

**Commonwealth of Massachusetts**

**SUFFOLK, ss.**

**SUPREME JUDICIAL COURT**

**FOR SUFFOLK COUNTY**

**No.**

[Plaintiffs' Names],

Plaintiffs,

Nick Bokron & Terra Friedrichs

V.

ATTORNEY GENERAL and SECRETARY

of the COMMONWEALTH

Defendants,

Through this filing we are asking the Court for Emergency Relief concerning the collection of signatures in the Fall for a ballot initiative to

amend the Massachusetts Constitution. Our concern is the harm that it could inflict on our effort by denying our constitutional protections if a State run system for e-signatures is not in place during this pandemic and these unprecedented circumstances for the collection of signatures.

The Secretary of the Commonwealth's Elections Division has stated that they could not have a State run e-signature system up in time for us, even if they were allowed, and the legislature has no incentive to pass something that can not be set up in time to help the situation, which leaves us no recourse but to turn to the Court.

Next would be the certification of our petition language by the Attorney General. This is the first year that we have responded to a declination letter. We consider moving forward with proceedings without first deciding the constitutionality of the language, if not certified, would harm us. We feel these issues tied together.

We ask for declaratory judgement and a writ of mandamus or injunctive relief. We contend that our constitutional rights to alter government, free speech and equal protection will be violated if a State run e-signature

system is not set up in time for signature gathering in the Fall. We would then ask the Court to suspend the signature requirement, at this time, and move the Secretary of the Commonwealth to submit the petition language to the House Clerk on the first day of the upcoming session, treating the petition language the same as any gathering the required amount of signatures.

In time of pandemic and the expected worsening, in person signature gathering is not an option if public health and personal safety is a priority. Batchelder, 388 Mass. 92, “Ideas and views can be transmitted through the press, by door-to-door distributions, or through the mail, without personal contact. On the other hand, a person needing signatures for ballot access requires personal contact with voters. He or she cannot reasonably obtain them in any other way. Reasonable access to the public is essential in ballot access matters.”

This year we filed our petition language with the Attorney General’s office on January 21, 2020, the 10th anniversary of the Citizens United decision.

[https://www.mass.gov/doc/20-01-passmass-amendment-initiative-petition/d](https://www.mass.gov/doc/20-01-passmass-amendment-initiative-petition/download)

[ownload](#) We felt a need to approach the Court early so as to ensure a

considered approach to the expected upcoming situation in the Fall.

Normally we would not have any contact with the Court until receiving the

declination letter from the Attorney General's office not certifying our

Amendment petition language for a ballot question. As stated we had not

challenged the declination previously.

[https://www.mass.gov/files/documents/2019/09/04/declination%20letter%2](https://www.mass.gov/files/documents/2019/09/04/declination%20letter%2019-07.pdf)

[019-07.pdf](#)

We have this year.

[http://passmass.server278.com/\\_media/2020\\_declination\\_letter\\_rebutal.pdf](http://passmass.server278.com/_media/2020_declination_letter_rebutal.pdf)

We would ask the Court to adjudicate the matter if the Attorney General does not certify our language. That would be on September 2, 2020, if the

Attorney General adheres to the calendar as they have not always done.

We feel that we have been harmed in previous proceedings because our

language had not been certified, even though we never responded to any

declination letter. We feel it is time for the Court to make that determination

before moving forward so as to not submit us to the harm coming from moving forward with petition language that has not been certified.

The Court should know the Attorney General's record for decisions on certification, since the Court has overturned the certification decision at least once during each 2 years petition cycle over the past few years. There are cases when the language is certified, which now carries protections with it, only to find out it was a mistake. The Attorney General is obviously not always correct and yet we citizens lose equal protection rights. All petition language needs to be treated as certified, during the process, until the opportunity to challenge in Court after signature gathering. There seem to be too many aberrations not to have concerns. We have asked the Attorney General for their record before the Court on article 48 cases over the past 10 years and have only so far gotten back 2019 when they were 1 - 1. The Attorney General might want to acquire some humility about the certification process as their decisions seem mediocre at best. We also have some concern about the politicization of the process.

What usually happens on about the first Wednesday in September is that we always ask the Court for an expedited hearing so as to keep the delay of gathering signatures to a minimum. The parties usually come together for an Order to have the Attorney General release a summary to the Secretary of the Commonwealth who then prints the petition forms and releases a pdf of the petition form. We felt the Court should be apprised earlier as this seems an unprecedented situation.

We are PassMassAmendment, a State Ballot Initiative Committee organized on 5/6/13. Our effort is to end the corrupting influence of corporations and big money on the political process and our main push is for an Amendment to the Massachusetts Constitution based on “Corporations are not People and may be regulated, The Massachusetts General Court may regulate and set reasonable limits on all political contributions and expenditures”.

PassMassAmendment is a totally grassroots, all volunteer organization that runs on People Power. Nobody gets paid. We have no attorney. Our effort is money out of politics. We are a non partisan organization that

advocates for no other issues than our own. In this way we try to insulate ourselves from any considered partisanship. We are all about the People, not one side or the other. This year we decided to go back to our roots to work on the Amendment again.

The original proponents of the Initiative and Referendum efforts were part of a movement, at that time, across the nation, away from corporate and monied interests and for the People. Even now we are witnessing the corruption of the likes that instigated the I and R 100 years ago. Instead of railroad and subway corporations back then, it is energy corporations now.

<https://www.nytimes.com/2020/08/02/opinion/utility-corruption-energy.html>

<https://www.energyandpolicy.org/utility-corruption/>

Our effort should be seen in rhythm with the views of the Convention and even now would help strengthen the Social Compact.

We would cite the beginning of the Massachusetts Constitution - The Preamble - "The end of the institution, maintenance and administration of

government, is to secure the existence of the body-politic, to protect it, and to furnish the individuals who compose it, with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: And whenever these great objects are not obtained, the people have a right to alter the government, and to take the measures necessary for their safety, prosperity and happiness.”

It took 140 years to give the citizens of the Commonwealth the ability to “...alter the government...” through the initiative and referendum process as enacted in Article 48 of the Massachusetts Constitution. That was around 100 years ago.

We consider our effort to be the epitome of what the proponents of the initiative and referendum had hoped for. In the General Provisions they were basically pleading with the legislature to enact monetary and corporate restrictions on the gathering of signatures. That is our essence.

From Article 48.

## GENERAL PROVISIONS

### 1. Identification and Certification of Signatures

Provisions will be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto...

The general court may provide by law that no co-partnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward.

After the Declaration of Independence, Reverend Thomas Allen from Pittsfield started the cry, "No Constitution, No Law", then the first referendum on these shores, a vote for the Citizens of the Commonwealth to approve a Constitution in 1787, which was resoundingly defeated. It was

after the Essex Results giving the People a Declaration of Rights and the return of John Adams, a story in itself, that what was presented to the Citizens in 1780 was somewhat passed and we have the Massachusetts Constitution, the longest lasting document of its kind. We understand the Court's inception in 1692 which predates these events.

From the aforementioned Declaration of Rights;

Article VII - Government is instituted for the Common good, for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man. family or class of men: Therefore the people alone have an incontestible, unalienable and indefeasible right to institute government, and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

Article IX - All elections ought to be free...

Article XVIII - A frequent recurrence to the fundamental principles of the Constitution, and a constant adherence to those of piety, justice,

moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government...

Article XXIII - No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature.

With the Massachusetts Constitution being the longest lasting document of its kind and the basis for the Federal Constitution, it should not be easy to Amend.

From the Initiative and Referendum Institute at the University of Southern California - "Conservative opposition to I&R, led by former state attorney general Albert E. Pillsbury of Wellesley and railroad counsel Charles F. Choate of Southborough, was strong enough to force numerous compromises in the final version: compromises that even today make the Massachusetts initiative procedure one of the nation's most cumbersome and complicated."

We have previously not had issue with the signature requirements nor

had we ever responded to not having our petition language certified. We do not, however, intend to give up our constitutional right to “Alter Government”, especially under Article 48. We seem to be in an unprecedented time of pandemic, economic meltdown and social unrest. This seems to mean that unprecedented measures will be needed to protect our efforts in these times. *Chelsea Collaborative, inc. v. Secretary of the Commonwealth*, 480 Mass. 37, (2018) - “However, we acknowledge that, with the passage of time, voting regulations once considered constitutionally permissible may come to significantly interfere with the fundamental right to vote in light of conditions existing in contemporary society.”

Our signature gathering history and money spent on the Amendment when we were provided equal protection was:

2013 - \$2,029 spent and 10,283 certified signatures gathered. This comes out to about 20 cents a signature.

2014 - \$315 spent with \$2,631 in kind donations and 12,085 certified signatures gathered. This comes out to about 24 cents a signature.

2015 - \$964 spent with \$457 in kind donations and 17,682 certified signatures gathered. This comes out to about 8 cents a signature

OTHERS - Source Ballotpedia

[https://ballotpedia.org/2020\\_ballot\\_measures](https://ballotpedia.org/2020_ballot_measures) for our info and the OCPF for 2018 payments to JEF Associates and Ballot Access Management - 2014 was not totally clear so we use a basis of 100,000 signatures to find the cost of individual signatures for a ballot question and 18,000 for the referendum question. Most organizations gather signatures in the even years. We would collect every year.

2014 - Q1 Gas Tax \$98,000 spent, 18,000 signatures equals \$5.50 a signature and it was not listed if a company was paid to collect signatures.

Q2 Environment \$1,500,000 spent, 100,000 signatures equals \$15 a signature and it was not listed if a company was paid to collect signatures.

Q3 Gambling \$691,000 spent, 100,000 signatures equals \$6.90 a signature and it was not listed if a company was paid to collect signatures.

Q4 Labor \$892,000 spent, 100,000 signatures equals \$8.92 a signature and it was not listed if a company was paid to collect signatures.

2016 - Q1 Gambling \$393,000 spent, JEF Associates was hired to collect signatures and the average cost per individual signature was \$6.08.

Q2 Charter Schools \$414,000 spent, JEF Associates was hired to collect signatures and the average cost per individual signature was \$6.39.

Q3 Food and Agriculture \$102,000 spent, no company paid to collect signatures and the average cost per signature was \$1.35.

Q4 Marijuana \$351,000 spent, Spoonworks and JEF Associates were hired to collect signatures and the average cost per signature was \$4.65.

2018 - Q1 Right to Repair \$757,000 spent, JEF Associates was hired, for \$420,247, to collect signatures and we use 100,000 signatures gathered as an estimate to reach an average cost of signature \$7.57.

Q2 Rank choice Voting \$1,148,000 spent, Ballot access Management was hired, for \$227,500 to collect signatures and we used 100,000 signatures gathered as an estimate to reach an average cost of signature \$11.48.

At this time we feel a need to stress our being a low budget grassroots organization. We feel that we are the epitome of what the proponents of what the 1917-18 Constitutional Convention, especially the Initiative and

Referendum, highlighted by the General Provisions, was trying to accomplish. We have no corporate backers and we are all volunteers.

As mentioned previously we have no attorney and yet we are allowed to make a filing with the Supreme Judicial Court of Massachusetts. This is greatly appreciated. When we first started in 2013 we found writings about the Court making an effort to be more accessible to Citizens representing themselves. We found - “Representing Yourself in a Civil Case”, “Addressing the Needs of Self - Represented Litigants in Our Courts” and “Serving the Self-Represented Litigants in Our Courts”. We would just like to highlight that the organizations that the Court is familiar with for these types of proceedings, concerning ballot initiatives/ questions, are usually well funded and well represented legally. We ask that more attention be paid to situations like ours in these type proceedings..

What we read in the Goldstein decision is that “wet signatures” seem to be no longer mandatory and copies of signatures will now be allowed. We already had G.L.c.53, section 22A “[n]or shall anyone be prohibited from

making exact copies of such blanks provided by the secretary of state for the purpose of collecting signatures for such petitions, nor shall any such copies be rejected for certification or submittal to the secretary of state.”

The registrars have been allowed to use stamps to affix their signatures on petition forms under 950 CMR 48.05:(3). And then G.L. c.110G, section 7(d) “[i]f a law requires a signature, an electronic signature satisfies the law.” It seems that we were basically already there and the reduction in signatures required was Solomonic. Neither of these remedies will address our concerns when dealing with the pandemic and the opportunity for malfeasance in allowing copies of Citizen’s signatures outside of State control.

Washington Post - July 26, 2020 - Rosalind S. Helderman writes about the recent mail-in voter fraud case in Patterson, NJ. “He contends that some loose ballots were stolen from apartment mailrooms. Then he alleges, the campaign workers filled out and cast ballots for their preferred candidates, affixing to the blank ballots images of signatures they had gathered and saved from past petition drives.” We do not want to be forced

into using a process so easily corruptible.

On July 6, 2020 Massachusetts Governor Charlie Baker signed a mail-in voting bill into law. Our main focus had been to have petitioners at as many polling places on this anticipated historic turnout for this election day on November 3rd. We expect minimal turnout now. We also do not anticipate festivals or any large gatherings happening any time soon.

On July 14th, CDC Director Dr. Redfield, cited in an article by CNN's Amanda Watts "the Fall and Winter of 2020 and 2021 are going to be the probably one of the most difficult times that we experienced in American public health." It seems that President Trump is doing all he can to lead us to another lockdown and recently stated that it is going to get worse. We need to anticipate this and be prepared. For our effort that means a State run e-signature system for signing petitions. Arizona's e-qual system is a good example.

With social distancing not ending anytime soon, no large gatherings expected and minimum turnout for the November election expected, we seek relief from the Court. We need our constitutional right to “alter the government” cited in the first sentence of the Preamble and also Article VII, be protected. We have concerns for the safety of petitioners as far as health and also concerns of individuals who may consider petitioners as pariahs and may lead to harm. *Batchelder v. Allied Stores Int’l, inc.*, 388 Mass. 92 (1983) “a person needing signatures for ballot access requires personal contact with voters”

Money should not be a deciding factor, Elections provides enough petition forms and a pdf. Normally that is all that is needed. What would we now need to be provided to bring us to that same level of relativity needed to collect signatures as described in the Goldstein decision’s need to turn in hard copies? We do not know. In the future?? Whatever it is, the cost would assuredly be prohibitive to us and again money should not be a deciding factor. *Perez v Guzman*, 346 F.3d 242 - “The short of it is that a state

cannot separate petitioning into two steps, close off the second step to all but a tiny professional class, and then ignore the effects of that restriction.”

E-signatures for a ballot initiative should be a compact between the registered voters of the Commonwealth of Massachusetts and the Clerks and Elections Divisions of their municipalities with the Secretary of the Commonwealth acting as an intermediary. Again, groups turning in copies of signatures is too easily corruptible and it should have no place in the process as it opens the proponents to long running Court time having to maybe defend each signature because the gathering process is so flawed.

With copied signatures there are multiple concerns. The idea of any organization, especially one incorporated, having access to prior signatures should be a serious concern. I even have a stack. We have been treating them like Flags, not throwing them away. Others might have a different view. Also, the idea that a Voter should have to turn their email addresses, or other personal info, over to some unknown entity to support a cause

dear to them should raise concern. We feel that a system like Arizona's e-equal is basically the only way to go other than in person petitioning.

If, as stated to the Court and us, the Secretary of the Commonwealth does not have a State run e-signature ability for the Citizens to sign petition forms for our upcoming signature gathering time period, we would ask for a Declaratory Judgement. Our ask would be that the signature gathering requirements under Article 48 be waived under this time of pandemic and the unprecedented difficulties. We would then request a writ of mandamus and/or injunctive relief to have the Secretary of the Commonwealth treat our petition language as having gathered the required amount of signatures and all that entails including submitting to the House Clerk as such.

There are still plenty of barriers before the Amendment would make it on the ballot. First would be the need to make it through two consecutive sessions of the Legislature needing 25% support. Next would be the obvious case in front of this Court and then to the voters, on the ballot,

where we would need at least 30% of the voters to cast yea or nay on the Amendment and then a majority of that total vote.

We at PassMassAmendment would like to Thank the Court for taking the time to attempt to resolve this unprecedented situation. We would also like to Thank the Clerk's office for the professionalism and kindness that we have experienced in our interactions over the years.

Nick Bokron /s/ Nick Bokron 8/27/2020

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