COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

NO. 11109

LIBERTARIAN ASSOCIATION OF MASSACHUSETTS AND
LIBERTARIAN NATIONAL COMMITTEE, INC.,
Plaintiffs-Appellants,

v.

WILLIAM F. GALVIN, SECRETARY OF THE COMMONWEALTH,
Defendant-Appellee.

ON RESERVATION AND REPORT BY
THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

BRIEF OF APPELLEE SECRETARY OF THE COMMONWEALTH

MARTHA COAKLEY
Attorney General

Amy Spector, BBO # 557611
Assistant Attorney General
Government Bureau
One Ashburton Place
Boston, Massachusetts 02108-1598
(617) 963-2076
email: amy.spector@state.ma.us

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QUESTIONS PRESENTED

I. Whether the complaint fails to present an actual controversy under G.L. c. 231A, where the appellants seek a declaration that, as applied to the 2008 presidential election, G.L. c. 53, § 14, would have required "substitution" of presidential candidate Bob Barr for candidate George Phillies on the 2008 election ballot in Massachusetts; the complaint does not present any facts establishing that the scenario upon which the appellants' 2008 "substitution" claim was based will arise again in the 2012 presidential election; and the declaratory relief sought will not have an immediate impact on the rights of the parties?

II. If the Court finds that an actual controversy exists concerning the proper application of G.L. c. 53, § 14, to the 2008 presidential election, whether the statute, which governs the filling of vacancies on the ballot of candidates for state, city, and local office, required the Secretary to have "substituted" on the ballot the name of non-party candidate Barr, who failed to obtain the 10,000 voter signatures required for non-party presidential candidates to obtain ballot placement under G.L. c. 53, § 6, in place of candidate Phillies, who had met the signature requirement?

III. If G.L. c. 53, § 14, did not require "substitution" on the ballot sought by candidate Barr, whether such "substitution" nevertheless would have

been constitutionally required under Article 9 of the Massachusetts Declaration of Rights?

STATEMENT OF THE CASE

Nature of the Case

Under Massachusetts' ballot access statute, presidential and vice-presidential candidates who are not enrolled in a legally recognized political party in Massachusetts (i.e., "non-party candidates") must gather and file signatures of 10,000 registered voters in order to have their names placed on the ballot. G.L. c. 53, § 6. Appellants Libertarian Association of Massachusetts and Libertarian National Committee (collectively, the "Libertarian Association" or the "Association") seek declaratory relief concerning the proper interpretation of an unrelated election law provision, G.L. c. 53, § 14, which states, in part, that "[i]f a candidate nominated for a state, city or town office dies before the day of election, or withdraws his name from nomination, or is found ineligible, the vacancy . . . may be filled by the same political party or persons who made the original nomination, and in the same manner[.]"

The Libertarian Association seeks a declaration that, under section 14, a non-party presidential candidate who does not qualify for the ballot under G.L. c. 53, § 6, by obtaining 10,000 voter signatures, nonetheless may demand "substitution" on the ballot in place of another candidate who meets the signature

requirement but who thereafter withdraws. The Association also seeks a declaration that, if section 14 does not provide for "substitution," the provision violates Massachusetts Declaration of Rights Article 9.

The Secretary moved to dismiss the complaint for failure to set forth an actual controversy, as the complaint does not allege facts showing that the circumstances underlying the Libertarian Association's claimed right to "substitution" exist now or that such circumstances will exist in the course of the upcoming election. In response to the Secretary's motion, and in their brief, the Association concedes that there is no actual controversy as to the 2012 election. It asserts, however, that the complaint is based not on the 2012 election "but rather upon the continuing dispute surrounding the 2008 presidential election." Brief of Appellants ("Appellants' Br.") at 17.

In the 2008 election, non-party presidential candidate Bob Barr and vice-presidential candidate Wayne Root, who failed to obtain 10,000 voter signatures in support of their ballot placement but were selected at a Libertarian national convention, sought to be "substituted" on the ballot for non-party presidential candidate George Phillies and vice-presidential candidate Chris Bennett, who had obtained the required 10,000 voter signatures but were not endorsed at the Libertarian convention. After the

Secretary refused to "substitute" Barr and Root on the ballot, they and the Libertarian Association filed suit in federal court in August 2008, asserting a right to "substitution" under the United States Constitution.

The district court issued a preliminary injunction placing the names of Barr and Root on the November 2008 election ballot in Massachusetts, Barr v. Galvin, 584 F.Supp.2d 316 (D. Mass. 2008), and the court subsequently entered summary judgment in their favor. Barr, 659 F.Supp.2d 225 (D. Mass. 2009). On appeal, the First Circuit reversed the district court, soundly rejecting Barr and Root's claimed federal constitutional right to "substitution" under the Equal Protection clause. Barr v. Galvin, 626 F.3d 99 (1st Cir. 2010). The First Circuit explained that the "substitution" sought by Barr and Root, if allowed, would "effectuate an end-run around the signature requirement - a requirement that allows the state to ascertain whether a given candidate has enough support to warrant inclusion on the ballot." Id. at 111.

In the aftermath of their unsuccessful federal court litigation, the Libertarian Association filed the instant action. In arguing that an actual controversy exists here concerning whether G.L. c. 53, § 14, would have required "substitution" of Barr for Phillies on the 2008 ballot, the Association mistakenly seizes upon the fact that, although the

2008 election had already occurred, the First Circuit proceeded to consider the equal protection claim asserted there, under the "capable of repetition" exception to the mootness doctrine. Id. at 104-06.

But the First Circuit's 2010 ruling in Barr does not establish the existence of an actual controversy here. The First Circuit's resolution of the equal protection claim was proper because, in the absence of an appellate ruling, the Secretary would have risked being bound, in future elections, by the incorrect decision of the district court (which had held that "substitution" was required under the Equal Protection clause). That the First Circuit properly exercised its discretion to resolve an otherwise moot federal equal protection claim in order to reverse an erroneous district court ruling does not in any manner establish that a "live" dispute currently exists in this newly-instituted state-court action concerning whether a state statute provided a right of "substitution" in the 2008 election.

Statutory Provisions Governing the Esablishment of Political Parties in Massachusetts

A recognized "political party" may be established in Massachusetts in one of two ways, each depending in the first instance on the use of a "political designation" by a candidate or by a grouping of voters. A "political designation" is merely a label of three words or fewer that signifies a particular

political outlook; as a legal matter it does not confer any ballot access rights on the candidate or grouping of voters and it does not necessarily entail any "on the ground" organization. G.L. c. 50, § 1 (definition of "political designation"); Barr 626 F.3d at 102 (in the 2008 election, the Commonwealth, pursuant to G.L. c. 50, § 1, "permitted the use of the Libertarian label as a 'political designation'").[1]

First, if at least 1% of the total number of registered voters in the Commonwealth enrolls in a "political designation," that designation becomes the name of a recognized "political party" comprised of the voters who enrolled under the name of the designation. G.L. c. 50, § 1. Second, if a candidate

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[1] A "political designation" refers to "any designation required in" G.L. c. 53, § 8, "expressed in not more than three words, which a candidate for nomination under section 6 of chapter 53 represents." G.L. c. 50, § 1; G.L. c. 53, § 8 ("If a candidate is nominated otherwise than by a political party the name of a political party shall not be used in his political designation"). Thus, a "political designation" is any three-word label, other than the name of a recognized political party, chosen by a candidate who seeks a nomination through nomination papers. A political designation also may be recognized when 50 or more voters file a petition with the Secretary, seeking recognition of a three-word label under which voters in the future may seek to enroll. G.L. c. 50, § 1 (further defining "political designation" as "any designation expressed in not more than three words to qualify a political party under this section, filed by fifty registered voters" with the Secretary on a form "requesting that such voters, and other others wishing to do so, may change their registration to such designation, provided however, that the designation "Independent" shall not be used.").

for any statewide office (who identifies himself on nomination papers with a political designation and is thus identified on the ballot) garners at least 3% of the vote, that designation becomes the name of a recognized "political party." Id.

There are currently three legally recognized political parties in Massachusetts: Democratic, Republican, and Green-Rainbow. See http://www.sec.state.ma.us/ele/elepar/paridx.htm (last visited January 26, 2012). There is no legally recognized "Libertarian" party in Massachusetts at the present time. The term "Libertarian" is a political designation, see id., or label, which may be used by a candidate or may give rise to a recognized political party if the requisite number of voters enroll in the designation.

Appellants Libertarian Association of Massachusetts and Libertarian National Committee are not recognized as political parties in Massachusetts. Both the Libertarian Association of Massachusetts, which is an "affiliation of Massachusetts voters formed for the purpose of fielding qualified candidates for public office," and the Libertarian National Committee, seek ballot access for "Libertarian" candidates. Appendix to the Briefs ("App.") 4 (Compl. ¶ 9), 35.[2]

[2] For the sake of simplicity, the Secretary refers to both appellants as "the Libertarian Association." In addition, the Secretary sometimes uses the term "non-

Statutory Provisions Governing Ballot Access

Consistent with the "fact . . . that there are obvious differences in kind" between established political parties and smaller organizations that have not achieved party status, the Supreme Court has held that States may properly "recogniz[e] these differences and provid[e] different routes to the printed ballot." Jenness v. Fortson, 403 U.S. 431, 441-42 (1971). In view of these inherent differences, Massachusetts election law sets forth different procedures governing ballot access for a recognized party's presidential candidates and the electors who support them, on the one hand, and non-party presidential candidates and the electors who support them, on the other hand.[3]

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party" to refer to the appellants (or other organizations that have not achieved status as political parties and which in their names make use of a political designation label). The Secretary reiterates, however, that under Massachusetts law, "non-parties" such as appellants have no right to place on the ballot a candidate who may be affiliated with the appellants' political views. Only candidates who obtain the number of signatures required to obtain ballot access under G.L. c. 53, § 6, as discussed infra.

[3] In the case of both recognized parties and non-parties, as a function of the electoral college system, it is the electors who actually elect the president and vice-president. U.S. Const. art. II, § I, cl. 2; U.S. Const. amend. XII. Therefore, although the general election ballot contains the names of the presidential and vice presidential candidates (and not the individual names of the electors), voters are actually voting to select

1. Ballot Access Provisions Governing Recognized Party Presidential Candidates

In order for the presidential and vice-presidential candidates of a recognized political party to have their names placed on the November statewide election ballot, the party's state committee is required to meet to choose presidential electors and to submit to the Secretary, by the second Tuesday in September, a form identifying the surnames of the presidential and vice-presidential candidates as well as the names and addresses of the presidential electors selected by the committee. G.L. c. 53, § 8. "This submission, in and of itself, qualifies the candidates for listing on the ballot," Barr, 626 F.3d at 102, in recognition of the facts that: (1) the party has demonstrated a substantial measure of public support by having achieved party status; (2) the party's state committee, having been elected by the party's voters, reflects the will of party members; and (3) the delegates chosen by the committee to attend the party's national presidential convention reflect the preferences of Massachusetts voters. G.L. c. 52, § 1; G.L. c. 53, § 70B.[4]

"Electors of President and Vice President." G.L. c. 54, § 43; App. 220, 271. The number of presidential electors to be elected is equal to the number of senators and representatives in Congress to which a State is entitled. U.S. Const. art. II, § 1, cl. 2; G.L. c. 54, § 151. Massachusetts thus elects 11 electors to the electoral college.

[4] In a separate certificate of nomination form submitted by the state party committee to the

The electors are required to sign their written acceptance on the form, thereby pledging to vote for the presidential and vice-presidential candidates identified on the form. G.L. c. 53, § 8. The electors must be registered voters in Massachusetts. G.L. c. 53, § 9.

2. Ballot Access Provisions Governing Non-Party Presidential Candidates

The process is different for candidates who are not affiliated with a recognized political party. In order to have their names appear on the ballot, presidential and vice-presidential candidates who are not enrolled in a recognized political party must file nomination papers signed by 10,000 registered voters supporting their placement on the ballot. G.L. c. 53, §§ 6-10; Barr, id. at 102. Any registered voter may sign a non-party candidate's nomination papers, and a voter may sign more than one candidate's nomination papers. G.L. c. 53, § 7. Candidates are free to use volunteers to gather signatures, and nomination papers are available free of charge from the Secretary's office. App. 222.

The nomination papers are required to identify the names of the non-party presidential and vice-

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Secretary, the state party certifies that the presidential and vice-presidential candidates identified by the state party were selected at that party's national convention; such form must be signed and sworn to by the national convention's presiding officer and secretary. G.L. c. 53, § 5.

presidential candidates in the blank space following the words "Candidates for President" and "Vice President," and the papers also may - but need not - identify a "political designation" with which the candidates are affiliated. G.L. c. 53, § 8; Barr, id. at 102; App. 254. The papers must set forth the names and addresses of a slate of presidential electors, whose signatures on the papers signify the electors' support for the presidential and vice-presidential candidates identified on the papers. G.L. c. 53, § 8; G.L. c. 54, § 78 (candidates for electors are nominated to vote for specified presidential and vice-presidential candidates); Barr, id.[5]

Signed nomination papers for non-party presidential and vice-presidential candidates must be submitted to local election officials for the city or town in which each voter resides, at least 28 days prior to the date for submitting the papers to the Secretary. G.L. c. 53, § 7; Barr, id. The local

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[5] Although the language in G.L. c. 53, § 8 (referring to "pledge" by electors to vote for presidential and vice-presidential candidates) by its terms applies only to party candidates for elector, another statutory provision, G.L. c. 54, § 78, reflects that all presidential electors (including non-party candidates for elector) are nominated to vote for the specified presidential and vice-presidential candidates whose names appear on the ballot. G.L. c. 54, § 78 (in order to vote for presidential electors, a voter shall make an "x" in the square on the ballot appearing to the right of the surnames of the presidential and vice-presidential candidates, "to vote for whom[,] such candidates for electors are nominated").

officials are required to certify whether the signatures are those of voters registered to vote in the city or town. Id. Following certification by the local officials, the nomination papers must be filed with the Secretary by the last Tuesday in August. G.L. c. 53, § 10.

The fact that non-party presidential and vice-presidential candidates may receive an endorsement from a political entity (such as the "Libertarian national convention") does not confer any ballot access rights on those candidates in Massachusetts. Barr, id. Rather, the statute requires that in order to obtain ballot placement, each non-party presidential candidate (and the elector candidates supporting such presidential candidate) must comply with G.L. c. 53, § 6, by filing 10,000 voter signatures in support of their candidacies. G.L. c. 53, §§ 6-10.

Statement of Facts

The facts leading up to the federal litigation in 2008 in Barr, which provide a necessary backdrop to understanding the present action, are as follows.

At the time of the November 2008 election, the Commonwealth recognized four political parties: Democratic, Republican, Green-Rainbow, and Working Families. There was no recognized Libertarian party in Massachusetts at that time. In early 2008, George Phillies began to circulate nomination papers

identifying himself as a presidential candidate and Chris Bennett as a vice-presidential candidate. Barr, id. at 103. The papers identified Phillies and Bennett as "Libertarian" in the space available on the papers for signifying a political designation. Id.

Phillies and Bennett competed unsuccessfully for the endorsement of the Libertarian national convention in May 2008; the convention instead endorsed Barr and Root. Id. at 103. On May 29, 2008, Phillies and Bennett, who by then had gathered approximately 7,000 signatures in support of their ballot placement, inquired of the Secretary as to whether they could "transfer" their signatures to Barr and Root. Id.

The Secretary responded on June 5, 2008, that such "substitution" was not allowed but that Barr and Root still had almost two months before the July 28 deadline to gather and submit signatures in support of their own ballot placement. Id.[6]

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[6] Here, as in the federal litigation, the Libertarian Association places much weight on an earlier communication in October 2007 between Phillies and a staff attorney in the Secretary's office. Appellants' Br. at 9-12. Specifically, in an e-mail, Phillies, who was chair of the "Libertarian Party of Massachusetts" had asked whether, if the presidential and vice-presidential candidates identified on nomination papers were not later endorsed at the national Libertarian convention in May 2008, the names of the convention-endorsed candidates could be "substituted" on the ballot. Barr, id. at 103. In an e-mail in October 2007, the Secretary's aide responded that the Secretary's office could "prepare a form that allows members of the party to request the substitution of the candidate." Id. The district

Phillies continued to circulate nomination papers in support of a Phillies/Bennett candidacy. Id. He ultimately submitted nomination papers with over 10,000 voter signatures to the Secretary in a timely manner, thereby qualifying for ballot access. Id. "In contrast, Barr and Root did not submit any nominating papers, did not provide any evidence that they had secured the necessary signatures, and did not identify any presidential electors." Id.

Thereafter, in August 2008, candidates Barr and Root, the Libertarian Association of Massachusetts (then named Libertarian Party of Massachusetts), and the Libertarian National Committee, filed suit in federal court, challenging the Secretary's refusal to place Barr and Root on the November 2008 ballot, and asserting claims based on plaintiffs' right to free speech, freedom of association, and equal protection. Id. In the ensuing proceedings, Barr and Root's counsel represented to the court that Phillies and

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court rejected Barr and Root's assertion that the Secretary was thereby "estopped" from later refusing to allow "substitution"; the court held that the aide's communication "made no promise that the request for substitution would be granted." Barr, 584 F.Supp.2d 316, 320 (D. Mass. 2008) (preliminary injunction ruling). On appeal from the district court's subsequent summary judgment decision, the First Circuit held that the estoppel issue was moot, insofar as the Secretary in the course of the litigation had made "crystal clear" his position that "substitution" was not allowed in the circumstances presented; and "there is no reasonable likelihood of recurrence" of the facts upon which the "estoppel" claim had been based. Barr, 626 F.3d at 111-12.

Bennett supported the "substitution" request. The district court issued a preliminary injunction in September 2008, directing the Secretary to place the names of Barr and Root on the ballot in lieu of Phillies and Bennett, as candidates for President and Vice-President. Barr, 584 F.Supp.2d at 318-22. Barr and Root thus appeared on the 2008 election ballot, ultimately receiving less than one percent of the vote. Barr, 626 F.3d at 104.[7]

The district court subsequently granted summary judgment in favor of Barr and Root, holding that the Secretary was required, as a matter of equal protection, to allow candidate "substitution." Barr, 659 F.Supp.2d at 230. In addition, "[e]ven though the initial complaint acknowledged that Massachusetts had no statutory mechanism specific to the kind of substitution" sought by Barr and Root, the district

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[7] Although Barr and Root received less than one percent of the vote (and thus less than the three percent threshold required to achieve party status for the "Libertarian" designation), a candidate for United States Senate who identified himself as "Libertarian" received over three percent of the total votes for that office, as a result of which, beginning in November 2008, the Commonwealth recognized the "Libertarian" party as a recognized political party in Massachusetts. Barr, 626 F.3d at 104. As a result of the 2010 statewide election in Massachusetts, however, at which no Libertarian party candidate appeared on the ballot let only met the 3% threshold, there is no longer a recognized "Libertarian" party in Massachusetts; rather, the term "Libertarian" has reverted to a political designation. See http://www.sec.state.ma.us/ele/elepar/paridx.htm (last visited January 26, 2012).

court "speculated that section 14 [G.L. c. 53, § 14] might provide a mechanism for substitution but declared that section unconstitutionally vague because it was unclear as to whether the reference to 'state . . . officer' encompassed the presidency, the vice-presidency, and/or presidential electors." Barr, 626 F.3d at 104; 584 F.Supp.2d at 320-22.[8]

The First Circuit reversed the district court's ruling on the equal protection issue, holding that the Secretary's refusal to "substitute" Barr and Root on the ballot did not violate equal protection. The court held that "[t]he Massachusetts ballot access provisions at issue here are nondiscriminatory," because all political organizations have an "equal opportunity" to achieve status as a recognized party and thus to "qualify . . . for the array of rights indigenous to recognized parties under Massachusetts law." 626 F.3d at 109.

The court emphasized that the Libertarian Association "had the same chance as any other political organization to qualify as a recognized

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[8] Barr and Root's primary constitutional claim in the federal litigation was that "substitution" was required as a matter of equal protection and First Amendment rights under the federal Constitution. In the course of the preliminary injunction proceedings in district court, Barr and Root asserted that G.L. c. 53, § 14 could be read to authorize candidate "substitution" but that the statute was unconstitutionally vague. Barr, 659 F. Supp.2d 225, 227-28 (D. Mass. 2009); Barr, 626 F.3d at 103-04.

political party in this way [i.e., by fielding candidates who obtain at least three percent of the vote] and, in fact, did so in the 2008 election." Id. The court further found that the "second avenue for qualification as a recognized political party under Massachusetts law," namely, through enrollment of at least one percent of registered voters, was a "reasonable" method "by which the state can ascertain whether a political organization has demonstrated sufficient support to warrant official recognition as a party." Id. As the First Circuit concluded, "the LPM [now Libertarian Association] had a full and fair chance to avail itself of this avenue for becoming a recognized political party," and thus, "[t]o sum up, equality of opportunity exists here." Id.

The court went on to further find that the roughly 60-day period between the "Libertarian" convention and the deadline for filing nomination papers did not impose an "unreasonable burden" on Barr and Root to gather the required 10,000 signatures. Id. at 109-10. As the First Circuit explained, the State's legitimate interest in ensuring that candidates on the ballot have a substantial measure of support "is advanced by the Secretary's refusal to grant to non-party candidates the right to substitution in circumvention of the state's signature requirements." Id. at 111. Further reasoning that the "substitution" sought, if granted, would result in

"an end-run around the signature requirement," the court concluded that "the modest burden imposed upon non-party candidates by requiring them to secure signatures, rather than piggy-backing upon signatures collected for other candidates, is not so onerous as to present an equal protection problem vis-à-vis candidates affiliated with recognized political parties." Id.

The First Circuit vacated the district court's decision that G.L. c. 53, § 14, was unconstitutionally vague. The court commented that section 14, "while not unconstitutionally vague," nevertheless would benefit from "interpretive clarification" by the state courts, and the court remanded the matter to the district court with instructions to abstain from ruling on the vagueness claim under the doctrine of "Pullman" abstention. Id. at 101, 108, 113 (citing R.R. Comm'n of Tex. v. Pullman Co., 312 U.S. 496 (1941)). Barr and Root unsuccessfully sought rehearing and certiorari review.[9]

Following remand by the First Circuit, the district court issued a decision abstaining on the vagueness claim, staying that claim "pending a state court interpretive clarification of the state

[9] Barr v. Galvin, 630 F.3d 250 (1st Cir. 2010) (denying panel rehearing); Barr v. Galvin, U.S. Court of Appeals for the First Circuit, No. 09-2426, Order dated December 28, 2010 (denying rehearing en banc) (reproduced in Addendum); Barr v. Galvin, 132 S.Ct. 368 (2011).

statute," and dismissing the remaining claims. Barr, 755 F.Supp.2d 293, 295 (D. Mass. 2010). In March 2011, Barr and Root filed a motion requesting that the district court certify, to this Court, the question whether "substitution" was authorized under G.L. c. 53, § 14. The district court denied the motion. Barr, 793 F. Supp.2d 463, 465 (D. Mass. 2011).

Prior Proceedings

On August 27, 2011, the Libertarian Association filed the instant action in the Supreme Judicial Court for Suffolk County, seeking a declaration that G.L. c. 53, § 14, applies to presidential elections and provides non-parties "with a means to substitute the presidential and vice-presidential candidates chosen at their conventions" for other candidates identified on nomination papers. App. 2-3, 13 (Compl. ¶ 5 and Count I). In the alternative, the Libertarian Association seeks a declaration that, if G.L. c. 53, § 14, does not provide "a right of substitution for minor party presidential and vice-presidential candidates, then the statutory scheme is in violation of" Article 9 of the Massachusetts Declaration of Rights. App. 2-3, 13 (Compl. ¶ 5 and Count II).[10]

The Secretary moved to dismiss the complaint for lack of an actual controversy and lack of standing,

[10] In a third count, the Libertarian Association asserts that, if the Court is "unable to determine the meaning of G.L. c 53, § 14," then the statute is unconstitutionally vague. App. 14.

because the Libertarian Association had not alleged any facts showing that the "substitution" scenario existed or would exist in the course of the 2012 election. App. 54-73. The Libertarian Association opposed the Secretary's motion and filed a motion for summary judgment. App. 74-85, 92-94. On December 14, 2011, the Single Justice (Cordy, J.) reserved and reported the matter without decision to the full Court. App. 292-293.

SUMMARY OF ARGUMENT

The complaint does not present an actual controversy, because the Libertarian Association has not set forth any facts establishing that a "substitution" scenario will occur during the 2012 election, and there is no live dispute concerning the 2008 election. (pp. 20-32) General Laws c. 53, § 14, which governs the manner in which vacancies in state or local office are filled, does not provide a mechanism by which candidates can avoid the ballot access requirement set forth in G.L. c. 53, § 6. (pp. 32-45) "Substitution" also is not guaranteed by Article 9 of the Massachusetts Declaration of Rights. (pp. 45-50)

ARGUMENT

I. THE COMPLAINT DOES NOT PRESENT AN ACTUAL CONTROVERSY.

A court may grant declaratory relief only where an "actual controversy has arisen" and the plaintiff

demonstrates standing. G.L. c. 231A, § 1; Massachusetts Ass'n of Independent Ins. Agents & Brokers, Inc. v. Commissioner of Ins., 373 Mass. 290, 292 (1977). An actual controversy is "a real dispute" between adverse parties each with a "definite interest in the subject matter," such that "unless the matter is adjusted such antagonistic claims will almost immediately and inevitably lead to litigation." Bunker Hill Distributing Inc. v. District Attorney for the Suffolk District, 376 Mass. 142, 144 (1978) (internal citation omitted). Declaratory judgment proceedings "are concerned with the resolution of real, not hypothetical, controversies," and thus relief is appropriate under G.L. c. 231A only where a declaration would "have an immediate impact on the rights of the parties." Massachusetts Assn. of Indep. Ins. Agents & Brokers, 373 Mass. at 292. The existence of an "actual controversy" is a jurisdictional issue. Villages Development Co. v. Secretary of the Exec. Office of Environmental Affairs, 410 Mass. 100, 105-06 (1991).

Here, the complaint is devoid of any facts establishing the existence of an actual controversy concerning the proper interpretation of G.L. c. 53, § 14. The complaint alleges only that the issue of "substitution" has arisen in past presidential elections such as the 2008 election, and the Libertarian Association asserts, in conclusory

fashion, that the issue "will continue to arise" in future elections. App. 1 (Compl. ¶ 1).[11] The Association also contends that "[d]isputes like this one concerning ballot access procedures are often time-sensitive, and the temporal parameters are sometimes too short to allow the issues to be fully litigated within a single election cycle." App. 12 (Compl. ¶ 48).

The complaint further alleges that non-parties "must be provided a mechanism to substitute" their convention-backed candidates for other non-party candidates identified on nomination papers, and they contend that G.L. c. 53, § 14, "can be interpreted" to provide such a mechanism. App. 13 (Compl. ¶ 52-53). The Association asserts that, because the Secretary does not share its view, "there exists a controversy which cannot be eliminated without the intervention of the Court." App. 12-13 (Compl. ¶¶ 46-47, 51).

The foregoing allegations do not establish the existence of an actual controversy. The Libertarian Association's interest in having the "substitution" issue addressed under the statute does not establish

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[11] The Libertarian Association also alleges that the Secretary allowed "substitution" in 1996, 2000, and 2004, see App. 7-8 (Compl. ¶¶ 24-28), but the examples that it cites all involved circumstances that the First Circuit found readily distinguishable, leading the court to find "unconvincing" the Association's contention that the Secretary had acted inconsistently in refusing to "substitute" Barr and Root on the ballot. Barr, 626 F.3d at 112.

that in the absence of declaratory relief the issue will "almost immediately and inevitably lead to litigation," Bunker Hill, 376 Mass. at 144. Although the Association asserts that the issue "must be resolved before the upcoming presidential election," App. 3-4 (Compl. ¶ 8), the complaint does not identify any actual candidates who may seek to obtain placement on the 2012 Massachusetts ballot through a claimed right of "substitution," and the complaint does not establish - or even allege - that the attempted "substitution" scenario that occurred in 2008 will occur again in 2012. Indeed, as the Association acknowledges, nomination papers for the 2012 presidential election are not yet even available; they will become available by February 14, 2012 and must be submitted to local officials, with 10,000 voter signatures, by July 31, 2012. Appellants' Br. at 14-15. In advance of the July 2012 deadline for submission of nomination papers to local officials (and the August 2012 deadline for submission of the papers to the Secretary), it is impossible to predict which, if any, Libertarian-affiliated candidates will satisfy the ballot access requirement. Likewise, the Libertarian Association does not - and cannot - know in advance of the 2012 Libertarian convention which candidate will receive that convention's endorsement.[12]

[12] And, if the "Libertarian" convention-endorsed candidate obtains the voter signatures necessary for ballot access, there will be no context in which a

The Libertarian Association acknowledges that it has not established an actual controversy with respect to the 2012 presidential election. Rather, it claims that a "live dispute" still exists concerning the 2008 presidential election that gives rise to an "actual controversy" sufficient to invoke this Court's jurisdiction. The Association states that "[i]t is this . . . live dispute surrounding the 2008 election - not some hypothetical dispute about the 2012 election - that forms the basis for the Libertarians' Complaint" and meets the "actual controversy" requirement of the Declaratory Judgment Act. Appellants' Br. at 17-18.

In arguing that an actual controversy exists, the Libertarian Association places undue reliance on the First Circuit's finding in Barr that although the 2008 election was "a fait accompli" by the time the appeal was heard, "a live dispute remains" with respect to the constitutional issues presented in the federal court proceedings. 626 F.3d at 105, 106; Appellants' Br. at 17-18. But nothing in the First Circuit's decision supports the Association's argument that an "actual controversy" is presented here.

"substitution" claim could even arise. In addition, in the event that the non-endorsed candidate obtains signatures for ballot access but does not want to cede his position on the ballot to the endorsed candidate, there would be no occasion for the type of "substitution" claim that the Association asserts.

To begin with, in the federal litigation, unlike here, candidates Barr and Root asserted a live controversy when they sued the Secretary in August 2008. Accordingly, when the case reached the First Circuit in 2010, well after the November 2008 election, the Secretary agreed that a strong public interest supported the exercise of appellate jurisdiction because the Secretary otherwise risked being bound, in future elections, by the incorrect reasoning and judgment of the district court.

The First Circuit correctly reasoned that the federal dispute concerning a constitutional right to "substitution" fell within the "capable of repetition, yet evading review" exception to the mootness doctrine that is at times recognized where live pre-election controversies become moot before they reach an appellate court. Id. at 104-06. In so ruling, the court found that although the Libertarian party had gained recognized party status as a result of the 2008 election, it could well lose that status in the following election, inasmuch as it did not have a candidate on the November 2010 ballot[13]; and the court further found that the issues raised in the federal case concerning "substitution" thus "may recur and may

[13] As noted above, as a result of the November 2010 statewide election, there no longer is a recognized "Libertarian" party in Massachusetts. See supra footnote 7.

again involve the LPM and/or the Libertarian National Committee." Id. at 106.

As discussed above, the First Circuit then went on to resolve the primary constitutional issue presented - the equal protection issue - in favor of the Secretary. The practical considerations underlying the First Circuit's determination to exercise jurisdiction over the equal protection question - namely, that all of the parties urged the court to reach the merits, see id. at 106, and more significantly that the district court had determined the Secretary's obligations in a manner that could (by persuasive and perhaps res judicata effect) have bound the Secretary absent an appellate decision - are not present here. Thus, the fact that the First Circuit found a "live dispute" in federal court as to the constitutional issues does not establish the existence of an actual controversy in this newly-instituted state court statutory case.

The First Circuit's further determination that the district court should abstain from considering the Association's claim that G.L. c. 53, § 14, was unconstitutionally vague, likewise does not establish the existence of an actual controversy in this Court. In commenting that G.L. c. 53, § 14, "while not unconstitutionally vague," nevertheless would benefit, at some time in the future, from "interpretive clarification" by the Massachusetts courts, id. at

101, the First Circuit did not suggest that state-court clarification should occur immediately or in a case that fails to meet threshold jurisdictional requirements under state law. Rather, in emphasizing that the proper interpretation of G.L. c. 53, § 14, "is a task for which the state courts, as the ultimate arbiters of state-law questions, are better suited," id. at 107, the First Circuit's decision is best understood as merely suggesting the possibility of state-court litigation at some future point, in an appropriate case meeting state court jurisdictional requirements. Certainly nothing in the First Circuit's decision suggests that a state court should provide interpretive guidance concerning G.L. c. 53, § 14, in the absence of an actual controversy, as federal courts do not instruct state courts to render advisory opinions.

In any event, the federal court proceedings obviously cannot - and do not here purport to - compel the exercise of jurisdiction by this Court. Cf. Payton v. Abbott Labs, 386 Mass. 540, 570-574 (1982) (declining to answer one of four questions certified to this Court by a federal district court where the record was not sufficiently developed to enable the Court to resolve the question). In particular, the district court's ruling on abstention in Barr cannot confer jurisdiction on or compel its exercise by this

Court where none exists as a matter of state law.[14] Thus, contrary to the Libertarian Association's argument, federal court abstention on the vagueness claim does not render "live," for this Court's jurisdiction, the question of how section 14 should have been applied in 2008.

Significantly, the First Circuit did not certify to this Court the state-law question concerning the proper interpretation of G.L. c. 53, § 14, nor did it direct the district court to do so, underscoring that the First Circuit did not view state court interpretation of the statute as "determinative" of any pending federal question.[15] And the district court subsequently denied Barr and Root's motion seeking

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[14] Cf. Harris County Commissioners Court v. Moore, 420 U.S. 77 (1975) (ordering district court to abstain and dismiss the complaint without prejudice pending determination of a state law question by the Texas courts, because Texas Supreme Court had held that Texas courts lacked jurisdiction to grant declaratory relief under state law in circumstances where the federal court retained jurisdiction over a federal claim).

[15] See Supreme Judicial Court Rule 1:03, section 1 (authorizing Court to answer questions certified to it by federal courts in cases involving questions of Massachusetts law that "may be determinative of the cause then pending in the certifying court" and as to which there is no controlling SJC precedent). Contrast In re Hundley, 603 F.3d 95, 98-99 (1st Cir. 2010) (certifying state law question to Massachusetts Supreme Judicial Court); Romero v. Colegio de Abogados de Puerto Rico, 204 F.3d 291, 305-06 (1st Cir. 2000) (remanding matter to district court with directions to certify question to Supreme Court of Puerto Rico).

certification of the state-law question. Barr, 793 F.Supp.2d at 465.

Thus, the Association is wrong in stating that, in order "[t]o resolve" the vagueness claim in federal court, "the Libertarians were directed to file an action in Massachusetts state court to obtain clarification of G.L. c. 53, § 14." Appellants' Br. at 20. While the First Circuit expressly noted the "lack of urgency" for state court clarification of G.L. c. 53, § 14, since (at the time of the First Circuit decision, in November 2010), "the next presidential election is almost two full years away," Barr, 626 F.3d at 107, the court did not hint, let alone direct, the state courts to resolve the issue in the absence of an actual controversy involving identified candidates.

In any event, contrary to the Association's assertion that the vagueness claim remains to be decided in the district court, nothing substantive remains to be decided there. In this regard, the First Circuit emphasized that state court clarification, "however it comes out, would end the 'void for vagueness' argument." Id. at 108. In other words, state-court litigation is not necessary to resolve any pending issue in federal court, nor did the First Circuit or district court "direct" the filing of an action in state court to enable the

district court to rule on the vagueness claim.[16]

Finally, although the Libertarian Association has clarified that it does not here seek relief in connection with the 2012 election, it is worth noting that, should a "substitution" scenario arise in connection with the 2012 presidential election, the Association will not be without judicial recourse. In the event that the presidential candidate endorsed by the 2012 Libertarian convention does not obtain the signatures necessary for Massachusetts ballot access,

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[16] The Association correctly notes that, in cases involving Pullman abstention, typically a federal court retains jurisdiction but stays its proceedings pending a determination of state law. Appellants' Br. at 21. And it is true that, following remand from the First Circuit, the district court stayed, rather than dismissing, Barr and Root's vagueness claim, see Barr, 755 F.Supp.2d at 295. But, although nothing in this case turns on the point, it is far from clear that the district court's retention of jurisdiction was the appropriate procedural outcome in the circumstances presented. Given the First Circuit's recognition that state court clarification at some future time "would end the 'void for vagueness' argument" regardless of whether the state court found substitution was authorized by G.L. c. 53, § 14, or not, as a practical matter there remains nothing further for the district court to do, except entry of judgment dismissing the vagueness claim, now or at the latest following a future state court determination of the proper interpretation of G.L. c. 53, § 14. It thus appears that, in these unusual circumstances, the First Circuit may well have intended that the district court dismiss rather than stay the vagueness claim. The First Circuit's citation to Harris County Commissioners Court v. Moore, 420 U.S. 77 (1975), a case in which the federal action was dismissed, see Barr, 626 F.3d at 108, indeed suggests such an outcome. See supra footnote 14.

and then demands "substitution" (assuming that another "Libertarian" candidate who has obtained ballot access under section 6 is willing to "withdraw"), the endorsed candidate could seek to raise the question of the interpretation of G.L. c. 53, § 14, at that time. The fact that Barr and Root were able to obtain relief during the 2008 election cycle, by initiating litigation in federal court in August 2008 and obtaining an injunction prior to the printing of the 2008 ballot, demonstrates that candidates may obtain judicial relief should an actual controversy arise. The state courts similarly have entertained such election actions on an expedited basis in the past.[17]

But absent the concrete facts necessary to establish an actual controversy as to the 2012 election, and because there is no remaining controversy concerning the 2008 election, this Court lacks jurisdiction and should decline to entertain the Association's request for declaratory relief, particularly insofar as its alternate claim for relief would necessitate the Court resolving a constitutional

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[17] See, e.g., Delahunt v. Johnston et al., 423 Mass. 731 (1996) (affirming, on direct appellate review, Superior Court decision ordering Secretary to print plaintiff candidate's name on November general election ballot, in an action that was commenced in Superior Court on October 2, 1996, following September primary election; Superior Court issued a judgment on October 4, 1996; and Supreme Judicial Court heard argument on October 7 and entered an order on October 8, 1996, affirming the judgment).

issue. Commonwealth v. Bartlett, 374 Mass. 744, 749 (1978) ("A court will ordinarily 'not pass upon a constitutional question . . . if there is also present some other ground upon which the case may be disposed of . . . .'") (internal citation omitted).

II. GENERAL LAWS C. 53, § 14, DOES NOT AUTHORIZE A NON-PARTY CANDIDATE TO AVOID COMPLIANCE WITH THE SIGNATURE REQUIREMENT IN G.L. C. 53, § 6.

The Libertarian Association argues that under G.L. c. 53, § 14, a convention-endorsed non-party presidential candidate who does not qualify for ballot access under G.L. c. 53, § 6, by submitting 10,000 voter signatures, nevertheless may demand "substitution" on the ballot in place of a candidate who has met the signature requirement but who thereafter withdraws. This argument is without merit for the same reason that the First Circuit rejected the Association's claim of a right to "substitution" under the Equal Protection clause, namely, that allowing such "substitution" "would effectuate an end-run around the signature requirement." Barr, 626 F.3d at 111. The Court should not interpret the statute in a way that would produce such a plainly absurd result.

Section 14 provides that "[i]f a candidate nominated for state, city or town office dies before the day of election, or withdraws his name from nomination, or is found ineligible, the vacancy . . . may be filled by the same political party or persons who made the original nomination, and in the same

manner . . . ." G.L. c. 53, § 14. It is apparent on the face of the statute that, whatever imprecision might exist in G.L. c. 53, § 14, that provision is not intended to provide a means by which a candidate can plan in advance to obtain ballot access in lieu of complying with the signature requirement set forth in G.L. c. 53, § 6. Rather, section 14 addresses the unusual circumstances in which a nominated candidate dies, withdraws, or is found ineligible after nomination papers are filed. In such unusual circumstances, section 14 simply directs the party or non-party to fill the vacancy through "the same political party or persons who made the original nomination, and in the same manner." G.L. c. 53, § 14.[18] Thus, even assuming that G.L. c. 53, § 14, applies in the context of presidential elections, it would not enable a non-party presidential candidate to dispense with the signature requirement in order to gain ballot access.

The Association's claim of a statutory right to "substitution" is based on a fundamentally flawed premise - namely, that because, in the case of a recognized political party, the presidential candidate selected at the party's national convention is automatically accorded a place on the ballot, the

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[18] A candidate's "withdrawal" as referenced in section 14 may only occur within a 72-hour period after the deadline for filing completed nomination papers. See G.L. c. 53, § 13; id. § 11; G.L. c. 55B, § 5.

statue must be somehow interpreted in a manner that would accord "substitution" to the "Libertarian" convention-backed candidate. This premise is unfounded.

It is well-settled as a matter of federal constitutional law that the States may provide different ballot access procedures for non-party candidates and candidates of recognized political parties. American Party of Texas v. White, 415 U.S. 767 (1974) (rejecting equal protection challenge to a Texas provision requiring minor party candidates to gather, within 55 days, notarized signatures from 1% of voters in previous gubernatorial election). As the Supreme Court stated in White, "So long as the larger parties must demonstrate major support among the electorate at the last election, whereas the smaller parties need not, the latter, without being invidiously treated, may be required to establish their position in some other manner." 415 U.S. at 782-83. Likewise, in Jenness v. Fortson, the Court rejected an equal protection challenge to a Georgia provision requiring independent candidates to obtain signatures representing 5% of registered voters at the last general election, while party candidates were elected through a primary process. 403 U.S. at 440-41 ("We cannot see how [the State] has violated the Equal Protection Clause of the Fourteenth Amendment by making available these two alternative paths, neither

of which can be assumed to be inherently more burdensome than the other.").

Based on the foregoing principle, the First Circuit in Barr correctly held that the Secretary's adherence to the signature requirement in G.L. c. 53, § 6, and his refusal to allow Barr and Root to avoid the requirements of that provision through "substitution," did not violate Barr's and Root's (or the Association's) equal protection rights.[19]

And there is no question that the particular means chosen by the Massachusetts Legislature for non-

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[19] Status as a recognized political party in Massachusetts is "not an unmixed blessing," as it entails substantial regulation (including control by the party's voters) from which non-party candidates, such as Barr and Root, were free. Socialist Workers Party v. Davoren, 378 F. Supp. 1245, 1247 (D. Mass. 1974). For example, in the case of presidential elections, state law closely regulates the selection of electors by a recognized political party's state committee and thus ensures that the will of the party's tens or hundreds of thousands of voters is carried out with respect to the party's nominee for president. Specifically, Mass. G.L. c. 52, § 1, requires that the members of a party's state committee be democratically elected from each of 40 districts by registered voters of that party. The state committee then nominates the presidential electors who, by virtue of Mass. G.L. c. 53, § 8, pledge to vote for the presidential candidate named in the party's filing with the Secretary. In contrast, state law neither authorizes the selection nor regulates the actions of entities like the Libertarian Association insofar as it claims decision-making authority on behalf of a non-party grouping of voters who signed particular nomination papers, such as those voters who signed papers on which Phillies and Bennett used the "Libertarian" designation in 2008.

party presidential candidates to obtain ballot access is entirely proper. As the First Circuit explained, it is "settled beyond hope of contradiction that states have a legitimate interest in ensuring that a candidate makes a preliminary showing of a substantial measure of support as a prerequisite to appearing on the ballot." Barr, 626 F.2d at 111. The requirement that non-party presidential candidates submit 10,000 voter signatures directly serves the Commonwealth's "legitimate interest in ensuring that the candidates who appear on the statewide ballot have demonstrable support among the voting public." Id. at 111.[20]

Certainly the Legislature, in adopting the signature requirement, could reasonably determine that requiring submission of the signatures of 10,000 Massachusetts voters provides a more effective means by which to ensure that a particular candidate enjoys "demonstrable support" in the Commonwealth than providing for ballot access in the manner that the Association urges, namely, based on the results of a national non-party convention - which may not necessarily reflect the will of Massachusetts voters.[21]

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[20] In the case of presidential candidates of a recognized political party, the party's success in maintaining its status as a recognized party (demonstrated at each biennial election) itself ensures that the candidate enjoys a substantial measure of public support.

[21] As the Association itself acknowledges, the presidential and vice-presidential candidates of "*national* minor parties like the Libertarians . . .

With the foregoing principles in mind, this Court can easily dispose of the Association's argument that G.L. c. 53, § 14, should be interpreted to provide a means by which to "substitute" Barr and Root, who failed to submit 10,000 voter signatures, for Phillies and Bennett, who satisfied the signature requirement. The Association advances several arguments based on the text of G.L. c. 53, § 14, straining to read the statute to accord a right of "substitution' to non-party presidential candidates or to the elector candidates. None of these arguments has any merit.

The Association first argues that the term "state office," as used in G.L. c. 53, § 14, includes presidential electors. Appellants' Br. at 26-30.[22]

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are not chosen by Massachusetts voters alone but by voters in states across the country," presumably a reference to the non-party delegates from the other 49 States who participate in the Libertarian national convention. See Appellants' Br. at 41 (italics in original). Moreover, because the Association is not subject to state regulation in the same manner as a recognized political party, see supra footnote 19, the Commonwealth has no mechanism in place - other than through its signature requirement for non-party presidential candidates - by which it can ascertain that a non-party's convention-backed candidate actually has demonstrable support among Massachusetts voters. In short, even if Massachusetts "delegates" to a non-party national convention end up supporting the convention nominee, there is no legal assurance that those delegates are directly or indirectly chosen by, or reflect the views of, the Massachusetts voters who have chosen the political designation (such as "Libertarian") with which the non-party convention is associated in name.

[22] Section 14, which is limited to vacancies in nominations for candidates for a "state, city or town

This Court need not resolve that question because, assuming arguendo that "state office" does include presidential electors, the statute in any event does not authorize the "substitution" sought by the Association. In particular, section 14 provides that a vacancy may be filled "by the same political party or persons who made the original nomination, and in the same manner" as the original nomination. This language, if applicable at all, would have required new nomination papers, with 10,000 voter signatures, to be submitted on behalf of elector candidates pledged to Barr and Root, in order for the names of Barr and Root to be "substituted" on the ballot for those of Phillies and Bennett, who had been nominated

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office," cannot reasonably be understood to apply to candidates for President and Vice-President, who are selected by a nationwide election at the electoral college and therefore certainly are not "state officers" within the meaning of section 14. In Barr, however, the Association suggested (and the district court found) that the term "state office" arguably could be understood to include candidates for President and Vice-President, insofar as G.L. c. 50, § 1, defines "state officers" to include "any person . . . chosen at a state election" and "state election" is defined as "any election at which a national, state or county officer . . . is to be chosen by voters" (defined as a "registered voter," which refers only to voters registered in Massachusetts). Although the Association has abandoned that argument here - focusing instead on the presidential electors - the Secretary nevertheless notes that the statute's definition of "state election" is most reasonably read as applying only to those "national" offices selected by Massachusetts voters alone, namely, United States Senator and Representative.

in that manner.

The Association contends, however, that the "same political party or persons who made the original nomination" should be understood to refer not to the actual voters who signed the nomination papers supporting Phillies and Bennett, but rather to "those persons or entities that requested, circulated, and filed the nomination papers," i.e., "the Libertarians." Appellants' Br. at 32. The Court should reject out-of-hand this topsy-turvy interpretation, which would ignore the crucial role of the 10,000 voters in the nominating process, and which rests on the Association's attempt to gloss over the fundamental distinction between recognized political parties, on the one hand, and groups of voters who have not achieved party status, on the other hand.

The "Libertarians," having failed to achieve status as a recognized political party, have no right to dictate which, if any, "Libertarian"-affiliated presidential candidate appears on the Massachusetts ballot. Barr, id. at 102 (under Massachusetts law, the endorsement of non-party presidential and vice-presidential candidates by a national political entity "does not confer any special ballot access rights"). This point is vividly underscored by the First Circuit's decision in another case involving the 2008 presidential election, Libertarian Party of New Hampshire v. Gardner, 638 F.3d 6 (1st Cir.), cert.

denied, 132 S.Ct. 402 (2011), where the court held that the plaintiff had no right to demand the removal from the New Hampshire ballot of Phillies/Bennett, who had met the signature requirement for ballot access.[23] Thus, contrary to their suggestion, the existence of a "Libertarian" "political designation" in Massachusetts does not give the voters enrolled under that designation any right to place, or replace, a "Libertarian" candidate on the ballot without satisfying the 10,000 signature requirement.[24]

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[23] In New Hampshire, unlike in Massachusetts, Barr/Root, as well as Phillies/Bennett, submitted enough signatures to qualify for ballot access, and both sets of candidates appeared as "Libertarian" on the ballot. Gardner, 638 F.3d at 10. Arguing that only the Libertarian convention-endorsed nominees, Barr/Root, could appear on the ballot under the "Libertarian" affiliation, the Libertarian Party of New Hampshire - which, despite its self-chosen name, did not have recognized party status - sought to remove the names of Phillies/Bennett from the ballot or in the alternative to strike the "Libertarian" affiliation listed after their names. Id. at 8-9 & n.1. The First Circuit rejected their claims, finding that the Libertarian Party of New Hampshire, lacking status as a recognized party, had no right to demand the removal of candidates, such as Phillies/Bennett, who otherwise met state ballot access requirements, even if those candidates "have been active participants in the efforts of the Libertarian Party [of New Hampshire]"; and the Libertarian Party of New Hampshire also did not have the right to exclusive use of the word "Libertarian" on the ballot. Id. at 14-15 & n.9. In Massachusetts as well, more than one candidate may appear on the ballot under the "Libertarian" (or any other) political designation, as long as each such candidate has qualified for ballot access by satisfying the signature requirement.

[24] As discussed above, see supra pages 5-8 and 10-12, the establishment of a political designation does not

The Association further asserts that the phrase "in the same manner" should not be understood as requiring the gathering of new signatures, because as a practical matter such a requirement would make it difficult, if not impossible, for them to accomplish "substitution" (since candidate withdrawal may occur only within 72 hours after the filing of nomination papers; a vacancy cannot be filled until a withdrawal is filed; and by that time the deadline for submission of nomination papers necessarily has passed). Reasoning that the Legislature "did not intend to deprive minor parties of the opportunity to place their nationally nominated candidates for President and Vice President on the ballot," it asserts that the statute therefore must be construed to authorize "substitution." Appellants' Br. at 36.

The Association's interpretation of the statute ignores the fact that the Association is not a recognized party in Massachusetts. Because there is no recognized "Libertarian" party in Massachusetts, the selection of a candidate at the Libertarian national convention confers no ballot access rights for that candidate in Massachusetts, and the "substitution" that the Association seeks would defeat the very purpose of the signature requirement - ensuring that a particular non-party candidate has

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confer any ballot access rights on candidates who identify themselves by reference to the designation.

demonstrable public support, as measured by the signatures of 10,000 Massachusetts voters. Barr, id. at 111. The Court should reject an interpretation that would lead to such an absurd result. Flemings v. Contributory Retirement Appeal Bd., 431 Mass. 374, 375-76 (2000) ("If a sensible construction is available, we shall not construe a statute . . . to produce absurd results.").

The clearest evidence that section 14 was not intended to authorize the "substitution" sought by the Association is that the Legislature did provide a mechanism for filling vacancies following the withdrawal of a candidate nominated by nomination papers - but only in the case of gubernatorial candidates, as reflected in a 1972 amendment to the statute. G.L. c. 53, § 14, second sentence. Prior to the adoption of that amendment, it had been argued that section 14 provided no way to fill a vacancy in the case of a gubernatorial or other candidate nominated by nomination papers, but the Court had no occasion to resolve the question. Manser v. Secretary of the Commonwealth, 301 Mass. 264, 269 (1938).

The Legislature evidently agreed that there was no such mechanism for "substitution" of candidates nominated by nomination papers, because, some years after Manser, the Legislature amended G.L. c. 53, § 14, to add a mechanism for filling a vacancy following the withdrawal of a candidate nominated by

nomination papers, but the Legislature did so only in the case of gubernatorial candidates. Thus, the second sentence of section 14, enacted in 1972, provides that, in the event of the death, withdrawal, or ineligibility of a candidate for governor or lieutenant governor nominated by nomination papers, a vacancy "shall be filled by majority vote of the committee of five members whose names were placed upon said [nomination] papers for the purpose before the signatures of voters were obtained thereon." This ensures that the committee filling the vacancy is in fact representative of the 10,000 voters (see G.L. c. 53, § 6) who signed the nomination papers.

The statute does not contain comparable language governing vacancies of any other candidates nominated by nominating papers, including non-party presidential electors. The Legislature's provision of a mechanism for filling a vacancy caused by withdrawal of gubernatorial candidates nominated by nomination papers, and the absence of a similar provision for other candidates, strongly suggests that the Legislature did not intend for section 14 to authorize the "substitution" sought by the Libertarians here. See, e.g., Boone v. Commerce Ins. Co., 451 Mass. 192, 197 (2008) (where the Legislature uses specific language in one part of a statute but not another part dealing with the same topic, the earlier language should not be implied where it is not present).

Finally, the Association argues that even if "in the same manner" requires the gathering of 10,000 new signatures, the statute does not address the circumstance in which "the time is insufficient" to use "the same manner" as the original nomination. Appellants' Br. at 36-37 n.8. This argument rests on the first sentence of section 14, which provides that, "if the time is insufficient" to fill a vacancy "in the same manner" as the original nomination, "the vacancy may be filled, if the nomination was made by a convention or caucus, in such manner as the convention or caucus may have prescribed" or, if no such provision has been made, by a regularly elected or executive committee representing the political party or persons who made the nomination. G.L. c. 53, § 14, 1st sentence (emphasis added). The Association argues that the Court should assume that the Legislature would have intended to extend, to non-parties in presidential elections, an "alternate means of filling vacancies if there is insufficient time to re-circulate nomination papers (e.g., when the filing deadline has passed)," the "alternate means" being the non-party convention's endorsement. Appellants' Br. at 36-38 and n.8.

The more reasonable conclusion - which avoids the kind of statutory gymnastics that the Association advocates -is simply that the Legislature intentionally limited the provision governing "if the

time is insufficient therefor" to caucus/convention-nominated candidates, having elsewhere - in the second sentence - provided a means to fill vacancies in candidates nominated by nomination papers but limiting the latter provision to gubernatorial candidates.[25] See Prudential Ins. Co. of America v. Boston, 369 Mass. 542, 547 (1976) ("It is the function of the court to construe a statute as written and an event or contingency for which no provision is made does not justify judicial legislation.").

III. "SUBSTITUTION" IS NOT REQUIRED UNDER MASSACHUSETTS DECLARATION OF RIGHTS ARTICLE 9.

The Libertarian Association further argues that any ambiguity in G.L. c. 53, § 14, must be interpreted to authorize substitution because "such a right is guaranteed by Article 9," which provides that "[a]ll

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[25] The Legislature also provided a means to fill a vacancy in a manner other than "the same manner" as the original nomination, in the case of "any candidate of a political party nominated by direct nomination for any office," e.g., by a recognized party's primary. G.L. c. 53, § 14, third sentence. The Legislature's specific provision of mechanisms to fill vacancies in a manner other than "the same manner" as the original nomination - in the case of convention/caucus candidates, gubernatorial candidates nominated by nomination papers, and candidates nominated by primary - and the absence of a provision for filling vacancies in candidates nominated by nomination papers other than gubernatorial candidates, further confirms that the Legislature did not intend to authorize the "alternate means" that the Association urges here. See Boone v. Commerce Ins. Co., supra (language used in one part of statute but not another should not be implied where it is not present).

elections ought to be free" and that Massachusetts inhabitants "have an equal right to elect officers, and to be elected, for public employment." Mass. Const., Part 1, Art. 9; Appellants' Br. at 39. The Association argues that, absent a mechanism to substitute the Libertarian convention-endorsed candidates for those listed on nomination papers, non-parties are "forced" to hold their conventions early in the election cycle "before the electorate is fully engaged," or to forgo using some of the signature-gathering time allowed by the statute and thus "risk losing a place on the ballot." Appellants' Br. at 40-41. It claims that, without substitution, the statute limits non-parties' ballot access rights and burdens voters' rights. Id. at 40-42.

The Association advanced the same arguments in Barr, under the federal Constitution, and the First Circuit rejected them. The Association's parallel argument under article 9 is equally unavailing here.

In Barr, the court emphatically rejected the claim that the Secretary's refusal to allow "substitution" placed an unconstitutional burden on the Association's ballot access rights or the rights of voters. Barr, 626 F.3d at 109-10. The court also specifically found that the roughly 60 days available to Barr and Root to collect signatures was not unduly burdensome. Id. at 110 (noting that "the Supreme Court has approved analogous time frames for

collecting signatures").[26] For the same reasons, the Association's claim under article 9 is without merit.

In past election cases, this Court has looked to federal law, recognizing that article 9 protects freedom of elections and equality in voting in a manner comparable to the federal equal protection clause. Based on Barr, this Court thus should similarly conclude that "substitution" is not required by article 9. See Opinion of the Justices, 375 Mass. 795, 811 (1978) (citing federal cases including Storer v. Brown, 415 U.S. 724 (1974)); Opinion of the Justices, 368 Mass. 819, 821-22 (1975) (resolving art. 9 question by reliance on Storer v. Brown and other federal equal protection decisions); cf. Metros v. Secretary of the Commonwealth, 396 Mass. 156, 161-64 (1985) (relying on Storer v. Brown).

Although the Court in certain limited contexts has found greater protection in the Massachusetts Constitution than in parallel federal constitutional provisions, none of the cases cited by the Association

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[26] The 2012 national "Libertarian Party" convention is scheduled for May 2-6. See http://www.lp.org (last visited Jan. 26, 2012). Thus the Association will have 86 days between the end of the convention and the deadline for submitting voter signatures to local election officials (July 31, 2012), significantly longer than the 60 days approved in Barr. 626 F.3d at 109-10. Of course, the Association can start collecting signatures for Libertarian-affiliated candidates well before the convention; in 2012, nomination papers will become available by February 14. http://www.sec.state.ma.us/ele/elepdf/2012_State_Election_Calendar.pdf (last visited Jan. 26, 2012).

even remotely supports its contention that article 9 guarantees a right of "substitution." To begin with, all but two of the cases the Association relies upon did not involve ballot access rights at all. See Appellants' Br. at 45. And the two election cases the Association cites do not support its argument.

Batchelder v. Allied Stores, 388 Mass. 83 (1983) does not, as the Association argues, stand for the proposition that "Article 9 provides greater ballot access rights than those guaranteed by the U.S. Constitution." Appellants' Br. at 45. Rather, the holding in Batchelder - that a privately-owned shopping center could not prohibit candidates from soliciting signatures in the shopping center's common areas ("areas that have been dedicated to the public as a practical matter") - rested on the textual difference between article 9 and the analogous provisions in the First and Fourteenth Amendments. 388 Mass. at 593-94 (unlike the First and Fourteenth Amendments, which expressly apply to Congress and the States, respectively, article 9 "by its terms" contains no "State action" requirement, and "[w]e . . . think that the distinction is significant").[27]

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[27] The second case, Cepulonis v. Secretary, 389 Mass. 930, 931 n.4 (1983), concerning inmates' rights to register to vote, principally involved Amendment Article 3, which guarantees the right to vote. The Court in a footnote also cited, as relating generally to the rights of voters, articles 1-9, but did not engage in any substantive discussion of article 9.

Moreover, in Langone v. Secretary, 388 Mass. 185 (1983), decided a month after Batchelder, the Court affirmatively rejected the argument that article 9 and other provisions in the Declaration of Rights confer greater ballot access rights than the federal Constitution. 388 Mass. at 198-99 (holding that challenged ballot access provision did not violate plaintiffs' federal constitutional rights, and that, although plaintiffs also argued that provision violated Mass. Declaration of Rights arts. 1, 9, 16, and 19, "they advance no separate reasons, and we are unaware of any, to conclude that the Massachusetts Constitution affords them protection not provided by the First and Fourteenth Amendment of the United States Constitution"), app. dismissed and cert. denied, 460 U.S 1057 (1983).[28]

Accordingly, for the same reasons that the First Circuit rejected the Association's "substitution" claim under the federal Constitution, this Court should reject the Association's claim under article

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[28] The Association elsewhere cites Langone for the point that political parties have an interest in ensuring that their members play a role in determining who appears on the ballot as the party's candidate, but in the passage quoted from Langone, the Court was speaking of recognized political parties. See Appellants' Br. at 38 (quoting Langone, 388 Mass. at 190, summarizing Opinion of the Justices, 385 Mass. 1201, 1204 (1982)). In Langone, moreover, the Court specifically noted that non-party candidates may achieve ballot access "by compliance with the provisions of G.L. c. 53, § 6." 388 Mass. at 197-98.

9.[29]

IV. THE STATUTE IS NOT UNCONSTITUTIONALLY VAGUE.

The Association finally argues that, if the Court cannot determine whether G.L. c. 53, § 14, authorizes "substitution," the Court should hold that statute void for vagueness. Appellants' Br. at 50. The Court need not tarry long over this argument. As set forth in Argument section II, the statute does not authorize "substitution." Moreover, "[w]hatever its semantic shortcomings," section 14 is "not unconstitutionally vague." Barr, 626 F.3d at 101, 107.

CONCLUSION

For the foregoing reasons, the Court should dismiss the Complaint for lack of an actual controversy. In the alternative, the Court should declare that G.L. c. 53, § 14, does not authorize the "substitution" sought by the Libertarian Association.

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[29] The Association also asserts that, absent "substitution," voters will "undoubtedly be misled into believing they are voting for the minor party's chosen candidates." Appellants' Br. at 42. The First Circuit rejected the identical argument in Libertarian Party of New Hampshire v. Gardner, discussed in footnote 23, supra. As the court there found, identification of Phillies and Bennett on the ballot as "Libertarian" "did not itself indicate that Phillies and Bennett were the nominees of the Libertarian Party"; rather, the ballot identified them, and Barr and Root, "merely as Libertarian," thus simply identifying both sets of candidates "with the political organization or principles that they represent." 638 F.3d at 16.

Respectfully submitted,

MARTHA COAKLEY
ATTORNEY GENERAL

Amy Spector, BBO No. 557611
Assistant Attorney General
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2076
amy.spector@state.ma.us

Certification Pursuant to Mass. R. App. P. 16(k)

I certify that the foregoing brief complies with all of the court rules pertaining to the filing of briefs, including but not limited to the requirements under Mass. R. App. P. 16 and 20.

Amy Spector

ADDENDUM

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 3, 2011

Clerk
United States Court of Appeals for the First Circuit
United States Courthouse
1 Courthouse Way
Boston, MA 02210

Re: Bob Barr, et al.
v. William F. Galvin, in His Official Capacity as Secretary of the Commonwealth of Massachusetts
No. 10-1456
(Your No. 09-2426)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The motion of petitioner to defer consideration of the petition for a writ of certiorari is denied. The petition for a writ of certiorari is denied.

Sincerely,

William K. Suter

William K. Suter, Clerk

United States Court of Appeals
For the First Circuit

No. 09-2426

BOB BARR ET AL.,

Plaintiffs, Appellees,

v.

WILLIAM F. GALVIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS,

Defendant, Appellant.

Before

Lynch, Chief Judge,
Torruella, Boudin, Lipez
Howard and Thompson, Circuit Judges.

ORDER OF COURT
Entered: December 28, 2010

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:
/s/ Margaret Carter, Clerk

cc: Hon. Nathaniel M. Gorton, Ms. Sarah Thornton, Clerk, United States District Court for the District of Massachusetts, Ms. Spector, Mr. Baltay, Mr. Casey, Mr. Reinstein, Ms. Behr, Ms. Goldman, Ms. Wadhera & Mr. Bialas.

United States Code Annotated

Constitution of the United States

Annotated

Article II. The President (Refs & Annos)

U.S.C.A. Const. Art. II § 1, cl. 2

Section 1, Clause 2. Presidential Electors

Currentness

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Editors' Notes

LAW REVIEW COMMENTARIES

Article II as interpretative theory: *Bush v. Gore* and the retreat from *Erie*. Robert A. Shapiro, 34 Loy.U.Chi.L.J. 89 (2002).

United States Code Annotated

Constitution of the United States

Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement (Refs & Annos)

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

Current through P.L. 112-71 (excluding P.L. 112-40, 112-55, and 112-56) approved 12-19-11

End of Document

Massachusetts General Laws Annotated

Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]

Part the First a Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

M.G.L.A. Const. Pt. 1, Art. 9

Art. IX. Free elections; equality of right to elect and to be elected

Currentness

ART. IX. All elections ought to be free; and all the 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.

Notes of Decisions (100)

Current through amendments approved December 1, 2011

End of Document

Massachusetts General Laws Annotated

Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]

Articles of Amendment

M.G.L.A. Const. Amend. Art. 3

Art. III. Qualifications of voters for governor, lieutenant governor, senators and representatives

Currentness

ART. III. Every citizen of eighteen years of age and upwards, excepting persons who are incarcerated in a correctional facility due to a felony conviction, and, excepting persons under guardianship and persons temporarily or permanently disqualified by law because of corrupt practices in respect to elections who shall have resided within the town or district in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant governor, senators or representatives, shall have a right to vote in such election of governor, lieutenant governor, senators and representatives; and no other person shall be entitled to vote in such election.

Notes of Decisions (60)

Current through amendments approved December 1, 2011

End of Document

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VIII. Elections (Ch. 50-57)

Chapter 50. General Provisions Relative to Primaries, Caucuses and Elections (Refs & Annos)

M.G.L.A. 50 § 1

§ 1. Definitions

Effective: February 25, 2002
Currentness

Terms used in chapters fifty to fifty-seven, inclusive, shall be construed as follows, unless a contrary intention clearly appears:

"Aldermen" or "board of aldermen" shall include the board of election commissioners or election commission of any city having such a board or commission, as to all matters coming within the scope of their powers and duties, and as to such matters shall not apply to the city council of such city.

"Ballot labels" shall mean printed strips of cardboard or paper for use on voting machines, containing the names and addresses of candidates for each office and the questions submitted to the voters at the election except such questions as shall appear on separate ballots, as determined by the state secretary under section thirty-five A of chapter fifty-four.

"Caucus" shall apply to any public meeting of the voters of a precinct, ward or town, held under the laws relating to caucuses.

"Caucus officers" shall apply to chairmen, wardens, secretaries, clerks and inspectors, and, when on duty, to additional officers appointed or elected, or elected to fill a vacancy, and taking part in the conduct of caucuses.

"City clerk" shall include the board of election commissioners or election commission of any city having such a board or commission, with reference to all matters coming within the scope of their powers and duties, and as to such matters shall not apply to the city clerk of such city.

"City election" shall apply to any election held in a city at which a city officer is to be chosen by the voters, whether for a full term or for the filling of a vacancy, or at which any question to be voted upon at a city election is to be submitted to the voters.

"Convention" shall apply only to a meeting of delegates duly chosen in primaries or caucuses, representing two or more subdivisions of the district for which the convention is held.

"Direct plurality vote" shall mean the highest total vote, determined according to section two, received for a nomination at the primaries or caucuses in an entire electoral district.

"Election" shall apply to the choice by the voters of any public officer and to the taking of a vote upon any question by law submitted to the voters.

"Election officer" shall apply to wardens, clerks, inspectors and ballot clerks, and to their deputies when on duty, and also to selectmen, town clerks, moderators and tellers when taking part in the conduct of elections.

"Family member", a spouse or person residing in the same household, in-laws, father, mother, sister or brother of the whole or half blood, son, daughter, adopting parent or adopted child, stepparent or stepchild, uncle, aunt, niece, nephew, grandparent or grandchild.

"Federal act", the National Voter Registration Act of 1993, 42 USC 1973 gg to 1973 gg-10, inclusive, as may be amended from time to time.

"Listing board", a board established by special law in a particular city or town to prepare lists of persons of voting age resident in the city or town and perform certain other duties in connection with said lists.

"Majority", with reference to a question on the ballot, shall mean more than one half of those voting upon the question.

"Mayor" or "mayor and aldermen" shall include the board of election commissioners or election commission of any city having such a board or commission, with reference to all matters coming within the scope of their powers and duties, and as to such matters shall not apply to the mayor or city council of such city.

"Municipal party" shall apply to a party, not a political party as to state elections or state primaries, which at the preceding city or town election polled for mayor or a selectman at least three per cent of the entire vote cast in the city or town for that office, or, in a city, which files with the city clerk, at least sixty days before the annual or biennial municipal election, a petition to be allowed to place nominations of such party on the official ballot, signed in person by a number of registered voters of the city equal at least to three per cent of the entire vote polled in the city for mayor at the preceding election.

"Official ballot" shall mean a ballot prepared for any primary, caucus or election by public authority and at public expense, and where voting machines are used shall include ballot labels.

"Political committee" shall apply only to a committee elected as provided in chapter fifty-two, except that in chapter fifty-five it shall also apply, subject to the exception contained in section twenty-nine thereof, to every other committee or combination of five or more voters of the commonwealth who shall aid or promote the success or defeat of a candidate at a primary or election or the success or defeat of a political party or principle in a public election or shall favor or oppose the adoption or rejection of a question submitted to the voters.

"Political designation" shall apply to any designation required in section 8 of chapter 53, expressed in not more than three words, which a candidate for nomination under section 6 of chapter 53 represents, and to any designation expressed in not more than three words to qualify a political party under this section, filed by fifty registered voters with the secretary of state on a form provided by him or her, requesting that such voters, and any others wishing to do so, may change their registration to such designation, provided however, that the designation "Independent" shall not be used. Certificates showing that each of the signers of said request is a registered voter at the stated address, signed by the city or town clerk shall accompany the petition. Any such request filed before December first in the year of a biennial state election shall not be effective until said December first.

"Political party" shall apply to a party which at the preceding biennial state election polled for any office to be filled by all the voters of the commonwealth at least three percent of the entire vote cast in the commonwealth for such office, or which shall have enrolled, according to the first count submitted under section thirty-eight A of chapter fifty-three, a number of voters with its political designation equal to or greater than one percent of the entire number of voters registered in the commonwealth according to said count. Such parties shall be eligible to conduct primary elections at the next following biennial state election. With reference to municipal elections and primaries and caucuses for the nomination of city and town officers, "political party" shall include a municipal party.

"Presiding officer" shall apply to the warden or chairman at a caucus, to the warden, chairman of the selectmen, moderator, temporary moderator or town clerk in charge of a polling place at a primary or election, or to a justice of the peace acting as moderator at a town meeting, or, in the absence of any such officer, to the deputy warden or the clerk or senior inspector or senior selectman present who shall have charge of a polling place.

"Primary" shall apply to a joint meeting of political or municipal parties held under the laws relating to primaries.

"Registrars" or "registrars of voters" shall mean the board of registrars of voters of a city or town, and shall include the board of election commissioners or election commission of any city having such a board or commission, with reference to all matters coming within the scope of their powers and duties. "Registrar" shall, when applicable, mean a member of any of said boards.

"Registration agency", a location where eligible citizens may register as voters, including city or town clerk's offices, military recruitment offices, offices of the registry of motor vehicles and of all state agencies that provide public assistance or assistance to people with disabilities, offices that provide state-funded programs primarily engaged in providing services to people with disabilities, and any other offices which the state secretary shall designate by regulation.

"Specially qualified voter", a person (a) who is otherwise eligible to register as a voter; and (b) (1) whose present domicile is outside the United States and whose last domicile in the United States was Massachusetts; or (2) whose present domicile is Massachusetts and who is:

(i) absent from the city or town of residence and in the active service of the armed forces or in the merchant marine of the United States, or a spouse or dependent of such person;

(ii) absent from the commonwealth; or

(iii) confined in a correctional facility or a jail, except if by reason of a felony conviction.

"State election" shall apply to any election at which a national, state, or county officer or a regional district school committee member elected district-wide is to be chosen by the voters, whether for a full term or for the filling of a vacancy.

"State officer" shall apply to, and include, any person to be nominated at a state primary or chosen at a state election and shall include United States senator and representative in Congress.

"Town" shall not include city.

"Town officer" shall apply to and include town meeting members.

"Two leading political parties" shall apply to the political parties which elected the highest and next highest number of members of the general court at the preceding biennial state election.

"Voter" shall mean a registered voter.

"Written acceptance" shall mean acceptance signed personally or by attorney duly authorized in writing.

Credits
Amended by St.1941, c. 511, §§ 1, 2; St.1943, c. 318, § 5; St.1943, c. 453, §§ 6 to 8; St.1951, c. 805, § 4; St.1954, c. 224; St.1988, c. 10, § 1; St.1990, c. 269, §§ 3, 4; St.1991, c. 483, §§ 1, 2; St.1993, c. 475, §§ 1, 2; St.2001, c. 150, § 1.

Notes of Decisions (19)

Current through Chapter 175 of the 2011 1st Annual Session

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VIII. Elections (Ch. 50-57)

Chapter 52. Political Committees (Refs & Annos)

M.G.L.A. 52 § 1

§ 1. State committees; election; organization; terms; vacancies

Currentness

Each political party shall, in the manner herein provided, elect a state committee from among its members who either have enrolled on or before the ninetieth day prior to the last day for filing nomination papers for state committees with the state secretary, or are newly registered voters in their city or town enrolled in that political party and have not been enrolled in another political party during the year preceding such last day for filing nomination papers. Each state committee shall consist of one man and one woman from each senatorial district, who shall be residents thereof, to be elected at the presidential primaries by plurality vote of the members of the party in the district, and such number of members as may be appointed by the state committee as hereinafter provided. Members of said committee elected at the presidential primaries from senatorial districts shall hold office for a period of four years from the thirtieth day next following their election; provided that members of said committee elected in nineteen hundred and seventy-six shall hold office for a period beginning May fifteenth, nineteen hundred and seventy-six and ending on the thirtieth day following the day on which presidential primaries are next held. Members appointed by the state committee shall hold office for two years from the date of their appointment; provided, however, that in no event shall the terms of office of such members extend beyond the term of office of members who were elected at the presidential primaries.

The members of the state committee elected at the presidential primaries shall, within ten days after the thirtieth day next following their election, meet and organize for the purpose of choosing a secretary, treasurer, and such other officers, other than a chairman, as they may decide to elect; provided, however, that such members shall, within ten days after the November general election at which a president is elected, meet and choose a chairman. Notwithstanding the provisions of any general or special law to the contrary, a chairman shall serve in his respective position until his successor has been chosen; provided, however, that in the event that a state committee requires that its chairman be a member and any such elected chairman ceases to be a member, the committee shall choose a temporary chairman who shall serve until a permanent chairman is chosen following the November election as aforesaid. Such committee may, at any time after its organization, add to its membership.

The secretary of the state committee shall file with the state secretary, and send to each city and town committee, within ten days after such permanent organization, a list of the members of the state committee and of its officers, and, within ten days after each addition to its membership made subsequently to its permanent organization, a list of the members so added.

A vacancy in the office of chairman, secretary or treasurer of the state committee or in the membership thereof shall be filled by said committee, and a statement of any such change shall be filed as in the case of the officers first chosen.

Credits

Added by St.1938, c. 346, § 1. Amended by St.1948, c. 614, § 1; St.1950, c. 280, § 1; St.1955, c. 138, § 1; St.1961, c. 145; St.1975, c. 600, §§ 2, 3; St.1977, c. 546, § 1; St.1985, c. 477, § 12; St.1986, c. 695, § 4; St.1987, c. 2; St.1995, c. 127.

Notes of Decisions (9)

Current through Chapter 175 of the 2011 1st Annual Session

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Title VIII. Elections (Ch. 50-57)

Chapter 53. Nominations, Questions to Be Submitted to the Voters, Primaries and Caucuses (Refs & Annos)

M.G.L.A. 53 § 5

§ 5. Certificate of nomination; contents; signatures; filing; written acceptance of candidate

Currentness

Every certificate of nomination shall state such facts as are required by section eight and shall be signed and sworn to by the presiding officer and by the secretary of the caucus or convention, who shall add to their signatures their residences. The secretary shall within the seventy-two hours succeeding five o'clock in the afternoon of the day upon which the caucus was held or the session of the convention terminated, and within the time specified in section ten, file such certificate at the place specified in section nine.

No such certificate of nomination, except for presidential electors, shall be received or be valid unless the written acceptance of the candidates thereby nominated shall be filed therewith.

Credits

Amended by St.1947, c. 141; St.1954, c. 31; St.1955, c. 288, § 1; St.1966, c. 56, § 1; St.1973, c. 429, § 2.

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Title VIII. Elections (Ch. 50-57)

Chapter 53. Nominations, Questions to Be Submitted to the Voters, Primaries and Caucuses (Refs & Annos)

M.G.L.A. 53 § 6

§ 6. Nomination papers; contents; number of signatures; unenrolled candidates

Currentness

Nominations of candidates for any offices to be filled at a state election may be made by nomination papers, stating the facts required by section eight and signed in the aggregate by not less than the following number of voters: for governor and lieutenant governor, attorney general, United States senator, and presidential electors, ten thousand; for state secretary, state treasurer, and state auditor, five thousand; for representative in congress, two thousand; for state senator, three hundred; for state representative, one hundred and fifty; for councillor, district attorney, clerk of courts, register of probate, register of deeds, county commissioner, sheriff, and county treasurer, one thousand, except for clerk of courts, register of probate, register of deeds, county commissioner, sheriff, and county treasurer, in Barnstable, Berkshire, Franklin, and Hampshire counties, five hundred, and for any such offices in Dukes and Nantucket counties, twenty-five. In the case of the offices of governor and lieutenant governor, only nomination papers containing the names and addresses of candidates for both offices shall be valid. Nominations of candidates for offices to be filled at a city or town election, except where city charters or general or special laws provide otherwise and nominations of candidates for the office of regional district school committee members elected district-wide, may be made by like nomination papers, signed in the aggregate by not less than such number of voters as will equal one percent of the entire vote cast for governor at the preceding biennial state election in the electoral district or division for which the officers are to be elected, but in no event by less than twenty voters in the case of an office to be filled at a town election or election to a regional district school committee elected district-wide; provided, however, that no more than fifty signatures of voters shall be required on nomination papers for such town office or regional district school committee elected district-wide. At a first election to be held in a newly established ward, the number of signatures of voters upon a nomination paper of a candidate who is to be voted for only in such ward shall be at least fifty.

The name of a candidate for election to any office who is nominated otherwise than by a political party, generally referred to as an "Unenrolled" candidate, shall not be printed on the ballot at a state election, or on the ballot at any city or town election following a city or town primary, unless a certificate from the registrars of voters of the city or town wherein such person is a registered voter, certifying that he is not enrolled as a member of any political party, is filed with the state secretary or city or town clerk on or before the last day provided in section ten for filing nomination papers. Said registrars shall issue each certificate forthwith upon request of any such candidate who is not a member of a political party or his authorized representative. No such certificate shall be issued to any such candidate who shall have been an enrolled member of any political party during the time prior to the last day for filing nomination papers as provided in section ten, and on or after the day by which a primary candidate is required by section forty-eight to establish enrollment in a political party.

Sections six and ten shall not apply to primary candidates nominated under sections twenty-three to seventy *I*, inclusive, except as expressly provided otherwise.

Credits

Amended by St.1936, c. 101; St.1939, c. 191; St.1941, c. 266; St.1943, c. 50; St.1943, c. 334, § 2; St.1960, c. 224; St.1972, c. 51; St.1972, c. 400, § 1; St.1973, c. 849; St.1976, c. 234, § 1; St.1977, c. 546, § 3; St.1979, c. 745, § 1; St.1988, c. 10, § 3; St.1989, c. 676, § 1; St.1990, c. 269, § 1; St.1990, c. 526, § 19; St.1991, c. 483, § 6.

Notes of Decisions (11)

Current through Chapter 175 of the 2011 1st Annual Session

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VIII. Elections (Ch. 50-57)

Chapter 53. Nominations, Questions to Be Submitted to the Voters, Primaries and Caucuses (Refs & Annos)

M.G.L.A. 53 § 7

§ 7. Nomination papers; signatures; addresses; submission; deadlines; correction procedures; certification and checking; special elections

Effective: October 28, 2004
Currentness

Every voter signing a nomination paper shall sign in person as registered or substantially as registered, and shall state the address where he or she is currently registered, but any voter who is prevented by physical disability from writing may authorize some person to write his or her name and residence in his or her presence.

Every nomination paper of a candidate for a city or town office shall be submitted to the registrars of the city or town where the signers appear to be voters on or before five o'clock post meridian of the fourteenth day preceding the day on which it must be filed with the city or town clerk. Every nomination paper of a candidate for a state office shall be submitted to the registrars of the city or town where the signers appear to be voters on or before five o'clock post meridian of the twenty-eighth day preceding the day on which it must be filed with the state secretary; and certification of nomination papers of candidates for state office shall be completed no later than the seventh day before the final day for filing said papers with the state secretary.

The registrars shall inform the candidate submitting such papers if the designation of the district only in which he seeks office is incorrect, and shall give said candidate the opportunity to insert the correct designation on such papers before the signatures are certified. The registrars shall, if the candidate so desires, allow a change of district on the nomination papers, in the presence of the candidate whose name appears on the nomination papers, and the registrar and the candidate shall both initial the change of district so made and further shall in writing explain the change of district causing three copies to be made, one of each for the registrar and candidate and one to be attached to the nomination papers. If the correct district designation is not so inserted, the nomination papers shall not be approved. In no case may a correction be made to change the office for which such candidate is nominated.

Every initiative, referendum or other ballot question petition paper, except an application for a public policy question under sections nineteen to twenty-two, inclusive, shall be submitted to the registrars of the city or town where the signers appear to be voters on or before five o'clock post meridian of the fourteenth day preceding the day on which it must be filed with the state secretary; and certification of such papers shall be completed no later than the second day before the final day for filing said papers with the state secretary. In the case of special elections, every nomination paper shall be submitted to the registrars of the city or town where the signers appear to be voters on or before five o'clock post meridian in the afternoon of the seventh day preceding the day on which it must be filed with the state secretary; and certification of nomination papers of candidates shall be completed no later than the twenty-four hours before the final hour for filing said papers with the state secretary, except that, for special elections for senator or representative in congress, every nomination paper shall be submitted to the registrars of the city or town where the signers appear to be voters at or before 5:00 p.m. of the fourteenth day preceding the day on which it must be filed with the state secretary, and certification of nomination papers of candidates shall be completed no later than the 72 weekday hours before the final hour for filing those papers with the state secretary.

Each nomination paper shall be marked with the date and time it was submitted and such papers shall be certified in order of submission. In each case the registrars shall check each name to be certified by them on the nomination paper and shall forthwith

certify thereon the number of signatures so checked which are names of voters both in the city or town and in the district for which the nomination is made, and only names so checked shall be deemed to be names of qualified voters for the purposes of nomination. The registrars shall place next to each name not checked symbols designated by the state secretary indicating the reason that name was disqualified. The registrars shall certify a number of names that are required to make a nomination, increased by two fifths thereof, if they are submitted in a timely manner for a certification.

The state secretary need not receive nomination papers for a candidate after receiving such papers containing a sufficient number of certified names to make a nomination, increased by two fifths thereof.

For the purposes of this section a registered voter who in signing his name to a nomination paper inserts a middle name or initial in, or omits a middle name or initial from, his name as registered shall be deemed to have signed his name substantially as registered. If the registrars can reasonably determine from the form of the signature the identity of the duly registered voter, the name shall be deemed to have been signed substantially as registered. The provisions of this section shall apply in all cases where any statute, special act, or home rule charter requires the certification of the signature of a voter by boards of registrars of voters. Signatures shall not be certified on nomination papers or initiative and referendum petitions from more than one city or town per sheet.

The state secretary shall promulgate regulations designed to achieve and maintain accuracy, uniformity, and security from forgery and fraud in the procedures for certifying nomination papers and petitions for ballot questions and names thereon pursuant to this section, and to ensure proper delivery of certified nomination papers and petitions by registrars to the person or organization who submitted such papers or petitions.

Credits

Amended by St.1933, c. 254, § 16; St.1936, c. 2, § 2; St.1936, c. 4, § 1; St.1937, c. 25, § 1; St.1938, c. 341, § 5; St.1943, c. 334, § 3; St.1954, c. 183, § 2; St.1963, c. 210; St.1968, c. 112; St.1968, c. 114; St.1968, c. 488; St.1971, c. 512, §§ 1, 2; St.1974, c. 63; St.1974, c. 169; St.1974, c. 200, § 1; St.1976, c. 306; St.1977, c. 927, § 2; St.1980, c. 134, §§ 1, 2; St.1982, c. 283, § 1; St.1985, c. 477, §§ 14, 15; St.1987, c. 128; St.1990, c. 269, § 8; St.1991, c. 483, § 7; St.2004, c. 236, § 1, eff. Oct. 28, 2004.

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M.G.L.A. 53 § 8

§ 8. Certificates of nomination and nomination papers; contents; party designation

Currentness

All certificates of nomination and nomination papers shall, in addition to the names of candidates, specify as to each, (1) his residence, with street and number, if any, (2) the office for which he is nominated, and (3) except as otherwise provided in this section and except for elections which are not preceded by primaries or political party caucuses, the political designation, if any, which he represents, expressed in not more than three words. This information, in addition to the district name or number, if any, shall be specified on the nomination paper before any signature of a purported registered voter is obtained and the circulation of nomination papers without such information is prohibited. Certificates of nomination made by convention or caucus shall also state what provision, if any, was made for filling vacancies caused by the death, withdrawal or ineligibility of candidates. The state committees of the respective political parties at a meeting called for the purpose shall nominate the presidential electors. The surnames of the candidates for president and vice president of the United States shall be added to the party or political designation of the candidates for presidential electors. Such surnames and a list of the persons nominated for presidential electors, together with an acceptance in writing signed by each candidate for presidential elector on a form to be provided by the state secretary, shall be filed by the state chairmen of the respective political parties not later than the second Tuesday of September. Said acceptance form shall include a pledge by the presidential elector to vote for the candidate named in the filing. To the name of each candidate for alderman at large shall be added the number of the ward in which he resides. To the name of a candidate for a town office who is an elected incumbent thereof there may be added the words "Candidate for Re-election".

If a candidate is nominated otherwise than by a political party the name of a political party shall not be used in his political designation nor shall the name of any organization which has been adjudicated subversive under section eighteen of chapter two hundred and sixty-four be used in his political designation. Certificates of nomination and nomination papers for city or town offices need not include a designation of the party which the candidate represents. Except in the case of nomination papers of candidates for offices to be filled by all the voters of the commonwealth, or of candidates for town offices and the office of regional district school committee member elected district-wide, no nomination papers shall contain the name of more than one candidate. Such nomination papers for candidates for governor and lieutenant governor shall contain provision for the names and addresses of members of a committee of five registered voters who shall fill any vacancy caused by death, withdrawal, ineligibility or disqualification of either candidate. Such nomination papers for town offices may contain the names of candidates for any or all of the offices to be filled at the town election, but the number of names of candidates on such paper for any one office shall not exceed the number to be elected thereto.

Credits

Amended by St.1932, c. 135, § 4; St.1933, c. 35, § 1; St.1938, c. 473, § 6; St.1943, c. 334, § 4; St.1951, c. 805, § 5; St.1955, c. 288, § 2; St.1957, c. 14; St.1957, c. 278, § 1; St.1963, c. 307; St.1970, c. 869, § 1; St.1971, c. 202; St.1972, c. 400, § 2; St.1977, c. 329, § 1; St.1979, c. 745, § 2; St.1985, c. 477, § 17; St.1988, c. 10, §§ 4, 5; St.1990, c. 526, § 20.

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M.G.L.A. 53 § 9

§ 9. Certificate of nomination and nomination papers; certification of candidate as registered voter; acceptance procedure

Effective: September 29, 2009
Currentness

Certificates of nomination and nomination papers for state offices shall be filed with the state secretary and he shall forthwith issue to the candidate or other person filing the same a certificate acknowledging the time and date of the receipt thereof. Certificates of nomination or nomination papers for city and town offices shall be filed with the city or town clerk. Any candidate, including a candidate for presidential elector, not required by section forty-eight of this chapter to file a certificate of party enrollment shall, on or before the last day provided by law for filing nomination papers, file a certificate from the registrars of voters of the city or town wherein such candidate is a registered voter, certifying that such candidate is a registered voter in such city or town. Said registrars shall issue such a certificate forthwith upon request of any such candidate so registered or of his authorized representative. No nomination paper shall be received or be valid unless the written acceptance of the candidate thereby nominated shall be filed therewith. No nomination paper or certificate of nomination of a candidate for public office, as defined by chapter 268B, shall be accepted by the state secretary nor be valid unless accompanied by a receipt from the state ethics commission verifying the fact that a statement of financial interest has been filed pursuant to the provisions of said chapter 268B. No nomination paper for statewide elective office shall be received or be valid unless accompanied by a receipt from the director of campaign and political finance verifying the fact that the candidate has filed with said director the statement required by subsection (a) of section one A of said chapter 55C. The name of a candidate who fails to file any statement within the time required by said section one A shall not appear on the state primary or state election ballot.

Credits

Amended by St.1961, c. 390; St.1976, c. 86; St.1978, c. 210, § 3; St.1994, c. 43, § 8; St.1996, c. 454, § 17; St.2009, c. 28, §§ 21, 22, eff. Sept. 29, 2009.

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M.G.L.A. 53 § 10

§ 10. Certificates of nomination and nomination papers; time for filing

Effective: October 28, 2004
Currentness

All certificates of nomination and nomination papers of candidates for the office of state representative, state senator, executive council, or county office shall be filed with the state secretary on or before the last Tuesday in May of the year in which a state election is to be held. Certificates of nomination or nomination papers for the office of senator in congress, representative in congress, governor, lieutenant governor, attorney general, treasurer and receiver-general, state auditor and state secretary, shall be filed on or before the last Tuesday in August of the year in which a state election is to be held. If there is a special election to fill the office of senator or representative in congress, all certificates of nomination and nomination papers shall be filed on or before the sixth Tuesday preceding the day of such election. If there is a special election to fill any other state office, all certificates of nomination and nomination papers shall be filed on or before the ninth Tuesday preceding the day of such election. Nomination papers for presidential elector shall be filed on or before the last Tuesday in August of the year in which a presidential election is to be held.

In any city, except Boston, certificates of nomination and nomination papers for any city election shall be filed on or before the thirty-fifth day preceding such city election. In any city, except Boston, the time for presenting nomination papers for certification to the registrars of voters, and for certifying the same, shall be governed by section seven, notwithstanding any contrary provision in any special law. In any city where primaries are held, under authority of general or special law, for the nomination of candidates for city offices, certificates of nomination and nomination papers shall be filed not later than the last day fixed for the filing of nomination papers for such primaries. In any city where preliminary elections for the nomination of candidates for a city office are held, nomination or other like papers required to be filed by such candidates shall be filed on or before the thirty-fifth day preceding the day of the preliminary election, notwithstanding any contrary provision in any special law.

Any provision of general or special law to the contrary notwithstanding, the last day for filing with the town clerk certificates of nomination or nomination papers for the nomination of town offices shall be the thirty-fifth day preceding the date of the election. In any town, the time for presenting nomination papers for certification to the registrars of voters, and for certifying the same, shall be governed by section seven, notwithstanding any contrary provision in any special law.

Any incumbent town meeting member may become a candidate for election by giving written notice thereof to the town clerk not later than twenty-one days prior to the last day and hour for filing nomination papers notwithstanding any contrary provision in any special law.

Certificates of nomination and nomination papers shall be filed before five o'clock in the afternoon of the last day fixed therefor.

Credits

Amended by St.1933, c. 313, § 2; St.1934, c. 111; St.1937, c. 45, § 2; St.1937, c. 77, § 2; St.1938, c. 373, § 4; St.1941, c. 278; St.1941, c. 472, § 4; St.1943, c. 229, § 3; St.1943, c. 334, § 5; St.1946, c. 20, § 2; St.1947, c. 74; St.1948, c. 63; St.1954, c. 114;

St.1963, c. 236, § 1; St.1968, c. 762, §§ 1, 2; St.1971, c. 920, §§ 1A, 2; St.1977, c. 927, § 3; St.1980, c. 134, § 3; St.1985, c. 477, § 18; St.1989, c. 601; St.1989, c. 676, § 2; St.1990, c. 526, § 21; St.2004, c. 236, § 2, eff. Oct. 28, 2004.

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M.G.L.A. 53 § 14

§ 14. Death, withdrawal or ineligibility of nominated candidates; filling vacancies; objections

Currentness

If a candidate nominated for a state, city or town office dies before the day of election, or withdraws his name from nomination, or is found ineligible, the vacancy, except for city offices where city charters provide otherwise, may be filled by the same political party or persons who made the original nomination, and in the same manner; or, if the time is insufficient therefor, the vacancy may be filled, if the nomination was made by a convention or caucus, in such manner as the convention or caucus may have prescribed, or, if no such provision has been made, by a regularly elected general or executive committee representing the political party or persons who held such convention or caucus. In the event of the death, withdrawal, ineligibility or disqualification of a candidate for governor or lieutenant governor who has been nominated by election nomination papers, except disqualification for insufficient signatures, the vacancy shall be filled by majority vote of the committee of five members whose names were placed upon said papers for the purpose before the signatures of voters were obtained thereon. In the event of the withdrawal, death or ineligibility of any candidate of a political party nominated by direct nomination for any office, the vacancy may be filled by a regularly elected general or executive committee representing the election district in which such vacancy occurs, or, if no such committee exists by the members of the town committee in any town comprising such district, by the members of the ward committee or committees in the ward or wards comprising such district if within the limits of a single city, or by delegates chosen as hereinafter provided by and from the members of the ward and town committees in the wards and towns comprising such district if within the limits of more than one municipality, at a meeting to be called by such a member or delegate, as the case may be, designated by the chairman of the state committee, and such member or delegate shall preside until a chairman of such meeting is elected. Each ward and town committee in the wards and towns compromising such a district within the limits of more than one municipality shall, as occasions arise, choose from its members delegates to fill vacancies as hereinbefore provided, in such manner as it may determine by its rules and regulations, to a number not exceeding one for each five hundred votes, or fraction thereof, cast in its ward or town for the candidate of the party for governor at the last state election, and shall forthwith notify the state secretary of the delegates so chosen. Notwithstanding any of the foregoing, when a vacancy occurs, by reason of withdrawal, death or ineligibility in a district comprised of portions of wards of a city or not all precincts of a town, then each ward and town committee which includes the precincts which are part of the district shall choose delegates as hereinabove provided to fill vacancies in such number not exceeding one for each five hundred votes or fractions thereof cast in that portion of the ward or town included in the district for the candidate of that party for governor at the last state election, provided further that said delegate so chosen shall reside in the district where the vacancy occurs. In cities and towns where candidates are nominated by nomination papers, such papers may contain the names of members of a committee of not more than five registered voters who may fill any vacancy caused by the death or physical disability of the candidate whose name appears upon such nomination paper. If a vacancy is caused by withdrawal, certificates of nomination made otherwise than in the original manner shall be filed within seventy-two week day hours in the case of state offices, or within forty-eight week day hours in the case of city or town offices, succeeding five o'clock in the afternoon of the last day for filing withdrawals. They shall be open to objections in the same manner, so far as practicable, as other certificates of nomination. No vacancy caused by withdrawal shall be filled before the withdrawal has been filed.

Credits

Amended by St.1943, c. 334, § 8; St.1972, c. 400, § 3; St.1988, c. 296, § 12; St.1992, c. 133, § 378.

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M.G.L.A. 53 § 70B

§ 70B. Delegates to national conventions; election; number

Currentness

In any year in which candidates for presidential electors are to be elected, the selection of delegates and alternate delegates to national conventions of political parties shall be by that system adopted by the state committee, provided such system shall not include the placing of the names of delegates on the presidential primary ballot; and provided, further, that the distribution of delegates under any such system shall reflect the preference expressed by the voters on the presidential preference portion of the ballot at the presidential primary. The system adopted by the state committee shall be set forth in written rules and procedures covering all aspects of the delegate selection process and a copy of such rules and procedures shall be filed with the state secretary on or before October first of the year preceding the year in which presidential electors are to be elected. The number of district delegates and alternate district delegates, not less than two from each congressional district, and the number of delegates and alternate delegates at large shall be fixed by the state committee, who shall give notice thereof to the state secretary on or before the first Tuesday in January. At such primaries, members of the state, ward and town committees shall also be chosen as provided in chapter fifty-two.

Credits

Added by St.1938, c. 473, § 21. Amended by St.1941, c. 337, § 12; St.1966, c. 407, § 2; St.1970, c. 104, § 1; St.1971, c. 920, § 8A; St.1975, c. 600, § 13.

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M.G.L.A. 54 § 43

§ 43. Presidential electors; arrangement of names

Currentness

The names of the candidates for presidential electors shall not be printed on the ballot, but in lieu thereof the surnames of the candidates of each party for president and vice president shall be printed thereon in one line under the designation "Electors of president and vice president" and arranged in the alphabetical order of the surnames of the candidates for president, with the political designation of the party placed at the right of and in the same line with the surnames. A sufficient square in which each voter may designate by a cross (X) his choice for electors shall be left at the right of each political designation.

Credits

Amended by St.1932, c. 135, § 1.

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M.G.L.A. 54 § 78

§ 78. Voting for presidential electors, governor, and lieutenant governor; marking ballots

Currentness

In order to vote for presidential electors, the voter shall make a cross (X) in the square at the right of the party or political designation appearing on the ballot at the right of the surnames of the candidates for president and vice president, to vote for whom such candidates for electors are nominated; and the making of a cross as aforesaid shall be deemed and taken as a vote for such candidates for presidential electors, except as provided in section thirty-three E. A vote by sticker or write-in in the blank space at the end of the list of names of presidential and vice presidential candidates may be cast for those candidates whose names are contained in lists filed with the state secretary under the provisions of section seventy-eight A and shall be deemed to be a vote for each of the candidates for presidential elector whose names are contained in the appropriate list so filed; provided, however, that in such case the voter shall list only the surnames of the candidates for president and vice president. In order to vote for governor and lieutenant governor, the voter shall mark a cross (X) in the square at the right of the names of the group of candidates for said offices for whom he desires to vote, or by inserting the name and residence of any person for either office in the blank space provided therefor; provided, however, that no such inserted name may be that of a candidate whose name is printed upon the ballot as a candidate for the office.

Credits

Amended by St.1932, c. 135, § 2; St.1967, c. 564, § 12; St.1970, c. 424, § 2; St.1972, c. 400, § 9; St.1976, c. 475, § 3.

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M.G.L.A. 54 § 151

§ 151. Presidential electors

Currentness

At the biennial state election in each year in which presidential electors are required to be elected, a number of electors, equal to the whole number of senators and representatives in congress to which the commonwealth is entitled, shall be chosen by the voters of the commonwealth in the manner and with the effect provided by section seventy-eight.

Credits

Amended by St.1932, c. 135, § 3.

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