

In the Supreme Court of the United States

REPUBLICAN PARTY OF RHODE ISLAND AND REPUBLICAN NATIONAL COMMITTEE,
Applicants,

vs.

COMMON CAUSE RHODE ISLAND; LEAGUE OF WOMEN VOTERS OF RHODE ISLAND;
MIRANDA OAKLEY; BARBARA MONAHAN; MARY BAKER; NELLIE M. GORBEA, IN HER
OFFICIAL CAPACITY AS SECRETARY OF STATE OF RHODE ISLAND; AND DIANE C.
MEDEROS, LOUIS A. DESIMONE JR., JENNIFER L. JOHNSON, RICHARD H. PIERCE,
ISADORE S. RAMOS, DAVID H. SHOLES, AND WILLIAM E. WEST, IN THEIR OFFICIAL
CAPACITIES AS MEMBERS OF THE RHODE ISLAND BOARD OF ELECTIONS
Respondents,

TO THE HONORABLE STEPHEN G. BREYER,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES, AND
CIRCUIT JUSTICE FOR THE FIRST CIRCUIT

**RESPONDENTS' OPPOSITION TO THE EMERGENCY APPLICATION FOR
STAY PENDING APPEAL**

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

COMMON CAUSE RHODE ISLAND, LEAGUE OF
WOMEN VOTERS OF RHODE ISLAND, MIRANDA
OAKLEY, BARBARA MONAHAN, and MARY
BAKER,

Plaintiffs,

- against -

NELLIE M. GORBEA, in her official capacity as Secretary
of State of Rhode Island; DIANE C. MEDEROS, LOUIS
A. DESIMONE JR., JENNIFER L. JOHNSON,
RICHARD H. PIERCE, ISADORE S. RAMOS, DAVID
H. SHOLES, and WILLIAM E. WEST, in their official
capacity as members of the Rhode Island Board of
Elections,

Defendants.

**TEMPORARY RESTRAINING
ORDER REQUESTED**

Case No. 1:20-cv-00318-MSM-
LDA

**PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiffs, by and through their undersigned counsel, individually and on behalf of their members, hereby move for the issuance of a Temporary Restraining Order and, after hearing thereon, a Preliminary Injunction, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure directing Defendants to suspend Rhode Island's requirement that citizens who choose to vote by mail ballot sign the certifying envelope which contains their ballot before a notary public or two witnesses pursuant to R.I. Gen. Laws §§ 17-20-2.1(d)(1), 17-20-2.1(d)(4) and 17-20-2.2(d)(1), for the September 8, 2020 Primary Election and the November 3, 2020 General Election. Plaintiffs, by and through their undersigned counsel, request a Temporary Restraining Order conference, and if the requested relief is contested by Defendants, Plaintiffs request an

evidentiary hearing on the Preliminary Injunction. Plaintiffs anticipate that an evidentiary hearing of not more than two hours may also be required.

In support of the Motion, Plaintiffs rely upon the Complaint and the attached supporting Memorandum of Fact and Law, as well as the exhibits thereto, including the Declarations of Dr. Arthur Reingold, Dr. Michael Fine, and Plaintiffs Miranda Oakley, Barbara Monahan, and Mary Baker, as well as John Marion in his capacity as Executive Director of Common Cause Rhode Island, and Jane Koster in her capacity as President of the League of Women Voters Rhode Island.

Prior to filing this motion, on July 22, 2020, undersigned counsel notified Miriam Weizenbaum of the Department of Attorney General, Angel Taveras, counsel to Secretary of State Nellie M. Gorbea, and Raymond Marcaccio, counsel to the Board of Elections, of the within motion, and today provided electronic copies of the Complaint and the within Motion and supporting documents. Mr. Taveras informed Plaintiffs' counsel that the Secretary of State will not oppose Plaintiffs' motion for injunctive relief.

Respectfully submitted,

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CERTIFICATION

I hereby certify that I filed the within document via the ECF system on this 23rd day of July, 2020, and that it is available for viewing and downloading to all counsel of record and that I provided the within documents by email to:

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Plaintiffs,

- against -

NELLIE M. GORBEA, in her official capacity as Secretary
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Case No. 1:20-cv-00318-MSM-
LDA

PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND DECLARATORY AND INJUNCTIVE RELIEF

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INTRODUCTION

Rhode Island, which took swift action in the early days of the COVID-19 pandemic to ensure its citizens could vote safely, today plans to enforce voting regulations that will require tens of thousands of its citizens to make an impossible choice between two irreparable harms—violating social distancing guidelines designed to protect them and their loved ones and foregoing their fundamental right to vote. At issue is Rhode Island’s requirement that citizens who¹ vote by mail sign the certifying envelope which contains their ballot before a notary public or two witnesses (the “witness or notary requirement”). Plaintiffs’ motion to enjoin the State’s enforcement of the witness or notary requirement is not opposed by Defendant Secretary of State Nellie M. Gorbea. Yesterday, in the evening of July 22, 2020, counsel for Defendant Gorbea informed Plaintiffs by email that the Secretary of State “believes that there should not be any requirement of witnesses or notaries for mail ballots during this election period[,]” and “will not oppose [Plaintiffs’] request for injunctive relief.”

In normal times the witness or notary requirement was an ineffectual policy, but burdened only the small percentage of voters who chose to vote by mail in a given election. Voters in many cases could simply satisfy the requirement without risking their health or the health of others. Of course, these are not normal times. The global pandemic, which has seen a resurgence in Rhode Island communities, makes interacting with others outside of one’s household not only dangerous but a violation of State and Federal health guidelines. For the tens of thousands of Rhode Islanders without ready access to two witnesses or a notary in their homes, either voting in-person or seeking out two witnesses or a notary places their health at

¹ Subject to very limited exclusions not at issue here, *see infra* Factual Background Sec. F.

grave risk. Nearly a quarter of the State’s voting age population—nearly 200,000 people, including one of the individual Plaintiffs and some members of the League of Women Voters of Rhode Island (the “LWVRI”) and Common Cause Rhode Island (“CC-RI”)—live by themselves. Hundreds of thousands of others do not live with a notary or two adults who may serve as witnesses.

The witness or notary requirement will require these eligible voters to do the opposite of what the State has demanded in the current public health emergency. Governor Gina M. Raimondo has declared a state of emergency,² urging citizens to “reduce the size of mass gatherings,”³ and has continued to caution citizens to “[k]eep groups consistent and small.”⁴ Critically for this litigation, on April 17, 2020, Governor Raimondo suspended the witness or notary requirement challenged here in view of the inherent health risks posed, but only with respect to the State’s June 2, 2020 presidential primary election.⁵ Leading up to the June 2 presidential primary, Secretary of State Gorbea advised that “[v]oting from home is the safe and secure way to make your voice heard during the COVID-19 pandemic.”⁶

But in the face of a resurgent virus, the State has declined to suspend the witness or notary requirement for its pending September and November elections, requiring many thousands of Rhode Island voters to disregard the State’s own health and safety guidance and venture from the safety of their homes in order to vote. As explained by Plaintiffs’ expert Dr.

² R.I. Exec. Order No. 20-52 (July 3, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-52.pdf>.

³ R.I. Exec. Order No. 20-09 (March 22, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-09.pdf>.

⁴ Press Release, *Rhode Island to Move to Phase 3 Tuesday, Governor Extends Executive Orders* (June 29, 2020), <https://www.ri.gov/press/view/38720>.

⁵ R.I. Exec. Order No. 20-27 at 2 (Apr. 17, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-27.pdf>.

⁶ Press Release, *Secretary Gorbea to Rhode Islanders: Vote from Home this Week* (May 26, 2020), <https://www.ri.gov/press/view/38424>.

Arthur Reingold—Head of Epidemiology and Biostatistics at the University of California at Berkeley—person-to-person interaction continues to carry substantial risks of exposure to and/or transmission of COVID-19. Facing glaring contradictions between state health guidance and the few states that impose mail-in ballot witness requirements, three federal courts have enjoined the enforcement of substantially similar requirements in states that, unlike Rhode Island, did not waive the requirements ahead of primary elections held earlier this year.⁷ Plaintiffs respectfully submit that they have done more than establish a substantial likelihood of success on the merits that their constitutionally-protected voting rights will be overburdened by the witness or notary requirement; the facts speak for themselves and Plaintiffs have proven their case.

Unless this Court enjoins the State from enforcing the witness or notary requirement, Rhode Island voters will face a choice between two immediate and irreparable harms: risk your health or forego your constitutional rights. The State will soon be conducting a primary and general election, and will need to prepare by printing ballots and ballot envelopes and educating voters. Applications for mail-in ballots must be received by the voter's local board by August 18, 2020 to be valid for the State's September 8, 2020 primary.⁸ Only an immediate temporary restraining order and preliminary injunction from this Court will prevent irreparable harm to Plaintiffs.

Finally, the balance of the equities and the public interest tips decidedly in favor of a temporary restraining order and preliminary injunction, which will vindicate the dual public interests of ensuring all qualified voters can vote in September and November and protecting

⁷ See *Thomas v. Andino*, 2020 U.S. Dist. LEXIS 90812 (D.S.C. May 25, 2020); *League of Women Voters of Va. v. Va. State Bd. of Elections*, 2020 U.S. Dist. LEXIS 79439 at *1 (W.D. Va. May 5, 2020); *People First of Ala. v. Merrill*, 2020 U.S. Dist. LEXIS 104444 at *1 (N.D. Ala. June 15, 2020).

⁸ See *Upcoming Elections*, ST. OF R.I. BD. OF ELECTIONS, (last visited July 22, 2020), <https://elections.ri.gov/elections/upcoming/>.

public health, with little if any harm to Defendants. This Court must evaluate the witness or notary requirement in light of the present and impending circumstances that Plaintiffs and other Rhode Island voters face. Without relief, thousands of Rhode Island voters will be forced to risk their health in order to vote—or simply not have their voices heard at all. Plaintiffs therefore request the Court grant a temporary restraining order and preliminary injunction enjoining Defendants from enforcing the witness or notary requirement for the State’s pending September primary and November general elections.

FACTUAL BACKGROUND

A. THE COVID-19 PANDEMIC

Tragically, the United States is the epicenter of the global COVID-19 pandemic and has far more confirmed COVID-19 cases than any other nation.⁹ As Plaintiffs’ expert Dr. Arthur Reingold explains in his Declaration, the novel coronavirus, SARS-CoV-2, causes individuals to contract COVID-19. Declaration of Dr. Arthur Reingold ¶ 7 (attached as Ex. A).¹⁰ COVID-19 spreads mainly from person-to-person through close contact with one another and through respiratory droplets when an infected person coughs or sneezes.¹¹ COVID-19 “is aerosolized, such that tiny droplets containing the virus remain in the air and can be inhaled by others who

⁹ *Covid-19 Dashboard by the Center for Systems Science and Engineering at Johns Hopkins University*, JOHNS HOPKINS U. CORONAVIRUS RESOURCE CENTER <https://coronavirus.jhu.edu/map.html> (last visited July 22, 2020) (reporting 3,925,025 confirmed cases in the United States, and 2,159,654 cases in Brazil (the country with the second-highest number of confirmed cases), as of July 22, 2020).

¹⁰ Dr. Reingold is a medical doctor, a public health expert in the area of infectious diseases and epidemiology, and the Division Head of Epidemiology and Biostatistics at the University of California, Berkeley, School of Public Health. Reingold Decl. ¶¶ 1, 3. He spent eight years at the Centers for Disease Control and Prevention (“CDC”), has directed or co-directed the CDC-funded California Emerging Infections Program for more than 25 years, and was previously the President of both the Society for Epidemiologic Research and the American Epidemiological Society. *Id.* ¶ 1.

¹¹ *How COVID-19 Spreads*, CENTER FOR DISEASE CONTROL AND PREVENTION (last updated June 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

come into contact with that air.” Reingold Decl. ¶ 9. Those infected with the virus may transmit it to others even without showing symptoms themselves. *Id.* at 12.

COVID-19 can cause severe consequences, including long-term illness and death. *Id.* ¶ 7. Globally, about 20% of COVID-19 patients “become ill enough to need supplemental oxygen or even more advanced hospital care.”¹² A study conducted in San Diego County, California found that 10% of those confirmed to have contracted COVID-19 required hospital care.¹³ By one estimate, COVID-19 will be responsible for well over 200,000 deaths in the United States by November 1, 2020.¹⁴

COVID-19 threatens to infect any individual no matter their age. Reingold Decl. ¶ 7. Between February 1 and July 18, 2020, persons between 18 and 64 years old accounted for 75.9% of reported cases of COVID-19 in the United States.¹⁵ During the week of July 11, 61.9% of persons hospitalized were between 18 and 64 years old.¹⁶ While people of all ages have contracted and died from COVID-19, it is particularly fatal for older individuals. Reingold Decl. ¶ 7. Preliminary data shows a 5.6% mortality rate for individuals older than 65.¹⁷ One study found that patients older than 80 were twenty times more likely to die than persons in their 50s

¹² Donald G. McNeil Jr., *The Pandemic’s Big Mystery: How Deadly is the Coronavirus?*, N.Y. TIMES (July 4, 2020), <https://www.nytimes.com/2020/07/04/health/coronavirus-death-rate.html> (last updated July 15, 2020).

¹³ COUNTY OF SAN DIEGO HEALTH AND HUMAN SERVICES AGENCY, COVID-19 WATCH - WEEKLY COVID-19 SURVEILLANCE REPORT (July 14, 2020), available at <https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/COVID-19%20Watch.pdf>.

¹⁴ *COVID-19 Projections*, THE INST. FOR HEALTH METRICS AND EVALUATION, <https://covid19.healthdata.org/united-states-of-america> (updating regularly) (last accessed July 22, 2020).

¹⁵ *Demographic Trends of COVID-19 Cases and Deaths in the US Reported to CDC*, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/covid-data-tracker/index.html#demographics> (last updated July 22, 2020).

¹⁶ *COVID-NET: A Weekly Summary of U.S. COVID-19 Hospitalization Date: COVID-19 Laboratory-Confirmed Hospitalizations*, CENTER FOR DISEASE CONTROL AND PREVENTION, https://gis.cdc.gov/grasp/COVIDNet/COVID19_5.html (last visited July 21, 2020).

¹⁷ Francisco Perez-Saez et al., *Serology-informed Estimates of SARS-COV-2 Infection Fatality Risk in Geneva, Switzerland*, OSF PREPRINTS, <https://osf.io/wdbpe/> (last updated June 15, 2020) (data is based on a study of COVID-19 mortality in Geneva, Switzerland).

and hundreds of times more likely to die than those below forty.¹⁸ COVID-19 also poses greater risks for people with preexisting heart and respiratory conditions including asthma, individuals with compromised immune systems, and those with many other preexisting health conditions. Reingold Decl. ¶ 7. Those with disabilities may be at higher risk. The CDC cautions that, although disability alone may not be related to higher risk of contracting COVID-19, some people with disabilities might be at a higher risk of infection or severe illness because of underlying chronic medical conditions such as chronic lung disease, a serious heart condition, or a weakened immune system.¹⁹

B. THE SPREAD OF COVID-19 IN RHODE ISLAND

On March 1, 2020, Rhode Island public health officials confirmed its first case of COVID-19 in the state.²⁰ As of July 22, 2020, there have been 3,882,167 confirmed cases of COVID-19 and 141,677 deaths attributed to COVID-19 in the United States, according to the Centers for Disease Control and Prevention (“CDC”).²¹ Rhode Island has had 17,986 confirmed cases and 996 deaths.²² These figures almost certainly understate the real numbers of COVID-19 victims, given the limitations in testing.

The seven day average for new reported cases of COVID-19 in Rhode Island peaked in late April 2020 and, as a result of swift and strong social distancing measures, steadily declined

¹⁸ Katherine J. Wu, *Study of 17 Million Identifies Crucial Risk Factors for Coronavirus Deaths*, N.Y. TIMES, <https://www.nytimes.com/2020/07/08/health/coronavirus-risk-factors.html> (last updated July 17, 2020).

¹⁹ *See People with Disabilities*, CENTER FOR DISEASE CONTROL AND PREVENTION (April 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html>.

²⁰ The Associated Press, 1st COVID-19 case confirmed in Rhode Island, BANGOR DAILY NEWS, March 1, 2020, <https://bangordailynews.com/2020/03/01/news/1st-covid-19-case-confirmed-in-rhode-island/>. (Accessed July 19, 2020).

²¹ *Cases in the US*, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last updated July 22, 2020).

²² *Id.*

through the end of June.²³ However, over the last two weeks the seven day average has increased from 35 on July 1, 2020 to 60 on July 22.²⁴ On July 13, Rhode Island reported 175 new cases.²⁵ Plaintiffs' local expert, Dr. Fine, is a former Director of the Rhode Island Department of Health, as well as the former Physician-in-Chief of the Rhode Island and Miriam Hospitals' Departments of Family and Community Medicine. *See* Declaration of Michael Fine ¶ 2 (attached as Ex. B). He has witnessed new outbreaks in Central Falls and Pawtucket, with the number of positive COVID-19 cases identified at local health facilities rising around 1 or 2 per day in early July to more than 20 positive tests per day on July 16 and July 17. *Id.* ¶ 8.

The recent increase in reported cases in Rhode Island occurs in a national context where, as of July 19, 2020, 39 states and the District of Columbia are seeing an increase in the rate of reported new cases, while nine states are holding steady and only two are experiencing a decrease.²⁶ A document prepared for the White House Coronavirus Task Force dated July 14, 2020 recommends that 18 states in the coronavirus "red zone" should roll back reopening measures amid surging cases.²⁷ As of July 21, 2020 thirteen states are pausing the reopening of their economies, while nine states are re-closing.²⁸ Acknowledging this reality, on July 21, 2020 the President of the United States told Americans the pandemic will "get worse before it gets

²³ *Rhode Island Coronavirus Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/rhode-island-coronavirus-cases.html> (last updated July 22, 2020).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (accessed July 19, 2020).

²⁷ *See* Betsy Klein, *Task force report says 18 states in coronavirus 'red zone' should roll back reopening*, CNN (July 17, 2020) <https://www.cnn.com/2020/07/17/politics/white-house-states-hot-spots-task-force/index.html>. The "red zone" is defined in the 359-page report as "those core-based statistical areas (CBSAs) and counties that during the last week reported both new cases above 100 per 100,000 population, and a diagnostic test positivity result above 10%."

²⁸ *See* Jasmine C. Lee et al., *See How All 50 States Are Reopening (and Closing Again)*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html> (last updated July 21, 2020).

better.”²⁹ As the recent uptick in Rhode Island demonstrates, Rhode Island is not immune from these larger trends in the United States and strict social distancing measures are crucial to maintain Rhode Island’s progress in fighting COVID-19.

C. THE PUBLIC HEALTH RESPONSE TO COVID-19

Recognizing the need for social distancing in order to reduce the spread of COVID-19, Rhode Island Governor. Raimondo issued an Executive Order on March 9, 2020 declaring a state of emergency which has been extended at least through August 2, 2020.³⁰ Governor Raimondo’s July 3, 2020 executive order extending the state of emergency acknowledged that “aggressive and sustained efforts are still necessary to slow the spread of the COVID-19 virus and to lessen the strain on our healthcare system.”³¹ Local leaders agree, as evidenced by the various localities in Rhode Island that have likewise declared states of emergency that remain in effect.³²

Shortly after declaring a state of emergency, Governor Raimondo issued an executive order announcing that the Rhode Island Department of Health “determined that it is necessary to further reduce the size of mass gatherings.”³³ Governor Raimondo has since eased restrictions on the maximum permissible size for public gatherings.³⁴ However, Governor Raimondo has cautioned that citizens should continue to avoid mass gatherings.³⁵ She explained that “the lower the attendance and gathering size, the lower the risk.”³⁶ She also explained that all vulnerable

²⁹ Weijia Jang, *Trump says pandemic will "get worse before it gets better,"* CBS NEWS (July 21, 2020), <https://www.cbsnews.com/video/trump-says-pandemic-will-get-worse-before-it-gets-better/#x>.

³⁰ R.I. Exec. Order No. 20-52 (July 3, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-52.pdf>.

³¹ *Id.* at 2.

³² See, e.g., Scott Souza, *Barrington Extends Coronavirus State of Emergency*, THE PATCH (July 6, 2020), <https://patch.com/rhode-island/barrington/barrington-extends-coronavirus-state-emergency>.

³³ R. I. Exec Order No. 20-09 (March 22, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-09.pdf>.

³⁴ R.I. Exec. Order No. 20-50 (June 29, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-50.pdf>.

³⁵ *Id.*

³⁶ *Id.*

populations, including persons 65 years or older, “are still strongly advised to stay at home[.]”³⁷

Governor Raimondo emphasized that a key message for the public is to “[k]eep groups consistent and small.”³⁸

This Court has likewise acknowledged the need for continued public health measures to address the COVID-19 pandemic and has acted accordingly. “In light of the continued guidance from the Centers for Disease Control and other health authorities and given the continued escalation of the COVID-19 pandemic,” this Court remains closed to the public and has continued to encourage its employees to maximize telework per an order set to remain in effect until at least September 30, 2020, a date more than three weeks after the September primary election.³⁹ Recognizing that it is unlikely a vaccine will be available to the public at large before mid-2021, Reingold Decl. ¶ 14, social distancing measures including maintaining at least six feet of space between people (as well as consistent hygiene practices) are the only known effective measures for protecting against transmission of COVID-19. *Id.* ¶ 11. Some scientists have expressed anxiety that Rhode Island may experience a resurgence in COVID-19 cases in the fall as children return to school and people spend more time indoors.⁴⁰

D. RHODE ISLAND’S SUSPENSION OF THE WITNESS OR NOTARY REQUIREMENT FOR THE PRESIDENTIAL PRIMARIES

Witnessing the spread of COVID-19 in Rhode Island and elsewhere, State public officials responded to these serious public health dangers and the need to provide Rhode Island citizens

³⁷ *Id.*

³⁸ Press Release, Gina Raimondo, Governor of Rhode Island, *Rhode Island to Move to Phase 3 Tuesday, Governor Extends Executive Orders* (June 29, 2020), <https://www.ri.gov/press/view/38720>.

³⁹ *Fourth General Order Regarding Continuity of Operations During Coronavirus Pandemic* (D.R.I. June 29, 2020), <https://www.rid.uscourts.gov/sites/rid/files/FourthGeneralOrderOperations.pdf>.

⁴⁰ G. Wayne Miller, *R.I. Faces Uncertain COVID-19 Prognosis for Fall*, PROVIDENCE JOURNAL (July 19, 2020), <https://www.providencejournal.com/news/20200718/ri-faces-uncertain-covid-19-prognosis-for-fall>.

with a safe and accessible means of voting for the June presidential primary election. On March 23, 2020, Governor Raimondo issued Executive Order 20-11, which delayed the primary election to June 2, 2020 and prepared for a “predominantly mail ballot election.”⁴¹ The Order acknowledged that “minimizing contact between individuals, including those who would ordinarily vote at a polling place, will help slow the spread of COVID-19.”⁴² On March 26, 2020 the State Board of Elections voted to suspend the signature requirement for mail ballots, acknowledging that the requirements “necessitate[] close contact between the voter and other people, which is a known cause of transmitting COVID-19.”⁴³ On April 17, 2020 Governor Raimondo issued Executive Order 20-27, which suspended the witness or notary requirement challenged here for the June 2, 2020 presidential primary election.⁴⁴ The Governor instructed the Board of Elections to “take all measures necessary to compare and authenticate the signatures set forth on the application and certification envelopes” and permitted them to “request mail ballot applicants to voluntarily provide the last four digits of the voter’s Social Security number or a valid driver’s license number.”⁴⁵

The State also advised and encouraged its citizens to exercise their right to vote by mail, to minimize the risk to themselves and their fellow citizens. In May, Defendant Gorbea was “encouraging everybody to just vote by mail[.]”⁴⁶ Defendant Gorbea later advised that “[v]oting from home is the safe and secure way to make your voice heard during the COVID-19

⁴¹ R.I. Exec. Order No. 20-11 (March 23, 2020) <https://governor.ri.gov/documents/orders/Executive-Order-20-11.pdf>, (March 23, 2020).

⁴² *Id.*

⁴³ *R.I. STATE BOARD OF ELECTIONS MINUTES OF MEETING*, ST. OF R.I. BD. OF ELECTIONS (March 26, 2020), <https://opengov.sos.ri.gov/Common/DownloadMeetingFiles?FilePath=\\Minutes\\132\\2020\\362125.pdf>.

⁴⁴ R.I. Exec. Order No. 20-27, 2 (Apr. 17, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-27.pdf>.

⁴⁵ *Id.*

⁴⁶ Erica Ponte, *RI Secretary of State encourages mail ballot voting in presidential primary*, WPRI (May 14, 2020), <https://www.wpri.com/news/elections/ri-secretary-of-state-encourages-mail-ballot-voting-in-presidential-primary/>.

pandemic.”⁴⁷ In its presidential primary “guide for eligible voters,” the Secretary of State’s office told voters that voting by mail is “the best ways for RI voters to follow social distancing best practices.”⁴⁸

The State’s measures to protect Rhode Island voters were in accord with guidelines issued by the CDC on June 22, 2020 concerning voting during the COVID-19 pandemic. Under “Guiding Principles,” the CDC states that “[e]lections with only in-person voting on a single day are higher risk for COVID-19 spread because there will be larger crowds and longer wait times.”⁴⁹ The CDC recommends that voters “[c]onsider voting alternatives . . . that minimize contact.”⁵⁰ It notes that alternative voting mechanisms can reduce the transmission of COVID-19.⁵¹

The suspension of the witness or notary requirement for the June presidential preference primary was successful. 83% of Rhode Island voters exercised their fundamental right to vote via mail-in ballot.⁵² Voting by mail was used most extensively by older voters, which allowed the

⁴⁷ Press Release, Nellie Gorbea, *Secretary of State of Rhode Island*, *Secretary Gorbea to Rhode Islanders: Vote from Home this Week* (May 26, 2020) <https://www.ri.gov/press/view/38424>.

⁴⁸ *All About the Rhode Island Presidential Primary: A Guide for Eligible Voters*, R.I. SEC’Y OF ST. (JUNE 2, 2020), <https://vote.sos.ri.gov/Content/Pdfs/June2PPPGuide.pdf>.

⁴⁹ *Considerations for Polling Locations*, CENTER FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last updated June 22, 2020).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *2020 Presidential Primary Elections Task Force Preliminary Overview 3* (July 1, 2020); *see also* *2020 Presidential Preference Primary Statewide Summary*, ST. OF R.I. BD. OF ELECTIONS (updated July 2, 2020), https://www.ri.gov/election/results/2020/presidential_preference_primary/#.

age cohorts most vulnerable to COVID-19 to vote in safety.⁵³ In comparison, less than 4% of the votes in the May 2016 presidential preference primary were cast by mail.⁵⁴

Following the successful presidential primary election, Defendant Gorbea established the 2020 Presidential Primary Election Task Force (“Election Task Force” or “ETF”). On July 9, 2020, the Election Task Force released recommendations for how to minimize the risk of COVID-19 transmission during the elections.⁵⁵ The ETF recommended a variety of measures to make it easier to cast ballots by mail and more efficiently process mail ballots.⁵⁶ A presentation published by the Election Task Force that same day reflected that “[r]emoving the two witness/notary signature requirement on ballots made it easier for older Rhode Islanders and those living alone” to vote safely.⁵⁷ As a result of these measures, the ETF concluded that the Governor’s executive order was a success and led to a “[d]ecreased number of in-person voters [which] allowed for social distancing best practices.”⁵⁸

After concluding that removing the witness or notary requirement had been a success, the Election Task Force proposed that Rhode Island adopt the same course for the September and November 2020 elections. The ETF stated that adopting this change would “[e]nsure[] voters who live alone or with one other person do not have to rely on someone else in order to cast a ballot.”⁵⁹ The ETF also acknowledged that the “[m]ajority of states do not have a witness or

⁵³ 2020 Presidential Primary Election Task Force Presentation, R.I. DEP’T OF ST. (July 9, 2020), <https://vote.sos.ri.gov/Content/Pdfs/PPP%20Task%20Force%20July%209%202020%20Final.pdf> (stating that voting by mail “protected our most vulnerable populations[.]”).

⁵⁴ 2016 Presidential Primary Statewide Summary, ST. OF R.I. BD. OF ELECTIONS, https://www.ri.gov/election/results/2016/presidential_preference_primary/# (last updated May 4, 2016) (click on “Show mail ballot breakout”).

⁵⁵ Press Release, Office of the Secretary of State, Task Force Releases Recommendations for Safe and Secure Fall Elections in Rhode Island (July 9, 2020), <https://www.ri.gov/press/view/38803>.

⁵⁶ *Id.*

⁵⁷ 2020 Presidential Primary Election Task Force Presentation 4.

⁵⁸ *Id.*

⁵⁹ *Id.* at 10.

notary requirement,” with most states instead predominantly relying on signing under oath and signature matching to confirm voter identification, as Rhode Island did for the June election.⁶⁰

On June 30, 2020, the Voting Access Coalition, an alliance of organizations in the state promoting the exercise of the franchise and fairness in elections, formally requested that the Governor waive the witness or notary requirement for the State’s upcoming primary and general elections.⁶¹ To date Governor Raimondo has not responded, nor has she acted to suspend the witness or notary requirement. Defendant Gorbea promoted legislation to implement mail-in voting for the remaining 2020 elections, including a provision to eliminate the witness or notary requirement.⁶² However, the Rhode Island General Assembly failed to pass this legislation with its opponents largely citing the provision of the legislation which would have required applications for mail-in ballots to be sent to every registered voter.⁶³ The General Assembly, however, has passed other legislation clearly demonstrating that they understand the public health risks of in-person contact at this time, for example eliminating the in-person registration requirement for the Rhode Island’s mobile sports betting app.⁶⁴

⁶⁰ *Id.*; see also R. I. Exec. Order 20-27, 2 (Apr. 17, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-27.pdf>.

⁶¹ Letter to Governor Raimondo, R.I. ACLU (June 30, 2020), http://riaclu.org/images/uploads/VAC_letter_to_Governor_FINAL_20200630.pdf.

⁶² Alexandra Leslie & Melanie DaSilva, *RI secretary of state announces legislation for mail-based voting in the fall*, WPRI (June 12, 2020), <https://www.wpri.com/news/elections/r-i-secretary-of-state-set-to-introduce-legislation-for-mail-based-voting-in-the-fall/>.

⁶³ See, e.g., Parker Gavigan, *A battle over mail ballots*, WJAR (July 17, 2020), <https://turnto10.com/i-team/battle-over-mail-ballots>; Ted Nesi, *House leaders back bill to send all RI voters mail ballot applications*, WPRI (July 14, 2020), <https://www.wpri.com/news/politics-government/house-leaders-back-bill-to-send-all-ri-voters-mail-ballot-applications/>.

⁶⁴ *Lawmakers drop in-person requirement for online sports wagering*, State of RI General Assembly (July 16, 2020), http://www.rilin.state.ri.us/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8ded-9dbbe21ce3e9&ID=370997.

E. RHODE ISLAND’S UPCOMING PRIMARY AND GENERAL ELECTIONS

Rhode Island will hold two statewide election days in the remaining part of 2020.

Primary elections for offices including U.S. House of Representatives, Rhode Island Senate, and Rhode Island House of Representatives will be held on September 8, 2020.⁶⁵ The general Presidential election, and the election for U.S. Senate, U.S. House of Representatives, Rhode Island Senate, Rhode Island House of Representatives, and municipal offices will be held on November 3, 2020.⁶⁶

Voters’ applications for mail-in ballots must be received by the local board 21 days before the election to be counted. R.I. Gen. Laws § 17-20-2.1(c). While a voter may apply for an emergency ballot up to the day before the election, such ballots are available only to voters who become eligible to vote by mail ballot “on account of circumstances manifested twenty (20) days or less prior to” the election. *Id.* § 17-20-2.2(a), (b). For the vast majority of Rhode Island voters eligible to vote by mail, they must apply for absentee ballots by August 18, 2020 and October 13, 2020 for the State primary and general election, respectively.⁶⁷

F. RHODE ISLAND’S MAIL BALLOT PROCESS AND THE CHALLENGED WITNESS OR NOTARY REQUIREMENT

Rhode Island law provides four circumstances under which a qualified elector may vote by mail. Voters confined to a hospital or nursing home may have their ballot witnessed by a pair of bi-partisan state supervisors.⁶⁸ For voters living abroad and/or serving out-of-state in the

⁶⁵ See *Upcoming Elections*, ST. OF R.I. BD. OF ELECTIONS, (last visited July 22, 2020), <https://elections.ri.gov/elections/upcoming/>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ If the voter is voting by mail because they are “confined in any hospital, convalescent home, nursing home, rest home, or similar institution, public or private, within the State of Rhode Island,” R.I. Gen. Laws § 17-20-2(2), the

military, there is no witness or notary requirement.⁶⁹ Voters who qualify to vote by mail under either of the remaining two circumstances must sign the certifying envelopes which contain their ballots before a notary public or two witnesses.

- a. If the voter is voting by mail because they are “incapacitated to the extent that it would be an undue hardship to vote at the polls because of illness, or mental or physical disability, blindness, or serious impairment of mobility,” R.I. Gen. Laws § 17-20-2(1), “the signature on the certifying envelopes containing a voted ballot must be made before a notary public or two (2) witnesses who shall set forth their addresses on the form.” R.I. Gen. Laws § 17-20-2.1(d)(1).
- b. If the voter is voting by mail because they “may not be able to vote at his or her polling place in his or her city or town on the day of the election,” R.I. Gen. Laws § 17-20-2(4), the signature on all certifying envelopes containing a voted ballot must be made before a notary public, or other person authorized by law to administer oaths where signed, or where the elector voted, or before two (2) witnesses who shall set forth their addresses on the form,” R.I. Gen. Laws § 17-20-2.1(d)(4).

Rhode Island voters voting by emergency mail ballot must also comply with the witness or notary requirement. *Id.* § 17-20-2.2(d)(1).⁷⁰ Voters are eligible for an emergency mail ballot if they become eligible to vote by mail ballot for any of the aforementioned reasons “on account of circumstances manifested twenty (20) days or less prior to” the election. *Id.* § 17-20-2.2(a).

ballot “must be witnessed by the state supervisors” who travel in bipartisan pairs to each of the aforementioned facilities within twenty days before the election, R.I. Gen. Laws § 17-20-14(a).

⁶⁹ If the voter is voting by mail because they “will be temporarily absent from the state because of employment or service intimately connected with military operations or who is a spouse or legal dependent residing with that person; or a United States citizen that will be outside of the United States,” R.I. Gen. Laws § 17-20-2(3)-(4), there is no notarization or witnessing requirement, R.I. Gen. Laws § 17-20-2.1(d)(3).

⁷⁰ The State Legislature has also failed to address the witness or notary requirement. On July 17, 2020 the Legislature transmitted to the Governor H 8102A and S 2598A, which permit emergency mail ballots applications to be processed at a voter’s board of canvassers in person on electronic poll pads.⁷⁰ The bill does not address the State’s witness or notary requirement for mail-in ballots.⁷⁰ Another bill that passed in the State Legislature, H 7200A, would have provided mail-in ballots to all Rhode Island voters for the September and November Elections. However, the State Senate did not vote on the bill.

Rhode Island is only one of twelve states with a witness or notarization requirement,⁷¹ and is one of only three states requiring two witnesses.⁷²

The two witnesses or the notary for each ballot must actually witness the voter marking the ballot. R.I. Gen. Laws §§ 17-20-21 and 17-20-23. The Standards of Conduct for Notaries Public in the State of Rhode Island provide that voters may not notarize a document where the principal is the spouse, domestic partner, parent, guardian, child or sibling of the notary, including in-law, step, or half relatives.⁷³ On April 8, 2020, Defendant Gorbea authorized electronic notarizations for the duration of the state of emergency.⁷⁴ Among other requirements, in order to utilize electronic notarization for a mail ballot the voter must have an internet connection and be able to connect to the notary via approved video conference software, provide either two forms of ID or the oath of a credible witness as to who they are, sign the envelope in the video “presence” of the notary, and then, mail the document to the Notary for stamping and return to the voter by mail, before forwarding it to the Board of Elections by Election Day, and pay any required fee, up to \$5.00 per notarized document.⁷⁵

Some of the State’s guides for eligible voters on how to vote by mail do not reference the witness or notary requirement. For instance, the State Board of Elections website provides that

⁷¹ See Chart, “Verifying Authenticity of Absentee/Mailed Ballots,” Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options, Nat’l Conf. of State Legislatures (July 10, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

⁷² See Ala. Code §§ 17-11-7, 17-11-10; N.C. Gen. Stat. Ann. § 163-231(a). While North Carolina generally requires either two witnesses or a notary to witness mail-in ballots, the state has lessened this requirement to one witness for elections in 2020 in light of the COVID-19 pandemic. See N.C. Session Law 2020-17 §1(a).

⁷³ See Standards of Conduct for Notaries Public in the State of Rhode Island and Providence Plantations § 4(a)(3) (effective Jan. 1, 2019), available at <https://sos.ri.gov/assets/downloads/documents/notary-standards-of-conduct-for-notaries-amended.pdf>.

⁷⁴ Mark Reynolds, *R.I. Approves Electronic Notarization During Coronavirus Outbreak*, PROVIDENCE JOURNAL (April 6, 2020), <https://www.providencejournal.com/news/20200406/ri-approves-electronic-notarization-during-coronavirus-outbreak>.

⁷⁵ See R.I. Dep’t of St., *Rhode Island Remote Online Notarization Temporary Performance Guide 2-3*, available at <https://www.sos.ri.gov/assets/downloads/documents/RI-RON-guidance-document.pdf>.

“[i]f you may not be able to get to the polls on Election Day, you can fill out a mail ballot application and receive a mail ballot.”⁷⁶ The website makes no mention of the witness or notary requirement. Similarly, the Secretary of State’s website provides step by step instructions on applying for and returning a mail ballot.⁷⁷ However, the website is silent with regards to the witness or notary requirement. The requirement that a mail ballot certificate be witnessed by two individuals or a notary is noted only on a separate page related to emergency mail ballots.⁷⁸ As a result, some voters new to voting by mail may only learn of the witness or notary requirement when they receive their ballot and prepare to cast it, making compliance on such a short time frame while social distancing even more difficult.

G. RHODE ISLAND’S LAWS SUPPORTING ELECTION INTEGRITY FOR VOTING BY MAIL

In addition to the witness or notary requirement, Rhode Island has a number of different laws designed to promote the integrity of mail-in ballot procedures. First, mail-in ballots are assessed to ensure that the name, residence, and signature on the ballot itself all match that same information on the ballot application, including ensuring “that both signatures are identical.” R.I. Gen. Laws 17-20-26(c)(2).

Second, Rhode Island also has stringent criminal provisions discouraging and penalizing misuse of mail-in ballots. In the rare case someone were to vote fraudulently, it is a felony in

⁷⁶ *Mail Ballot*, ST. OF R.I. BD. OF ELECTIONS, <https://elections.ri.gov/voting/mailballot.php> (last accessed July 18, 2020).

⁷⁷ *Vote by Mail*, R.I. DEP’T OF ST., <https://vote.sos.ri.gov/Voter/VotebyMail?ActiveFlag=4> (last accessed July 18, 2020).

⁷⁸ *Vote By Emergency Mail Ballot*, R.I. DEP’T OF ST., <https://vote.sos.ri.gov/Voter/EmergencyBallot> (last accessed July 18, 2020). The “emergency mail ballot” provisions apply to voters who become eligible to vote by mail within twenty days of an election. R.I. Gen. Laws § 17-20-2.2(a).

Rhode Island, punishable by up to ten years of imprisonment with a fine between \$1,000 and \$5,000. R.I. Gen. Laws §§ 17-23-4 & 17-26-1.

These anti-fraud measures work. Rhode Island’s experience with mail-in voting is consistent with the experience of other states, which have found instances of voter fraud exceedingly rare. A comprehensive nationwide analysis found 491 cases of absentee voting fraud from 2000 to 2012—a minuscule fraction of all mail-in ballots cast during that period.⁷⁹ The study determined that an American is more likely to be struck by lightning than to cast a fraudulent mail-in ballot.⁸⁰ The Heritage Foundation, which maintains a comprehensive database of allegedly proven instances of voter fraud since 1979, lists no examples of voter fraud in Rhode Island.⁸¹

H. THE PUBLIC HEALTH AND DISENFRANCHISEMENT CONSEQUENCES OF RHODE ISLAND’S WITNESS OR NOTARY REQUIREMENT DURING THE COVID-19 PANDEMIC

For “individuals without another person able to witness in their household, the requirement that they have someone witness their absentee ballot would place them at increased risk of exposure to and/or transmission of COVID-19.” Reingold Decl. ¶ 23. This is because coming into “close enough proximity to witness their ballot would place them at increased risk of infection,” and “would be particularly risky for those who are at a greater risk of complications and death from COVID-19.” *Id.* And for public health purposes, “to prevent increasing the scope of the outbreak of COVID-19, we must assume that anyone could be infected and infect another person.” *Id.* ¶ 12.

⁷⁹ Wendy R. Weiser & Harold Ekeh, *The False Narrative of Voter Fraud*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020) <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

⁸⁰ *Id.*

⁸¹ *A Sampling of Recent Election Fraud Cases from Across the United States*, HERITAGE FOUND. (accessed July 17, 2020), <https://www.heritage.org/voterfraud>.

Data from the U.S. Census Bureau confirms that a large portion of the Rhode Island electorate lives alone. As of 2018, 197,000 Rhode Islanders over the age of 18, 23.45% of the State's voting-age population, live alone.⁸² Another 289,000 Rhode Islanders of voting age live with only one other person.⁸³ Of the 197,000 Rhode Islanders of voting age who live alone, an estimated 59,000 are aged 65 and older, accounting for 37.82% of all those aged 65 and over in Rhode Island.⁸⁴ For Rhode Islanders of voting age with a disability, an estimated 42,000, or 42%, live alone.⁸⁵ Assuming that these numbers apply roughly evenly across Rhode Island's 791,284 registered voters,⁸⁶ this means roughly 185,556 Rhode Island voters live alone. In Rhode Island's 2018 general election, 381,267 voters⁸⁷ cast ballots, meaning roughly 89,407 of those voters lived alone.

I. INJURIES AND IRREPARABLE HARM TO PLAINTIFFS

Individual Plaintiff Miranda Oakley is a registered Rhode Island voter who regularly votes in Rhode Island elections and wishes to vote in the upcoming primary election on September 8, 2020 and general election on November 3, 2020. Declaration of Miranda Oakley ¶ 4 (attached as Ex. C). Following the recommendations of the Rhode Island Department of Health and the State's Election Task Force, she wishes to vote by mail because of the risk of COVID-19 transmission from voting in person. *Id.* ¶¶ 10, 12. Ms. Oakley will have to violate social distancing guidelines to have her ballot witnessed and counted, as she does not live with two

⁸² See U.S. Census 2018: ACS 5-year estimate data profile concerning Rhode Islanders' household size, broken down by age group, race, and disability status (attached at Ex. H). This table was downloaded using the CPS Table Creator, available at <https://www.census.gov/cps/data/cpstablecreator.html> (accessed July 18, 2020).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Registration Status of Voters in Rhode Island as of July 2020*, R.I. DEP'T OF ST. (accessed July 18, 2020), <https://datahub.sos.ri.gov/RegisteredVoter.aspx>.

⁸⁷ See Elections Data-Voter Turnout, RHODE ISLAND DEPARTMENT OF STATE (Accessed 7/22/2020), <https://vote.sos.ri.gov/DataInformation/VoterTurnout>.

eligible individuals who may serve as witnesses. *Id.* ¶ 2. If she leaves her home to vote in-person, she risks not only her own health, but also the health of her elderly grandmother. *Id.* ¶ 7. Voting in person would also expose her mother, who works with the elderly, both because of the risk that Ms. Oakley will contract the virus, and because Ms. Oakley is blind and will need her mother to drive her to the polls. *Id.* ¶ 7, 10.

Individual Plaintiff Barbara Monahan is also a registered Rhode Island voter who regularly votes in Rhode Island elections and wishes to vote in the upcoming primary election on September 8, 2020 and general election on November 3, 2020. Declaration of Barbara Monahan ¶ 3 (attached as Ex. D). Because of her advanced age, she is at high risk of becoming severely ill or dying if she contracts COVID-19. *Id.* ¶ 8. Following public health recommendations, she wishes to vote by mail because of the risk of COVID-19 transmission from voting in person. *Id.* ¶ 10. Ms. Monahan lives alone, and will have to violate social distancing guidelines to have her ballot witnessed and counted. *Id.* ¶¶ 9, 12. She does not have access to a computer or a video call service of any kind. *Id.* ¶ 11.

Individual Plaintiff Mary Baker is another registered Rhode Island voter who regularly votes in Rhode Island elections and wishes to vote in the upcoming primary election on September 8, 2020 and general election on November 3, 2020. Declaration of Mary Baker ¶ 3 (attached as Ex. E). Ms. Baker is at high risk of becoming severely ill or dying if she contracts COVID-19, due to numerous health conditions including asthma, apnea, hypertension, diabetes, and obesity. *Id.* ¶¶ 4, 7. Following public health recommendations, she wishes to vote by mail because of the risk of COVID-19 transmission from voting in person. *Id.* ¶¶ 11, 12.

Plaintiff League of Women Voters of Rhode Island has a mission of encouraging informed and active participation in government, and influencing public policy through

education and advocacy. Declaration of Jane Koster ¶ 3 (attached as Ex. F). The League has 150 members across Rhode Island. *Id.* Some of these members, like Individual Plaintiffs, wish to preserve their health by voting in the September primary and November general election by mail-in ballot but will be unable to do so without violating social distancing guidelines to have their ballot witnessed. *Id.* ¶ 8. This is a particular risk for certain of these League members, who are older than 60 years old (approximately 75% of the League's membership) and/or have underlying health conditions that put them at greater risk for serious injury or death from COVID-19. *Id.* Dealing with the implications of the witness or notary requirement has also caused, and will continue to cause, the League to divert resources from other core activities such as voter registration, voter education, and voter mobilization activities to try to educate voters about the witness requirement should it remain in place *Id.* ¶ 10.

Plaintiff Common Cause Rhode Island has a mission of promoting representative democracy by ensuring open, ethical, accountable, effective government processes at local, state and national levels by educating and mobilizing citizens. Declaration of John Marion ¶ 3 (attached as Ex. G). CC-RI has 5,800 members across Rhode Island. *Id.* Some of these members, like a 66-year-old resident of Cranston, Rhode Island, live alone and, like Individual Plaintiffs, they wish to preserve their health by voting in the September primary and November general elections by mail-in ballot but will be unable to do so without violating social distancing guidelines to have their ballot witnessed. *Id.* ¶ 8, 9. Many of CC-RI's members are particularly vulnerable to COVID-19 either due to their age or other underlying health conditions. *Id.* Others live in households with individuals particularly vulnerable to COVID-19. *Id.* Some of these members live by themselves or with only one other non-notary person. *Id.* Many of these members will become disenfranchised because of the witness or notary requirement. *Id.* at 8.

Dealing with the implications of the witness requirement has also caused, and will continue to cause, CC-RI to divert resources from other core activities such as voter registration, voter education, and voter mobilization activities to try to educate voters about the witness requirement should it remain in place *Id.* ¶ 11.

ARGUMENT

In determining whether to grant a preliminary injunction, the court must find (1) a substantial likelihood of success on the merits; (2) a significant risk of irreparable harm if the injunction is withheld; (3) the harm to plaintiff outweighs the harm defendants would suffer in the absence of an injunction; and (4) an injunction will not adversely affect the public interest. *See Sallaj v. United States Immigration & Customs Enf't*, U.S. Dist. LEXIS 72857, *6 (D.R.I. 2020). Of the four factors, the likelihood of success on the merits is weighted most heavily. *See Wine and Spirits Retailers, Inc. v. Rhode Island*, 418 F.3d 36, 46 (1st Cir. 2005). Plaintiffs need not establish a certainty of success, but they must show a “strong likelihood that [they] will ultimately prevail.” *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (*quoting Respect Me. PAC v. McKee*, 622 F.3d 13, 15 (1st Cir. 2010)).

A. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR CONSTITUTIONAL CLAIM BECAUSE THE WITNESS OR NOTARY REQUIREMENT UNDULY BURDENS THE RIGHT TO VOTE UNDER THE PRESENT CIRCUMSTANCES

The Fourteenth Amendment safeguards the “precious” and “fundamental” right to vote. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966). The Equal Protection Clause prohibits any encumbrance on the right to vote that is not adequately justified by a valid state interest. *See Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983); *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992).

Plaintiffs are highly likely to succeed on their claims because the First and Fourteenth Amendments do not permit a state to deprive tens of thousands of its qualified citizens of the right to vote by maintaining a requirement that runs counter to public health guidance and does little, if anything, to promote election integrity. Because the unconstitutional burden placed on plaintiffs by the State's witness or notary requirement is severe and widespread, the Court should apply heightened, if not strict, scrutiny. This Court should follow other courts finding that similar requirements during a global pandemic impose an unconstitutional burden on a citizen's right to vote. *See, e.g., Thomas v. Andino*, Civil Action No. 3:20-cv-01552-JMC, 2020 U.S. Dist. LEXIS 90812 (D.S.C. May 25, 2020); *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-CV-00024, 2020 U.S. Dist. LEXIS 79439 (W.D. Va. May 5, 2020). The requirement would not, however, pass even rational basis scrutiny.

1. THE ANDERSON-BURDICK FRAMEWORK

As the Supreme Court set forth in *Anderson v. Celebrezze* and *Burdick v. Takushi*, courts must balance the character and magnitude of any law burdening the right to vote against the relevant government interest served by the law. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). The First Circuit describes the application of the *Anderson-Burdick* framework as follows:

the U.S. Supreme Court has developed a flexible "sliding scale" approach for assessing the constitutionality of such restrictions. Under this approach, when the burden imposed by a ballot access regulation is heavy, the provision must be narrowly tailored to promote a compelling state interest. Reasonable, nondiscriminatory restrictions, however, need be justified only by legitimate regulatory interests.

Barr v. Galvin, 626 F.3d 99, 109 (1st Cir. 2010).

Courts assess the applicable level of scrutiny under *Anderson-Burdick* based upon both the reach of the burden and the severity of the burden on those it impacts. *See Werme v. Merrill*, 84 F.3d 479, 483-484 (1st Cir. 1996); *Barr v. Galvin*, 626 F.3d 99, 109 (1st Cir. 2010); *Ayers-Schaffner v. DiStefano*, 860 F. Supp. 918, 920 (D.R.I. 1994); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198–99 (2008); *see also One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 930 (W.D. Wis. 2016), *order enforced*, 351 F. Supp. 3d 1160 (W.D. Wis. 2019) (“the court must focus on the burdens that the challenged provisions place on eligible voters who cannot comply”). The fact that a majority of voters “are able to comply . . . does not mean that the burdens that these laws impose are constitutionally insignificant.” *One Wisconsin*, 198 F. Supp. 3d at 930. Because the “right to vote is personal,” an *Anderson-Burdick* claim “is not defeated by the fact that 99% of other people can” easily exercise the franchise despite the challenged provision. *Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016).

The *Anderson-Burdick* balancing test requires the court to measure “the character and magnitude of the asserted injury” against “the precise interests put forward by the State as justifications for the burden.” *Anderson*, 460 U.S. at 789; *see Democratic Nat’l Comm. v. Bostelmann*, 2020 U.S. Dist. LEXIS 57918 at *36-37 (D. Wisc. Apr. 2, 2020) (applying the *Anderson-Burdick* test to evaluate a similar witness signature requirement).

The Supreme Court has made clear that it has not identified any “litmus test for measuring the severity of a burden that a state law imposes on a political party, an individual voter, or a discrete class of voters.” *Crawford*, 553 U.S. at 191. Yet “however slight that burden may appear,” the reviewing court must find that it is “justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 288–89 (1992)); *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215, 1221 n.6 (4th Cir.

1995) (“We believe that a regulation which imposes only moderate burdens could well fail the *Anderson* balancing test when the interests that it serves are minor, notwithstanding that the regulation is rational.”).

Once the burdens on voters are weighed, a court must weigh those burdens against the “precise interest put forward by the State as justifications for the burden imposed by its rule.” *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). Even if a state law imposes a slight burden, a court must still “actually weigh the burdens imposed on the plaintiff against the *precise* interests put forward by the State,” and take into account “the extent to which those interests make it necessary to burden the plaintiff’s rights,” unlike traditional rational basis review. *Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 108-09 (2d Cir. 2008) (internal citations and quotation marks omitted) (emphasis added).

Under the *Anderson-Burdick* framework, Rhode Island’s enforcement of the witness or notary requirement—in the midst of the global pandemic—fails both because the burdens are severe and because the state’s interests are minimal.

2. THE WITNESS OR NOTARY REQUIREMENT MERITS AT LEAST HEIGHTENED SCRUTINY BECAUSE IT WILL DISENFRANCHISE THOUSANDS OF VOTERS WHILE WORSENING A PUBLIC HEALTH CRISIS

Here, in the midst of the COVID-19 pandemic, the requirement that all citizens of Rhode Island must either: (1) appear in-person at the polls, (2) find two other adults to witness and sign their mail ballot envelope, or (3) find a notary to sign their mail ballot envelope; severely or at least significantly burdens the right to vote. The burden is both wide-reaching—affecting many thousands of Rhode Island citizens—and severe. In essence, the witness or notary requirement will force many thousands of Rhode Islanders to choose between exercising their right to vote in

the upcoming State primary and general elections and adhering to the State's own social distancing guidelines. If they choose the former, they expose themselves, their families, and their communities to a heightened risk of COVID-19. If they choose the latter, they are disenfranchised.

**a. THE WITNESS OR NOTARY REQUIREMENT WILL
BURDEN MANY THOUSANDS OF RHODE ISLAND VOTERS
WHO WISH TO PROTECT THEIR OWN HEALTH AND THE
HEALTH OF THOSE AROUND THEM**

The enforcement of Rhode Island's witness or notary requirement has the potential to disenfranchise many thousands of the State's voters given the COVID-19 pandemic, far more than would normally be impacted by the requirement. In Rhode Island's 2020 presidential primary, 83% of voters chose to vote by mail.⁸⁸ Unburdened by the State's witness or notary requirement and facing a very real risk to their health, an "overwhelming number of Rhode Islanders chose to safely vote from home."⁸⁹ In stark contrast, in Rhode Island's 2016 presidential primary, 3.6% of voters completed mail-in ballots while 96.4% went to polling places.⁹⁰ While the State's witness or notary requirement burdens mail-in voters in normal times, today this requirement has the potential to disenfranchise a wide swath of the Rhode Island electorate.

Voters who live alone make up a large portion of Rhode Island's eligible voters, and will ordinarily not be able to comply with the State's witness or notary requirement without violating

⁸⁸ 2020 Presidential Primary Election Task Force Presentation, R.I. DEP'T OF ST., 4 (July 9, 2020), <https://vote.sos.ri.gov/Content/Pdfs/PPP%20Task%20Force%20July%202020%20Final.pdf>.

⁸⁹ *Id.*

⁹⁰ 2016 Presidential Primary Statewide Summary, ST. OF R.I. BD. OF ELECTIONS (updated May 4, 2016), https://www.ri.gov/election/results/2016/presidential_preference_primary/# ("Show mail ballot breakout"). In the 2016 Rhode Island presidential primary, 6,411 voters voted by mail versus 177,661 in person voters. Mail ballots represented 3.6% of the total ballots cast.

social distancing guidelines. According to Federal Census estimates, in 2018 an estimated 197,000 Rhode Islanders over the age of 18, 23.45% of the estimated 840,000 Rhode Islanders of voting age in 2018, live alone.⁹¹ Based upon their share of the voting-age population, roughly 185,556 of Rhode Island's 791,284 registered voters live alone.⁹² Of the estimated 197,000 voting-age Rhode Islanders living alone, an estimated 59,000 are aged 65 and older and an estimated 42,000 are disabled.⁹³

This already-substantial number does not account for persons who live with only one other person. In addition to the estimated 197,000 Rhode Island voters living alone, a further 289,000 live in a household of two.⁹⁴ Like those living alone, these Rhode Islanders will ordinarily not be able to comply with the witness or notary requirement without disregarding State and Federal health guidelines. Even those living in households with three or more persons do not necessarily live with two other adults who may serve as witnesses. In a four-person household consisting of two parents and two children, the parents will not be able to comply with the witness or notary requirement without violating social distancing guidelines. In addition, not all adults will be capable of serving as witnesses. For instance, plaintiff Oakley lives with both her mother and her grandmother, but her grandmother is not capable of serving as a witness. Oakley Decl. ¶ 2. Ms. Oakley's situation also highlights the heightened risk faced by those who regularly interact with people uniquely vulnerable to COVID-19, either because of their age or chronic medical conditions. If Ms. Oakley is forced to vote in-person she risks the health of her grandmother, and the health of the elderly individuals whom her mother works with. *Id.* ¶¶ 7, 11.

⁹¹ See Ex. H, U.S. Census 2018: ACS 5-year estimate data profile.

⁹² See *id.*; *Registration Status of Voters in Rhode Island as of July 2020*, R.I. DEP'T OF ST. (accessed July 18, 2020), <https://datahub.sos.ri.gov/RegisteredVoter.aspx>.

⁹³ See Ex. H, U.S. Census 2018: ACS 5-year estimate data profile.

⁹⁴ *Id.*

The burden imposed by the State's witness or notary requirement is far from limited to the estimated 185,556 registered Rhode Island voters who live alone.

Courts have found that laws burdening far fewer (and a lower percentage of) voters violate *Anderson-Burdick*. “[E]ven one disenfranchised voter . . . is too many.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014) (finding minority voters were entitled to a preliminary injunction on a bill eliminating same-day registration); *see also Ne. Ohio Coal. For Homeless v. Husted*, 696 F.3d 580 (6th Cir. 2012) (affirming order enjoining state from rejecting ballots cast in the wrong precinct due to poll worker error, where rejected ballots constituted less than .248% of votes cast); *Saucedo v. Gardner*, 335 F. Supp. 3d 202 (D.N.H. 2018) (enjoining state from enforcing law rejecting ballots due to signature mismatch, despite state's rejection of only .35% of all absentee ballots submitted).

The State's witness or notary requirement will burden a large majority of the Rhode Island electorate that will choose to vote by mail, with tens of thousands facing a particularly acute burden based on their inability to obtain the required witnesses for casting a mail-in ballot without disregarding critical State and Federal health guidelines.

b. THE BURDEN PLACED ON VOTERS IS SEVERE AND IRREPARABLE

The State's witness or notary requirement means that tens of thousands of Rhode Islanders will not be able to cast a ballot without disregarding State and Federal health guidelines that could put their health in jeopardy. The requirement will result in irreparable disenfranchisement for those who cannot risk their health or life to satisfy it. Dr. Fine, who is personally familiar with the State's witness or notary requirement, explains that “[t]he witness or notary requirement means that many individuals must invite one or two persons into their home,

or travel outside their home to meet these witnesses. Either of these situations would violate social distancing guidelines and increase the likelihood that those involved will contract COVID-19 and transmit it to others.” Fine Decl. ¶ 10. For this reason, “[t]he current witness requirement carries with it a high risk to the general public’s health.” *Id.* ¶ 9. His statement is confirmed by State and Federal health guidance, echoed by Defendants and other State officials. *See* Factual Background Sec. C.

Rhode Island voters’ other option—in-person voting—is equally, if not more, dangerous for vulnerable residents. As Plaintiff Baker notes, “[v]oting in person would involve waiting in line with other voters, interacting with poll workers, and touching voting equipment.” Baker Decl. ¶ 10. Recognizing that in-person voting necessarily requires violating social distancing guidelines, in its presidential primary “guide for eligible voters” the Secretary of State’s office told voters that voting by mail is “the best way for RI voters to follow social distancing best practices.”⁹⁵ The danger of in-person voting is further confirmed by the experience of voters in Wisconsin, where researchers linked dozens of cases of COVID-19 to that state’s failure to provide mail ballots with sufficient time for many voters to return them.⁹⁶ There can be no doubt that social distancing and minimizing person-to-person contact is critical to avoid contracting and spreading the virus, and that the witness or notary requirement will require tens of thousands of Rhode Island voters to violate these protocols whether they choose to vote by mail or in person. As the Eleventh Circuit stated in *Dem. Exec. Comm. of Fla. v. Lee*, “even one

⁹⁵ *All About the Rhode Island Presidential Primary: A Guide for Eligible Voters*, RI DEP’T OF ST., (JUNE 2, 2020) <https://vote.sos.ri.gov/Content/Pdfs/June2PPPGuide.pdf>.

⁹⁶ Chad D. Cotti et al., *The Relationship Between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on COVID-19: Evidence From the Wisconsin Primary*, Working Paper 27187, NAT’L BUREAU OF ECON. RESEARCH (May 2020), available at <https://www.nber.org/papers/w27187>. In this study, researchers determined that 71 positive COVID-19 cases were directly traceable to in-person voting.

disenfranchised voter . . . is too many.” 915 F.3d 1312, 1315 (11th Cir. 2019) (quoting *LWVNC*, 769 F.3d at 244).

Confronted with a highly similar set of facts, the court in *League of Women Voters of Va.* found that Virginia’s witness signature requirement for absentee ballots—which required *one* witness—posed an unconstitutional burden on the right to vote as applied during the Covid-19 pandemic. 2020 U.S. Dist. LEXIS 79439. The Court stated:

In ordinary times, Virginia's witness signature requirement may not be a significant burden on the right to vote. But these are not ordinary times. In our current era of social distancing—where not just Virginians, but all Americans, have been instructed to maintain a minimum of six feet from those outside their household—the burden is substantial for a substantial and discrete class of Virginia's electorate.

Id. at *24-25. The Court considered that the witness requirement forced Virginians to choose between following health and safety guidance and their right to vote. The Court declared “[t]he Constitution does not permit a state to force such a choice on its electorate” and that the witness requirement poses a “substantial burden” on the right to vote. *Id.* at *25, 28.

In *Thomas v. Andino* the court likewise found that the plaintiffs were likely to prevail on their claim that the state’s requirement that a *single* witness be present when a voter signs their mail-in ballot posed an undue burden on South Carolina voters. 2020 U.S. Dist. LEXIS 90812, *55 (D.S.C. May 25, 2020). The court observed that, while the state’s witness requirement had not “absolutely prohibited voting,” in-person voting presented voters with an “illusory choice between exercising their right to vote and placing themselves at risk of contracting a potentially terminal disease.” *Id.* at *46 n.20. While declining to determine the exact level of scrutiny to apply to the challenged law, the court found that the plaintiffs “have identified burdens inflicted

by the Witness Requirement, which are at least of sufficient magnitude to warrant the injunction.” *Id.* at *50.

While the State’s witness or notary requirement burdens all Rhode Island voters, older voters face unique risks due to their particular susceptibility to the COVID-19 virus. Plaintiffs’ expert Dr. Reingold notes that while people of all ages have contracted and died from COVID-19, it is particularly fatal for older individuals. Reingold Decl. ¶ 7. The CDC cautions that “[a]mong adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk.”⁹⁷ Preliminary data shows a 5.6% mortality rate for individuals older than 65.⁹⁸

Recognizing the danger to their health, older voters overwhelmingly voted by mail in the State’s June 2, 2020 presidential primary election, with the share of voters voting by mail increasing with the voter’s age.⁹⁹ A presentation at an Election Task Force meeting reviewing Rhode Island’s June 2, 2020 presidential primary noted that 99% of the Greatest Generation (those approximately age 90 and older) voted by mail in the 2020 presidential primary vs. 33% in the 2016 presidential primary.¹⁰⁰ A further 94% of the Silent Generation (those approximately age 75 to 92) voted by mail in the 2020 presidential primary vs. 6% in the 2016 presidential primary.¹⁰¹ If the Court does not enjoin the State from enforcing the witness or notary requirement, a large share of the 59,000 Rhode Islanders aged 65 and older who live alone—and the many more that live with only one other person or simply do not have two competent

⁹⁷ See *Older Adults*, CENTER FOR DISEASE CONTROL AND PREVENTION (June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.

⁹⁸ Francisco Perez-Saez et al., *Serology-informed Estimates of SARS-COV-2 Infection Fatality Risk in Geneva, Switzerland*, OSF PREPRINTS, <https://osf.io/wdbpe/> (last updated June 15, 2020) (data is based on a study of COVID-19 mortality in Geneva, Switzerland).

⁹⁹ *2020 Presidential Primary Election Task Force Presentation*, R.I. DEP’T OF ST., 5 (July 9, 2020), <https://vote.sos.ri.gov/Content/Pdfs/PPP%20Task%20Force%20July%202020%20Final.pdf> (stating that voting by mail “protected our most vulnerable populations[.]”).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

witnesses in their household—will undoubtedly choose not to vote rather than risking their health.¹⁰²

For the estimated 42,000 individuals of voting age who have disabilities and who live alone in Rhode Island—and the many more who live with only one other person or do not live with two competent adults—the risk is further magnified.¹⁰³ According to the CDC, some people with disabilities might be at a higher risk of infection or severe illness because of underlying chronic medical conditions such as chronic lung disease, a serious heart condition, or a weakened immune system.¹⁰⁴ Further, individuals with disabilities may need help reaching the polls and/or casting their ballot, exposing an additional person to COVID-19. For instance, Plaintiff Oakley is blind and will require her mother to drive her to the polls. Oakley Decl. ¶ 10. This requires exposing additional persons to COVID-19.

The burden placed on voters by the State's witness or notary requirement is in no way lessened by Defendant Gorbea's authorization of online notarization for the pendency of the state of emergency.¹⁰⁵ To take advantage of online notarization, the voter must (1) have a high-speed internet connection and connect to the notary via approved video conference software, (2) provide either two forms of ID or the oath of a credible witness, (3) mail the document to the Notary for stamping and receive the document back by mail—in time to then mail the ballot to the Board of Elections by Election Day—and (4) pay any required fee.¹⁰⁶ Because mail ballot

¹⁰² See Ex. H, U.S. Census 2018: ACS 5-year estimate data profile.

¹⁰³ *Id.*

¹⁰⁴ See *People with Disabilities*, CENTER FOR DISEASE CONTROL AND PREVENTION (April 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html>.

¹⁰⁵ Mark Reynolds, *R.I. Approves Electronic Notarization During Coronavirus Outbreak*, PROVIDENCE JOURNAL (April 6, 2020), <https://www.providencejournal.com/news/20200406/ri-approves-electronic-notarization-during-coronavirus-outbreak>.

¹⁰⁶ See *Rhode Island Remote Online Notarization Temporary Performance Guide 2–3*, R.I. DEP'T OF ST., available at <https://www.sos.ri.gov/assets/downloads/documents/RI-RON-guidance-document.pdf>.

certification envelopes are not digitized, the voter will also need access to a suitable scanner.¹⁰⁷

At each stage, this process is burdensome and exclusionary of those without adequate technology, without adequate documentation, or without adequate time and resources to send and receive the document by mail. For instance, Plaintiff Monahan does not have access to a suitable computer or internet connection and cannot take advantage of this service. Monahan Decl. ¶ 11.

Not to mention the fee. Voters should not have to pay to vote.

Finally, it is unclear how a voter can locate a qualified notary. To perform online notarizations a notary must download and be trained in the services of an approved audio-video solution provider and register with the State to perform online notarizations,¹⁰⁸ whereas the State's notary lookup service does not identify whether a notary is authorized and registered for online notarizations unless one searches for the name of a particular notary and the notary has asked to be so listed.¹⁰⁹ The time, expense, and logistical hassle of this process make it illusory for countless voters, particularly older voters.¹¹⁰

The broad sweep and severe health repercussions of the burden of the witness or notary requirement merit heightened, if not strict, scrutiny, and reveal the unconstitutional burden Rhode Island voters will face if it remains in place.

¹⁰⁷ See *Process for Remote Online Notarization (RON) of Paper Documents*, R.I. DEP'T OF ST., available at https://www.sos.ri.gov/assets/downloads/documents/RON_Tangible_Document_Bulletin.pdf.

¹⁰⁸ See *Rhode Island Remote Online Notarization Temporary Performance Guide 3*, R.I. DEP'T OF ST., available at <https://www.sos.ri.gov/assets/downloads/documents/RI-RON-guidance-document.pdf>.

¹⁰⁹ See *Notary Public and Justice of the Peace (JP) Status Lookup*, R.I. SEC'Y OF ST., <http://business.sos.ri.gov/notarypublicsearch/> (last visited July 20, 2020).

¹¹⁰ In one survey, 73% of those aged 65 and older said when they get a new electronic device, they usually need someone's assistance in setting up or learning how to use the technology. Monica Anderson and Andrew Perrin, *Tech Adoption Climbing Among Older Adults*, PEW RESEARCH CENTER (May 17, 2017), <https://www.pewresearch.org/internet/2017/05/17/barriers-to-adoption-and-attitudes-towards-technology/>. Seniors with a disability reported being less likely to use digital technology, including the internet in general.

B. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR AMERICANS WITH DISABILITIES ACT CLAIM BECAUSE THE WITNESS OR NOTARY REQUIREMENT EXCLUDES AND FAILS TO ACCOMMODATE INDIVIDUALS WITH DISABILITIES

Title II of the Americans with Disabilities Act prohibits discrimination against individuals with disabilities by state and local government entities. 42 U.S.C. § 12132. Proving a violation of Title II requires showing that: (1) plaintiffs are qualified individuals with disabilities; (2) plaintiffs are being excluded from participating in, or denied the benefits of, a public entity's services, programs, or activities or are otherwise discriminated against; and (3) that such exclusion, denial of benefits, or discrimination was by reason of disability. *Kiman v. New Hampshire Dep't of Corr.*, 451 F.3d 274, 283 (1st Cir. 2006). Plaintiffs Oakley, Monahan and many members of LWVRI have a disability within the meaning of the ADA.¹¹¹ Koster Decl. ¶ 8, Oakley Decl. ¶ 3, Monahan ¶ 4, 5. They are “qualified” for the programs, services, and activities being challenged herein in that they meet all essential eligibility requirements to vote in Rhode Island. 42 U.S.C. § 12131(2).

Under Title II of the ADA, state and local governments are forbidden from imposing or applying eligibility criteria for public services, programs, or activities, including voting, that screen out or tend to screen out individuals with disabilities from fully and equally enjoying those programs.¹¹² Public entities must also make reasonable modifications of policies, practices, or procedures, including voting and election procedures, when such modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that

¹¹¹ An individual with disability is defined by the ADA as a person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a history or record of such an impairment, or (3) is perceived by others as having such an impairment. 42 U.S.C. § 12102(1); 28 C.F.R. § 35.108(a)(1). Individual plaintiffs Oakley, Monahan and Baker, as well as many members of organizational plaintiffs, satisfy the first prong of this definition.

¹¹² 28 C.F.R. § 35.130(b)(8).

making the modifications would fundamentally alter the nature of the service, program, or activity.¹¹³

The State's witness or notary requirement constitutes an eligibility criteria criterion that screens out individuals with disabilities from voting, and Defendants have failed to make reasonable modifications to that requirement. The witness or notary requirement will require that many individuals with disabilities, for whom COVID-19 poses grave health risks,¹¹⁴ engage in an in-person interaction outside the home in order to vote. This requirement will screen out many individuals with disabilities who are unwilling or unable to risk their life and health in this way.

Modifying the witness or notary requirement is reasonable and necessary in order to ensure equal access to voting for individuals with disabilities whose health statuses severely limit their ability to leave home or have any personal contacts with others amid the COVID-19 pandemic. In *Nat'l Fed'n of the Blind v. Lamone*, the Fourth Circuit found that Maryland violated Title II by failing to modify its absentee voting program, which required voters to mark the hardcopy ballot by hand. 813 F.3d 494 (4th Cir. 2016). Because disabled voters with disabilities would need the assistance of others to vote absentee, the Court found that disabled voters they did not have equal and meaningful access to the absentee voting program. *Id.* In *Saucedo v. Gardner*, 335 F. Supp. 3d 202 (D.N.H. 2018), the Court enjoined state officials from enforcing New Hampshire's signature match requirement for absentee ballots, in part because the execution of identical signatures on multiple absentee forms may be more difficult for some voters due to "unintentional factors includ[ing] age, physical and mental condition, disability,

¹¹³ 28 C.F.R. § 35.130(b)(7).

¹¹⁴ See *People with Disabilities*, CENTER FOR DISEASE CONTROL AND PREVENTION (April 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html>.¹¹⁵ Wendy R. Weiser & Harold Ekeh, *The False Narrative of Voter Fraud*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020) <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

medication, stress, accidents, and inherent differences in a person's neuromuscular coordination and stance.” *Id.* at 205.

C. THE HARM INFLICTED UPON VOTERS FAR OUTWEIGHS THE STATE’S INTEREST IN ELECTION INTEGRITY

Rhode Island does not have a weighty—let alone sufficiently compelling—interest in enforcing the witness or notary requirement under these circumstances. Indeed, two other federal courts have determined that a state’s interest in enforcing substantially similar (but less burdensome) requirements, in the midst of the COVID-19 pandemic, does not outweigh their burden on citizens’ fundamental right to vote.

The State’s witness or notary requirement does not prevent fraud, and therefore does not serve a significant state interest. Studies confirm that fraud is extremely rare nationwide,¹¹⁵ and The Heritage Foundation’s comprehensive database of allegedly proven instances of voter fraud lists no examples of voter fraud in Rhode Island.¹¹⁶ Without a problem, the State cannot disenfranchise voters as a solution. *Saucedo v. Gardner*, 335 F. Supp. 3d 202, 220 (D.N.H. 2018) (finding state’s disenfranchisement of approximately 740 voters to prevent two instances of absentee-voter fraud, one each in 2012 and 2016, was not justified). Even assuming states other than Rhode Island have a significant problem of mail-in voter fraud (they do not), this cannot justify the disenfranchisement of Rhode Island citizens. *See Rideout v. Gardner*, 838 F.3d 65, 73 (1st Cir. 2016) (“A few recent instances of vote buying in other states do not substantiate New

¹¹⁵ Wendy R. Weiser & Harold Ekeh, *The False Narrative of Voter Fraud*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020) <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

¹¹⁶ *A Sampling of Recent Election Fraud Cases from Across the United States*, HERITAGE FOUND. (accessed July 17, 2020), <https://www.heritage.org/voterfraud>.

Hampshire’s asserted interest in targeting vote buying through banning the publication of ballot selfies.”).

While the State has an interest in election integrity, this interest is sufficiently protected by laws other than the witness requirement. In fact, Rhode Island’s witness requirement is likely the *least* effective of several requirements and procedures designed to promote election integrity in the mail voting process. First, mail-in ballots are assessed to ensure that the name, residence, and signature on the ballot itself all match that same information on the ballot application, including ensuring “that both signatures are identical.” R.I. Gen. Laws 17-20-26(c)(2). The Board of Elections “regularly rejects mail ballots where there is a substantial difference between the two signatures or if the witness does not provide enough information so that they can be identified and questioned.”¹¹⁷ Second, the State may also request that voters provide supplementary identifying information, as evidenced by the Governor’s April 17, 2020 order providing that the Board of Elections may “request mail ballot applicants to voluntarily provide the last four digits of the voter’s Social Security number or a valid driver’s license number.”¹¹⁸ Third, in the rare case someone were to commit voter fraud, it is a felony in Rhode Island, punishable by up to ten years of imprisonment with a fine between \$1,000 and \$5,000. R.I. Gen. Laws §§ 17-23-3 & 17-20-1. These election integrity measures have proven effective. Rhode Island has not experienced a problem with mail voter fraud, even in the most recent election that occurred without the witness or notary requirement.

¹¹⁷ Eric Lynch, *Are Rhode Island’s Mail in Ballots a “Gigantic, Illegal Loophole,”* WM. & MARY L. SCH.: ELECTION L. SOC’Y (Apr. 11, 2018), <http://electls.blogs.wm.edu/2018/04/11/rhode-islands-mail-ballots-gigantic-illegal-loophole/>.

¹¹⁸ R.I. Exec. Order No. 20-27 at 2 (Apr. 17, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-27.pdf>.

In addition, the State’s decision to suspend the witness or notary requirement for the presidential primaries held June 2, 2020, and the unqualified success of this election, is dispositive evidence that the State does not have a significant interest in the enforcement of this requirement. Leading up to the June 2020 presidential primary, the State not only eliminated the witness or notary requirement,¹¹⁹ but was in fact “encouraging everybody to just vote by mail[.]”¹²⁰ Defendant Gorbea herself advised that “[v]oting from home is the safe and secure way to make your voice heard during the COVID-19 pandemic.”¹²¹ In its presidential primary “guide for eligible voters,” the Secretary of State’s office told voters that voting by mail is “the best ways for RI voters to follow social distancing best practices.”¹²² Further, and as detailed previously, this election was successful, which the State’s Election Task Force attributed to social distancing made possible by the suspension of the witness or notary requirement.¹²³ *See* Factual Background Sec. D.

The State may also argue it has an interest in adhering to existing election rules in an effort to not confuse voters before an approaching election. However, it is again worth noting that leading up to the June 2, 2020 presidential primaries, the State not only eliminated the witness or notary requirement,¹²⁴ but was in fact encouraging citizens to vote by mail. If the change was not confusing to voters then, it will not be now. And since the June 2, 2020

¹¹⁹ R.I. Exec. Order No. 20-27 at 2 (Apr. 17, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-27.pdf>.

¹²⁰ Erica Ponte, *RI Secretary of State Encourages Mail Ballot Voting in Presidential Primary*, WPRI (May 14, 2020), <https://www.wpri.com/news/elections/ri-secretary-of-state-encourages-mail-ballot-voting-in-presidential-primary/>.

¹²¹ Press Release, *Secretary Gorbea to Rhode Islanders: Vote from Home this Week*, ST. OF R.I. (May 26, 2020), <https://www.ri.gov/press/view/38424>.

¹²² *All About the Rhode Island Presidential Primary: A Guide for Eligible Voters*, R.I. SEC.’Y OF ST. (June 2, 2020), <https://vote.sos.ri.gov/Content/Pdfs/June2PPPGuide.pdf>.

¹²³ *Id.* at 4.

¹²⁴ R.I. Exec. Order No. 20-27 at 2 (Apr. 17, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-27.pdf>.

presidential primaries were conducted without the witness requirement, it is the reinstatement of that requirement while the pandemic is ongoing that is likely to confuse voters. After all, the majority of Rhode Island voters likely cast a mail-in ballot for the first time in the most recent election and therefore are entirely unfamiliar with the witness requirement.

Because the witness requirement offers little if any benefit to election integrity, even a lesser burden would still outweigh any governmental benefit and make the provision unconstitutional during community transmission of COVID-19.

D. A PRELIMINARY INJUNCTION IS NECESSARY TO PREVENT IRREPARABLE HARM TO PLAINTIFFS' CONSTITUTIONAL RIGHTS

If this Court does not act to enjoin the State from enforcing the witness or notary requirement, Rhode Island voters soon face a Sophie's choice: risk your health or forego your constitutional rights. This is precisely the choice confronting Individual Plaintiffs and a number of members of both the LWVRI and CC-RI, not to mention thousands of other Rhode Island citizens. The State's mail-in ballots and accompanying certification envelopes will need to be printed imminently. Voters' applications for these mail-in ballots must be received by the voter's local board by August 18, 2020 to be valid for the State's September 8, 2020 primary.¹²⁵ Only an immediate temporary restraining order and injunction from this Court will prevent irreparable harm to Plaintiffs' rights.

The violation of a constitutional right is presumed to demonstrate "irreparable harm." *Elrod v. Burns*, 427 U.S. 347, 373 (June 28, 1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."); *see also*

¹²⁵ See *Upcoming Elections*, ST. OF R.I. BD. OF ELECTIONS, (last visited July 22, 2020), <https://elections.ri.gov/elections/upcoming/>.

Asociación de Educación Privada de Puerto Rico, 490 F.3d 1, 21 (1st Cir. 2007) (applying *Elrod* to irreparable harm component of permanent injunction analysis). Indeed, courts routinely deem restrictions on fundamental voting rights irreparable injury. *Jones v. Governor of Fla.*, 950 F.3d 795, 828 (11th Cir. 2020) (“The denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—even once—is an irreparable harm.”); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986). This is because “once the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin this law.” *League of Women Voters of N.C.*, 769 F.3d at 247; *see also Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1258 (N.D. Fla. 2016) (noting that voting rights cases are not situations “where failing to grant the requested relief would be a mere inconvenience to Plaintiff and its members”—an election “isn’t golf: there are no mulligans.”). And of course there “can be no injury more irreparable” than “serious, lasting illness or death.” *Thakker v. Doll*, No. 1:20-CV-480, 2020 WL 1671563, at *4 (M.D. Pa. Mar. 31, 2020).

The harm voters will suffer if they are forced to violate social distancing guidelines, whether by voting in-person or securing two witnesses or a notary, is anything but speculative. It is confirmed by the rising number of COVID-19 cases in Rhode Island and by State and Federal health guidelines. *See* Factual Background Sec. B. It is further confirmed by the experience of voters in Wisconsin, where researchers linked dozens of cases of COVID-19 to that state’s failure to provide mail ballots with sufficient time for many voters to return them.¹²⁶ Here

¹²⁶ Chad D. Cotti et al., *The Relationship Between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on COVID-19: Evidence From the Wisconsin Primary*, Working Paper 27187, NAT’L BUREAU OF ECON. RESEARCH (May 2020), available at <https://www.nber.org/papers/w27187>.

Individual Plaintiffs, as well as thousands of other Rhode Island voters, face disenfranchisement if they do not vote, or risk serious illness or even death if they do. In either case, the harm to Plaintiffs will be irreparable.

The harm to Individual Plaintiffs and other Rhode Island voters is not only irreparable, but imminent. If the Court does not immediately enjoin the State from enforcing the witness or notary requirement, it is beyond doubt that Individual Plaintiffs and thousands more Rhode Island voters will be denied the opportunity to cast a vote in the September primary election, and likely the general election as well. “The denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—even once—is an irreparable harm.” *Jones v. Governor of Fla.*, 950 F.3d 795, 828 (11th Cir. 2020); *see also Thomas*, 2020 U.S. Dist. LEXIS 90812, at *57 (“to the extent that [] Plaintiffs have a likely constitutional violation, [] Plaintiffs have satisfied their initial showing of irreparable harm.”) (enjoining enforcement of absentee ballot witness requirement).

Organizational plaintiffs LWVRI and CC-RI face similar and additional harms. Multiple members of both LWVRI and CC-RI live alone, and some face additional risks and obstacles on account of their age and/or disability. Koster Decl. ¶¶ 8, 9; Marion Decl. ¶¶ 8, 9. A voting rights organization is “irreparably harmed when the right to vote is wrongfully denied or abridged—whether belonging to its membership or the electorate at large.” *N.C. State Conf. of NAACP v. Cooper*, No. 1:18CV1034, 2019 WL 7372980, at *24 (M.D.N.C. Dec. 31, 2019); *see also Common Cause Georgia v. Kemp*, 347 F. Supp. 3d 1270, 1295 (N.D. Ga. 2018) (finding plaintiff organization’s harm “to its organizational interests is coterminous with the harms suffered by its citizen members”).

Additionally, the witness requirement harms the LWVRI's and CC-RI's mission of ensuring that all qualified Rhode Islanders are registered to vote and participate in the democratic process, because "[their] mission has been 'frustrated' by the challenged conduct and [they have] expended resources to combat it." *Equal Means Equal v. Dept' of Educ.*, 2020 U.S. Dist. LEXIS 46810 at *12 (D. Mass. 2020) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)); *see also Action NC v. Stranch*, 216 F. Supp. 3d 597, 642 (M.D.N.C. 2016); *see also League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016) (finding irreparable harm based on legal barriers that "ma[de] it more difficult for [the organization] to accomplish their primary mission of registering voters"). Many of the LWVRI's and CC-RI's members are particularly vulnerable to COVID-19 either due to their age or other underlying health conditions. Marion Decl. ¶¶ 8, 9; Koster Decl. ¶¶ 8, 9. Others live in households with individuals particularly vulnerable to COVID-19. Marion Decl. ¶ 9.

The LWVRI and CC-RI have diverted, and will continue to divert, resources and devoted significant time and energy to developing and advocating for recommendations for how the Rhode Island government could adjust its mail-in voting system to ensure voters are able to safely cast their ballots in the September and November 2020 elections and are not disenfranchised by the witness or notary requirement. Marion Decl. ¶¶ 5-7, 11, Koster Decl. ¶¶ 5-7, 10. If absentee voters were not required to have their mail-in ballot envelopes signed by either two lay witnesses or one notary, CC-RI could spend less of its volunteer resources and time on educating voters about the witness requirement, and more on its other critical activities including voter registration, voter education, voter protection, and voter mobilization work. Marion Decl. ¶ 11. These lost opportunities constitute an irreparable harm. *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012) ("[W]hen a plaintiff

loses an opportunity to register a voter, the opportunity is gone forever.”); *see also LWWNC*, 769 F.3d at 247; *Ind. State Conf. of the NAACP v. Lawson*, 326 F. Supp. 3d 646, 662–63 (S.D. Ind. 2018); *Action NC*, 216 F. Supp. 3d at 642–43.

In short, the State’s imminent preparations to enforce its witness or notary requirement will lead directly to Plaintiffs’ irreparable harm to their health or their fundamental right to vote.

E. THE BALANCE OF HARDSHIPS AND THE PUBLIC INTEREST SUPPORT INJUNCTIVE RELIEF

Here, the public interest overwhelmingly favors granting interim relief. The “public interest . . . favors permitting as many qualified voters to vote as possible.” *LWWNC*, 769 F.3d at 247–48 (citations and internal quotation marks omitted). “The Right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Griffin v. Burns*, 431 F. Supp. 1361, 1365 (D.R.I. 1977). And as this Court has stated, enforcing election regulations that pit an individual’s right to participate in the democratic process against public health guidelines in the midst of a pandemic is against the public interest. *Acosta*, 2020 U.S. Dist. LEXIS 115782, at *16 (“In-person signatures amid a pandemic, one comprised of a highly contagious virus transmitted through close human contact, actually would undermine the public interest.”).

In contrast, a “state is in no way harmed by the issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction.” *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (citation and internal quotation marks omitted). After all, “upholding constitutional rights surely serves the public interest,” of which the State is the

custodian. *Id.* It is no hardship for the State not to enforce a requirement which the State itself suspended recently (and which was an unqualified success). *See* Factual Background Section D.

Enjoining the witness or notary requirement will serve the public interest on several fronts. It will allow Rhode Islanders to continue to observe health guidelines. *See* Factual Background Sec. C. It will also allow Rhode Islanders to safely exercise their fundamental right to vote. Meanwhile, Rhode Island already has a raft of other electoral integrity provisions to regulate voting by mail, *see* Factual Background Sec. G, and the witness or notary requirement provides an ineffectual method of doing so in any event. It will not be missed.

By granting the Plaintiffs' requested injunction, the Court will vindicate the public interests of promoting both public health and access to the franchise at a critical moment for Rhode Island citizens.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant a temporary restraining order and preliminary injunction enjoining Defendants from enforcing the witness or notary requirement for the State's pending September primary and November general elections.

Dated: July 23, 2020

Respectfully submitted,

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Exhibit A.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

COMMON CAUSE RHODE ISLAND,
LEAGUE OF WOMEN VOTERS RHODE
ISLAND, MIRANDA OAKLEY,
BARBARA MONAHAN, and MARY
BAKER,

Plaintiffs,

v.

NELLIE M. GORBEA, in her official
capacity as Secretary of State of Rhode
Island, DIANE C. MEDEROS, LOUIS A.
DESIMONE JR., JENNIFER L. JOHNSON,
RICHARD H. PIERCE, ISADORE S.
RAMOS, DAVID H. SHOLES, and
WILLIAM E. WEST, in their official
capacities as members of the Rhode Island
Board of Elections,

Defendants.

Case No. 20-cv-_____

DECLARATION OF DR. ARTHUR L. REINGOLD

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Division Head of Epidemiology and Biostatistics at the University of California, Berkeley, School of Public Health. I have worked on the prevention and control of infectious diseases in both the United States, including eight years at the US Centers for Disease Control and Prevention (“CDC”), and with numerous developing countries around the world for over forty years. Since its inception in 1994, I have directed or co-directed the CDC-funded California Emerging Infections Program. I am a member of the Society for Epidemiologic Research and the American Epidemiological Society; an elected Fellow of the Infectious Disease Society of America and of the American Association for the Advancement of Science; and an

elected member of the Institute of Medicine of the National Academy of Sciences. I was previously the President of both the Society for Epidemiologic Research and the American Epidemiological Society. I have served on the editorial boards of the journals: American Journal of Epidemiology, Epidemiology, and Global Public Health.

2. I received my A.B. in biology from the University of Chicago in 1970, and my M.D. from the University of Chicago in 1976. Among other things, I completed a residency in internal medicine and a preventative medicine residency with the CDC.

3. My career in public health has been in the area of infectious diseases and epidemiology. Following my positions at the CDC (1979–87), I joined the faculty of the School of Public Health at Berkeley as a Professor of Epidemiology (1987–present), the faculty of the Department of Epidemiology and Biostatistics at the University of California, San Francisco (“UCSF”) (1989–present), and as a Clinical Professor in the Department of Medicine at UCSF (1991–present). From 1990–94, I was the Head of the Epidemiology Program, Department of Biomedical and Environmental Health Sciences, University of California, Berkeley; from 1994–2000, I was the Head of the Division of Public Health Biology and Epidemiology, University of California, Berkeley; from 2000–18, I was the Head of the Division of Epidemiology, School of Public Health, University of California, Berkeley; from 2018 continuing through the present, I am the Head of the Division of Epidemiology and Biostatistics, School of Public Health University of California, Berkeley.

4. My research focuses on emerging and re-emerging infections in the United States and in developing countries; vaccine-preventable diseases in the United States and in developing countries; and disease surveillance, outbreak detection, and outbreak response.

5. Attached and incorporated by reference to this declaration is a copy of my

curriculum vitae. (Attached as Exhibit A.)

6. I am currently collaborating on research concerning SARS-CoV-2 and its incidence, and serving on SARS-CoV-2 advisory groups for multiple organizations, including UC Berkeley, the University of California system, and the City and County of San Francisco, among others.

7. SARS-CoV-2 is a novel coronavirus that causes Coronavirus Disease 2019 (COVID-19). The virus is a respiratory virus with patients typically presenting with acute respiratory signs and symptoms, which can escalate in some patients to respiratory failure and other serious, life-threatening complications. The most common symptoms are fever, cough, and shortness of breath. Other identified symptoms include muscle aches, headaches, chest pain, diarrhea, coughing up blood, sputum production, runny nose, nausea, vomiting, sore throat, confusion, lack of senses of taste and smell, and anorexia. Due to the respiratory impacts of the disease, individuals may need to be put on oxygen, and in severe cases, patients may need to be intubated and put on a ventilator. People of every age can and have contracted COVID-19, including severe cases, but geriatric patients are at the greatest risk of severe cases, long-term impairment, and death. Likewise, those with immunologic conditions and with other pre-existing conditions, such as hypertension, certain heart conditions, lung diseases (e.g., asthma, COPD), diabetes mellitus, obesity, and chronic kidney disease, are at high risk of a life-threatening COVID-19 illness.

8. Information available to date shows that not only do racial and ethnic minority communities tend to experience higher infection rates than white communities but also that, if infected with the SARS-CoV-2 virus, racial and ethnic minority populations, especially African Americans, are at a substantially elevated risk of developing life-threatening COVID-19 illnesses

and to die of COVID-19.¹ The reasons for such disparities are complex and interrelated, but include, among other things, (1) high rates of other medical problems such as diabetes, heart disease, lung disease, and liver disease among racial and ethnic minority communities; (2) densely populated neighborhoods, living quarters, and multigenerational households; (3) limited access to quality medical care and SARS-CoV-2 testing; and (4) predominance of employment in “essential” positions that involve high levels of public interaction.²

9. SARS-CoV-2 is readily spread through respiratory transmission. All people are susceptible to and capable of getting COVID-19 because of the ease with which it spreads. The virus is spread through droplet transmission; that is, when an infected individual speaks, coughs, sneezes, and the like, they expel droplets which can transmit the virus to others in their proximity. SARS-CoV-2 is also aerosolized, such that tiny droplets containing the virus remain in the air and can be inhaled by others who come into contact with that air and SARS-CoV-2 can also be transmitted in that fashion.³ The virus is also known to be spread through the touching of

¹ Dorn AV, Cooney RE, Sabin ML (April 2020). COVID-19 exacerbating inequalities in the US, *Lancet*. 395 (10232): 1243–1244. doi:10.1016/S0140-6736(20)30893-X; Adams ML, Katz DL, Grandpre J (April 2020). Population-Based Estimates of Chronic Conditions Affecting Risk for Complications from Coronavirus Disease, United States, *Emerging Infectious Diseases*. 26 (8). doi:10.3201/eid2608.200679; Price-Haywood E, Jeffrey Burton J, Fort D, Seoane L, Hospitalization and Mortality among Black Patients and White Patients with Covid-19, *N Engl J Med* 2020; 382:2534-2543, DOI: 10.1056/NEJMsa2011686; Williams DR, Cooper LA. COVID-19 and Health Equity—A New Kind of “Herd Immunity”. *JAMA*. 2020;323(24):2478–2480. doi:10.1001/jama.2020.8051; *see also* Artiga S & Orgera K, COVID-19 Presents Significant Risks for American Indian and Alaska Native People, Kaiser Family Foundation, Washington, DC. May 2020, <https://www.kff.org/coronavirus-covid-19/issue-brief/covid-19-presents-significant-risks-for-american-indian-and-alaska-native-people/>; Laurencin CT, McClinton A (April 2020), The COVID-19 Pandemic: a Call to Action to Identify and Address Racial and Ethnic Disparities, *Journal of Racial and Ethnic Health Disparities*. 7 (3):398–402. doi:10.1007/s40615-020-00756-0.

² *See supra* note 1; *see also* Rho HJ, Brown H & Fremstad S, *A Basic Demographic Profile of Workers in Frontline Industries*, Ctr. for Econ. & Pol’y Res. (2020), <https://cepr.net/wp-content/uploads/2020/04/2020-04-Frontline-Workers.pdf>.

³ *See, e.g.*, Fears SC, Klimstra WB, Duprex P, Hartman A, Weaver SC, Plante KS, et al. Persistence of

contaminated surfaces, for example, when an infected person touches a surface with a hand they have coughed into and then another person touches that same surface before it has been disinfected and then touches their face. Each infected individual is estimated to infect two to eight others. In addition, some people are so-called “superspreaders,” who cause widespread infections.

10. Diagnostic testing for the virus is currently most often done through use of a reverse-transcriptase polymerase chain reaction (RT-PCR) test. While testing is becoming more widely available, there has not been sufficiently wide-spread and easily accessible testing throughout the United States, including in Rhode Island, to accurately detect the number of new cases. Point of care diagnostic tests, which have begun to be developed, thus far have less than 50% sensitivity, meaning they miss the majority of positives. Serologic tests, which detect antibodies to the virus and thus indicate whether someone has already been exposed to it, are being developed but have not yet been validated or produced at sufficient scale.⁴ Furthermore, it is not yet known whether a positive result on such serologic tests is indicative of immunity to re-infection with SARS-CoV-2.

severe acute respiratory syndrome coronavirus 2 in aerosol suspensions. *Emerg Infect Dis.* 2020 Sept. <https://doi.org/10.3201/eid2609.201806>; Lea Hamner et al., High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice — Skagit County, Washington, March 2020, *Morbidity and Mortality Weekly Report Early Release* (May 12, 2020), *available at* <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm>; Jianyun Lu et al., COVID-19 outbreak associated with air conditioning in restaurant, Guangzhou, China, 2020, *Emerg. Infect. Dis.* (July 2020, Early Release), https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article; *see also* Stadnytskyi V, Bax CE, Bax A, Anfinrud P (June 2020). The airborne lifetime of small speech droplets and their potential importance in SARS-CoV-2 transmission, *Proceedings of the National Academy of Sciences of the United States of America.* 117 (22): 11875–11877. doi:10.1073/pnas.2006874117 (concluding among other things that “normal speech generates airborne droplets that can remain suspended for tens of minutes or longer and are eminently capable of transmitting disease in confined spaces”).

⁴ Gronvall G *et al.*, Developing a National Strategy for Serology (Antibody Testing) in the United States, https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2020/200422-national-strategy-serology.pdf; Johns Hopkins Bloomberg School of Public Health, Serology-based tests for COVID-19, <https://www.centerforhealthsecurity.org/resources/COVID-19/serology/Serology-based-tests-for-COVID-19.html> (last visited June 25, 2020); Abbasi J, The Promise and Peril of Antibody Testing for COVID-19, *JAMA.* 2020;323(19):1881–1883, doi:10.1001/jama.2020.6170.

11. There is not yet any FDA-approved vaccine against SARS-CoV-2 that could be used to immunize the population to the virus. As a result, the only ways to limit its spread are self-isolation, social distancing, frequent handwashing, mask or face covering wearing, and disinfecting surfaces. Self-isolation involves not physically interacting with those outside one's household. Social or physical distancing is maintaining at least six feet of distance between individuals, which can also be implemented within one's household. Each of these interventions is aimed at keeping infected individuals far enough apart from other individuals so that they do not transmit the virus. Similarly, wearing a mask or face covering is meant to prevent an infected individual from spreading droplets of the virus which could infect others. Frequent handwashing and regular disinfecting of surfaces can help curb spread via contaminated surfaces.

12. Transmission of SARS-CoV-2 can occur in any location where there is close proximity (less than six feet) between individuals, particularly indoors. And because transmission of the virus can occur via environmental surfaces, there is also risk of spread of the virus at any location where multiple individuals touch surfaces. Some individuals who are infected with the virus do not have any symptoms but can transmit the virus and/or are infectious before they develop any symptoms. This means that isolating only persons known to be infected or exhibiting symptoms of infection will not stop the spread of infection. Rather, to prevent increasing the scope of the outbreak of COVID-19, we must assume that anyone could be infected and transmit infection to others.

13. Due to the lack of adequate testing, the time lag in getting results back from laboratories, lengthy incubation time, and varied start and end points of stay at home requirements, we may never definitively determine the full effects of stay-at-home orders and social distancing. But social distancing has worked to slow the spread of respiratory viruses generally and in places

that are ahead of Rhode Island and the United States in the current pandemic. There is evidence that cities and states that have implemented stay-at-home orders and kept them in place until transmission was under control are experiencing reduced transmission. There is also evidence beginning to suggest that the ending of stay-at-home orders and other mitigation measures is leading to increased transmission. Transmission of the virus will continue through the population until the development and widespread use of a vaccine and/or herd immunity develops. In other countries, once restrictions have been lifted or eased, new clusters of COVID-19 cases have been identified. In these countries, however, there are very aggressive containment measures, supported by substantial funding, that have likely prevented full-blown second waves. There have not been plans to implement such measures in the United States nor have sufficient resources been allocated to support them.

14. It is unlikely that a large number of doses of an FDA-approved vaccine will be available for use in the U.S. before early to mid-2021 at the earliest, and indeed it is unlikely that an FDA-approved vaccine will be available for at least 12 to 18 months, and indeed may take longer than that due to the number of steps in the process of developing, trial and error, scaling to clinical trials, assessing side effects, and assessing efficacy across the population at large.⁵

15. Herd immunity occurs when a high percentage of the population become immune to an infectious disease, such that the spread is dramatically slowed, as infected persons can become dead-ends for the virus, so to speak, because they are not interacting with anyone to whom they can transmit the virus. Approximately 70-95% of a population must be immune in order to

⁵ Can a Vaccine for Covid-19 Be Developed in Record Time?, N.Y. Times Magazine (June 9, 2020), <https://www.nytimes.com/interactive/2020/06/09/magazine/covid-vaccine.html>; Mullard A. COVID-19 vaccine development pipeline gears up. The Lancet. 395 (10239): 1751-1752 (June 6, 2020). [https://doi.org/10.1016/S0140-6736\(20\)31252-6](https://doi.org/10.1016/S0140-6736(20)31252-6).

achieve herd immunity, depending on the infectiousness of the agent. In this context, an individual's immunity can come from either a vaccine or from previous infection. Herd immunity can protect those in a population who cannot be vaccinated and for whom infection can be particularly serious. Without herd immunity, we can expect that SARS-CoV-2 will continue to be transmitted widely.

16. Because SARS-CoV-2 is a new virus, also referred to as a novel virus, only those who have been infected and recovered are possibly immune; no one in the population has pre-existing immunity to the virus. Anyone who has not yet been infected is susceptible to infection. Also, due to the virus's novelty, we do not know whether any immunity generated by previous infection lasts permanently, for a specified period of time, or whether re-infection is possible. As a result, herd immunity is unlikely unless and until the development and widespread use of an effective vaccine or a sufficiently high proportion of the population has been infected. Only once serologic (i.e., antibody) testing with a high degree of reliability is widely available and the results have been shown to correlate with protection against re-infection will we be able to determine who in the population may not be susceptible to either re-infection or transmission based on their immunity due to a prior infection. As a result, even if transmission slows due to behavioral interventions, such as social distancing and stay-at-home orders, we can expect resurgences of COVID-19, including significant community transmission, throughout 2020 and into 2021 across the United States, until the development and widespread use of a vaccine. Such resurgence is particularly likely in locations where these behavioral modifications are lifted when community transmission is still continuing, as evidenced by increasing numbers of cases in states that have ended or eased stay-at-home requirements while community transmission is continuing.

17. As SARS-CoV-2 is novel, we also cannot say definitively whether its incidence and prevalence will rise and fall based on weather / ambient temperature and humidity / season. Virus transmission and prevalence do not appear to have declined over the summer months, but regardless, it remains likely that they will resurge in the fall and winter. Indeed, certain other coronaviruses—such as SARS and MERS-CoV—do not appear to demonstrate seasonality of infection. And the current virus has circulated widely in countries currently in their hot seasons and is increasing rapidly right now in states with warmer climates such as Florida, Texas, and Arizona. These two points suggest that the effect of weather on transmission of and infection with SARS-CoV-2 may not be predicted reliably.

18. Due to the ease of transmission, the high risk to certain segments of the population, and the fact that the virus will continue to surge unless and until wide-spread vaccination and/or herd immunity is achieved, individuals will need to continue to take steps to prevent infection. Polling locations are a prime area for increased transmission of SARS-CoV-2, due to the close proximity of a large number of individuals—voters, observers, poll workers—in a limited space. This close proximity allows for the transmission of the virus via droplets and aerosols between various individuals. A polling location also has a large number of common surfaces that multiple people touch: the doors, the poll books to sign in, pens, voting booths, and voting machines. While surface transmission is not the main way that SARS-CoV-2 is spread, it remains the case that available evidence suggests the virus can be transmitted in that way. Nor is touching surfaces the only potential source of exposure to the virus in a polling location. Rather, it is mixing with other people in a public space—in this context, the polling location—such that the virus spreads via aerosols and droplets. The risk of transmission is a function of how many people to whom one is exposed and the circumstances of each exposure. Due to the transmission of the virus via both

droplet and aerosols and contaminated environmental surfaces, polling locations are highly likely to cause increased SARS-CoV-2 infection.

19. The virus is readily spread through droplet and aerosol transmission, so in public spaces, particularly indoor spaces, the density and proximity of the number of people present are the critical factors in assessing likelihood of transmission. If a polling place has higher density of and proximity between individuals than another public space, then regardless of mitigation measures, the polling place is not safer in terms of transmission of SARS-CoV-2 than another public space that has lesser density and proximity. Even if a polling place has lower density of and proximity between people than other congregate spaces, because a polling location is a place where people congregate, including large numbers of individuals who may not otherwise interact in the ordinary course, it necessarily has a much higher risk of transmission than a person isolating in their own home. While efforts at environmental decontamination are important public health interventions, the most effective measure to curb transmission of the virus is to reduce exposure to strangers, which necessarily occurs in polling places.

20. My opinion has been further confirmed by reports like those from the Wisconsin Department of Health Services, which has directly traced and linked 71 confirmed cases of COVID-19 to people who voted in-person in the primary election held on April 7, 2020.⁶ This is one example of the risks of transmission I have described. The connection between transmission of COVID-19 via in-person voting illustrated by the test and trace efforts in Wisconsin has been further demonstrated in a recent study that showed that, controlling for other differences, counties

⁶ Dee J. Hall, *Study: Poll closings, COVID-19 fears, kept many Milwaukee voters away*, Wisconsin Watch (June 24, 2020), <https://www.wisconsinwatch.org/2020/06/study-poll-closings-covid-19-fears-kept-many-milwaukee-voters-away/>; Associated Press, *The Latest: 52 positive cases tied to Wisconsin election* (Apr. 28, 2020), <https://apnews.com/b1503b5591c682530d1005e58ec8c267>.

in Wisconsin that had more in-person voting per voting location had a higher rate of positive COVID-19 tests than counties with relatively fewer in-person voters.⁷ Widespread vote-by-mail, absentee balloting, or methods other than in-person voting would be much safer options for public health, in light of COVID-19, as such methods would vastly decrease the number of individuals needing to vote in person and thus substantially decrease the number of people coming into proximity at polling locations and the spread of SARS-CoV-2 via droplets, aerosols, and environmental surfaces.

21. Evidence of outbreaks of COVID-19 at polling locations is clear epidemiologic evidence of the risks of the transmission of the SARS-CoV-2 virus related to in-person voting. This evidence demonstrates that, as expected, making people come together at a polling location can cause an outbreak of this particular disease. This is unsurprising because the virus can be readily spread when people are in proximity to one another, particularly indoors. The appropriate comparison is not between polling locations and other congregate settings, but the avoidable risk involved in bringing people together in congregate settings, including polling locations, compared to not bringing them together.

22. With widespread vote by mail, however, for individuals without another person able to witness in their household, the requirement that they have someone witness their absentee ballot would place them at increased risk of exposure to and/or transmission of COVID-19. Requiring individuals to have someone they are not otherwise being exposed to come into close enough proximity to witness their ballot would place them at increased risk of infection. This would be particularly risky for those who are at a greater risk of complications and death from COVID-19.

⁷ Chad D. Cotti *et al.*, *The Relationship Between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on COVID-19: Evidence from the Wisconsin Primary*, NBER Working Paper Series, Working Paper 27187 (revised June 2020), available at <https://www.nber.org/papers/w27187>.

23. My opinion that voting by mail is a demonstrably safer option for voters in light of the SARS-CoV-2 virus pandemic is not based upon people's generalized fear of infection. It is based on what we know about how this virus is transmitted. The same is true for not requiring individuals to come into contact with individuals outside their home to comply with witness requirements on vote by mail ballots. The goal is to minimize people's contact with other people who might be infected with the virus. When dealing with infectious diseases that are transmitted via aerosols and/or droplets, the public health response is not to simply assert that other interventions are sufficient. It is to isolate or quarantine those who may be infectious to others. In the ordinary course, the public health approach is to maximize protection and minimize risk. In the instant case, there are public health interventions that are available to minimize the risk of transmission of SARS-CoV-2, namely, to allow people to vote by absentee ballot without needing to expose themselves to individuals outside their home due to a witness requirement and not place themselves in the congregate setting of a polling location.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 21, 2020.


Dr. Arthur L. Reingold

Exhibit A

May, 2020

CURRICULUM VITA

Arthur Lawrence Reingold

PRESENT POSITION: Professor of Epidemiology
Head, Division of Epidemiology and Biostatistics
School of Public Health
University of California, Berkeley
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Phone: (510) 642-0327
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E-mail: Reingold@berkeley.edu

DATE OF BIRTH: October 31, 1948

PLACE OF BIRTH: Chicago, Illinois

MARITAL STATUS: Married

EDUCATION: 1966 - 70 A.B. University of Chicago
1970 - 76 M.D. University of Chicago

POSTGRADUATE TRAINING: 1976 - 78 Internal Medicine Resident, Mount Auburn Hospital
Cambridge, Massachusetts
1980 - 82 Preventive Medicine Resident, Centers for Disease
Control (CDC) - Atlanta, Georgia

POSITIONS HELD: 1979 - 80 Epidemic Intelligence Service Officer,
State of Connecticut - Department of Health Services
Hartford, Connecticut
1980 - 81 Epidemic Intelligence Service Officer,
Special Pathogens Branch - Bacterial Diseases Division
Centers for Disease Control (CDC) - Atlanta, Georgia
1981 - 85 Assistant Chief, Respiratory & Special Pathogens
Epidemiology Branch, Center for Infectious Diseases
Centers for Disease Control (CDC) - Atlanta, Georgia
1985 - 87 CDC Liaison Officer, Office of the Director
Centers for Disease Control - Atlanta, Georgia

FACULTY APPOINTMENTS: 1979 - 80 Instructor, Department of Medicine (Epidemiology)
University of Connecticut - Hartford, Connecticut
1985 - 87 Visiting Lecturer, Department of Biomedical and
Environmental Health Sciences (Epidemiology)
University of California, Berkeley
1987 - Professor of Epidemiology, School of Public Health,
University of California, Berkeley
1989 - Professor, Department of Epidemiology and
Biostatistics - University of California, San Francisco

FACULTY 1990 - 94 Head, Epidemiology Program, Department of Biomedical

Arthur Lawrence Reingold**APPOINTMENTS:
(CONTINUED)**

and Environmental Health Sciences, University of California, Berkeley

1991 - Clinical Professor, Department of Medicine
University of California, San Francisco

1994 - 2000 Head, Division of Public Health Biology and Epidemiology
University of California, Berkeley

2000 - 2018 Head, Division of Epidemiology, School of Public Health,
University of California, Berkeley

2018 - Head, Division of Epidemiology and Biostatistics, School of Public Health
University of California, Berkeley

2008 - 2014 Associate Dean for Research, School of Public Health,
University of California, Berkeley

2009 - 2014 Edward Penhoet Distinguished Chair for Global Health and
Infectious Disease

MEDICAL LICENSURE:

California

BOARD**CERTIFICATION:** 1980 American Board of Internal Medicine

AWARDS: 1970 - 74 Medical Scientist Training Program
1985 Commendation Medal, U.S. Public Health Service
1986 Charles Shepard Award, Centers for Disease Control (CDC)

MEMBERSHIPS: 1970 Sigma Xi
1978 American College of Physicians
1983 American Society for Microbiology
1984 Society for Epidemiologic Research
1986 Infectious Disease Society of America (Fellow)
1988 American Epidemiological Society
1991 American College of Epidemiology (Fellow)
1994 AAAS (Fellow)
2003 Institute of Medicine, National Academy of Medicine (Member)

PROFESSIONAL ACTIVITIES

CONSULTATIONS: 1981 Institute of Medicine: Toxic-shock syndrome

1981 Food and Drug Administration: Toxic-shock syndrome

1982 United States Agency for International Development:
Control of meningococcal meningitis in West Africa

1983 World Health Organization (WHO):
Control of meningococcal meningitis in Nepal

1983 East-West Center, University of Hawaii: Role of indoor air pollution
in acute respiratory infections in developing countries

1984 Institute of Medicine: Meningococcal vaccines

CONSULTATIONS: 1986 World Health Organization (WHO):

Arthur Lawrence Reingold**(CONTINUED)**

	Control of meningococcal meningitis in South Asia
1987 - 1993	Center for Child Survival, University of Indonesia: Control of Acute Respiratory Infections
1988	Evaluation of the Combating Communicable Childhood Disease Program, Ivory Coast
1994	Evaluation of National Epidemiology Board Program, Rockefeller Foundation
1995	Planning of a School-based Acute Rheumatic Fever Prevention Project - New Zealand Heart Foundation
1995	Vaccines Advisory Committee, Food & Drug Administration Approval of acellular pertussis vaccine
1996	External Reviewer, NIAID Group B Streptococcus Research Contract with Harvard University
1996 - 2000	U.S. Food and Drug Administration; Consultant to the Vaccines Advisory Committee
1996	World Health Organization, Consultation on Control of Meningococcal Meningitis in Africa
1998 – 2002	Advisor to the INCLEN "Indiaclen" project
2002 – 2003	Evaluation of a School-based Acute Rheumatic Fever Prevention Project – New Zealand Heart Association

**ADVISORY BOARDS
AND PANELS:**

1988 - 1989	Member, Advisory Committee on Ground Water and Reproductive Outcomes, State of California Department of Health Services
1989 - 1990	AIDS Advisory Committee, Alameda County Board of Supervisors
1989 - 1993	Advisory Committee, Birth Defects Monitoring Program, State of California Department of Health Services
1993 - 1995	Centers for Disease Control (CDC): Public Health Service Advisory Panel on the Case Definition for Lyme Disease
1992 - 1994	World Health Organization (WHO): Task Force on Strengthening Epidemiologic Capacity; Childhood Vaccine Initiative
1996 - 2000	Armed Forces Epidemiological Board
1997 - 2012	University of California, San Francisco AIDS Research Institute Steering Committee
1998 - 2003	Emerging Infections Committee of the Infectious Diseases Society of America
1998 – 2000	Panelist, Howard Hughes Medical Institute Predoctoral Fellowship
2001 - 2006	Technical expert, Sub-Committee on the Protection of Public Health; California State Strategic Committee on Terrorism

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ADVISORY BOARDS PANELS (CONTINUED)	2003 - 2008	Advisory Board, Chinese University of Hong Kong – Centre for Emerging AND Infectious Diseases
	2004 -	Advisory Board, University of California, Berkeley Clinical Research Center
	2004 - 2008	Advisory Board, New York University School of Medicine Fellowship in Medicine and Public Health Research
	2004 - 2005	Institute of Medicine Committee on Measures to Enhance the Effectiveness of CDC Quarantine Station Plan for U.S. Ports of Entry
	2005 - 2012	Strategic Advisory Group of Experts (SAGE) for Vaccine Policy, World Health Organization (WHO) (Deputy Chairman, 2010-2012)
	2005 -	Data and Safety Monitoring Committee; F.I. Proctor Foundation, University of California, San Francisco (UCSF)
	2007 - 2012	NIH Fogarty International Center External Advisory Board
	2007 - 2009	Chair, Working Group on Pneumococcal Vaccine, Strategic Advisory Group of Experts (SAGE), World Health Organization (WHO)
	2008 - 2012	Working Group on H5N1 Influenza Vaccines, Strategic Advisory Group of Experts (SAGE), World Health Organization (WHO)
	2008 - 2011	Chair, Leptospirosis Burden Epidemiology Reference Group, World Health Organization (WHO)
	2008 - 2012	National Biosurveillance Advisory Subcommittee of the Advisory Committee to The Director, Centers for Disease Control and Prevention (CDC)
	2008 - 2009	Institute of Medicine Committee on the Review of Priorities in the National Vaccine Plan
	2009 - 2012	Chair, Working Group on Hepatitis A Vaccine, Strategic Advisory Group of Experts (SAGE), World Health Organization (WHO)
	2011 - 2013	Member, Institute of Medicine Committee on Vaccine Priorities
	2011 - 2014	Member, Working Group on Vaccine Hesitancy, Strategic Advisory Group of Experts (SAGE), World Health Organization (WHO)
	2012 - 2014	Chair, Review of the Heterologous Effects of Childhood Vaccines, World Health Organization (WHO)
	2012 - 2014	Chair, External Review of the Measles Rubella Initiative (of WHO, CDC, UNICEF, American Red Cross, and United Nations Foundation)
	2013 - 2018	Advisory Committee on Immunization Practices (ACIP), U.S. Department of Health and Human Services
	2016-2017	Member, Institute of Medicine Committee on a National Strategy for the Elimination of Hepatitis B and C
	2018 -	Member, Independent Review Committee, Global Alliance for Vaccines and Immunizations (GAVI)
	2018 -	Member, Strategic Advisory Group, Partnership for Influenza Vaccination Introduction

Arthur Lawrence Reingold

LEADERSHIP POSITIONS:

1997 - 2012	Secretary-Treasurer, American Epidemiological Society
2009 - 2010	President, Society for Epidemiologic Research
2015 – 2016	President, American Epidemiological Society (AES)

EDITORIAL BOARDS:

1995 - 2000	Board of Editors, American Journal of Epidemiology
2001 - 2005	Board of Editors, Epidemiology
2005 -	Editorial Advisory Board, Global Public Health
2009 - 2010	Editorial Advisory Board, American Journal of Epidemiology

ASSOCIATE EDITORSHIPS:

2017 - 2019	Current Epidemiology Reports
2018 -	Vaccine

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PUBLICATIONS:

1. Hayes RV, Pottenger LA, Reingold AL, Getz GS, Wissler RW. Degradation of I¹²⁵ - labeled serum low density lipoprotein in normal and estrogen-treated male rats. *Biochem Biophys Res Comm* 1971;44:1471-1477.
2. Reingold AL, Kane MA, Murphy BL, Checko P, Francis DP, Maynard JE. Transmission of hepatitis B by an oral surgeon. *J Infect Dis* 1982;145:262-268.
3. Reingold AL, Dan BB, Shands KN, Broome CV. Toxic-shock syndrome not associated with menstruation: a review of 54 cases. *Lancet* 1982;1:1-4.
4. Bartlett P, Reingold AL, Graham DR, et al. Toxic-shock syndrome associated with surgical wound infections. *JAMA* 1982;247:1448-1450.
5. Reingold AL, Hargrett NT, Shands KN, et al. Toxic-shock syndrome surveillance in the United States, 1980-1981. *Ann Intern Med* 1982;96:875-880.
6. Reingold AL, Hargrett NT, Dan BB, Shands KN, Strickland BY, Broome CV. Nonmenstrual toxic-shock syndrome: a review of 130 cases. *Ann Intern Med* 1982;96:871-874.
7. Broome CV, Hayes PS, Ajello GW, Feeley JC, Gibson RJ, Graves LM, Hancock GA, Anderson RJ, Highsmith AK, Mackel DC, Hargrett NT, Reingold AL. In-vitro studies of interactions between tampons and *Staphylococcus aureus*. *Ann Intern Med* 1982;96:959-962.
8. Guinan ME, Dan BB, Guidotti RJ, Reingold AL, et al. Vaginal colonization with *Staphylococcus aureus* in healthy women: a review of four studies. *Ann Intern Med* 1982;96(pt.2):944-947.
9. Schlech WF III, Shands KN, Reingold AL, et al. Risk factors for development of toxic-shock syndrome: association with a tampon brand. *JAMA* 1982;248:835-839.
10. Reingold AL, Bank JD. Legionellosis. In: Easmon CSF, Jeljaszewicz J, eds. *Medical Microbiology*. London: Academic Press 1982 (I):217-239.
11. Reingold AL. Toxic-shock syndrome. In: Spittell JA Jr., ed. *Clinical Medicine*. Philadelphia: Harper & Row Publishers 1982 (II):1-6.
12. Kornblatt AN, Reingold AL. Legionellosis. In: Steele JH, Hillyer RV, Hopla CE, eds. *CRC Handbook Series in Zoonoses*. CRC Press 1982:313-324.
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14. Meenhorst PL, Reingold AL, Gorman GW, et al. *Legionella* pneumonia in guinea pigs exposed to aerosols of concentrated potable water from a hospital with nosocomial Legionnaires' disease. *J Infect Dis* 1983;147:129-132.

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15. Reingold AL. Nonmenstrual toxic-shock syndrome: the growing picture. JAMA 1983; 249:932 (editorial).
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17. Reingold AL, Broome CV, Phillips CJ, Meda H, Tiendrebeogo H, Yada A. Evidence of continuing protection against group A meningococcal disease one year after vaccination: a case-control approach. Med Trop 1983;43:225.
18. Reingold AL, Kane MA, Hightower AW. Disinfection procedures and infection control in the outpatient oral surgery practice. J Oral Maxillofac Surg 1984;42:568-572.
19. Broome CV, Reingold AL. Current issues in toxic-shock syndrome. In: Remington JS, Swartz MN, eds. Current clinical topics in infectious diseases. McGraw Hill 1984;65-85.
20. Herwaldt LA, Gorman GW, McGrath T, Toma S, Brake B, Hightower AW, Jones J, Reingold AL, et al. A new Legionella species, Legionella feeleei species nova, causes Pontiac fever in an automobile plant. Ann Intern Med 1984;100:333-338.
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33. Bolan G, Reingold AL, Carson L, et al. Infections with Mycobacterium chelonae in patients receiving dialysis and using processed hemodialyzers. J Infect Dis 1985;152:1013-1019.
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35. Reingold AL, Broome CV, Hightower AW, et al. Age-specific differences in duration of clinical protection after vaccination with meningococcal polysaccharide A vaccine. Lancet 1985;II:114-118.
36. Petitti DB, Reingold AL, Chin J. The incidence of toxic-shock syndrome in Northern California: 1972-1983. JAMA 1986;255:368-372.
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Arthur Lawrence Reingold

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46. Reingold AL, Kane MA, Hightower AW. Failure of gloves and other protective devices to prevent transmission of hepatitis B virus in oral surgeons. *JAMA* 1988;259:2558-2560.
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51. Petitti DB, Reingold AL. Update through 1985 on the incidence of toxic shock syndrome among members of a prepaid health plan. *Rev Infect Dis* 1989;11:S22-27.
52. Reingold AL, Broome CV, Gaventa S, Hightower SW, and the Toxic-Shock Syndrome Study Group. Risk factors for menstrual toxic-shock syndrome: results of a multi-state case-control study. *Rev Infect Dis* 1989;11:S35-42.
53. Gaventa S, Reingold AL, Hightower AW, et al. Active surveillance for toxic-shock syndrome in the United States, 1986. *Rev Infect Dis* 1989;11:S28-34.
54. Schwartz B, Gaventa S, Broome CV, Reingold AL, et al. Non-menstrual toxic-shock syndrome associated with barrier contraceptives: report of a case-control study. *Rev Infect Dis* 1989;11:S43-49.
55. Reingold AL, Hearst N. Identifying the health care needs of the community. In: Overall N, Williamson J, eds. *Community Oriented Primary Care in Action: A Practice Manual for Primary Care Settings*. U.S. Department of Health and Human Services.
56. Koo D, Bouvier B, Wesley M, Courtright P, Reingold AL. Epidemic keratoconjunctivitis in a university medical center ophthalmology clinic: need for re-evaluation of the design and disinfection of instruments. *Inf Control and Hosp Epi* 1989;10:547-552.
57. Harrison LH, Broome CV, Hightower AW, and the *Haemophilus Vaccine Efficacy Study Group* (includes A.L. Reingold). *Haemophilus influenzae* type b polysaccharide vaccine: an efficacy study. *Pediatrics* 1989;84:225-261.

Arthur Lawrence Reingold

58. Wenger JD, Harrison LH, Hightower A, Broome CV, *Haemophilus influenzae* Study Group (includes A.L. Reingold). Day care characteristics associated with *Haemophilus influenzae* disease. *Am J Public Health* 1990;80:1455-1458.
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60. Wenger JD, Hightower AW, Facklam RR, Gaventa S, Broome CV, *Bacterial Meningitis Study Group* (includes A.L. Reingold). Bacterial meningitis in the United States, 1986: Report on a multistate surveillance study. *J Infect Dis* 1990;162:1316-1323.
61. Reingold AL. Toxic-shock syndrome. In: Evans AS, Brachman PS, eds. *Bacterial Infections of Humans*. Plenum, 1991;727-743.
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63. Reingold AL. Toxic-shock syndrome. In: Rakel RE, ed. *Conn's Current Therapy*. W. B. Saunders, 1991;1010-1012.
64. Reingold AL, Markowitz LE. Toxic-shock syndrome. In: Maxcy-Rosenau Public Health and Preventive Medicine, 13th Edition. Appleton-Century-Crofts, 1991;304-306.
65. Bauer HM, Ting Y, Greer CE, Chambers JC, Tashiro CJ, Chimera J, Reingold AL, Manos MM. Genital human papillomavirus infection in female university students as determined by a PCR-based method. *JAMA* 1991;265:472-477.
66. Sutrisna B, Frerichs RR, Reingold AL. Randomised, controlled trial of effectiveness of ampicillin in mild acute respiratory infections in Indonesian children. *Lancet* 1991;338:471-474.
67. Reingold AL. Toxic-shock syndrome: an update. *Am J Ob & Gyn* 1991;165:1236-1239.
68. Pettiti DB, Reingold AL. Recent trends in the incidence of toxic-shock syndrome in Northern California. *Am J Public Health* 1991;81:1209-1211.
69. Ley C, Reingold AL, et al. Determinants of genital human papillomavirus infection in young women. *JNCI* 1991;83:997-1003.
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Arthur Lawrence Reingold

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80. Tappero JW, Koehler JE, Berger TG, Reingold AL, et al. Bacillary angiomatosis and bacillary splenitis in immunocompetent adults. *Ann Int Med*, 1993;118:363-365.
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82. Weinstock HS, Bolan G, Reingold AL, Polish LB. Hepatitis C virus infection among patients attending a clinic for sexually transmitted diseases. *JAMA* 1993;269:392-394.
83. Yajko DM, Nassos PS, Sanders CA, Gonzalez PC, Reingold AL, et al. Comparison of four decontamination methods for recovery of *Mycobacterium avium* complex from stools. *J Clin Micro*, 1993;31:302-306.
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Exhibit B.

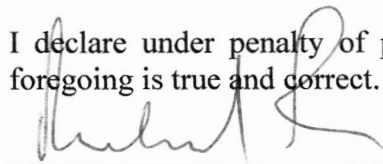
DECLARATION OF MICHAEL FINE

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Michael Fine, MD. I am a resident of Rhode Island, over 18 years old, and competent to make this declaration. The facts in this declaration are based on my personal knowledge. If called upon as a witness, I would testify to these facts.
2. I am a graduate of Case Western Reserve University School of Medicine. I was formerly the Physician Operating Officer of Hillside Avenue Family and Community Medicine, the largest family practice in Rhode Island, and the former Physician-in-Chief of the Rhode Island and Miriam Hospitals' Departments of Family and Community Medicine. Thereafter, I was Director of the Rhode Island Department of Health from February of 2011 until March of 2015, overseeing a broad range of public health programs and service. As a result of the foregoing, all opinions are expressed to a reasonable degree of certainty in the field of medicine.
3. I have been a candidate for public office in Rhode Island, and so I also have knowledge regarding the law and practicalities of the voting procedures, including the state's requirement that many of those voting by mail must provide the signatures of two witnesses or a notary with their ballot.
4. COVID-19 remains an imminent public health threat. Persons in Rhode Island continue to contract the disease on a daily basis. Some fundamentals about COVID-19 are pertinent to this discussion. COVID-19 is a highly contagious and easily transmitted disease. The disease can be transmitted via proximity to a person who is infected or to source contact with droplets containing the virus. Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is the strain of coronavirus that causes COVID-19. There is currently no test that allows for the identification of asymptomatic carriers of SARS-CoV-2 with a reasonable degree of certainty.
5. Maintaining social distancing through limiting contact between members of the public and sanitizing "high touch" items used by the public (for instance, ATM's) is critical to the containment of COVID-19.
6. It cannot be overemphasized that certain members of the public are most at risk to Covid-19. These persons include people over 60 years of age, persons with respiratory conditions, persons who are immunocompromised, and persons with certain other medical conditions. Persons who are most at risk need to scrupulously maintain distance from the public, including medical professionals treating COVID-19 patients.
7. It should also be emphasized that asymptomatic carriers of COVID-19 can infect others. This point is of particular importance with respect to the aforementioned witness or notary requirement, as persons seeking or providing witnesses and notaries may be COVID-19 positive without knowing it, thereby unwittingly exposing others.

8. I am aware based on publically available information that since last week, the week beginning July 12, 2020, the cities of Pawtucket and Central Falls, Rhode Island have seen new outbreaks of COVID-19. Although the number of positive COVID-19 tests at the Central Falls testing site were at or around 1 or 2 per day in early July, they have recently seen a rapid increase in positive tests. Following the Fourth of July, the number of positive tests rose to 5 or 6 per day. This number then rose to more than 20 positive tests per day on July 16 and July 17. Currently, around 130 to 140 people per day get tested at the Central Falls site. This is about 10 times what it was a month ago. Many attribute this spike in cases to celebrations around the Fourth of July when some individuals violated social distancing guidelines.
9. An issue that has grown in importance since the beginning of this crisis is the need for strong protections for absentee voters, who will likely make up a much larger share of the electorate than in past elections. The current witness requirement carries with it a high risk to the general public's health.
10. The witness or notary requirement means that many individuals must invite one or two persons into their home, or travel outside their home to meet these witnesses. Either of these situations would violate social distancing guidelines and increase the likelihood that those involved will contract COVID-19 and transmit it to others. The witness or notary requirement will likely produce many unnecessary "in person" contacts prior to the upcoming primary and general elections.
11. The only way to fully mitigate the risk of transmission of COVID-19 with respect to voting by mail in Rhode Island is to waive the witness requirement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Michael Fine, MD

Executed on July 21 2020

Exhibit C.

DECLARATION OF MIRANDA OAKLEY

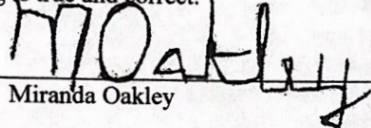
Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Miranda Oakley. I am a resident of Rhode Island, over 18 years old, and competent to make this declaration. The facts in this declaration are based on my personal knowledge. If called upon as a witness, I would testify to these facts.
2. I am thirty-two years old and currently reside in South Kingstown, Rhode Island with my mother and grandmother. Unfortunately, my grandmother is unable to serve as a witness.
3. I am blind. This means that I am unable to drive, so leaving my house requires someone to take me. It also means that I necessarily engage in high levels of touch when navigating, as I use my hands to see.
4. I regularly vote in federal, state, and local elections, and plan on voting in the September and November 2020 elections. I have been registered to vote in Rhode Island since September 2006. Voting is incredibly important to me. It is especially important for me to vote to ensure that the disability community is represented in politics. I want to push back on people's perceptions that blind people do not vote and to speak up about the issues that matter.
5. Based on news coverage, I am aware that the virus that causes COVID-19 is highly contagious and spreads through a variety of means, including respiratory droplets, touching surfaces with those droplets on them, and contact between individuals. I understand that while some infected individuals experience no symptoms or only mild symptoms from COVID-19, others become seriously ill, sometimes with severe buildup of fluid in their lungs that can lead to death.
6. I also understand that some people are particularly vulnerable to becoming severely sick from COVID-19—specifically, people over 65 and people of any age who are immunocompromised, or have other underlying conditions like asthma, heart conditions, chronic lung disease, diabetes, or obesity.
7. My contracting COVID-19 could be very detrimental to myself and my family. My grandmother's old age makes her especially at risk to become severely ill or die from COVID-19. If I contracted COVID-19 and passed it on to her, it could put her at risk of death. Second, my mother works with the elderly. If I contracted COVID-19 and passed it on to her, it would put all of the elderly people that my mother works with at risk as well.
8. I voted by mail for the first time in the June 2020 presidential preference primary. Prior to that, I have always voted in person at my polling place. During that primary election, the witnesses requirement for voting by mail was suspended so I didn't have to find witnesses to sign my mail ballot.
9. Since the start of the pandemic, myself, my mother, and my grandmother have been closely following social distancing guidelines to protect ourselves and the elderly people my mother works with. When interacting with others, I wear a facemask and keep as much of a distance as I can, except from anyone I need to guide me. I strive to keep my interactions with individuals outside my household limited.
10. Voting in person would involve waiting in line with other voters, interacting with poll workers, and, due to my blindness, touching not just voting equipment, but also many more surfaces all of which might be contaminated. My mother would also have to go to the polls with me, risking contamination herself, due to the fact that I cannot drive. I am

concerned that the prolonged exposure to other individuals and potentially contaminated surfaces at a crowded polling place would put me at serious risk of contracting COVID-19.

11. The two witness/notary requirement means that I would have to invite a person into my home, or I would have to travel outside my home along with a driver to interact with a second witness. Either of these situations would violate the social distancing rules I have been following to the best of my ability and increase the likelihood that I contract COVID-19 and pass it to my mother or grandmother.
12. If the witness requirement stays in place through the pandemic, I do not know whether I will be able to vote by mail in the September or November 2020 elections. I should not have to choose between risking the lives of myself, my grandmother, and mother's clients or giving up my fundamental right to vote. I consider the two witness/notary requirement under these pandemic circumstances to be a form of voter suppression.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Miranda Oakley

Executed on 7-20-2020

Exhibit D.

DECLARATION OF BARBARA MONAHAN

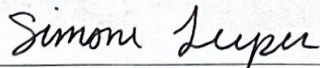
Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Barbara Monahan. I am a resident of Rhode Island, over 18 years old, and competent to make this declaration. The facts in this declaration are based on my personal knowledge. If called upon as a witness, I would testify to these facts.
2. I am eighty-eight years old and currently reside in North Kingstown, Rhode Island. I am a registered unaffiliated voter. I plan on affiliating with the Democratic party to vote in the September primary.
3. I regularly vote in federal, state, and local elections, and plan on voting in the September and November 2020 elections. I believe that everyone should have the ability vote in every election if they so choose, and that it means something to live in a country where everyone has that option. For me, however, voting is more than just something I choose to do. I truly believe that we all have a responsibility to vote.
4. I have a back condition which severely limits my mobility. This means that I am unable to drive, so leaving my house requires someone to take me.
5. I have voted by mail since I became disabled in late 2010. Previously, I usually had two neighbors serve as my ballot witnesses, however, since the start of the COVID-19 pandemic, the building I live in has discouraged residents from congregating in common areas or interacting and I have acted accordingly.
6. Based on news coverage, I am aware that the virus that causes COVID-19 is highly contagious and spreads through a variety of means, including respiratory droplets and contact between individuals. I understand that while some infected individuals experience no symptoms or only mild symptoms from COVID-19, others become seriously ill, sometimes with severe buildup of fluid in their lungs that can lead to death.
7. I also understand that some people are particularly vulnerable to becoming severely sick from COVID-19—specifically, people over 65 and people of any age who are immunocompromised, or have other underlying conditions like asthma, heart conditions, chronic lung disease, diabetes, or obesity.
8. I am well over 65 years old and am, therefore, at high risk of becoming severely ill or dying if I contract COVID-19. Because of this risk, I have been closely following social distancing guidelines to avoid exposing myself to the virus.
9. I live alone and have only left my house for medical appointments, as has been the case since late 2010 due to my medical condition. When interacting with others, I wear a face mask, insist that they wear a facemask, and keep as much of a distance as I can. Since the start of the pandemic, I have sharply limited visitors to my home. The building where I live, a Section 8 complex occupied almost exclusively by elderly people, only recently allowed us to have any visitors and has asked that we continue exercising discretion and

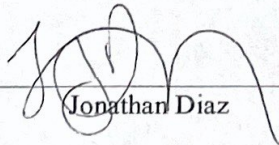
keeping visitors to a minimum. There are announcements on every entrance to the building asking anyone entering to reconsider their visit if their presence is not absolutely necessary in order to protect the vulnerable population of the building.

10. I am unable to vote in person due to my back condition and the limited mobility that it offers me. I also would not wish to vote in person because of my high vulnerability to COVID-19. Therefore, I must vote by mail.
11. I do not have a computer or device that would enable me to make an online video call or a video call of any kind.
12. The two witness/notary requirement means that I would have to invite two people or a notary into my home and, in order to have them witness me casting my ballot, violate the social distancing rules I have been careful to follow when possible. We would also have to touch the same ballot envelope, creating another risk of spreading contaminants. This would increase the likelihood that I contract COVID-19.
13. Being able to cast a mail-in ballot in the privacy and safety of my own home without interacting with additional people would allow me to exercise my right to vote while also protecting my health. I should not have to choose between my right to vote and my health and safety.
14. I do not have a printer or scanner as would be necessary to sign and submit this declaration with a wet signature. I also do not have the personal technological capability to complete an e-signature.

Two of my attorneys have signed below to certify that I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Simone Leeper



Jonathan Diaz

Executed on 7/21/2020

Exhibit E.

DECLARATION OF MARY BAKER

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Mary Baker. I am a resident of Rhode Island, over 18 years old, and competent to make this declaration. The facts in this declaration are based on my personal knowledge. If called upon as a witness, I would testify to these facts.
2. I am fifty-nine years old and currently reside in Glocester, Rhode Island. I am a registered Democratic voter.
3. I regularly vote in federal, state, and local elections, and plan on voting in the September and November 2020 elections. I believe that the right to vote, unencumbered, is terribly important. I personally value voting because of my deep care for my country, my concern for its future, and my deep desire to have a say in which elected officials will address the incredibly pressing issues before us today.
4. I have been diagnosed with asthma, apnea, hypertension, diabetes, and obesity.
5. Based on news coverage and my own research into the developing science around COVID-19, I am aware that the virus that causes COVID-19 is highly contagious and spreads through a variety of means, including respiratory droplets and contact between individuals. I understand that while some infected individuals experience no symptoms or only mild symptoms from COVID-19, others become seriously ill, sometimes with severe buildup of fluid in their lungs that can lead to death. I am also aware that there is growing evidence about the negative long-term impacts of a COVID-19 infection even if the individual infected survives.
6. I also understand that some people are particularly vulnerable to becoming severely sick from COVID-19—specifically, people over 65 and people of any age who are immunocompromised, or have other underlying conditions like asthma, heart conditions, chronic lung disease, diabetes, or obesity.
7. Due to my numerous health conditions, I am at high risk of becoming severely ill or dying if I contract COVID-19. Especially due to my asthma and apnea, contracting COVID-19 would likely lead to me being put on a ventilator; I would have a low chance of survival and, if I did survive, I would have a high likelihood of long-term problems. I live with just my husband who is sixty-three years old and also diabetic and, therefore, also at risk of becoming severely ill or dying if he contracts COVID-19.
8. Because of this risk, I have been strictly following social distancing guidelines to avoid exposing myself to the virus. Both my husband and I wear cloth masks with filters whenever leaving the house, and we use bleach wipes to wipe off any surfaces that we touch. While I would usually go to the grocery store once to twice per week, I have gone only three times total since mid-March and have left the store as quickly as possible on those occasions. For every other grocery trip or take-out food pick-up, I have used curbside pick-up, or, on a small number of occasions, my husband has gone into the

store. Whenever possible, we let groceries sit untouched for one to two days before using them. Since mid-March, I have cancelled all non-essential medical appointments including a dental appointment, eye appointment, and regular physical therapy appointments that I was attending to address my finger amputation. Based on my limited experiences going out since mid-March, I am deeply concerned that people in my area are not following proper social distancing or mask-wearing protocols. Because of this and because the science suggests that this virus is not going away, I continue to fear for my own and my husband's well-being and have no current plans to lessen the precautions that I am taking.

9. I voted by mail for the first time in the June 2020 presidential preference primary. During that election, the two witnesses/notary requirement for voting by mail was suspended so I didn't have to find witnesses to sign my ballot.
10. Voting in person would involve waiting in line with other voters, interacting with poll workers, and touching voting equipment. I am deeply concerned that the prolonged exposure to other individuals and potentially contaminated surfaces at a crowded polling place would put me at serious risk of contracting COVID-19.
11. To meet the two witness/notary requirement, I would have to violate the social distancing rules I have been strictly following in order to have someone other than my husband witness me casting my ballot. We would also have to touch the same ballot envelope, creating another risk of spreading contaminants. This would increase the likelihood that I contract COVID-19.
12. Being able to cast a mail-in ballot in the privacy and safety of my own home without interacting with additional people would allow me to exercise my right to vote while also protecting my health and my husband's health. I should not have to choose between my right to vote and my health and safety.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Mary Baker

Executed on 21 July 2020.

Exhibit F.

**DECLARATION OF JANE KOSTER ON BEHALF OF
THE LEAGUE OF WOMEN VOTERS OF RHODE ISLAND**

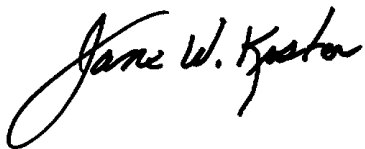
Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Jane Koster. I am a resident of Rhode Island, over 18 years old, and competent to make this declaration. The facts in this declaration are based on my personal knowledge. If called upon as a witness, I would testify to these facts.
2. I am the President of the League of Women Voters of Rhode Island (“LWVRI” or “we”), a role that I assumed on June 2013. As president of LWVRI, I am responsible for, among other things, overseeing the activities, membership, and events of LWV-RI, and directing its advocacy and voter outreach efforts.
3. LWV-RI is a nonpartisan membership organization with a membership of roughly 150 people, and four local leagues across Rhode Island. LWVRI works to encourage informed and active participation in government, and influence public policy through education and advocacy.
4. To meet these objectives, LWVRI undertakes a number of activities related to voter registration including: organizing and running voter registration drives at high schools, colleges, libraries, farmers markets, assisted living centers, and various public events; designing and executing public information campaigns using press releases and social media about how to register and update one’s voter registration; creating brochures about voter registration and topics such as absentee voting; and assisting voters who ask questions about voting through email, occasional telephone hotlines, and through our internet platforms.
5. LWVRI also conducts various voter mobilization and education activities including hosting candidate forums, developing voter guides, and conducting get-out-the-vote efforts. LWVRI also educates voters about new laws, and plans to spend significant resources to educate voters this year about the witness requirement for absentee voting in Rhode Island.
6. LWVRI conducts voter registration, voter mobilization, and voter education efforts regularly, and these efforts require significant volunteer hours and other resources, particularly during the current global health crisis caused by COVID-19. Because of the crisis and the accompanying stay-at-home orders and social distancing recommendations, LWVRI has been devoting significant resources toward adapting many of its voter registration and voter outreach activities such that they can be performed remotely or without relying on in-person interactions. For example, we have been expanding the use of flyers and emails to contact outreach, and holding meetings online.
7. An issue that has grown in importance since the beginning of this crisis is the need for strong protections for absentee voters, who will likely make up a much larger share of the

electorate than in past elections. LWVRI has been advocating for increased voting flexibility including the expanded use of absentee voting by mail in order to protect the safety and health of voters and poll workers during the COVID-19 pandemic. One aspect of the absentee balloting process that LWVRI believes will pose a significant problem for voters in upcoming elections is the requirement that absentee voters have their mail-in ballot envelopes signed by either two lay witnesses or one notary public.

8. Based on conversations and communication among League members, we expect that this witness requirement will be a major barrier to voting for some League members and Rhode Island voters in general, and that many of them will be disenfranchised as a result of this requirement. About 75 % of LWVRI's members are senior citizens. As well, many of our RI voters are Black, Latinx, disabled, or low-income registered voters who are staying home because they are at a higher risk of death or serious illness from COVID-19 due to age or preexisting medical conditions, like diabetes or hypertension.
9. I expect that there are many other voters such as these who are served by the LWV-RI and its members and will face significant burdens complying with the witness requirement and that many will be disenfranchised should it remain.
10. Because the witness requirement remains in effect, the LWVRI has already diverted and will need to continue to divert resources from its voter registration, voter education, and voter mobilization activities towards advocating against and educating voters about the witness requirement, to prevent the requirement from disenfranchising its members and the voters they serve. If absentee voters were not required to have their mail-in ballot envelopes signed by either two lay witnesses or one notary public, LWVRI could spend less of its volunteer resources and time on educating voters about the witness requirement, and more on its other critical activities including registering voters without being able to conduct in-person registration drives and educational events.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Jane Koster

Executed on July 22, 2020.

Exhibit G.

**5800DECLARATION OF JOHN MARION ON BEHALF OF
COMMON CAUSE OF RHODE ISLAND**

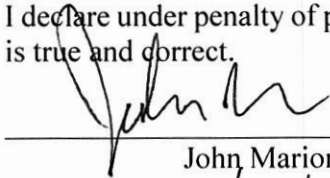
Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is John Marion. I am a resident of Rhode Island, over 18 years old, and competent to make this declaration. The facts in this declaration are based on my personal knowledge. If called upon as a witness, I would testify to these facts.
2. I am the executive director of Common Cause of Rhode Island (“CC-RI” or “we”), a role which I assumed in 2008. As executive director of CC-RI, I am responsible for, among other things, overseeing the activities, membership, and events of CC-RI, and directing its advocacy and voter outreach efforts.
3. CC-RI is a nonpartisan membership organization with a membership of roughly 5800 people in Rhode Island. Our members live in all 39 cities and towns in the state. CC-RI works to promote representative democracy by ensuring open, ethical, accountable, effective government processes at local, state and national levels by educating and mobilizing the citizens of Rhode Island.
4. To meet these objectives, CC-RI undertakes a number of activities related to promoting and safeguarding the voting process and protecting election integrity. These activities include providing online tools for voter registration, executing public information campaigns to promote automatic voter registration, risk-limiting post-election audits, and early voting. We also provide assistance and voting-related information to Rhode Island residents through polling place volunteers on Election Day and monitoring the national Election Protection hotline.
5. CC-RI conducts various mobilization and educational activities for voters including get-out-the-vote efforts and educating voters about laws in Rhode Island that impact their ability to vote. As such, this year CC-RI plans to spend significant resources to educate voters about the witness requirement for absentee voting in Rhode Island.
6. CC-RI conducts voter registration, voter mobilization, and voter education efforts regularly, and these efforts require significant volunteer hours and other resources, particularly during the current global health crisis caused by COVID-19. Because of the crisis and the accompanying stay-at-home orders and social distancing recommendations, CC-RI has been devoting significant resources towards educational campaigns and political efforts related to promoting safer voting and educating Rhode Island voters about the witness requirement.
7. An issue that has grown in importance since the beginning of this crisis is the need for strong protections for absentee voters, who will likely make up a much larger share of the electorate than in past elections. CC-RI has been advocating for increased voting flexibility including the expanded use of absentee voting by mail in order to protect the

safety and health of voters and poll workers during the COVID-19 pandemic. One aspect of the absentee balloting process that CC-RI believes will pose a significant problem for voters in upcoming elections is the requirement that absentee voters have their mail-in ballot envelopes signed by either two lay witnesses or one notary.

8. Based on conversations and communication among CC-RI members, we expect that this witness requirement will be a major barrier to voting for some CC-RI members and Rhode Island voters in general, and that many of them will be disenfranchised as a result of this requirement. Of CC-RI's more than 5800 members, many are older members who live alone and lack access to a computer, the internet, or other videoconferencing technology. Of those members, many are registered voters who are staying home because they are at a higher risk of death or serious illness from COVID-19 due to age or preexisting medical conditions, like diabetes or hypertension.
9. For example, I am aware of the following CC-RI members who are regular voters and will face difficulties complying with the witness requirement in upcoming elections:
 - a. A 66-year-old resident of Cranston, Rhode Island who lives alone. He is recovering from lymphoma treatments he received in 2019 and is still immunocompromised.
 - b. A 80-year-old resident of Cranston, Rhode Island who lives with her 85-year-old husband who suffers from prostate cancer. She is the primary caretaker for her husband and severely restricts her interactions with others.
10. I am also personally aware of other Rhode Island voters who are not members of CC-RI but who will face difficulties voting in upcoming elections. I expect that there are many other voters such as these who are served by the CC-RI and its members and will face significant burdens complying with the witness requirement and that many will be disenfranchised should it remain.
11. Because the witness requirement remains in effect, CC-RI has already diverted and will need to continue to divert resources from its voter registration, voter education, and voter mobilization activities towards advocating against and educating voters about the witness requirement, to prevent the requirement from disenfranchising its members and the voters they serve. If absentee voters were not required to have their mail-in ballot envelopes signed by either two lay witnesses or one notary, CC-RI could spend less of its volunteer resources and time on educating voters about the witness requirement, and more on its other critical activities including registering voters without being able to conduct in-person registration drives and educational events.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "John Marion", is written over a horizontal line.

John Marion

Executed on 7/22/20.

Exhibit H.

CPS Data Collected in Year: 2018

Persons - All

(Numbers in Thousands)

State: RI				Totals	Family Size								
					1	2	3	4	5	6	7	8	
Totals	Totals	Totals	Totals	1,047	200	306	199	194	83	36	17	5	
			Disability Status										
			With a Disability	100	42	36	12	6	2	1	1	.	
			With no Disability	775	155	255	141	139	56	18	6	2	
			Not in Universe	172	2	15	46	50	25	18	10	3	
		Age											
		00 to 17	Totals	207	2	18	55	64	32	19	10	4	
			Disability Status										
			With no Disability	37	.	3	9	16	7	1	0	1	
			Not in Universe	169	2	15	46	48	24	18	9	3	
		18 to 64	Totals	684	138	210	133	127	48	17	7	1	
			Disability Status										
			With a Disability	56	21	16	11	4	2	1	1	.	
			With no Disability	626	117	194	123	121	46	16	5	1	
			Not in Universe	3	.	.	.	2	1	.	1	.	
		65 to 80+	Totals	156	59	79	11	4	3	1	.	.	
			Disability Status										
			With a Disability	44	21	21	1	1	.	.	.	.
			With no Disability	112	38	58	10	2	3	1	.	.	
		Race											
		White alone	Totals	Totals	882	176	286	155	167	56	27	9	1
				Disability Status									
				With a Disability	84	37	35	9	3	.	1	.	.
				With no Disability	677	136	238	117	124	38	16	4	1
				Not in Universe	122	2	13	29	40	17	11	5	.
			Age										
			00 to 17	Totals	147	2	15	35	52	21	12	5	.
				Disability Status									
				With no Disability	28	.	3	6	14	4	1	0	.
				Not in Universe	119	2	13	29	39	17	11	5	.
			18 to 64	Totals	590	118	194	112	111	33	15	4	1
				Disability Status									
				With a Disability	42	17	15	8	2	.	1	.	.
				With no Disability	545	101	179	104	108	33	14	4	1
				Not in Universe	3	.	.	.	2	1	.	1	.
			65 to 80+	Totals	146	55	77	8	3	2	1	.	.
				Disability Status									
				With a Disability	42	20	20	1	1	.	.	.	.
				With no Disability	104	35	56	7	2	2	1	.	.
			Black or African American alone	Totals	Totals	81	13	8	33	12	9	5	.	1
		Disability Status											
		With a Disability			6	1	.	1	2	1	.	.	.
		With no Disability			53	12	7	21	5	6	2	.	1

			Not in Universe	22	.	1	11	5	2	3	.	.
		Age										
		00 to 17	Totals	26	.	1	12	6	4	3	.	.
			Disability Status									
			With no Disability	4	.	.	1	1	2	.	.	.
			Not in Universe	22	.	1	11	5	2	3	.	.
		18 to 64	Totals	49	10	6	19	6	5	2	.	1
			Disability Status									
			With a Disability	5	1	.	1	2	1	.	.	.
			With no Disability	44	10	6	17	4	4	2	.	1
		65 to 80+	Totals	6	2	0	2	0	0	.	.	.
			Disability Status									
			With a Disability	1	0	.	.	0	.	.	.	.
			With no Disability	5	2	0	2	.	0	.	.	.
	American Indian and Alaska Native alone	Totals	Totals	15	2	2	3	6	3	.	.	.
			Disability Status									
			With a Disability	4	1	1	1	1	1	.	.	.
			With no Disability	7	1	1	.	3	1	.	.	.
			Not in Universe	5	.	.	2	2	1	.	.	.
		Age										
		00 to 17	Totals	5	.	.	2	2	1	.	.	.
			Disability Status									
			Not in Universe	5	.	.	2	2	1	.	.	.
		18 to 64	Totals	9	1	1	1	4	2	.	.	.
			Disability Status									
			With a Disability	4	1	1	1	1	1	.	.	.
			With no Disability	5	0	1	.	3	1	.	.	.
		65 to 80+	Totals	1	1	1	.	.	.	.	.	.
			Disability Status									
			With no Disability	1	1	1	.	.	.	.	.	.
	Asian alone	Totals	Totals	32	4	8	1	5	10	.	5	.
			Disability Status									
			With a Disability	3	0	0	.	.	1	.	1	.
			With no Disability	24	4	7	1	4	7	.	2	.
			Not in Universe	5	.	.	.	1	2	.	2	.
		Age										
		00 to 17	Totals	5	.	.	.	1	2	.	2	.
			Disability Status									
			Not in Universe	5	.	.	.	1	2	.	2	.
		18 to 64	Totals	25	4	7	1	4	7	.	3	.
			Disability Status									
			With a Disability	2	0	.	.	.	1	.	1	.
			With no Disability	23	4	7	1	4	7	.	2	.
		65 to 80+	Totals	2	.	1	.	.	0	.	.	.
			Disability Status									
			With a Disability	0	.	0	.	.	.	.	.	.
			With no Disability	1	.	1	.	.	0	.	.	.
	Native Hawaiian and Other Pacific Islander alone	Totals	Totals	9	1	2	2	4	.	.	.	.
			Disability Status									
			With a Disability	1	.	1	.	.	.	.	.	.
			With no Disability	6	1	1	1	3	.	.	.	.
			Not in Universe	2	.	.	1	1	.	.	.	.

		Age												
		00 to 17	Totals	3	.	.	1	1	.	.	.	.	.
			Disability Status											
			With no Disability	1	.	.	.	1	.	.	.	.	.
			Not in Universe	2	.	.	1	1	.	.	.	.	.
		18 to 64	Totals	6	1	2	1	2	.	.	.	.	.
			Disability Status											
			With a Disability	1	.	1	.	.	.	.	.	.	.
			With no Disability	5	1	1	1	2	.	.	.	.	.
		Two or more races	Totals	Totals	28	4	2	4	1	5	4	3	4	
				Disability Status										
				With a Disability	3	3
				With no Disability	8	1	1	1	.	3	.	.	1	.
				Not in Universe	17	.	1	3	1	2	4	3	3	.
			Age											
	00 to 17		Totals	22	.	1	4	1	4	4	3	4	.	
			Disability Status											
			With no Disability	5	.	.	1	.	2	.	.	1	.	
			Not in Universe	17	.	1	3	1	2	4	3	3	.	
	18 to 64		Totals	5	4	1	.	.	1	.	.	.	.
			Disability Status											
			With a Disability	2	2	.	.	.	.	.	.	.	.
			With no Disability	3	1	1	.	.	1	.	.	.	.
	65 to 80+		Totals	1	1	.	.	.	.	.	.	.	.
		Disability Status												
		With a Disability	1	1	.	.	.	.	.	.	.	.
	Origin													
	Non Hispanic	Totals	Totals	Totals	862	179	281	146	154	58	21	17	5	
				Disability Status										
				With a Disability	88	39	32	9	5	2	1	1	.	
With no Disability				657	139	236	113	111	38	11	6	2		
Not in Universe				118	2	13	24	38	18	10	10	3		
Age														
00 to 17			Totals	144	2	14	32	50	22	10	10	4		
			Disability Status											
			With no Disability	29	.	2	8	13	4	.	0	1		
			Not in Universe	115	2	13	24	37	17	10	9	3		
18 to 64			Totals	567	120	189	105	100	35	11	7	1		
			Disability Status											
			With a Disability	44	18	12	8	3	2	1	1	.		
			With no Disability	520	102	177	97	96	32	10	5	1		
			Not in Universe	2	.	.	.	1	1	.	1	.		
65 to 80+			Totals	151	58	78	9	4	2	1	.	.		
			Disability Status											
		With a Disability	44	21	20	1	1	.	.	.	.
		With no Disability	107	36	57	8	2	2	1	.	.			
Race														
White alone		Totals	Totals	738	159	262	120	132	37	17	9	1		
			Disability Status											
			With a Disability	74	34	31	7	1	.	1	.	.		
	With no Disability		578	123	220	95	101	25	9	4	1			
	Not in Universe		86	2	11	18	30	12	8	5	.			

		Age											
		00 to 17	Totals	105	2	12	23	41	14	8	5	.	.
			Disability Status										
			With no Disability	22	.	2	5	12	2	.	0	.	.
			Not in Universe	83	2	11	18	29	11	8	5	.	.
		18 to 64	Totals	492	103	174	90	88	22	8	4	1	.
			Disability Status										
			With a Disability	33	14	11	6	0	.	1	.	.	.
			With no Disability	457	89	163	84	86	22	8	4	1	.
			Not in Universe	2	.	.	.	1	1	.	1	.	.
		65 to 80+	Totals	141	54	76	7	3	1	1	.	.	.
			Disability Status										
			With a Disability	42	20	20	1	1	.	.	.	.	.
			With no Disability	100	34	56	6	2	1	1	.	.	.
	Black or African American alone	Totals	Totals	62	12	7	22	12	3	4	.	1	.
			Disability Status										
			With a Disability	6	1	.	1	2	1	.	.	.	.
			With no Disability	43	11	6	16	5	2	2	.	1	.
			Not in Universe	13	.	1	5	5	1	2	.	.	.
		Age											
		00 to 17	Totals	15	.	1	6	6	1	2	.	.	.
			Disability Status										
			With no Disability	2	.	.	1	1	.	.	.	.	.
			Not in Universe	13	.	1	5	5	1	2	.	.	.
		18 to 64	Totals	40	10	6	14	6	2	2	.	1	.
			Disability Status										
			With a Disability	5	1	.	1	2	1	.	.	.	.
			With no Disability	35	9	6	12	4	1	2	.	1	.
		65 to 80+	Totals	6	2	0	2	0	0	.	.	.	.
			Disability Status										
			With a Disability	1	0	.	.	0	.	.	.	.	.
			With no Disability	5	2	0	2	.	0	.	.	.	.
	American Indian and Alaska Native alone	Totals	Totals	8	1	2	.	3	3	.	.	.	.
			Disability Status										
			With a Disability	2	.	1	.	1	1	.	.	.	.
			With no Disability	4	1	1	.	1	1	.	.	.	.
			Not in Universe	2	.	.	.	1	1	.	.	.	.
		Age											
		00 to 17	Totals	2	.	.	.	1	1	.	.	.	.
			Disability Status										
			Not in Universe	2	.	.	.	1	1	.	.	.	.
		18 to 64	Totals	5	.	1	.	2	2	.	.	.	.
			Disability Status										
			With a Disability	2	.	1	.	1	1	.	.	.	.
			With no Disability	3	.	1	.	1	1	.	.	.	.
		65 to 80+	Totals	1	1	1	.	.	.	.	.	.	.
			Disability Status										
			With no Disability	1	1	1	.	.	.	.	.	.	.
	Asian alone	Totals	Totals	32	4	8	1	5	10	.	5	.	.
			Disability Status										
			With a Disability	3	0	0	.	.	1	.	1	.	.
			With no Disability	24	4	7	1	4	7	.	2	.	.

			Not in Universe	5	.	.	.	1	2	.	2	.
		Age										
		00 to 17	Totals	5	.	.	.	1	2	.	2	.
			Disability Status									
			Not in Universe	5	.	.	.	1	2	.	2	.
		18 to 64	Totals	25	4	7	1	4	7	.	3	.
			Disability Status									
			With a Disability	2	0	.	.	.	1	.	1	.
			With no Disability	23	4	7	1	4	7	.	2	.
		65 to 80+	Totals	2	.	1	.	.	0	.	.	.
			Disability Status									
			With a Disability	0	.	0	.	.	.	.	.	.
			With no Disability	1	.	1	.	.	0	.	.	.
	Native Hawaiian and Other Pacific Islander alone	Totals	Totals	1	.	1	.	1	.	.	.	.
			Disability Status									
			With no Disability	1	.	1	.	1	.	.	.	.
		Age										
			18 to 64	1	.	1	.	1	.	.	.	.
			Disability Status									
	Two or more races	Totals	Totals	22	4	2	3	1	5	.	3	4
			Disability Status									
			With a Disability	3	3	.	.	.	.	.	.	.
			With no Disability	7	1	1	1	.	3	.	.	1
			Not in Universe	12	.	1	1	1	2	.	3	3
		Age										
			00 to 17	16	.	1	3	1	4	.	3	4
		00 to 17	Totals									
			Disability Status									
			With no Disability	5	.	.	1	.	2	.	.	1
			Not in Universe	12	.	1	1	1	2	.	3	3
		18 to 64	Totals	5	3	1	.	.	1	.	.	.
			Disability Status									
			With a Disability	2	2	.	.	.	.	.	.	.
			With no Disability	2	1	1	.	.	1	.	.	.
		65 to 80+	Totals	1	1	.	.	.	.	.	.	.
			Disability Status									
			With a Disability	1	1	.	.	.	.	.	.	.
Hispanic	Totals	Totals	Totals	184	20	26	53	40	24	15	.	.
			Disability Status									
			With a Disability	12	4	4	3	1	.	.	.	.
			With no Disability	118	16	19	28	28	17	7	.	.
			Not in Universe	54	0	2	22	12	7	8	.	.
		Age										
			00 to 17	63	0	3	23	14	10	9	.	.
		00 to 17	Totals									
			Disability Status									
			With no Disability	9	.	1	1	2	3	1	.	.
			Not in Universe	54	0	2	22	11	7	8	.	.
		18 to 64	Totals	117	18	21	29	27	14	6	.	.
			Disability Status									
			With a Disability	12	4	4	3	1	.	.	.	.
			With no Disability	105	15	17	26	25	14	6	.	.
			Not in Universe	0	.	.	.	0	.	.	.	.

	65 to 80+	Totals	5	2	1	1	.	1	.	.	.	
		Disability Status										
		With a Disability	0	.	0	.	.	.	.	.	.
		With no Disability	4	2	1	1	.	1	.	.	.	
Race												
White alone	Totals	Totals	144	17	24	35	34	18	10	.	.	
		Disability Status										
		With a Disability	10	3	4	2	1	.	.	.	.
		With no Disability	99	14	18	22	23	13	7	.	.	
		Not in Universe	36	0	2	11	10	5	3	.	.	
	Age											
		00 to 17	Totals	41	0	3	12	11	7	4	.	.
			Disability Status									
			With no Disability	6	.	1	1	2	1	1	.	.
	Not in Universe		35	0	2	11	10	5	3	.	.	
	18 to 64	Totals	98	15	19	21	23	11	6	.	.	
		Disability Status										
		With a Disability	9	3	3	2	1	.	.	.	.
		With no Disability	89	12	16	20	21	11	6	.	.	
		Not in Universe	0	.	.	.	0	.	.	.	.
	65 to 80+	Totals	5	2	1	1	.	1	.	.	.	
		Disability Status										
		With a Disability	0	.	0	.	.	.	.	.	.
		With no Disability	4	2	1	1	.	1	.	.	.	
Black or African American alone	Totals	Totals	19	1	1	11	.	6	1	.	.	
		Disability Status										
		With no Disability	11	1	1	5	.	4	.	.	.	
		Not in Universe	9	.	.	6	.	2	1	.	.	
	Age											
		00 to 17	Totals	10	.	.	6	.	4	1	.	.
			Disability Status									
			With no Disability	2	2	.	.	.
	Not in Universe		9	.	.	6	.	2	1	.	.	
	18 to 64	Totals	9	1	1	5	.	2	.	.	.	
		Disability Status										
		With no Disability	9	1	1	5	.	2	.	.	.	
American Indian and Alaska Native alone	Totals	Totals	7	1	.	3	3	.	.	.	.
		Disability Status										
		With a Disability	2	1	.	1	.	.	.	.	.
		With no Disability	3	0	.	.	2	.	.	.	.
		Not in Universe	3	.	.	2	1	.	.	.	.
	Age											
		00 to 17	Totals	3	.	.	2	1
			Disability Status									
			Not in Universe	3	.	.	2	1
	18 to 64	Totals	5	1	.	1	2	.	.	.	.
		Disability Status										
		With a Disability	2	1	.	1	.	.	.	.	.
With no Disability		3	0	.	.	2	.	.	.	.
Native Hawaiian and Other Pacific	Totals	Totals	8	1	1	2	3	.	.	.	.
		Disability Status										
		With a Disability	1	.	1	.	.	.	.	.	.

	Islander alone		With no Disability	5	1	1	1	2	.	.	.	.	.
			Not in Universe	2	.	.	1	1	.	.	.	.	.
		Age											
		00 to 17	Totals	3	.	.	1	1	.	.	.	.	.
			Disability Status										
			With no Disability	1	.	.	.	1	.	.	.	.	.
			Not in Universe	2	.	.	1	1	.	.	.	.	.
		18 to 64	Totals	5	1	1	1	2	.	.	.	.	.
			Disability Status										
			With a Disability	1	.	1	.	.	.	.	.	.	.
			With no Disability	4	1	1	1	2	.	.	.	.	.
	Two or more races	Totals	Totals	6	1	.	1	.	.	4	.	.	.
			Disability Status										
			With no Disability	1	1	.	.	.	.	.	.	.	.
			Not in Universe	6	.	.	1	.	.	4	.	.	.
		Age											
		00 to 17	Totals	6	.	.	1	.	.	4	.	.	.
			Disability Status										
			Not in Universe	6	.	.	1	.	.	4	.	.	.
		18 to 64	Totals	1	1	.	.	.	.	.	.	.	.
			Disability Status										
			With no Disability	1	1	.	.	.	.	.	.	.	.

Inferences should be made with extreme caution when the cell sizes are small. To examine cell sizes, select "Display Unweighted
Some CPS questions, such as income, ask about the previous year. Others, such as age, refer to the time of the survey. The color
Current Population Survey, Annual Social and Economic Supplement, 2018
Source: U.S. Census Bureau

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

COMMON CAUSE RHODE ISLAND, LEAGUE OF
WOMEN VOTERS OF RHODE ISLAND, MIRANDA
OAKLEY, BARBARA MONAHAN, and MARY
BAKER,

Plaintiffs,

- against -

NELLIE M. GORBEA, in her official capacity as Secretary
of State of Rhode Island; DIANE C. MEDEROS, LOUIS
A. DESIMONE JR., JENNIFER L. JOHNSON,
RICHARD H. PIERCE, ISADORE S. RAMOS, DAVID
H. SHOLES, and WILLIAM E. WEST, in their official
capacity as members of the Rhode Island Board of
Elections,

Defendants.

Case No. 1:20-cv-00318-MSM-
LDA

AFFIDAVIT

I, Robert Rock, hereby swear and affirm as follows:

1. I am the Director of Elections for the Rhode Island Department of State.
2. I have been working in elections administration for over 15 years, serving as Director of Elections for 5 and ½ years.
3. In my current role I oversee the mail ballot process including ensuring all mail ballot voters receive, vote, and send their voted mail ballots back in time for their vote to be counted.
4. In March 2020, Rhode Island Governor Gina M. Raimondo issued an executive order moving Rhode Island's Presidential Primary from April 28 to June 2. The order also indicated Rhode Island would conduct the primary using predominately mail ballots. Due

to the high volume of mail ballot requests received (over 150,000), our office hired a vendor to process and send mail ballots to those who applied.

5. Due to the coronavirus pandemic and the growing use of mail ballots, we expect a large volume of mail ballots this Fall. We once again, hired a vendor to process and mail all mail ballots.
6. In order to provide enough time for voters to receive, vote, and send back their mail ballots by Primary Day (September 8), it is imperative our vendor begin mailing ballots on August 10.
7. Approximately three weeks ago, our vendor began their internal process of preparing to meet our August 10th deadline. For them to meet the deadline they indicated that envelopes had to be finalized by July 17, a deadline we met.
8. On July 23, when I received word of the pending lawsuit regarding our mail ballot certificate envelopes, I immediately reached out to the vendor who notified me that the envelopes could still be changed without affecting the August 10 mailing deadline however, we would have to let them know by July 24.
9. Due to this ongoing litigation, I asked the vendor to remove the witness and notary requirements from the envelopes and to add an "optional information" section asking for voter's driver's license number or last four digits of their social security like we had done in the Presidential Primary.
10. On July 27, I was notified that a proposed Consent Judgment which would require the Secretary of State to print mail ballot certificate envelopes without the witness or notary requirement, had been scheduled for a fairness hearing on July 28, 2020. I immediately

notified our vendor who stressed the importance of knowing that day (July 27), how to proceed.

11. On July 27, I asked our vendor to print envelopes without the witness/notary requirement.

I did so due to the timeliness of the mailing of mail ballots.

12. Our office currently has approximately 60,000 mail ballot certificate envelopes (with the witness/notary requirement) in stock. We ordered them in the winter in preparation of the 2020 election cycle before the pandemic struck.

13. Should the witness/notary requirement remain on the mail ballot certificate envelopes, I will ship the envelopes we have in stock to our vendor. The vendor however, has indicated this is not an ideal situation due to their processing procedures.

14. As of 6 pm on July 27, our office had provided our mail ballot vendor with all necessary mail ballot package inserts including ballots, instruction sheets, "I Voted" stickers, mailing envelopes, return envelopes, and mail ballot certificate envelopes.

15. To be clear, we also need to know which mail ballot certificate envelope will be used as that will dictate which instruction sheet will be printed for mail ballot voters.

Accordingly, we need to provide final instructions to our vendor immediately to be able to mail out mail ballots in a timely manner.

16. In addition, our vendor has also indicated the November envelope order must be placed by August 3 in order to begin mailing mail ballots on October 5. The reason that the vendor needs so much lead time for the November General Election is because the vendor will be printing millions of mail ballots for states across the country.

Sworn on July 28, 2020 under pains and penalties of perjury.



Robert Rock

**UNITED STATES COURT OF APPEALS
For the First Circuit**

No. 20-1753

COMMON CAUSE RHODE ISLAND; LEAGUE OF WOMEN VOTERS OF
RHODE ISLAND; MIRANDA OAKLEY; BARBARA MONAHAN;
MARY BAKER

Plaintiffs – Appellees

v.

NELLIE GORBEA, in her official capacity as Secretary of State of Rhode Island;
DIANE L. MEDEROS, in her official capacities as member of the Rhode Island
Board of Elections; JENNIFER L. JOHNSON, in her official capacities as member
of the Rhode Island Board of Elections; ISADORE S. RAMOS, in his official
capacities as member of the Rhode Island Board of Elections; LOUIS A. DIMONE
JR., in his official capacities as member of the Rhode Island Board of Elections;
WILLIAM E. WEST, in his official capacities as member of the Rhode Island
Board of Elections; RICHARD H. PIERCE, in his official capacities as member of
the Rhode Island Board of Elections; DAVID H. SHOLES, in his official
capacities as member of the Rhode Island Board of Elections

Defendants – Appellants

RHODE ISLAND REPUBLICAN PARTY; REPUBLICAN NATIONAL
COMMITTEE

Movants – Appellants

On Appeal from the United States District Court
for the District of Rhode Island, No. 1:20-cv-00318-MSM-LDA

**BRIEF OF DEFENDANTS-APPELLANTS MEDEROS, DESIMONE,
JOHNSON, PIERCE, RAMOS, SHOLES, AND WEST IN OPPOSITION TO
APPELLANTS' MOTION FOR STAY**

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I. INTRODUCTION

Appellants Rhode Island Republican Party and Republican National Committee (the “Appellants”) appeal the denial of a motion to intervene and the entry of a consent decree which the District Court granted after a fairness hearing held on July 28, 2020 (“Consent Decree”). The Consent Decree suspends the requirements imposed by R.I. Gen. Laws §§ 17-20-2.1(d)(1), 17-20-2.1(d)(4), 17-20-2.2(d)(1), 17-20-2.2(d)(4), 17-20-21 and 17-20-23(c) that requires two witness or notary public signature on the certifying envelope containing a mail ballot (the “notary or witness requirement”) for the 2020 election cycle, in light of the parties’ agreement that these requirements impose an undue burden on voters under the existing pandemic.

Appellants have misconstrued the posture of this case, and the nature of the parties to the Consent Decree and have failed to meet the requirements to obtain a stay. The Consent Decree perfects the considered judgment of the Rhode Island Board of Elections (the “Board”),¹ the entity given plenary powers to supervise and administer Rhode Island elections and elections laws, including the requirements suspended by the Consent Decree. *See* R.I. Gen. Laws § 17-7-5. Therefore, the

¹ Defendant-Appellees Diane C. Mederos, Louis A. Desimone Jr., Jennifer L. Johnson, Richard H. Pierce, Isadore S. Ramos, David H. Sholes, and William E. West are the members of the Board.

allegations and cases raised by Appellants are inapposite here, and nothing else presented by Appellants justifies, let alone requires, grant of a stay.

II. BACKGROUND

Rhode Island has been in a declared state of emergency since March 9, 2020 due to the novel coronavirus pandemic. The pandemic involves the severe acute respiratory syndrome coronavirus 2 (“SARS-CoV-2” or “Coronavirus”) a novel coronavirus known to cause coronavirus disease (“COVID-19”). The Coronavirus is known to be highly communicable, and upon information and belief is currently believed to be transmitted through respiratory droplets that collect on surfaces or may linger in the air. The highest risk of transmission is believed to be posed by contact with an infected individual. It is also known that a number of individuals are asymptomatic carriers of the Coronavirus, able to transmit the virus despite showing light or no symptoms.

In response, the State, as well as numerous national and international public health agencies, have introduced interventions, primary among them the imposition of “social distancing”—asking individuals outside of their homes to stay at least six feet away from each other and to limit time spent indoors or in close proximity together—as well as limiting the size of social gatherings and asking individuals to wear cloth face coverings while in public.

Besides the numerous interventions by Governor Raimondo, the Rhode Island General Assembly, and state health officials, Rhode Island has also seen significant intervention from the Rhode Island Board of Elections. Under R.I. Gen. Laws § 17-7-5(a), the Board possesses the “functions, powers, and duties that are prescribed by this title or otherwise pursuant to law.” The Board is empowered to make “any rules, regulations, and directives that it deems necessary to carry out the objects and purposes of this title ...” R.I. Gen. Laws § 17-7-5(c). It has exclusive jurisdiction to decide any “matters pertinent and necessary to the proper supervision of the election laws.” R.I. Gen. Laws § 17-7-5(d).

The Board’s authority is uniquely broad in the Rhode Island statutory scheme. The Board is a quasi-judicial entity empowered to investigate and decide cases and controversies involving all aspects of elections laws, from voter registration and eligibility, to campaign finance and voter fraud investigations, to appeals of the decisions of local canvassing authorities. *See generally* R.I. Gen. Laws §§ 17-7-5, 17-9.1-30, 17-11-1. The Board is also tasked with final authority over the administration of elections and election laws for all primary and general elections, from the nominating process through the final recount. *See generally* R.I. Gen. Laws §§ 17-7-5, 17-14-1, 17-15-1, 17-19-24. Additionally, the Board is granted subpoena power, is exempted from Rhode Island’s Administrative Procedures Act, and its decisions on elections matters are final, subject to review

only by petition of certiorari to the Rhode Island Supreme Court. *See* R.I. Gen. Laws §§ 17-7-8, 42-35-18(7); *Van Daam v. DiPrete*, 560 A.2d 953, 954 (R.I. 1989) (“There is no statutory appeal provided from a decision of the Board of Elections.”).

Most importantly for this proceeding, the Board is responsible for the oversight, administration and adjudication of all matters pertaining to the use of mail ballots for any election conducted in Rhode Island. R.I. Gen. Laws § 17-20-1. This includes the process of certifying and counting all mail ballots cast for all elections held in Rhode Island. R.I. Gen. Laws § 17-20-26. Only the Board can, on its own motion, disqualify a mail ballot “which it determines, based upon a preponderance of the evidence, was not voted by the elector who purportedly cast it, or was voted by an elector who was not eligible to vote by mail ballot, or was not obtained and voted in the manner prescribed” by law. R.I. Gen. Laws § 17-20-33.

The Rhode Island Supreme Court has recognized the Board’s singular authority to oversee, administer, and modify the election process in order to effectuate a fair and efficient election process. *See generally DeLuca v. R.I. Bd. of Elections*, 376 A.2d 326, 328 (R.I. 1977) (Board has jurisdiction to hear all matters that affect the election process, including the authority to determine if a letter of resignation is legally binding upon the office holder). This authority was perhaps

most broadly recognized in the Rhode Island Supreme Court’s decision in *Buonanno v. DiStefano*, 430 A.2d 765, 769 (R.I. 1981), where the Court endorsed the power of the Board to call for a limited new election—a power not expressly granted to the Board—to resolve a problem created by malfunctioning voting machines. The Court noted that “at the same time as there is no express authorization to conduct a new election, there is also no express prohibition of such a power,” *id.* at 770, and concluded that the Board has all powers necessary to “fashion a remedy that would generate a valid expression of the will of the voters” and to “carry out the objects and purposes of the elections laws of this state.” *Id.* at 771.

Beginning on March 17, 2020, the Board has held a series of evidentiary hearings and heard testimony from the Rhode Island Department of Health (“DOH”), the Office of the Secretary of State (“SOS”), the National Guard, the U.S. Postal Service and the local boards of canvassers, as well as the Board’s Executive Director, concerning the transmission and effects of the COVID-19 pandemic on the systems on which elections rely, and how the pandemic affects and interacts with the ordinary requirements and burdens imposed by Rhode Island election laws. The Board also weighed guidance issued by DOH, the U.S. Department of Health & Human Services, and the Centers for Disease Control and

Prevention, with particular emphasis on guidance advising the public to avoid close contact with other people.

Based on this testimony, the Board suspended the notary or witness requirement for the Presidential Preference Primary on March 26, 2020. Board Appendix at 3-4. The Board did so in acknowledgement of the increased burden imposed on voters because of COVID-19, particularly for voters who are quarantined or are vulnerable to the effects of this virus, such as seniors and those people with compromised immune systems. *Id.* The Board recognized that this requirement necessitates very close contact with other people, which potentially exposes voters to the virus. *Id.* The Board also considered alternative measures to safeguard the integrity of the election process, and determined that the comparison of the voter's signature on the certification envelope to their signature on the ballot application was sufficient. *Id.*

Weighing testimony and evidence it had considered beginning in March, as well as the largely unchanged burdens imposed by notary or witness requirement under the conditions imposed by the pandemic, the Board voted unanimously on July 13, 2020 to suspend the signature and notary requirements for the September 8 Statewide Primary and the November 3 General Election. Ten days later, the Plaintiffs-Appellees filed the Complaint in the action below, seeking an order from the District Court which would effectively ratify the Board's July 13 vote.

III. ARGUMENT

A. This Court Should Deny Appellants' Motion to Stay

Appellants request this Court stay entry of the Consent Decree pending this Court's resolution of the instant appeal.² This Court must consider:

(1) whether the applicant has made a strong showing of success on the merits; (2) whether the applicant will be irreparably harmed absent injunctive relief; (3) whether issuance of the stay will injure other parties; and (4) where the public interest lies.

Acevedo-Garcia v. Vera-Monroig, 296 F.3d 13, 16 n.3 (1st Cir. 2002) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776–77 (1987)).

1. Appellants Have Failed to Make a "Strong Showing" of Success on the Merits

In order to make a "strong showing" of success on the merits, Appellants must make a strong showing that they would be able to prevent the entry of the Consent Decree.

As would-be intervenors, Appellants are "entitled 'to present evidence' and 'have [their] objections heard.'" *P.R. Dairy Farmers Ass'n v. Pagan*, 748 F.3d 13, 20 (1st Cir. 2014) (quoting *Local No. 93, Int'l Ass'n of Firefighters, AFL-CIO v.*

² Appellants have also briefed an appeal of the denial of their Motion to Intervene, since a precondition of their request for a stay is that they be recognized by this Court as a party. *See* Fed. R. App. P. 8(a). The Board did not oppose Appellants' Motion to Intervene before the District Court, and takes no position regarding that Motion before this Court, save for observing that 1) Appellants made no allegation of collusion between the Board and the Plaintiff-Appellees, and would deny any such allegation.

City of Cleveland, 478 U.S. 501, 529 (1986)). “The key consideration in this type of process inquiry is whether there has been ‘a fair opportunity to present relevant facts and arguments to the court, and to counter the opponent's submissions.’” *Id.* (quoting *U.S. v. Cannons Eng’g Corp.*, 899 F.2d 79, 94 (1st Cir.1990)). However, “[a]n intervenor lacks the power to block a consent decree merely by withholding its consent,” and the intervenor’s right to be heard “does not translate into a right to block a settlement.” *Id.*

When reviewing a settlement or consent decree, a district court must:

assure itself that the parties have validly consented; that reasonable notice has been given possible objectors; that the settlement is fair, adequate, and reasonable; that the proposed decree will not violate the Constitution, a statute, or other authority; that it is consistent with the objectives of Congress; and, if third parties will be affected, that it will not be unreasonable or legally impermissible as to them.

Durrett v. Hous. Auth. of City of Providence, 896 F.2d 600, 604 (1st Cir. 1990).

Approval of a consent decree is “committed to the trial court’s informed discretion.” *Id.* (quoting *Cannons Eng’g Corp.*, 899 F.2d at 84). Appellants must show that the court abused its discretion in accepting the settlement. *Id.* To show abuse of discretion, objectors must “demonstrate that the trier made a harmful error of law or has lapsed into ‘a meaningful error in judgment’” *Id.* (quoting *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 923 (1st Cir. 1988)).

Moreover, “[w]oven into the abuse of discretion standard here is a ‘strong public policy in favor of settlements’” *Id.* (quoting *U.S. v. Comunidades*

Unidas Contra La Contaminacion, 204 F.3d 275, 280 (1st Cir. 2000)). This strong public policy interest “has particular force where, as here, a government actor committed to the protection of the public interest has pulled the laboring oar in constructing the proposed settlement.” *See Cannons Eng’g Corp.*, 899 F.2d at 84 (citing *F.T.C. v. Standard Financial Mgmt. Corp.*, 830 F.2d 404, 408 (1st Cir.1987); *S.E.C. v. Randolph*, 736 F.2d 525, 529 (9th Cir.1984)). The relevant standard “is not whether the settlement is one which the court itself might have fashioned, or considers as ideal, but whether the proposed decree is fair, reasonable, and faithful to the objectives of the governing statute.” *Id.*

The District Court found the Consent Decree met all criteria for acceptance. *Durrett*, 896 F.2d at 604. As outlined above, the Board is the party “charged with the responsibility to carry out the objects and purposes of the election laws of [Rhode Island],” including the notary or witness requirement at issue in this case. *Buonanno v. DiStefano*, 430 A.2d 765, 772 (R.I. 1981); *see also* R.I. Gen. Laws § 17-7-5(a) & (c). The Board’s approval of the decree merits “deference to the [Board’s] expertise and to the parties’ agreement.” *Cannons Eng’g Corp.*, 899 F.2d at 84; *see also* *Clingman v. Beaver*, 544 U.S. 581, 586 (2005) (“The Constitution grants States broad power to prescribe the Times, Places and Manner of holding Elections for Senators and Representatives, which power is matched by state control over the election process for state offices.”) (internal citation omitted).

“The doubly required deference—district court to agency³ and appellate court to district court—places a heavy burden on those who purpose to upset a trial judge’s approval of a consent decree.” *Cannons Eng’g Corp.*, 899 F.2d at 84.

2. *The Purcell Principle is Inapposite to This Case*

Appellants claim that it was an abuse of discretion for the District Court to adopt the Consent Decree, because it was contrary to the principle set forth in *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) that federal courts refrain from rewriting state election procedures shortly before elections. *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S.Ct. 1205, 1207 (2020) (“This Court has repeatedly emphasized that lower federal courts should ordinarily no alter the election rules on the eve of an election.”) (citing *Purcell*).

Federal courts are cautioned from issuing injunctions modifying state election laws close to elections. *Id.* However, the *Purcell* principle does not refer to a mere arbitrary deadline beyond which federal courts are forbidden to act.⁴

³ *Cannons Engineering* involved consent decrees crafted by the Environmental Protection Agency, whose interpretation of the law—including its determination that the consent decrees were appropriate—was owed deference. 899 F.2d at 83-84. Though in this case the Board is a state agency, its determinations are owed similar deference. *Pagan*, 748 F.3d at 20-21 (showing deference to consent decree crafted by Puerto Rican government agency). Moreover, as noted above, this deference is arguably increased even further where the matter at issue is a state’s administration of its election laws. *Clingman*, 544 U.S. at 586.

⁴ Likewise, *Purcell* says nothing about promoting “the same neutral rules throughout the election process.” Appellants’ Brief at p. 12. Nothing in *Purcell* addresses, for example, an act of a *state legislature* changing electoral rules on the

549 U.S. at 5-6. Indeed, *Purcell* does not hold that courts *should*—let alone *must*— “allow the election to proceed without an injunction suspending [election] rules.” *See* Appellants’ Brief at p. 12; *Purcell*, 549 U.S. at 5-6. Rather, the *Purcell* principle refers to the caution expressed by the *Purcell* Court that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.”⁵ 549 U.S. at 4-5; *see also Republican Nat’l Comm.*, 140 S.Ct. at 1206-07 (noting that “unusual nature” of court’s injunction, including the fact that it necessitated a second injunction barring the release of election results, “underscores the wisdom of the *Purcell* principle, which seeks to avoid this kind of judicially created confusion.”).

However, Appellants have not presented *any* evidence of voter confusion or the likelihood thereof. Instead, they have treated the *Purcell* principle as simply terminating the authority of federal courts in close proximity to an election. *But see Frank v. Walker*, 874 U.S. 929 (2014) (vacating order of Seventh Circuit which stayed injunction issued by district court, *allowing election to proceed under the*

eve of an election. *Purcell* simply acknowledges that “[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” 549 U.S. at 4.

⁵ *Purcell* was focused on the appellate court’s failure to adequately defer to the judgement of the district court, when it granted an injunction the district court denied. 549 U.S. at 5-6.

district court's injunction which suspended voter identification requirement). Such an oversimplification cannot be the basis of a “strong showing” of success on the merits to justify a stay. *See Acevedo-Garcia*, 296 F.3d at 16 & n.3.

3. *Appellants' Arguments Ignore the Deference Owed to the District Court and the Board*

Moreover, Appellants make no effort to tailor their argument to the deference this Court owes the District Court or the Board under *Pagan* and *Cannons Engineering*. *Pagan*, 748 F.3d at 20; *Cannons Eng'g Corp.*, 899 F.2d at 84. As noted above, the Consent Decree is “encased in a double layer of swaddling.” *Cannons Eng'g Corp.*, 899 F.2d at 84. Therefore, to obtain a stay of the Consent Decree, Appellants would have to make a “strong showing” not only that the District Court has abused its discretion, but also that the Board, as the entity charged with administering elections laws in the State of Rhode Island, has likewise done so. *Id.* at 89-90.

Appellants instead tailored their arguments to the standard that might apply to seek a stay of an *injunction* by the District Court. Appellants focus on the constitutionality of the notary or witness requirement, and on the breadth of the remedy consented to by the parties. However, this is the wrong inquiry. The question before this Court is not whether the *District Court* erred in holding that the notary or witness requirement were unconstitutional, not least of which because it did not do so hold. ADD10. Rather, the question before this Court is whether

the Board erred in its considered judgment—both when it initially voted to suspend the notary or witness requirement, and when it voted to accept the Consent Decree. *Cannons Eng’g Corp.*, 899 F.2d at 89-91. Appellants make no argument even approaching the standard elucidated in *Cannons Engineering*. This is a woeful failing. *Acevedo-Garcia*, 296 F.3d at 16 n.3.

The Consent Decree was the result of a negotiations between the parties. The District Court found that the parties negotiated in good faith. ADD11. Appellants presented no evidence of said collusion. The District Court acted well within its discretion in finding that the agreement was negotiated and consented to fairly. *Durrett*, 896 at 604.

Likewise, Appellants admit that they submitted briefs and participated in the Motion to Intervene on equal footing with the parties. *See* Appellants’ Brief at p. 3-4.

Finally, though the terms of the Consent Decree are contrary to the terms of Rhode Island statutes, the District Court’s adoption of the Consent Decree reflects both the District Court’s and Board’s finding that the departure from the suspended notary and witness requirement statutes is appropriate. *Cannons Eng’g Corp.*, 899 F.2d at 84-86. The Board, which first made that finding on July 13, 2020, weighed the interests underlying the notary or witness requirement, and the burden the notary or witness requirement imposes on individual voters in the context of the

COVID-19 pandemic. *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983). The District Court endorsed the Board's finding when it stated that it anticipated reaching the same holding had the parties reached a hearing on the merits. ADD10.

Appellants rely on the fact that a proposal to suspend the notary or witness requirement was considered but did not pass the General Assembly. However, Appellants present no legislative history. *See* Appellant's Brief at p. 2-3, 15. Instead, Appellants present the quoted Tweets of a single member of the minority party in the Rhode Island House—which passed the bill—and the fact that Governor Raimondo did not directly address the notary or witness requirement via executive order prior to the filing of the complaint. *Id.*

Ultimately, the District Court acted within its discretion to accept the Consent Decree. This Court's role is deferential to both the District Court's and the Board's findings, and nothing Appellants has presented is sufficient to overcome that deference. *Cannons Eng'g Corp.*, 899 F.2d at 90-92.

B. Appellants Have Presented No Evidence of Irreparable Harm or Harm to Other Parties

Appellants must present evidence that denial of the stay will cause them irreparable harm. Appellants raise two arguments: that they will suffer irreparable harm if they are denied a stay because the matter may become moot, and that suspending the notary or witness requirement will lead to voter confusion and

voter fraud. However, Appellants fail to present evidence on this point, and the evidence point strongly against a finding that they, or anyone else, will suffer irreparable harm.

1. The Risk of Mootness Cannot Justify Grant of a Stay in This Case

Appellants rely on *Providence Journal Co. v. Fed. Bureau of Investigation*, 595 F.2d 889, 890 (1st Cir. 1979). However, their reliance is misplaced. Unlike the defendant and intervenor in *Providence Journal*, Appellants have failed to make a strong showing of success on the merits. *Id.*

Secondly, irreparable harm prevented by the stay must be balanced against the harm the stay may cause. *Id.* (granting stay where harm caused by publication would “irreparably harm[] appellants” but “granting of a stay will cause relatively slight harm to appellee”).

Unlike *Providence Journal*, a stay is liable to cause at least as much harm to the Board and the other Appellees as to Appellants. Firstly, the same concern for mootness would apply equally to Appellees—grant of a stay would presumably ensure that at least one election would be subject to the notary or witness requirement, contrary to the will of the parties to the Consent Decree and the determination of the Board. While Appellants’ alleged harm implicates their ability to challenge the suspension of the notary and witness requirement as applied in the coming election, the Board’s concern implicates nothing less than

the State’s “compelling interest in preserving the integrity of its election process.” *Purcell*, 549 U.S. at 4 (quoting *Eu*, 489 U.S. at 231). As alleged elsewhere, the Board is the entity empowered to administer Rhode Island elections law, and it is broadly empowered to issue directives “make any rules, regulations, and directives that it deems necessary to carry out the objects and purposes of this title not inconsistent with law.” R.I. Gen. Laws § 17-7-5(c). To grant a stay requiring the State to hold an election subject to a requirement which the Board suspended does violence to the State’s ability to administer its own elections. *Id.*; *see also Thompson*, 959 F.3d at 812 (“the decision to drastically alter [a state]s election procedures must rest with [that state’s elections administration] ... not the courts.”).

Moreover, the vendor used by the Secretary to prepare the mail ballots required a final design for the mail ballot certification envelopes on July 17, which requirement was already stretched by the Secretary’s request to the vendor to print envelopes in compliance with the then-unentered Consent Decree. *See* Affidavit of Robert Rock (“Rock Aff”) at ¶¶ 7-11 (Board Appx. 15-16). A stay would further complicate the Secretary’s ability to “arrange, print, and distribute” the mail ballots and certification envelopes as called for under R.I. Gen. Laws § 17-6-4. *Id.* at ¶¶ 12-15 (Board Appx. 16). It would impose significant burdens on the Secretary, and would almost certainly be irreversible even if this Court were to affirm the District

Court, at least without potentially causing significant voter confusion—precisely what Appellants claim they wish to avoid. Under these circumstances, this Court should decline to issue a stay on the basis of *Providence Journal*.

2. *Appellants Present No Evidence of Irreparable Harm to Other Parties*

Appellants also allege irreparable harm caused by voter fraud and/or voter confusion. However, they present no evidence that such fraud or confusion is likely to occur at all, let alone that it is likely to rise to a constitutional violation or affect an election outcome. *Griffin v. Burns*, 570 F.2d 1065, 1079 (1st Cir. 1978) (discussing irregularities in management of election rising to constitutional violations where outcome of election was changed).

Appellants' focus on potential fraud is misplaced. The notary and signature requirement *is not used*, as a rule or a practice, *to prevent voter fraud*.

The Board prevents voter fraud by comparing the signature on the certification envelope with the signature on the voter's mail ballot application, which is done at an open meeting. R.I. Gen. Laws § 17-20-26(c). The voter's mail ballot application signature is itself first verified by the voter's local board of canvassers by comparing to the voter's signature on their voter registration card, before the application can be accepted and the mail ballot issued. R.I. Gen. Laws § 17-20-10(a). Unlike the notary or witness requirement, the signature comparison method permits the Board to reliably and securely confirm the identities of voters

prior to counting their ballots—every voter registration, application, and certification envelope must always have the voter’s signature, ensuring that the Board will *always* have the information necessary to verify the identity of the voter. R.I. Gen. Laws §§ 17-20-26(c), 17-20-10(a).

Additionally, voters whose mail ballot certification envelopes are found to contain discrepancies—chiefly, a signature which does not match the application signature—are notified that a mail ballot has been received in their name with a discrepancy. 410 RICR § 20-00-23.4(B)(e).

Likewise, voters whose mail ballot applications which are accepted pursuant to R.I. Gen. Laws § 17-20-10 are prohibited from voting in person at polling places unless they surrender their mail ballot or deliver to their local board an affidavit stating that they never received a mail ballot. R.I. Gen. Laws § 17-20-29(a). If a voter were to visit a polling place, that voter would be made aware that they are ineligible to vote a regular ballot because of their accepted mail ballot application, instead only received a provisional ballot. R.I. Gen. Laws § 17-20-29(b).

There is no evidence of voter confusion or likelihood of voter confusion. The Board’s determination that the notary or witness requirement ought to be suspended was motivated in part due to the potential confusion that would be caused by only a partial suspension. The Consent Decree does not seek to replace one set of rules with a conflicting set of rules—rather, it seeks to entirely suspend

those rules. Moreover, it does so with considerable publicity, and in concert with the preparation of the materials and instructions voters will actually receive. *See* Rock Aff at ¶¶ 7-11 (Board Appx. 15-16). It is difficult to imagine significant voter confusion where voters would receive instructions and certification envelopes that have been modified to comply with the Consent Decree's requirements, including eliminating notary and witness signature lines on the certification envelopes.

3. *The Board's Determinations Regarding Voter Fraud and Voter Confusion are Entitled to Deference by This Court*

Finally, Appellants' argument appears to have been framed around an injunction rather than a consent decree, insofar as Appellants treat the Consent Decree as solely an order of the District Court. It bears repeating that the Consent Decree was approved by the Board at a vote held on July 27, 2020. That vote was made pursuant to the Board's findings, after an evidentiary hearing held on July 13, that the COVID-19 pandemic continued to magnify the burden imposed by the notary or witness requirements to unconstitutional proportions. As a result of those findings, the Board voted to suspend the notary or witness requirement for the remainder of the 2020 election cycle.

As the agency empowered to interpret and administer Rhode Island election laws, both the District Court and this Court must defer to the Board's interpretation of state laws. *See Antilles Cement Corp. v. Acevedo Vila*, 408 F.3d 41, 51

(“deference is owed to state agency's interpretation of state law”); *Pharm. Research & Mfrs. of Am. v. Concannon*, 249 F.3d 66, 75 (1st Cir. 2001) (“we owe deference to [state agency’s] interpretation of the [state act governing use of state Medicaid funds]). Likewise, Appellants must defer to, or at least rebut, the Board’s consideration of those harms in suspending the notary or witness requirement in order to challenge the Consent Decree. See *Cannons Eng’g Corp.*, 899 F.2d at 84. Where Appellants have failed to do so, this Court should deny their application for stay.

C. The Public Interest Favors Denial of the Motion to Stay

Finally, the public interest in this case favors denial of the stay. Unlike the cases cited by Appellants, which involved injunctions *imposed* on state officials, the Consent Decree is the work of the Board and the Secretary, respectively the state body charged with administering Rhode Island election laws—including the certification and tabulation of mail ballots—and the state official tasked with preparing and furnishing “[a]ll mail ballots, application forms, certified envelopes for enclosing ballots, any other envelopes that may be necessary, and instructions as to voting, use of ballots, and affidavits” used by voters. R.I. Gen. Laws §§ 17-7-5 & 17-20-12.

The Consent Decree merely perfects the determination by the Board that the notary or witness requirement ought to be suspended. Appellants neither

meaningfully challenge that determination, nor present any authority that does so.

Compare with Cannons Eng'g Corp., 899 F.2d at 84-92.

IV. CONCLUSION

For the reasons stated above, this Court should deny Appellant's Motion for Stay.

Defendants-Appellants,
Diane C. Mederos, Louise A. DeSimone,
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Isadore S. Ramos, David H. Sholes and
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CERTIFICATE OF COMPLIANCE

This brief in opposition complies with Rule 27(d)(2) in that it contains 4,920 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) in that it was prepared using a proportionally spaced type, Times New Roman, 14 point font.

/s/ Raymond A. Marcaccio

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Raymond A. Marcaccio

No. 20-1753

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

COMMON CAUSE RHODE ISLAND, LEAGUE OF WOMEN VOTERS OF RHODE ISLAND,
MIRANDA OAKLEY, BARBARA MONAHAN, and MARY BAKER,
Plaintiffs-Appellees,

v.

NELLIE M. GORBEA, in her official capacity as Secretary of State of Rhode Island,
DIANE C. MEDEROS, LOUIS A. DESIMONE JR., JENNIFER L. JOHNSON, RICHARD
H. PIERCE, ISADORE S. RAMOS, DAVID H. SHOLES, and WILLIAM E. WEST, in
their official capacities as members of the Rhode Island Board of Elections,
Defendants-Appellees,

REPUBLICAN NATIONAL COMMITTEE and REPUBLICAN PARTY OF RHODE ISLAND,
Movants-Appellants

On Appeal from the United States District Court
for the District of Rhode Island
No. 1:20-cv-318-MSM

RESPONSE TO EMERGENCY MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

Apparently terrified that voter turnout will increase, as it did during the 2020 Presidential Preference Primary (“PPP”) when the State of Rhode Island, without legal challenge, suspended the requirement that voters who want to vote by mail have their signatures witnessed by two people or notarized, Republicans have brought this frantic request for a stay of a consent judgment pending their appeal of an order denying their last-minute attempt to intervene and scuttle the agreed-upon resolution of the parties’ dispute. This is not a surprise given reports that “[t]he RNC has committed \$20 million this year to fight the Democrats’ legal challenges to the signature and other mail-in voting laws”. <https://www.npr.org/2020/06/01/865043618/need-a-witness-for-your-mail-in-ballot-new-pandemic-lawsuits-challenge-old-rules> The Republicans’ Emergency Motion to Stay Pending Appeal should be denied for the reasons below.

I. BACKGROUND

Movants-Appellants Republican National Committee and Republican Party of Rhode Island (the “Republicans”) have moved for expedited consideration of this appeal, and the Court has granted their request. While the Rhode Island Secretary of State (the “Secretary”) has no objection to expedited consideration, it is important to point out that the Affidavit of Suzanne Cienki, the Chair of the Rhode Island Republican Party, does not present the full context for how late is the Republicans’ attempt to intervene and appeal.

Ms. Cienki testifies that a printing vendor in Rochester, New York “indicated the

process for printing would take 2 weeks and a rush job could be completed in 8-10 days.” Affidavit of Suzanne Cienki, attached to Movant-Appellants Emergency Motion to Expedite Emergency Motion to Stay Pending Appeal as Exhibit A (“Cienki Affidavit”), ¶ 7.¹ Ms. Cienki, however, failed to note that the printing vendor from Rochester she mentions is not the State’s vendor.

Robert Rock, the Director of Elections for the Rhode Island Department of State with over 15 years of experience working in elections administration, did testify by affidavit in the District Court that: “In order to provide enough time for voters to receive, vote, and send back their mail ballots by Primary Day (September 8), it is imperative our vendor begin mailing ballots on August 10.” Affidavit of Robert Rock (Doc # 23) (“Rock Affidavit”) ¶6. The printing vendor informed the Director of Elections that to meet the August 10th deadline, the vendor needed to have the ballot return envelopes information by July 17.² As the consideration of the Consent Judgment was continued to July 28, the Director of Elections testified: “I immediately notified our vendor who stressed the importance of knowing that day (July 27), how to proceed.” Rock Affidavit ¶10. The printing vendor for the State of Rhode Island has been hard at work printing the ballot return envelopes without the requirements for witnesses or a notary but with the request for optional information, the last four

¹ Ms. Cienki did not testify nor submit an affidavit to the District Court.

² July 17 is almost exactly 3 weeks before August 10. Ms. Cienki in her affidavit says that the Rochester printing company said the “printing would take 2 weeks and a rush job could be completed in 8-10 days.” Cienki Affidavit ¶ 7. Even assuming that Ms. Cienki’s assertions are true, the time has already passed in order to meet the August 10th date and make sure that voters have a chance to receive, complete and return their mail ballot.

numbers of the voter's social security number and/or driver's license number. Stopping the printing now will only wreak havoc on the mail ballot voting process and make it more likely that mail voters will be disenfranchised. For that reason alone, Republicans' Motion to Stay should be denied.

A. Governor Raimondo's Executive Order for 2020 Presidential Preference Primary

As alleged by Plaintiffs-Appellees in their Complaint:

Governor Raimondo responded to these serious (COVID-19) public health dangers and the need to provide Rhode Island citizens with a safe and accessible means of voting for the June presidential primary election by issuing an executive order that, among other measures, eliminated the two witness/notary requirement challenged here.³ Defendant Gorbea's 2020 Presidential Primary Election Task Force ("PPE Task Force" or "task force") specifically reflected that "[r]emoving the two witness/notary requirement on ballots made it easier for older Rhode Islanders and those living alone" to vote safely. As a result of these measures, the PPS task force concluded that the executive order was a success and led to a "[d]ecreased number of in-person voters [which] allowed for social distancing best practices."⁴

Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, and Declaratory Judgment, ¶33 (Doc. #1). In response to the Governor's Executive Order, the Secretary worked with the Rhode Island Board of Elections ("Board of Elections") to conduct a predominantly mail ballot election for the 2020 Presidential Preference Primary. The Board of Elections passed a resolution to require that in place of two witness/notary requirement, the voter be asked to voluntarily provide his or her driver's license and/or the last four digits of their social security

³ Executive Order 20-27 at 2 (April 17, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-27.pdf>.

⁴ 2020 Presidential Primary Election Task Force Slideshow at 4 (July 9, 2020).

number.⁵ Accordingly, the Secretary worked with a printer vendor to prepare certifying envelopes without the two witness/notary requirement but with a request for driver's license and/or the last 4 digits of a voter's social security number. In addition, for the June PPP the Secretary also took an unprecedented step of mailing a mail ballot application to all voters.

The result of the Governor's Executive Order and the work of the Secretary of State and the Board of Elections was a huge increase in mail ballot applications from voters requesting a mail ballot. *See* [Proposed] Intervenor-Defendants' Opposition to the Proposed Consent Decree, ("83% of voters cast their ballots in the June 2020 presidential primary by mail versus only 4% in the same primary four years earlier")⁶ (Doc. #21 at 26). Even with this huge increase in requests for mail ballots, the Movants-Appellants cannot point to one case of voter fraud and offered no such evidence in the District Court.

B. September Statewide Primary Election and November General Election

The Secretary and co-defendant/co-appellee Board of Elections both expressed their views, in their official capacities, that the 2020 September statewide primary

⁵ The Help America Vote Act, 42 U.S.C. §15483(a)(5)(A)(i), requires, with limited exceptions, that first time registrants provide either their driver's license number or the last 4 digits of social security number when they register to vote. This information is used to verify the voter's identity. 42 U.S.C. §15483(a)(5)(B)(i)-(ii).

⁶ In the most similar Rhode Island PPPs of the recent past, 38,294 voted in 2004 and 22,670 voted in 2012. *See* <https://elections.ri.gov/elections/results/2004/preference/> and <https://www.ri.gov/election/results/2012/presidential-preference-primary/>. By comparison, 125,991 voted in 2020 with 83% of those voters voting by mail ballots. <https://www.ri.gov/election/results/2020/presidential-preference-primary/#>

election and November general election should be held similarly to the 2020 Presidential Preference Primary and conducted primarily through mail. Both, the Secretary and the Board of Elections recommended a continued suspension of the two witness/notary requirement on certifying envelopes.

Unlike the 2020 Presidential Preference Primary, the Rhode Island Governor did not issue an executive order and the matter was taken up by the Rhode Island General Assembly, which previously was not in session when the Governor issued Executive Order 20-27 related to the Presidential Preference Primary. The Rhode Island House of Representatives passed a bill that would have eliminated the two witness/notary requirement for the 2020 September statewide primary and November general election. However, the Rhode Island State Senate failed to act on the same bill before adjourning on July 17, 2020. The result of the Rhode Island Senate's failure to act was this lawsuit. Significantly, the Rhode Island Senate has not sought to intervene or object to the entry of the Consent Judgment in this case.

C. Complaint For Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, and Declaratory Judgment.

Less than a week after the Rhode Island Senate failed to act, Plaintiffs-Appellees filed the Complaint in this matter. Despite Movants-Appellants' false assertions, the Secretary did not "[find] another way to suspend the witness requirement" or "turn[] to this lawsuit for relief." Emergency Motion for Stay Pending Appeal, at 3, 19. As indicated in Court, on July 22, 2020 Plaintiffs-Appellees' counsel emailed counsel for

the Secretary, Board of Elections, and the Rhode Island Attorney General's Office telling them that Plaintiffs would file a complaint in federal court and asking whether the soon-to-be defendants would be opposing their request. Approximately 7 hours after the email, the Secretary's counsel responded via email and wrote that the Secretary would not be opposing Plaintiffs' request for injunctive relief.

Movants-Appellants strain to make a big "collusion" issue out of the Secretary's position not to oppose the request for injunctive relief. As the Secretary's counsel pointed out during the fairness hearing in District Court, the Secretary had the benefit of a 14-page decision in *Acosta v. Restrepo*, No. 1:20-CV-00262, 2020 U.S. Dist. LEXIS 115782 (D.R.I. June 25, 2020). In *Acosta*, Judge McElroy, the same judge as the present case, concluded that as applied during the COVID-19 pandemic, the requirements of "in-person solicitation and receipt of signatures, an in-person witness, and use of a common petition form upon which qualified voters sign" for a candidate to qualify to appear on the ballot, were unconstitutional. *Id.* at *4. Given that prior and very recent ruling by the same District Court Judge, it was reasonable to predict that the District Court would grant Plaintiffs relief in the present case and that opposing the request for injunctive relief would be fruitless.

Further evidence that there was no collusion here between the parties is found in the affidavit of the Director of Elections. By July 17, the printing vendor had finalized the form for the certifying envelope to meet the August 10th deadline for mailing mail ballots. Rock Affidavit ¶ 7. Mr. Rock testified: "Due to this ongoing

litigation, I asked the vendor to remove the witness and notary requirements from the envelopes and to add an ‘optional information’ section asking for voter’s driver’s license number or last four digits of their social security like we had done in the Presidential Primary.” *Id.* ¶ 9. Despite Movants-Appellants’ false statements to the contrary, the Secretary was ready to enforce the two witness/notary requirement up until the time of the lawsuit.

On July 24, 2020, Plaintiffs-Appellees and Defendants-Appellees Secretary and Board of Elections, had an in-chambers conference with Judge McElroy. Because the Defendants-Appellees did not object to Plaintiffs-Appellees’ requested relief and indeed thought the requested relief would be good public policy, it was suggested that the parties see if they could agree on a Consent Judgment. However, the District Court also set the matter down for a hearing on Monday, July 27.

After the court conference on July 24, the Secretary’s counsel received a text from Movants-Appellants’ current counsel, Brandon Bell, which read in relevant part: “Anything happen today with Judge McElroy? National GOP may seek to intervene”. The Secretary’s Counsel responded a minute later, in relevant part: “The parties are working on a Consent Judgment so if you want to intervene you should try soon.” Mr. Bell responded in relevant part: “I may reach out to you about Common Cause case but not sure what your (sic) friends at the White House will do, if anything.” So, as of 2:32 pm on July 24, Mr. Bell knew that the parties were working on a Consent Judgment. Movants-Appellants are misleading when they write “The Republican party was not

invited to participate in the negotiations.” Emergency Motion for Stay Pending Appeal at 3. The Republican National Committee and Republican Party of Rhode Island knew about lawsuit but apparently had not made a decision to intervene.

D. The Republicans’ Motion to Intervene

On July 26, 2020, at literally the eleventh hour, 11:52 PM to be exact, the Republicans filed their Motion to Intervene. (Doc. # 10). On July 27, 2020, the District Court held its scheduled hearing in this matter and directed the Republicans to perfect their Motion to Intervene by filing a responsive pleading by 7 pm that evening. The District Court directed the Secretary to file any objection by noon on July 28, 2020 and scheduled a fairness hearing for July 28, 2020 at 3 pm. The Secretary filed her Objection to Movants-Appellants’ Emergency Motion to Intervene but intentionally and explicitly did not object to the Republicans being heard at the fairness hearing. In her objection to intervention, the Secretary cited numerous cases where the Republican Party or Republican officials were denied their requests to intervene in election-related cases due to the significant prejudice that can arise in elections from complications and delays resulting from the intervention. Objection at 3-5. (Doc. #22).

E. Consent Judgment and Fairness Hearing

At the fairness hearing, the parties described the process leading to the Consent Judgment. The Secretary’s counsel informed the District Court that he had worked with counsel for the Board of Elections as well as the Rhode Island Attorney General’s Office to revise the Plaintiffs-Appellants’ proposed Consent Judgment. In fact, an

Assistant Attorney General was present at the fairness hearing to answer any questions the District Court might have relating to the Attorney General's Office participation in the settlement process. The Secretary's counsel also pointed out that despite the Republicans' assertions that she "obtained nothing", the Secretary obtained the ability to ask all mail ballot applicants for their driver's license number and/or last 4 digits of the social security number. Furthermore, at the insistence of the Secretary and the Board of Elections, Plaintiffs-Appellees waived their right to attorneys' fees and costs.

Movants-Appellants argue that they have an interest that is not adequately protected by the Secretary or Board of Elections. The Republicans assert that they have an interest in conserving resources, mobilizing voters and promoting electoral prospects. Emergency Motion for Stay Pending Appeal at 10. Movants-Appellants do not explain how these alleged interests are impaired by this litigation and Consent Judgment. The Secretary and Board of Elections have an interest in free, fair, and safe elections. The Republicans' interest should be the same.⁷ The fact that the Republicans disagree with the Secretary and Board of Elections' view of the two witness/notary requirement⁸ does not mean that the Republicans' interest is not being adequately

⁷ In the District Court, the Movants-Appellants argued: "Removing this requirement – particularly for an election with unprecedented levels of absentee voting – poses a serious threat that fraudulent or otherwise ineligible ballots will be cast." [Proposed] Intervenor-Defendants' Opposition to the Proposed Consent Decree at 24. (Doc. #21). Yet, Movants-Appellants offered no evidence of any fraud in the 2020 PPP which had unprecedented levels of mail ballots. Moreover, the Movants-Appellants' alleged interest in protecting against fraudulent or ineligible ballots is the same interest that the Secretary and the Board of Elections have. In fact, the Secretary and the Board of Elections is asking all mail ballot voters for their driver's license number and/or the last 4 digits of their social security number.

⁸ The Republicans argue: "As for the witness requirement, Rhode Island will allow voters to teleconference with remote notaries." Emergency Motion for Stay Pending Appeal at 2. If the Republicans had made that argument at the District Court, the Secretary would have pointed out that there are only 118 remote notaries in Rhode Island.

represented. Memorandum and Order at 8, fn. 5. (Doc. #25) (“the Court found that the RNC did not assert an interest any different from that asserted by the named defendants. They simply claimed a desire to ‘protect’ their voters from possible election fraud and to see that existing laws remained enforced. That is the same interest the defendant agencies are statutorily required to protect.”)

In addition, in response to Movants-Appellants’ legal argument that the District Court should not change rules close to an election, the Secretary pointed out that in fact, the 2020 Presidential Preference Primary had been conducted primarily through mail ballots without the two witness/notary requirement. Given the vast increase in the use of mail ballots for the PPP, voters were much more likely to be confused by a new two witness/notary requirement than by the entry of the Consent Judgment and the suspension of that requirement.

The District Court agreed with the Secretary and granted the Motion for Entry of Consent Judgment. The District Court also denied Movants-Appellants’ Motion to Intervene. Memorandum and Order at 8, fn. 5. (Doc. #25). This Appeal and Emergency Motion for Stay Pending Appeal followed.

F. Overview of Mail Ballot Voting in Rhode Island

Under Rhode Island law, any voter may vote by mail and the voter does not need a specific reason to vote by mail. R.I. Gen. Laws § 17-20-2(4). The voter must fill out a mail ballot application, sign it (without any witnesses or notary), and return it to the local board of canvassers. R.I. Gen. Laws §§ 17-20-2.1; 17-20-13. The local board of

canvassers is then required to review the application for compliance with the requirements of the law and to check the signature on the mail ballot application against the voter's signature from the voter's original registration card. R.I. Gen. Laws § 17-20-10 (a). If the signature on the application and the voter's original registration card match, the local board of canvassers certifies the application to the Secretary of State through the Central Voter Registrations System ("CVRS"). R.I. Gen. Laws § 17-20-10 (c).⁹ The local boards of canvassers maintain a separate list of all voters who applied for a mail ballot. R.I. Gen. Laws § 17-20-8. That list is publicly available for inspection.

Once the CVRS has been updated with the board of canvassers' notation that a voter has properly applied for a mail ballot, the Secretary of State mails the voter a mail ballot package which consists of an instruction sheet on how to complete the ballot, the actual ballot, a certifying envelope which the voter uses to place the voted ballot, and a return envelope that the voter uses to place the certifying envelope and mail the voted ballot to the Rhode Island Board of Elections. Rock Affidavit ¶ 14; R.I. Gen. Laws §§ 17-20-10 (d)(1); 17-20-12. More specifically, Rhode Island law explicitly provides: "The secretary of state shall cause to be prepared and printed and shall furnish

⁹ "Upon the certification of a mail ballot application to the secretary of state, the local board shall enter on the voting list the fact that a mail ballot application for the voter has been certified and shall cause the delivery of the certified mail ballot applications together with the signed certified listing thereof in sealed packages to the state board of elections." R.I. Gen. Laws §17-20-10(c). This is important because a voter who has applied for a mail ballot is not allowed to vote at the polls. R.I. Gen. Laws §17-20-29. The law also provides:

Prior to each election, the secretary of state shall also furnish to the chairperson of the state committee of each political party a list of the names and residence addresses of all persons to whom mail ballots have been issued. The secretary of state shall also furnish to a candidate for political office, upon request, a list of the names and residence addresses of all persons to whom mail ballots have been issued within his or her district.

R.I. Gen. Laws §17-20-10(e).

with each mail ballot an envelope for sealing up and certifying the ballot when returned.” R.I. Gen. Laws § 17-20-21¹⁰. The statute also provides that the certifying envelopes “shall be printed in substantially the following form” and includes a notary signature block as well as spaces for 2 witness signatures. R.I. Gen. Laws § 17-20-21.

With some statutory exceptions, “[i]n order to be valid, the signature of the elector on the certifying envelope containing a voted ballot must be made before a notary public, or other person authorized by law to administer oaths where signed, or where the elector voted, or before two (2) witnesses who shall set forth their addresses on the form.” R.I. Gen. Laws § 17-20-2.1 (d)(4).

Once mail ballots are returned by the voter, the Board of Elections is responsible for certifying mail ballots and counting them. R.I. Gen. Laws §17-20-26. The law requires that the Board of Elections’ certification be public and explicitly provides:

Notice of these sessions shall be given to the public on the state board of elections' website, the secretary of state's website, and announcements in newspapers of general circulation published at least twenty-four hours before the commencing of any session. All candidates for state and federal office, as well as all state party chairpersons, shall be given notice by telephone or otherwise of the day on which ballots affecting that candidate's district will be certified; provided, that failure to effect the notice shall in no way invalidate the ballots.

R.I. Gen. Laws §17-20-26 (a)(2).

¹⁰ By statute, the Secretary of State is responsible for furnishing mail ballot supplies. Specifically, R.I. Gen. Laws §17-20-12 provides:

All mail ballots, application forms, certified envelopes for enclosing ballots, any other envelopes that may be necessary, and instructions as to voting, use of ballots, and affidavits, shall be furnished and supplied by the secretary of state for use in mailing application forms, ballots, and other supplies to mail voters to carry out the provisions of this chapter, but each local board shall print or stamp upon the application form and upon the return envelope the address of the local board. The secretary of state is authorized to interpret and apply the provisions of this chapter in a manner that effects the legislative intention set forth in this chapter.

The Board of Elections is required to “(1) Determine the city or town in which the voter cast his or her ballot and classify accordingly; and (2) Compare the name, residence, and signature of the voter with the name, residence, and signature on the ballot application for mail ballots and satisfy itself that both signatures are identical.” R.I. Gen. Laws §17-20-26 (c)(1)-(2). There is no explicit requirement that the Board of Elections examine the witnesses or notary on the certifying envelope.

The candidates have a right to object to mail ballots during this certification process. The law explicitly provides:

The board shall establish guidelines setting forth the grounds for challenging the certification of mail ballots. These guidelines shall recognize that if a ballot can be reasonably identified to be that of the voter it purports to be, and if it can reasonably be determined that the voter was eligible to vote by mail ballot and if the requirements of § 17-20-2.1 were complied with, it should not be subject to frivolous or technical challenge. The burden of proof in challenging a mail ballot as not obtained and/or cast in conformance with this chapter is on the person challenging the ballot. Once the irregularity is shown, the burden of proof shall shift to the person defending the ballot to demonstrate that it is the ballot of the voter it purports to be, that the voter was eligible to vote by mail ballot, and that all of the applicable requirements of § 17-20-2.1 were complied with. The guidelines shall be adopted at a public meeting of the board and shall be made available prior to the start of the certification process for mail ballots.

R.I. Gen. Laws §17-20-26 (e).

II. STANDARD OF REVIEW

Orders denying a motion to intervene are reviewed under an abuse of discretion standard. *Public Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998). Denials of intervention *as of right* may be reversed only “if the court fails to apply the general standard provided by the text of Rule 24(a)(2), or if the court reaches a decision that so

fails to comport with that standard as to indicate an abuse of discretion." *Id.* The First Circuit has recognized that “despite its nomenclature, intervention ‘as of right’ usually turns on judgment calls and fact assessments that a reviewing court is unlikely to disturb except for clear mistakes. . . . In practice, the district court enjoys a reasonable measure of latitude” *Daggett v. Comm'n on Governmental Ethics and Election Practices*, 172 F.3d 104, 113 (1st Cir. 1999). As to the denial of *permissive* intervention, appellate review is even more restrictive. *Maine v. Director, United States Fish & Wildlife Serv.*, 262 F.3d 13, 21 (1st Cir. 2001) (it is entirely with the District Court’s discretion to deny permissive intervention because it would unduly delay the case).

Motions to stay pending appeal of a district court order are evaluated under the four-part standard applied to preliminary injunctions. *Acevedo-Garcia v. Vera-Monroig*, 296 F.3d 13, 16 (1st Cir. 2002). The considerations are: (1) whether the applicant has made a strong showing of success on the merits; (2) whether the applicant will be irreparably harmed absent injunctive relief; (3) whether issuance of the stay will injure other parties; and (4) where the public interest lies. *Id.* at 16 n.3; *accord Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (holding that traditional four-part standard applies to motions for a stay pending appeal). The First Circuit has clarified that the *sine qua non* of the stay pending appeal standard is whether the movant is likely to succeed on the merits. *Acevedo-Garcia*, 296 F.3d at 16; *Latino Political Action Comm., Inc. v. City of Boston*, 716 F.2d 68, 69 (1st Cir. 1983) (denying a motion to stay pending appeal of a court order invalidating Boston election rules because movant’s likelihood of success was too low to justify granting of

the stay). In essence, the granting of a stay depends on “whether the harm caused movant without the stay, *in light of the movant's likelihood of eventual success on the merits*, outweighs the harm the stay will cause the non-moving party.” *Id.* (emphasis added).

III. ARGUMENT

A. The Court Should Deny The Motion to Stay Because Movants-Appellants Cannot Succeed On Their Intervention Claim.

The Movants-Appellants cannot come close to showing that the District Court abused its discretion when it denied their motion to intervene. As pointed out above, the First Circuit has recognized that “despite its nomenclature, intervention ‘as of right’ usually turns on judgment calls and fact assessments that a reviewing court is unlikely to disturb except for clear mistakes...” *Daggett*, 172 F.3d at 113. The District Court here correctly and fairly denied the Movants-Appellants’ motion to intervene.

Because the District Court acted appropriately denying the Movants-Appellants’ motion to intervene, the Emergency Motion for Stay Pending Appeal should be denied. Movants-Appellants cannot show the most important factor for a stay – a likelihood of success on the merits. *Acevedo-Garcia*, 296 F.3d at 16; *Georgia Muslim Voter Project v. Kemp*, 918 F.3d 1262 (11th Cir. 2019) (Pryor, C.J. concurring)(denying stay pending appeal and concluding that the district court had not abused its discretion in issuing an injunction ordering the Secretary of State of Georgia to instruct county elections officials to provide prerejection notice and an opportunity to be heard in the event of a perceived signature mismatch for mail ballots); *Michigan State A. Philip Randolph Inst. v.*

Johnson, 833 F.3d 656 (6th Cir. 2016) (denying stay pending appeal of a preliminary injunction barring enforcement of Michigan’s law prohibiting straight-party voting as movant had failed to meet its burden to show a likelihood of success on the merits).

i. The District Court correctly denied Movants-Appellants’ motion to intervene because it would unduly delay the case and prejudice the parties.

In ruling on a motion to intervene under FED. R. CIV. PROC. 24, the court must weigh whether the proposed intervention will unduly delay the case or prejudice the existing parties. *Culbreath v. Dukakis*, 630 F.2d 15, 21 (1st Cir. 1980) (courts should consider the prejudice to existing parties for motions to intervene filed under Rule 24(a) or (b)). Several courts have denied the intervention of unnecessary parties in election-related cases due to the significant prejudice that can arise from complications and delays resulting from the intervention.

In *One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394 (W.D. Wis. 2015), plaintiffs filed suit challenging several state voting laws. A group of Republican officials and registered voters sought to intervene as defendants. *Id.* at 396. The proposed intervenors asserted a protected interest in ensuring that they are not defeated by fraudulent votes and avoiding the appearance of corruption in the electoral process. *Id.* at 396. The court denied the motion to intervene, paying particular attention to the fact that “adding the proposed intervenors could unnecessarily complicate and delay all stages of this case.” *Id.* at 399. For the court, the electoral nature of the case “require[d] a higher-than-usual commitment to a swift resolution.” *Id.* Because

plaintiffs challenged the State’s election procedures, the court recognized, in an order issued on October 28, 2015, that it needed to resolve these challenges “well ahead of the November 2016 election to avoid any voter confusion” and that “even minor delays . . . could jeopardize the parties’ ability to obtain a final judgment . . . in time for the election.” *Id.*

Likewise, in *N. Carolina State Conf. of NAACP v. Cooper*, 332 F.R.D. 161 (M.D.N.C. 2019), plaintiffs sought to strike down state laws requiring voters to provide photographic identification before voting in person and expanding the number of poll observers and the number of people who can challenge ballots. Less than one month after the plaintiff filed suit, a group of Republican officials filed a motion to intervene as defendants. *Id.* at 164. In denying the motion to intervene, the court focused on the fact that the outcome of the case “could have direct impact on the upcoming election cycle, beginning with primary elections scheduled in early 2020.” *Id.* at 172. In an order issued in June 2019, the court held that the electoral nature of the claims at issue and the imminence of the 2020 election “require[d] a swift resolution on the merits to bring certainty and confidence to the voting process.” *Id.* Given the proximity of the electoral cycle, the court concluded that the intervention would “unnecessarily complicate and delay” the case and, therefore, jeopardize the Court’s ability to reach final judgment in advance of the impending election cycle. *Id.* (quoting *One Wis. Inst.*, 310 F.R.D. at 399).

In *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236 (D.N.M. 2008), plaintiffs challenged state laws requiring the registration of non-government voter registration agents and providing for various procedures and penalties regarding the activities of such agents. A group of voters, state officials, and the Republican Party of New Mexico filed motions to intervene as co-defendants. *Id.* at 241. In an order issued one month before the state deadline to register voters for the November 2008 election, the court denied the proposed intervention to avoid any unnecessary delays as the case was “very time-sensitive.” *Id.* at 259.

Lastly, in *SEIU, Local 1 v. Husted*, 887 F. Supp. 2d 761 (S.D. Ohio 2012) *aff'd* 515 F. App'x 539 (6th Cir. 2013), the court denied the intervention by a group of voters in consolidated cases challenging the constitutionality of Ohio's provisional ballot system. The court noted that the delay caused by the intervention and resulting prejudice to the parties was “of particular concern in this election case.” *Id.* at 772. The Sixth Circuit affirmed, holding that the delay posed a significant risk of upsetting the expedited schedule necessitated by the upcoming election. *SEIU Local 1 v. Husted*, 515 F. App'x 539, 542 (6th Cir. 2013).

In all these cases¹¹, the court denied intervention due, in part, to concerns about undue delay and prejudice to the parties even though the relevant electoral deadlines in each case were months, or even a full year, away. *See One Wis. Inst.*, 310 F.R.D. at

¹¹ Perhaps not by coincidence, in three of the four cases cited, it is Republicans who are trying to intervene.

399 (one year); *N. Carolina State Conf. of NAACP*, 332 F.R.D. at 172 (more than six months); *Am. Ass’n of People with Disabilities v. Herrera*, 257 F.R.D. at 259 (one month); *SEIU, Local 1 v. Husted*, 887 F. Supp. 2d at 771-72 (three months). Here, Rhode Island’s primary and general 2020 elections are only mere *weeks* away. As a result, concerns about unduly delays and prejudice to the parties caused by the proposed intervention are even more pressing. Any minor delays caused by the Republicans’ proposed intervention will most likely impact the state’s ability to conduct well-ordered elections, especially amidst a global pandemic.

To explain the prejudice to the Secretary and the negative impact on the upcoming elections, the Secretary submitted the Affidavit of the Secretary of State’s Director of Elections, Robert Rock, which explained the printing process for the mail ballots and more specifically, the mail ballot certifying envelopes. As Mr. Rock explained, the printing vendor needed a response by July 27, 2020 to have the mail ballots including the mail ballot certifying envelopes ready to be mailed out by August 10, 2020. Rock Affidavit ¶ 6.

ii. The District Court Correctly Found that Movants-Appellants’ Interest was adequately Represented by the Existing Parties

In the District Court, the Movants-Appellants argued: “Removing this requirement – particularly for an election with unprecedented levels of absentee voting – poses a serious threat that fraudulent or otherwise ineligible ballots will be cast.” [Proposed] Intervenor-Defendants’ Opposition to the Proposed Consent Decree at

24. (Doc. #21). Yet, Movants-Appellants offered no evidence of any fraud in the 2020 PPP which had unprecedented levels of mail ballots. Moreover, the Movants-Appellants' alleged interest in protecting against fraudulent or ineligible ballots is the same interest that the Secretary and the Board of Elections have. In fact, the Secretary and the Board of Elections are asking all mail ballot applicants for their driver's license number or the last four digits of their social security number.

In considering the Movants-Appellants' motion for intervention, "the Court found that the RNC did not assert an interest any different from that asserted by the named defendants. They simply claimed a desire to 'protect' their voters from possible election fraud and to see that existing laws remained enforced. That is the same interest the defendant agencies are statutorily required to protect." Memorandum and Order at 8, fn. 5. (Doc. #25). Accordingly, the District Court correctly denied Movants-Appellants' motion to intervene.

B. Movants-Appellants Have Not Shown Any Irreparable Harm from the District Court's Denial of their Motion to Intervene.

The Movants-Appellants have not shown any irreparable harm in this case. In the District Court, the Movants-Appellants offered no evidence of mail ballot fraud. Even with a 2020 Presidential Preference Primary that saw over 100,000 Rhode Islanders vote by mail, the Republicans were not able to offer one case of fraud.

Furthermore, Rhode Island law requires that signatures on applications and mail ballot certifying envelopes be matched to the voter's signature. R.I. Gen. Laws §§ 17-

20-10 (a), 17-20-26 (c)(1)-(2). In addition, Rhode Island law:

- Requires that a public list be compiled of all voters who have applied and obtained a mail ballot;
- Requires that the Republican Party be given a copy of the mail ballot list;
- Requires that a candidate, upon request, be given a copy of the mail ballot list for his or her race;
- Requires that the Republican Party and its candidates be given oral notice at least 24 hours before mail ballot certification begins;
- Allows the Republican Party and its candidates an opportunity to be present during certification and to object to any mail ballot; and
- Prohibits anyone who has obtained a mail ballot from voting at the polls on election day.

R.I. Gen. Laws §§ 17-20-8, 17-20-10(e), 17-20-26(a)(2), 17-20-29. The Republicans have more than a fair opportunity to contest mail ballots.

The Republicans do not point to any evidence of mail ballot voter fraud because they have no evidence. Moreover, the State of Rhode Island has numerous safeguards in place to protect against any interest that the Republicans may have. Most importantly, the Republicans have the right to be present at the certification of mail ballots and to object to any mail ballot.

C. The Public Interest Favors Denying of the Motion to Intervene as it Would Risk an Orderly Election Like the 2020 Presidential Preference Primary.

The September statewide primary is approximately 35 days away. The Secretary of State's Director of Elections has testified: "In order to provide enough time for voters to receive, vote, and send back their mail ballots by Primary Day (September 8), it is imperative our (printing) vendor begin mailing ballots on August 10." Rock Affidavit ¶ 6. Furthermore, Mr. Rock testified: "Approximately three weeks ago, K&H

(our printing vendor) began their internal process of preparing to meet our August 10th deadline. For them to meet the deadline they indicated that envelopes had to be finalized by July 17, a deadline we met.” Rock Affidavit ¶ 7. At this point, allowing the Republicans to intervene threatens the right of thousands of Rhode Islanders to vote by mail as they did during the 2020 Presidential Preference Primary. The Republicans’ motion for a stay should be denied.

Given that Movants-Appellants fail on their motion to intervene, that should end this appeal. As Movants-Appellants concede: “When ‘final judgment is entered with or after the denial of intervention,’ the proposed intervenor can appeal intervention and ‘file a protective notice of appeal as to the judgment, to become effective if the denial of intervention is reversed.’” Emergency Motion for Stay Pending Appeal at 5. There is no need to consider the Consent Judgment because the intervention was properly denied in this case.

D. Movants-Appellants Have Not Shown a Likelihood of Success on Their Challenge to the Consent Judgment.

In their Emergency Motion for Stay Pending Appeal, the Movants-Appellants make three arguments for why the Consent Judgment is invalid. According to the Movants-Appellants the consent judgment: (1) violates the *Purcell* principle; (2) suspends a constitutional state law; and (3) is fatally overbroad. Emergency Motion for Stay Pending Appeal at 12-18.

i. The Consent Judgment does not violate the Purcell principle.

The Movants-Appellants argue that under *Purcell v. Gonzalez*, 549 U.S. 1 (2006), “federal courts are not supposed to change state election rules as elections approach.” Emergency Motion for Stay Pending Appeal at 12. However, in the present case, the District Court is approving a Consent Decree entered into by the parties including representatives of the State, namely the Secretary and the Board of Elections. The cases cited by Movants-Appellants all involve government entities requesting stays from injunctions. In *Purcell*, the State of Arizona and county officials applied for a stay from an injunction. 549 U.S. at 2. Likewise, in the Wisconsin case that Movants-Appellants cite, the Wisconsin Legislature applied for a stay from an injunction. *Republican National Committee v. Democratic National Committee*, 589 U.S. ____ (2020). In the Alabama case, the Alabama Secretary of State and the State of Alabama applied for a stay. *Merrill v. People First of Alabama*, 591 U.S. ____, 2020 WL 3604049 (July 2, 2020).

The present case is unique as it is a Consent Judgment and the Secretary and Board of Elections do not seek to lift a stay. Instead, the Secretary and Board of Elections seek to prevent the Court from entering a last-minute stay so that the 2020 September primary and November general election may be conducted in a fashion that they deem safe. Chief Justice Roberts recently admonished a district court and pointed out: “The District Court did not accord sufficient weight to the State’s discretionary judgments about how to prioritize limited state resources across the election system as a whole.” *Little v. Reclaim Idaho*, 591 U.S. ____ (July 31, 2020). The Consent Judgment in

this case is totally appropriate and reflects the judgment of the Secretary and Board of Elections on how to prioritize limited state resources. Contrary to the Republicans' contention, the *Purcell* principle mandates that this Court **not** intervene to grant a last-minute stay and thereby interfere with the decisions of the Rhode Island state officials as to how to conduct their elections.

Movants-Appellants wrongly contend that the Secretary and Board of Elections are changing the rules on the eve of the election. As pointed out by the District Court: “the Court rejected the proposed intervenors’ main argument that ‘changing the rules’ on the eve of the election would cause voter confusion. In fact, the opposite is true. The last rules explained to voters eliminated the signature and notary requirement for the June 2, 2020, presidential preference primary. Approving the Consent Decree maintained that status quo. *Enforcing* the signature and notary requirement would have ‘changed the rules.’” Memorandum and Order at 8-9, fn. 5. (Doc. #25).

ii. The Consent Judgment is lawful as the witness requirement is unconstitutional as applied during the COVID-19 Pandemic.

The District Court expressly found: “While the Consent Decree seeks to transgress existing Rhode Island statutory election law, had there been a hearing on the merits of the plaintiffs’ prayer for injunctive relief, the Court would have found that the mail-ballot witness or notary requirement, as applied during the COVID-19 pandemic, is violative of the First and Fourteenth Amendments to the United States Constitution because it places an unconstitutional burden on the right to vote.” Memorandum and

Order at 10. (Doc. #25). The District Court’s ruling is consistent with a case it had decided merely a month earlier. *Acosta*, 2020 U.S. Dist. LEXIS 115782. In *Acosta* the District Court found that the Rhode Island ballot qualification laws for candidates, which required “in-person solicitation and receipt of signatures, an in-person witness, and use of a common petition form upon which qualified voters sign” was unconstitutional as applied during the COVID-19 pandemic. *Id.* at *4.

iii. The Consent Judgment is not overbroad and is tailored to protect the State’s interest in fair elections.

Movants-Appellants claim that the consent decree is overbroad. Emergency Motion for Stay Pending Appeal at 17. Apparently, Movants-Appellants suggest that the exception to the witness/notary requirement should simply apply to the three plaintiffs, and the subset of voters who cannot find witnesses or vote in person. Emergency Motion for Stay Pending Appeal at 17-18. The Movants-Appellants do not address the administrative challenges of having such narrow proposed relief. Furthermore, the fact that Movants-Appellants do not like the alternative of asking for the voter’s driver’s license number and last four digits of their social security number does not mean that the Consent Judgment is overbroad.

The Movants-Appellants cite to a District of Minnesota case in support of their claim that the Consent Judgment is overbroad. Emergency Motion for Stay Pending Appeal at 18. However, on August 3, 2020, a state court in Minnesota, over the objection of the Republican National Committee, granted a motion to enter a consent

decree which suspended the witness requirement for mail ballots in Minnesota. While the court allowed the Republican National Committee to permissively intervene, the court concluded:

The benefits of the relief sought will accrue equivalently to all voters, whether they cast their votes for Democrats, Republicans, Independents, or the Green Party – no voters would be obligated to endanger themselves and their community to exercise their right to vote, and those who cast their ballots on Election Day would be counted. The Committees present no evidence that the outcome of this litigation will specifically disadvantage their candidates or the voters they represent.

LaRose v. Minnesota Secretary of State, 62-CV-20-3149 (Second Judicial District Minn., August 3, 2020). The Consent Judgment in the present case is also very similar to a consent decree which enjoined Virginia officials from enforcing their witness requirement for absentee ballots. *League of Women Voters v. Virginia State Board of Elections*, No. 6:20-cv-00024, 2020 WL 2158249 (W.D. Va. May 5, 2020).

E. Movants-Appellants Will Not Suffer Irreparable Harm Without a Stay.

Movants-Appellants have not shown how they will be irreparably harmed by the Consent Judgment. Looking at Rhode Island’s 2020 Presidential Preference Primary which was conducted without the two witness/notary requirement, the data suggests that Movants-Appellants can expect an increase in turnout of Republican voters.

Despite Republicans’ alleged fear of “fraud,” there has been absolutely no evidence introduced of any mail ballot fraud in the 2020 Presidential Preference Primary. As outlined above, Rhode Island law provides numerous safeguards to ensure that a mail ballot applicant is indeed registered to vote. Moreover, the Secretary and

Board of Elections required that the Consent Judgment include the ability to ask mail ballot applicants for their driver's license and/or last four digits of their social security number as yet another way to confirm identity in the absence of the two witness/notary requirement. The Republicans can receive the list of mail ballot applicants and those who were actually approved for a mail ballot. They also have the right to be present at the certification of mail ballots and can object to any mail ballot.

F. The Balance of Harms and Public Interest Do Not Favor a Stay.

The balance of the harms and public interest favors the Consent Judgment, which will allow Rhode Islanders to vote by mail in the same manner that they did for the June 2, 2020 Presidential Preference Primary. Rhode Island saw a historic increase in mail balloting in June 2020 and expects to see the same in the September primary election and November general election. Furthermore, given the COVID-19 Pandemic, the public interest is promoted by protecting hundreds of thousands of voters from having unnecessary contacts with other people.

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CONCLUSION

For all the foregoing reasons, Defendant-Appellee Nellie M. Gorbea, in her official capacity as Secretary of State of Rhode Island, respectfully requests that this Court deny Movants-Appellants' Emergency Motion for Stay Pending Appeal and order such other relief as the Court shall deem just and proper.

Respectfully submitted,

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By: /s/ Angel Taveras
Angel Taveras

*Counsel for Appellee – NELLIE M. GORBEA,
in her official capacity as Secretary of State of Rhode
Island*

Dated: August 4, 2020

CERTIFICATE OF COMPLIANCE

This opposition complies with Rule 27(d)(2) because it contains 7,614 words, excluding the parts that can be excluded. This opposition also complies with Rule 32(a)(5)-(6) because it has been prepared in a proportionally spaced face using Microsoft Word 2016 in a 14-point Garamond font.

Dated: August 4, 2020

/s/ *Angel Taveras*

CERTIFICATE OF SERVICE

I filed this opposition with the Court via ECF, which will electronically notify all parties.

Dated: August 4, 2020

/s/ Angel Taveras



Angel Taveras
Tel 617.310.6096
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taverasa@gtlaw.com

August 7, 2020

Via Electronic Filing

Honorable Maria R. Hamilton
Clerk of Court
United States Court of Appeals for the First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210

RE: Rule 28(j) Letter – Common Cause Rhode Island, et als. v. Rhode Island Republican Party, et al., No.20-1753

Dear Ms. Hamilton:

At the Court's request and pursuant to Rule 28(j), I am submitting this letter on behalf of my client, Rhode Island Secretary of State Nellie M. Gorbea. Specifically, I am responding to whether an executive order by Rhode Island Governor Gina M. Raimondo would moot the present appeal. The answer is no. Rhode Island law, specifically R.I. Gen. Laws § 30-15-9, limits the Governor's emergency powers to 30 day periods and allows the Rhode Island General Assembly to "terminate a state of disaster emergency at any time." Specifically, the statute provides:

The state of disaster emergency shall continue until the governor finds that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist and terminates the state of disaster emergency by executive order or proclamation, but no state of disaster emergency may continue for longer than thirty (30) days unless renewed by the governor. The general assembly, by concurrent resolution, may terminate a state of disaster emergency at any time.

R.I. Gen. Laws § 30-15-9(b). Given that a declaration of disaster emergency can be terminated by a joint resolution of both chambers of the Rhode Island General Assembly, any executive order issued pursuant to the emergency would likely terminate as well. Moreover, while Movants-Appellants represented that an executive order by the Governor would likely made this appeal moot, the Movants-Appellants did not commit to foregoing a challenge to an executive order.

Hon. Maria R. Hamilton

August 7, 2020

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The General Assembly did not meet in full session from March 13 through June 16. The General Assembly was in session on June 17 and June 18. The Rhode Island Senate was in session on July 13 and both the House and Senate were in session on July 16.

http://status.rilin.state.ri.us/calendar_previous.aspx?id=1&type=2&title=House%20Floor;

http://status.rilin.state.ri.us/calendar_previous.aspx?id=2&type=2&title=Senate%20Floor. The

General Assembly is currently in recess. <http://www.rilegislature.gov/Pages/Default.aspx>

Should you have any questions, please let me know. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Angel Taveras", with a stylized, cursive script.

Angel Taveras

cc: Brandon Scott Bell (via electronic service)
Christopher H. Bell (via electronic service)
Julie Ebenstein (via electronic service)
Dale Ho (via electronic service)
Michael Courtney Keats (via electronic service)
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Matthew T. Oliverio
Raymond A. Marcaccio

Santiago H. Posas

All attorneys admitted in RI and MA

August 7, 2020

Via Electronic Filing

Honorable Maria R. Hamilton
Clerk of Court
United States Court of Appeals for the First Circuit
John Joseph Moakley U.S. Courthouse
Boston, MA 02210

Re: Common Cause Rhode Island, et al. v. Gorbea, et al
v. Republican Party of RI, et al
No. 20-1753
Rule 28(j) Letter

Dear Ms. Hamilton:

Defendants-Appellees Diane C. Mederos, Louis A. DeSimone, Jr., Jennifer L. Johnson, Richard H. Pierce, Isadore S. Ramos, David H. Sholes and William E. West join in the submission of the Rule 28(j) letter filed on behalf of Rhode Island Secretary of State Nellie M. Gorbea.

Sincerely,



Raymond A. Marcaccio

Honorable Maria R. Hamilton
August 7, 2020
Page Two

C: *Via Electronic Service*
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