competent person willing to serve, without regard to political party membership, voter status, residence in the city or town or inclusion on a list filed by a political party committee pursuant to said sections 11B and 12 of said chapter 54.

SECTION 13. Notwithstanding sections 67 and 83 of chapter 54 of the General Laws or any other general or special law to the contrary, for the primary election and general election, the city or town clerk may eliminate the requirement that a voter provide their name or residence to an election officer at the ballot box and that the election officer mark the name off a voting list before the voter may deposit the ballot in the ballot box.

SECTION 14. Notwithstanding any general or special law to the contrary, the state secretary shall implement a system to allow a qualified voter to request an early or absentee ballot on the state secretary's website, to be mailed to the qualified voter's home address or a different mailing address as designated by the voter. The system shall not require the voter's signature. The system shall apply to the November 3, 2020 general election, and, if feasible, to the September 1, 2020 state primaries, and shall in any event be operational not later than October 1, 2020.

SECTION 15. For an election held on or before December 31, 2020, any person taking precaution related to COVID-19 in response to a declared state of emergency or from guidance from a medical professional, local or state health official or any civil authority shall be deemed to be unable by reason of physical disability to cast their vote in person at a polling location.

SECTION 16. Notwithstanding sections 25B and 89 of chapter 54 of the General Laws or any other general or special law to the contrary, applications for early and absentee ballots for all elections held on or before December 31, 2020 shall be acceptable if they are signed or submitted electronically; provided, however, that any electronic signature shall be written in substantially the same manner as a handwritten signature.

SECTION 17. Notwithstanding any other general or special law to the contrary, subsection (c) of section 91B of chapter 54 of the General Laws shall apply to voters who have been instructed by a medical professional or a local or state health official to self-quarantine in their home beginning after noon on the seventh day before the any election held on or before December 31, 2020.

SECTION 18. Notwithstanding sections 26 and 28 of chapter 51 of the General Laws or any other general or special law to the contrary, the last day to register to vote for any election taking place on or before December 31, 2020 shall be 10 days before the date of such election; provided, however, that the board of registrars shall hold a registration session on that date not less than from 2:00 P.M. to 4:00 P.M. and from 7:00 P.M. to 8:00 P.M. The voting list to be used for any such election shall include all eligible voters registered as of that date.

SECTION 19. The state secretary shall promulgate emergency regulations for the administration and enforcement of this act including, after consulting with the commissioner of

the department of public health, regulations requiring public health safeguards at early voting sites and polling places, including required distancing of voters and election officers, frequent use of sanitizers, personal protective equipment and use of marking pens.

SECTION 20. Not later than July 15, 2020, the state secretary shall: (i) promulgate regulations for electronic poll books required by section 33I of chapter 54 of the General Laws; and (ii) certify 1 or more types of electronic poll books in time to be used in the 2020 state primary and the general elections, and all future elections, under said section 33I of said chapter 54.

SECTION 21. The state secretary shall report to the house and senate committees on ways and means and the joint committee on election laws not later than July 1, 2021 on the costs to implement this act, including, but not limited to: (i) the number of ballot applications with postage guaranteed mailed to voters; (ii) the number of ballot applications with postage guaranteed returned requesting a ballot; (iii) the total number of ballots cast by mail; and (iv) total cost and amounts paid for using federal funds.

SECTION 22. The state secretary shall report to the house and senate committees on ways and means and the joint committee on election laws not later than 12 months after the enactment of this act on how the state secretary can make voting more accessible for voters with disabilities, specifically through online voting options.

SECTION 23. Section 109A of chapter 54 of the General Laws shall apply to ballots cast in the November 3, 2020 general election.

SECTION 24. The state secretary shall conduct a public awareness campaign to inform voters throughout the commonwealth of the provisions of this act, including, but not limited to,

381 measures to promote public awareness of expanded early voting options in the 2020 primary and
382 general elections and the requirements and procedures for early voting by mail, including, but
383 not limited to, information related to the ability of a voter who requests but does not return an
384 early voting by mail ballot to vote in person on election day.



<http://www.statehousenews.com>

Mail-in Voting Law Slams Into Dispute Over Postage Costs

Galvin: "Legislature Has Not Sent the Money"

Chris Van Buskirk | 7/7/20 4:42 PM

STATE HOUSE, BOSTON, JULY 7, 2020.....Disagreements over funding to mail ballot applications for the upcoming election cycle spilled into the public eye Tuesday after the state's top election official and election reform advocates differed on the permissible use of federal money.

Gov. Charlie Baker signed legislation into law Monday that directs Secretary of State William Galvin to send mail-in voting applications by July 15 in order to give voters time to request a ballot for the Sept. 1 primary elections, fill it out, and mail it back in. Crafted in response to the COVID-19 pandemic, advocates and state officials have pointed to the new law as a way to help voters participate in the upcoming election cycle without putting themselves at risk for COVID-19.

"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," Galvin told reporters Tuesday outside the State House.

The point of contention centers on whether guidance from the Election Assistance Commission allows for states to use federal funds through the CARES Act to mail applications to voters for early or absentee ballots. There were nearly 4.6 million registered voters in Massachusetts as of February.

Galvin said a \$5 million appropriation included in a more than \$1 billion Senate spending bill (S 2799) that largely deals with COVID-19 appropriations "would probably get us going." The House and Senate versions of that spending bill differ, and it's unclear when legislative leaders will agree on a single bill.

When the Senate passed the voting reforms, it estimated the bill's costs would reach about \$8 million.

Pam Wilmot, executive director of Common Cause Massachusetts, said the secretary of state's office could turn to an \$8.2 million portion of Massachusetts' CARES Act allocation to mail applications by July 15.

"It cannot be used for anything else. And although there is need for election equipment and the like, we have other money the federal government has allocated for that," she said at a Tuesday press conference. "This is exactly and precisely what that money was prepared for. And if the secretary doesn't follow what the regulations call for, you can stay tuned for us for some next steps."

The secretary of state does not believe CARES Act funds can be used to mail applications to all registered voters, a spokesperson for Galvin's office said, as a result of guidance from the Election Assistance Commission. The secretary's office can use the money to send the ballots themselves, the spokesperson said.

The commission, in an April 6 letter to chief state election officers, provided additional guidance to states writing that "funds are for additional costs associated with the national emergency related to the coronavirus and are to be spent 'to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle.'"

According to the letter, allowable uses include printing additional ballots and envelopes, statewide or local database upgrades to allow for online absentee or mail ballot requests, and additional mailing and postage costs.

"I do expect the COVID [supplemental] budget to get done very soon but I'd also add that the secretary does have money from the CARES Act, and in my opinion does have the money to send this out. We're not talking a huge amount of money to do this," Election Laws Co-Chair Barry Finegold said at the press conference. "In my opinion, he does have the money and I hope he will send them out expeditiously."

Voters have three options for the fall elections: voting early, in-person on election day, or by mail. For the first time in the state, voters can take advantage of an early voting window before the statewide primary.

Local clerks will face larger amounts of manual labor when sending out and receiving mail-in ballots, a concern previously raised by advocates and state officials alike. Galvin said his office is exploring ways to help local officials through tabulation equipment and electronic poll books.

"When you're increasing or taking a significant number of the electorate and having them vote-by-mail, that means you have to mail them out, you have to mail them back, receive them back, you have to log them in, and you have to tabulate," he said. "It's going to be a burden on them. We're going to try to help them wherever we can."

Asked about voter fraud, Galvin said his office is always concerned about the potential for false ballots.

"I know some candidates speculate about it sometimes. But it's untrue. The history with my office in terms of voter fraud, when we've had voter fraud issues in the past, it's been candidates who've been perpetrating fraud, and we've never hesitated to prosecute people," he said. "There is a warning on the application that illegal voting is punishable both by state and federal law. And I assure you if we have any indication fraud, we'll be up there prosecuting people right away."

-END-

07/07/2020

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1 (c) The amount provided by this section is designated
2 by the Congress as being for an emergency requirement
3 pursuant to section 251(b)(2)(A)(i) of the Balanced Budg-
4 et and Emergency Deficit Control Act of 1985.

5 DISTRICT OF COLUMBIA

6 FEDERAL FUNDS

7 FEDERAL PAYMENT FOR EMERGENCY PLANNING AND
8 SECURITY COSTS IN THE DISTRICT OF COLUMBIA

9 For an additional amount for “Federal Payment for
10 Emergency Planning and Security Costs in the District
11 of Columbia”, \$5,000,000, to remain available until ex-
12 pended, to prevent, prepare for, and respond to
13 coronavirus, domestically or internationally: *Provided*,
14 That such amount is designated by the Congress as being
15 for an emergency requirement pursuant to section
16 251(b)(2)(A)(i) of the Balanced Budget and Emergency
17 Deficit Control Act of 1985.

18 INDEPENDENT AGENCIES

19 ELECTION ASSISTANCE COMMISSION

20 ELECTION SECURITY GRANTS

21 For an additional amount for “Election Security
22 Grants”, \$400,000,000, to prevent, prepare for, and re-
23 spond to coronavirus, domestically or internationally, for
24 the 2020 Federal election cycle: *Provided*, That a State
25 receiving a payment with funds provided under this head-

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1 ing in this Act shall provide to the Election Assistance
2 Commission, within 20 days of each election in the 2020
3 Federal election cycle in that State, a report that includes
4 a full accounting of the State's uses of the payment and
5 an explanation of how such uses allowed the State to pre-
6 vent, prepare for, and respond to coronavirus: *Provided*
7 *further*, That, within 3 days of its receipt of a report re-
8 quired in the preceding proviso, the Election Assistance
9 Commission will transmit the report to the Committee on
10 Appropriations and the Committee on House Administra-
11 tion of the House of Representatives and the Committee
12 on Appropriations and the Committee on Rules and Ad-
13 ministration of the Senate: *Provided further*, That not
14 later than 30 days after the date of enactment of this Act,
15 the Election Assistance Commission shall make the pay-
16 ments to States under this heading: *Provided further*, That
17 any portion of a payment made to a State with funds pro-
18 vided under this heading in this Act which is unobligated
19 on December 31, 2020 shall be returned to the Treasury:
20 *Provided further*, That such amount is designated by the
21 Congress as being for an emergency requirement pursuant
22 to section 251(b)(2)(A)(i) of the Balanced Budget and
23 Emergency Deficit Control Act of 1985.



U.S. ELECTION ASSISTANCE COMMISSION
1335 EAST-WEST HIGHWAY, SUITE 4300
SILVER SPRING, MD 20910

April 6, 2020

To: Chief State Election Officers
From: Mona Harrington, Acting Executive Director
CC: State Election Directors
Re: 2020 HAVA Coronavirus Aid, Relief and Economic Security (CARES) Act Grants

The EAC is committed to providing as much flexibility as possible to the states to access and expend funds appropriated under the Coronavirus Aid, Relief and Economic Security (CARES) Act. As we have done with the 2018 and 2020 Election Security grants, EAC is making the funds available for immediate access and use, subject to the contingencies found in the attached Notice of Grant Award (NGA). States may expend the funds as of March 28, 2020, the start date for the project and budget period on the notice of grant award and in advance of your request for disbursement. In addition, the funding request and application requirements are minimal.

We are aware many of you are concerned about meeting the match requirement under the grant and find the two-year period to make the match available confusing. Under a supplemental appropriation, the requirements in the original appropriation apply unless changed by the supplemental. Therefore, CARES Act appropriations are subject to requirements in the Consolidated Appropriations Act of 2020, as well as those in the CARES Act.

Under the Consolidated Appropriations Act, states must make a 20% match available within two years of receiving the funds. While the CARES Act did not address the two years allowed to make the match available, the activities for which the funds are authorized are limited to the 2020 federal elections. The definition of match in GAO-06-382SP, Principles of Federal Appropriations Law state "A matching share provision is one under which the grantee is required to contribute a portion of the total project cost." In this case, the project is the activities for which a state incurs costs *"to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle."*

EAC wants to provide as much flexibility as we can under the law for states to meet the match. The attached instructions provide additional guidance to ensure maximum flexibility. We will also host a webinar within the next two weeks to address the issue and will work with states to identify existing costs the state incurs that can be used to meet the matching requirement.

Please request the funds immediately. You may use the template described in the attached instructions to submit your request. The funds are solely focused on costs states incur as a result of the pandemic affecting 2020 federal elections. Therefore, instead of requiring a separate program narrative and budget, states will describe the major areas in which they expect to expend the funds in the CARES Disbursement

Tel: (301) 563-3919 www.eac.gov Fax: (301) 734-3108
Toll free: 1 (866) 747-1471

Request Letter. We provide guidance on allowable costs in the attached instructions and states may request guidance related to other costs as needs arise.

Finally, I am pleased to inform you that we have hired a grants manager, Kinza Ghaznavi, who started on March 30, 2020. She has extensive experience in federal grants management and is coming quickly up to speed on HAVA and HAVA grants. For at least the next three weeks as she becomes familiar with the EAC and HAVA grants, please continue to address your questions to me or to Peg Rosenberry at prosenberry@eac.gov.

2020 HAVA CARES Act Grants

I. Purpose and Use of Funds. The CARES Act makes clear that grant funds are 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.*” The EAC has previously provided guidance on allowable uses of funds related to the pandemic. Those allowable uses include, but are not limited to:

- Printing of additional ballots and envelopes for potential higher levels of absentee or vote by mail processes
- Registration List Activities to improve the accuracy and currency of registrant addresses
- Upgrades of statewide or local databases to allow for online absentee or mail ballot requests or change of address
- Additional mailing and postage costs, including ballot tracking software
- Acquisition of additional voting equipment, including high speed or central count tabulators and hardware and software associated with signature comparison of returned absentee or mail ballots
- Installation and security for absentee or mail drop-boxes
- Temporary elections office staffing
- Cleaning supplies and protective masks and equipment for staff and poll workers in early voting, vote center, or election day polling places
- Overtime salary and benefit costs for elections staff and poll workers
- Training of poll workers on sanitization procedures for in-person voting
- Public communication of changes in registration, ballot request options, or voting procedures, including information on coronavirus precautions being implemented during the voting process.
- Mailings to inform the public on changes or determination of procedures of coronavirus precautions, options in voting, and other voting information.
- Pre- and post-election deep cleaning of polling places
- Leasing of new polling places when existing sites must be closed
- Additional laptops and mobile IT equipment
- Additional automated letter opening equipment

This list is not exhaustive and states may encounter other costs. States will determine allowable costs within the parameters of the CARES Act, and EAC staff is available to provide guidance as needed. EAC has established a specific email address, CARESFunding@eac.gov, for all correspondence related to the funding.

II. Submitting the CARES Act Disbursement Request Letter: Please submit your Disbursement Request Letter (Attachment A below) and the signed Standard Certifications (Attachment B below) by April 14, 2020. Send your documents to CARESFunding@eac.gov. EAC will process your request and forward it to the Bureau of Fiscal Services for disbursement within 24 hours. You will include a description in the letter describing the major costs you anticipate incurring based on the pandemic and how you will provide funds to local election jurisdictions.

We recognize states may have state procedures and requirements that will preclude submitting by April 14. If so, by April 14, please send an explanation for the delay and expected submission date to EAC to the CARESFunding@eac.gov. The template for the letter is on the EAC website at:

https://www.eac.gov/sites/default/files/paymentgrants/cares/Template_StateCARES_Disbursement_Request_Letter.docx

III. Project and Budget Periods: The CARES Act makes clear that states must spend all federal funds by December 31, 2020 or return any unspent funds as of that date to the U.S. Treasury. The law also indicates states have two years to make the match available. The project period on the Notice of Grant Award is March 28, 2020 through March 27, 2022. However, states cannot spend any federal funds on activities after December 31, 2020. The budget period for the federal funds ends on the Notice of Grant Award on December 31, 2020.

IV. Match Requirement of 20%: Under a supplemental appropriation, the requirements in the original appropriation apply unless changed by the supplemental. Therefore, CARES Act appropriations are subject to requirements in the Consolidated Appropriations Act of 2020 as well as those in the CARES Act. Under the Consolidated Appropriations Act, states must make a 20% match available within two years of receiving the funds. While the language hasn't changed related to the two years, the activities for which the funds are authorized are limited to the 2020 federal elections. The definition of match in GAO-06-382SP, Principles of Federal Appropriations Law state "A matching share provision is one under which the grantee is required to contribute a portion of the total project cost." In this case, the project is the activities for which a state incurs costs *"to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle"*

To address the conflicting requirements, EAC is setting a two-year project period on the grant. This will allow states to count costs as match they may incur in 2021 that are related to the effects of the coronavirus on the 2020 federal elections. For example, there may be an unexpected need for additional post-election audits or additional costs to deep clean facilities where ballots will be stored. States cannot expend federal funds after December 31, 2020, but will track and report on state funds expended over the remainder of the project period.

States should make every effort to meet the required match by December 31. A state that expends its full federal allocation by December 31 without also meeting the match by that same date, may have to repay federal funds if they are unable to match the full amount within the two-year project period. EAC will schedule a webinar on meeting the match requirements within the next two weeks and will expand on ways to meet the match already on the EAC website.

States may meet the matching requirements through the agency's existing budget authority or with other emergency state funds allocated to the agency. EAC will work with states to identify costs within their existing budget authority that would be eligible matching funds.

V. Reporting Requirements. The CARES Act requires that states receiving funding under the Act "shall provide to the Election Assistance Commission, within 20 days of each election in the 2020 Federal election cycle in that State, a report that includes a full accounting of the State's uses of the payment and an explanation of how such uses allowed the State to prevent, prepare for, and respond to coronavirus." EAC will issue specific instructions for the report format within two weeks. Reports are due as follows:

A. States that have already conducted their primaries: One report due after the November general election on November 23, 2020.

B. States with upcoming primaries: One report due 20 days after each primary and a report due on November 23 after the general election.

C. December Federal Financial Report (FFR): States will submit an FFR for the period ending December 31, 2020 by February 28, 2021. EAC will use this report to identify any unexpended amounts that will be due back to the U.S. Treasury.

- D. Additional Federal Financial Reports and Progress Reports:** States will submit a final Progress Report on February 28, 2021 if they have met their 20% match by that date. For any state that does not meet the match by December 31, 2020, EAC will require semi-annual FFRs and progress reports until the full match is met, but no later than March 27, 2022.

Attachment A

Template for State Requests for 2020 CARES Funds

Submit on Agency Letterhead to CARESFunding@eac.gov

Areas in brackets in the letter are for state input

Mona Harrington, Acting Executive Director
U.S. Election Assistance Commission
1335 East-West Highway, Suite 4300
Silver Spring, MD 20910

Dear Ms. Harrington:

The purpose of this letter is to certify that the state of *[Name]* will use the funds provided under the Notice of Grant Award, Agreement # *[Number]*, for activities consistent with the laws described in Section 906 of HAVA and will not use the funds in a manner that is inconsistent with the requirements of Title III of HAVA.

We further certify that we have reviewed and accept the terms of the award as specified in the Notice of Grant Award. Our UEI number (formerly DUNS) is *[UEI number]* and the signed Certifications are enclosed.

We are requesting *[\$ amount]*. We will use the funds to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle. To address the effects of the coronavirus on the election we.....

[Include here a brief description of the needs and challenges the state faces related to the coronavirus effects on the 2020 elections. Include information about any costs already incurred and briefly describe the major areas on which you expect to expend the funds in the coming months, including how you will support local election jurisdictions. It does not have to be more than a paragraph or two.]

If you have any questions about this request, please contact *[name of person in the state with knowledge of the request]* at *[phone number]* or *[email]*.

Sincerely,

[Chief Election Official Name]
[Title]

Cc.
Kinza Ghaznavi, Grants Manager

To: US Election Assistance Commission

Standard Certifications

Certification Regarding Lobbying for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Certification Regarding Trafficking in Persons

The undersigned certifies to his or her understanding that this grant is subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) as follows:

- I. Provisions applicable to a recipient that is a private entity.
 - A. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not:
 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 2. Procure a commercial sex act during the period of time that the award is in effect; or
 3. Use forced labor in the performance of the award or subawards under the award.

- B. We as the federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity
 - 1. Violates a prohibition in paragraph A of this award term; or
 - 2. Has an employee who violates a prohibition in paragraph A of this award term through conduct that is either:
 - a. Associated with performance under this award; or
 - b. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)”.
- II. Provisions applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is not a private entity—
- A. Is determined to have violated an applicable prohibition of paragraph I.A of this award term; or
 - B. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph I.A of this award term through conduct that is –
 - 1. Associated with performance under this award; or
 - 2. Imputed to you using the standards and due process for imputing conduct of an individual to an organization that are provided in 2 CFR Part 180, “OMB 12 Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 CFR Part 2200.
- III. Provisions applicable to any recipient.
- A. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph I A of this award term.
 - B. Our right to terminate unilaterally that is described in paragraph (1) and (2) of this section:
 - 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - 2. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - C. You must include the requirements of paragraph I A of this award term in any subaward you make to a private entity.
- IV. Definitions. For purposes of this award term:
- A. “Employee” means either:
 - 1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - 2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose service are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

B. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

C. “Private entity”:

1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR §175.25.
2. Includes:
 - a. A nonprofit organization, including any non-profit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
 - b. A for-profit organization. d. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102

Printed Name

Title

Organization

Signature

Date



U.S. ELECTION
ASSISTANCE
COMMISSION



Election Management Resources

GUIDANCE ON USE OF HAVA FUNDS FOR EXPENSES RELATED TO COVID-19

State and local election officials are concerned about the COVID-19 pandemic and its impact on upcoming primaries and the November general election. The EAC has received several requests for guidance on the allowability of using HAVA funds to cover costs they are incurring as a result of the pandemic. This guidance and the FAQs address the use of HAVA funds for such expenditures, including those necessary to protect the health and safety of poll workers, voters, and staff. In addition, the Office of Management and Budget issued guidance on administrative relief for grantees impacted by the pandemic. EAC has incorporated relevant elements of that guidance below.

This guidance applies to all HAVA funds granted to the state, including recent HAVA section 101 funds awarded with 2018 and 2020 appropriations. The guidance will be posted on the EAC website, and we will add FAQs as we receive additional questions. There are already extensive FAQs on the website related to the allowability of costs under HAVA grants which are also relevant to the current pandemic. The EAC wants to provide flexibility to the states to meet unexpected needs related to the pandemic and will work with you to determine if adjustments you want to make to your budgets and plans will require EAC prior approval.

HAVA neither expressly authorizes nor prohibits the use of section 101 or section 251 funds for expenditures necessary to protect against and respond to a pandemic. Both sections provide payments for the purposes of improving the administration of elections for federal office, which can include expenditures that would protect staff and poll workers, secure physical locations, and address unexpected expenses due to the COVID-19 pandemic during a federal election. The costs must still meet standards set in general federal grants regulations as described below.

Allowable, Allocable, and Reasonable Costs

Guidelines and requirements governing allowable costs under grants are found in 2 CFR 200.400, Subpart E, Cost Principles. To be allowable under a grant, costs must be necessary, reasonable and allocable to the grant. This is an assessment each state makes, but the EAC is of the opinion that expenditures related to the protection of the health and safety of poll workers, staff, and voters during federal

elections as well as those resulting from unanticipated increased demand for vote by mail costs (e.g. printing ballots, postage, etc.), equipment, temporary staff, and similar costs due to COVID-19 would satisfy these elements.

Allowable Costs

An allowable cost is one that is necessary and reasonable for the proper and efficient performance and administration of the activities funded under the grant. Examples of allowable costs in this context could include cleaning supplies and protective masks for staff and poll workers, resources to meet an unanticipated increased demand for mail ballots due to self-isolation and quarantine in response to COVID-19, and temporary staff to process the increased absentee ballot demand. Allowable costs would not include those that are currently paid with state or local election jurisdiction funds, such as the regularly anticipated demand for mail ballots. See 2 CFR 200.403.

Allocable Costs

An allocable expense is one that is directly related to the objectives and activities planned under the grant and included in the approved budget for the grant. This can include providing increased physical security for federal elections. See 2 CFR 200.404. If a state thinks that its approved budget does not include a line item that covers such expenses, staff may request approval from EAC for a budget amendment. Grantees can re-allocate funds to other line items up to 10% of the budget without approval from EAC.

Costs that would not be allocable would be costs incurred for state or administrative staff that are not working on activities supported under the grant. In some cases, a cost might only be partially allocable to the grant, e.g. In addition and for example, if the approved grant budget currently only includes costs associated with post-election auditing, you cannot allocate costs related to printing additional ballots to the grant. However, you can request a budget amendment from EAC to include costs related to voting systems and, thus, printing ballots. The EAC will work to approve such budget amendments within 48 hours.

Reasonable Costs

Finally, the cost is considered reasonable if, by its nature and amount, it does not exceed what a prudent person would pay under the circumstances. It can be based on frequency of use, actual cost for the products, and other relevant factors. Any expenditures in response to COVID-19 would require the same analysis as other costs. See 2 CFR 200.405.

OMB Guidance

The guidance provided by OMB allowed federal agencies additional flexibility related to grant application deadlines, approval to allow non-competitive continuations, publication of grant application instructions and no-cost extensions on expiring grants that don't apply to EAC grantees at this time. This section describes the areas that EAC determined apply to all its grantees.

1. OMB Guidance: Allowability of salaries and other project activities. (2 CFR § 200.403, 2 CFR § 200.404, 2 CFR § 200.405)

Awarding agencies may allow recipients to continue to charge salaries and benefits to currently active federal awards consistent with the recipients' policy of paying salaries (under unexpected or extraordinary circumstances) from all funding sources, federal and non-federal.

Applicability to EAC Grants: EAC does not anticipate a situation in which the activities supported under current HAVA grants could not continue during the pandemic. Grant funds can be spent on activities that improve the physical as well as cyber security of elections which include activities related to the pandemic. However, states may continue to pay staff supported with HAVA funds if they must stop working on grant-funded activities to focus on other areas. You must notify EAC in these situations and maintain appropriate records and cost documentation to substantiate the charging of salaries related to interruption of grant operations or services.

2. Allowability of Costs not Normally Chargeable to Awards. (2 CFR § 200.403, 2 CFR § 200.404, 2 CFR § 200.405)

Awarding agencies may allow recipients who incur costs related to the cancellation of events, travel, or other activities necessary and reasonable for the performance of the award, or the pausing and restarting of grant funded activities due to the public health emergency, to charge these costs to their award without regard to 2 CFR § 200.403, *Factors affecting allowability of costs*, 2 CFR § 200.404, *Reasonable costs*, and 2 CFR § 200.405, *Allocable costs* an agency program official.

Applicability to EAC Grants Under normal circumstances, costs related to cancellation fees for meetings, training, or travel might not meet the reasonable or necessary standard under a grant. As authorized by OMB guidance for administrative relief at this time, EAC will allow states to claim such costs under the grant without prior approval as well as costs incurred for pausing and restarting activities. In addition, given the importance of ensuring elections go forward with as little disruption as possible, additional costs states incur to conduct virtual trainings and other activities vital to improving the administration of federal elections, can be claimed under the grant. The standard requirements to maintain appropriate

records and cost documentation still apply. See 2 CFR § 200.302 - Financial management and 2 CFR § 200.333 - Retention requirement of records, to substantiate the charging of any cancellation or other fees related to interruption of operations or services.

3. Exemption of certain procurement requirements. (2 CFR§ 200.319(b), 2 CFR§ 200.321)

Awarding agencies may waive the procurement requirements contained in 2 CFR§ 200.319(b) regarding geographical preferences and 2 CFR§ 200.321 regarding contracting small and minority businesses, women's business enterprises, and labor surplus area firms.

Applicability to EAC Grants: OMB has eased procurement restrictions on geographic preference (2 CFR§ 200.319(b) and procurement requirements regarding contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR§ 200.321). States are required to follow their state procurement processes under the EAC grants and these sections of 2 CFR don't apply to states. However, your state may have similar requirements they are easing.

Frequently Asked Questions

Guidance on Use of HAVA Funds for Expenses Related to COVID-19

- **(/ #My-state-is-about-to-adopt-rules-that-will-allow-mail-ballots-in-more-circumstances-than-are-currently-allowed-in-both-our-upcoming-primary-and-general-elections.-As-a-result,-we-will-incur-expenses-for-a-second-printing-of-primary-ballots-and-a-larger-pr)My state is about to adopt rules that will allow mail ballots in more circumstances than are currently allowed in both our upcoming primary and general elections. As a result, we will incur expenses for a second printing of primary ballots and a larger pr**
- **(/ #We-have-not-submitted-our-program-narrative-and-budget-yet-for-our-2020-Election-Security-grant.-Can-we-spend-those-funds-or-must-we-use-our-remaining-251-or-101-funds-awarded-**

in-2018?) We have not submitted our program narrative and budget yet for our 2020 Election Security grant. Can we spend those funds or must we use our remaining 251 or 101 funds awarded in 2018?

- **(/ #My-state-will-incur-new-costs-to-communicate-changes-in-mail-ballot-rules-that-will-result-from-the-pandemic.-Can-we-use-HAVA-funds-to-cover-those-costs?) My state will incur new costs to communicate changes in mail ballot rules that will result from the pandemic. Can we use HAVA funds to cover those costs?**
- **(/ #We-need-to-move-polling-places-from-assisted-living-facilities-to-other-sites-associated-with-senior-citizens-and-may-need-to-lease-the-new-space.-Can-we-use-HAVA-funds-to-cover-those-costs?) We need to move polling places from assisted living facilities to other sites associated with senior citizens and may need to lease the new space. Can we use HAVA funds to cover those costs?**
- **(/ #Some-local-election-offices-do-not-have-laptops-for-all-staff-so-they-can-work-remotely-during-this-pandemic-office-shutdown.-Can-we-use-HAVA-funds-to-buy-laptops-for-those-employees?) Some local election offices do not have laptops for all staff so they can work remotely during this pandemic office shutdown. Can we use HAVA funds to buy laptops for those employees?**
- **(/ #We-expect-to-receive-a-much-higher-percentage-of-absentee-ballots-and-need-to-purchase-more-automated-letter-opening-equipment-and-scanners. -Can-we-use-HAVA-funds-to-purchase-more-equipment? -Can-we-lease-the-equipment?) We expect to receive a much higher percentage of absentee ballots and need to purchase more automated letter opening equipment and scanners. Can we use HAVA funds to purchase more equipment? Can we lease the equipment?**
- **(/ #We-expect-to-receive-a-much-higher-percentage-of-absentee-ballots-and-need-to-hire-temporary-staff-to-prepare-ballots-for-mailing.-Can-we-use-HAVA-funds-for-this-purpose?) We expect to receive a much higher percentage of absentee ballots and need to**

hire temporary staff to prepare ballots for mailing. Can we use HAVA funds for this purpose?

- **((/ #We-expect-to-experience-an-increase-in-personnel-costs-for-the-Absentee-Election-Managers-due-to-the-COVID-19-pandemic.-Our-run-off-was-postponed-from-03/31/20-to-07/14/20-which-greatly-extends-the-required-work-time-for-the-AEMs.-Would-it-be-permissible-to-use-a-portion-of-the-2020-HAVA-funds-to-help-cover-this-increased-personnel-cost?)We expect to experience an increase in personnel costs for the Absentee Election Managers due to the COVID-19 pandemic. Our run off was postponed from 03/31/20 to 07/14/20 which greatly extends the required work time for the AEMs. Would it be permissible to use a portion of the 2020 HAVA funds to help cover this increased personnel cost?**

Guidance on Use of HAVA Funds for Expenses Related to COVID-19

My state is about to adopt rules that will allow mail ballots in more circumstances than are currently allowed in both our upcoming primary and general elections. As a result, we will incur expenses for a second printing of primary ballots and a larger pr

Increased costs you incur 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. For example, you may have funds for mail ballots in the general election in your current state budget, but not for a second printing of primary ballots. For the general election ballots, HAVA funds can be used to cover the costs of the increase in absentee ballots you need due to the pandemic that are not already covered by state funds. For the primary ballots, you could use HAVA funds to cover the total cost of the second printing. One caution, these costs may become an ongoing expense. Covering them with a one-time funding source such as HAVA funds solves an immediate problem, but the costs will inevitably be assumed by the state or local government upon the exhaustion of federal funds.

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We have not submitted our program narrative and budget yet for our 2020 Election Security grant. Can we spend those funds or must we use our remaining 251 or 101 funds awarded in 2018?

You may use any of the funds. However, you cannot use remaining 251 funds for this purpose unless you have already met all the requirements in Title III or the amount will be minimal as defined in Section 251(b)2 of HAVA. The EAC has already awarded your 2020 funds and the project period in the Notice of Grant Award you received began on December 21, 2019. Any expenditures you incur after that date can be claimed against the grant. When you submit your narrative and budget you can describe how you have used or plan to use the funds to secure federal elections during this pandemic.

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My state will incur new costs to communicate changes in mail ballot rules that will result from the pandemic. Can we use HAVA funds to cover those costs?

Yes, costs to communicate changes in voting processes due to the pandemic are allowable costs. Keep in mind that HAVA funds can be used to provide information on voting procedures, rights or technology. Items intended to “get out the vote” or merely encourage voting do not meet this requirement.

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We need to move polling places from assisted living facilities to other sites associated with senior citizens and may need to lease the new space. Can we use HAVA funds to cover those costs?

Yes, unanticipated costs to lease polling facilities are allowable costs.

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Some local election offices do not have laptops for all staff so they can work remotely during this pandemic office shutdown. Can we use HAVA funds to buy laptops for those employees?

Yes, those would be allowable costs. However, please be aware that you must also ensure you have appropriate security measures in place (tokens, VPN access only, etc.) if they will be accessing your shared system.

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We expect to receive a much higher percentage of absentee ballots and need to purchase more automated letter opening equipment and scanners. Can we use HAVA funds to purchase more equipment? Can we lease the equipment?

Yes, those would be allowable costs, with the caveat that you need to ensure the costs are allocated to the grant in appropriate proportions. If you decide to lease the equipment, you must also follow requirements in Section 200.465 of 2 CFR which outline circumstances you should consider in determining whether to lease or buy the equipment.

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We expect to receive a much higher percentage of absentee ballots and need to hire temporary staff to prepare ballots for mailing. Can we use HAVA funds for this purpose?

Yes, you may hire temporary staff under these circumstances and to provide additional temporary help to process returned ballots.

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We expect to experience an increase in personnel costs for the Absentee Election Managers due to the COVID-19 pandemic. Our run off was postponed from 03/31/20 to 07/14/20 which greatly extends the required work time for the AEMs. Would it be permissible to use a portion of the 2020 HAVA funds to help cover this increased personnel cost?

Yes, this is an allowable cost directly related to the pandemic.

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The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

April 14, 2020

Mona Harrington, Acting Executive Director
U.S. Election Assistance Commission
1335 East-West Highway, Suite 4300
Silver Spring, MD 20910

Via e-mail only: CARESFunding@eac.gov

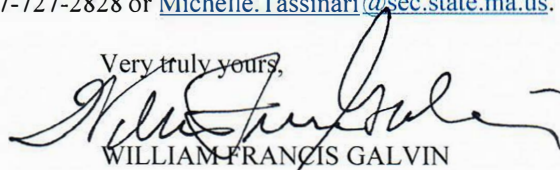
Dear Ms. Harrington:

The purpose of this letter is to request \$8,325,918 in HAVA CARES funds as outlined in the Notice of Grant Award, Agreement Number MA20101CARES. We certify that the Commonwealth of Massachusetts will use these funds for activities consistent with the laws described in Section 906 of HAVA and will not use the funds in a manner that is inconsistent with the requirements of Title III of HAVA.

We further certify that we have reviewed and accept the terms of the award as specified in the Notice of Grant Award. Our UEI number (formerly DUNS) is 36-154-9660 and the signed Certifications are enclosed.

We will use the funds to prevent, prepare for, and respond to coronavirus, domestically or internationally, for the 2020 Federal election cycle. 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.

If you have any questions about this request, please contact Michelle K. Tassinari, Director and Legal Counsel, Elections Division at 617-727-2828 or Michelle.Tassinari@sec.state.ma.us.

Very truly yours,

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

cc: Kinza Ghaznavi, Grants Manager
Enclosures