
COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

SUFFOLK, SS.

No. SJC-13307

JAMES LYONS, IN HIS CAPACITY AS CHAIRMAN OF THE MASSACHUSETTS
REPUBLICAN PARTY, RAYLA CAMPBELL, EVELYN CURLEY, RAYMOND XIE, AND
ROBERT MAY,
Plaintiffs-Appellants,

v.

SECRETARY OF THE COMMONWEALTH,
Defendant-Appellee.

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

**BRIEF OF THE DEFENDANT-APPELLEE
SECRETARY OF THE COMMONWEALTH**

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QUESTIONS PRESENTED

1. Did the Legislature act within its broad power to regulate elections when it adopted the VOTES Act, which makes permanent an expanded version of early voting by mail for primary and general state elections?

2. Is the VOTES Act rational under the Free Elections clause of Article IX of the Declaration of Rights where it expands the methods and opportunities for Massachusetts voters to participate in elections and does not burden voters' exercise of the franchise?

3. Is the VOTES Act, which extends existing Election Day campaign-free buffer zones to early voting polling places to protect the fundamental right to vote, consistent with the free speech guarantees of the First Amendment of the United States Constitution and Article 16 of the Massachusetts Declaration of Rights?

STATEMENT OF THE CASE

I. Prior Proceedings.

On June 22, 2022, the Governor signed into law An Act Fostering Voter Opportunities, Trust, Equity, and Security (the "VOTES Act"), which became chapter 92 of the Acts of 2022. The following day, Plaintiffs filed

this suit in the Supreme Judicial Court for Suffolk County alleging that the VOTES Act is unconstitutional. They also sought an emergency temporary restraining order to enjoin the Secretary of the Commonwealth from implementing the VOTES Act for the September 2022 primary election and the November 2022 general state election. On June 28, 2022, the Secretary filed a combined motion to dismiss the Plaintiffs' complaint and opposition to the motion for a temporary restraining order.

On June 29, 2022, the Court (Kafker, J.) reserved and reported the case to the full Supreme Judicial Court. The case was entered in the Supreme Judicial Court the same day.¹

II. Statement of Facts.

A. The VOTES Act.

On June 22, 2022, Governor Baker signed the VOTES Act, which became Chapter 92 of the Acts of 2022, a copy of which is reproduced in the Addendum to this brief (ADD-55). The VOTES Act updated Massachusetts

¹ The Secretary of the Commonwealth respectfully requests that this Court issue an order resolving this case on or before July 23, with an opinion to follow, if necessary. As noted in the Court's Reservation and Report, the VOTES Act requires the Secretary to send applications to vote by mail to all registered voters in the Commonwealth on or before that date.

election laws; many of these updates had the effect of making permanent changes that were made by the Legislature during the COVID-19 pandemic. Whether taken individually or collectively, the provisions of the VOTES Act expand the methods and opportunities for Massachusetts voters to participate in elections. As relevant to Plaintiffs' Complaint, the VOTES Act contains the following provisions:

B. Early voting by mail.

Section 10 of the VOTES Act amends G.L. c. 54, § 25B, which pertain to early voting, to make permanent an expanded version of early voting by mail, as was implemented in 2020 during the pandemic. Amended Section 25B(a)(1) of Chapter 54 expands early voting by mail to be available at any municipal preliminary or presidential or state primary or election, including special elections. 2022 Mass. Acts c. 92, § 10. It also provides a mechanism by which a city or town can opt out of providing early voting by mail for a municipal election, except that municipalities cannot opt out of providing early voting by mail for a municipal election being held on the same day as a state election for which early voting by mail is required. Id.

Amended Section 25B(a) (4) provides for the use of accessible vote by mail (AVBM) for state elections, and subsection (5) provides for the use of AVBM for municipal elections. 2022 Mass. Acts c. 92, § 10. Under these provisions, a voter whose disability prevents them from being able to independently mark a paper ballot must be offered the ability to receive their ballot, mark it, and return it electronically.

Vote-by-mail applications must be sent by the Secretary to all registered voters not later than 45 days before any presidential or regular state primary or biennial state election or special election for senator in congress. G.L. c. 54, § 25B(a) (7); 2022 Mass. Acts c. 92, § 10. Applications must be mailed to all voters who are registered not less than 60 days before a primary election. Id. Voters who register to vote for the first time or change their voter registration address must be mailed an application for an early voting ballot along with the acknowledgement of their registration change. G.L. c. 54, § 25B(a) (8).

The new G.L. c. 54, § 25B(a) (14) sets forth the process for election officials upon receiving a completed early voting ballot, which mirrors the

existing process for absentee ballots. 2022 Mass. Acts c. 92, § 10. The official is to open the outer mailing envelope and examine the inner secrecy envelope without opening it, compare the signature on the secrecy envelope with the one on the voter's application (except if a family member signed the application or the voter received assistance in signing), and examine the affidavit on the secrecy envelope. If the affidavit is not properly executed or does not sufficiently indicate that the ballot was marked and mailed or delivered as required by law, the official is to mark the envelope "Rejected as defective," notify the voter, and send the voter a new ballot. If the early voting ballot is accepted, the official is to record the date and secure the ballot in the secrecy envelope until it is processed. Early voting ballots, whether cast by mail or in person, may be processed in advance of Election Day by opening the envelopes and depositing the ballots into a tabulator machine, but results cannot be tallied until after the polls close.² G.L. c. 54, § 25B(h).

² Putting the votes in a machine is not, as Plaintiffs accuse (Br. at 21), the same as counting the votes, which occurs only after polls close - just as it does for votes cast in person on Election Day.

C. Early voting in person.

The VOTES Act also amends the provisions of G.L. c. 54, § 25B regarding early voting in person. 2022 Mass. Acts c. 92, § 10. Previously, under c. 54, § 25B, in-person early voting was only available for biennial state elections; now, early voting must be available for any presidential or state primary as well as the biennial state election and primaries or elections to fill vacancies for senator or representative in Congress. G.L. c. 54, § 25B(b)(1). It also includes early voting in person for any municipal election held on the same day as a primary or election. G.L. c. 54, § 25B(b)(1).

For biennial state elections, early voting in person must be held for two weeks - from the seventeenth day through the fourth day before Election Day. 2022 Mass. Acts c. 92, § 10; G.L. c. 54, § 25B(b)(2). Early voting in person for state and presidential primaries is to be held for one week - from the tenth day before the primary to the fourth day before the primary. Id. The law also sets minimum hours for the early voting period and sets a deadline for publication of early voting sites. 2022 Mass. Acts c. 92, § 10; G.L. c. 54, § 25B(b)(5). And

it applies the existing prohibition on electioneering within 150 feet of polling places to early voting sites during voting hours. 2022 Mass. Acts c. 92, § 11; G.L. c. 54, § 65.

The VOTES Act makes no changes to the preexisting provisions governing the process for voting early in person. Consistent with the preexisting law, the VOTES Act provides that the early voting ballot of a voter who was eligible to vote at the time the ballot was cast will not be invalidated if a voter dies after casting the ballot. Casting the ballot is defined as (a) depositing the ballot in the mail; (b) returning the early voting ballot to the appropriate local election official or depositing it in a secured municipal drop box for the municipality in which the voter is registered; (c) completing voting in person at an early voting location; or (d) submitting a ballot via AVBM. G.L. c. 54, § 25B(e).

As before, early voting materials must be provided to local election officials not less than 30 days prior to an election. G.L. c. 54, § 25B(g).

D. Other relevant provisions of the VOTES Act.

The VOTES Act also makes other changes to the Commonwealth's election laws, including:

- Sections 2 and 3 amend G.L. c. 51, § 26 to change the voter registration deadline from 20 days before an election to 10, expanding the opportunity for voters to register for an immediately upcoming election.
- Section 5 adds Portuguese and “any such additional languages as the state secretary deems necessary or required by law” to the languages currently required (English, Spanish, Chinese, Khmer, and Vietnamese) for the Secretary’s online voter registration portal.
- Sections 6 and 7 remove the opportunity for otherwise-eligible applicants for renewal or issuance of a driver’s license or permit to opt out of the automatic voter registration provisions of G.L. c. 51, § 42G^½, instead requiring the Registry of Motor Vehicles to transmit information for all applicants who are at least 16 years old and United States citizens. If the applicant is already registered to vote but the information differs, the local election official must update the voter’s record. If the applicant is not registered, the local election official is to process the registration and notify the

applicant that they will be registered to vote unless they decline by return mailing.

- Section 9 amends G.L. c. 54, § 14's provisions for filling poll worker vacancies. Under the amended provisions, if a city or town clerk determines in writing that there are insufficient poll workers within 6 weeks of an election, the appointing authority may appoint replacement workers without regard to political party membership, voter status, city/town residence, or inclusion on a list filed by a political party committee. In addition, if a warden, clerk, inspector, or deputy position is vacant within the 3 weeks preceding an election, the city or town clerk may fill the vacancy by appointing a competent person willing to serve without regard to any of the factors listed above. G.L. c. 54, § 14 previously contemplated only vacancies occurring immediately after appointment, and required party representation requirements to the replacement appointments, if the local party committees had submitted lists. The VOTES Act leaves untouched the existing provisions of G.L. c. 54, § 16A, which require that same-day replacement poll workers be from the same party as the poll worker being replaced.

- Sections 12 and 14 amend previous statutory sections regarding check-in and check-out tables at polling locations. The amended sections provide that a check-out table is optional, but still require the use of a second voter list at the ballot box. G.L. c. 54, §§ 67, 83.

- Section 13 amends the process for designating police officers or constables for polling locations, but an officer or constable is still required at every polling location on Election Day. G.L. c. 54, § 72.

- Sections 16 and 17 amend the statutory provisions regarding the return envelopes and deadline for receipt of absentee ballots to be consistent with the provisions applicable to early vote-by-mail ballots.

- Section 19 amends G.L. c. 54, § 92 to provide that an absentee ballot cast by a voter who subsequently dies should still be counted, consistent with the cognate provision for early vote-by-mail ballots. Section 22 repeals G.L. c. 54, § 100, which provided that a ballot could not be counted if the voter was known to have died between submitting her vote and the opening of the polls.

- Section 21 amends G.L. c. 54, § 95 to allow advance processing of absentee ballots, consistent with the cognate provisions for early vote-by-mail ballots.

- Section 24 requires the Secretary to conduct a public awareness campaign to educate voters on the provisions of the VOTES Act, in a manner that is linguistically diverse and culturally competent, in multiple formats, and with specific outreach to groups and communities that have historically underused mail and early voting.

SUMMARY OF THE ARGUMENT

The VOTES Act makes it easier for qualified Massachusetts voters to cast their ballots. The new law extends the timeframe for voters to vote early by mail, which was temporarily authorized for the 2020 election, and first allowed for a shorter period in 2016. It halves the deadline for registering to vote before an election from twenty days to ten, thereby increasing opportunities for newly registered voters to exercise their franchise sooner. It establishes a new electronic means for sending and receiving ballots to permit print-disabled and military and overseas voters to independently cast their ballots. And it

implements procedures to make sure that elections are run in an orderly, secure manner. All told, the VOTES Act reflects the most recent, reasoned judgment of the Legislature on how best to regulate the manner of elections in the Commonwealth while ensuring that qualified voters can securely, efficiently, and safely exercise the franchise.

Yet within mere hours of the law's enactment, Plaintiffs filed suit seeking to frustrate the judgment of the Legislature and thwart these improvements to voting opportunities for Massachusetts voters. The Complaint and Motion for Temporary Restraining Order offer nothing more than unsupported theories and threadbare - and often mistaken - allegations as to why the VOTES Act is somehow unconstitutional. Nothing in the Complaint demonstrates that the Legislature acted beyond its broad power to regulate elections when it adopted this law. Simply put, Plaintiffs' Complaint fails to state any plausible claim for relief. The Complaint, and Plaintiffs' motion for preliminary injunctive relief, should be rejected. The VOTES Act survives constitutional scrutiny under any of the tenuous theories advanced by Plaintiffs.

First, the VOTES Act does not violate Article CV's provisions concerning absentee voting. See infra at pp. 24-32. Article CV empowers the Legislature to provide for absentee voting for certain categories of voters, but this provision - which applies only to general elections, not primary elections - sets a floor for what the Legislature can do, not a ceiling. The Legislature retains the broad power to go above this floor, and it appropriately exercised this broad power when it expanded the ways in which voters could exercise their fundamental right to vote by making permanent an expanded version of early voting by mail. Nothing in Article CV circumscribes the Legislature's ability to have done so.

Nor does the VOTES Act run afoul of the Free Elections clause of Article IX. See infra at pp. 33-46. Contrary to Plaintiffs' fact-free allegations, this law augments the ability of qualified voters to participate in elections. The changes that the law made were all rational and designed to make it easier to vote, not harder. These changes include: (1) requiring the Secretary to provide an electronic system to deliver and return ballots for disabled voters who are unable to mark paper ballots without

assistance, and military and overseas voters who are not physically present; (2) enabling voters to register closer to an election in which they may wish to vote; (3) making commonsense reforms to ensure that polling places are adequately staffed; (4) making it easier and more efficient for voters to cast a ballot by making check-out tables optional while retaining double voter lists at polling places; (5) changing the process by which police are detailed to work at polling places; and (6) ensuring that people who cast absentee ballots but then later die have their votes tallied. Nothing in the Complaint demonstrates that the Legislature acted irrationally by implementing these reforms, notwithstanding Plaintiffs' repeated attempts to mischaracterize what the law, in fact, requires.

Third, the VOTES Act, which applies the electioneering buffer zone requirement that has long existed for Election Day polling places to early voting locations, is consistent with the free speech guarantees of the state and federal constitutions. See infra at pp. 46-52. Plaintiffs acknowledge that such buffer zones serve "an important and legitimate governmental purpose," namely giving voters the "space

to freely cast their ballot without pressure.” Compl. ¶ 62. Considering the fundamental interests that these buffer zones serve, they survive Plaintiffs’ free speech challenge.

ARGUMENT

I. The VOTES Act does not conflict with the absentee voting provisions of Article CV.

The Court should reject Plaintiffs’ challenge (Compl. ¶ 37) that the VOTES Act violates Article CV’s requirements concerning absentee voting. This constitutional provision, which only applies to the administration of general state elections (and not primary elections), sets a constitutional floor for what the Legislature can do regarding absentee ballots. But nothing in Article CV expressly prohibits the Legislature from going above this constitutional minimum. In the absence of a specific prohibition to the contrary, the Legislature retains broad rulemaking authority, see Mass. Const. Pt. II, c.1, § 1, art. 4, including for the administration of elections, which it then permissibly used to establish and then make permanent expanded versions of early voting and early voting by mail. Nothing in the Complaint or Plaintiffs’ brief demonstrates that the

Legislature's actions were barred by Article CV, and this claim should be rejected.

A. Article CV does not restrict the Legislature's authority to make laws concerning primary elections.

As a threshold matter, the Court should reject any argument that the VOTES Act's provisions concerning primary elections are barred by Article CV, because Article CV only applies to the conduct of general elections. As the Court has previously explained, the "Massachusetts Constitution does not refer to primaries and nominations as such, but concerns itself only with elections." Opinion of the Justices, 359 Mass. 775, 776 (1971). Primary elections, which "came into practice by legislative act," id., not from constitutional requirements, do not fall under Article CV's purview. As such, this Court previously concluded that a prior version of Article CV could not apply to primary elections. Id. Consequently, the Court reasoned, the Legislature retained the power to "exercise statutory authority over voting procedures at nominations." Id. Any challenge to the VOTES Act's provisions concerning

primary elections based on Article CV, therefore, must be rejected at the outset.³

B. Article CV does not limit the Legislature's authority to make permanent an expanded version of the process allowing any voter to vote early, in person or by mail.

Even aside from this threshold issue, this Court should reject Plaintiffs' claim that the VOTES Act violates Article CV of the Massachusetts Constitution, which sets a floor for what is required for absentee voting but does not otherwise constrain the Legislature's discretion to provide for other methods of voting in the Commonwealth. Article CV provides that the Legislature:

shall have power to provide by law for voting, in the choice of any officer to be elected or upon any question submitted at an election, by qualified voters of the commonwealth who, at the

³ The Secretary addresses Plaintiffs' arguments concerning the VOTES Act's applicability to general elections below and explains why this Court should reject Plaintiffs' challenges as to both the general and primary elections. However, to the extent that Plaintiffs may encourage this Court to reach one result for primary elections and another for general elections, the Secretary emphasizes that a decision by this Court permitting early voting by mail for the primary election - but not the general state election - would cause substantial voter confusion. This confusion would be particularly acute where vote-by-mail ballot applications have already been approved for printing in accordance with the VOTES Act provisions allowing a voter to request an early voting ballot for all remaining state primary or general elections in the calendar year. G.L. c. 54, § 25B(7) (i).

time of such an election, are absent from the city or town of which they are inhabitants or are unable by reason of physical disability to cast their votes in person at the polling places or who hold religious beliefs in conflict with the act of voting on the day on which such an election is to be held.

In short, this provision vests the Legislature with power to provide for and regulate absentee voting for those individuals who (1) are disabled, (2) are absent from their locality on election day, or (3) have religious beliefs that prevent them from voting on election day. On its face, Article CV says nothing whatsoever about early voting, a different species of balloting statutorily created by the Legislature. Nor does it limit any other power the Legislature may have to regulate voting in the Commonwealth.

Indeed, as this Court has long emphasized, “[e]xcept where the Constitution makes express provision, the Legislature has broad powers to deal with elections.” Opinion of the Justices, 359 Mass. at 777. That is, the Legislature enjoys plenary power to regulate elections so long as the Constitution does not specifically and expressly circumscribe that authority in plain and unambiguous terms. Nothing in Article CV limits the Legislature’s power to authorize early voting - or to go beyond the minimum

requirements contemplated by Article CV - and Plaintiffs offer no legal analysis or credible argument to the contrary.

As this Court recently observed, the Constitution does not afford a "right to vote by mail." Grossman v. Secretary of the Commonwealth, 485 Mass. 541, 547 (2020). Instead, prior to the enactment of the early voting statute in 2014 and the creation of temporary vote-by-mail legislation in 2020, "voters effectively had two options" for voting. Id. at 548. "If they had a recognized excuse for not being able to vote in person on the date of the primary election, namely, a physical disability, religious objection, or absence from the Commonwealth, they could vote in advance using an absentee ballot. Otherwise, they had to vote in person." Id. at 548 (internal citations omitted).

Legislation more recently changed that arrangement, and provided "more options for voting," including this expanded means of voting early by mail. Id. at 549. This "over-all mail-in ballot process," the Court concluded in response to an Article IX challenge, "was laudable and reasonable," particularly in light of the ongoing COVID-19 pandemic. Id. at 550. The Court affirmed the constitutionality of one

provision of the similar 2020 early vote-by-mail scheme while praising the legislation for having “provid[ed] multiple means of voting, including options to vote by mail that previously never existed.” Id. at 542.

The result here should be dictated by Grossman’s recognition that early voting is a distinct and additional means of voting that stands apart from what is contemplated by Article CV. The new VOTES Act does not alter the constitutional eligibility for absentee voting; it expands the existing regime for early voting, which is a creature of statute, not of constitutional dimension. Thus, even to the extent that Article CV can be construed to limit the Legislature’s regulation of absentee voting, it does not apply to early voting. See Opinion of the Justices, 359 Mass. at 777 (construing predecessor to Article CV narrowly to apply only to absentee voting in general elections, not to other forms of voting in elections that had a statutory genesis). The “new voting options,” Grossman, 485 Mass. at 548, are not subject to Article CV, and the VOTES Act is, therefore, permissible.

But even if Article CV somehow could be twisted to apply to this distinct means of voting with a legislative, not constitutional, origin, Plaintiffs' arguments fail. Article CV does not limit the Legislature's plenary power of elections, it merely sets a minimum of what is required of the Legislature.⁴ That is, Article CV instructs the Legislature to, at a minimum, make provisions for absentee voting by certain categories of qualified voters; it does not otherwise constrain the Legislature's power to go

⁴ Nor does the VOTES Act violate Articles LXXXII or LXXIX of the Massachusetts Constitution. Plaintiffs are wrong that these two provisions, which likely only apply to general elections, see Opinion of the Justices, 359 Mass. at 776, require that ballots be cast only on a single Election Day in November (Compl. ¶¶ 35-36). As amicus curiae Common Cause notes in its brief, the physical presence at a meeting-style election has been supplanted; indeed, this transition away from meetings-based elections was the impetus behind Article XLV, the predecessor of Article CV. The fact remains that ballots (whether absentee, early, or those cast on Election Day proper) are still only tallied on Election Day even under the VOTES Act. Plaintiffs' vague argument (Compl. ¶¶ 38-39) that early voting by mail somehow intrudes on the Article XLVIII initiative petition and referendum process similarly does not demonstrate that the VOTES Act is unconstitutional. That the new law expands the menu of options for how people may cast their ballot does not impinge upon the people's petitioning process at all, and Plaintiffs offer no serious argument to the contrary.

above this floor to provide additional opportunities for voter participation.⁵

Indeed, the idea that Article CV's grant of power to the Legislature to address absentee voting somehow precludes them from doing more is illogical and contrary to the constitution's grant of plenary legislative power to the Legislature under Mass. Const. Pt. II, c.1, § 1, art. 4; doing as Plaintiffs suggest would curb lawmakers' authority through constitutional silence. See Opinion of the Justices, 359 Mass. at 777 (stating that Legislature retains broad power to regulate elections in the absence of express constitutional prohibition); see also Opinion of the Justices to the Senate, 375 Mass. 795, 810 (1978) (noting that "[i]ncluded in the grant to the General Court of legislative authority are broad

⁵ Plaintiffs' reliance in their motion for a temporary restraining order on a decision from a Pennsylvania appellate court applying Pennsylvania constitutional law is misplaced. In McLinko v. Dep't of State, 270 A.3d 1243, 1252 (Pa. Commw. Ct. 2022), a Pennsylvania court invalidated a system for no-excuse mail-in balloting because it ran afoul of a state constitutional requirement that a voter could only "offer to vote" if they physically presented themselves "at the time and place appointed" to make "manual delivery of the ballot." No such "offer to vote" language appears in Article CV of the Massachusetts constitution, and thus McLinko is of no value in resolving this suit.

powers to regulate the process of elections.”); cf. Phillips v. Equity Residential Mgmt., L.L.C., 478 Mass. 251, 259 n.19 (2017) (warning that maxim of statutory construction, known as “expressio unius est exclusio alterius,” is “rarely used” and should be applied with “caution”). This cannot be the case. That the constitution instructs the Legislature to provide for absentee voting in general elections does not otherwise limit the Legislature’s power to do more to allow voters to vote. Plaintiffs’ Article CV claim falls short and must be rejected.⁶

⁶ Plaintiffs nowhere explain how early voting by mail compromises ballot secrecy (Compl. ¶ 40). Nor could they. The Legislature included multiple measures in the VOTES Act to preserve ballot secrecy. Notably, as described above, supra at pp. 13-14, voters receive a ballot plus two envelopes, an outer mailing envelope and an inner secrecy envelope. Local election officials will open the outer mailing envelope when received and examine the inner secrecy envelope without opening it, compare the signature on the secrecy envelope with the one on the voter’s application (except if a family member signed the application or the voter received assistance in signing), and examine the affidavit on the secrecy envelope. G.L. c. 54, § 25B(a)(14); 2022 Mass. Acts c. 92, § 10. This secrecy envelope shields the anonymity of the voter’s ballot. Plaintiffs conveniently omit any mention of these safeguards.

II. The VOTES Act, which expands the ability of qualified voters to cast their ballots, has a rational basis and is consistent with the Free Elections Clause of Article IX.

The VOTES Act does not violate the Free Elections clause of Article IX of the Declaration of Rights, because not only does it have a rational basis, but also it also expands voters' ability to participate in the electoral process. Plaintiffs' attempts to advance scattershot arguments as to why Article IX presents a problem for the provisions of the VOTES Act are unavailing. Although it is unclear from the face of the Complaint and from Plaintiffs' brief what the legal basis is for many of Plaintiffs' arguments, which repeatedly hop from one undifferentiated constitutional provision to another, most of these arguments fall under the umbrella of a Free Elections clause challenge, and so the Secretary addresses these arguments using this framework, even though Plaintiffs unavailingly attempt to escape this structure.

A. The Free Elections Clause does not directly apply to Plaintiffs' challenge to the portion of the VOTES Act applicable to primary elections.

At the outset, Plaintiffs' constitutional challenge to the VOTES Act under Article IX (and related provisions of the state constitution) should

be rejected insofar as the new law concerns primary elections because these constitutional requirements do not generally apply to primaries. As the Supreme Judicial Court has explained, "the Massachusetts Constitution, including art. 9 of the Declaration of Rights, did not refer to primaries and nominations as such, but concerned itself only with elections." Opinion of the Justices to the House of Representatives, 368 Mass. 828, 831 (1975) (concluding that "art. 9 of the Declaration of Rights does not apply" to laws affecting administration of primary elections). Nevertheless, the Court has previously entertained and decided Article IX challenges to laws concerning primary elections, but only where the law had a "necessary effect on," id., the administration of a general state election. See, e.g., Grossman, 485 Mass. at 550 (affirming constitutionality of vote receipt deadline for primary election under Article IX because the primary "must be completed in a timely fashion to set the stage for the general election"). But nothing in the Complaint suggests that the changes the VOTES Act made to the administration of the primary elections is so tied to the general election

that Article IX (or related provisions of the state constitution) should apply in this case.

B. The VOTES Act reflects a rational exercise of legislative judgment concerning the administration of elections and is, therefore, consistent with Article IX's requirements.

1. Rational basis review applies to Plaintiffs' Article IX challenge because the VOTES Act expands the ability of voters to cast their ballots, and nothing in the Complaint suggests that the Legislature acted irrationally.

"[V]oting has long been recognized as a fundamental political right and indeed the 'preservative of all rights.'" Mass. Pub. Int. Research Grp. v. Sec'y, 375 Mass. 85, 94 (1978) (quoting Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886)). Article IX of the Massachusetts Constitution's Declaration of Rights accordingly provides: "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." As the Supreme Judicial Court has observed, the "primary, if not the exclusive, purpose of [Article IX] is to guarantee equality among all ... [qualified] voters."

Opinion of the Justices, 368 Mass. 819, 821 (1975); see also Bowe v. Secretary of the Commonwealth, 320 Mass. 230, 248 (1946) (explaining that Article IX endorses the encompassed equality in voting for the freedom of elections).

Still, lawmakers are afforded latitude to regulate elections in the Commonwealth. See First Nat. Bank of Boston v. Attorney General, 362 Mass. 570, 587 (1972) (explaining Legislature's power "to regulate elections in order to prevent bribery, fraud and corruption to the end that the people's right to vote may be protected."). This is because "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." Storer v. Brown, 415 U.S. 724, 730 (1974); Goldstein v. Secretary of the Commonwealth, 484 Mass. 516, 524 (2020) (noting that as "with many fundamental rights, the court has sustained statutes which reasonably regulate elections and access to a place on the ballot") (citation and internal quotation omitted). And courts have recognized that regulations to achieve the "necessary objectives" of fairness, honesty, and

order will “inevitably affect[] - at least to some degree - the individual’s right to vote.” Anderson v. Celebrezze, 460 U.S. 780, 788 (1983).

To assess whether a law is permissible under Article IX, a court will consider whether it “impairs the freedom of a voter to express his choice as to men or measures.” Bowe, 320 Mass. at 249. In conducting this analysis, Massachusetts courts apply a “sliding scale approach,” under which they “weigh the character and magnitude of the burden the State’s rule imposes on the plaintiffs’ rights against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary.” Libertarian Ass’n of Mass. v. Secretary of the Commonwealth, 462 Mass. 538, 560 (2012) (“LAM”) (quotations, citations, and alterations omitted); Chelsea Collaborative, Inc. v. Secretary of the Commonwealth, 480 Mass. 27, 35 (2018) (“In general, this ‘sliding scale’ analytical framework [discussed in LAM] is appropriate for cases that involve voting rights under the Massachusetts Constitution.”).

In calibrating this sliding scale, courts first look to how burdensome a law is on the exercise of the right to vote. “Recognizing that [Article IX of] the

Massachusetts Declaration of Rights may be more protective of voting rights than the Federal Constitution," courts will apply strict scrutiny to any voting requirement that "significantly interfere[s]" with the fundamental right to vote. Goldstein, 484 Mass. at 524. At the other end of the sliding scale, where a law does not "significantly interfere with the right to vote but merely regulate[s] and affect[s] the exercise of that right to a lesser degree," courts will examine the law under "rational basis review to assure [its] reasonableness." Chelsea Collaborative, 480 Mass. at 34. Some regulations on the right to vote, however, will fall somewhere "between these two extremes." Chelsea Collaborative, 480 Mass. at 48-49 (Gants, C.J., concurring). In these circumstances, courts apply "a more flexible standard," under which "the rigorousness of [the] inquiry ... depends upon the extent to which a challenged regulation burdens" voters' rights. Id.

Where, as here, an election law enhances voters' ability to cast their ballots, the Court has instructed that rational basis review applies. Grossman, 485 Mass. at 542 (concluding that laws that

“enhance” the right to vote are evaluated under lowest level of constitutional scrutiny). Indeed, in Grossman, the Court concluded that the pandemic early-vote-by-mail statute enacted in 2020 was constitutional under the rational basis test precisely because it “provid[ed] multiple means of voting, including options to vote by mail that previously never existed.” *Id.* (affirming constitutionality of vote receipt deadline imposed by 2020 election laws).

Moreover, this Court has already said that a law similar to the VOTES Act - one that sought “the expansion of the right to vote, by providing multiple voting options” - was both laudable and reasonable. *Id.* at 548. The Legislature rationally chose to enact the VOTES Act to expand voting access, and that judgment passes constitutional muster. Nothing in the Complaint changes this outcome, let alone calls into doubt the rationality of the Legislature in enacting this law. See also Goldstein v. Secretary of the Commonwealth, 484 Mass. at 528 (noting that judgments concerning election laws are typically “best left to the Legislature”).

Each of Plaintiffs' theories concerning the alleged infirmities of the VOTES Act is addressed, in turn:

2. The VOTES Act's limited use of electronic ballot conveyance does not violate Article IX.

Plaintiffs' argument (Compl. ¶¶ 45-46) that the VOTES Act implements "electronic voting" in contravention of the Massachusetts Constitution continues to be both factually inaccurate and legally unsupported. The VOTES Act does not - contrary to Plaintiffs' assertion - implement electronic voting.⁷ Instead, it requires the Secretary to provide an electronic system to deliver and return ballots for two limited populations: disabled voters who are unable to mark paper ballots without assistance, and military and overseas voters who are not physically present and for whom mailing a paper ballot would be more onerous. G.L. c. 54, §§ 25B(a)(4)-(5).

⁷ Plaintiffs' argument that these requirements violate state law, including Article XXXVIII, likewise misses the mark because it misapprehends what the VOTES Act requires. The VOTES Act does not implement electronic voting; it just establishes a new electronic means for sending and receiving ballots to permit print-disabled and military and overseas voters to independently cast their ballots.

The Legislature's choice to include these electronic means of delivering and returning ballots in the VOTES Act was eminently rational, particularly because doing so helps the Commonwealth comply with two federal laws: the Americans with Disabilities Act (42 U.S.C. §§ 12101, et seq.) and the Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. §§ 20301-20311). The former law requires the Commonwealth to take reasonable steps to permit disabled voters to vote; the latter requires the Commonwealth to allow military and overseas voters to receive and return their ballots electronically. In Grossman, the Court held that the Legislature acted rationally when it created ballot receipt deadlines to comply with certain federally imposed statutory election deadlines, see 485 Mass. at 552 (observing that it "certainly is not an irrational choice" for Legislature to craft an election law complying with federal law). The Court should do the same here.

3. Plaintiffs have withdrawn their claim concerning durational residency requirements for Massachusetts voters because it was based on an incorrect read of the VOTES Act.

Plaintiffs have withdrawn (Br. at 55) their claim (Compl. ¶ 50) that the VOTES Act violates the state

constitution because it supposedly changes residency requirements for voting. The VOTES Act makes no such changes, as Plaintiffs belatedly acknowledge. This portion of the suit should accordingly be dismissed.

4. The VOTES Act does not establish a system of "partisan favor."

Plaintiffs are likewise mistaken (Compl. ¶¶ 55-56) that the VOTES Act creates a system of partisan favor through its amendment to the law concerning vacancies for poll workers. Section 9 of the VOTES Act amends G.L. c. 54, § 14 to change the process for filling vacancies of poll workers. 2022 Mass. Acts c. 92, § 9. The existing version of Section 14 only envisioned vacancies occurring immediately after the appointment of poll workers and applied certain party representation requirements to those appointed to fill a vacancy if the local party committees had submitted lists. G.L. c. 54, § 14. Under the new law, if the city or town clerk determines that there is a deficiency in the number of required election officers within the six weeks preceding the primary or election, the appointing authority may appoint election officers without regard to political party membership, voter status, residence in the city or town, or inclusion on a list filed by a political

party committee. 2022 Mass. Acts c. 92, § 9. The new law also provides that if the position of warden, clerk, or inspector, or deputy of any such officer becomes vacant within the three weeks preceding any primary or election, the city or town clerk may fill the vacancy by appointing a competent person willing to serve, without regard to political party membership, voter status, residence in the city or town, or inclusion on a list filed by a political party committee. Id. The VOTES Act, however, makes no change to G.L. c. 51, § 16A, which is a local option statute that allows a city or town clerk to appoint poll workers on the day of the election if there is a vacancy but requires them to appoint someone of the same party as the no-show.

The Complaint is devoid of explanation how this addition to the law regarding replacement poll workers impairs the administration of free elections in the Commonwealth. To the contrary, the new law facilitates the conduct of elections by ensuring that there are sufficient poll workers present to ensure that polling places run smoothly and in accordance

with all relevant laws.⁸ This commonsense change helps guarantee that cities and towns have sufficient personnel to administer an election; it is not a means of preferring one political party over another. Indeed, the Complaint is entirely silent as to how ensuring adequately staffed polling places creates an unconstitutional partisan advantage for one political party or another. Regardless of their party affiliation, poll workers take the same oath and have the same responsibility to discharge their duties consistent with that oath. G.L. c. 54, § 20. Simply put, this claim has neither factual nor legal support, and it should be rejected.

5. The VOTES Act does not make voting "unsecure."

Plaintiffs are also wrong that the VOTES Act undercuts the security of voting (Compl. ¶¶ 57-60). The Complaint fails to articulate a single plausible claim that anything in the VOTES Act poses a threat to secure voting such that voters are unconstitutionally burdened. Instead, this section of the Complaint is

⁸ Otherwise, for example, smaller towns may struggle to staff polling places fully from party lists because as of 2021, 57% of voters in the Commonwealth are registered as unenrolled. See https://www.sec.state.ma.us/ele/elepdf/enrollment_count_20210201.pdf.

full of speculation in search of a plausible claim, and in fact, it appears that Plaintiffs have now mostly abandoned these claims.⁹

Plaintiffs continue to press their hyperbolic assertion that the VOTES Act authorizes dead people to vote. This argument is badly misleading and continues to mischaracterize the law. Section 19 of the new statute amends G.L. c. 54, § 92 to provide that an absentee ballot cast by a voter who then dies after the vote is cast (but before the vote is tallied) still gets counted. The reason for this provision is to treat absentee ballots the same as early voting ballots (and, for that matter, ballots cast in person on Election Day), which existing law provided would be counted even if the early voter died after having cast a ballot but before the vote was counted.

Specifically, Section 22 of the new law repeals G.L. c. 54, § 100, which provided that absentee ballots

⁹ Plaintiffs did not advance any argument in their brief concerning the unsupported allegation that the VOTES Act eliminated police from polling places. And in fact, the VOTES Act did nothing of the sort. Now abandoned, this claim should be dismissed.

Plaintiffs also failed to advance any argument concerning their inaccurate claim that the VOTES Act eliminated double voter lists. Here too, the VOTES Act did not actually do what the Complaint alleged. Plaintiffs having declined to make any argument on this issue, this claim should be dismissed.

cast by voters who died before the opening of the polls would not be counted. The effect of these provisions is not, as Plaintiffs contend, to allow dead people to vote; it allows clerks to count all ballots that have been cast by registered voters who were, in fact, alive when they voted, without having to fish out ballots cast by voters who died in the intervening time. This rule is administrable and makes sense; voters who cast valid votes should have them counted. Nothing in Plaintiffs' scaremongering Complaint suggests any reason why this rule is irrational - let alone would permit someone else to cast a ballot on behalf of a dead person, as Plaintiffs wildly assert.

III. Campaign-free buffer zones around early voting sites do not violate the free speech guarantees of the State or Federal Constitutions.

The VOTES Act extends the same electioneering buffer zone requirement that has long existed for Election Day polling places to early voting locations during voting hours.¹⁰ 2022 Mass. Acts c. 92, § 11; G.L. c. 54, § 65. Plaintiffs offer no serious

¹⁰ Plaintiffs brief now appears to challenge the Secretary's guidance on electioneering buffer zones, but this challenge is beyond the scope of the Complaint, which focused only on the VOTES Act.

allegation (Compl. ¶¶ 61-66) that this requirement fails to pass constitutional muster. As the Complaint recognizes, such buffer zones have been permissibly used for Election Day polling places for many years, and Plaintiffs themselves admit that such buffer zones serve "an important and legitimate governmental purpose," namely giving voters the "space to freely cast their ballot without pressure." Compl. ¶ 62.

The new law requires municipalities to impose the same 150-foot zone around early voting locations where specific electioneering activity is prohibited, for the same reason it is prohibited on Election Day.¹¹

The United States Supreme Court has held that campaign-free buffer zones are permitted by the First

¹¹ Contrary to Plaintiffs' insinuation, all potentially political speech, including passive speech like wearing vaguely political clothing, is not precluded within the buffer zone. The electioneering rules prohibit solicitation of votes for or against any person, political party, or ballot question that is to be voted on at a current election. 950 C.M.R. §§ 52.03(22)(d), 54.04(22)(d). They also prohibit direct influencing of voters by holding any campaign sign; wearing any campaign buttons, clothing, or identifying signs or symbols; handing any person literature intended to influence their action at the polls; soliciting a person's vote for or against a candidate or question on the ballot; or promoting or opposing any person or political party or ballot question on the ballot. 950 C.M.R. §§ 52.03(22)(d), 54.04(22)(d).

Amendment,¹² and the Complaint does not demonstrate why a departure from this rule is warranted here.

The VOTES Act's restriction applies only at voting locations. It therefore implicates the First Amendment's "'forum based' approach for assessing restrictions that the government seeks to place on the use of its property." Int'l Soc. for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 678 (1992). Polling places are considered nonpublic forums for purposes of a free speech analysis. See Minnesota Voters All. v. Mansky, 138 S. Ct. 1876, 1886 (2018) ("A polling place ... qualifies as a nonpublic forum."). In a nonpublic forum, the government enjoys "much more flexibility to craft rules limiting speech." Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 46 (1983). The government may reserve such a forum "for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression

¹² Plaintiffs do not distinguish at all between the protections provided by the First Amendment and Article 16 of the Declaration of Rights of the Massachusetts constitution, and this Court has often drawn on First Amendment law in deciding Article 16 challenges. See Commonwealth v. Lucas, 472 Mass. 387, 398 (2015) (deciding free speech case on Article 16 grounds but relying on First Amendment law).

merely because public officials oppose the speaker's view." Id.

Accordingly, the Court employs a distinct standard of review to assess speech restrictions in nonpublic forums because the government, "no less than a private owner of property," retains the "power to preserve the property under its control for the use to which it is lawfully dedicated." Adderley v. Florida, 385 U.S. 39, 47 (1966). Accordingly, the Supreme Court has "long recognized that the government may impose some content-based restrictions on speech in nonpublic forums, including restrictions that exclude political advocates and forms of political advocacy." Mansky, 138 S. Ct. at 1886. The only question for a nonpublic forum First Amendment challenge is whether a campaign-free buffer zone rule at a polling place is "reasonable in light of the purpose served by the forum": voting. Id. That is the only relevant test for evaluating the VOTES Act's electioneering buffer zone.

In Burson v. Freeman, the Supreme Court (in a plurality opinion and a separate concurrence) answered that question affirmatively, upholding a Tennessee law that created a 100-foot campaign-free buffer zone

around polling places. 504 U.S. 191, 211 (1992) (Blackmun, J., plurality op.). In that case, the plurality concluded that the buffer zone law withstood even the strict scrutiny applicable to speech restrictions in traditional public forums. Id. The State, the plurality wrote, had a compelling interest in ensuring “the right to cast a ballot in an election free from the taint of intimidation and fraud.” Id. Therefore, the Court in affirming this law determined that “some restricted zone around polling places is necessary to protect that fundamental right.” Id. As the plurality further explained, “[t]he State of Tennessee has decided that [the] last 15 seconds before its citizens enter the polling place should be their own, as free from interference as possible.” Id. at 210. That was not “an unconstitutional choice.” Id. Concurring in the result, Justice Scalia agreed, opining that the less rigorous “reasonableness” standard of review should apply, and found the law “at least reasonable” considering the plurality’s analysis. Id., at 216 (Scalia, J., concurring). See also Mansky, 138 S. Ct. at 1887 (remarking that voting is “a time for choosing, not campaigning” and therefore the “State may reasonably

decide that the interior of the polling place should reflect that distinction”).

The result here should be no different than it was in Burson. Massachusetts has a compelling interest in the orderly administration of elections, which includes - as the Complaint freely acknowledges - ensuring that voters can cast their votes free from intimidation and fraud. See Grossman, 485 Mass. at 553 (recognizing that state has legitimate interests in conducting orderly election). The VOTES Act’s extension of buffer zones from Election Day polling sites, which Plaintiffs acknowledge are permissible, to early voting sites during voting hours is reasonable, and nothing in the Complaint demonstrates otherwise. The VOTES Act thus survives constitutional scrutiny under a nonpublic forum analysis.

Instead of confronting this analysis and addressing their admission that these buffer zones serve compelling interests, Plaintiffs argue for the first time in their brief that the VOTES Act’s electioneering buffer zones apply to public (as opposed to nonpublic) forums and are thus subject to a different constitutional analysis. Not so. As the Supreme Court has made clear, “a polling place” is a

"nonpublic forum." Mansky, 138 S. Ct. at 1886; see also Int'l Soc. for Krishna Consciousness, 505 U.S. at 680 (remarking that a public forum is not created just because "members of the public are permitted freely to visit a place owned or operated by the Government."). And the extension of these reasonable buffer zones to polling places during the early voting period (as compared to a far greater number of polling places on Election Day, which Plaintiffs agree is permissible) does not change the outcome dictated by Burson here.

CONCLUSION

For the foregoing reasons, the Secretary requests that the Court enter judgment in his favor.

Respectfully submitted,

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Date: July 5, 2022

CERTIFICATE OF COMPLIANCE

I, Adam Hornstine, hereby certify that the foregoing brief complies with all of the rules of

court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 20 because it is 42 pages long (not including the portions of the brief excluded under Rule 20) in 12-point Courier New font, which prints approximately 10 characters per inch.

/s/ Adam Hornstine
Adam Hornstine
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2022, I filed with the Supreme Judicial Court and served the attached brief of the Secretary of the Commonwealth in this case, by e-mail:

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ADDENDUM

VOTES Act, 2022 Mass. Acts c. 92..... 55

Acts (2022)

Chapter 92

AN ACT FOSTERING VOTER OPPORTUNITIES, TRUST, EQUITY AND SECURITY

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith voter opportunities, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1F of chapter 51 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking out the words “eight o’clock post meridian of the twentieth” and inserting in place thereof the following words:- 5:00 p.m. of the tenth.

SECTION 2. Section 26 of said chapter 51, as so appearing, is hereby amended by striking out, in lines 10 and 11, the words “eight o’clock in the evening” and inserting in place thereof, in each instance, the following words:- 5:00 p.m.

SECTION 3. Said section 26 of said chapter 51, as so appearing, is hereby further amended by striking out, in line 10, the word “twentieth” and inserting in place thereof the following word:- tenth.

SECTION 4. Said chapter 51 is hereby further amended by striking out section 28, as so appearing, and inserting in place thereof the following section:-

Section 28. Registrars shall hold a continuous session from 9:00 a.m. until 5:00 p.m. on the last day for registration established under section 26; provided, however, that a town having less than 1,500 voters may hold a session from 9:00 a.m. until 11:00 a.m. and from 3:00 p.m. until 5:00 p.m.

SECTION 5. Section 33A of said chapter 51, as so appearing, is hereby amended by adding the following sentence:- The state secretary shall make the online portal accessible in English, Spanish, Portuguese, Chinese and such additional languages as the state secretary deems necessary or required by law.

SECTION 6. Section 42G^{1/2} of said chapter 51, as so appearing, is hereby amended by inserting after the word “vote”, in line 57, the following words:- pursuant to subsection (d) of section 65.

SECTION 7. Said section 42G^{1/2} of said chapter 51, as so appearing, is hereby further amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) In accordance with the memorandum of understanding required by subsection (b), each eligible applicant for services at an automatic voter registration agency who meets the qualifications to register to vote and does not decline to register to vote under subsection (d) of section 65 shall be registered as a voter under said section 65 as of the date the registrars add the person’s name and address to the register of voters, pursuant to paragraph (4) of said

subsection (d) of said section 65; provided, however, that an applicant who meets the qualifications to register to vote, does not decline to register to vote under said subsection (d) of said section 65 and completes a qualifying transaction with an automatic voter registration agency not less than 10 days before an election shall be entitled to vote in that election. If necessary to comply with federal law, the division of medical assistance and the commonwealth health insurance connector authority may allow an applicant to decline to register to vote at the time of application. Otherwise, all automatic voter registration agencies, including the registry of motor vehicles, shall transmit records of all eligible applicants as provided in subsection (e) and these applicants may decline to register to vote only after receiving notice from the registrars under paragraph (3) of said subsection (d) of said section 65.

SECTION 8. Section 47C of said chapter 51, as so appearing, is hereby amended by adding the following paragraph:-

To the extent feasible, the state secretary shall make the statewide list of registered voters contained in the central registry of voters established in this section available to the local election officers at each polling location.

SECTION 9. Chapter 54 of the General Laws is hereby amended by striking out section 14, as so appearing, and inserting in place thereof the following section:-

Section 14. For any primary or election, if the city or town clerk determines in writing that there is a deficiency in the number of required election officers within the 6 weeks preceding the primary or election, the appointing authority may appoint election officers

without regard to political party membership, voter status, residence in the city or town or inclusion on a list filed by a political party committee pursuant to sections 11B and 12. If the position of warden, clerk or inspector, or deputy of any such officer, if any, is vacant within the 3 weeks preceding any primary or election, the city or town clerk may fill the vacancy by appointing a competent person willing to serve, without regard to political party membership, voter status, residence in the city or town or inclusion on a list filed by a political party committee pursuant to said sections 11B and 12.

SECTION 10. Said chapter 54 is hereby further amended by striking out section 25B, as so appearing, and inserting in place thereof the following 2 sections:-

Section 25B. (a)(1) The election officers and registrars of every city or town shall allow any registered voter qualified under section 1 of chapter 51 to vote early by mail for any municipal preliminary or election or presidential or state primary or election, including any such special preliminary, primary or election, or any primary or election held pursuant to section 140 to fill a vacancy for senator or representative in congress; provided, however, that the select board, board of selectmen, town council or city council of each city and town may, after a public hearing and by recorded and public vote not less than 45 days prior to the date of the preliminary or election, opt out of the provisions of this subsection for any regular or special municipal preliminary or municipal election; provided further, that any registered voter qualified under section 1 of chapter 51 shall be allowed to vote early by mail for any municipal preliminary or municipal election held on the same day as any presidential or state primary or election or any

primary or election held pursuant to section 140 to fill a vacancy for senator or representative in congress; and provided further, that this subsection shall not apply to an annual or special town meeting.

(2) Any registered voter wanting to vote early by mail may file with the voter's local election official an application for an early voting ballot for a preliminary, primary or election or for all preliminaries, primaries and elections authorized pursuant to this subsection during the calendar year. Any form of written communication evidencing a desire to have an early voting ballot sent for use for voting at a preliminary, primary or election shall be given the same effect as an application made in the form prescribed by the state secretary. Applications shall be acceptable if they are signed or submitted electronically; provided, however, that any electronic signature shall be written in substantially the same manner as a handwritten signature. No application shall be deemed to be seasonably filed unless it is received in the office of the city or town clerk or registrars of voters before 5 p.m. on the fifth business day preceding the preliminary, primary or election.

(3) A family member of a person qualified to vote early by mail may apply in the manner described under paragraph (2) on behalf of such person. Such applicant shall state the applicant's relationship to the early voter, shall sign the application under the pains and penalties of perjury and shall transmit the application to the clerk of the city or town where the early voter is registered.

(4) A voter wishing to apply to vote early by mail in any presidential or state primary or election or any primary or election held pursuant to section 140 to fill a vacancy for senator or

representative in congress and who needs accommodation by reason of disability and is unable to independently mark a paper ballot may apply for such accommodations in a form and manner prescribed by the state secretary. Accommodations shall include, but not be limited to: (i) clear and accessible electronic instructions for completion, printing and returning of the ballot; (ii) an accessible blank electronic application that can be: (A) completed by the voter electronically; (B) signed with a wet signature, a hand drawn electronic signature or the voter's typewritten name as a signature if the voter is unable to independently insert a hand-drawn signature on the application due to a disability; and (C) submitted electronically, by mail or by delivering it, in person or by a family member, to the office of the appropriate city or town clerk; (iii) an authorized accessible blank electronic ballot that can be filled out electronically, printed and signed; provided, however, that the accessible electronic ballot marking system the voter utilizes to access their blank electronic ballot shall not collect or store any personally identifying information obtained in the process of filling out the ballot; (iv) an accessible electronic affidavit that may be used for certification of an accessible electronic ballot and signed with a wet signature, a hand-drawn electronic signature or the voter's typewritten name as a signature if the voter is unable to independently insert a hand-drawn signature on the ballot due to a disability; (v) an envelope to return the ballot to the voter's town or city clerk with postage guaranteed; and (vi) hole punched markers in place of a wet signature required for certification if an electronic affidavit of certification is not utilized. A voter with accommodations in receipt of a ballot pursuant to this section may complete and return the ballot by: (i) submitting it electronically; (ii) delivering it, in person or by a

family member, to the office of the appropriate city or town clerk or a secured municipal drop box for the city or town where the voter is registered; or (iii) mailing it to the appropriate city or town clerk; provided, however, that the state secretary shall provide an envelope to allow for returning the ballot pursuant to clause (ii) or (iii).

(5) A voter wishing to apply to vote early by mail in a municipal preliminary or election authorized pursuant to this subsection and who needs accommodation by reason of disability and is unable to independently mark a paper ballot may request an accommodation from their local election official. The request shall be received by the local election official not later than the seventh business day preceding the preliminary or election. Upon receiving such a request from a registered voter by phone or electronically, the local election official shall grant reasonable accommodations to the voter.

(6) The state secretary shall establish, implement and maintain an internet portal on the secretary's website to allow a voter to request an early voting ballot for preliminaries, primaries and elections authorized pursuant to this subsection or an absent voting ballot for primaries and elections authorized pursuant to section 86. The voter shall be able to request that the ballot be mailed to the voter's home address, or a different mailing address as designated by the voter, or provided electronically if the voter is approved to utilize an accessible electronic ballot as an accommodation under paragraph (4). Any request under this paragraph shall not require the voter's wet signature.

(7) (i) Not later than 45 days before any presidential or regular state primary or biennial state election or a primary held pursuant to section 140 to fill a vacancy for senator in congress, the state secretary shall mail to all registered voters who are registered to vote not less than 60 days before such primary or election, at their residential addresses or mailing addresses if different from their residential address listed in the central registry, an application for an early voting ballot for the applicable primary or election and any city or town election held on the same day as such primary or election. The application shall also allow a voter to request an early voting ballot for: (A) the remaining state primary or election in the calendar year; or (B) if applicable, the election held pursuant to section 140 to fill a vacancy for senator in congress. The state secretary need not mail an application to a voter whose previous application for an absent voting ballot or early voting ballot for the applicable primary or election has been accepted.

(ii) Each application mailed pursuant to this paragraph shall: (A) be pre-addressed to the city or town clerk with return postage guaranteed; (B) be provided in any language required by the bilingual election requirements of the federal Voting Rights Act, 52 U.S.C. 10503; (C) be in a form prescribed by the state secretary in accordance with state and federal law; (D) include clear instructions for completing and returning the application; and (E) allow a voter to designate the mailing address to which the ballot shall be sent.

(iii) Each application mailed pursuant to this paragraph to a voter in the city of Boston shall include an option, which shall appear prominently on the application, to request a ballot printed in any

language available at the voter's polling location pursuant to chapter 166 of the acts of 2014.

(iv) To minimize mailings and costs, the state secretary may seek to include said applications in any other mailings required by this chapter or otherwise issued to such registered voters at such time; provided, however, that such a mailing shall clearly indicate that applications to vote early by mail are contained therein and that any voter who previously returned an accepted application for an absent voting ballot or early voting ballot in the calendar year need not return an additional application for the applicable primary or election.

(v) The applications required pursuant to this paragraph shall be made available on the website of: (A) the state secretary; and (B) each city and town.

(8) The election officers and registrars of every city or town shall include an application for an early voting ballot with the acknowledgment notice sent to any person registering to vote or changing their voter registration address; provided, however, that the application shall be in the form prescribed by the state secretary pursuant to paragraph (7).

(9) Upon receipt of an early voting application, the election officers shall verify the voter's information and, if confirmed, shall record the voter as "EV" on the voting list. If the election officers find that the person signing the application is not a duly registered voter or the family member of a voter, they shall send the voter written notice to that effect and shall preserve the application during the time fixed by law for the preservation of ballots cast in the coming election, after which time the application shall be destroyed.

(10) Early voting ballots authorized pursuant to this section shall be mailed by the appropriate local election officials as soon as such materials are available. The mailing of an early voting ballot shall include: (i) instructions for early voting; (ii) instructions for completing the ballot; (iii) an inner envelope where the ballot shall be placed after voting that contains an affidavit of compliance to be filled out by the voter and notice of the penalties under section 26 of chapter 56; and (iv) an outer envelope that is pre-addressed to the local election official with postage guaranteed. To the extent feasible, the state secretary shall include on the outer envelope a system that generates a postmark for determining the date upon which the envelope was mailed.

(11) Early voting ballots authorized pursuant to this section shall be provided to the voter in the language required pursuant to clauses (ii) and (iii) of paragraph (7).

(12) The provisions of section 81 relative to spoiled ballots shall apply to early voting ballots under this section; provided, however, that a request for a substitute ballot from a voter who has received a ballot by mail shall not be valid unless it is accompanied by the spoiled ballot and received in the office of the city or town clerk or the registrars before 5 p.m. on the fifth day preceding the election for which such substitute voting ballot is requested.

(13) An early voting ballot received by mail may be returned by the voter or a family member by: (i) delivering it in person to the office of the appropriate city or town clerk; (ii) delivering it to an early voting location for the appropriate city or town during the early voting in-

person hours; (iii) dropping it in a secured municipal drop box for the city or town where the voter is registered; or (iv) mailing it to the appropriate city or town clerk.

All early voting ballots submitted by mail, delivered in person to the office of the city or town clerk, returned to a secured municipal drop box for the city or town where the voter is registered or returned electronically pursuant to the accommodations granted to a voter by reason of disability under paragraph (4) shall be received by the city or town clerk before the hour fixed for closing the polls on the day of a preliminary, primary or election; provided, however, that an early voting ballot mailed on or before the day of a biennial state election shall be accepted until 5 p.m. on the third day after the election and shall be processed in accordance with section 95. A postmark, if legible, shall be evidence of the time of mailing.

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

(b)(1) The local election officers and registrars of every city or town shall allow any registered voter qualified under section 1 of chapter 51 to vote early in person for any: (i) presidential or state primary or biennial state election or primary or election held pursuant to section 140 to fill a vacancy for senator or representative in congress; and (ii) city or town election held on the same day as a primary or election enumerated in clause (i). Any voter wishing to vote early in person in such primaries or elections may do so at the time, manner and location prescribed in this section.

(2) Early voting in person shall be conducted:

(i) from the seventeenth day through the fourth day, inclusive, preceding a biennial state election and any city or town election held on the same day as a biennial state election; and

(ii) from the tenth day through the fourth day, inclusive, preceding any: (A) presidential or state primary or primary or election held pursuant to section 140 to fill a vacancy for senator or representative in congress; and (B) city or town election held on the same day as a primary or election enumerated in subclause (A).

(3) Early voting in person shall be conducted on weekend dates during the early voting period as follows: (i) for municipalities with less than 5,000 registered voters, for not less than 4 hours each weekend, with at least 1 day per weekend, for not less than 2 hours on a weekend day in which voting is conducted; (ii) for municipalities with not less than 5,000 registered voters but less than 25,000 registered voters, for not less than 6 hours each weekend, with at least 1 day per weekend, for not less than 3 hours on a weekend day in which voting is conducted; (iii) for municipalities with not less than

25,000 registered voters but less than 40,000 registered voters, for not less than 4 hours each weekend day; (iv) for municipalities with not less than 40,000 registered voters but less than 75,000 registered voters, for not less than 6 hours each weekend day; and (v) for municipalities with not less than 75,000 registered voters, for not less than 8 hours each weekend day. For each other day during the early voting period, early voting in-person shall be conducted as follows: (i) for municipalities with less than 5,000 registered voters the city council of a city or board of selectmen or select board of a town may, at a public meeting held not less than 20 days before the first day of the early voting period, vote to provide early voting hours of not less than 25 per cent of the usual business hours of the town clerk; (ii) for municipalities with more than 5,000 registered voters but less than 40,000 registered voters: (A) for the fifteenth day to the eleventh day, inclusive, preceding a biennial state election, the city council of a city or board of selectmen or select board of a town may, at a public meeting held not less than 20 days before the first day of the early voting period, vote to provide early voting hours of not less than 50 per cent of the usual business hours of the city or town clerk; and (B) for the eighth day to the fourth day, inclusive, during the usual business hours of each city or town clerk; and (iii) for municipalities with more than 40,000 registered voters, during the usual business hours of the city or town clerk. A city or town may, in its discretion, provide for additional early voting hours beyond the hours required by this paragraph.

(4) Each city and town shall establish an early voting site that shall include the local election office for the city or town; provided, however, that if the city or town determines that the office is

unavailable or unsuitable for early voting, the registrars of each city or town shall identify and provide for an alternative public building that is centrally-located, suitable and convenient within the city or town as an early voting site; and provided further, that when designating early voting sites, a city or town shall consider, to the extent feasible, diverse geographic locations and whether such sites would have an impact on access to the polls on the basis of race, national origin, disability, income or age. A city or town may also provide for additional early voting sites at the discretion of the registrars for that city or town. Each early voting site shall be accessible to persons with disabilities in accordance with state and federal law.

(5) The designation of an early voting site shall be made not less than 14 days prior to the beginning of the early voting period established in this section. Not less than 5 business days prior to the beginning of the early voting period and at least once during the early voting period, the registrars for each city and town shall publish notice of the location of the early voting sites as well as the applicable dates and hours. Such notice shall be conspicuously posted: (i) in the office of the city or town clerk and on the principal official bulletin board of each city or town; (ii) on any other public building considered necessary; (iii) on the city or town's website; and (iv) on the website of the state secretary.

(6) Prior to the beginning of in-person early voting, the local election officials for each city and town shall prepare a list for the early voting sites, containing the names and residences of all persons qualified to vote at each voting site as the names and residences

appear upon the annual register, and shall reasonably transmit the applicable list to the local election officers at each early voting site designated by the registrars.

(7) A voter seeking to vote in person at an early voting site shall provide their name and address to the local election officer who shall, upon finding the voter's name and address upon the list, repeat it loudly and clearly, mark the list and provide the voter with an early voting ballot and an envelope containing an affidavit, which shall include a notice of penalties under section 26 of chapter 56. The registrar or presiding election officer at the early voting site shall cause to be placed on the voting list opposite the name of a qualified voter who participates in early voting, the letters "EV" designating an early voter.

(8) Upon marking their early voting ballot, enclosing it in the secrecy envelope and executing the affidavit, the voter shall return the ballot envelope to a local election officer at the early voting site who shall review the envelope to ensure the affidavit has been signed by the voter. After a ballot envelope has been accepted, it shall be securely stored at the early voting site until such time as it is transported to the office of the local election official, but not later than the close of early voting for that day.

(c)(1) The select board, board of selectmen, town council or city council of each city and town may vote to authorize early in-person voting for any other city or town preliminary or election not included in subsection (b). Such vote may only be taken after a request from not less than 50 percent of the registrars of the city or town

recommending in-person early voting; provided, however, that such vote shall occur not less than 5 business days prior to the proposed beginning of early voting.

(2) As part of the vote to allow early in-person voting under this subsection, a city or town shall set the early voting period to begin not sooner than 17 days before the preliminary or election and end not later than 2 business days preceding the preliminary or election.

(3) Early voting under this subsection shall be conducted during the usual business hours of the city or town clerk unless different hours are set as part of the vote to allow early in-person voting, including any weekend hours.

(4) The city or town clerk shall establish an early voting site for early in-person voting under this subsection that is centrally-located, suitable and in a convenient public building. Notice of the early voting location, dates and hours shall be posted not less than 48 weekday hours before the early voting period begins.

(5) A voter voting early in person under this subsection shall be provided with a ballot and an envelope where the ballot is placed after voting that contains an affidavit of compliance to be filled out by the voter. A voter voting early in person shall complete an affidavit under the regulations promulgated by the state secretary for the administration of early voting, as applicable, which shall include a notice of penalties under section 26 of chapter 56.

(d) The registrars shall prepare lists of all voters casting ballots during the early voting period pursuant to this section and update the voter list in a manner prescribed by the state secretary. Once an early

voting ballot is cast, the voter shall not vote again.

(e) The early voting ballot of any voter who was eligible to vote at the time the ballot was cast shall not be invalid solely because the voter became ineligible to vote by reason of death after casting the ballot. For purposes of this subsection, the term “cast” shall mean that the voter has: (i) deposited the early voting ballot in the mail for ballots mailed; (ii) returned the early voting ballot to the appropriate local election official either by hand or by depositing it in a secured municipal drop box, where available, for the city or town where the voter is registered; (iii) completed voting in person at an early voting location; or (iv) submitted a ballot electronically pursuant to the accommodations granted to a voter by reason of disability under paragraph (4) of subsection (a).

(f) Sections 37 and 38 of chapter 53 shall apply to unenrolled voters and voters enrolled in political designations voting early in primaries. The registrar or presiding election official at the early voting site shall cause the name of the party of the ballot being voted to be recorded on the voting list. Once the party selection has been recorded on the voting list, a voter shall not request or vote on the ballot of another party.

(g) Not less than 30 days prior to each presidential primary, state primary, state election, and primary or election held pursuant to section 140 to fill a vacancy for senator or representative in congress, the state secretary shall deliver to each city and town, in quantities as the state secretary determines necessary, the following papers: (i) official early voting ballots similar to the official ballot to be used at the election; provided, however, that a sufficient quantity of such

ballots are printed in the languages necessary to accommodate the selection of a bilingual ballot by voters pursuant to clauses (ii) and (iii) of paragraph (7) of subsection (a); (ii) envelopes of sufficient size to contain the ballots specified in clause (i) bearing on their reverse the voter's affidavit; (iii) return envelopes, pre-addressed to the local election official with postage guaranteed, for any ballot requested for voting by mail; and (iv) instructions for voting by mail to be sent to each voter who requests to cast a ballot by mail. The voting period for early voting by mail shall begin as soon as all necessary early voting materials have been received by the local election official pursuant to this subsection.

(h) Any early voting ballot cast pursuant to this section may be opened and deposited into a tabulator in advance of the date of the preliminary, primary or election in accordance with regulations promulgated by the state secretary; provided, however, that municipalities that do not have a tabulator may open and deposit early voting ballots into a ballot box; provided further, that such ballots shall be kept secured, locked and unexamined and that no results shall be determined or announced until after the time polls close on the date of the preliminary, primary or election; and provided further, that notice of the date, time and location of any such opening or depositing shall be posted not less than 2 business days in advance of the opening or depositing; and provided further, that the opening or depositing shall be open to the public. Disclosing any such result before such time shall be punished as a violation of section 14 of chapter 56.

All envelopes referred to in this section shall be retained with the ballots cast at the preliminary, primary or election and shall be preserved and destroyed in the manner provided by law for the retention, preservation or destruction of official ballots.

(i) The state secretary shall promulgate regulations to implement this section including, but not limited to, a process for establishing additional early voting sites and a process for applying for, receiving, separating, compiling, recording and securing early ballots and advance depositing.

(j) Section 72 shall not apply to this section; provided, however, that a city or town, at the discretion of its election officers and registrars, may detail a sufficient number of police officers or constables for each early voting site at the expense of the city or town to preserve order, protect local election officers and supervisors from any interference with their duties and aid in enforcing the laws relating to elections.

(k) Not later than 45 days after each presidential primary, regular state primary, biennial state election and primary or election held pursuant to section 140 to fill a vacancy for senator or representative in congress, the state secretary shall submit a report to the house and senate committees on ways and means and the joint committee on election laws on the costs to implement subsection (a) of this section. The report shall include, but not be limited to: (i) the number of ballot applications with postage guaranteed mailed to voters; (ii) where available, the number of ballot applications with postage guaranteed returned requesting a ballot; (iii) the total number of ballots cast by mail; (iv) total cost and amounts paid for using federal funds; and (v)

where available, the number of ballot applications that were returned as undeliverable and a description of the reasons why each application was returned, including, but not limited to, a change of address or the intended recipient being deceased.

Section 25C. (a) For the purposes of this section, the following words shall have the following meanings:

“Applicable statewide election”, a presidential or regular state primary or biennial state election or a primary or election held pursuant to section 140 to fill a vacancy for senator in congress.

“Facility”, a correctional facility, house of correction, jail or department of youth services.

(b) The officer in charge of a facility shall develop and publish policies and procedures that govern the facilitation of voting and voter registration for eligible voters in the facility; provided, however, that the policies and procedures shall include, but not be limited to:

(i) the distribution of voter education and election information provided by the state secretary, including, but not limited to: (A) the display of posters in prominent locations visible to individuals who are incarcerated at the facility; and (B) the dissemination of written notices about voting rights and procedures to all individuals who are incarcerated at the facility and who may be eligible to vote;

(ii) for any preliminary, primary or election, assisting an individual who is incarcerated at the facility and who may be eligible to vote in registering as a voter and in applying for an early voting by mail or absent voting ballot, including as a specially qualified voter; provided, however, that such assistance shall include, but not be limited to: (A)

distributing forms prepared by the state secretary for those purposes, including ballot applications or voter registration forms; (B) providing an individual with access to a writing implement sufficient to properly complete the registration and application forms; (C) providing records that may serve as proof of residence for the purpose of voter registration or that provide a voter with their last known address, such as intake forms, arrest records or other forms in the possession of the facility; (D) providing voter information packets generated by the state secretary and, where possible, by nonpartisan community groups, nonpartisan volunteers or other nonpartisan stakeholders; and (E) facilitating the timely return of an application for an eligible voter to be permitted to vote early by mail;

(iii) facilitating the expeditious and timely receipt and return of an early voting by mail or absent voting ballot by an eligible individual who is incarcerated at the facility, including, but not limited to, by: (A) providing access to a writing implement sufficient to properly complete the ballots; (B) establishing locations where voters may complete ballots and other paperwork in private, where feasible; and (C) facilitating the mailing of completed mail ballots as soon as practicable; provided, however, that an employee, contractor, agent, official or representative of the department of correction shall not open or inspect any completed mail ballot unless it is to investigate reasonable suspicion of a prohibited activity;

(iv) providing means of tracking: (A) complaints by an individual who is incarcerated at the facility related to voting or registration; (B) numbers of individuals who are incarcerated who sought to vote; and (C) the outcome of their requests; and

- (v) policies for collaboration with local election officials, civic engagement community groups and other stakeholders.
- (c) The officer in charge of a facility shall:
- (i) not later than 45 days before an applicable statewide election, display or distribute any informational posters or packets provided by the state secretary pursuant to subsection (d) or, if received after such date, immediately upon receipt; provided, however, that the distribution and announcements of such information shall be continued through the conclusion of such election;
- (ii) not later than 14 days before an applicable statewide election, file a written report with the state secretary, in a form prescribed by the state secretary, that details the actions taken under this section; provided, however, that the report shall be a public record; and
- (iii) appoint a subordinate officer at the facility to supervise the actions required by this section.
- (d) Not later than 90 days before an applicable statewide election, the state secretary shall: (i) create and distribute to sheriffs and superintendents of facilities voter information signs and information for display and distribution in facilities; and (ii) distribute to local election officials information on: (A) the qualifications and rights of eligible incarcerated voters; (B) how to process a voter registration or ballot application from an eligible incarcerated voter; (C) current law pertaining to those rights and processes; and (D) the presumed residence for voting purposes of an eligible incarcerated voter and instances in which an eligible incarcerated voter can maintain the facility in which they are confined as their address for voting purposes.

(e)(1) Prior to the expiration of the term for a person who is incarcerated in a correctional facility, the officer in charge of the facility shall provide, in writing, a document prepared by the state secretary explaining: (i) the voting rights of a person who is incarcerated in a correctional facility upon discharge from a correctional facility; and (ii) instructions for the person to register to vote following discharge from the facility. The officer in charge of the facility shall provide the person with a voter registration form with a postage guaranteed envelope, and assistance, if requested, to complete such form.

(2) The state secretary shall prepare and transmit the document required pursuant to paragraph (1) to the local election officials for each city and town.

(f)(1) For each applicable statewide election, following the close of registration pursuant to section 26 of chapter 51 but not later than the day of the election, the officer in charge of a facility, except for the department of youth services, shall transmit to the state secretary: (i) a list containing information about persons who are newly incarcerated in the correctional facility due to a felony conviction since the time of last reporting under this section; (ii) a list containing information about persons who were incarcerated in the correctional facility due to a felony conviction but were discharged since the time of last reporting under this section; and (iii) a list containing information about persons in the facility who are detained pre-trial or convicted of a misdemeanor.

(2) The lists required by paragraph (1) shall include, for each person listed: (i) name; (ii) date of birth; (iii) last 4 digits of social security number or driver's license number, if available; (iv) address on-file, including street, city or town and state; and (v) the name and address of the facility where the person is detained.

(g) The state secretary shall submit a report to the joint committee on election laws not later than 6 months following each applicable statewide election, including anonymized, aggregated data on the number of: (i) eligible incarcerated voters at the time of the election in each municipality; and (ii) incarcerated voters who requested an early voting by mail or absent voting ballot and the outcome of that request in each municipality, including the reasons for rejection, if applicable. The state secretary may coordinate with local election officials and officers in charge of facilities to aggregate such data, where available. The submitted report shall be a public record, but other materials generated for the purpose of the state secretary's compilation of the report shall not be public records.

(h) Not later than 30 days before any municipal, state or presidential election, each city or town clerk shall post on the city or town's website and report to the state secretary any measures undertaken to facilitate voting for eligible incarcerated voters.

SECTION 11. Section 65 of said chapter 54, as so appearing, is hereby amended by adding the following paragraph:-

This section shall apply to early voting locations under section 25B while voting is being conducted.

SECTION 12. Said chapter 54 is hereby further amended by striking out section 67, as so appearing, and inserting in place thereof the following section:-

Section 67. One voting list shall be delivered to the ballot clerks and another may be delivered to the officer in charge of the ballot box; provided, however, that the city or town clerk may opt to use only 1 voting list at the check in. When a ballot is delivered to a voter, the voter's name shall be checked on the voting list and, except where the city or town clerk has opted to not use a check-out list, it shall be checked on the second voting list when the voter deposits the ballot. Where a check-out list is used, the officer in charge of the ballot box and the officer in charge of the voting list shall either: (i) be of different political parties; or (ii) not be of the same political party if the election officers have been appointed pursuant to section 14 without regard to political party membership. No person shall vote if the person's name is not on the voting list, nor until the local election officer shall check the person's name thereon, unless the person presents a certificate from the registrars of the city or town as provided by section 51 or section 59 of chapter 51 or unless the person is voting by provisional ballot under section 76C. A city or town may vote to use electronic poll books rather than paper voting lists in accordance with section 33I.

SECTION 13. Said chapter 54 is hereby further amended by striking out section 72, as so appearing, and inserting in place thereof the following section:-

Section 72. The select board, board of selectmen, town council or city council of each city and town, in consultation with its election officers and registrars, shall detail a sufficient number of police officers or constables for each building that contains the polling place for 1 or more precincts at every election therein to preserve order and to protect the election officers and supervisors from any interference with their duties and to aid in enforcing the laws relating to elections.

SECTION 14. Said chapter 54 is hereby further amended by striking out section 83, as so appearing, and inserting in place thereof the following section:-

Section 83. In a precinct at which a check-out table is used, a voter, after marking the voter's ballot, shall give the voter's name, and, if requested, residence, to an officer in charge of the ballot box, who shall distinctly announce the voter's name and, if requested, residence. If the name is found on the voting list by the local election officer, the local election officer shall distinctly repeat the name and check it on the voting list. The voter may then deposit the ballot in the ballot box. No ballot without the official endorsement, except as provided in section 61, shall be deposited in the ballot box. A city or town clerk may opt to eliminate the use of a voting list at the check-out table but shall maintain an officer in charge of the ballot box.

SECTION 15. Subsection (d) of section 87 of said chapter 54, as so appearing, is hereby amended by adding the following paragraph:-

To the extent feasible, the state secretary shall include on the envelopes required pursuant to this subsection a system that generates a postmark for determining the date upon which the envelope was mailed.

SECTION 16. Section 89 of said chapter 54, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- No application for an absent voting ballot to be sent by mail shall be deemed to be seasonably filed unless it is received in the office of the city or town clerk or registrars before 5 p.m. on or before the fifth business day preceding the election for which the ballot is being requested.

SECTION 17. Section 91B of said chapter 54, as so appearing, is hereby amended by inserting after the word “prepaid”, in line 5, the following words:- and with return postage guaranteed.

SECTION 18. Said chapter 54 is hereby further amended by striking out section 91C, as so appearing, and inserting in place thereof the following section:-

Section 91C. (a) For the purposes of this section, “voter” shall mean an individual voting pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act.

(b) A voter wishing to cast an absentee ballot in any preliminary, primary or election may apply for such ballot in a form and manner prescribed by the state secretary; provided, however, that the secretary shall permit a voter to apply through an electronic application that: (i) includes clear instructions for completing and returning the application; and (ii) can be: (A) completed by the voter electronically; (B) signed with a wet signature or hand-drawn electronic signature; and (C) submitted electronically, by mail or by delivering it to the office of the appropriate city or town clerk. The most recent version of the Federal Post Card Application shall be one such application that shall be accepted by the state secretary pursuant to this section.

(c) An application pursuant to subsection (b) shall permit a voter to request to receive an absentee ballot: (i) by mail, in accordance with section 91B; (ii) by fax; (iii) by email; or (iv) electronically through an electronic system that is approved by the state secretary and allows a voter to receive, mark, verify and cast a ballot electronically; provided, however, that any electronic system approved by the state secretary under this section shall: (A) provide an electronic voter affidavit that may be used for certification of an electronic ballot and signed with a wet signature or hand-drawn electronic signature; and (B) not store personal identifying information beyond the time necessary to confirm the identity of the voter.

(d) Upon receipt of a properly executed application for an absentee ballot from a voter, the city or town clerk shall retain the application and, without delay, enter the application in the voter registration information system. The city or town clerk shall expeditiously transmit a ballot or access to an electronic ballot to all voters for whom an application was received in accordance with subsection (c).

(e) The state secretary shall provide clear instructions to voters for returning the marked absentee ballot to the appropriate city or town clerk to be counted; provided, however, that the voter may return the ballot to the city or town clerk: (i) by mail; (ii) by fax; (iii) by email; (iv) electronically through the electronic system approved by the state secretary, subject to the regulations promulgated by the secretary; or (v) by delivering it to the office of the city or town clerk or a secured municipal drop box for the city or town where the voter is registered.

(f) If a request for an absentee ballot is received from a voter 45 or more days before a federal election and the state secretary has determined that the city or town clerk is unwilling or unable to transmit the ballot not less than 45 days before the election, the state secretary may, on behalf of the city or town clerk, after notice to the city or town clerk and in accordance with the voter's choice, electronically transmit or mail the appropriate absentee ballot and instructions to the voter not later than 45 days prior to the federal election. The state secretary shall enter in the voter registration information system the transmission date on which absentee voters were sent ballots by the state secretary pursuant to this subsection.

(g) The state secretary shall promulgate regulations to implement this section.

SECTION 19. Section 92 of said chapter 54, as so appearing, is hereby amended by adding the following subsection:-

(d) The absent voting ballot of any voter who was eligible to vote at the time the ballot was cast shall not be deemed invalid solely because the voter became ineligible to vote by reason of death after casting the ballot. For purposes of this subsection, the term "cast" shall mean that the voter has: (i) deposited the absent voting ballot in the mail for ballots mailed; (ii) returned the absent voting ballot to the appropriate local election official either by hand or by depositing it in a secured municipal drop box, where available, for the city or town where the voter is registered; or (iii) returned the absent voting ballot electronically pursuant to section 91C.

SECTION 20. Said chapter 54 is hereby further amended by striking out section 93, as so appearing, and inserting in place thereof the following section:-

Section 93. All absent voting ballots submitted by mail, delivered in person to the office of the city or town clerk, returned to a secured municipal drop box for the city or town where the voter is registered or returned electronically pursuant to section 91C shall be received by the city or town clerk before the hour fixed for closing the polls on the day of a primary or election; provided, however, that an absent voting ballot mailed on or before the day of a biennial state election shall be accepted until 5 p.m. on the third day after the election and shall be processed in accordance with section 95. A postmark, if legible, shall be evidence of the time of mailing.

SECTION 21. Section 95 of said chapter 54, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following 2 paragraphs:-

Any absent voter ballot cast pursuant to section 86 may be opened and deposited into a tabulator in advance of the date of the primary or election in accordance with regulations promulgated by the state secretary; provided, however, that municipalities that do not have a tabulator may open and deposit early voting ballots into a ballot box; provided further, that such ballots shall be kept secured, locked and unexamined and that no results shall be determined or announced until after the time polls close on the date of the primary or election; and provided further, that notice of the date, time and location of any such opening or depositing shall be posted 2 business days in advance of the opening or depositing; and provided further, that the opening or

depositing shall be open to the public. Disclosing any such result before such time shall be punished as a violation of section 14 of chapter 56.

If not advance deposited, the city or town clerk, on the day of the election but not later than 1 hour after the hour for the closing of the polls, shall transmit all envelopes purporting to contain official absent voting ballots received on or before the close of business on the day preceding the day of the election, and that have not been marked "Rejected as Defective" as provided in section 94, to the local election officers in the several precincts where the voters whose names appear on such envelopes assert the right to vote or to a central tabulation facility designated in accordance with regulations promulgated by the state secretary. The local election officer in charge of the polling place or central tabulation facility shall immediately, after receipt of any such envelopes, distinctly announce the name and residence of each such voter and check the voter's name on the voting lists referred to in section 60 of chapter 51, on the voter's certificate of supplementary registration attached to such lists as provided in section 51 of said chapter 51 or on the lists of specially qualified voters, if it has not already been so checked. The city or town clerk shall open the envelopes in which the ballot is enclosed in such a manner as not to destroy the affidavit thereon, take the ballot therefrom without opening it or permitting it to be examined and deposit it in the ballot box. All envelopes referred to in this section shall be retained with the ballots cast at the election and shall be preserved and destroyed in the manner provided by law for the retention, preservation or destruction of official ballots.

SECTION 22. Section 100 of said chapter 54 is hereby repealed.

SECTION 23. Not later than July 1, 2022, the state secretary shall enter into the agreement with the Electronic Registration Information Center, Inc. as required by section 47C of chapter 51 of the General Laws.

SECTION 24. Not later than 30 days after the effective date of this act, the state secretary shall conduct a public awareness campaign to inform voters in the commonwealth of the provisions of this act, including, but not limited to, measures to promote public awareness of: (i) expanded early voting options; (ii) the requirements and procedures for early voting by mail, including, but not limited to, information related to the ability of a voter who requests but does not return an early voting by mail ballot to vote in person on election day; (iii) the availability of accommodations for voters with disabilities; (iv) the availability of assistance under section 79 of chapter 54 of the General Laws for voters who have limited English proficiency; and (v) information explaining that the processing of mail ballots and the tabulating of the results of the election may extend a few days past the day of the election. The public awareness campaign shall: (i) be linguistically diverse and culturally competent; (ii) be provided in multiple formats for viewing and include, but not be limited to, outreach through digital and social media; and (iii) ensure specific outreach is conducted for groups and communities that have historically underused mail voting and early voting.

SECTION 25. The electronic instructions and accommodations prescribed by the state secretary pursuant to paragraph (4) of subsection (a) of section 25B of chapter 54 of the General Laws, as

inserted by section 10, shall comply with requirements contained in Title II of the federal Americans with Disabilities Act and shall conform, to the extent feasible and required under law, with the Web Content Accessibility Guidelines 2.1 Level AA and best practices from the National Institute of Standards and Technology.

SECTION 26. Sections 1 to 4, inclusive, shall take effect 30 days after the effective date of this act.

SECTION 27. Not later than 30 days after the effective date of this act, the state secretary shall implement the internet portal required by paragraph (6) of subsection (a) of section 25B of chapter 54 of the General Laws, as inserted by section 10.

SECTION 28. Section 18 shall take effect on December 1, 2022. The state secretary shall promulgate regulations necessary to implement section 91C of chapter 54 of the General Laws, as inserted by section 18, not later than January 1, 2023.

SECTION 29. Sections 6 and 7 shall take effect on January 1, 2023.

SECTION 30. Section 25C of chapter 54 of the General Laws, as inserted by section 10, shall take effect on January 1, 2023.

Approved, June 22, 2022.