

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT DEPARTMENT

KARI MACRAE,

Plaintiff,

v.

TOWN OF BOURNE CLERK AND BOARD OF REGISTRARS OF VOTERS,

TOWN OF FALMOUTH CLERK AND BOARD OF REGISTRARS OF VOTERS,

TOWN OF MASHPEE CLERK AND BOARD OF REGISTRARS OF VOTERS,

TOWN OF SANDWICH CLERK AND BOARD OF REGISTRARS OF VOTERS,

and

HON. WILLIAM FRANCIS GALVIN, in his official capacity as Secretary of the Commonwealth of Massachusetts,

Defendants.

Civil Action No.: _____

COMPLAINT

INTRODUCTION

1. Plaintiff Kari MacRae brings this action¹ against Defendants the Town Clerks and Boards of Registrars of Voters in the towns of Bourne, Falmouth, Mashpee, and Sandwich, Massachusetts, and the Hon. William Francis Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts (“Commonwealth”), and alleges as follows.

¹ Plaintiff is concurrently filing a companion lawsuit in the Superior Court for Plymouth County, naming as defendants the Town Clerks and Boards of Registrars of Voters in the towns of Plymouth and Plympton, and the Hon. William Francis Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts. Plaintiff intends to seek consolidation of that lawsuit with the instant lawsuit.

PARTIES

2. Plaintiff was a candidate for Massachusetts State Senator for the Plymouth and Barnstable Senate District in the Massachusetts Republican Primary Election that was held on September 3, 2024 (“Primary Election”) and resides at 41 Yearling Run Road, Bourne, MA 02532-2259.

3. On information and belief, Defendant Town of Bourne Clerk is responsible for the administration of elections and all other voter-related activities in the Town of Bourne, and has a principal place of business located at 24 Perry Avenue, Buzzards Bay, MA 02532-3441.

4. On information and belief, Defendant Town of Bourne Board of Registrars of Voters is a board formed in accordance with G.L. ch. 51 § 15. The Bourne Board of Registrars’ responsibilities include maintaining accurate lists of registered voters in their town, preparation and publication of resident lists, voter registration, processing voter registration changes, hearing complaints of illegal or incorrect registration, accepting and certifying nomination papers and petitions, rendering decisions regarding objections and challenges, processing of early voting applications, maintenance and testing of voting equipment, certifying elections, and presiding over election recounts, and has a principal place of business located at 24 Perry Avenue, Buzzards Bay, MA 02532-3441.

5. On information and belief, Defendant Town of Falmouth Clerk is responsible for the administration of elections and all other voter-related activities in the Town of Falmouth, and has a principal place of business located at 59 Town Hall Square, Falmouth, MA 02540-2761.

6. On information and belief, Defendant Town of Falmouth Board of Registrars of Voters is a board formed in accordance with G.L. ch. 51 § 15. The Falmouth Board of Registrars’ responsibilities include maintaining accurate lists of registered voters in their town,

preparation and publication of resident lists, voter registration, processing voter registration changes, hearing complaints of illegal or incorrect registration, accepting and certifying nomination papers and petitions, rendering decisions regarding objections and challenges, processing of early voting applications, maintenance and testing of voting equipment, certifying elections, and presiding over election recounts, and has a principal place of business located at 59 Town Hall Square, Falmouth, MA 02540-2761.

7. On information and belief, Defendant Town of Mashpee Clerk is responsible for the administration of elections and all other voter-related activities in the Town of Mashpee, and has a principal place of business located at 16 Great Neck Road North, Mashpee, MA 02649-2500.

8. On information and belief, Defendant Town of Mashpee Board of Registrars of Voters is a board formed in accordance with G.L. ch. 51 § 15. The Mashpee Board of Registrars' responsibilities include maintaining accurate lists of registered voters in their town, preparation and publication of resident lists, voter registration, processing voter registration changes, hearing complaints of illegal or incorrect registration, accepting and certifying nomination papers and petitions, rendering decisions regarding objections and challenges, processing of early voting applications, maintenance and testing of voting equipment, certifying elections, and presiding over election recounts, and has a principal place of business located at 16 Great Neck Road North, Mashpee, MA 02649-2500.

9. On information and belief, Defendant Town of Sandwich Clerk is responsible for the administration of elections and all other voter-related activities in the Town of Sandwich, and has a principal place of business located at 100 Route 6A, Sandwich, MA 02563-5322.

10. On information and belief, Defendant Town of Sandwich Board of Registrars of Voters is a board formed in accordance with G.L. ch. 51 § 15. The Sandwich Board of Registrars' responsibilities include maintaining accurate lists of registered voters in their town, preparation and publication of resident lists, voter registration, processing voter registration changes, hearing complaints of illegal or incorrect registration, accepting and certifying nomination papers and petitions, rendering decisions regarding objections and challenges, processing of early voting applications, maintenance and testing of voting equipment, certifying elections, and presiding over election recounts, and has a principal place of business located at 100 Route 6A, Sandwich, MA 02563-5322.

11. On information and belief, Defendant the Hon. William Francis Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts, is the Chief Election Official of the Commonwealth, and has a principal place of business located at 1 Ashburton Place, Boston, MA 02108-1518.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this matter pursuant to G.L. ch. 56, § 59, which states that “the superior court department of the trial court shall have jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and may award relief formerly available in equity or by mandamus”

13. This Court has jurisdiction over this matter pursuant to G.L. c. 231A, § 1, the statutory procedure for declaratory judgments.

14. Venue in this Court is proper under G.L. ch. 214, § 5 and G.L. ch. 223, § 1.

FACTS

15. On September 3, 2024 the Commonwealth conducted a primary election that included the race for Massachusetts State Senator for the Plymouth and Barnstable Senate District.

16. The Plymouth and Barnstable Senate District consists of eight towns: four in Plymouth County (Kingston, Pembroke, Plymouth, and Plympton) and four in Barnstable County (Bourne, Falmouth, Mashpee, and Sandwich).

17. Defendant Secretary Galvin declared Mathew J. Muratore as the winner of the Primary Election.

18. Plaintiff successfully petitioned for a recount in each of the eight towns in the Plymouth and Barnstable Senate District.

19. Defendant Secretary Galvin ordered a district-wide recount on September 10, 2024.

20. The towns of Plymouth and Sandwich conducted their recounts on September 11, 2024.

21. The towns of Bourne, Falmouth, Kingston, and Plympton conducted their recounts on September 12, 2024.

22. The town of Mashpee conducted its recount on September 13, 2024.

23. The town of Pembroke conducted its recount on September 14, 2024.

24. On September 14, 2024 after the completion of the recounts, Defendant Secretary Galvin declared the final Primary Election results as follows:

Republican Candidate	Totals
Kari MacRae	6,966
Mathew J. Muratore	7,005
All Others	15
Blanks	564
Total Votes Cast	14,550

25. Plaintiff lost the Primary Election to Mr. Muratore by 39 votes.

26. With respect to early voting ballots, Massachusetts law requires that the local election official compare the voter's signature on the inner secrecy (ballot) envelope with the voter's signature on the application for the early voting ballot, except in instances of authorized third-party signatories:

Upon receipt of a completed early voting ballot, the local election official shall open the outer mailing envelope and examine the inner secrecy envelope without opening it, compare the signature thereon with the signature on the application therefor, except if a family member signed the application or the voter received assistance in signing the application or the envelope, and examine the affidavit on each such envelope. If the affidavit has been improperly executed or does not sufficiently indicate that the ballot was marked and mailed or delivered as required by this section, the local election official shall mark across the face thereof "Rejected as defective" and shall notify the voter and send the voter a new ballot. If the early voting ballot is accepted, the local election official shall record the date and secure the ballot in its envelope until processing in accordance with law.

G.L. ch. 54 § 25B(a)(14) (emphasis added).

27. Before and/or during the recounts in the towns of Bourne, Falmouth, Mashpee, and Sandwich, witnesses became aware of instances of noncompliance with the signature comparison requirement set forth in G.L. ch. 54 § 25B(a)(14), as well as other anomalies, as described below.

Town of Bourne

28. On September 6, 2024 Plaintiff had an in-person conversation with Defendant Bourne Town Clerk (assistant), Mary C. Fernandes. Decl. of K. MacRae (attached hereto as Ex. A) ¶ 12.

29. In that conversation, Plaintiff discussed with Ms. Fernandes how the local election officials in the Town of Bourne performed the signature comparison procedure that G.L. ch. 54 § 25B(a)(14) requires. *Id.* ¶ 8.

30. Ms. Fernandes informed Plaintiff that in the Primary Election the Town of Bourne local election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot. *Id.* ¶ 13.

31. On September 9, 2024 at approximately 3:24 p.m. Christopher Lyon, Plaintiff's campaign manager, spoke via telephone with Ms. Fernandes. Decl. of C. Lyon (attached hereto as Ex. B) ¶ 12.

32. In that conversation, Mr. Lyon discussed with Ms. Fernandes how the local election officials in the Town of Bourne performed the signature comparison procedure that G.L. ch. 54 § 25B(a)(14) requires. *Id.* ¶ 8.

33. Ms. Fernandes informed Mr. Lyon that in the Primary Election the Town of Bourne local election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot. *Id.* ¶ 13.

Town of Falmouth

34. On September 9, 2024 at approximately 4:00 p.m. Mr. Lyon spoke via telephone with Defendant Falmouth Town Clerk, Michael Palmer. *Id.* ¶ 14.

35. In that conversation, Mr. Lyon discussed with Mr. Palmer how the local election officials in the Town of Falmouth performed the signature comparison procedure that G.L. ch. 54 § 25B(a)(14) requires. *Id.* ¶ 8.

36. Mr. Palmer informed Mr. Lyon that in the Primary Election the Town of Falmouth local election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot. *Id.* ¶ 15.

37. William Winters met with Mr. Palmer on August 14, 2024. Decl. of W. Winters (attached hereto as Ex. C) ¶ 3.

38. During the August 14 2024 meeting Mr. Winters asked Mr. Palmer about the procedures that he and the other local election officials in the Town of Falmouth would follow during the Primary Election. *Id.* ¶ 5.

39. More specifically, Mr. Winters asked Mr. Palmer how the local election officials in the Town of Falmouth would perform the signature comparison procedure that G.L. ch. 54 § 25B(a)(14) requires for early voting ballots submitted in the Primary Election. *Id.* ¶ 8.

40. Mr. Palmer informed Mr. Winters that for the Primary Election the Falmouth local election officials would not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot. *Id.* ¶ 9.

Town of Mashpee

41. On September 13, 2024 Plaintiff had an in-person conversation with Defendant Mashpee Town Clerk, Deborah Kaye. Decl. of K. MacRae (attached hereto as Ex. A) ¶ 14.

42. In that conversation, Plaintiff discussed with Ms. Kaye how the local election officials in the Town of Mashpee performed the signature comparison procedure that G.L. ch. 54 § 25B(a)(14) requires. *Id.* ¶ 8.

43. Ms. Kaye informed Plaintiff that in the Primary Election the Town of Mashpee local election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot. *Id.* ¶ 15.

44. On September 9, 2024 at approximately 2:24 p.m. Mr. Lyon spoke via telephone with Ms. Kaye. Decl. of C. Lyon (attached hereto as Ex. B) ¶ 16.

45. In that conversation, Mr. Lyon discussed with Ms. Kaye how the local election officials in the Town of Mashpee performed the signature comparison procedure that G.L. ch. 54 § 25B(a)(14) requires. *Id.* ¶ 8.

46. Ms. Kaye informed Mr. Lyon that in the Primary Election the Town of Mashpee local election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot. *Id.* ¶ 17.

Town of Sandwich

47. On September 9, 2024 at approximately 3:46 p.m. Mr. Lyon spoke via telephone with Defendant Sandwich Town Clerk, Taylor D. White. *Id.* ¶ 18.

48. In that conversation, Mr. Lyon discussed with Mr. White how the local election officials in the Town of Sandwich performed the signature comparison procedure that G.L. ch. 54 § 25B(a)(14) requires. *Id.* ¶ 8.

49. Mr. White informed Mr. Lyon that in the Primary Election the Town of Sandwich local election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot. *Id.* ¶ 19.

COUNT I

(Declaratory Judgment, G.L. c. 231A, § 1)

50. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-49.

51. District-wide, Defendants Town Clerks received and counted approximately 6,000 early voting Republican ballots in the Primary Election, approximately 5,000 of which arrived by mail.

52. Defendant Town Clerks' failure to follow the signature comparison requirements set forth in G.L. ch. 54 § 25B(a)(14) was unlawful. *Connolly v. Sec'y of Commonwealth*, 404 Mass. 556, 569-70 (1989) (discussing the signature comparison required for absentee ballots set forth in G.L. ch. 54 § 94, which uses language virtually identical to that requiring the signature comparison required for early voting ballots set forth in G.L. ch. 54 § 25B(a)(14)).

53. Defendant Town Clerks' failure to follow the signature comparison requirements set forth in G.L. ch. 54 § 25B(a)(14) implicates every early voting ballot and calls in to question the integrity of each early voting ballot.

54. Consequently, early voting ballots that were not processed in accordance G.L. ch. 54 § 25B(a)(14) should not have been counted in the Primary Election. Such ballots should have been “Rejected as defective” pursuant to G.L. ch. 54 § 25B(a)(14).

55. A genuine case or controversy has arisen between the parties as to whether the early voting ballots that were counted in the Primary Election should not have been counted in view of Defendant Town Clerks’ admissions that they did not follow the requirements of G.L. ch. 54 § 25B(a)(14), underscored by Defendant Secretary Galvin’s Mass. Election Advisory 20-04, Sept. 24, 2020, at 3.

56. A genuine case or controversy has arisen between the parties as to whether the results of the Primary Election that Defendant Secretary Galvin declared are valid because the number of number of early voting ballots that were counted but were not processed in accordance G.L. ch. 54 § 25B(a)(14) exceeds the thirty-nine votes that separate Plaintiff from Mr. Muratore.

57. The failure of Defendants Town Clerks and Boards of Registrars to follow the requirements of G.L. ch. 54 § 25B(a)(14) constitutes a substantial dereliction of duties imposed by Massachusetts law.

58. Plaintiff respectfully urges the Court to declare that the failure of Defendants Town Clerks and Boards of Registrars to follow the requirements of G.L. ch. 54 § 25B(a)(14) was unlawful and, as a consequence, that the results of the Primary Election are invalid.

COUNT II

(De Novo Review, G.L. c. 56, § 59)

59. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-58.

60. The determination of the legal effect of a ballot is a question of law. *McCavitt v. Registrars of Voters of Brockton*, 385 Mass. 833, 839 (1982); *Morris v. Bd. of Registrars of Voters of East Bridgewater*, 362 Mass. 48, 49 (1972).

61. In view of Defendants' Town Clerks and Boards of Registrars failure to follow the requirements of G.L. ch. 54 § 25B(a)(14), Plaintiff respectfully urges the Court to undertake a *de novo* comparison of the signature on the inner secrecy envelope of each completed early voting ballot submitted in the Primary Election with the signature on the application for the early voting ballot to determine the validity of each completed early voting ballot.

62. In addition, Plaintiff respectfully urges the Court to examine the inner secrecy envelope of each completed early voting ballot submitted in the Primary Election to determine if it includes a date and/or time stamp as required² and meets all other requirements for validity.

COUNT III

(Contested Election)

63. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-62.

64. Plaintiff challenges the results of the Primary Election as to the Republican nominee and the recounts in the Towns of Bourne, Falmouth, Mashpee, and Sandwich based at least in part on the counting of early voting ballots that were not processed in accordance G.L. ch. 54 § 25B(a)(14).

65. Plaintiff respectfully urges the Court to invalidate the results of the Primary Election as to the Republican nominee and order a special election between Plaintiff and Mr. Muratore. In the alternative, Plaintiff respectfully urges the Court to find Mr. Muratore to be

² See, e.g., Mass. Election Advisory 20-02, Aug. 18, 2020, at 1.

ineligible as the Republican nominee in the November 5, 2024 general election (“General Election”) due to the improper counting of early voting ballots in the Primary Election that were not processed in accordance with G.L. ch. 54 § 25B(a)(14) and, pursuant to G.L. ch. 53 § 14, order the Republican Town Committees in the towns comprising the Plymouth and Barnstable Massachusetts Senate District (for Plymouth County: Kingston, Pembroke, Plymouth, and Plympton; for Barnstable County: Bourne, Falmouth, Mashpee, and Sandwich) to select a Republican nominee for Massachusetts State Senator for that District to compete in the General Election.

COUNT IV

(Violation of Rights)

66. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-65.

67. “The right to seek elected office, like the related right to vote, is a fundamental constitutional right in Massachusetts.” *Goldstein v. Sec’y of the Commonwealth*, 484 Mass. 516, 523 (2020). A party deprived of that constitutional right is entitled to redress.

68. “The rights of candidates to gain access to the ballot and of voters to cast their ballots as they see fit” are fundamental and intertwined. *Id.* at 524.

69. The Massachusetts Declaration of Rights provides that “all inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.” Mass. Decl. of Rights, Art. 9. These equal rights cannot be negated by the failure of local election officials to perform their required duties.

70. The failure of Defendants Town Clerks and Boards of Registrars to follow the requirements of G.L. ch. 54 § 25B(a)(14), and Defendant Secretary Galvin's subsequent declaration of the final Primary Election results as to the Republican nominee notwithstanding that failure, violated Plaintiff's fundamental rights and disenfranchised voters who lawfully cast votes for Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court:

(1) Issue a declaratory judgment that the failure of Defendants Town Clerks and Boards of Registrars to follow the requirements of G.L. ch. 54 § 25B(a)(14) was unlawful and, as a consequence, that the results of the Primary Election are invalid;

(2) Undertake a *de novo* (i) comparison of the signature on the inner secrecy envelope of each completed early voting ballot submitted in the Primary Election with the signature on the application for the early voting ballot to determine the validity of each completed early voting ballot, and (ii) examination of the inner secrecy envelope of each completed early voting ballot submitted in the Primary Election to determine if it includes a date and/or time stamp as required and meets all other requirements for validity;

(3) Order a special primary election between Plaintiff and Mr. Muratore or, in the alternative, find Mr. Muratore to be ineligible as the Republican nominee in the General Election due to the improper counting of early voting ballots in the Primary Election that were not processed in accordance with G.L. ch. 54 § 25B(a)(14) and, pursuant to G.L. ch. 53 § 14, order the Republican Town Committees in the towns comprising the Plymouth and Barnstable Massachusetts Senate District (for Plymouth County: Kingston, Pembroke, Plymouth, and Plympton; for Barnstable County: Bourne, Falmouth, Mashpee, and Sandwich) to select a

Republican nominee for Massachusetts State Senator for that District to compete in the General Election;

(4) Enjoin the counting and tabulation of any votes for Massachusetts State Senator for the Plymouth and Barnstable Senate District in the General Election in which the Republican nominee therefor has not previously been determined as a result of this litigation;

(5) Enjoin the certification and transmission of any result of the voting for Massachusetts State Senator for the Plymouth and Barnstable Senate District in the General Election in which the Republican nominee therefor has not previously been determined as a result of this litigation;

(6) Declare null and void the upcoming General Election as to Massachusetts State Senator for the Plymouth and Barnstable Senate District to the extent that the Republican nominee therefor has not previously been determined as a result of this litigation;

(7) Order a special general election to occur after November 5, 2024 between the Republican nominee determined as a result of this litigation and the Democrat nominee;

(8) Hold that Defendants violated Plaintiff's fundamental rights and the fundamental rights of the voters in the Primary Election;

(9) Award Plaintiff reasonable attorneys' fees and costs; and

(10) Award such other relief as this Court may deem just and proper.

Respectfully submitted,

Dated: October 10, 2024

/s/ Brian M. Gaff

Brian M. Gaff (BBO No. 642297)

215 South Broadway, Suite 308

Salem, NH 03079-3374

857-719-0100

781-581-9134 (fax)

bgaff@lawbmg.com

Attorney for Kari MacRae.

CIVIL ACTION COVER SHEET

DOCKET NUMBER

Massachusetts Trial Court Superior Court



COUNTY Barnstable Superior Court (Barnstable)

Plaintiff: Kari MacRae, Defendant: Town of Bourne Clerk and Board of Registrars of Voters, Plaintiff Attorney: Brian M. Gaff, Defendant: Town of Falmouth Clerk and Board of Registrars of Voters, Plaintiff Attorney: [blank], Defendant: Town of Mashpee Clerk and Board of Registrars of Voters, Plaintiff Attorney: [blank], Defendant: Town of Sandwich Clerk and Board of Registrars of Voters, Plaintiff Attorney: [blank], Defendant: Hon. William Francis Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts

TYPE OF ACTION AND TRACK DESIGNATION (see instructions section on next page)

CODE NO. AD1 TYPE OF ACTION (specify) Equity Action involving Municipality TRACK A HAS A JURY CLAIM BEEN MADE? [] YES [X] NO

*If "Other" please describe:

Is there a claim under G.L. c. 93A?

[] YES [X] NO

Is there a class action under Mass. R. Civ. P. 23?

[] YES [X] NO

STATEMENT OF DAMAGES REQUIRED BY G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. (Note to plaintiff: for this form, do not state double or treble damages; indicate single damages only.)

TORT CLAIMS

A. Documented medical expenses to date

- 1. Total hospital expenses
2. Total doctor expenses
3. Total chiropractic expenses
4. Total physical therapy expenses
5. Total other expenses (describe below)

Subtotal (1-5): \$0.00

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe below)

TOTAL (A-F): \$0.00

G. Briefly describe plaintiff's injury, including the nature and extent of the injury:

CONTRACT CLAIMS

This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).

Item #	Detailed Description of Each Claim	Amount
1.		
Total		

Signature of Attorney/Self-Represented Plaintiff: X /s/ Brian M. Gaff

Date: October 10, 2024

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION UNDER S.J.C. RULE 1:18(5)

I hereby certify that I have complied with requirements of Rule 5 of Supreme Judicial Court Rule 1:18: Uniform Rules on Dispute Resolution, requiring that I inform my clients about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney: X /s/ Brian M. Gaff

Date: October 10, 2024

CIVIL ACTION COVER SHEET INSTRUCTIONS — SELECT A CATEGORY THAT BEST DESCRIBES YOUR CASE*

<p>AC Actions Involving the State/Municipality†*</p> <p>AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)</p> <p>AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)</p> <p>AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)</p> <p>AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)</p> <p>AE1 Administrative Action involving Commonwealth, Municipality, MBTA, etc. (A)</p> <p style="text-align: center;">CN Contract/Business Cases</p> <p>A01 Services, Labor, and Materials (F)</p> <p>A02 Goods Sold and Delivered (F)</p> <p>A03 Commercial Paper (F)</p> <p>A04 Employment Contract (F)</p> <p>A05 Consumer Revolving Credit - M.R.C.P. 8.1 (F)</p> <p>A06 Insurance Contract (F)</p> <p>A08 Sale or Lease of Real Estate (F)</p> <p>A12 Construction Dispute (A)</p> <p>A14 Interpleader (F)</p> <p>BA1 Governance, Conduct, Internal Affairs of Entities (A)</p> <p>BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)</p> <p>BB1 Shareholder Derivative (A)</p> <p>BB2 Securities Transactions (A)</p> <p>BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)</p> <p>BD1 Intellectual Property (A)</p> <p>BD2 Proprietary Information or Trade Secrets (A)</p> <p>BG1 Financial Institutions/Funds (A)</p> <p>BH1 Violation of Antitrust or Trade Regulation Laws (A)</p> <p>A99 Other Contract/Business Action - Specify (F)</p> <p><small>* See Superior Court Standing Order 1-88 for an explanation of the tracking deadlines for each track designation: F, A, and X. On this page, the track designation for each case type is noted in parentheses.</small></p> <p><small>†* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).</small></p> <p><small>‡ Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).</small></p>	<p style="text-align: center;">ER Equitable Remedies</p> <p>D01 Specific Performance of a Contract (A)</p> <p>D02 Reach and Apply (F)</p> <p>D03 Injunction (F)</p> <p>D04 Reform/ Cancel Instrument (F)</p> <p>D05 Equitable Replevin (F)</p> <p>D06 Contribution or Indemnification (F)</p> <p>D07 Imposition of a Trust (A)</p> <p>D08 Minority Shareholder's Suit (A)</p> <p>D09 Interference in Contractual Relationship (F)</p> <p>D10 Accounting (A)</p> <p>D11 Enforcement of Restrictive Covenant (F)</p> <p>D12 Dissolution of a Partnership (F)</p> <p>D13 Declaratory Judgment, G.L. c. 231A (A)</p> <p>D14 Dissolution of a Corporation (F)</p> <p>D99 Other Equity Action (F)</p> <p style="text-align: center;">PA Civil Actions Involving Incarcerated Party ‡</p> <p>PA1 Contract Action involving an Incarcerated Party (A)</p> <p>PB1 Tortious Action involving an Incarcerated Party (A)</p> <p>PC1 Real Property Action involving an Incarcerated Party (F)</p> <p>PD1 Equity Action involving an Incarcerated Party (F)</p> <p>PE1 Administrative Action involving an Incarcerated Party (F)</p> <p style="text-align: center;">TR Torts</p> <p>B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)</p> <p>B04 Other Negligence - Personal Injury/Property Damage (F)</p> <p>B05 Products Liability (A)</p> <p>B06 Malpractice - Medical (A)</p> <p>B07 Malpractice - Other (A)</p> <p>B08 Wrongful Death - Non-medical (A)</p> <p>B15 Defamation (A)</p> <p>B19 Asbestos (A)</p> <p>B20 Personal Injury - Slip & Fall (F)</p> <p>B21 Environmental (F)</p> <p>B22 Employment Discrimination (F)</p> <p>BE1 Fraud, Business Torts, etc. (A)</p> <p>B99 Other Tortious Action (F)</p> <p style="text-align: center;">RP Summary Process (Real Property)</p> <p>S01 Summary Process - Residential (X)</p> <p>S02 Summary Process - Commercial/ Non-residential (F)</p>	<p style="text-align: center;">RP Real Property</p> <p>C01 Land Taking (F)</p> <p>C02 Zoning Appeal, G.L. c. 40A (F)</p> <p>C03 Dispute Concerning Title (F)</p> <p>C04 Foreclosure of a Mortgage (X)</p> <p>C05 Condominium Lien & Charges (X)</p> <p>C99 Other Real Property Action (F)</p> <p style="text-align: center;">MC Miscellaneous Civil Actions</p> <p>E18 Foreign Discovery Proceeding (X)</p> <p>E97 Prisoner Habeas Corpus (X)</p> <p>E22 Lottery Assignment, G.L. c. 10, § 28 (X)</p> <p style="text-align: center;">AB Abuse/Harassment Prevention</p> <p>E15 Abuse Prevention Petition, G.L. c. 209A (X)</p> <p>E21 Protection from Harassment, G.L. c. 258E(X)</p> <p style="text-align: center;">AA Administrative Civil Actions</p> <p>E02 Appeal from Administrative Agency, G.L. c. 30A (X)</p> <p>E03 Certiorari Action, G.L. c. 249, § 4 (X)</p> <p>E05 Confirmation of Arbitration Awards (X)</p> <p>E06 Mass Antitrust Act, G.L. c. 93, § 9 (A)</p> <p>E07 Mass Antitrust Act, G.L. c. 93, § 8 (X)</p> <p>E08 Appointment of a Receiver (X)</p> <p>E09 Construction Surety Bond, G.L. c. 149, § 29, 29A (A)</p> <p>E10 Summary Process Appeal (X)</p> <p>E11 Worker's Compensation (X)</p> <p>E16 Auto Surcharge Appeal (X)</p> <p>E17 Civil Rights Act, G.L. c.12, § 11H (A)</p> <p>E24 Appeal from District Court Commitment, G.L. c.123, § 9(b) (X)</p> <p>E94 Forfeiture, G.L. c. 265, § 56 (X)</p> <p>E95 Forfeiture, G.L. c. 94C, § 47 (F)</p> <p>E99 Other Administrative Action (X)</p> <p>Z01 Medical Malpractice - Tribunal only, G.L. c. 231, § 60B (F)</p> <p>Z02 Appeal Bond Denial (X)</p> <p style="text-align: center;">SO Sex Offender Review</p> <p>E12 SDP Commitment, G.L. c. 123A, § 12 (X)</p> <p>E14 SDP Petition, G.L. c. 123A, § 9(b) (X)</p> <p style="text-align: center;">RC Restricted Civil Actions</p> <p>E19 Sex Offender Registry, G.L. c. 6, § 178M (X)</p> <p>E27 Minor Seeking Consent, G.L. c.112, § 12S(X)</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

TRANSFER YOUR SELECTION TO THE FACE SHEET

EXAMPLE:

CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
B03	Motor Vehicle Negligence-Personal Injury	<u> F </u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

STATEMENT OF DAMAGES REQUIRED BY G.L. c. 212, § 3A

DUTY OF THE PLAINTIFF — On the face of the Civil Action Cover Sheet (or on attached additional sheets, if necessary), the plaintiff shall state the facts on which the plaintiff relies to determine money damages. A copy of the completed Civil Action Cover Sheet, including the statement concerning damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or self-represented litigant.**

DUTY OF THE DEFENDANT — If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with the defendant's answer a statement specifying the potential damages which may result if the plaintiff prevails.

**A CIVIL ACTION COVER SHEET MUST BE FILED WITH EACH COMPLAINT.
IF THIS COVER SHEET IS NOT FILLED OUT THOROUGHLY AND
ACCURATELY, THE CASE MAY BE DISMISSED.**

EXHIBIT A

Exhibit A

Exhibit A

Exhibit A

Exhibit A

I declare under penalty of perjury under laws of the United States of America and the Commonwealth of Massachusetts that the foregoing is true and correct and that this Declaration was executed on this 30th day of September 2024.



Kari MacRae

EXHIBIT B

Exhibit B

DECLARATION OF CHRISTOPHER LYON

1. I, Christopher Lyon, have personal knowledge of the facts and opinions stated herein and, unless otherwise noted, I am competent to testify to the same.

2. I reside at 278 Barker Road, East Wareham, MA 02538.

3. I serve as the campaign manager for Kari MacRae in her race for Massachusetts State Senator for the Plymouth and Barnstable Senate District.

4. On September 9, 2024 I spoke via telephone with the Town Clerks in each of the following towns: Plympton, Bourne, Falmouth, Mashpee, and Sandwich.

5. During my conversations with each Town Clerk, I inquired in to the procedures that each Town Clerk followed during the Massachusetts Primary Election that was held on September 3, 2024 (“Primary Election”).

6. A purpose of my conversations was to ascertain whether the election officials in each town adhered to the processes and procedures prescribed by law with respect to conducting elections and computing election results as applied to the Primary Election.

7. I have been informed that Massachusetts General Laws ch. 54 § 25B(a)(14) requires that for each completed early voting ballot, the local election official must examine the inner secrecy envelope without opening it and compare the signature on it with the signature on the application for the early voting ballot.

8. One topic that I discussed with each Town Clerk was how the election officials in their respective towns performed the signature comparison procedure that Massachusetts General Laws ch. 54 § 25B(a)(14) requires for early voting ballots submitted in the Primary Election.

9. A summary of each of my conversations with Town Clerks is set forth below.

Exhibit B

Plympton Town Clerk

10. I spoke via telephone with the Plympton Town Clerk (interim), Tara Shaw, at approximately 1:49 p.m. on September 9, 2024.

11. Ms. Shaw informed me that the Plympton election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot.

Bourne Town Clerk

12. I spoke via telephone with the Bourne Town Clerk (assistant), Mary C. Fernandes, at approximately 3:24 p.m. on September 9, 2024.

13. Ms. Fernandes informed me that the Bourne election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot.

Falmouth Town Clerk

14. I spoke via telephone with the Falmouth Town Clerk, Michael Palmer, at approximately 4:00 p.m. on September 9, 2024.

15. Mr. Palmer informed me that the Falmouth election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot.

Mashpee Town Clerk

16. I spoke via telephone with the Mashpee Town Clerk, Deborah Kaye, at approximately 2:24 p.m. on September 9, 2024.

17. Ms. Kaye informed me that the Mashpee election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the

Exhibit B

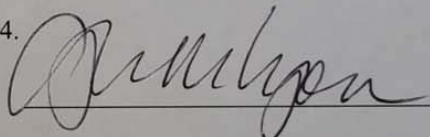
inner secrecy envelope with the signature on the application for the early voting ballot.

Sandwich Town Clerk

18. I spoke via telephone with the Sandwich Town Clerk, Taylor D. White, at approximately 3:46 p.m. on September 9, 2024.

19. Mr. White informed me that the Sandwich election officials did not examine the inner secrecy envelope of each completed early voting ballot and compare the signature on the inner secrecy envelope with the signature on the application for the early voting ballot.

I declare under penalty of perjury under laws of the United States of America and the Commonwealth of Massachusetts that the foregoing is true and correct and that this Declaration was executed on this 30 day of September 2024.



Christopher Lyon

EXHIBIT C

Exhibit C

**MOTION FOR CASE-SPECIFIC
MANAGEMENT PURSUANT TO
SUPERIOR COURT RULE 20**

DOCKET NUMBER

**Trial Court of Massachusetts
The Superior Court**



CASE NAME:
KARI MACRAE

v.

TOWN OF BOURNE CLERK AND BOARD OF REGISTRARS OF VOTERS,
TOWN OF FALMOUTH CLERK AND BOARD OF REGISTRARS OF VOTERS,
TOWN OF MASHPEE CLERK AND BOARD OF REGISTRARS OF VOTERS,
TOWN OF SANDWICH CLERK AND BOARD OF REGISTRARS OF VOTERS,

and
HON. WILLIAM FRANCIS GALVIN, in his official capacity as Secretary of the Commonwealth of Massachusetts

Scott W. Nickerson Clerk of Courts
Barnstable County

COURT NAME & ADDRESS
Barnstable County Superior Court
3195 Main Street
Barnstable, MA 02630-1105

GENERAL INSTRUCTIONS

•This form is only for parties proposing or stipulating to a deviation from the standard rules governing this case. IF YOU DO NOT WANT TO MAKE ANY PROPOSAL, THEN YOU DO NOT NEED TO FILL OUT THIS FORM.

•YOU DO NOT NEED TO FILL IN ANY BLANKS UNLESS YOU WANT TO (except for case name, docket number and item (a) below). If you leave an item blank, then the usual court rules, orders, directives and policies will apply.

•Unless ALL parties agree, this document must be served upon all parties pursuant to Superior Court Rule 9A.

•If all parties agree to SOME items, but not others, then please submit TWO separate motions - one for all agreed-upon matters, and another for contested (or unagreed) matters.

IF YOU ARE REPRESENTING YOURSELF: Please be aware that some parts of this form involve giving up rights that may (or may not) be important for your protection. You may wish to learn more about these rights by, for instance, consulting an attorney or visiting the court's self-help website: www.mass.gov/courts/selfhelp.

a. (Required) This document is submitted by:

- ALL PARTIES
 THE FOLLOWING PARTY(IES) ONLY: Kari MacRae

b. EARLY COURT CONFERENCE - SCHEDULING

Do you request a scheduling or case management conference with the Court at this time?

YES NO

If YES: IN-COURT CONFERENCE on _____ (proposed dates) at _____ (2 or 3 PM)
 PHONE CONFERENCE on 10/17-18, 10/21 (proposed dates) at 2:00 p.m. (2 or 3 PM)

c. JUDICIAL ASSESSMENT

Do you request a conference for the purpose of obtaining the session judge's non-binding assessment of this case?

YES NO

If YES: ON 10/25, 10/28 (proposed dates) at 3:00 p.m. (2 or 3 PM)

d. IMMEDIATE SCHEDULING OF A PROMPT AND FIRM, TRIAL DATE?

Do you want the Court to schedule a trial date at this time? YES NO

Do you propose a specific Trial Date or Range of Trial Dates?

NOT AT THIS TIME PROPOSED TRIAL DATED(S):

If proposing a date, please predict the number of trial days (9 AM to 1PM):

The Court will make every effort to accommodate an agreed-upon proposed trial date.

**MOTION FOR CASE-SPECIFIC
MANAGEMENT PURSUANT TO
SUPERIOR COURT RULE 20**

DOCKET NUMBER

**Trial Court of Massachusetts
The Superior Court**



e. CHANGES TO STANDARD PRETRIAL DEADLINES?

Do you want changes in the deadlines for pretrial events (these cannot be longer than the standard tracking order for this case. See Superior Court Standing Order 1-88) or waiver of certain motions?

YES NO

If YES - We/I propose the following:

	Shorter Deadlines (please specify)	Event Waived Entirely
Rule 12, 15, 19 Motions	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Discovery	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Summary Judgment	(if shorter deadlines, enter below)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Summary Judgment Served	_____	N/A
Summary Judgment Filed	_____	N/A
Final Pretrial Conference	_____	N/A

If agreed, or approved by the court, this request will reassign this case to an Individual Track for purposes of Standing Order 1-88, instead of the track originally assigned to this case.

f. OTHER PROPOSALS FOR DISCOVERY, MOTIONS, TRIAL OR POST-TRIAL? (For examples, see Superior Court Rule 20(f) - (k))

- 1. Limits on discovery? Yes No
- 2. Limits on motions/in-court appearances? Yes No
- 3. Varying the format for jury or bench trial? Yes No
- 4. Limiting Post-Trial Motions or Appeals? Yes No
- 5. Other? Yes No

If you have any "YES" answers, please explain what you propose (court approval of the proposal(s) may be required):

EACH OF THE PARTIES WHO SIGNS (BELOW) MOVES THAT THE COURT APPROVE THE ABOVE REQUESTS AND ENTER AN ORDER ACCORDINGLY.

/s/ **Brian M. Gaff**

Party/Attorney for: _____

Kari MacRae

Party/Attorney for: _____

Party/Attorney for: _____

Party/Attorney for: _____

COURT RULING

- APPROVED IN FULL and SO ORDERED.
- DENIED
- APPROVED IN PART AND DENIED IN PART AS FOLLOWS:

DATE:

So ORDERED:

(Associate Justice)

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the Court's e-filing system, will be served on all Defendants with the Summons and Complaint.

/s/ Brian M. Gaff

Brian M. Gaff

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT DEPARTMENT

KARI MACRAE,

Plaintiff,

v.

TOWN OF BOURNE CLERK AND BOARD OF REGISTRARS OF VOTERS,

TOWN OF FALMOUTH CLERK AND BOARD OF REGISTRARS OF VOTERS,

TOWN OF MASHPEE CLERK AND BOARD OF REGISTRARS OF VOTERS,

TOWN OF SANDWICH CLERK AND BOARD OF REGISTRARS OF VOTERS,

and

HON. WILLIAM FRANCIS GALVIN, in his official capacity as Secretary of the Commonwealth of Massachusetts,

Defendants.

Civil Action No.: _____

EX PARTE MOTION FOR EXPEDITED DE NOVO REVIEW

Plaintiff Kari MacRae submits this motion¹ pursuant to Mass. Super. Ct. R. 9A(d)(1) to respectfully request that this Court conduct an expedited *de novo* review of the completed early voting ballots submitted in the Republican Primary Election for Massachusetts State Senator for

¹ Plaintiff is concurrently filing a companion lawsuit and *ex parte* motion in the Superior Court for Plymouth County, naming as defendants the Town Clerks and Boards of Registrars of Voters in the towns of Plymouth and Plympton, and the Hon. William Francis Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts. Plaintiff intends to seek consolidation of that lawsuit with the instant lawsuit

the Plymouth and Barnstable Senate District that was held on September 3, 2024 (“Primary Election”).

Specifically, Plaintiff respectfully requests that the expedited *de novo* review include (i) a comparison of the signature on the inner secrecy envelope of each completed early voting ballot submitted in the Primary Election with the signature on the application for the early voting ballot to determine the validity of each completed early voting ballot pursuant to G.L. ch. 54 § 25B(a)(14), and (ii) an examination to determine if the inner secrecy envelope of each completed early voting ballot includes a date and/or time stamp as required² and meets all other requirements for validity.

The reasons for Plaintiffs’ Motion are set forth in the Memorandum filed herewith.

Respectfully submitted,

Dated: October 10, 2024

/s/ Brian M. Gaff

Brian M. Gaff (BBO No. 642297)

215 South Broadway, Suite 308

Salem, NH 03079-3374

857-719-0100

781-581-9134 (fax)

bgaff@lawbmg.com

Attorney for Kari MacRae.

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the Court’s e-filing system, will be served on all Defendants with the Summons and Complaint.

/s/ Brian M. Gaff

Brian M. Gaff

² See, e.g., Mass. Election Advisory 20-02, Aug. 18, 2020, at 1.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT DEPARTMENT

KARI MACRAE,

Plaintiff,

v.

TOWN OF BOURNE CLERK AND BOARD
OF REGISTRARS OF VOTERS,

TOWN OF FALMOUTH CLERK AND
BOARD OF REGISTRARS OF VOTERS,

TOWN OF MASHPEE CLERK AND
BOARD OF REGISTRARS OF VOTERS,

TOWN OF SANDWICH CLERK AND
BOARD OF REGISTRARS OF VOTERS,

and

HON. WILLIAM FRANCIS GALVIN, in his
official capacity as Secretary of the
Commonwealth of Massachusetts,

Defendants.

Civil Action No.: _____

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S
EX PARTE MOTION FOR EXPEDITED DE NOVO REVIEW**

Plaintiff Kari MacRae respectfully requests that this Court conduct an expedited *de novo* review of the completed early voting ballots submitted in the Republican Primary Election for Massachusetts State Senator for the Plymouth and Barnstable Senate District that was held on September 3, 2024 (“Primary Election”).

The reasons for Plaintiffs’ Motion are set forth in this Memorandum.

I. FACTS

The Plymouth and Barnstable Senate District consists of eight towns: four in Plymouth County (Kingston, Pembroke, Plymouth, and Plympton) and four in Barnstable County (Bourne, Falmouth, Mashpee, and Sandwich).

Plaintiff was one of two Republican candidates in the Primary Election. On September 14, 2024, following a district-wide recount, Defendant Secretary Galvin declared the final Primary Election results as follows:

Republican Candidate	Totals
Kari MacRae	6,966
Mathew J. Muratore	7,005
All Others	15
Blanks	564
Total Votes Cast	14,550

Plaintiff lost the Primary Election to Mr. Muratore by thirty-nine votes.

As described in Plaintiff’s Complaint, before and/or during the recounts in the towns of Plymouth and Plympton, Plaintiff and other witnesses became aware that the local election officials in those towns were including early voting ballots in their vote tabulations without first performing the required signature comparison regarding those ballots pursuant to G.L. ch. 54 § 25B(a)(14), underscored by Defendant Secretary Galvin’s Mass. Election Advisory 20-04, Sept. 24, 2020, at 3.

The statute requires that the signature on the inner secrecy envelope of each completed early voting ballot be compared to the signature on the application for the early voting ballot. Indeed, as described in the declarations accompanying Plaintiff’s Complaint, the local election officials admitted to not performing the required signature comparison for any of the completed

early voting ballots. In addition, Plaintiff observed multiple instances of inner secrecy envelopes that lacked the required¹ date and/or time stamp.

The number of completed early voting ballots that were not processed in accordance G.L. ch. 54 § 25B(a)(14) exceeds the thirty-nine vote margin.

II. LEGAL STANDARD

The determination of the legal effect of a ballot is a question of law. *McCavitt v. Registrars of Voters of Brockton*, 385 Mass. 833, 839 (1982); *Morris v. Bd. of Registrars of Voters of East Bridgewater*, 362 Mass. 48, 49 (1972). The prevention of fraud is a vital consideration in the development of laws governing non-in-person voting. *McCavitt*, 385 Mass. at 844 (discussing legislation pertaining to absentee voting). Local election officials have no discretion regarding the associated statutory requirements that determine ballot validity. *Connolly v. Sec’y of Commonwealth*, 404 Mass. 556, 569-70 (1989) (discussing the signature comparison required for absentee ballots set forth in G.L. ch. 54 § 94, which uses language virtually identical to that requiring the signature comparison for early voting ballots set forth in G.L. ch. 54 § 25B(a)(14)).

Examination of ballot envelopes on the issue of validity is appropriate for a *de novo* review. *See, e.g., Connolly*, 404 Mass. at 565 (discussing the *de novo* review and rejection of ballots from the City of Lowell due to ballot envelope deficiencies where “the potential for fraud in such circumstances is too great.”).

III. ARGUMENT

The decision by local election officials to disregard the requirements of G.L. ch. 54 § 25B(a)(14) with respect to early voting ballots was unlawful. *Connolly*, 404 Mass. at 569-70.

¹ Mass. Election Advisory 20-02, Aug. 18, 2020, at 1.

Furthermore, disregarding the statutory requirements implicates every early voting ballot and calls in to question the integrity of each early voting ballot. A *de novo* review is, therefore, appropriate in this case to guarantee safeguards are followed to ensure that fraud did not affect the Primary Election.

Additionally, a *de novo* review is appropriate because the number of early voting ballots that were counted but not subjected to the required signature comparison pursuant to G.L. ch. 54 § 25B(a)(14) exceeds the number of votes—thirty-nine—separating Plaintiff from Mr. Muratore in the Primary Election.²

An expedited *de novo* review is appropriate in this case because the general election of November 5, 2024 (“General Election”) is less than four weeks away. It is necessary to determine quickly whether there are more than thirty-nine early voting ballots that were counted but should have been rejected for failing the required signature comparison. If the *de novo* review confirms that, then the outcome of the Primary Election must be invalidated as to the current Republican nominee (Mr. Muratore) and a new Republican nominee must be selected to compete in the General Election.

That selection may be accomplished as described in Plaintiff’s Complaint: the Court may order a special primary election, or pursuant to G.L. ch. 53 § 14 the Court may order the Republican Town Committees in the towns comprising the Plymouth and Barnstable Massachusetts Senate District (for Plymouth County: Kingston, Pembroke, Plymouth, and Plympton; for Barnstable County: Bourne, Falmouth, Mashpee, and Sandwich) to select a Republican nominee for Massachusetts State Senator for that District to compete in the General Election.

² District-wide, there were approximately 6,000 early voting Republican ballots received and counted in the Primary Election, approximately 5,000 of which arrived by mail.

An objective of the expedited *de novo* review is to minimize the disruption of the forthcoming General Election as to the race for Massachusetts State Senator for the Plymouth and Barnstable Senate District. However, should the *de novo* review dictate that a new Republican nominee must be selected, that nominee must have sufficient time to be able to compete fairly in the General Election. If there is insufficient time available, it would be appropriate for the Court to order a special general election to occur after November 5, 2024, e.g., within sixty days. This would necessitate declaring the General Election to be held on November 5, 2024 null and void with respect to the race at issue.

IV. CONCLUSION

Plaintiff's request for an expedited *de novo* review is necessary and proper in light of (i) the local election officials' unlawful decision to ignore the requirements of G.L. ch. 54 § 25B(a)(14) with respect to early voting ballots, and (ii) the imminent General Election. By failing to perform the signature comparison, and by failing to include the required date and/or time stamp, the likelihood of fraud is significant. If the expedited *de novo* review confirms that more than thirty-nine early voting ballots that were counted should have been rejected for failing the required signature comparison, or lacking the required date and/or time stamp, or due to other indicia of invalidity, that would demonstrate an irregularity or illegality of the Primary Election. In that instance, the Primary Election should be set aside. *McCavitt*, 385 Mass. at 850.

Respectfully submitted,

Dated: October 10, 2024

/s/ Brian M. Gaff

Brian M. Gaff (BBO No. 642297)
215 South Broadway, Suite 308
Salem, NH 03079-3374
857-719-0100
781-581-9134 (fax)
bgaff@lawbmg.com

Attorney for Kari MacRae.

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the Court's e-filing system, will be served on all Defendants with the Summons and Complaint.

/s/ Brian M. Gaff

Brian M. Gaff

Envelope # 3160214

Envelope Information

Envelope Id

3160214

Submitted Date

10/10/2024 4:08 PM EST

Submitted User Name

bgaff@lawbmg.com

Case Information

Location

Superior Court - Barnstable

Category

Actions Involving State/Municipality

Case Type

Equity Action involving the Commonwealth, Municipality, MBTA, etc.

Filings

Filing Type

EFile

Filing Code

Complaint electronically filed

Filing Description

Complaint

Comments to Court

Plaintiff or her representative will pick up the summons documents at the Court. Please don't mail them.

Filing on Behalf of

Kari MacRae

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
1-Barnstable Complaint.pdf	1-Barnstable Complaint.pdf	Public	Original File

Filing Type

EFile

Filing Code

Civil Action Cover Sheet

Filing Description

Cover Sheet

Filing on Behalf of

Kari MacRae

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
2-Barnstable Cover Sheet.pdf	2-Barnstable Cover Sheet.pdf	Public	Original File

Filing Type

EFile

Filing Code

Exhibits/Appendix

Filing Description

Exhibits A-C to Complaint

Filing on Behalf of

Kari MacRae

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
3-Barnstable Complaint Exhibits.pdf	3-Barnstable Complaint Exhibits.pdf	Public	Original File

Filing Type

EFile

Filing Code

Motion – Other

Filing Description

Rule 20 Motion

Filing on Behalf of

Kari MacRae

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
	4-Barnstable Rule 20		

Motion.pdf	Public	4-Barnstable Rule 20 Motion.pdf
Original File		

Filing Type

EFile

Filing Code

Motion – Other

Filing Description

Ex Parte Motion for Expedited De Novo Review

Filing on Behalf of

Kari MacRae

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
5-Barnstable Ex Parte Motion.pdf	5-Barnstable Ex Parte Motion.pdf	Public	Original File

Filing Type

EFile

Filing Code

Memorandum (options)

Filing Description

Memo In Support Of Ex Parte Motion for Expedited De Novo Review

Filing on Behalf of

Kari MacRae

Filing Status

Submitting

Lead Document

File Name	Description	Security	Download
6-Barnstable Memo ISO Ex Parte Motion.pdf	6-Barnstable Memo ISO Ex Parte Motion.pdf	Public	Original File

Fees

Complaint electronically filed

Description	Amount
Filing Fee	\$0.00
Fee for Blank Summons or Writ (except Writ of Habeas Corpus) MGL 262 sec 4b (6 x \$5.00)	\$30.00
	Filing Total: \$30.00

Civil Action Cover Sheet

Description	Amount
Filing Fee	\$0.00
	Filing Total: \$0.00

Exhibits/Appendix

Description	Amount
Filing Fee	\$0.00
	Filing Total: \$0.00

Motion – Other

Description	Amount
Filing Fee	\$0.00
	Filing Total: \$0.00

Motion – Other

Description	Amount
Filing Fee	\$0.00
	Filing Total: \$0.00

Memorandum (options)

Description	Amount
Filing Fee	\$0.00
	Filing Total: \$0.00

Total Filing Fee	\$30.00
Court Case Fee	\$275.00
Payment Service Fee	\$9.45
E-File Fee	\$22.00
	Envelope Total: \$336.45

Transaction Amount \$336.45
Transaction Id 4913785
Filing Attorney Brian Gaff
Transaction Response Authorized

Order Id 003160214-0

© 2024 Tyler Technologies
Version: 2022.1.7.10519