

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

JONATHON ACOSTA, :
JEANINE CALKIN, :
LEONARNO A. CIOE, JR., :
GAYLE GOLDIN, :
TIARA MACK, and :
JENNIFER ROURKE, :

Plaintiffs, :

v. :

C.A. No. 20-

JUAN PABLO RESTREPO, :
BRYANT A. ESTRADA, and :
EMMANUEL L. LYTE, solely in their official :
capacity as members of the Central Falls Board of :
Canvassers; :
ALBERTO DEBURGOS, solely in his official :
capacity as Clerk of the Central Falls Board of :
Canvassers; :
JANICE PUCCI, GARY E. WYNKOOP, :
and NICHOLAS BIANCO, solely in their official :
capacity as members of the North Providence :
Board of Canvassers; :
DENISE A. VASQUES, solely in her official :
capacity as the Clerk of the :
North Providence Board of Canvassers; :
MARIA M. PAVAO, ROBERT W. CASTLE, :
and EDWARD CANTONE, JR., solely in their :
official capacity as members of the :
Pawtucket Board of Canvassers; :
KENNETH MCGILL, solely in his official capacity :
as Registrar for the Pawtucket Board of Canvassers; :
CLAUDIA J. HAUGEN, :
RENAY BROOKS OMISORE, and :
MERCEDES BERNAL, solely in their :
official capacity as members of the :
Providence Board of Canvassers; :
KATHY PLACENCIA, solely in her official :
capacity as Administrator of Elections :
for the City of Providence; :
EDWARD MURPHY, SUSAN ABRAMSON, :

and DONNA J. MCDONALD, solely in their :
official capacity as members of the :
Warwick Board of Canvassers; :
DOROTHY MCCARTHY, solely in her official :
capacity as Director of Elections :
for the City of Warwick; :
NELLIE GORBEA, solely in her capacity as :
Rhode Island Secretary of State; :
DIANE C. MEDEROS, STEPHEN P. ERICKSON, :
JENNIFER L. JOHNSON, RICHARD H. PIERCE, :
ISADORE S. RAMOS, DAVID H. SHOLES, and :
WILLIAM E. WEST, solely in their official :
capacity as members of the :
Rhode Island Board of Elections; and, :
PETER NERONHA, solely in his official capacity :
as Attorney General of the State of Rhode Island :
: :
Defendants. :

VERIFIED COMPLAINT

This is a civil action presenting an “as applied” challenge to the Rhode Island ballot qualification process as a result of the Covid-19 pandemic. The current ballot qualification process requires in-person solicitation and receipt of signatures, an in-person witness, and use of a common petition form for each twenty (20) signatures. Pursuing such a ballot qualification process needlessly exposes candidates, their supporters, and the general public to risks associated with the Covid-19 pandemic with no justifiable countervailing government interest. Plaintiffs (as defined below) consequently seek declaratory and injunctive relief, declaring that Rhode Island’s current ballot qualification process is constitutionally infirm, and suspending that qualification process for the upcoming 2020 election cycle.

In support of this Verified Complaint, Plaintiffs state as follows:

Parties, Jurisdiction, and Venue

1. Plaintiff Jonathon Acosta (“Acosta”) is a resident of the City of Central Falls, Rhode Island (“Central Falls”), and is a candidate for Rhode Island Senate, District 16, which is

located in Central Falls and Pawtucket.

2. Plaintiff Jeanine Calkin (“Calkin”) is a resident of the City of Warwick, Rhode Island, and is a former Senator of and is a candidate for Rhode Island Senate, District 30, which is located in Warwick.

3. Plaintiff Leonardo (“Lenny”) A. Cioe, Jr. (“Cioe”) is a resident of the Town of North Providence, Rhode Island, and is a candidate and for Rhode Island Senate, District 4, which is located in Providence and North Providence.

4. Plaintiff Gayle Goldin (“Goldin”) is a resident of Providence, a serving state senator for Rhode Island Senate, District 3, which is located in Providence, and is a candidate for re-election to that position.

5. Plaintiff Tiara Mack (“Mack”) is a resident of the City of Providence, and is a candidate for Rhode Island Senate, District 6, which is located in Providence.

6. Plaintiff Jennifer Rourke (“Rourke”) is a resident of the City of Warwick, Rhode Island, and is a candidate for Rhode Island Senate, District 29, which is located in Warwick.

7. Acosta, Calkin, Cioe, Goldin, Mack, and Rourke are referred to collectively herein as “Plaintiffs.”

8. Defendants Juan Pablo Restrepo, Bryant A. Estrada, and Emmanuel L. Lyte are named solely in their official capacity as members of the Central Falls Board of Canvassers.

9. Defendant Alberto Deburgos is named solely in his official capacity as Clerk of the Central Falls Board of Canvassers.

10. Defendants Janice Pucci, Gary E. Wynkoop, and Nicholas Bianco are named solely in their official capacity as members of the North Providence Board of Canvassers.

11. Defendant Denise A. Vasques is named solely in her official capacity as the Clerk of the North Providence Board of Canvassers;

12. Defendants Maria M. Pavao, Robert W. Castle, and Edward Cantone, Jr. are named solely in their official capacity as members of the Pawtucket Board of Canvassers.

13. Defendant Kenneth McGill is named solely in his official capacity as Registrar for the Pawtucket Board of Canvassers.

14. Defendants Claudia J. Haugen, Renay Brooks Omisore, and Mercedes Bernal are named solely in their official capacity as members of the Providence Board of Canvassers.

15. Defendant Kathy Placencia is named solely in her official capacity as Administrator of Elections for the City of Providence.

16. Defendants Edward Murphy, Susan Abramson, and Donna J. McDonald are named solely in their official capacity as members of the Warwick Board of Canvassers.

17. Defendant Dorothy McCarthy is named solely in her official capacity as Director of Elections for the City of Warwick.

18. Defendant Nellie Gorbea is named solely in her capacity as Rhode Island Secretary of State.

19. Defendants Diane C. Mederos, Stephen P. Erickson, Jennifer L. Johnson, Richard H. Pierce, Isadore S. Ramos, David H. Sholes, and William E. West are named solely in their official capacity as members of the Rhode Island Board of Elections.

20. Defendant Peter Neronha is the Attorney General of the State of Rhode Island and is named in his official capacity only. The Attorney General has been made a party defendant pursuant to R.I. Gen. Laws § 9-30-11.

21. Defendants in Paragraphs 8 through 20, above, shall be referred to herein

collectively as “Defendants.” Each of the Defendants are charged with the enforcement of the law being challenged by this lawsuit and/or are responsible for the administration of elections in Rhode Island.

Jurisdiction and Venue

22. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

23. Declaratory relief is authorized by 28 U.S.C. §§ 2201-2202.

24. Venue in the District of Rhode Island is based upon 28 U.S.C. § 1391(b).

Facts Common to All Counts

a. Candidate Nomination Process

23. Plaintiffs are candidates for Rhode Island Senate in the upcoming 2020 election, will be filing declaration papers, and will have to qualify to be on the ballot in the manner described to follow.

24. R.I.G.L. § 17-14-1, *et seq.* governs the candidate nomination process.

25. The first step towards becoming a candidate for public office is filing a declaration of candidacy. For regular elections, that declaration must be filed during the last consecutive Monday, Tuesday, and Wednesday of June (in this case beginning on June 22-24, 2020). *See* R.I.G.L. § 17-14-1.

26. Once candidates have declared, the entire nomination process for qualifying to appear on the ballot requires in-person contact.

27. First, the local boards of canvassers furnish nomination papers for each declared candidate for general assembly. Those papers are “personally issued” to the candidate or an authorized representative of the candidate. *See id.*, § 17-14-1. Each nomination petition contains

space for 20 signatures.

28. Rhode Island requires the signature of 100 registered voters who reside in the senatorial district for the nomination of a candidate for state senate. If the senatorial district contains more than one municipality, nomination petitions are required to contain signatures unique to each municipality. *See id.*, § 17-14-7.

29. The most salient point is that solicitation, collection, and witnessing of signatures must take place in person pursuant to the statutorily required nomination process. The nomination process requires the collection of “wet” signatures from each person executing a nomination petition, coupled with an attestation from a witness who personally observed the signing of the petition. *See id.*, §§ 17-14-8 & 10.

30. Solicitation and collection are two distinct features of the nominating process. Persons soliciting signatures, consequently, must engage in a colloquy with prospective signers regarding their eligibility to sign, and only collect signatures from those who are eligible to sign. As a result, solicitation naturally includes contact with far more people than the number required to be collected for nomination.

31. Additionally, most candidates collect far more signatures than are required to mitigate against the disallowance of certain signatures.

32. Candidates have a tight window within which to solicit and collect signatures. For the 2020 election cycle, nomination papers will be provided to candidates starting on June 30, with the deadline for submission of completed petitions being July 10. In practical terms, this results in the interaction of multiple persons over a relatively brief timeframe.

34. Submission of nomination papers is also “in hand” at the local board of canvassers office for candidates for state legislature.

35. Thereafter, the local boards review and certify the signatures on the petitions, “check[ing] signatures on each nomination paper filed with it against the voting list as last canvassed or published according to law.” The local boards do not verify the accuracy of signatures as part of their review process. Rather, signature verification only occurs if a challenge is made by another candidate. *See id.*, § 17-14-11.

b. The Candidate Nomination Process Endangers Public Health Without A Justifiable Government Interest.

36. The current candidate nomination process needlessly exposes candidates, their supporters, and the general public to risks associated with the Covid-19 pandemic with no justifiable countervailing government interest.

37. It bears emphasis that Covid-19 is highly infectious, and transmitted through in-person contact and contact with surfaces on which bodily fluids from an infected person are present. A fairly high percentage of carriers are asymptomatic, meaning that persons engaging in the signature collection process or providing a signature may not know they are infected, thereby unknowingly exposing others to infection.

38. And, certain demographic groups and persons with medical conditions must limit their direct contact with third parties – even as restrictions ease. The result, consequently, is that senior citizens and others (including anyone living in an assisted living facility) will be excluded from participating in the nomination process if the current system is not modified.

39. Additionally, current Rhode Island Department of Health regulations still require “social distancing” of 6 feet, and emphasizes “minimiz[ing] the time of exposure to the extent possible.” RIDOH Reg. 216-RICR-50-15-7 (June 1, 2020).

40. Rhode Island Secretary of State Nellie Gorbea and officials from the Rhode Island Board of Elections recently met with Rhode Island Department of Health Chief Administrative

Officer, James McDonald, MD, MPH (“Dr. McDonald”) to discuss issues related to the conduct of elections. With respect to signature gathering for nomination papers, Dr. McDonald expressed concern that the process included “high touch point” items like pens and petitions, and that maintaining social distancing while soliciting and collecting signature may be difficult.

41. Plaintiffs have filed, contemporaneously with this Complaint, Affidavits from Michael Fine, MD and Konstantine Nicholas Tsiongas, MD. Both doctors have opined that “[t]he current ‘in person’ signature solicitation and collection process as part of the candidate nomination process carries with it a high risk to the general public’s health.”

42. Certain of the Plaintiffs have health conditions or are situated so that signature gathering is highly inadvisable:

- Jonathon Acosta’s district includes Central Falls, the hardest hit community for Covid-19 in Rhode Island;
- Jeanine Calkin suffers from a respiratory ailment that requires that she avoid all contact with persons outside of her home during the pandemic;
- Lenny Cioe is a registered nurse currently treating coronavirus patients at Fatima Hospital, and so has to avoid all contact with persons outside of his workplace; and,
- Gayle Goldin is asthmatic, and so must limit her exposure to persons outside of her home during the pandemic;
- Jennifer Rourke is a mother of four children, one of whom has a medical condition that makes him acutely at risk if exposed to Covid-19, and so has not interacted with any person outside of her home since March 12, 2020.

43. At bottom, while the number of cases in Rhode Island appears to be decreasing, Covid-19 still remains an imminent health threat to all Rhode Islanders.

c. The Pandemic Impedes Direct Collection of Signatures.

44. Recent experience of some of the Plaintiffs and other candidates in collecting signatures for the presidential primary in February 2020 highlights the impediments to soliciting and collecting signatures during a pandemic.

45. Specifically, members of the public are reluctant to participate in conversations regarding signing a petition, never mind actually perform the physical act of signing the petition.

46. Additionally, this fact places candidates who are not incumbents at a distinct disadvantage, as those candidates do not have an established network of supporters. As a result, new candidates have to rely, at least in part, on approaching persons who do not personally know the candidate – a bad situation in the current context.

47. The situation is also exacerbated in certain locations, where Covid-19 is more prevalent. For example, East Providence Executive Order 2020-028 is in effect through July 8th, after the nomination period is over. That Order states that “the COVID-19 pandemic continues to remain a serious threat to both the health and safety of the residents of East Providence” and mandates that this State of Emergency for East Providence “remain in full force and effect through July 8, 2020, unless rescinded or further extended by and with the consent of the City Council.”

d. Rhode Island Secretary of State Supports Remote Signing.

48. Rhode Island Secretary of State Nellie Gorbea (“RISOS”) supports remote signing of nomination papers. Attached hereto as Exhibit A is a true and accurate copy of a letter from RISOS to Representative Robert Craven, Chair of the House Judiciary Committee dated June 10, 2020.

49. RISOS proposes the common-sense measure that voters execute nomination

petitions remotely through e-mail or other electronic transmission and the submission of nominating petitions to local board of canvassers via email, but otherwise leaves the review and certification process the same. As a result, very little changes with respect to the local boards other than the type of signature being placed on the petitions.

50. It should be noted that RISOS does not have the authority to revise the manner whereby candidate nomination petitions are executed.

d. Other States Have Adopted Remote Signatures.

51. Other states in this situation have instituted common-sense modifications to ballot nomination processes as a result of Covid-19. For example, Florida,¹ New Jersey,² Utah,³ Minnesota,⁴ Michigan,⁵ and Massachusetts⁶ allow nomination petitions to be signed and verified electronically. Vermont has entirely suspended its signature requirement for elections in 2020.⁷

e. Rhode Island State Government Action To Date.

52. The only action, to date, of the Rhode Island General Assembly, has been the introduction, and House committee approval, of H-7901-Sub A (“H-7901”), a bill that purports to modify certain aspects of the conduct of the 2020 elections to mitigate the effects of Covid-19.

53. H-7901 provides little modification to the candidate nomination process. Specifically, it reduces by half the number of signatures required to appear on the ballot for

¹ Secretary of State Laurel M. Lee Announces Business Annual Report Filing Deadline Extension and Changes to Candidate Petition and Qualifying Processes (Apr. 6, 2020), <https://dos.myflorida.com/communications/press-releases/2020/secretary-of-state-laurel-m-lee-announces-business-annual-report-filing-deadline-extension-and-changes-to-candidate-petition-and-qualifying-processes/>.

² Governor Murphy Announces Changes to Upcoming New Jersey Elections in Response to COVID-19 (Mar. 19, 2020), <https://www.nj.gov/governor/news/news/562020/20200319a.shtml>.

³ Gov. Herbert Suspends Sections of Utah Statute Regarding Signature Gathering (Mar. 26, 2020), <https://governor.utah.gov/2020/03/26/gov-herbert-suspends-sections-of-utah-statute-regarding-signature-gathering/>.

⁴ Governor Tim Walz signed HF3429 into law, authorizing general election candidates to submit filing forms and petitions electronically.

⁵ See <https://www.mlive.com/public-interest/2020/05/signatures-required-to-run-for-some-offices-in-michigan-reduced.html>.

⁶ See <https://www.courthousenews.com/top-massachusetts-court-green-lights-e-signatures-for-election-canvassing/>.

⁷ H. 681, 2019-2020 Gen. Assemb., Adjourned Sess. (Vt. 2020).

federal offices. It contains no other modifications, so that the number of signatures required for state and local offices and the in-person signature gathering process remain unchanged.

54. Rhode Island Board of Elections (“RIBOE”) has discussed this issue on two occasions, most recently on June 11, 2020. It will be meeting again on June 17 to discuss the possibility of remote signature collection. However, RIBOE has decided that it will only act in an advisory capacity, and will not take direct action to modify the candidate nomination signature process.

g. Timing Is Critical.

55. Nomination petitions will be distributed to candidates on June 30. As a result, any adjustment to the solicitation and collection of signatures for candidate nomination petitions must occur quickly. Plaintiffs had hoped that the legislative and executive branches would have acted to meaningfully address this issue, and waited to file this action to allow time for action by those branches of government. Unfortunately, as evidenced by H-7901, that action is unlikely forthcoming.

Count I
(Declaratory Judgment)

56. Plaintiffs reallege Paragraphs 1-55.

57. The foregoing allegations demonstrate there is an actual controversy for this Court to resolve.

58. Plaintiffs seek a declaration that the current candidate nomination statute, R.I. Gen. Laws § 17-14-1, *et seq.*, violates the First and Fourteenth Amendments of the United States Constitution “as applied” to the current Covid-19 pandemic and the 2020 election, insofar as that statute creates an unreasonable burden on qualification for candidates to appear on the ballot that fails to track a legitimate government interest, particularly where there are less onerous and

much safer options available.

WHEREFORE, Plaintiffs request the following relief:

(a) A declaratory judgment that R.I. Gen. Laws § 17-14-1, *et seq.*, is unconstitutional under the United States Constitution “as applied” to the 2020 election;

(b) Temporarily, preliminarily, and permanently restrain and enjoin Defendants from enforcing the provisions of R.I. Gen. Laws § 17-14-1, *et seq.* for the 2020 election, or lesser relief, including but not limited to suspending in person signature collection and witness of signatures;

(c) Award Plaintiffs litigation costs and reasonable attorney’s fees, pursuant to 42 U.S.C. §1988, as against any Defendants who actively litigate in opposition to the relief sought herein; and,

(c) Award such other relief as the Court deems just and proper.

**JONATHON ACOSTA,
JEANINE CALKIN,
LEONARD CIOE,
GAYLE GOLDIN,
TIARA MACK, and
JENNIFER ROURKE,**

By their attorneys,

/s/ Armando E. Batastini
Armando E. Batastini (# 6016)
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VERIFICATION

We, the undersigned, hereby verify, under the penalties of perjury: (a) that each of us, attesting for ourselves individually, has read the foregoing Verified Complaint; and (b) that the allegations contained in the Verified Complaint are true and accurate based upon each of our individual personal knowledge, except such allegations as are made upon information and belief, which allegations we believe to be true.

JONATHON ACOSTA

JEANINE CALKIN

/s/ Leonard A. Cioe, Jr.
LEONARD A. CIOE, JR.

/s/ Gayle Goldin
GAYLE GOLDIN

TIARA MACK

JENNIFER ROURKE