No. _____

In the Supreme Court of the United States

REPUBLICAN NATIONAL COMMITTEE and REPUBLICAN PARTY OF RHODE ISLAND,

Applicants,

v.

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

APPENDIX TO EMERGENCY APPLICATION FOR STAY

To the Honorable Stephen Breyer,
Associate Justice of the Supreme Court of the
United States and Circuit Justice for the First Circuit

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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 C. 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. SOLES, in his official capacities as member of the Rhode Island Board of Elections,

Defendants, Appellees,

REPUBLICAN NATIONAL COMMITTEE; REPUBLICAN PARTY OF RHODE ISLAND,

Movants, Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

[Hon. Mary S. McElroy, U.S. District Judge]

Before

Torruella, Thompson, and Kayatta,
Circuit Judges.

Michael Courtney Keats, with whom Christopher H. Bell, Nicholas Carre, Avani Uppalapati, Jonathan Diaz, Fried Frank Harris Shriver & Jacobson LLP, Julie A. Ebenstein, Dale E. Ho, American Civil Liberties Union Foundation, Inc., Lynette J. Labinger, American Civil Liberties Union Foundation of Rhode Island, Jonathan Diaz, Danielle Lang, Paul March Smith, and Campaign Legal Center were on brief, for appellees Common Cause Rhode Island, League of Women Voters of Rhode Island, Miranda Oakley, Barbara Monahan, and Mary Baker.

Angel Taveras, with whom Gustavo Ribeiro, Elliot H. Scherker, and Greenberg Traurig LLP were on brief, for appellee Nellie M. Gorbea.

Raymond A. Marcaccio, with whom Oliverio & Marcaccio LLP was on brief, for appellees Diane C. Mederos, Jennifer L. Johnson, Isadore S. Ramos, Louis A. DeSimone, Jr., William E. West, Richard H. Pierce, and David H. Sholes.

Cameron Thomas Norris, with whom Thomas R. McCarthy, Patrick N. Strawbridge, Consovoy McCarthy PLLC, Brandon S. Bell, Fontaine Bell, Joseph S. Larisa, Jr. were on brief, for appellants Republican National Committee and Republican Party of Rhode Island.

August 7, 2020

Per curiam. In an action brought by Common Cause Rhode Island, the League of Women Voters of Rhode Island, and three individual Rhode Island voters against the Rhode Island Secretary of State and members of its Board of Elections, the district court denied a motion to intervene filed by the Republican National Committee and the Republican Party of Rhode Island (jointly referred to here as the "Republicans"). Following briefing and a hearing at which the court nevertheless let the Republicans participate more or less as if they had been allowed to intervene, the court entered on July 30 a consent judgment and decree. Effective for the September and November 2020 elections, the decree suspended the state's requirements that a voter using a mail ballot mark the ballot (and sign its envelope) in the presence of two witnesses or a notary; and that the witnesses or notary, in turn, sign the envelope, provide their addresses, and affirm in the space provided that "Before me . . . personally appeared the above named voter, to me known and known by me to be the person who affixed his or her signature to this ballot envelope." See 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).

The Republicans promptly appealed the denial of their motion to intervene and the entry of the consent judgment and decree. They also filed a motion to intervene to appeal and to stay the district court's judgment and decree pending a decision

on the merits of the appeal. After receiving expedited briefing and hearing oral argument on the motion to intervene and stay, we now reverse the denial of the motion to intervene for the purposes of appeal only (we otherwise refrain from deciding the full scope of intervention until we review this case on its merits). We deny the Republicans' motion to stay the judgment and decree pending the outcome of the appeal.

In reviewing a motion to stay a consent judgment and decree pending appeal, we consider the following factors: "(1) [W]hether the stay applicant has made a strong showing that it is likely to succeed on the merits, (2) whether the applicant will be irreparably injured absent a stay, (3) whether [the] issuance of the stay will substantially injure the other parties interested in the proceeding, and (4) where the public interest lies." Nken v. Holder, 556 U.S. 418, 426 (2009) (quoting Hilton v. Braunskill, 481 U.S. 770, 776 (1987)). The first two factors "are the most critical." Id. at 434. "It is not enough that the chance of success on the merits be better than negligible. . . . By the same token, simply showing some possibility of irreparable injury fails to satisfy the second factor." Id. at 434–35 (citations and internal quotation marks omitted).

The parties agree that, at least in the first instance, the likelihood of success turns in great part on whether enforcing the two-witness or notary requirement in the midst of the pandemic

is constitutional. The First and Fourteenth Amendments prohibit states from placing burdens on citizens' rights to vote that are not reasonably justified by states' "important regulatory interests." Anderson v. Celebrezze, 460 U.S. 780, 788–89 (1983); see also Burdick v. Takushi, 504 U.S. 428, 430 (1992) (ruling that Hawaii's prohibition of write-in voting did not unreasonably burden Hawaii citizens' constitutional rights). So under the Anderson-Burdick framework we weigh the "character and magnitude of the asserted injury to" the voters' rights against the "precise interests put forward by the State as justifications for the burden imposed." Anderson, 460 U.S. at 789. We note as preliminary matters first that the burdens imposed in this case may affect more fundamental rights than those at issue in Anderson and Burdick -- that is, they affect the voter's ability to actually cast a ballot, not just the procedures for getting candidates on a ballot. And second, unlike the process contemplated by the Court in Anderson, we are unable to consider the "justifications put forward by the State" here, as the "State" of Rhode Island has not objected to the consent decree in any way.

The burden imposed by these requirements in the midst of a pandemic is significant. First, many more voters are likely to want to vote without going to the polls and will thus only vote if they can vote by mail. Second, many voters may be deterred by the fear of contagion from interacting with witnesses or a notary.

Could a determined and resourceful voter intent on voting manage to work around these impediments? Certainly.[1] But it is also certain that the burdens are much more unusual and substantial than those that voters are generally expected to bear. Taking an unusual and in fact unnecessary chance with your life is a heavy burden to bear simply to vote.

Turning to the other side of the Anderson-Burdick scales, we agree with the Republicans that, in the abstract, the broader regulatory interest -- preventing voting fraud and enhancing the perceived integrity of elections -- is substantial and important. But the incremental interest in the specific regulation at issue (the two-witness or notary rule) is marginal at best. Only two other states have such a rule, and only a total of twelve require even one witness. In the current COVID-19 pandemic, Rhode Island may be the lone state where the election laws still facially require the voter to mark his or her ballot (as well as sign the envelope) before two witnesses or a notary. Cf. Ala. Code § 17-11-10(b); N.C. Gen. Stat. Ann. § 163-231(a)(1); N.C. Session Law 2020-17 § 1.(a) (reducing North Carolina's two-witness requirement to one witness for the 2020 elections).

[1] For example, counsel for the Republicans suggested at argument that senior voters, facing a higher risk of COVID-19 complications, could ask food delivery drivers to act as witnesses. Of course, this suggestion would require that another witness be available simultaneously with the food delivery driver, and that the food delivery driver be able to certify the voter's identity.

Moreover, Rhode Island just successfully completed an election without the two-witness or notary requirement in which over 150,000 mail-in ballots were requested and no evidence of fraud resulted, much less material evidence of the type of fraud that could be prevented by the two-witness or notary requirement in the first place. So the state itself views the rule as -- at best -- required in only some elections, with no coherent view (that we have heard) about which elections those might be. And Rhode Island officials charged with the conduct of fair elections apparently view the regulation's possible benefits as far outweighed by its burdens in this unusual circumstance. Indeed, no Rhode Island official has stepped forward in these proceedings, even as amicus, to tout the need for the rule. This silence certainly does not mean that the rule is not current Rhode Island law. But it does fairly support the view that the rule is not of great import for any particular regulatory purpose in the eyes of Rhode Island officials and lawmakers.

The Republicans also struggle to establish any significant likelihood of irreparable harm. They claim that their candidates may be the victims of fraudulent ballots. This is surely correct as a matter of theory. But it is dubious as a matter of fact and reality. It is not as if no protections remain. Rhode Island law provides for a local board of canvassers which ensures that the signature on all mail ballot applications (which

must be signed by the voter) matches the signature on the voter's registration card. R.I. Gen. Laws. § 17-20-10. Once a voter submits their ballot, the Board of Elections "[c]ompare[s] the name, residence, and signature [on the ballot] with the name, residence, and signature on the ballot application for mail ballots and satisf[ies] itself that both signatures are identical." R.I. Gen. Laws. § 17-20-26 (c)(2).[2]

Given the Nken standard, and given the deference accorded to a district court's exercise of its equitable discretion, Purcell v. Gonzalez, 549 U.S. 1, 5 (2006) (per curiam) (explaining that it is "necessary, as a procedural matter, for the Court of Appeals to give deference to the discretion of the District Court"), the foregoing would normally doom the Republicans' motion for a stay. The Supreme Court, however, has offered a special caution about the perils of federal courts changing the rules on the eve of an election. 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 not alter the election rules on the eve of an

[2] The Republicans also argue that they will suffer irreparable harm without a stay because allowing the elections to move forward per the consent decree will effectively moot their challenge to it. Without passing on whether this alleged harm is an appropriate one to consider for the purposes of irreparable injury, see Providence Journal Co. v. F.B.I., 595 F.2d 889, 890 (1st Cir. 1979), we note that the appellees would face precisely the same harm if we were to grant the stay.

election." (citing Purcell, 549 U.S. at 4–5 ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls."))). Given those admonishments we would be inclined to grant the stay requested -- especially as to the September primaries -- but for two unique factors in this case.

First, even in the wake of this much-publicized litigation, Rhode Island itself has voiced no concern at all that the consent judgment and decree will create any problems for the state or its voter. To the contrary, the elected constitutional officers charged with ensuring free and fair elections favor the consent judgment and decree and credibly explain how setting aside the consent judgment and decree would confuse voters. Nor has any other Rhode Island government entity sought to intervene or make its opinion known. This fact materially distinguishes this case from every other case the Republicans cite to illustrate the "Purcell principle." See Republican Nat'l Comm., 140 S. Ct. at 1205 (Wisconsin legislature joining with the Republican National Committee to challenge the district court's order); Purcell, 549 U.S. at 2 (State of Arizona and four counties seeking relief from a Ninth Circuit injunction); People First of Ala. v. Sec. of State for Ala., 2020 WL 3478093, at *1 (11th Cir. June 25, 2020) (State of Alabama and Alabama Secretary of State seeking stay of district court injunction), rev'd 2020 WL 3604049, at *1 (U.S. July 2, 2020)

(staying the district court's preliminary injunction pending appeal); League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 248 (4th Cir. 2014) (ordering the district court to enter a preliminary injunction challenged by the State of North Carolina and members of its Board of Elections enjoining legislation setting forth new voting rules), stayed at 574 U.S. 927 (2014); Ohio State Conf. of N.A.A.C.P. v. Husted, 768 F.3d 524, 561 (6th Cir. 2014) (affirming district court injunction enjoining the Ohio Secretary of State from preventing individual counties from setting additional voting hours, challenged by Secretary of State and Ohio Attorney General), stayed at 573 U.S. 988 (2014); Perry v. Perez, 835 F. Supp. 2d 209 (W.D. Tex. 2011) (adopting an interim redistricting plan against the objections of the state of Texas), stayed at 565 U.S. 1090 (2011).

Second, Rhode Island just conducted an election without any attestation requirement, in which 150,000 mail-in ballots were requested. So the status quo (indeed the only experience) for most recent voters is that no witnesses are required. Instructions omitting the two-witness or notary requirement have been on the state's website since at least mid-July. See Rhode Island Department of State, Vote from Home with a Mail Ballot, https://vote.sos.ri.gov/Voter/VotebyMail. And to the extent certain voters expect the two-witness or notary requirement, we cannot imagine that it will pose any difficulty not to have to

comply with it. For this reason, the consent judgment and decree poses no conflict with the sort of expectations that concerned the court in Purcell and no substantial specter of confusion that might deter voters from voting. To the contrary, in the absence of the consent decree, it is likely that many voters will be surprised when they receive ballots, and far fewer will vote. Perhaps as a result, the Republicans make no claim that the decree will cause a decrease in election participation.

Because of the unusual -- indeed in several instances unique -- characteristics of this case, the Purcell concerns that would normally support a stay are largely inapplicable, and arguably militate against it. Moreover, our reliance on Rhode Island's passive reaction to the litigation precludes our holding from being relied upon to open any floodgates. To the contrary, as experience shows, states will be quick to defend election laws that they see as important and worth keeping, even when they might burden voting.

We have paid attention, too, to the possibility that this litigation is collusive, with defendants having agreed to judgment just days after the suit was filed. A state official unhappy with the lawful decisions of the state legislature should not be able to round up an agreeable plaintiff who then uses collusive litigation to "force" the state to do what the official wants. Here, though, all other representatives of Rhode Island's

government have gone silent, voicing no objection at all to the consent judgment and decree. Furthermore, if state officials fairly conclude, as credibly happened here, that enforcement of a law is unconstitutional in certain circumstances, one can hardly fault them for so acknowledging. Indeed, the Secretary of State and Board of Elections are obligated to enforce Rhode Island's voting laws, provided those laws are not deemed unconstitutional. R.I. const. art. III, § 3; R.I. const. art. IV, § 12. 17 R.I. Gen. Laws §§ 17-7-4, 17-7-5. Notice, too, was given to the attorney general, who by law is obligated to act as legal advisor for all state agencies and officers acting in their official capacity and to defend them against suit, R.I. Gen. Laws § 42-9-6, and who advised the defendants, herein, throughout the proceedings below. And it would be odd indeed to say that a plaintiff cannot get relief from an unconstitutional law merely because the state official charged with enforcing the law agrees that its application is unconstitutional. Finally, there is no claim that the details of the consent decree were not negotiated at arm's length. All in all, we see no collusion, and counsel for the Republicans expressly so agreed at argument.

Finally, as to the Republicans' status as intervenors in this case, the district court's order denying intervention is **reversed in part**, only for purposes of appeal, and the motion for stay pending appeal is **denied**.

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, 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 WEST, in their official capacities as members of the Rhode Island Board of Elections, Defendants.	C.A. No. 1:20-CV-00318-MSM-LDA

MEMORANDUM AND ORDER

Mary S. McElroy, United States District Judge.

The plaintiffs, Common Cause Rhode Island, League of Women Voters of Rhode Island, Miranda Oakley, Barbara Monahan, and Mary Baker, filed this action seeking to enjoin the State's enforcement of the witness or notary requirement for the two upcoming statewide elections in 2020: the primary election on September 8 and the general election on November 3. The plaintiffs have named as defendants the Rhode Island Secretary of State and the members of the Rhode Island Board of Elections.

The parties have submitted to the Court a proposed Consent Judgment and Decree ("Consent Decree") which would resolve the plaintiffs' claims. On July 28, 2020, the Court conducted a Fairness Hearing to review the proposed Consent Decree. For the following reasons, the Court approves the Consent Decree and thereby GRANTS the parties' Joint Motion to Approve Consent Judgment (ECF No. 18.)

I. BACKGROUND

With exceptions related to voters in medical facilities, abroad, or out of state for military service, Rhode Island law requires that any voters seeking to vote by mail must have their ballot envelope signed by either two witnesses or a notary public. R.I.G.L. §§ 17-20-2.1(d)(1), (d)(4) ("[T]he 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."). The two witnesses or the notary for each ballot must actually witness the voter marking the ballot. R.I.G.L. §§ 17-20-21 and 17-20-23. Rhode Island is one of three states with such a requirement.[1]

All the parties share a concern with the integrity of the election process. The Secretary of State and Rhode Island Board of Elections share a statutory obligation to ensure full and fair elections, and the Court examines this Consent Decree with a specific eye on that public interest. To the extent that some have suggested the signature and notary requirements are necessary to prevent voter fraud, Rhode

[1] The other states with such requirements are Alabama and North Carolina. *See* Ala. Code §§ 17-11-7, 17-11-10; N.C. Gen. Stat. Ann. § 163-231(a).

Island law includes other measures to safeguard against fraud in mail-ballot procedures. The Board of Elections is statutorily required to assess mail-in ballots 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.G.L. § 17-20-26(c)(2). Additionally, voter fraud in Rhode Island is a felony, punishable by up to ten years of imprisonment and/or a fine of between $1,000 and $5,000. R.I.G.L. §§ 17-23-4, 17-26-1.

Due to the COVID-19 pandemic, Rhode Island's Governor, by executive order, suspended the two-witness or notary requirement for mail ballots in the June 2, 2020, presidential preference primary. R.I. Exec. Order No. 20-27 at 2 (Apr. 17, 2020). In that election, 83% of those voting did so by mail-in ballot, compared to less than 4% in the previous presidential preference primary of May 2016. The Governor has not issued any similar orders for the upcoming elections, despite the Secretary of State's proposal to do so. Further, the Secretary of State promoted legislation to implement mail-in voting for the remaining 2020 elections, including a provision to eliminate the witness or notary requirement. The Rhode Island House of Representatives passed this legislation, but it was not taken up by the Rhode Island Senate. At this time, the Rhode Island General Assembly has adjourned.

During this period of inaction, the COVID-19 pandemic, while it has improved in Rhode Island since the presidential preference primary, continues to threaten and permeate society in this state. Because 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, mask wearing, social distancing practices, and limitations on the size of group gatherings continue to be public health mandates. Persons in particularly vulnerable demographics—those over age 65 or with preexisting health conditions—remain advised to stay home unless they must venture out for work, medical visits, or to gather necessities.

Although Rhode Island had made much progress in slowing the spread of the virus, recent warnings indicate an uptick in infections and just days before this filing the Rhode Island Governor rescinded a planned move to Stage 4 of the state's reopening plan which would have relaxed restrictions on gatherings and public excursions. In fact, the governor reduced the maximum size of in person gatherings at a coronavirus briefing held on July 29, 2020.[2] Rhode Island's rate of transmission has risen to 1.7 – nowhere near the 1.0 goal. With the elections months away, there is no telling whether the health crisis will improve or become dramatically worse. The most reasonable inference, since Rhode Island is in a worsening trend, is that it will become more grave.

The plaintiffs maintain that the two signature or notary requirement will drive them out of their houses into the general population, with the risk to health that entails. The plaintiffs have presented data from the U.S. Census Bureau which demonstrates 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

[2] https://www.providencejournal.com/news/20200729/ri-reports-2-coronavirus-deaths-61-new-cases-raimondo-reduces-limit-on-social-gatherings.

population, live alone. Another 289,000 Rhode Islanders of voting age live with only one other person. 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. For Rhode Islanders of voting age with a disability, an estimated 42,000, or 42%, live alone.

The individual plaintiffs, Miranda Oakley, Barbara Monahan, and Mary Baker, all have provided the Court with affidavits stating that they either live alone or are in high risk groups for COVID-19 because they are of advanced age or are regularly in close contact with those that are, or have preexisting medical conditions. The organizational plaintiffs, Common Cause and the League of Women Voters, have provided affidavits attesting that the majority of their members, who are voters, are of advanced age while others live alone or have preexisting health conditions. It is their concern that the witness or notary requirements would force them 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." (ECF No. 5-1 at 1.)

The plaintiffs therefore have filed the instant suit, putting forth (1) a 42 U.S.C. § 1983 claim that the mail-ballot witness or notary requirement, as applied to the September 2020 primary and November 2020 general elections, imposes an undue burden on their right to vote in violation of the First and Fourteenth Amendments to the United States Constitution; and (2) a claim for violation of Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.* because the challenged

provisions disadvantage individuals with disabilities from participating safely in the upcoming elections and do not provide them with reasonable accommodations.

Regarding their constitutional claim, the plaintiffs assert that the witness requirement for mail voting constitutes "a severe burden on the right to vote because it forces voters to choose between exercising the franchise safely or violating social distancing guidelines and exposing themselves, their families, and their communities to a heightened risk of COVID-19." (ECF No. 1 ¶ 60.) Moreover, they argue, the State has no interest sufficient to justify maintaining the witness requirement during the COVID-19 pandemic. In response to the argument that the witnessing requirement ensures the integrity of the election, the plaintiffs counter that, while the prevention of fraud is a legitimate state interest, the state has other safeguards, including signing under oath and signature matching which protect the integrity of the voting process. There is no information in the record, nor was any brought forth, that recent Rhode Island elections are susceptible to fraud.

On July 23, 2020, shortly after filing their Complaint, the plaintiffs moved for a preliminary injunction to enjoin the defendants from enforcing the witness or notary requirements. The Court held a conference with all parties on Friday, July 24, 2020, at which time the parties informed the Court that they would seek to craft a consent decree, due to the defendants' sharing of the plaintiffs' concerns and general agreement with the plaintiffs' request, thus possibly obviating the need to proceed with the plaintiffs' motion for a preliminary injunction. The parties agreed to discuss a consent decree over the weekend and the Court scheduled a hearing on the

plaintiffs' motion for Monday, July 27, in the event the negotiations failed.

Also discussed at the Friday, July 24, conference was the Rhode Island Republican Party's publicly stated intention to seek to intervene in the matter and oppose the plaintiffs' Complaint.[3] On that same Friday, counsel for the Secretary of State informed counsel for the Rhode Island Republican Party that the parties were going to negotiate a consent decree and that if the Republican Party was going to attempt to intervene, it should do so quickly. Yet, it was not until more than 48 hours later, at approximately midnight on Sunday, July 26, that the Republican National Committee ("RNC") and the Rhode Island Republican Party filed a Motion to Intervene.[4]

By Monday, July 27, the parties had reached an accord and presented the Court with a proposed Consent Decree for review. That same day, the Court held another conference with the parties and with representatives of the proposed intervenors, the RNC and Rhode Island Republican Party. The proposed intervenors, in addition to seeking to intervene, filed an emergency "Protective Motion For Fairness Hearing" to present arguments opposing the proposed Consent Decree. The Court granted the request for the Fairness Hearing. Although the Court deferred ruling on the Motion to Intervene, it allowed the proposed intervenors to participate

[3] In fact, the local Republican Party had announced that intention the day before, on the same day that this suit was filed. http://www.ri.gop/aclu_puts_the_integrity_of_our_elections_at_risk (July 23, 2020).

[4] Notably that motion was not perfected until approximately 6:30 p.m. on Monday July 27 by the filing of a proposed answer. See FRCP 24 (c).

in the fairness hearing and to provide the Court with written briefing in advance of that hearing. The proposed intervenors did file an Objection to the proposed Consent Decree and were heard, in equal measure to the parties, at the Fairness Hearing.

The Court conducted the Fairness Hearing on July 28, 2020, during which counsel for all parties, as well as the proposed intervenors, presented argument for and against approval of the proposed Consent Decree and on the Motion to Intervene.[5]

[5] At the Fairness Hearing, the Court heard argument on the RNC and Rhode Island Republican Party's Motion to Intervene. The Court denied that Motion, finding that the proposed intervenors had not timely sought to intervene and that their interest, for a fair and lawful election, was adequately represented by the existing parties. *See* Fed. R. Civ. P. 24. Specifically, even though the time between the filing of the lawsuit and the Motion to Intervene was short in terms of actual days, it was well within the capability of the RNC and local party to meet. Although the RNC protests it did not hire its counsel until Saturday night, delay is counted toward litigants, not lawyers, and the local Party was already represented. Nothing, certainly, prohibited the RNC even on Saturday night from filing a motion to intervene, announcing its intention, and seeking more time if necessary, to file a memorandum. That, at least, would have put the parties on formal notice that the RNC was prepared to actively participate. Instead, the parties worked extensively over the weekend toward crafting a settlement. In addition, 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. The point of the would-be intervenors was their naked assertion that the defendant-parties were not adequately protecting those interests because there had been "collusion" between them and the plaintiffs. This Court found no evidence of collusion. The fact that two agencies with expertise independently reached the conclusion that the health risk was real, that the signature and notary requirements unduly burdened the right to vote, and that the parties could reach a workable solution that protected the integrity of the election, does not show collusion. If anything, it points to the reasonableness and fairness of the Consent Decree. Finally, the Court rejected the proposed intervenors' main argument that "changing the rules" on the eve of an 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

II. LEGAL STANDARD

A consent decree "embodies an agreement of the parties," that they "desire and expect will be reflected in, and be enforceable as, a judicial decree." *Aronov v. Napolitano*, 562 F.3d 84, 90–91 (1st Cir. 2009) (quoting *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 437 (2004)). Because it is entered as an order of the court, a consent decree is distinguished from a private settlement in that the latter do not "entail judicial approval and oversight." *Id.*

For that reason, a "court entering a consent decree must examine its terms to be sure they are fair and not unlawful." *Id.* at 91. Approval of a consent decree is "committed to the trial court's informed discretion." *Puerto Rico Dairy Farmers Ass'n v. Pagan*, 748 F.3d 13, 20 (1st Cir. 2014). "Woven 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)).

Should a third-party object to a consent decree, that party is entitled "to present evidence" and "have its objections heard." *Id.* (quoting *Local No. 93, Int'l Ass'n of Firefighters, AFL–CIO v. City of Cleveland*, 478 U.S. 501, 529 (1986)). The key consideration in this type of 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.* The objecting party's "right to be heard, however, does not translate into a right to block a settlement." *Id.* (citing *Local No. 93*, 478 U.S. at 529).

When reviewing a consent decree,

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primary. Approving the Consent Decree maintained that status quo. *Enforcing* the signature and notary requirement would have "changed the rules."

> the 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).

III. DISCUSSION

The Court is satisfied that the parties to the Consent Decree—the plaintiffs, the Secretary of State, and the members of the Board of Elections—all have validly consented to its terms. The Consent Decree was drafted by those parties over a weekend of negotiations. Additionally, reasonable notice has been given to possible objectors: the RNC and local Republican Party were given an opportunity to provide the Court with extensive briefing and to argue their position at the Fairness Hearing.

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. As the supreme law of the land, the United States Constitution supersedes any conflicting state statute. *See* U.S. Const. Art. IV. The Court therefore finds that the Consent Decree is lawful.

The Court also finds that the Consent Decree is fair, adequate, and reasonable. The RNC argued that the because the defendants generally were in agreement with

the plaintiffs' position on the witness or notary requirement, the litigation lacked adversarial vigor which made it collusive and, therefore, unfair. (ECF No. 21 at 19-20.) But no evidence of collusion among the parties has been presented to this Court; in fact, the parties have represented that they engaged in good-faith negotiations in the crafting of the Consent Decree's terms. It is clear that the Consent Decree was a compromise reached after sincere, arm's length negotiations. Indeed, the plaintiffs sought to do away with all extra identity requirements such as providing, in appropriate circumstances, the last four digits of a voter's Social Security Number or a photographic ID. But the parties agreed to suspend the witness and notary requirement and retain these extra identity requirements. This compromise and the fact that the plaintiffs did not get everything that they sought in the Consent Decree, as well the fact that the defendants notified the proposed intervenors of the status of the case immediately after Friday's conference suggest that the proposed intervenors' argument that this agreement was not at arm's length and was otherwise collusive is wholly without merit or evidence.

The adequacy and reasonableness of the Consent Decree also is evident by the fact that it sets forth the exact mail-ballot protocols successfully used during the June 2, 2020, presidential preference primary.

Finally, the Consent Decree is not legally impermissible as to the RNC or the Rhode Island Republican Party. Had the parties not reached a Consent Decree to suspend the witness or notary requirements for the remaining 2020 elections, this Court is empowered to find that the requirement, as applied in the current pandemic,

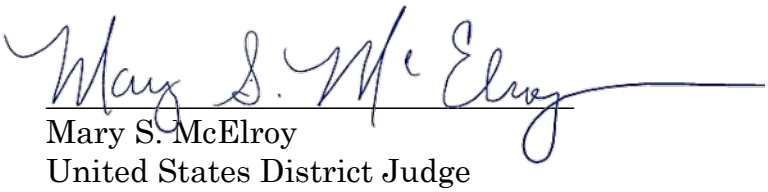
unconstitutionally limits voting access, and therefore order precisely what the Consent Decree achieves. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (holding that the constitutionality of election laws depends upon a court's balancing of the character and magnitude of any law burdening the right to vote against the relevant government interest served by the law); *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Barr v. Galvin*, 626 F.3d 99, 109 (1st Cir. 2010).

The proposed intevenors argued at the Fairness Hearing that, even if this Court were to find that the statutory requirement, as applied during the current pandemic was violative of the constitution, the Court would be powerless to intervene as the legislature had not acted. This rather improbable argument, when taken to its extreme would mean that no court could invalidate unconstitutional restrictions on voting as long as state legislatures had declined to do so. A long history of federal court review of voting laws says the contrary. "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote." *Reynolds v. Sims*, 377 U.S. 533, 554-56 (1964).

IV. CONCLUSION

For the foregoing reasons, the parties' Joint Motion to Approve Consent Judgment (ECF No. 18) was GRANTED on July 28, 2020. The Court therefore enters the Consent Judgment and Decree (ECF No. 18-1).

IT IS SO ORDERED.



Mary S. McElroy
United States District Judge
July 30, 2020

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

CONSENT JUDGMENT AND DECREE

1. Whereas Rhode Island law requires voters eligible to vote by mail, subject to very limited exclusions, to sign the certifying envelopes which contain their ballots before a notary public or two witnesses, in order for their votes to be counted (the "two witness requirement"). 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). 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(c). Rhode Island is in the minority of states with such a requirement.

2. Whereas Rhode Island and America are currently suffering from the effects of a global pandemic. The novel coronavirus, SARS-CoV-2, causes individuals to contract COVID-19, and spreads mainly from person-to-person through close contact with one another and through respiratory droplets when an infected person coughs or sneezes. COVID-19 threatens the

health of any individual no matter their age, although older persons are particularly vulnerable. As of July 24, 2020, Rhode Island has experienced over 18,000 confirmed cases and over 1,000 deaths from COVID-19.

3. Whereas 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. R.I. Exec. Order No. 20-52 (July 3, 2020). 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." R. I. Exec Order No. 20-09 (March 22, 2020). While Governor Raimondo has since eased restrictions on the maximum permissible size for public gatherings, she has cautioned that citizens should continue to avoid mass gatherings. R.I. Exec. Order No. 20-50 (June 29, 2020). The Governor explained that "the lower the attendance and gathering size, the lower the risk." *Id.* She emphasized that a key message for the public is to "[k]eep groups consistent and small." *Id.*

4. Whereas the two witness requirement necessitates that some individuals will invite one or two persons into their home, or travel outside their home to meet these witnesses. Either of these situations may violate social distancing guidelines and increase the likelihood that those involved will contract COVID-19 and transmit it to others. For this reason, the two witness requirement may carry a high risk to the general public's health. Rhode Island voters' other option, in-person voting, also may contain a risk to the general public's health. Voting in person involves waiting in line with other voters, interacting with poll workers, and touching voting equipment, which also violates social distancing guidelines.

5. Whereas Rhode Island has other laws to maintain the integrity of the electoral process. 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. R.I. Gen. Laws 17-20-26(c)(2). Further, voting fraudulently 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 §§ 17-23-4 & 17-26-1.

6. Whereas on March 26, 2020 the State Board of Elections voted to suspend the two witness requirement for mail ballots for the June 2, 2020 presidential primary, acknowledging that the requirements may result in close contact between the voter and other people, which is a known cause of transmitting COVID-19. On April 17, 2020 Governor Raimondo issued Executive Order 20-27, which suspended the two witness requirement challenged here for the June 2, 2020 presidential primary election. R.I. Exec. Order No. 20-27 (Apr. 17, 2020).

7. Whereas the suspension of the two witness requirement for the June presidential primary was successful. 83% of Rhode Island voters exercised their fundamental right to vote via mail-in ballot. *2020 Presidential Preference Primary Statewide Summary*, ST. OF R.I. BD. OF ELECTIONS (updated July 3, 2020), https://www.ri.gov/election/results/2020/presidential_preference_primary/#. Voting by mail was used most extensively by older voters. In comparison, less than 4% of the votes in the May 2016 presidential preference primary were cast by mail. A presentation published by the Election Task Force ("ETF"), established by Defendant Secretary Gorbea's office, 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. *2020 Presidential Primary Election Task Force Presentation* 4, R.I. DEP'T OF ST. (July 9, 2020), https://vote.sos.ri.gov/Content/Pdfs/PPP%20Task%20Force%20July%209%202020%20Final.pdf. 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." *Id.* The Election Task Force proposed that Rhode Island follow the same course for the September and November 2020 elections.

8. Whereas Rhode Island will hold two statewide election days in the remaining part of 2020. Primary elections for offices including U.S. Congress, Rhode Island Senate, and Rhode Island House of Representatives will be held on September 8, 2020. On July 13, 2020 Defendants constituting the State Board of Elections voted unanimously to suspend the witness and notary public requirements for the mail ballot certification envelope, under the requirements set forth under Chapter 20 of Title 17 of the General Laws in order to mitigate exposure to COVID 19. Defendant Secretary Gorbea also believes the two witness requirement should be suspended for the State's September and November, 2020 elections.

9. Whereas on July 23, 2020, the League of Women Voters of Rhode Island, Common Cause Rhode Island, Ms. Miranda Oakley, Ms. Barbara Monahan, and Ms. Mary Baker ("Plaintiffs") filed a complaint against the above-named Defendants challenging enforcement during the ongoing public health crisis caused by the spread of COVID-19 of Rhode Island's two witness requirement. Plaintiffs moved for a temporary restraining order and injunctive relief enjoining Defendants from enforcing the two witness requirement, 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), for the State's pending September 8, 2020 primary and November 3, 2020 general elections.

10. Whereas for qualified electors who wish to vote by mail, their mail ballot applications must be received by the voter's local board by August 18, 2020 and October 13,

2020 for the State primary and general election, respectively. The State must print ballots for these elections imminently.

11. Whereas in light of the data that supports the Plaintiffs' concerns for their safety if they are required to interact with others in order to cast their ballot in the pending September 8, 2020 primary and November 3, 2020 general elections, Plaintiffs and Defendants (collectively, the "Consent Parties") agree that an expeditious resolution of this matter in the manner encompassed by the terms of this Consent Order, is in the best interests of the health, safety, and constitutional rights of the citizens of Rhode Island, and therefore in the public interest.

12. Whereas the Consent Parties further agree that no eligible voter should have to choose between casting a ballot that will count and placing their own health at risk.

13. Whereas Defendants agree not to enforce the two witness requirement for the September 8, 2020 primary and November 3, 2020 general elections. The Consent Parties further agree that nothing in this Consent Order shall restrict the Defendants from requesting that that mail voters provide their Rhode Island Driver's License or State ID number, the last four digits of their Social Security number, or their phone number, as further identification verification, so long as the request makes clear that the provision of such information is optional.

14. Whereas Plaintiffs agree to a waiver of any entitlement to damages, fees, including attorneys' fees, expenses, and costs, that may have accrued as of the date of the entry of this Consent Order, with respect to the claims raised by Plaintiffs in this action.

15. Whereas the Court finds that it has subject matter jurisdiction over the Consent Parties and that this Consent Order is fair, adequate, and reasonable and that it is not illegal, a product of collusion, or against the public interest, because such agreement preserves the constitutional right to vote of Plaintiffs and other Rhode Island voters while promoting public

health during a pandemic and does so without harming the integrity of Rhode Island's elections. It gives appropriate weight to Defendants' expertise and public interest responsibility in the area of election administration.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED FOR THE REASONS STATED ABOVE IN PARAGRAPHS 1-15 THAT:

1. The two witness requirement set forth in 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) shall be suspended for the September 8, 2020 primary or November 3, 2020 general elections. Defendants members of the Rhode Island Board of Elections shall not enforce the requirements set forth in 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 qualified electors who vote by mail sign the certifying envelope which contains their ballot before a notary public or two witnesses for the September 8, 2020 primary or November 3, 2020 general elections.

2. As of the date of this Consent Order, Defendant Secretary Gorbea shall not print or distribute to qualified electors any ballots, envelopes, instructions, or other materials directing qualified electors who vote by mail to sign the certifying envelope which contains their ballot before a notary public or two witnesses or requiring a notary public's or two witnesses' signatures on the certifying envelopes.

3. Defendants Secretary Gorbea and members of the Rhode Island Board of Elections shall issue guidance instructing all relevant local election officials and boards of canvassers that, for the September 8, 2020 primary and November 3, 2020 general elections, no mail ballot cast by a registered voter may be rejected for failure to include the signature of either two witnesses or a notary.

4. Defendant Secretary Gorbea shall take all actions necessary to modify or amend the printed instructions accompanying each mail ballot provided to voters for the September 8, 2020 primary and November 3, 2020 general elections, to inform voters that any mail ballot cast in these elections without witness signatures will not be rejected on that basis.

5. Defendants Secretary Gorbea and members of the Rhode Island Board of Elections shall inform the public that the two witness requirement will be suspended for the September 8, 2020 primary and November 3, 2020 general elections on their existing web sites and social media, including frequently asked questions, and any recorded phone lines.

6. Plaintiffs will withdraw their motion for a temporary restraining order and preliminary injunction.

7. The within Consent Order, upon entry by the Court, shall be the final judgment of the Court. Each party shall bear their own fees, expenses, and costs.

Entered as the Judgment of this Court this 28 day of July, 2020.

Mary S. McElroy
UNITED STATES DISTRICT JUDGE

July 28, 2020
Providence, Rhode Island

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Attorneys for Plaintiffs

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

* * * * * * * * * * * * * * * * * *	CA NO. 20-318-MSM
COMMON CAUSE RHODE ISLAND, LEAGUE OF WOMEN VOTERS OF RHODE ISLAND, MIRANDA OAKLEY, BARBARA MONAHAN, and MARY BAKER, Plaintiffs	
VS.	JULY 28, 2020
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	
* * * * * * * * * * * * * * * * * *	VIA VIDEO CONFERENCE

BEFORE THE HONORABLE MARY S. McELROY

DISTRICT JUDGE

(Fairness Hearing)

APPEARANCES:

FOR THE PLAINTIFFS: MICHAEL C. KEATS, ESQ.
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New York, NY 10004

FOR THE DEFENDANTS: Nellie M. Gorbea	ANGEL TAVERAS, ESQ. Greenberg Traurig One International Place Boston, MA 02110
Rhode Island Board of Elections	RAYMOND A. MARCACCIO, ESQ. Oliverio & Marcaccio 55 Dorrance Street, Ste 400 Providence, RI 02903
FOR THE PROPOSED INTERVENORS:	THOMAS R. McCARTHY, ESQ Consovoy McCarthy 1600 Wilson Blvd., Ste 700 Arlington, VA 22209
Court Reporter:	Denise P. Veitch, RPR One Exchange Terrace Providence, RI 02903

MR. McCARTHY: Your Honor, one thing from proposed intervenors?

THE COURT: Mr. McCarthy, go right ahead.

MR. McCARTHY: Thank you. If your Honor is inclined to enter an order of the court today approving of the consent decree, proposed intervenors would like a stay pending appeal.

THE COURT: Okay.

MR. McCARTHY: I understand that your Honor, if your Honor endorses a consent decree your Honor is probably not particularly likely to grant us the stay pending appeal. I appreciate that. It's a requirement though typically to ask the District Court first, and so if your Honor is disinclined to grant one, we would appreciate it if your Honor would deny the request on the record.

THE COURT: Sure, I understand that, and I understand arguing things that you have to argue, so, believe me.

MR. McCARTHY: Thank you.

THE COURT: So with respect to the consent decree, I've reviewed it. I've reviewed all of the provisions of the consent decree, and I find that the settlement is fair, reasonable, and adequate to protect the interests of all of the voters of Rhode Island,

including the proposed intervenors and the Plaintiffs in this case.

We will issue a written order hopefully tomorrow, but just so that you understand, I am inclined to -- I am going to find that this consent agreement is justified and lawful and fair. So I'm not inclined -- I need to say specifically I am granting, I am making that finding.

With respect to intervention, I am denying the petitioner's motion to intervene. And I have to say I understand your argument, Mr. McCarthy, that intervention happened as quickly as you could, having been retained on Saturday evening. But with respect to the interests, the interests that you're claiming is an interest in, I understand it, a fair election. I know you said interest in enforcing the law, but the broader interest is the interest in a fair election, which you're claiming is put into jeopardy by the change in this witness requirement at this time.

And as I understand your arguments, and they were very well-articulated in your papers as well as here, your argument is that the fairness of that election is to be put into jeopardy by making the mail-in ballot requirement, changing the mail-in ballot requirement. I'm very cognizant of the interest in a

fair and free election. There's a public interest that this Court is required to consider, the parties are required to consider it and have addressed it in their papers, and there has been no, I find that there's been no evidence that the mail-in ballot process has been, is subject to any kind of fraud, which is one of the things that I think that you put forth in your interest.

But I have considered all of your arguments on fairness, and I've allowed you rather extensively to file papers and to argue here today. I've heard from you and I've done that, so I think that I don't find that there's a gain in granting you intervenor status; but I do find that the parties would be prejudiced by it and the public would be prejudiced because the election, as you've noted, is not in the too distant future.

I understand, Mr. McCarthy, that you were retained Saturday night; but delay is about parties and not about lawyers, so, and while it is a short time in number of days and number of court days, it is during a time during which the entire case was settled. And you could have, the Republican Party of the State or the National Party could have filed a one-line intervention on Thursday, on Friday, on Saturday, on Sunday before

midnight; you could have participated in the Friday conference; could have participated in the discussions over the weekend between the parties, and they could have had persuasive input into either the path this Court has taken or the path that the parties have taken with respect to the settlement agreement. And Mr. Tavares and Mr. Marcaccio have indicated that settlement, proposed drafts of settlements were first circulated sometime Saturday afternoon, so certainly there was enough time for you to participate. We don't stand on ceremony here. I know that the parties here who do appellate work have filed interventions in hours in an afternoon and I think that it's reasonable in this case, particularly because when we're not talking about specific time, you know, a day is a lot to somebody and not a lot to others. But in this case where it's an election that is coming up quickly, as you have pointed out, Mr. McCarthy, then the time matters, and the fact that the proposed intervenors sat on their rights during that time, I find they've not met the timeliness requirement of either statutory or the intervention as of right or intervention, permissive intervention.

But beyond that, because I've allowed you to file papers, all of which I've read and considered, and

because I've allowed you to argue here, I don't believe that your rights are prejudiced. I think the rights of the citizens of the State of Rhode Island to some certainty with respect to the election would be prejudiced if I were to delay this any further. And I recognize that you have asked for a stay. I'm denying your request for a stay.

We will get written orders out as soon as possible, but that allows you to know what the landscape is at this time.

MR. McCARTHY: Your Honor, may I ask one question just for clarification. I don't know if you actually said this, I think I know what your ruling is, but can you tell me specifically what your ruling is with regard to intervention for purposes of an appeal?

THE COURT: Right. I'm denying your right to intervene in this case. It will delay things longer, and certainly you could intervene, you could file a separate action if necessary, Mr. McCarthy. So I'm denying your matter, your right to intervene as a matter of right and permissibly with respect to just an appeal as well. Okay?

Is there anything further? Anything from anybody?

(Pause)

THE COURT: Okay. We're in recess.

MR. KEATS: Thank you, your Honor.

MR. MARCACCIO: Thank you, your Honor.

MR. McCARTHY: Thank you, your Honor.

(Adjourned)

C E R T I F I C A T I O N

I, Denise P. Veitch, RPR, do hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes in the above-entitled case held via video conference during the COVID-19 pandemic.

/s/ Denise P. Veitch_
Denise P. Veitch, RPR
Federal Official Court Reporter

August 4, 2020
Date