
The Commonwealth of Massachusetts

FINAL REPORT
OF THE
SPECIAL COMMITTEE OF THE HOUSE
TO EXAMINE THE
RETURNS OF THE VOTES FOR REPRESENTATIVE
IN THE SEVERAL
REPRESENTATIVE DISTRICTS OF THE
COMMONWEALTH RELATIVE TO THE
SECOND ESSEX DISTRICT

January 31, 2023

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Report of the Special Committee on the Second Essex District

I. Factual and Procedural Background

On November 8, 2022, the Commonwealth of Massachusetts conducted elections for various state and federal offices. The election for State Representative was one of the many contests included on the ballot in the Second Essex District, consisting of the Towns of Georgetown, Hamilton, Ipswich, Newbury, Rowley, and Topsfield (Precinct 1). Two candidates appeared printed on the ballot for the State Representative contest: Kristin E. Kassner (“Ms. Kassner”), a Democrat, and the incumbent Leonard Mirra (“Mr. Mirra”), a Republican.

The Registrars of the various towns in the Second Essex District counted the votes on their respective ballots and transmitted the results to the office of the Secretary of the Commonwealth, William F. Galvin. Secretary Galvin’s office released the results of the total ballots counted for the State Representative election, declaring: Mr. Mirra, 11,754 votes; Ms. Kassner, 11,744 votes; Blanks, 646 votes; All Others, 11 votes. Secretary Galvin’s office declared Mr. Mirra the winner by a ten-vote margin.

Ms. Kassner thereafter petitioned Secretary Galvin’s office to order a district-wide recount. The recount occurred in each town in the district, beginning on December 5, 2022 and concluding on December 8, 2022 (Georgetown, December 5, 2022; Hamilton, December 6, 2022; Newbury December 6, 2022; Ipswich, December 7, 2022; Rowley, December 7, 2022; and Topsfield, December 8, 2022). Secretary Galvin’s office released the results of the total ballots recounted for the State Representative election, declaring: Ms. Kassner, 11,763 votes; Mr. Mirra 11,762 votes; Blanks, 638 votes; All Others, 5 votes. After the recount, Secretary Galvin’s office declared Ms. Kassner the winner by a one-vote margin.

On December 14, 2022, the Governor and Governor’s Council certified Ms. Kassner as the winner of the Second Essex District and the Secretary of the Commonwealth issued a Certificate of Election (“Certificate”) to her bearing the signatures of the Governor and the Secretary in accordance with the provisions of section 116 of Chapter 54 of the General Laws, summoning her to appear on Wednesday, January 4, 2023 at the State House to be sworn in as the duly elected Representative of the Second Essex District. The Secretary then transmitted the Certificate to Ms. Kassner.

On December 21, 2022, a full week after issuance of the Certificate, Mr. Mirra filed a Complaint in Essex Superior Court, Civil Action No. 2277CV01243. In his Complaint, Mr. Mirra requested, *inter alia*, expedited *de novo* review of ballots challenged during the election recount, and a declaration that the reported recount results were inaccurate due to the “incorrect and unlawful” actions of the Registrars and Town Clerks. He asked the Court to either declare him the duly elected Representative or order a new election. On December

23, 2022, Mr. Mirra filed an Emergency Motion requesting an expedited review of two of the challenged ballots and sought an injunction staying the swearing-in of Ms. Kassner.

On December 27, 2022, Ms. Kassner filed a Motion to Dismiss stating that the Court lacked jurisdiction over the dispute, to which Mr. Mirra filed an opposition on December 28, 2022. On December 28, 2022, Defendant William F. Galvin, in his official capacity as Secretary of the Commonwealth, submitted a combined response to Mr. Mirra's emergency motion and Ms. Kassner's motion to dismiss, stating that although the Court retained jurisdiction to address the suit it did not have the authority to enjoin the House from seating a member. On December 29, 2022 both the Municipal Defendants and Ms. Kassner filed oppositions to Mr. Mirra's emergency motion for preliminary injunction. On December 29, 2022 Mr. Mirra filed a reply to all oppositions to his emergency motion. In short, the parties fully briefed their legal positions to the Superior Court within one week of Mr. Mirra filing his Complaint.

On December 29, 2022, Justice Thomas Drechsler, Associate Justice of the Superior Court, denied Mr. Mirra's emergency motion and granted Ms. Kassner's motion to dismiss. Mr. Mirra filed his notice of appeal of this decision on December 30, 2022 and a motion for an injunction pending appeal. On January 3, 2023 Ms. Kassner filed her opposition. Also on January 3, 2023, the Appeals Court denied Mr. Mirra's motion and Mr. Mirra then filed a petition for injunctive relief with the Massachusetts Supreme Judicial Court, which Ms. Kassner opposed. On January 4, 2023, a single Justice of the Supreme Judicial Court denied Mr. Mirra's motion without hearing.

Pursuant to Part II, Chapter 1, Section 1, Article 1, as amended by Article 64 of the amendments to the Constitution of the Commonwealth, the House assembled on January 4, 2023. Having received a communication from the Secretary of the Commonwealth indicating the returns of the November 8, 2022 elections for Representatives in the General Court (Appendix B), the House unanimously adopted an order to form a Special Committee of the House to Examine the Returns of Votes for Representative in the Several Representative Districts of the Commonwealth (hereinafter "the Special Committee") (Appendix C). The House appointed Representative-Elect Michael S. Day of Stoneham, Representative-Elect Daniel J. Ryan of Charlestown and Representative-Elect Bradley H. Jones, Jr. of North Reading to serve on the Special Committee.

Following the Special Committee's review of the returns, it unanimously agreed to offer an order in the hands of the Clerk of the House, ordering that: under the provisions of Article LVIX (as amended) of the Amendments to the Constitution, the remaining 158 members-elect had been duly elected and were rightly and truly chosen and qualified to be sworn in by his Excellency the Governor; that, under the provisions of Article LXIV (as amended) of the Amendments to the Constitution, until a successor is chosen and qualified, the term

of Representative Mirra of Georgetown shall continue; that said Representative Mirra of Georgetown shall continue to represent the Second Essex Representative District until a determination is made under the Constitution of the Commonwealth of Massachusetts as to the duly elected Representative from the Second Essex District; and that under the provisions of Article LVIX (as amended) of the Amendments to the Constitution until a Member is chosen and qualified, the First Middlesex Representative District shall remain vacant. (Appendix D).

On January 13, 2023, at 10:00am in Room A-2 of the Massachusetts State House, the Special Committee held a public hearing to further examine the returns of the Second Essex District election. The Special Committee invited Ms. Kassner and Mr. Mirra, along with their respective legal counsel, to submit any documents they wished the Special Committee to consider and invited them to appear and testify before the Special Committee. Ms. Kassner and Mr. Mirra together provided the Special Committee with a joint appendix of records. (Appendix E). Mr. Mirra also submitted a series of affidavits (Appendix F), and Ms. Kassner submitted a Memorandum (Appendix G) for the Special Committee’s review and consideration.

The Special Committee allowed the parties to submit supplemental materials up until January 17, 2023. Counsel for Ms. Kassner submitted a *Supplemental Memorandum*, adopted into the record through this Report and attached hereto at Appendix H. Mr. Mirra also submitted a *Supplemental Memorandum*, adopted into the record through this Report and attached hereto as Appendix I. The Special Committee secured the presence of a stenographer to transcribe the proceedings of the January 13, 2023 hearing, which were livestreamed, closed captioned and recorded on the General Court’s website. A copy of the transcript is adopted into the record through this Report and attached hereto at Appendix J.

II. Mr. Mirra’s Allegations

Mr. Mirra alleges that the result of the election for the Second Essex District was called into question by several administrative issues including, *inter alia*, changes in total ballot counts, mistaken signature comparisons on mail-in ballots and the counting of “spoiled” ballots during recount. Appendix E, pp. 4-18 at ¶¶ 39-40, 51-52, 62-63, 65, 68, 75. Mr. Mirra further alleges that Georgetown and Ipswich Registrars erred in making their determinations during recount on a total of three challenged ballots. *Id.* at ¶¶ 42, 54. At the hearing before the Special Committee, Mr. Mirra asked that the Special Committee “determine that Representative Mirra won the election, or in the alternative, find that the election was a tie, the seat is vacant and recommend a new election to the full House.” Appendix J at p. 14.

Mr. Mirra does not claim that he was denied due process during the recount process and agreed that he was afforded the opportunity to have legal counsel present, to object to contested ballots, to fully

argue his position on contested ballots and to contemporaneously listen to the decisions of the registrars on the contested ballots. *Id.* at p. 39. Mr. Mirra also does not allege any fraud or intentional misconduct occurred at any time by the voters or the various registrars charged with counting the returns. The Special Committee takes note of these statements from Mr. Mirra: “I think [the election] was held fairly. I think every town clerk did their best to hold a fair and open election. And I think any of the issues that we brought up today, honestly, are a simple matter of human error.” *Id.* at p. 44.

III. Legal Background

A. Jurisdiction

Pursuant to Part II, Chapter 1, Section 3, Article 10 of the Constitution of the Commonwealth, the House of Representatives has the exclusive and final jurisdiction over the “returns, elections and qualifications of its own members.” *See also Opinion of the Justices to the Senate*, 375 Mass. 795, 815 (1978). This prerogative of the House is not disturbed by a judicial court’s adjudication of an election dispute prior to the issuance of a certificate of election results from the Governor and Governor’s Council. *See, e.g., Banks v. Election Commrs. of Boston*, 327 Mass. 509, 512 (1951). Up to and until such a certificate is issued, aggrieved candidates may take full advantage of the court’s *de novo* authority under section 59 of chapter 56 to enforce laws regulating the conduct of elections and to petition for equitable relief or by mandamus. G.L. c. 56 § 59; *see also Wheatley v. Secretary of Commonwealth*, 439 Mass. 849, 853 (2003).

The Certificate and summons delivered to Representative-Elect Kassner, coupled with the formation of this Special Committee and our hearing on the matter clearly manifests the House’s exercise of its exclusive jurisdiction in regard to the Second Essex District. *See, e.g., Greenwood v. Registrars of Voters of City of Fitchburg*, 282 Mass. 74, 79 (1933). The House is now the sole arbiter of all claims to this seat and any requests pending in judicial proceedings or actions taken by a judicial court are moot. *See, e.g., Wheatley*, at 854.

B. The Certification Process

As discussed *supra*, the Secretary of the Commonwealth transmitted a certificate signed by Governor Baker and countersigned by Secretary Galvin to Representative-Elect Kassner, summoning her to appear at the General Court on Wednesday, January 4, 2023 as the duly-elected Representative for the Second Essex District and to take her seat in the House of Representatives accordingly.

The Certificate has multiple purposes. On its face, it operates as a notice of election and functions as a summons to the Representative-Elect to appear before the General Court at a designated time and date to assume that seat in the Massachusetts House of Representatives. Additionally, the Certificate is to, upon presentation, direct the attention of the House to the question of whether the presenter is entitled to be declared a representative. *See, e.g., Greenwood*, supra at 80.

Chapter 54 of the General Laws governs the manner, time and conduct of all elections in the Commonwealth of Massachusetts, including challenges thereto. Section 115 of Chapter 54 obligates the Governor and at least five members of the Governor's Council to examine and tabulate the state election results as they are received from the Secretary of the Commonwealth. The statute also explicitly requires that, in the case of a recount, the Governor and at least five members of the Governor's Council shall similarly review the amended results and revise the tabulation accordingly. G.L. c. 54, § 115.

After review and transmittal of the returns back to the Secretary of the Commonwealth, Section 116 of Chapter 54 of the General Laws then obligates the Governor and at least five members of the Governor's Council to certify the election returns and issue a summons for the elected individual to appear at an appointed place, time and date. The Secretary of the Commonwealth is to countersign the certificate and transmit the certification and summons to the elected individual. G.L. c. 54, § 116.

This procedure is an integral part of the election process and declaring election results is "an indispensable adjunct to that process." *See Opinion of the Justices to the Governor*, 362 Mass. 907, 912 (1972). It is this final tabulation and determination by the Governor and Governor's Council that effectuates the election, not the vote itself. *Id.* at 913.

Importantly, the statute then clearly and unequivocally prescribes strict timelines as to when the Governor and Governor's Council may take this final step in the election process:

No certification shall be made or summons or certificate issued under this section until after five o'clock in the afternoon of the fifteenth day following a state election, or, in case a state-wide or district-wide recount is held in accordance with section one hundred and thirty-five, until the tabulation and determination under the preceding section have been revised in accordance with the results of such recount...

G.L. c. 54 § 116. This timeline allows candidates who believe they have been harmed by the election process to petition the courts for relief. That petition may include a request for the court to order equitable relief or to issue a writ of mandamus directing a government official to take a specific action in furtherance of a statutory or constitutional obligation. G.L. c. 56 § 59; *see, e.g., Alicea v. Registrars of Voters of the Town of Southbridge, et al.*, Mass. Super. Ct. No. 1085CV02624 (Feb. 1, 2011).

That timeline is finite. The Legislature, through the General Laws, has declared that individuals may pursue election disputes with local election officials, with the Secretary of the Commonwealth, and with the Judiciary until the Governor and Governor's Council issues the Certificate of Election. At that time, jurisdiction rests exclusively with the House of Representatives to determine whether the Representative-Elect is entitled to claim the seat designated in the Certificate of Election.

IV. Findings and Conclusions

After hearing from witnesses, examining the returns and all other relevant evidence including documents and testimony offered by Ms. Kassner and Mr. Mirra, a majority of the Special Committee concludes the following:

- 1) The Special Committee concurs with Mr. Mirra and finds that no fraud or intentional misconduct occurred during either the initial count of the returns or during the recount of the returns for the Second Essex Representative District.
- 2) Massachusetts election laws are designed to prevent fraud and secure voting rights, not to disenfranchise voters because of ministerial irregularities or omissions. *See, e.g., Swift v. Registrars of Voters of Quincy*, 281 Mass. 271, 277 (1932); *McCavitt v. Registrars of Voters of Brockton*, 385 Mass. 833, 844 (1982). Failures on the part of election officers to perform the precise duties imposed on them by statute do not by themselves invalidate the votes or afford any grounds for nullifying the count. *See, e.g., Fytrilakis v. City of Springfield*, 47 Mass.App.Ct. 464, 469 (1999) citing *Swift*, supra at 278.
- 3) A new election disenfranchises thousands of voters so any complaint against its legitimacy must overcome both the presumption that votes counted by election officials are legal and that election officials as public officers act legally and with honest purpose. *See McCavitt*, supra at 846; *see also Talbot v. Registrars of Voters of Somerset*, 281 Mass. 284, 286 (1932).
- 4) Mr. Mirra failed to provide any corroborating, objective evidence beyond pure speculation to support his claims that the irregularities regarding tally changes, mail-in ballot signature comparisons or unspoiled ballots that allegedly occurred in the count or recount caused actual harm. He has not met his burden of proof in this matter sufficient to persuade the House to take the extraordinary step of ordering a new election.
- 5) While the Special Committee came to a clear decision, supported in testimony by both Ms. Kassner and Mr. Mirra, that there was no evidence of fraud in the conduct of the election for the Second Essex District, a review of the evidence presented to the Special Committee does raise

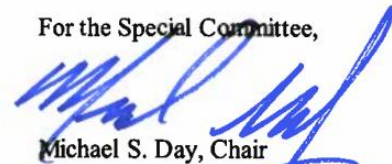
concerns regarding human error and, if occurring on a larger scale, their potential impact on future elections. While these missteps had no impact on the integrity or the final outcome of the election, similar missteps in the future, if occurring on a larger scale, could affect future elections.

- 6) As it did in its review of returns in the First Middlesex election, the Special Committee recognizes the critical role that municipal officers play in our state and national elections and notes the evolution of the election process necessitated by changes in technology and societal needs. As was the case with the First Middlesex District, the minor missteps here, while benign in the election for State Representative in the Second Essex District, also highlight the need for continued close review and updates of the current regulations, training, policies and practices of elections conducted in the Commonwealth.
- 7) Separately from his grievances regarding alleged procedural anomalies, Mr. Mirra also asks the Special Committee to conduct a *de novo* review of three contested ballots he has identified from the recount. We decline that invitation.
- 8) Mr. Mirra was afforded the same opportunities all candidates for State Representative have in contesting election results and recounts. Parties to a recount may object to the calling of individual votes for a particular candidate through a clear and fair process with the registrars overseeing the tallies. The recount conducted by duly appointed local election officials are then reviewed by the Secretary of the Commonwealth, who has standing to seek judicial relief if the Secretary finds plain evidence of incorrect results. *Secretary of Com. v. Election Com'fs of City of Boston*, 2000 WL 1716249 (2000). Aggrieved candidates may then pursue a *de novo* review of individual ballots in Superior Court should they choose to do so. *See G.L. c. 56, § 59*. Section 116 of Chapter 54 of the General Laws provides candidates with up to fifteen days following an initial election or until the Governor and Governor's Council reviews and determines the tally of a recount.
- 9) A majority of the Special Committee therefore today re-affirms a bright line: candidates may avail themselves of the courts to challenge election results only until the Governor and Governor's Council issue a certification of election and the Secretary of the Commonwealth countersigns and transmits that Certificate of Election to the duly elected Representative-Elect. Once that certification occurs, however, the exclusive jurisdiction over the election transfers to the House of Representatives.

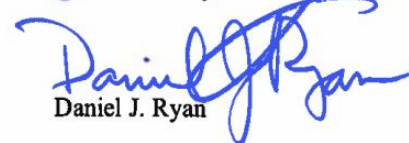
10) When, as is true in this matter, a candidate is provided the prescribed time and process to object to ballots prior to certification, the House of Representatives is not a proper forum for calling balls and strikes on challenges to the determination of the intent of individual voters. Allowing such redress runs contrary to our system of government and its attendant commitment to timely election results. Furthermore, a majority of the Special Committee finds that examining individual ballots in this case unnecessarily opens the door for potential future mischief from unscrupulous candidates seeking to impugn the integrity of the Commonwealth's elections.¹ Where no judicial decision or other rule of law beyond our Constitutional authority is applicable, we must give these public policy considerations great weight. *See Opinion of the Justices*, supra at 912.

A majority of the Special Committee recommends that the House of Representatives declare Representative-Elect Kristin Kassner the properly elected and qualified Representative for the Second Essex District and adopt a resolution to that effect in the form attached hereto at Appendix K.

For the Special Committee,



Michael S. Day, Chair



Daniel J. Ryan

¹ The Special Committee does not question Mr. Mirra's integrity or character in presenting his case in good faith and specifically notes and credits his testimony regarding his belief that this election was conducted fairly and openly. *See Appendix I* at pp. 43-44.

Appendix A – Minority Report on the
Special Committee of Elections

In the Matter of:
THE ELECTION OF THE REPRESENTATIVE
IN THE GENERAL COURT OF
THE COMMONWEALTH OF MASSACHUSETTS
REPRESENTING THE SECOND
ESSEX DISTRICT, BETWEEN
KRISTIN KASSNER and LEONARD MIRRA

Representative Bradley H. Jones, Jr., of North Reading, as the Minority member on the Special Committee, hereby submits this Minority Report concerning the above captioned matter now pending before the Special Committee.

1. The Minority generally does not dispute the factual and procedural background as laid out by the Majority Report. The Minority nevertheless does have serious concerns about several aspects of the Majority Report and its recommendations, which are outlined below.
2. The Minority agrees with the Majority Report analysis that the House has exclusive jurisdiction in regard to the Second Essex District. The House becomes the sole arbiter at such point that a Certificate of Election is issued. As the sole arbiter, "jurisdiction rests exclusively with the House of Representatives to determine whether the Representative-Elect is entitled to claim the seat designated in the Certificate of Election." The Committee was presented with evidence that is insufficient to make such a determination without further examination.
3. The Majority argument becomes a circular one. While candidates retain the right to seek relief through the courts following an election, the Majority notes the timeline for doing so "is finite." The House gains exclusive jurisdiction at the time the Certificate of Election is issued, even if the contesting candidate's appeal for judicial relief is still pending before the courts. The Majority seems to argue that while exclusive jurisdiction is gained by the issuance of such certificate, a contesting candidate loses the ability to assert any further legal rights or seek any remedies after the issuance of such certificate. If the Majority Report is accepted, this Special Committee is self-limiting the authority that the House

may take as the sole arbiter, and thereby rendering its jurisdiction meaningless in this case and in the future. Furthermore, as the Majority notes, the certificate merely serves to "direct the attention of the House to the question of whether the presenter is entitled to be declared a representative". It is important to note further in that analysis that "Although the judiciary may, under § 59, order that a certificate of election issue to a particular individual, that certificate is nothing more than evidence that a candidate may present to the House in support of a claim of election". Wheatley v. Secretary of the Commonwealth, 439 Mass. 849, 854 (2003). The bright line reaffirmed by the Majority is relative to the Courts, not to the House. As Ms. Kassner's Counsel pointed out in the transcript, "So that certification in -- in my mind, is a bright line that if you -- if you want to initiate litigation, you have to initiate it before there's a certification. Otherwise, you have to deal with the House of Representatives....". (Appendix J at p. 61.)

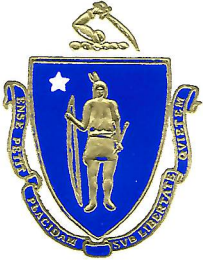
4. Mr. Mirra contends that two ballots in Ipswich that were originally called ballots for Mr. Mirra were incorrectly overruled and counted as blanks in the recount. If these two ballots were counted differently, they would materially change the outcome of the election. (Exhibit D at p. 51.) It appears from the accounts of all parties that there was significant discussion over these two ballots and that it was not immediately clear how the ballots should be correctly counted, which should raise questions to this committee over the validity of the final determinations. The parties also assert differing accounts of how the ballots appeared, and do so only from initial memory. (*Id.* at 104.) There remains dispute on these ballots and no resolution can be ascertained without the Committee's review of these and all other contested ballots.
5. Additionally, Counsel for Ms. Kassner points out that "there were many, many things" that were challenged. (Appendix J at p. 57.) Specifically, there is highlighted a challenged ballot that appears to have been counted for Ms. Kassner but by Counsel's own analysis of the general laws, should not have been. The ballot referenced had both circles filled in next to both candidates' names. "I think it's quite clear in the statute Chapter 54, Section 106, if a voter marks more names than there are persons to be elected on an office, his ballot shall not be counted for such office". (*Id.*)
6. Counsel for Ms. Kassner acknowledges "Mistakes happen." (*Id.* at p. 70.) The Majority in their report writes "...a review of the evidence presented to the Special Committee does raise concerns regarding

human error and, if occurring on a larger scale, their potential impact on future elections.” The margin in the pending matter is the slimmest that can be found in an election. Given the acknowledgments by Counsel and the Majority that mistakes and human error have been identified, a review by the Special Committee of all the challenged ballots is more than warranted, it is demanded by the oath of office each of the Special Committee members took on January 4, 2023.

7. It is true, as the Majority Report states, that “the House of Representatives is not a proper forum for calling balls and strikes” if we are talking about baseball. But, this is not America’s pastime, this is America’s fundamental constitutional right and one that a free and fair democracy cannot survive without. It is the duty of this body and its members to uphold this fundamental constitutional right. Additionally, the Majority engages in gross speculation without any foundation “... that examining individual ballots in this case unnecessarily opens the door for potential future mischief from unscrupulous candidates seeking to impugn the integrity of the Commonwealth’s elections.” A failure of this body to exercise its authority by refusing to examine individual ballots in this case, where it is abundantly clear that serious doubt remains in the accuracy of the counting of multiple ballots, where the will of the electorate cannot be ascertained by the evidence that has been presented, and where the slimmest margin of election is present, impugns the integrity of the Commonwealth’s elections. It has been long established that the House retains the right to examine ballots in question. In 1891, the Attorney General issued an opinion that speaks directly to the House's authority to examine ballots whereby he stated: "*The House of Representatives, or its election committee, subject to the approval of the House, has power to determine the evident intent of a voter from an inspection of the ballot, where the strict letter of the law as to affixing of filling in the name or marking the ballot has not been complied with; as by the Constitution (Part II), Chapter 1, Section 3, Article 10, the House of Representatives 'shall be the judge of the returns, elections, and qualifications of its members;' which provision is held to give the House absolute power over the subject.*" Opinion of the Attorney General 3, 8 (1891).

The Minority recommends that the Special Committee reconvene expeditiously to examine the ballots in question to make a determination as to whether Ms. Kassner or Mr. Mirra has been properly elected or the Second Essex District has failed to elect a representative.

Appendix B – Communications of the Secretary



The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

January 4, 2023

To the Honorable House of Representatives:

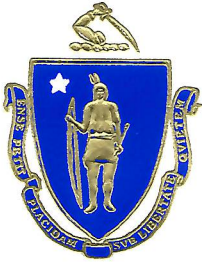
I have the honor to lay before you the returns of votes cast at the election held in this Commonwealth on the eighth day of November, 2022, for Representatives in the General Court in the several districts, together with schedules showing the number of ballots which appear to have been cast for each person voted for.

These returns have been duly canvassed by the Governor and Council, and are now transmitted for examination by the House of Representatives, as required by the Constitution and General Laws.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Wm. Francis Galvin", written in a cursive style with a long, sweeping tail that extends to the right.

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth



The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

January 4, 2023

To the Honorable Senate and House of Representatives:

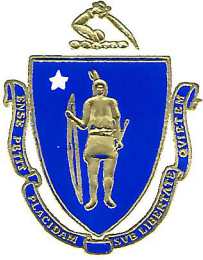
I have the honor to lay before you the returns of votes cast at the election held in this Commonwealth on the eighth day of November, 2022, for Councillors in the several districts, together with schedules showing the number of ballots which appear to have been cast for each person voted for.

These returns have been duly canvassed by the Governor and Council, and are now transmitted for examination by the Senate and the House of Representatives, as required by the Constitution.

Very truly yours,

A handwritten signature in blue ink, appearing to read "William Francis Galvin".

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth



The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

January 4, 2023

To the Honorable Senate and House of Representatives:

I have the honor to lay before you the returns of votes cast at the election held in this Commonwealth on the eighth day of November, 2022, for Governor and Lieutenant Governor, Attorney General, Secretary, Treasurer and Auditor, together with schedules showing the number of ballots which appear to have been cast for each person voted for.

These returns have been duly canvassed by the Governor and Council, and are now transmitted for examination by the Senate, as required by the Constitution and General Laws.

Very truly yours,

A handwritten signature in blue ink, appearing to read "W. Francis Galvin", written in a cursive style. The signature is positioned above the printed name and title.

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

Return of Votes

For Massachusetts State Election

November 8, 2022



Compiled by
William Francis Galvin
Secretary of the Commonwealth
Elections Division

Certified by the
Governor and Council

GOVERNOR AND LIEUTENANT GOVERNOR

ATTORNEY GENERAL

SECRETARY OF STATE

TREASURER

AUDITOR

REPRESENTATIVE IN CONGRESS

COUNCILLOR

SENATOR IN GENERAL COURT

REPRESENTATIVE IN GENERAL COURT

DISTRICT ATTORNEY

SHERIFF

STATEWIDE BALLOT QUESTIONS

PUBLIC POLICY QUESTIONS

The Commonwealth of Massachusetts

EXECUTIVE DEPARTMENT, COUNCIL CHAMBERS

December 14, 2022

His Excellency the Governor and Council, having examined the amended and recounted returns of votes for Representatives in Congress, State Officers, and ballot questions given in the several cities and towns in the manner prescribed by the Constitution and Laws of the Commonwealth on the eighth day of November last past, find that the following named persons have received the number of votes set against their names.

GOVERNOR and LIEUTENANT GOVERNOR

Diehl and Allen (Republican) have.....	859,343
Healey and Driscoll (Democratic) have.....	1,584,403
and appear to be elected.	
Reed and Everett (Libertarian) have.....	39,244
All others.....	2,806
Blanks.....	25,665
Total Votes Cast.....	2,511,461

ATTORNEY GENERAL

Andrea Joy Campbell, of Boston (Democratic) has	1,539,624
and appears to be elected.	
James R. McMahon, III, of Bourne (Republican) has	908,608
All Others.....	1,550
Blanks.....	61,679
Total Votes Cast.....	2,511,461

SECRETARY OF STATE

William Francis Galvin, of Boston (Democratic) has	1,665,808
and appears to be elected.	
Rayla Campbell, of Whitman (Republican) has	722,021
Juan Sanchez, of Holyoke (Green-Rainbow) has	71,717
All Others.....	1,396
Blanks.....	50,519
Total Votes Cast.....	2,511,461

TREASURER and RECEIVER GENERAL

Deborah B. Goldberg, of Brookline (Democratic) has	1,709,555
and appears to be elected.	
Cristina Crawford, of Sherborn (Libertarian)	516,019
All Others	9,994
Blanks	275,893
Total Votes Cast.....	2,511,461

AUDITOR

Anthony Amore, of Winchester (Republican) has.....	897,223
Diana DiZoglio, of Methuen (Democratic) has	1,310,773
and appears to be elected.	
Gloria A. Caballero-Roca, of Holyoke (Green-Rainbow) has.....	68,646
Dominic Giannone, III, of Weymouth (Workers Party) has.....	51,877
Daniel Riek, of Yarmouth (Libertarian) has	48,625
All Others.....	1,648
Blanks	132,669
Total Votes Cast.....	2,511,461

REPRESENTATIVE IN CONGRESS

FIRST DISTRICT

Richard E. Neal, of Springfield (Democratic) has	157,635
and is duly elected.	
Dean James Martilli, of West Springfield (Republican) has	98,386
All Others.....	378
Blanks	7,252
Total Votes Cast.....	263,651

SECOND DISTRICT

James P. McGovern, of Worcester (Democratic) has.....	180,639
and is duly elected.	
Jeffrey A. Sossa-Paquette, of Shrewsbury (Republican) has.....	91,956
All Others.....	276
Blanks	7,200
Total Votes Cast.....	280,071

THIRD DISTRICT

Lori Loureiro Trahan, of Westford (Democratic) has	154,496
and is duly elected.	
Dean A. Tran, of Fitchburg (Republican) has.....	88,585
All Others.....	220
Blanks	8,088
Total Votes Cast.....	251,389

FOURTH DISTRICT

Jake Auchincloss, of Newton (Democratic) has	201,882
and is duly elected.	
All Others.....	6,397
Blanks	83,290
Total Votes Cast.....	291,569

FIFTH DISTRICT

Katherine M. Clark, of Revere (Democratic) has	203,994
and is duly elected.	
Caroline Colarusso, of Stoneham (Republican) has	71,491
All Others.....	186
Blanks	9,210
Total Votes Cast.....	284,881

SIXTH DISTRICT

Seth Moulton, of Salem (Democratic) has.....	198,119
and is duly elected.	
Bob May, of Peabody (Republican) has	110,770
Mark T. Tashjian, of Georgetown (Libertarian) has.....	5,995
All Others.....	197
Blanks	7,951
Total Votes Cast.....	323,032

SEVENTH DISTRICT

Ayanna S. Pressley, of Boston (Democratic) has	151,825
and is duly elected.	
Donnie Dionicio Palmer, Jr., of Boston (Republican) has.....	27,129
All Others.....	557
Blanks	10,319
Total Votes Cast.....	189,830

EIGHTH DISTRICT

Stephen F. Lynch, of Boston (Democratic) has	189,987
and is duly elected.	
Robert G. Burke, of Milton (Republican) has.....	82,126
All Others.....	451
Blanks	12,019
Total Votes Cast.....	284,583

NINTH DISTRICT

Bill Keating, of Bourne (Democratic) has	197,823
and is duly elected.	
Jesse G. Brown, of Plymouth (Republican) has	136,347
All Others.....	150
Blanks	8,135
Total Votes Cast.....	342,455

COUNCILLOR

FIRST DISTRICT

Joseph C. Ferreira, of Swansea (Democratic) has	232,118
and appears to be elected.	
All Others.....	6,177
Blanks	109,738
Total Votes Cast.....	348,033

SECOND DISTRICT

Robert L. Jubinville, of Milton (Democratic) has.....	194,480
and appears to be elected.	
Dashe M. Videira, of Franklin (Republican) has	112,941
All Others.....	183
Blanks	21,549
Total Votes Cast.....	329,153

THIRD DISTRICT

Marilyn M. Petitto Devaney, of Watertown (Democratic) has.....	248,736
and appears to be elected.	
All Others.....	4,456
Blanks	91,907
Total Votes Cast.....	345,099

FOURTH DISTRICT

Christopher A. Iannella, Jr., of Boston (Democratic) has.....	205,182
and appears to be elected.	
Helene "Teddy" MacNeal, of Boston (Republican) has.....	84,005
All Others.....	418
Blanks	21,438
Total Votes Cast.....	311,043

FIFTH DISTRICT

Eileen R. Duff, of Gloucester (Democratic) has	175,894
and appears to be elected.	
Michael C. Walsh, of Lynnfield (Republican) has	119,175
All Others.....	207
Blanks	14,885
Total Votes Cast.....	310,161

SIXTH DISTRICT

Terrence W. Kennedy, of Lynnfield (Democratic) has	203,576
and appears to be elected.	
All Others.....	3,666
Blanks	71,129
Total Votes Cast.....	278,371

SEVENTH DISTRICT

Paul M. DePalo, of Worcester (Democratic)	163,456
and appears to be elected.	
Gary Galonek, of Sturbridge (Republican).....	123,084
All Others.....	157
Blanks	13,825
Total Votes Cast.....	300,522

EIGHTH DISTRICT

John M. Comerford, of Palmer (Republican) has	104,839
Tara J. Jacobs, of North Adams (Democratic) has	170,120
and appears to be elected.	
All Others.....	235
Blanks	13,885
Total Votes Cast.....	289,079

SENATOR IN GENERAL COURT

BERKSHIRE, HAMPDEN, FRANKLIN & HAMPSHIRE DISTRICT

Paul W. Mark, of Becket (Democratic) has	47,989
and appears to be elected.	
Brendan M. Phair, of Pittsfield (Unenrolled) has	14,806
All Others	139
Blanks	6,306
Total Votes Cast.....	69,240

BRISTOL & NORFOLK DISTRICT

Paul R. Feeney, of Foxborough (Democratic) has.....	40,353
and appears to be elected.	
Michael Chaisson, of Foxborough (Republican)	26,221
Laura L. Saylor, of Mansfield (Workers Party)	2,168
All Others	17
Blanks	2,733
Total Votes Cast.....	71,492

FIRST BRISTOL & PLYMOUTH DISTRICT

Michael J. Rodrigues, of Westport (Democratic) has.....	29,420
and appears to be elected.	
Russell T. Protentis, of Lakeville (Republican) has	21,600
All Others	34
Blanks	1,920
Total Votes Cast.....	52,974

SECOND BRISTOL & PLYMOUTH DISTRICT

Mark C. Montigny, of New Bedford (Democratic) has.....	35,193
and appears to be elected.	
All Others	1,018
Blanks	12,524
Total Votes Cast.....	48,735

THIRD BRISTOL & PLYMOUTH DISTRICT

Marc R. Pacheco, of Taunton (Democratic) has	35,556
and appears to be elected.	
Maria S. Collins, of Taunton (Republican) has	29,937
All Others.....	32
Blanks	2,105
Total Votes Cast.....	67,630

CAPE & ISLANDS DISTRICT

Julian Andre Cyr, of Truro (Democratic) has	54,714
and appears to be elected.	
Christopher Robert Lauzon, of Barnstable (Republican) has	31,176
All Others.....	32
Blanks	1,722
Total Votes Cast.....	87,644

FIRST ESSEX DISTRICT

Pavel Payano, of Lawrence (Democratic) has	21,591
and appears to be elected.	
All Others.....	1,256
Blanks	8,106
Total Votes Cast.....	30,953

SECOND ESSEX DISTRICT

Joan B. Lovely, of Salem (Democratic) has	44,277
and appears to be elected.	
Damian M. Anketell, of Peabody (Republican) has	21,108
All Others.....	50
Blanks	2,022
Total Votes Cast.....	67,457

THIRD ESSEX DISTRICT

Brendan P. Crighton, of Lynn (Democratic) has	34,620
Annalisa Sulustri, of Swampscott (Independent) has	13,910
All Others.....	205
Blanks	7,443
Total Votes Cast.....	56,178

FIRST ESSEX & MIDDLESEX DISTRICT

Bruce E. Tarr, of Gloucester (Republican) has	58,838
and appears to be elected.	
Terence William Cudney, of Gloucester (Independent) has	23,408
All Others	171
Blanks	7,075
Total Votes Cast.....	89,492

SECOND ESSEX & MIDDLESEX DISTRICT

Barry R. Finegold, of Andover (Democratic) has	42,932
and appears to be elected.	
Salvatore Paul DeFranco, of Haverhill (Republican) has	31,926
All Others	42
Blanks	1,727
Total Votes Cast.....	76,627

HAMPDEN DISTRICT

Adam Gomez, of Springfield (Democratic) has	23,665
and appears to be elected.	
All Others	845
Blanks	5,790
Total Votes Cast.....	30,300

HAMPDEN & HAMPSHIRE DISTRICT

John C. Velis, of Westfield (Democratic) has	37,130
and appears to be elected.	
Cecilia P. Calabrese, of Agawam (Republican) has	19,388
All Others	77
Blanks	1,244
Total Votes Cast.....	57,839

HAMPDEN, HAMPSHIRE & WORCESTER DISTRICT

William E. Johnson, of Granby (Republican) has	29,027
Jacob R. Oliveira, of Ludlow (Democratic) has	37,410
and appears to be elected.	
All Others.....	31
Blanks	1,681
Total Votes Cast.....	68,149

HAMPSHIRE, FRANKLIN & WORCESTER DISTRICT

Jo Comerford, of Northampton (Democratic) has	51,232
and appears to be elected.	
All Others.....	1,280
Blanks	11,039
Total Votes Cast.....	63,551

FIRST MIDDLESEX DISTRICT

Edward J. Kennedy, Jr., of Lowell (Democratic) has	32,003
and appears to be elected.	
All Others.....	847
Blanks	12,782
Total Votes Cast.....	45,632

SECOND MIDDLESEX DISTRICT

Patricia D. Jehlen, of Somerville (Democratic) has.....	53,866
and appears to be elected.	
All Others.....	439
Blanks	12,403
Total Votes Cast.....	66,708

THIRD MIDDLESEX DISTRICT

Michael J. Barrett, of Lexington (Democratic) has	50,728
and appears to be elected.	
All Others.....	672
Blanks	17,403
Total Votes Cast.....	68,803

FOURTH MIDDLESEX DISTRICT

Cindy F. Friedman, of Arlington (Democratic) has.....	54,112
and appears to be elected.	
All Others.....	1,107
Blanks	21,232
Total Votes Cast.....	76,451

FIFTH MIDDLESEX DISTRICT

Jason M. Lewis, of Winchester (Democratic) has	42,130
and appears to be elected.	
Edward F. Dombroski, Jr., of Wakefield (Republican) has.....	24,104
All Others.....	63
Blanks	2,625
Total Votes Cast.....	68,922

MIDDLESEX & NORFOLK DISTRICT

Karen E. Spilka, of Ashland (Democratic) has.....	52,484
and appears to be elected.	
All Others.....	952
Blanks	14,075
Total Votes Cast.....	67,511

MIDDLESEX & SUFFOLK DISTRICT

Sal N. DiDomenico, of Everett (Democratic) has	33,355
and appears to be elected.	
All Other	395
Blanks	7,831
Total Votes Cast.....	41,581

MIDDLESEX & WORCESTER DISTRICT

James B. Eldridge, of Acton (Democratic) has.....	51,574
and appears to be elected.	
Anthony Christakis, of Wayland (Republican) has	21,819
All Others.....	44
Blanks	2,528
Total Votes Cast.....	75,965

NORFOLK & MIDDLESEX DISTRICT

Cynthia Stone Creem, of Newton (Democratic) has	55,022
and appears to be elected.	
All Others	713
Blanks	15,213
Total Votes Cast.....	70,948

NORFOLK & PLYMOUTH DISTRICT

John F. Keenan, of Quincy (Democratic) has	36,063
and appears to be elected.	
Gary M. Innes, of Hanover (Republican) has	20,586
All Others	38
Blanks	2,248
Total Votes Cast.....	58,935

NORFOLK, PLYMOUTH & BRISTOL DISTRICT

Walter F. Timilty, of Milton (Democratic) has	40,311
and appears to be elected.	
Brian R. Muello, of Braintree (Republican) has	20,648
All Others	86
Blanks	2,996
Total Votes Cast.....	64,041

NORFOLK & SUFFOLK DISTRICT

Michael F. Rush, of Boston (Democratic) has	54,915
and appears to be elected.	
All Others	1,043
Blanks	19,742
Total Votes Cast.....	75,700

NORFOLK, WORCESTER & MIDDLESEX DISTRICT

Rebecca L. Rausch, of Needham (Democratic) has	41,893
and appears to be elected.	
Shawn C. Dooley, of Wrentham (Republican) has	34,452
All Others	53
Blanks	1,950
Total Votes Cast.....	78,348

PLYMOUTH & BARNSTABLE DISTRICT

Susan Lynn Moran, of Falmouth (Democratic) has.....	49,686
and appears to be elected.	
Kari MacRae, of Bourne (Republican) has.....	38,493
All Others.....	39
Blanks	2,832
Total Votes Cast.....	91,050

FIRST PLYMOUTH & NORFOLK DISTRICT

Patrick Michael O'Connor, of Weymouth (Republican) has.....	48,668
and appears to be elected.	
Robert William Stephens, Jr., of Hanson (Democratic) has	31,609
All Others.....	42
Blanks	2,952
Total Votes Cast.....	83,271

SECOND PLYMOUTH & NORFOLK DISTRICT

Michael D. Brady, of Brockton (Democratic) has.....	29,297
and appears to be elected.	
Jim Gordon, of Hanson (Republican) has.....	16,693
All Others.....	38
Blanks	1,733
Total Votes Cast.....	47,761

FIRST SUFFOLK DISTRICT

Nicholas P. Collins, of Boston (Democratic) has	41,069
and appears to be elected.	
All Others.....	929
Blanks	10,482
Total Votes Cast.....	52,480

SECOND SUFFOLK DISTRICT

Liz Miranda, of Boston (Democratic) has	35,207
and appears to be elected.	
All Others.....	439
Blanks	5,011
Total Votes Cast.....	40,657

THIRD SUFFOLK DISTRICT

Lydia Marie Edwards, of Boston (Democratic) has	32,396
and appears to be elected.	
All Others.....	1,006
Blanks	11,580
Total Votes Cast.....	44,982

SUFFOLK & MIDDLESEX DISTRICT

William N. Brownsberger, of Belmont (Democratic) has	42,713
and appears to be elected.	
All Others.....	437
Blanks	9,782
Total Votes Cast.....	52,932

FIRST WORCESTER DISTRICT

Robyn K. Kennedy, of Worcester (Democratic) has	30,138
and appears to be elected.	
Lisa K. Mair, of Berlin (Unenrolled) has.....	10,805
All Others.....	456
Blanks	3,318
Total Votes Cast.....	44,717

SECOND WORCESTER DISTRICT

Michael O. Moore, of Millbury (Democratic) has.....	40,946
and appears to be elected.	
All Others.....	793
Blanks	12,641
Total Votes Cast.....	54,380

WORCESTER & HAMPDEN DISTRICT

Ryan C. Fattman, of Sutton (Republican) has	53,456
and appears to be elected.	
All Others.....	833
Blanks	17,109
Total Votes Cast.....	71,398

WORCESTER & HAMPSHIRE DISTRICT

Anne M. Gobi, of Spencer (Democratic) has	35,409
and appears to be elected.	
James Anthony Amorello, of Holden (Republican) has	29,734
All Others.....	15
Blanks	1,580
Total Votes Cast.....	66,738

WORCESTER & MIDDLESEX DISTRICT

John J. Cronin, of Lunenburg (Democratic) has	36,784
and appears to be elected.	
Kenneth B. Hoyt, of Westford (Republican) has	24,238
All Others.....	35
Blanks	2,232
Total Votes Cast.....	63,289

REPRESENTATIVE IN GENERAL COURT

FIRST BARNSTABLE DISTRICT

Christopher Richard Flanagan, of Dennis (Democratic) has	12,454
and appears to be elected.	
Tracy A. Post, of Yarmouth (Republican) has.....	10,389
Abraham Kasparian, Jr., of Yarmouth (We The People) has	447
All Others.....	17
Blanks	457
Total Votes Cast.....	23,764

SECOND BARNSTABLE DISTRICT

Kip A. Diggs, of Barnstable (Democratic) has	11,664
and appears to be elected.	
William Buffington Peters, of Barnstable (Republican) has	7,098
All Others.....	18
Blanks	363
Total Votes Cast.....	19,143

THIRD BARNSTABLE DISTRICT

David T. Vieira, of Falmouth (Republican) has	12,715
and appears to be elected.	
Kathleen Fox Alfano, of Bourne (Democratic) has	10,227
All Others.....	7
Blanks	735
Total Votes Cast.....	23,684

FOURTH BARNSTABLE DISTRICT

Sarah K. Peake, of Provincetown (Democratic) has	18,786
and appears to be elected.	
All Others.....	240
Blanks	5,706
Total Votes Cast.....	24,732

FIFTH BARNSTABLE DISTRICT

Steven G. Xiarhos, of Barnstable (Republican) has	15,324
and appears to be elected.	
All Others.....	300
Blanks	5,704
Total Votes Cast.....	21,328

BARNSTABLE, DUKES & NANTUCKET DISTRICT

Dylan A. Fernandes, of Falmouth (Democratic) has	15,858
and appears to be elected.	
All Others	227
Blanks	4,359
Total Votes Cast.....	20,444

FIRST BERKSHIRE DISTRICT

John Barrett, III, of North Adams (Democratic) has	12,787
and appears to be elected.	
All Others	167
Blanks	2,817
Total Votes Cast.....	15,771

SECOND BERKSHIRE DISTRICT

Tricia Farley-Bouvier, of Pittsfield (Democratic) has	10,883
and appears to be elected.	
All Others	74
Blanks	3,277
Total Votes Cast.....	14,234

THIRD BERKSHIRE DISTRICT

William “Smitty” Pignatelli, of Lenox (Democratic) has.....	16,340
and appears to be elected.	
Michael Silvio Lavery, of Becket (Green-Rainbow Party) has	1,698
All Others	109
Blanks	1,490
Total Votes Cast.....	19,637

FIRST BRISTOL DISTRICT

Fred “Jay” Barrows, of Mansfield (Republican) has	9,680
and appears to be elected.	
Brendan A. Roche, of Mansfield (Democratic)	7,135
All Others	9
Blanks	669
Total Votes Cast.....	17,493

SECOND BRISTOL DISTRICT

James K. Hawkins, of Attleboro (Democratic) has	8,468
and appears to be elected.	
Steven Joseph Escobar, of Attleboro (Republican) has	5,516
All Others.....	3
Blanks	368
Total Votes Cast.....	14,355

THIRD BRISTOL DISTRICT

Carol A. Doherty, of Taunton (Democratic) has	8,011
and appears to be elected.	
Christopher P. Coute, of Taunton (Republican) has	6,036
All Others.....	4
Blanks	437
Total Votes Cast.....	14,488

FOURTH BRISTOL DISTRICT

Steven S. Howitt, of Seekonk (Republican) has	13,380
and appears to be elected.	
All Others.....	244
Blanks	4,149
Total Votes Cast.....	17,773

FIFTH BRISTOL DISTRICT

Patricia A. Haddad, of Somerset (Democratic) has	8,951
and appears to be elected.	
Justin Thurber, of Somerset (Republican) has	7,514
All Others.....	5
Blanks	393
Total Votes Cast.....	16,863

SIXTH BRISTOL DISTRICT

Carole A. Fiola, of Fall River (Democratic) has.....	7,321
and appears to be elected.	
All Others.....	256
Blanks	2,949
Total Votes Cast.....	10,526

SEVENTH BRISTOL DISTRICT

Alan Silvia, of Fall River (Democratic) has	4,886
and appears to be elected.	
All Others	179
Blanks	1,561
Total Votes Cast.....	6,626

EIGHTH BRISTOL DISTRICT

Paul A. Schmid, III, of Westport (Democratic) has.....	8,437
and appears to be elected.	
Evan Gendreau, of Westport (Republican) has.....	7,326
All Others	12
Blanks	418
Total Votes Cast.....	16,193

NINTH BRISTOL DISTRICT

Christopher Markey, of Dartmouth (Democratic) has	10,977
and appears to be elected.	
All Others	294
Blanks	4,410
Total Votes Cast.....	15,681

TENTH BRISTOL DISTRICT

William M. Straus, of Mattapoisett (Democratic) has	10,648
and appears to be elected.	
Jeffrey Gerald Swift, of Mattapoisett (Republican) has	8,280
All Others	7
Blanks	497
Total Votes Cast.....	19,432

ELEVENTH BRISTOL DISTRICT

Christopher Hendricks, of New Bedford (Democratic) has.....	4,906
and appears to be elected.	
All Others	161
Blanks	1,408
Total Votes Cast.....	6,475

TWELFTH BRISTOL DISTRICT

Norman J. Orrall, of Lakeville (Republican) has.....	12,370
and appears to be elected.	
All Others.....	186
Blanks	4,677
Total Votes Cast.....	17,233

THIRTEENTH BRISTOL DISTRICT

Antonio F.D. Cabral, of New Bedford (Democratic) has	6,977
and appears to be elected.	
All Others.....	225
Blanks	2,144
Total Votes Cast.....	9,346

FOURTEENTH BRISTOL DISTRICT

Adam Scanlon, of North Attleborough (Democratic) has	11,212
and appears to be elected.	
All Others.....	169
Blanks	4,823
Total Votes Cast.....	16,204

FIRST ESSEX DISTRICT

CJ Fitzwater, of Salisbury (Republican) has.....	8,657
Dawne F. Shand, of Newburyport (Democratic) has.....	12,790
and appears to be elected.	
All Others.....	18
Blanks	798
Total Votes Cast.....	22,263

**SECOND ESSEX DISTRICT
(AMENDED PER RECOUNT)**

Leonard Mirra, of Georgetown (Republican) has.....	11,762
Kristin E. Kassner, of Hamilton (Democratic) has	11,763
and appears to be elected.	
All Others.....	5
Blanks	638
Total Votes Cast.....	24,168

THIRD ESSEX DISTRICT

Andres X. Vargas, of Haverhill (Democratic) has.....	9,176
and appears to be elected.	
All Others.....	385
Blanks	3,369
Total Votes Cast.....	12,930

FOURTH ESSEX DISTRICT

Estela A. Reyes, of Lawrence (Democratic) has	4,884
and appears to be elected.	
All Others.....	238
Blanks	1,755
Total Votes Cast.....	6,877

FIFTH ESSEX DISTRICT

Ann-Margaret Ferrante, of Gloucester (Democratic) has	14,971
and appears to be elected.	
Ashley Sullivan, of Gloucester (Republican) has	6,683
All Others.....	34
Blanks	756
Total Votes Cast.....	22,444

SIXTH ESSEX DISTRICT

Jerald A. Parisella, of Beverly (Democratic) has.....	14,666
and appears to be elected.	
All Others.....	183
Blanks	3,764
Total Votes Cast.....	18,613

SEVENTH ESSEX DISTRICT

Manny Cruz, of Salem (Democratic) has	13,608
and appears to be elected.	
All Others.....	46
Blanks	3,048
Total Votes Cast.....	16,702

EIGHTH ESSEX DISTRICT

Jennifer WB Armini, of Marblehead (Democratic) has.....	14,156
and appears to be elected.	
All Others.....	215
Blanks	4,956
Total Votes Cast.....	19,327

NINTH ESSEX DISTRICT

Donald H. Wong, of Saugus (Republican) has	13,664
and appears to be elected	
All Others.....	133
Blanks	4,604
Total Votes Cast.....	18,401

TENTH ESSEX DISTRICT

Daniel Cahill, of Lynn (Democratic) has.....	6,042
and appears to be elected.	
All Others.....	217
Blanks	1,870
Total Votes Cast.....	8,129

ELEVENTH ESSEX DISTRICT

Peter L. Capano, of Lynn (Democratic) has	7,135
and appears to be elected.	
All Others.....	201
Blanks	1,999
Total Votes Cast.....	9,335

TWELFTH ESSEX DISTRICT

Thomas P. Walsh, of Peabody (Democratic) has	12,021
and appears to be elected.	
All Others.....	335
Blanks	3,729
Total Votes Cast.....	16,085

THIRTEENTH ESSEX DISTRICT

Sally P. Kerans, of Danvers (Democratic) has	13,923
and appears to be elected.	
Michael D. Bean (Write-in), of Danvers has	571
All Others	307
Blanks	6,009
Total Votes Cast.....	20,810

FOURTEENTH ESSEX DISTRICT

Joseph G. Finn, of North Andover (Republican) has.....	9,161
Adrienne Ramos, of North Andover (Democratic) has	10,879
and appears to be elected	
All Others.....	12
Blanks	544
Total Votes Cast.....	20,596

FIFTEENTH ESSEX DISTRICT

Ryan M. Hamilton, of Methuen (Democratic) has	10,822
and appears to be elected.	
All Others.....	543
Blanks	5,566
Total Votes Cast.....	16,931

SIXTEENTH ESSEX DISTRICT

Francisco E. Paulino, of Methuen (Democratic) has	5,363
and appears to be elected.	
All Others.....	224
Blanks	1,808
Total Votes Cast.....	7,395

SEVENTEENTH ESSEX DISTRICT

Frank A. Moran, of Lawrence (Democratic) has	6,031
and appears to be elected.	
All Others.....	145
Blanks	1,792
Total Votes Cast.....	7,968

EIGHTEENTH ESSEX DISTRICT

Tram T. Nguyen, of Andover (Democratic) has	11,812
and appears to be elected.	
Jeffrey Peter Dufour., of Andover (Republican) has	7,738
All Others.....	17
Blanks	400
Total Votes Cast.....	19,967

FIRST FRANKLIN DISTRICT

Natalie M. Blais, of Deerfield (Democratic) has	16,086
and appears to be elected.	
All Others.....	158
Blanks	3,460
Total Votes Cast.....	19,704

SECOND FRANKLIN DISTRICT

Susannah M. Whipps, of Athol (Independent) has	9,797
and appears to be elected.	
Jeffrey L. Raymond, of Athol (Republican) has	4,892
Kevin Patrick McKeown, of Gill (Unenrolled) has	736
All Others.....	24
Blanks	837
Total Votes Cast.....	16,286

FIRST HAMPDEN DISTRICT

Todd M. Smola, of Warren (Republican) has	13,297
and appears to be elected.	
All Others.....	218
Blanks	3,178
Total Votes Cast.....	16,693

SECOND HAMPDEN DISTRICT

Brian M. Ashe, of Longmeadow (Democratic) has	13,670
and appears to be elected.	
All Others.....	349
Blanks	4,748
Total Votes Cast.....	18,767

THIRD HAMPDEN DISTRICT

Nicholas A. Boldyga, of Southwick (Republican) has	11,093
and appears to be elected.	
Anthony J. Russo, of Agawam (Democratic) has	7,397
All Others	6
Blanks	360
Total Votes Cast.....	18,856

FOURTH HAMPDEN DISTRICT

Kelly W. Pease, of Westfield (Republican) has.....	12,256
and appears to be elected.	
All Others.....	225
Blanks	3,868
Total Votes Cast.....	16,349

FIFTH HAMPDEN DISTRICT

Patricia A. Duffy, of Holyoke (Democratic) has	7,990
and appears to be elected.	
All Others.....	219
Blanks	2,302
Total Votes Cast.....	10,511

SIXTH HAMPDEN DISTRICT

Michael J. Finn, of West Springfield (Democratic) has	9,055
and appears to be elected.	
All Others.....	180
Blanks	3,602
Total Votes Cast.....	12,837

SEVENTH HAMPDEN DISTRICT

James Chip Harrington, of Ludlow (Republican) has	8,573
Aaron L. Saunders, of Belchertown (Democratic) has	9,577
and appears to be elected.	
All Others.....	14
Blanks	454
Total Votes Cast.....	18,618

EIGHTH HAMPDEN DISTRICT

Shirley B. Arriaga, of Chicopee (Democratic)	8,129
and appears to be elected.	
Sean Goonan, of Chicopee (Independent)	4,420
All Others	65
Blanks	775
Total Votes Cast.....	13,389

NINTH HAMPDEN DISTRICT

Orlando Ramos, of Springfield (Democratic) has	5,913
and appears to be elected.	
All Others	216
Blanks	1,442
Total Votes Cast.....	7,571

TENTH HAMPDEN DISTRICT

Carlos Gonzalez, of Springfield (Democratic) has	4,069
and appears to be elected.	
All Others	105
Blanks	740
Total Votes Cast.....	4,914

ELEVENTH HAMPDEN DISTRICT

Bud L. Williams, of Springfield (Democratic) has	6,165
and appears to be elected.	
All Others	245
Blanks	1,358
Total Votes Cast.....	7,768

TWELFTH HAMPDEN DISTRICT

Angelo J. Puppolo, Jr., of Springfield (Democratic) has	12,882
and appears to be elected.	
All Others	340
Blanks	3,763
Total Votes Cast.....	16,985

FIRST HAMPSHIRE DISTRICT

Lindsay N. Sabadosa, of Northampton (Democratic) has	17,592
and appears to be elected.	
All Others	68
Blanks	3,164
Total Votes Cast.....	20,824

SECOND HAMPSHIRE DISTRICT

Daniel R. Carey, of Easthampton (Democratic) has	15,492
and appears to be elected.	
All Others	209
Blanks	3,703
Total Votes Cast.....	19,404

THIRD HAMPSHIRE DISTRICT

Mindy Domb, of Amherst (Democratic) has	8,333
and appears to be elected.	
All Others	68
Blanks	1,269
Total Votes Cast.....	9,670

**FIRST MIDDLESEX DISTRICT
(AMENDED PER RECOUNT)**

Margaret R. Scarsdale, of Pepperell (Democratic) has	9,409
and appears to be elected.	
Andrew James Shepherd, of Townsend (Republican) has.....	9,402
Catherine Lundeen, of Pepperell (Independent) has	1,075
All Others	91
Blanks	440
Total Votes Cast.....	20,417

SECOND MIDDLESEX DISTRICT

James Arciero, of Westford (Democratic) has.....	12,792
and appears to be elected.	
Raymond Yinggang Xie, of Westford (Republican) has	6,931
All Others	7
Blanks	455

Total Votes Cast..... 20,185

THIRD MIDDLESEX DISTRICT

Kate Hogan, of Stow (Democratic) has 15,844
and appears to be elected.

All Others..... 309

Blanks 4,162

Total Votes Cast..... 20,315

FOURTH MIDDLESEX DISTRICT

Danielle W. Gregoire, of Marlborough (Democratic) has 10,157
and appears to be elected.

All Others..... 133

Blanks 3,663

Total Votes Cast..... 13,953

FIFTH MIDDLESEX DISTRICT

David Paul Linsky, of Natick (Democratic) has 15,019
and appears to be elected.

All Others..... 139

Blanks 4,400

Total Votes Cast..... 19,558

SIXTH MIDDLESEX DISTRICT

Priscila S. Sousa, of Framingham (Democratic) has 6,839
and appears to be elected.

All Others..... 202

Blanks 1,524

Total Votes Cast..... 8,565

SEVENTH MIDDLESEX DISTRICT

Jack Patrick Lewis, of Framingham (Democratic) has 13,362
and appears to be elected.

All Others..... 170

Blanks 3,822

Total Votes Cast..... 17,354

EIGHTH MIDDLESEX DISTRICT

James C. Arena-DeRosa, of Holliston (Democratic) has	12,916
and appears to be elected.	
Loring Barnes, of Millis (Republican) has	6,947
All Others.....	10
Blanks	636
Total Votes Cast.....	20,509

NINTH MIDDLESEX DISTRICT

Thomas M. Stanley, of Waltham (Democratic) has	11,372
and appears to be elected.	
All Others.....	224
Blanks	3,408
Total Votes Cast.....	15,004

TENTH MIDDLESEX DISTRICT

John J. Lawn, Jr., of Watertown (Democratic) has.....	9,979
and appears to be elected.	
All Others.....	138
Blanks	2,862
Total Votes Cast.....	12,979

ELEVENTH MIDDLESEX DISTRICT

Kay S. Khan, of Newton (Democratic) has	13,394
and appears to be elected.	
All Others.....	229
Blanks	3,857
Total Votes Cast.....	17,480

TWELFTH MIDDLESEX DISTRICT

Ruth B. Balsler, of Newton (Democratic) has	15,164
and appears to be elected.	
All Others.....	197
Blanks	4,281
Total Votes Cast.....	19,642

THIRTEENTH MIDDLESEX DISTRICT

Carmine Lawrence Gentile, of Sudbury (Democratic) has.....	16,338
and appears to be elected.	
All Others.....	100
Blanks	5,002
Total Votes Cast.....	21,440

FOURTEENTH MIDDLESEX DISTRICT

Simon Cataldo, of Concord (Democratic) has.....	14,542
and appears to be elected.	
Rodney E. Cleaves, of Chelmsford (Republican) has.....	5,400
All Others.....	16
Blanks	831
Total Votes Cast.....	20,789

FIFTEENTH MIDDLESEX DISTRICT

Michelle Ciccolo, of Lexington (Democratic) has	14,123
and appears to be elected.	
All Others.....	179
Blanks	4,912
Total Votes Cast.....	19,214

SIXTEENTH MIDDLESEX DISTRICT

Rodney M. Elliott., of Lowell (Democratic) has	7,270
and appears to be elected.	
Karla Jean Miller., of Lowell (Republican) has.....	3,838
All Others.....	24
Blanks	707
Total Votes Cast.....	11,839

SEVENTEENTH MIDDLESEX DISTRICT

Vanna Howard, of Lowell (Democratic) has	7,168
and appears to be elected.	
All Others.....	266
Blanks	2,571
Total Votes Cast.....	10,005

EIGHTEENTH MIDDLESEX DISTRICT

Rady Mom, of Lowell (Democratic) has	4,434
and appears to be elected.	
All Others.....	225
Blanks	1,565
Total Votes Cast.....	6,224

NINETEENTH MIDDLESEX DISTRICT

David A. Robertson, of Wilmington (Democratic) has	10,248
and appears to be elected.	
Paul Sarnowski, of Wilmington (Republican) has.....	7,955
All Others.....	14
Blanks	532
Total Votes Cast.....	18,749

TWENTIETH MIDDLESEX DISTRICT

Bradley H. Jones, Jr., of North Reading (Republican) has	16,194
and appears to be elected.	
All Others.....	162
Blanks	5,134
Total Votes Cast.....	21,490

TWENTY-FIRST MIDDLESEX DISTRICT

Kenneth I. Gordon, of Bedford (Democratic) has	13,510
and appears to be elected.	
All Others.....	409
Blanks	5,306
Total Votes Cast.....	19,225

TWENTY-SECOND MIDDLESEX DISTRICT

Marc T. Lombardo, of Billerica (Republican) has.....	9,224
and appears to be elected.	
Teresa Nicole English, of Billerica (Democratic) has	7,747
All Others.....	25
Blanks	347
Total Votes Cast.....	17,343

TWENTY-THIRD MIDDLESEX DISTRICT

Sean Garballey, of Arlington (Democratic) has	16,822
and appears to be elected.	
All Others	83
Blanks	3,938
Total Votes Cast.....	20,843

TWENTY-FOURTH MIDDLESEX DISTRICT

David M. Rogers, of Cambridge (Democratic) has	16,223
and appears to be elected.	
All Others	68
Blanks	4,397
Total Votes Cast.....	20,698

TWENTY-FIFTH MIDDLESEX DISTRICT

Marjorie C. Decker, of Cambridge (Democratic) has.....	11,018
and appears to be elected.	
All Others.....	56
Blanks	1,897
Total Votes Cast.....	12,971

TWENTY-SIXTH MIDDLESEX DISTRICT

Mike Connolly, of Cambridge (Democratic) has	11,714
and appears to be elected.	
All Others.....	111
Blanks	2,506
Total Votes Cast.....	14,331

TWENTY-SEVENTH MIDDLESEX DISTRICT

Erika Uyterhoeven, of Somerville (Democratic) has.....	15,698
and appears to be elected.	
All Others.....	227
Blanks	2,262
Total Votes Cast.....	18,187

TWENTY-EIGHTH MIDDLESEX DISTRICT

Joseph W. McGonagle, of Everett (Democratic) has	4,713
and appears to be elected.	
Michael W. Marchese, of Everett (Unenrolled) has	1,943
All Others.....	68
Blanks	747
Total Votes Cast.....	7,471

TWENTY-NINTH MIDDLESEX DISTRICT

Steven C. Owens, of Watertown (Democratic) has	14,817
and appears to be elected.	
All Others.....	51
Blanks	3,226
Total Votes Cast.....	18,094

THIRTIETH MIDDLESEX DISTRICT

Richard M. Haggerty, of Woburn (Democratic) has	13,027
and appears to be elected.	
All Others.....	80
Blanks	5,742
Total Votes Cast.....	18,849

THIRTY-FIRST MIDDLESEX DISTRICT

Michael Seamus Day, of Stoneham (Democratic) has	12,527
and appears to be elected.	
Theodore Christos Menounos, of Winchester (Independent) has.....	5,079
All Others.....	66
Blanks	1,856
Total Votes Cast.....	19,528

THIRTY-SECOND MIDDLESEX DISTRICT

Kate Lipper-Garabedian, of Melrose (Democratic) has	14,673
and appears to be elected.	
All Others.....	338
Blanks	4,962
Total Votes Cast.....	19,973

THIRTY-THIRD MIDDLESEX DISTRICT

Steven Ultrino, of Malden (Democratic) has	7,817
and appears to be elected.	
All Others.....	216
Blanks	2,027
Total Votes Cast.....	10,060

THIRTY-FOURTH MIDDLESEX DISTRICT

Christine P. Barber, of Somerville (Democratic) has	11,675
and appears to be elected.	
All Others.....	76
Blanks	2,621
Total Votes Cast.....	14,372

THIRTY-FIFTH MIDDLESEX DISTRICT

Paul J. Donato, of Medford (Democratic) has	10,474
and appears to be elected.	
All Others.....	112
Blanks	3,245
Total Votes Cast.....	13,831

THIRTY-SIXTH MIDDLESEX DISTRICT

Colleen M. Garry, of Dracut (Democratic) has	10,025
and appears to be elected.	
George Derek Boag, of Dracut (Republican) has	6,506
All Others.....	0
Blanks	581
Total Votes Cast.....	17,112

THIRTY-SEVENTH MIDDLESEX DISTRICT

Danillo A. Sena, of Acton (Democratic) has	14,330
and appears to be elected.	
All Others.....	197
Blanks	4,477
Total Votes Cast.....	19,004

FIRST NORFOLK DISTRICT

Bruce J. Ayers, of Quincy (Democratic) has	11,027
and appears to be elected.	
All Others	199
Blanks	2,565
Total Votes Cast.....	13,791

SECOND NORFOLK DISTRICT

Tackey Chan, of Quincy (Democratic) has.....	9,888
and appears to be elected.	
Sharon Marie Cintolo, of Quincy (Republican) has	4,119
All Others	14
Blanks	671
Total Votes Cast.....	14,692

THIRD NORFOLK DISTRICT

Ronald Mariano, of Quincy (Democratic) has.....	10,085
and appears to be elected.	
All Others	273
Blanks	3,358
Total Votes Cast.....	13,716

FOURTH NORFOLK DISTRICT

James Michael Murphy, of Weymouth (Democratic) has	10,255
and appears to be elected.	
Paul J. Rotondo, of Weymouth (Republican) has	5,778
All Others	12
Blanks	444
Total Votes Cast.....	16,489

FIFTH NORFOLK DISTRICT

Mark J. Cusack, of Braintree (Democratic) has.....	11,309
and appears to be elected.	
All Others	376
Blanks	5,406
Total Votes Cast.....	17,091

SIXTH NORFOLK DISTRICT

William C. Galvin, of Canton (Democratic) has	12,778
and appears to be elected.	
All Others	113
Blanks	3,909
Total Votes Cast.....	16,800

SEVENTH NORFOLK DISTRICT

William J. Driscoll, Jr., of Milton (Democratic) has	12,322
and appears to be elected.	
All Others	192
Blanks	3,793
Total Votes Cast.....	16,307

EIGHTH NORFOLK DISTRICT

Ted Philips, of Sharon (Democratic) has	12,257
and appears to be elected.	
Howard L. Terban, of Stoughton (Republican) has	5,400
All Others	8
Blanks	1,059
Total Votes Cast.....	18,724

NINTH NORFOLK DISTRICT

Kevin Kalkut, of Norfolk (Democratic) has	10,174
Marcus S. Vaughn, of Wrentham (Republican) has	10,534
and appears to be elected.	
All Others	12
Blanks	582
Total Votes Cast.....	21,302

TENTH NORFOLK DISTRICT

Jeffrey N. Roy, of Franklin (Democratic) has	12,045
and appears to be elected.	
Charles F. Bailey, III, of Franklin (Republican) has	6,852
All Others	16
Blanks	501
Total Votes Cast.....	19,414

ELEVENTH NORFOLK DISTRICT

Paul McMurtry, of Dedham (Democratic) has	14,495
and appears to be elected.	
All Others	215
Blanks	5,966
Total Votes Cast.....	20,676

TWELFTH NORFOLK DISTRICT

John H. Rogers, of Norwood (Democratic) has.....	12,798
and appears to be elected.	
All Others	272
Blanks	4,975
Total Votes Cast.....	18,045

THIRTEENTH NORFOLK DISTRICT

Denise C. Garlick, of Needham (Democratic) has	17,056
and appears to be elected.	
All Others	356
Blanks	4,312
Total Votes Cast.....	21,724

FOURTEENTH NORFOLK DISTRICT

Alice Hanlon Peisch, of Wellesley (Democratic) has.....	14,057
and appears to be elected.	
David Rolde, of Weston (Green-Rainbow) has	1,167
All Others	120
Blanks	3,225
Total Votes Cast.....	18,569

FIFTEENTH NORFOLK DISTRICT

Tommy Vitolo, of Brookline (Democratic) has.....	12,906
and appears to be elected.	
All Others	190
Blanks	2,301
Total Votes Cast.....	15,397

FIRST PLYMOUTH DISTRICT

Mathew J. Muratore, of Plymouth (Republican) has	12,470
and appears to be elected.	
Stephen Michael Palmer, of Plymouth (Democratic) has	9,121
All Others	19
Blanks	588
Total Votes Cast.....	22,198

SECOND PLYMOUTH DISTRICT

Susan Williams Gifford, of Wareham (Republican) has	13,019
and appears to be elected.	
All Others	206
Blanks	4,048
Total Votes Cast.....	17,273

THIRD PLYMOUTH DISTRICT

Joan Meschino, of Hull (Democratic) has	15,999
and appears to be elected.	
All Others	375
Blanks	5,849
Total Votes Cast.....	22,223

FOURTH PLYMOUTH DISTRICT

Patrick Joseph Kearney, of Scituate (Democratic) has	17,384
and appears to be elected.	
All Others	137
Blanks	6,218
Total Votes Cast.....	23,739

FIFTH PLYMOUTH DISTRICT

David F. DeCoste, of Norwell (Republican) has	10,039
and appears to be elected.	
Emmanuel J. Dockter, of Hanover (Democratic) has	9,363
All Others	11
Blanks	419
Total Votes Cast.....	19,832

SIXTH PLYMOUTH DISTRICT

Josh S. Cutler, of Duxbury (Democratic) has	12,163
and appears to be elected.	
Kenneth Sweezey, of Hanson (Republican) has	9,503
All Others.....	1
Blanks	373
Total Votes Cast.....	22,040

SEVENTH PLYMOUTH DISTRICT

Alyson M. Sullivan, of Abington (Republican) has	12,083
and appears to be elected.	
Brandon J. Griffin, of Whitman (Workers Party) has.....	3,945
All Others.....	23
Blanks	1,636
Total Votes Cast.....	17,687

EIGHTH PLYMOUTH DISTRICT

Angelo L. D’Emilia, of Bridgewater (Republican) has	9,449
and appears to be elected.	
Eric J. Haikola, of Raynham (Democratic) has	6,299
All Others.....	4
Blanks	620
Total Votes Cast.....	16,372

NINTH PLYMOUTH DISTRICT

Gerard J. Cassidy, of Brockton (Democratic) has	9,357
and appears to be elected.	
Lawrence P. Novak, of Brockton (Republican) has	6,072
All Others.....	25
Blanks	896
Total Votes Cast.....	16,350

TENTH PLYMOUTH DISTRICT

Michelle M. DuBois, of Brockton (Democratic) has.....	7,031
and appears to be elected.	
All Others.....	103
Blanks	2,220
Total Votes Cast.....	9,354

ELEVENTH PLYMOUTH DISTRICT

Rita A. Mendes, of Brockton (Democratic) has	5,066
and appears to be elected.	
Fred Fontaine (Write-in), of Brockton has	414
All Others.....	53
Blanks	863
Total Votes Cast.....	6,396

TWELFTH PLYMOUTH DISTRICT

Kathleen R. LaNatra, of Kingston (Democratic) has.....	10,603
and appears to be elected.	
Eric J. Meschino, of Plymouth (Republican) has	8,767
Charles F. McCoy, Jr., of Kingston (Non-Party Candidate) has	856
All Others.....	5
Blanks	593
Total Votes Cast.....	20,824

FIRST SUFFOLK DISTRICT

Adrian C. Madaro, of Boston (Democratic) has	7,022
and appears to be elected.	
All Others.....	165
Blanks	1,640
Total Votes Cast.....	8,827

SECOND SUFFOLK DISTRICT

Daniel Joseph Ryan, of Boston (Democratic) has	8,963
and appears to be elected.	
All Others.....	130
Blanks	2,174
Total Votes Cast.....	11,267

THIRD SUFFOLK DISTRICT

Aaron M. Michlewitz, of Boston (Democratic) has	9,238
and appears to be elected.	
All Others.....	161
Blanks	2,753
Total Votes Cast.....	12,152

FOURTH SUFFOLK DISTRICT

David M. Biele, of Boston (Democratic) has	11,566
and appears to be elected.	
All Others.....	282
Blanks	3,123
Total Votes Cast.....	14,971

FIFTH SUFFOLK DISTRICT

Christopher J. Worrell, of Boston (Democratic) has	5,939
and appears to be elected.	
Roy A. Owens, Sr., of Boston (Independent) has.....	750
Althea Garrison (Write-in), of Boston has.....	15
All Others.....	29
Blanks	676
Total Votes Cast.....	7,409

SIXTH SUFFOLK DISTRICT

Russell E. Holmes, of Boston (Democratic) has.....	7,675
and appears to be elected.	
All Others.....	109
Blanks	1,342
Total Votes Cast.....	9,126

SEVENTH SUFFOLK DISTRICT

Chynah Tyler, of Boston (Democratic) has	5,317
and appears to be elected.	
All Others.....	77
Blanks	932
Total Votes Cast.....	6,326

EIGHTH SUFFOLK DISTRICT

Jay D. Livingstone, of Boston (Democratic) has	9,701
and appears to be elected.	
All Others	185
Blanks	2,457
Total Votes Cast.....	12,343

NINTH SUFFOLK DISTRICT

Jon Santiago, of Boston (Democratic) has	9,957
and appears to be elected.	
All Others	141
Blanks	2,082
Total Votes Cast.....	12,180

TENTH SUFFOLK DISTRICT

Edward Francis Coppinger, of Boston (Democratic) has	15,817
and appears to be elected.	
All Others	7
Blanks	5,059
Total Votes Cast.....	20,883

ELEVENTH SUFFOLK DISTRICT

Judith A. Garcia, of Chelsea (Democratic) has	4,127
and appears to be elected.	
Todd B. Taylor, of Chelsea (Republican) has	1,552
All Others	5
Blanks	306
Total Votes Cast.....	5,990

TWELFTH SUFFOLK DISTRICT

Brandy Fluker Oakley, of Boston (Democratic) has	10,729
and appears to be elected.	
All Others	120
Blanks	2,234
Total Votes Cast.....	13,083

THIRTEENTH SUFFOLK DISTRICT

Daniel J. Hunt, of Boston (Democratic) has	8,761
and appears to be elected.	
All Others	255
Blanks	2,800
Total Votes Cast.....	11,816

FOURTEENTH SUFFOLK DISTRICT

Rob Consalvo, of Boston (Democratic) has	11,565
and appears to be elected.	
All Others	151
Blanks	2,330
Total Votes Cast.....	14,046

FIFTEENTH SUFFOLK DISTRICT

Samantha Montaña, of Boston (Democratic) has	13,030
and appears to be elected.	
All Others	154
Blanks	2,139
Total Votes Cast.....	15,323

SIXTEENTH SUFFOLK DISTRICT

Jessica Ann Giannino, of Revere (Democratic) has	5,753
and appears to be elected.	
All Others	175
Blanks	2,491
Total Votes Cast.....	8,419

SEVENTEENTH SUFFOLK DISTRICT

Kevin G. Honan, of Boston (Democratic) has	9,581
and appears to be elected.	
All Others	150
Blanks	1,756
Total Votes Cast.....	11,487

EIGHTEENTH SUFFOLK DISTRICT

Michael J. Moran, of Boston (Democratic) has	6,200
and appears to be elected.	
All Others	102
Blanks	1,456
Total Votes Cast.....	7,758

NINETEENTH SUFFOLK DISTRICT

Jeffrey Rosario Turco, of Winthrop (Democratic) has	7,803
and appears to be elected.	
All Others	385
Blanks	3,333
Total Votes Cast.....	11,521

FIRST WORCESTER DISTRICT

Kimberly N. Ferguson, of Holden (Republican) has	16,342
and appears to be elected.	
All Others	105
Blanks	5,275
Total Votes Cast.....	21,722

SECOND WORCESTER DISTRICT

Jonathan D. Zlotnik, of Gardner (Democratic) has.....	7,667
and appears to be elected.	
Bruce K. Chester, of Gardner (Republican) has	6,664
All Others.....	7
Blanks	285
Total Votes Cast.....	14,623

THIRD WORCESTER DISTRICT

Michael P. Kushmerek, of Fitchburg (Democratic) has	6,824
and appears to be elected.	
Aaron L. Packard, of Fitchburg (Republican) has	4,058
All Others.....	7
Blanks	501
Total Votes Cast.....	11,390

FOURTH WORCESTER DISTRICT

Natalie Higgins, of Leominster (Democratic) has	7,193
and appears to be elected.	
John M. Dombrowski, of Leominster (Unenrolled) has	6,510
All Others.....	11
Blanks	737
Total Votes Cast.....	14,451

FIFTH WORCESTER DISTRICT

Donald R. Berthiaume, Jr., of Spencer (Republican) has	14,151
and appears to be elected.	
All Others.....	235
Blanks	4,188
Total Votes Cast.....	18,574

SIXTH WORCESTER DISTRICT

Peter J. Durant, of Spencer (Republican) has	10,526
and appears to elected.	
All Others.....	186
Blanks	3,209
Total Votes Cast.....	13,921

SEVENTH WORCESTER DISTRICT

Paul K. Frost, of Auburn (Republican) has.....	12,432
and appears to be elected.	
Terry Burke Dotson, of Millbury (Unenrolled) has.....	4,067
All Others.....	64
Blanks	1,477
Total Votes Cast.....	18,040

EIGHTH WORCESTER DISTRICT

Michael J. Soter, of Bellingham (Republican) has	13,182
and appears to be elected.	
All Others.....	251
Blanks	3,993
Total Votes Cast.....	17,426

NINTH WORCESTER DISTRICT

David K. Muradian, Jr., of Grafton (Republican) has	13,516
and appears to be elected.	
All Others	170
Blanks	4,740
Total Votes Cast.....	18,426

TENTH WORCESTER DISTRICT

Brian William Murray, of Milford (Democratic) has	10,323
and appears to be elected.	
All Others	92
Blanks	4,693
Total Votes Cast.....	15,108

ELEVENTH WORCESTER DISTRICT

Hannah E. Kane, of Shrewsbury (Republican) has.....	9,194
and appears to be elected.	
Stephen Fishman, of Shrewsbury (Democratic) has.....	6,496
All Others.....	5
Blanks	466
Total Votes Cast.....	16,161

TWELFTH WORCESTER DISTRICT

Meghan K. Kilcoyne, of Clinton (Democratic) has	11,044
and appears to be elected.	
Michael A. Vulcano, of Northborough (Republican) has.....	7,247
All Others.....	9
Blanks	563
Total Votes Cast.....	18,863

THIRTEENTH WORCESTER DISTRICT

John J. Mahoney, of Worcester (Democratic) has	10,413
and appears to be elected.	
All Others.....	261
Blanks	2,756
Total Votes Cast.....	13,430

FOURTEENTH WORCESTER DISTRICT

James J. O'Day, of West Boylston (Democratic) has.....	9,293
and appears to be elected.	
All Others.....	430
Blanks	2,758
Total Votes Cast.....	12,481

FIFTEENTH WORCESTER DISTRICT

Mary S. Keefe, of Worcester (Democratic) has.....	4,540
and appears to be elected.	
All Others.....	150
Blanks	1,057
Total Votes Cast.....	5,747

SIXTEENTH WORCESTER DISTRICT

Daniel M. Donahue, of Worcester (Democratic) has	6,111
and appears to be elected.	
All Others.....	274
Blanks	1,747
Total Votes Cast.....	8,132

SEVENTEENTH WORCESTER DISTRICT

David Henry Argosky LeBoeuf, of Worcester (Democratic) has.....	4,745
and appears to be elected.	
Paul J. Fullen, of Worcester (Republican) has.....	3,270
All Others.....	17
Blanks	367
Total Votes Cast.....	8,399

EIGHTEENTH WORCESTER DISTRICT

Joseph D. McKenna, of Webster (Republican) has	13,642
and appears to be elected.	
All Others.....	169
Blanks	4,178
Total Votes Cast.....	17,989

NINETEENTH WORCESTER DISTRICT

Kate Donaghue, of Westborough (Democratic) has	11,560
and appears to be elected.	
Jonathan I. Hostage, of Southborough (Republican) has.....	5,560
All Others.....	8
Blanks	510
Total Votes Cast.....	17,638

DISTRICT ATTORNEY

BERKSHIRE DISTRICT

Timothy J. Shugrue, of Pittsfield (Democratic) has	41,064
and appears to be elected.	
All Others.....	447
Blanks	8,131
Total Votes Cast.....	49,642

BRISTOL DISTRICT

Thomas M. Quinn, III, of Fall River (Democratic) has	127,376
and appears to be elected.	
All Others.....	2,699
Blanks	55,460
Total Votes Cast.....	185,535

CAPE & ISLANDS DISTRICT

Robert Joseph Galibois, of Barnstable (Democratic) has	72,970
and appears to be elected.	
Daniel Higgins, of Barnstable (Republican) has.....	56,408
All Others.....	40
Blanks	3,677
Total Votes Cast.....	133,095

EASTERN DISTRICT

Paul F. Tucker, of Salem (Democratic) has	203,382
and appears to be elected.	
All Others	5,340
Blanks	80,669
Total Votes Cast.....	289,391

HAMPDEN DISTRICT

Anthony D. Gulluni, of Springfield (Democratic) has	105,525
and appears to be elected.	
All Others	2,460
Blanks	31,718
Total Votes Cast.....	139,703

MIDDLE DISTRICT

Joseph D. Early, Jr., of Worcester (Democratic) has	209,803
and appears to be elected.	
All Others	5,501
Blanks	76,765
Total Votes Cast.....	292,069

NORFOLK DISTRICT

Michael W. Morrissey, of Quincy (Democratic) has	208,563
and appears to be elected.	
All Others	3,750
Blanks	75,606
Total Votes Cast.....	287,919

NORTHERN DISTRICT

Marian T. Ryan, of Belmont (Democratic) has	451,484
and appears to be elected.	
All Others	6,994
Blanks	153,747
Total Votes Cast.....	612,225

NORTHWESTERN DISTRICT

David E. Sullivan, of Easthampton (Democratic) has	80,079
and appears to be elected.	
All Others	1,150
Blanks	19,758
Total Votes Cast.....	100,987

PLYMOUTH DISTRICT

Timothy J. Cruz, of Marshfield (Republican) has	132,133
and appears to be elected.	
Rahsaan Hall, of Brockton (Democratic) has	77,685
All Others	114
Blanks	6,776
Total Votes Cast.....	216,708

SUFFOLK DISTRICT

Kevin R. Hayden, of Boston (Democratic) has	153,490
and appears to be elected.	
All Others	4,240
Blanks	46,457
Total Votes Cast.....	204,187

SHERIFF

BARNSTABLE COUNTY

Donna D. Buckley, of Falmouth (Democratic) has	60,124
and appears to be elected.	
Timothy R. Whelan, of Brewster (Republican) has.....	56,201
All Others.....	39
Blanks	2,369
Total Votes Cast.....	118,733

BERKSHIRE COUNTY

Thomas N. Bowler, of Pittsfield (Democratic) has.....	41,713
and appears to be elected.	
All Others.....	301
Blanks	7,628
Total Votes Cast.....	49,642

BRISTOL COUNTY

Thomas M. Hodgson, of Dartmouth (Republican) has.....	88,910
Paul R. Heroux, of Attleboro (Democratic) has	92,201
and appears to be elected.	
All Others.....	126
Blanks	4,298
Total Votes Cast.....	185,535

DUKES COUNTY

Robert Ogden, of West Tisbury (Democratic) has	7,504
and appears to be elected.	
Erik Blake (Write-in), of West Tisbury has.....	50
All Others.....	80
Blanks	1,773
Total Votes Cast.....	9,407

ESSEX COUNTY

Kevin F. Coppinger, of Lynn (Democratic) has	203,862
and appears to be elected.	
All Others.....	5,202
Blanks	80,327
Total Votes Cast.....	289,391

FRANKLIN COUNTY

Christopher J. Donelan, of Greenfield (Democratic) has	25,594
and appears to be elected.	
All Others.....	320
Blanks	6,056
Total Votes Cast.....	31,970

HAMPDEN COUNTY

Nick Cocchi, of Ludlow (Democratic) has	108,133
and appears to be elected.	
All Others	2,365
Blanks	29,205
Total Votes Cast.....	139,703

HAMPSHIRE COUNTY

Patrick J. Cahillane, of Northampton (Democratic) has	47,084
and appears to be elected.	
Yvonne C. Gittelson (Write-in) of Goshen has	6,006
All Others	528
Blanks	11,711
Total Votes Cast.....	65,329

MIDDLESEX COUNTY

Peter J. Koutoujian, of Waltham (Democratic) has	451,548
and appears to be elected.	
All Others	6,852
Blanks	153,825
Total Votes Cast.....	612,225

NANTUCKET COUNTY

James A. Perelman, of Nantucket (Democratic) has	4,209
and appears to be elected.	
David J. Aguiar, of Nantucket (Independent) has.....	610
All Others	7
Blanks	129
Total Votes Cast.....	4,955

NORFOLK COUNTY

Patrick W. McDermott, of Quincy (Democratic) has	205,834
and appears to be elected.	
All Others	3,665
Blanks	78,420
Total Votes Cast.....	287,919

PLYMOUTH COUNTY

Joseph Daniel McDonald, Jr., of Kingston (Republican) has	154,682
and appears to be elected.	
All Others	2,403
Blanks	59,623
Total Votes Cast.....	216,708

SUFFOLK COUNTY

Steven W. Tompkins of Boston (Democratic) has	154,205
and appears to be elected.	
All Others	3,753
Blanks	46,229
Total Votes Cast.....	204,187

WORCESTER COUNTY

Lewis G. Evangelidis, of Holden (Republican) has.....	166,968
and appears to be elected.	
David M. Fontaine, of Paxton (Democratic) has	116,582
All Others	302
Blanks	11,905
Total Votes Cast.....	295,757

STATEWIDE BALLOT QUESTIONS

QUESTION 1 PROPOSED CONSTITUTIONAL AMENDMENT

Do you approve of the adoption of an amendment to the constitution summarized below, which was approved by the General Court in joint sessions of the two houses on June 12, 2019 (yeas 147 – nays 48); and again on June 9, 2021 (yea 159 – nays 41)?

SUMMARY

This proposed constitutional amendment would establish an additional 4% state income tax on that portion of annual taxable income in excess of \$1 million. This income level would be adjusted annually, by the same method used for federal income-tax brackets, to reflect increases in the cost of living. Revenues from this tax would be used, subject to appropriation by the state Legislature, for public education, public colleges and universities; and for the repair and maintenance of roads, bridges, and public transportation. The proposed amendment would apply to tax years beginning on or after January 1, 2023.

	YES	NO	BLANK	TOTAL
County of Barnstable	55,414	60,152	3,167	118,733
County of Berkshire	32,183	15,429	2,030	49,642
County of Bristol	82,774	94,585	8,176	185,535
County of Dukes County	5,322	3,705	380	9,407
County of Essex	138,519	140,903	9,969	289,391
County of Franklin	21,052	9,859	1,059	31,970
County of Hampden	66,168	67,958	5,577	139,703
County of Hampshire	43,042	20,526	1,761	65,329
County of Middlesex	330,947	262,652	18,626	612,225
County of Nantucket	2,131	2,387	437	4,955
County of Norfolk	134,679	143,144	10,096	287,919
County of Plymouth	91,819	117,953	6,936	216,708
County of Suffolk	124,409	70,476	9,302	204,187
County of Worcester	138,673	148,496	8,588	295,757
TOTAL	1,267,132	1,158,225	86,104	2,511,461

QUESTION 2
LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives on or before May 3, 2022?

SUMMARY

This proposed law would direct the Commissioner of the Massachusetts Division of Insurance to approve or disapprove the rates of dental benefit plans and would require that a dental insurance carrier meet an annual aggregate medical loss ratio for its covered dental benefit plans of 83 percent. The medical loss ratio would measure the amount of premium dollars a dental insurance carrier spends on its members' dental expenses and quality improvements, as opposed to administrative expenses. If a carrier's annual aggregate medical loss ratio is less than 83 percent, the carrier would be required to refund the excess premiums to its covered individuals and groups. The proposed law would allow the Commissioner to waive or adjust the refunds only if it is determined that issuing refunds would result in financial impairment for the carrier.

The proposed law would apply to dental benefit plans regardless of whether they are issued directly by a carrier, through the connector, or through an intermediary. The proposed law would not apply to dental benefit plans issued, delivered, or renewed to a self-insured group or where the carrier is acting as a third-party administrator.

The proposed law would require the carriers offering dental benefit plans to submit information about their current and projected medical loss ratio, administrative expenses, and other financial information to the Commissioner. Each carrier would be required to submit an annual comprehensive financial statement to the Division of Insurance, itemized by market group size and line of business. A carrier that also provides administrative services to one or more self-insured groups would also be required to file an appendix to their annual financial statement with information about its self-insured business. The proposed law would impose a late penalty on a carrier that does not file its annual report on or before April 1.

The Division would be required to make the submitted data public, to issue an annual summary to certain legislative committees, and to exchange the data with the Health Policy Commission. The Commissioner would be required to adopt standards requiring the registration of persons or entities not otherwise licensed or registered by the Commissioner and criteria for the standardized reporting and uniform allocation methodologies among carriers.

The proposed law would allow the Commissioner to approve dental benefit policies for the purpose of being offered to individuals or groups. The Commissioner would be required to adopt regulations to determine eligibility criteria.

The proposed law would require carriers to file group product base rates and any changes to group rating factors that are to be effective on January 1 of each year on or before July 1 of the preceding year. The Commissioner would be required to disapprove any proposed changes to base rates that are excessive, inadequate, or unreasonable in relation to the benefits charged. The Commissioner would also be required to disapprove any change to group rating factors that is discriminatory or not actuarially sound.

The proposed law sets forth criteria that, if met, would require the Commissioner to presumptively disapprove a carrier's rate, including if the aggregate medical loss ratio for all dental benefit plans offered by a carrier is less than 83 percent.

The proposed law would establish procedures to be followed if a proposed rate is presumptively disapproved or if the Commissioner disapproves a rate.

The proposed law would require the Division to hold a hearing if a carrier reports a risk-based capital ratio on a combined entity basis that exceeds 700 percent in its annual report.

The proposed law would require the Commissioner to promulgate regulations consistent with its provisions by October 1, 2023. The proposed law would apply to all dental benefit plans issued, made effective, delivered, or renewed on or after January 1, 2024.

	YES	NO	BLANK	TOTAL
County of Barnstable	78,347	36,425	3,961	118,733
County of Berkshire	36,611	10,586	2,445	49,642
County of Bristol	115,546	61,001	8,988	185,535
County of Dukes County	7,119	1,776	512	9,407
County of Essex	196,785	80,138	12,468	289,391
County of Franklin	23,782	6,965	1,223	31,970
County of Hampden	83,357	49,461	6,885	139,703
County of Hampshire	48,408	14,564	2,357	65,329
County of Middlesex	443,247	143,806	25,172	612,225
County of Nantucket	3,163	1,299	493	4,955
County of Norfolk	198,664	77,281	11,974	287,919
County of Plymouth	140,042	68,427	8,239	216,708
County of Suffolk	150,307	39,759	14,121	204,187
County of Worcester	195,028	90,215	10,514	295,757
TOTAL	1,720,406	681,703	109,352	2,511,461

QUESTION 3
LAW PROPOSED BY INITIATIVE PETITION

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives on or before May 3, 2022?

SUMMARY

This proposed law would increase the statewide limits on the combined number of licenses for the sale of alcoholic beverages for off-premises consumption (including licenses for “all alcoholic beverages” and for “wines and malt beverages”) that any one retailer could own or control: from 9 to 12 licenses in 2023; to 15 licenses in 2027; and to 18 licenses in 2031.

Beginning in 2023, the proposed law would set a maximum number of “all alcoholic beverages” licenses that any one retailer could own or control at 7 licenses unless a retailer currently holds more than 7 such licenses.

The proposed law would require retailers to conduct the sale of alcoholic beverages for off-premises consumption through face-to-face transactions and would prohibit automated or self-checkout sales of alcoholic beverages by such retailers.

The proposed law would alter the calculation of the fine that the Alcoholic Beverages Control Commission may accept in lieu of suspending any license issued under the State Liquor Control Act. The proposed law would modify the formula for calculating such fee from being based on the gross profits on the sale of alcoholic beverages to being based on the gross profits on all retail sales.

The proposed law would also add out-of-state motor vehicle licenses to the list of the forms of identification that any holder of a license issued under the State Liquor Control Act, or their agent or employee, may choose to reasonably rely on for proof of a person’s identity and age.

	YES	NO	BLANK	TOTAL
County of Barnstable	48,596	64,955	5,182	118,733
County of Berkshire	21,647	25,094	2,901	49,642
County of Bristol	68,532	106,844	10,159	185,535
County of Dukes County	3,972	4,719	716	9,407
County of Essex	120,483	155,191	13,717	289,391
County of Franklin	14,687	15,403	1,880	31,970
County of Hampden	47,675	86,597	5,431	139,703
County of Hampshire	28,835	32,726	3,768	65,329
County of Middlesex	282,997	295,601	33,627	612,225
County of Nantucket	1,612	2,823	520	4,955
County of Norfolk	123,885	149,005	15,029	287,919
County of Plymouth	83,312	123,333	10,063	216,708
County of Suffolk	102,196	90,181	11,810	204,187
County of Worcester	122,332	162,500	10,925	295,757
TOTAL	1,070,761	1,314,972	125,728	2,511,461

QUESTION 4
REFERENDUM ON AN EXISTING LAW

Do you approve of a law summarized below, which was approved by the House of Representatives and the Senate on May 26, 2022?

SUMMARY

This law allows Massachusetts residents who cannot provide proof of lawful presence in the United States to obtain a standard driver's license or learner's permit if they meet all the other qualifications for a standard license or learner's permit, including a road test and insurance, and provide proof of their identity, date of birth, and residency. The law provides that, when processing an application for such a license or learner's permit or motor vehicle registration, the registrar of motor vehicles may not ask about or create a record of the citizenship or immigration status of the applicant, except as otherwise required by law. This law does not allow people who cannot provide proof of lawful presence in the United States to obtain a REAL ID.

To prove identity and date of birth, the law requires an applicant to present at least two documents, one from each of the following categories: (1) a valid unexpired foreign passport or a valid unexpired Consular Identification document; and (2) a valid unexpired driver's license from any United States state or territory, an original or certified copy of a birth certificate, a valid unexpired foreign national identification card, a valid unexpired foreign driver's license, or a marriage certificate or divorce decree issued by any state or territory of the United States. One of the documents presented by an applicant must include a photograph and one must include a date of birth. Any documents not in English must be accompanied by a certified translation. The registrar may review any documents issued by another country to determine whether they may be used as proof of identity or date of birth.

The law requires that applicants for a driver's license or learner's permit shall attest, under the pains and penalties of perjury, that their license has not been suspended or revoked in any other state, country, or jurisdiction.

The law specifies that information provided by or relating to any applicant or license-holder will not be a public record and shall not be disclosed, except as required by federal law or as authorized by Attorney General regulations, and except for purposes of motor vehicle insurance.

The law directs the registrar of motor vehicles to make regulations regarding the documents required of United States citizens and others who provide proof of lawful presence with their license application.

The law also requires the registrar and the Secretary of the Commonwealth to establish procedures and regulations to ensure that an applicant for a standard driver's license or learner's permit who does not provide proof of lawful presence will not be automatically registered to vote.

The law takes effect on July 1, 2023.

	YES	NO	BLANK	TOTAL
County of Barnstable	56,711	58,531	3,491	118,733
County of Berkshire	29,729	17,878	2,035	49,642
County of Bristol	76,759	100,246	8,530	185,535
County of Dukes County	6,007	3,011	389	9,407
County of Essex	142,338	134,297	12,756	289,391
County of Franklin	19,451	11,433	1,086	31,970
County of Hampden	57,794	76,154	5,755	139,703
County of Hampshire	40,882	22,500	1,947	65,329
County of Middlesex	362,419	228,076	21,730	612,225
County of Nantucket	2,561	1,978	416	4,955
County of Norfolk	149,104	127,509	11,306	287,919
County of Plymouth	90,860	118,248	7,600	216,708
County of Suffolk	131,184	58,505	14,498	204,187
County of Worcester	134,161	152,020	9,576	295,757
TOTAL	1,299,960	1,110,386	101,115	2,511,461

QUESTION 5 OR 6
THIS QUESTION IS NOT BINDING

Shall the representative for this district be instructed to vote for legislation to create a single payer system of universal health care that provides all Massachusetts residents with comprehensive health care coverage including the freedom to choose doctors and other health care professionals, facilities, and services, and eliminates the role of insurance companies in health care by creating an insurance trust fund that is publicly administered?

	YES	NO	BLANK	TOTAL
In the 2 nd Berkshire District	9,306	3,103	1,825	14,234
In the 1 st Essex District	11,958	7,168	3,137	22,263
In the 2 nd Franklin District	9,367	5,383	1,536	16,286
In the 6 th Hampden District	6,418	5,205	1,214	12,837
In the 7 th Hampden District	9,859	6,820	1,939	18,618
In the 8 th Hampden District	6,768	4,895	1,726	13,389
In the 12 th Hampden District	7,694	6,407	2,884	16,985
In the 4 th Middlesex District	7,531	4,408	2,014	13,953
In the 14 th Middlesex District	11,700	6,553	2,536	20,789
In the 23 rd Middlesex District	13,665	4,851	2,327	20,843
In the 25 th Middlesex District	9,796	1,715	1,460	12,971
In the 33 rd Middlesex District	5,926	2,226	1,908	10,060
In the 34 th Middlesex District	10,099	2,465	1,808	14,372
In the 35 th Middlesex District	8,105	3,523	2,203	13,831
In the 3 rd Norfolk District	7,003	4,511	2,202	13,716
In the 3 rd Plymouth District	11,052	8,460	2,711	22,223
In the 12 th Suffolk District	8,330	2,452	2,301	13,083
In the 13 th Suffolk District	6,450	3,031	2,335	11,816
In the 15 th Suffolk District	11,401	1,619	2,303	15,323
In the 12 th Worcester District	9,202	7,333	2,328	18,863
TOTAL	181,630	92,128	42,697	316,455

QUESTION 5, 6, OR 7
THIS QUESTION IS NOT BINDING

Shall the representative from this district be instructed to vote in favor of changes to the applicable House of Representative rules to make each Legislator's vote in that body's Legislative committees publicly available on the Legislature's website?

	YES	NO	BLANK	TOTAL
In the 4 th Barnstable District	18,166	3,283	3,283	24,732
In the 2 nd Berkshire District	10,588	1,701	1,945	14,234
In the 1 st Essex District	16,108	3,069	3,086	22,263
In the 8 th Essex District	13,987	2,174	3,166	19,327
In the 2 nd Franklin District	11,623	2,977	1,686	16,286
In the 8 th Hampden District	8,673	2,947	1,769	13,389
In the 12 th Hampden District	10,728	2,953	3,304	16,985
In the 4 th Middlesex District	9,860	2,047	2,046	13,953
In the 14 th Middlesex District	16,247	2,098	2,444	20,789
In the 25 th Middlesex District	10,854	663	1,454	12,971
In the 33 rd Middlesex District	6,469	1,443	2,148	10,060
In the 34 th Middlesex District	11,165	1,358	1,849	14,372
In the 35 th Middlesex District	9,443	2,060	2,328	13,831
In the 3 rd Norfolk District	8,853	2,499	2,364	13,716
In the 3 rd Plymouth District	16,725	2,789	2,709	22,223
In the 12 th Suffolk District	8,448	1,754	2,881	13,083
In the 13 th Suffolk District	7,214	1,764	2,838	11,816
In the 15 th Suffolk District	11,715	812	2,796	15,323
In the 12 th Worcester District	13,234	3,090	2,539	18,863
In the 19 th Worcester District	13,300	2,156	2,182	17,638
TOTAL	233,400	43,637	48,817	325,854

QUESTION 5 OR 6
THIS QUESTION IS NOT BINDING

Shall the representative from this district be instructed to introduce and vote for legislation that puts a fee on the carbon content of fossil fuels to compensate for their environmental damage and returns most of the proceeds in equitable ways to individuals as a cash-back dividend?

	YES	NO	BLANK	TOTAL
In the 1 st Franklin District	10,662	6,892	2,150	19,704
In the 1 st Hampshire District	12,987	5,578	2,259	20,824
In the 5 th Worcester District	5,851	10,769	1,954	18,574
TOTAL	29,500	23,239	6,363	59,102

QUESTION 5
THIS QUESTION IS NOT BINDING

Shall the State Representative from this district be instructed to vote in favor of legislation that would prohibit any public pension fund, college, or university in Massachusetts from directly or indirectly investing its funds, including, but not limited to, the holdings of stock, security, equity, asset or other obligation of a corporation or company who conducts exploration for, extraction of, or sales of fossil fuel assets?

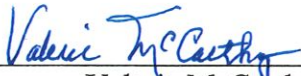
	YES	NO	BLANK	TOTAL
In the 4 th Barnstable	10,325	10,611	3,796	24,732
TOTAL	10,325	10,611	3,796	24,732

In Council, Boston, December 14, 2022

The foregoing findings are this day adopted.



Charles D. Baker
Governor



Valerie McCarthy
Administrative Secretary



Office of the Secretary of the Commonwealth, December 14, 2022

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

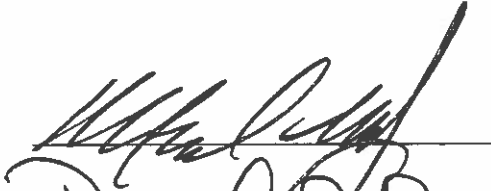
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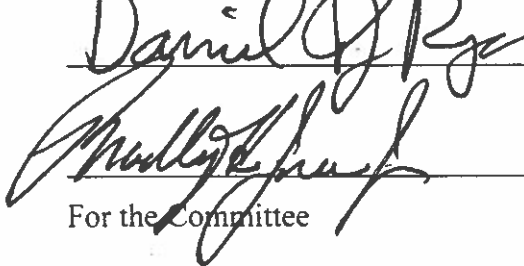
Appendix C – Order Establishing the Joint Committee

The Commonwealth of Massachusetts House of Representatives

January 4, 2023.

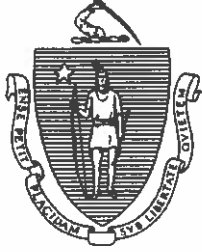
The special committee of the House, to which had been referred the returns of votes for Representatives in the several Representative Districts of the Commonwealth, reports, in part, that, under the provisions of Article LXIV (as amended) of the Amendments to the Constitution, until a successor is chosen and qualified, the term of Representative Mirra of Georgetown shall continue; and that said Representative Mirra of Georgetown shall continue to represent the Second Essex Representative District until a determination is made under the Constitution of the Commonwealth of Massachusetts as to the duly elected Representative from the Second Essex District; and, that, under the provisions of Article LVIX (as amended) of the Amendments to the Constitution until a Member is chosen and qualified, the First Middlesex Representative District shall remain vacant; and, that, under the provisions of Article LVIX (as amended) of the Amendments to the Constitution that, all other members-elect, except Members from the Second Essex Representative District and the First Middlesex Representative District, have been duly elected and are rightly and truly chosen and qualified to be sworn in by His Excellency the Governor.





For the Committee

Appendix D – Order Establishing
Committee of 158



The Commonwealth of Massachusetts

House of Representatives, January 4, 2023.

Ordered, That, the returns of votes for Representatives in several Representative Districts of the Commonwealth be referred a special committee to consist of three members.

Appendix E - Joint Records Appendix

COMMONWEALTH OF MASSACHUSETTS

HOUSE OF REPRESENTATIVES

SPECIAL COMMITTEE OF THE HOUSE TO EXAMINE THE
RETURNS OF VOTES FOR CERTAIN REPRESENTATIVE DISTRICTS

**JOINT RECORD APPENDIX FOR
LEONARD MIRRA AND KRISTIN KASSNER**

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Dated: January 11, 2023

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2277CV01243 Leonard Mirra Also Known As Lenny Mirra vs. Town of Georgetown Registrars of Voters et al

- Case Type:
Actions Involving the State/Municipality
- Case Status:
Open
- File Date
12/21/2022
- DCM Track:
A - Average
- Initiating Action:
Equity Action involving the Commonwealth, Municipality, MBTA, etc.
- Status Date:
12/21/2022
- Case Judge:
- Next Event:

All Information Party Event Tickler Docket Disposition

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/21/2022	Complaint electronically filed.	1	Image
12/21/2022	Civil action cover sheet filed.	2	Image
12/22/2022	Case assigned to: DCM Track A - Average was added on 12/22/2022		Image
12/22/2022	Attorney appearance electronically filed. Applies To: Sullivan, Esq., Michael J (Attorney) on behalf of Leonard Mirra Also Known As Lenny Mirra (Plaintiff)	3	Image
12/23/2022	Attorney appearance On this date Gerald A McDonough, Esq. added for Other interested party Kristin Kassner		
12/23/2022	Other Interested Party Kristin Kassner's EMERGENCY Motion to intervene	4	Image
12/23/2022	Attorney appearance On this date Adam Hornstine, Esq. added for Defendant William Francis Galvin In his/her capacity As the Secretary of the Commonwealth of Massachusetts	5	Image
12/23/2022	Attorney appearance On this date Anne Lisa Serman, Esq. added for Defendant William Francis Galvin In his/her capacity As the Secretary of the Commonwealth of Massachusetts		Image
12/23/2022	Plaintiff Leonard Mirra Also Known As Lenny Mirra's EMERGENCY Motion for Expedited And Limited De Novo Review Of Two Challenged Ballots, And Preliminary Injunction Staying Swearing-In	6	Image
12/23/2022	Leonard Mirra Also Known As Lenny Mirra's Memorandum in support of Emergency Motion For Expedited And Limited De Novo Review Of Two Challenged Ballots, And Preliminary Injunction Staying Swearing-In	6.1	Image
12/27/2022	Endorsement on Motion to Intervene (Emergency Motion) (#4.0): ALLOWED without objection. Judge: Drechsler, Hon. Thomas		
12/27/2022	Event Result:: Motion Hearing scheduled on: 12/27/2022 12:00 PM Has been: Not Held For the following reason: Transferred to another session Hon. Thomas Drechsler, Presiding Staff: Lisa Partelow, Assistant Clerk		
12/27/2022	Docket Note: Expecting motion to be filed by Defendant-Intervenor Kassner. Opposition, if any, to be filed no later than 12:30pm on 12/28/22. Defendant-Intervenor Kassner may file an opposition to plaintiff's motion for preliminary injunction no later than 11:00am on 12/29/22.		
12/27/2022	Attorney appearance On this date Christina Marshall, Esq. added for Defendant Town of Ipswich Registrars of Voters	7	Image
12/27/2022	Attorney appearance On this date George A Hall, Jr., Esq. added for Defendant Town of Ipswich Registrars of Voters		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/27/2022	Attorney appearance On this date Christina Marshall, Esq. added for Defendant Town Clerk for the Town of Ipswich	7	
12/27/2022	Attorney appearance On this date George A Hall, Jr., Esq. added for Defendant Town Clerk for the Town of Ipswich		
12/27/2022	Defendant-Intervenor Kristin Kassner's Motion to dismiss	8	Image
12/27/2022	Defendant-Intervenor Kristin Kassner's Submission of memorandum in support of motion to dismiss.	8.1	Image
12/27/2022	Event Result:: Motion Hearing scheduled on: 12/27/2022 12:00 PM Has been: Held via Video/Teleconference Comments: FTR "H" Hon. Thomas Drechsler, Presiding Staff: Jose Mejia, Assistant Clerk Magistrate		
12/27/2022	Attorney appearance On this date Devan C Braun, Esq. added for Defendant Town of Georgetown Registrars of Voters	9	Image
12/27/2022	Attorney appearance On this date Gregg J Corbo, Esq. added for Defendant Town of Georgetown Registrars of Voters	9	
12/27/2022	Attorney appearance On this date Lauren Feldman Goldberg, Esq. added for Defendant Town of Georgetown Registrars of Voters	9	
12/28/2022	Defendant William Francis Galvin In his/her capacity As the Secretary of the Commonwealth of Massachusetts's Response to plaintiff's emergency motion for expedited and limited de novo review of two challenged ballots and preliminary injunction staying swearing-in, and to intervenor's motion to dismiss.	10	Image
12/28/2022	ORDER: ORDER REGARDING ELECTION DOCUMENTS Defendants Town of Georgetown Registrars of Voters, Town of Ipswich Registrars of Voters, Town Clerk of the Town of Ipswich, Town of Rowley Registrar of Voters, and Town Clerk for the Town of Rowley (the "Municipal Defendants"), are hereby ORDERED to provide the following documents relative to the November 8, 2022 election for the Second Essex District State Representative and subsequent district-wide recounts held in their respective Towns, to the Essex County Superior Court Clerk's Office located at 56 Federal Street in Salem, Massachusetts 01970, by 10:00am on Thursday, December 29, 2022: 1. All protested ballots sealed and segregated by the registrars pursuant to G.L. c. 54, § 135, as set forth in the Plaintiff's Complaint. The Municipal Defendants shall notify counsel for Leonard Mirra and Kristin Kassner of the time and date, respectively, that they will be retrieving said protested ballot materials from their respective vaults. The candidates may, at their sole discretion, send a representative of their choosing to observe the retrieval of the protested ballot materials in each town; in no event however shall the transfer of ballot materials to this Court be delayed to address the candidates' inability to be present at the respective noticed date and time and such absence shall not affect or otherwise delay the retrieval of the protested ballot materials. As ordered by the Court at the December 27, 2022 scheduling hearing, only the protested ballots shall be reviewed by the Court in connection with the Plaintiff's Motion for Preliminary Injunction. It is hereby recognized, however, that one or more of the Municipal Defendants may have sealed such protested ballots with other sealed election materials, which materials could include and not be limited to voted and unchallenged ballots and additional materials requested at the recounts to be marked for identification. To protect the integrity of the election and the chain of custody, the Municipal Defendants shall not break any seals from the materials sealed at the recount and shall instead deliver to this Court the sealed physical container in which the protested ballot materials were segregated in accord with G.L. c. 54, § 135. To the extent that any protested ballots contain identifying information, to preserve the secrecy of any named individual's vote, such information will be redacted by this Court before making photocopies of the relevant ballots. Further, to ensure that the Court reviews any such protested ballots in the context of the objections made, copies shall be made of both sides of each ballot before said protested ballots are resealed by the Court. The Municipal Defendants are to coordinate with First Assistant Clerk Carlotta Palten regarding any logistical matters pertaining to the transportation and receipt of the election documents to be so provided to the Court.	11	Image
12/28/2022	Opposition to Intervenor's motion to dismiss filed by Leonard Mirra Also Known As Lenny Mirra	12	Image
12/28/2022	ORDER: ORDER The court hereby ORDERS the Secretary of the Commonwealth and Kristin Kassner to produce a copy of the December 14, 2022 signed certification referenced on page three of the Memorandum in Support of Kristen Kassner's Motion to Dismiss (Paper No 8.1) by the close of business today, December 28, 2022. Judge: Drechsler, Hon. Thomas	13	Image
12/28/2022	Defendant-Intervenor Kristin Kassner's Submission of Return of Votes	14	Image
12/28/2022	Defendant-Intervenor Kristin Kassner's Submission of Certification	15	Image
12/28/2022	Defendant William Francis Galvin In his/her capacity As the Secretary of the Commonwealth of Massachusetts's Response to Court Order of December 28, 2022	16	Image
12/29/2022	Opposition to Plaintiff's Emergency Motion for Preliminary Injunction filed by Town of Georgetown Registrars of Voters, Town of Ipswich Registrars of Voters, Town Clerk for the Town of Ipswich, Town of Rowley Registrars of Voters, Town Clerk for the Town of Rowley	17	Image
12/29/2022	Attorney appearance On this date Yael Magen, Esq. added for Defendant Town of Rowley Registrars of Voters		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/29/2022	Attorney appearance On this date Yael Magen, Esq. added for Defendant Town Clerk for the Town of Rowley		
12/29/2022	Opposition to Plaintiff's Motion for a Preliminary Injunction filed by Kristin Kassner	18	Image
12/29/2022	Reply/Sur-reply to Plaintiff's Emergency Motion for Expedited and Limited De Novo Review and Preliminary Injunction	19	Image
12/29/2022	MEMORANDUM & ORDER: MEMORANDUM OF DECISION AND ORDER ON: (1) PLAINTIFF'S EMERGENCY MOTION FOR EXPEDITED AND LIMITED DE NOVO REVIEW OF TWO CHALLENGED BALLOTS AND PRELIMINARY INJUNCTION STAYING SWEARING-IN; AND (2) THIRD PARTY DEFENDANT KRISTIN KASSNER'S MOTION TO DISMISS For the foregoing reasons, it is hereby ORDERED: 1. Plaintiff's Emergency Motion for Expedited and Limited De Novo Review of Two Challenged Ballots, and Preliminary Injunction Staying Swearing-in (Paper No. 6) is DENIED. 2. Third Party Defendant Kristin Kassner's Motion to Dismiss (Paper No. 8) is ALLOWED. (See Paper No. 20 for full text of Memorandum and Order) Judge: Drechsler, Hon. Thomas	20	Image
12/29/2022	Endorsement on Motion for Expedited and Limited De Novo Review of Two Challenged Ballots, and Preliminary Injunction Staying Swearing-In (#6.0): DENIED See Memo and Order at Paper No. 20. (Attest: ATMitchell, Asst. Clerk)		Image
12/29/2022	Endorsement on Motion to Dismiss (#8.0): ALLOWED See Memo and Order at Paper No. 20. (Attest: ATMitchell, Asst. Clerk)		Image
12/29/2022	Docket Note: Paper No. 20 emailed to counsel at 3:30 p.m.		
12/30/2022	JUDGMENT on Defendants, Kristin Kassner 12(b) motion to dismiss against Plaintiff(s) Leonard Mirra Also Known As Lenny Mirra. It is ORDERED and ADJUDGED: That the complaint of the plaintiff, Leonard Mirra, against all of the defendants be and hereby is DISMISSED.	21	Image
12/30/2022	Docket Note: Paper No. 21 emailed to counsel at 9:05 a.m.		
12/30/2022	Notice of appeal filed. Applies To: Leonard Mirra Also Known As Lenny Mirra (Plaintiff) (filed 12/29/2022)	22	Image
12/30/2022	Notice of appeal filed. Applies To: Sullivan, Esq., Michael J (Attorney) on behalf of Leonard Mirra Also Known As Lenny Mirra (Plaintiff)	23	Image
12/30/2022	Copy of Notice of Appeal sent to parties/counsel of record	24	
01/04/2023	Notice of docket entry received from Appeals Court ORDER: The plaintiff has moved pursuant to Mass. R. A. P. 6(a) for an injunction pending appeal. I have reviewed the papers filed, including the December 14, 2022 certification of the election results by Governor Charles D. Baker and the December 28, 2022 response by Secretary of the Commonwealth William F. Galvin to the plaintiff's motion. I have also reviewed the December 29, 2022 order of the Superior Court (Drechsler, J.), which denied the plaintiff's emergency motion for expedited and limited de novo review of two challenged ballots and preliminary injunction staying swearing in, and allowed the motion to dismiss of third-party defendant Kristin Kassner. In that order, the Superior Court judge concluded that the plaintiff has not shown a likelihood of success on appeal. I discern no abuse of discretion in the judge's rulings. See Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 615 (1980); Edwin R. Sage Co. v. Foley, 12 Mass. App. Ct. 20, 25 (1981). See also L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014). Accordingly, the motion is denied. (Grant, J.). Notice/attest/Drechsler, J.	25	Image
01/04/2023	Notice of docket entry received from Supreme Judicial Court JUDGMENT: This matter came before the Court, Cypher, J., on an emergency petition for injunctive relief, pursuant to G. L. c. 211, § 3, filed by Leonard Mirra. The petitioner seeks the extraordinary power of this Court to vacate the order of the Appeals Court denying an injunction, pending an appeal of the judgment of the Essex Superior Court. I have reviewed the petition, exhibits filed by the petitioner, the response filed by the respondent, Kristin Kassner, the order of the Appeals Court, and the memorandum and order of the Essex Superior Court. Upon consideration thereof, it is hereby ORDERED that the petition be, and the same hereby is, DENIED without hearing. (Cypher, J.)	26	Image

1

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

2277CV01243 B

LEONARD MIRRA a/k/a LENNY MIRRA,

Plaintiff,

v.

TOWN OF GEORGETOWN REGISTRARS OF
VOTERS,
TOWN OF IPSWICH REGISTRARS OF VOTERS,
TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS,
TOWN CLERK FOR THE TOWN OF ROWLEY,
and
WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,

Defendants.

COMPLAINT

PRELIMINARY STATEMENT

1. This is an action that contests the results of the November 8, 2022, Second Essex District State Representative election (the "Election"); seeks an expedited review of the ballots challenged and preserved at the December 2022 district-wide Election recount ("Recount"); and, *inter alia*, requests declaratory relief stating that Plaintiff Leonard Mirra a/k/a Lenny Mirra was the rightful winner of the Election.

2. The initial count showed that 24,155 votes were cast in the Election.

3. After the initial count, Plaintiff Mirra won the Election by a 10-vote margin. Plaintiff Mirra received a total of 11,754 votes. Kristin Kassner, the second-place finisher, received a total of 11,744 votes.

4. The margin of victory after the initial count was $\approx 0.041\%$.
5. Ms. Kassner petitioned for a district-wide recount.
6. The Recount commenced on Monday, December 5, 2022, spanned six (6) towns and four (4) days, and concluded on Thursday, December 8, 2022.
7. A total of 13 extra ballots were found and counted during the Recount, and no explanation was provided as to why the vote count increased by 13.
8. After the Recount, Ms. Kassner purportedly received one (1) vote more than Plaintiff Mirra, gaining a net of 11 votes to overcome the 10-vote margin after the initial count.
9. The margin of victory after the Recount narrowed to $\approx 0.0041\%$.
10. The Defendant Registrars and Town Clerks made several critical errors of law to the detriment of Plaintiff Mirra and the registered voters that participated in the Election.
11. Judicial review and correction of the unlawful actions, decisions, mistakes, and inaction by the Defendant Registrars and Town Clerks before and during the Recount will materially change the outcome of the Election and show that Plaintiff Mirra won the Election, or in the alternative (and in the very least), that the Election resulted in a tie and a special election is required.

PARTIES

12. Plaintiff Leonard Mirra a/k/a Lenny Mirra was a candidate in the Election. Plaintiff Mirra has served as the State Representative for the Second Essex District since first being elected in 2012. Plaintiff Mirra resides in Georgetown, MA.
13. Defendant Town of Georgetown Registrars of Voters ("Georgetown Registrars") is a board formed in accordance with Mass. Gen. Laws ch. 51, § 15. The Georgetown Registrars' responsibilities include accepting and certifying nomination papers; certifying initiative or

referendum petitions; conducting elections and recounts as necessary in a fair and impartial manner; maintaining accurate lists of registered voters in the town; maintenance and testing of voting equipment; processing absentee voter applications and mail-in voting; processing address and party changes; tallying election results; and the administration of voter registration.

14. Defendant Town of Ipswich Registrars of Voters ("Ipswich Registrars") is a board formed in accordance with Mass. Gen. Laws ch. 51, § 15. The Ipswich Registrars' responsibilities include accepting and certifying nomination papers; certifying initiative or referendum petitions; conducting elections and recounts as necessary in a fair and impartial manner; maintaining accurate lists of registered voters in the town; maintenance and testing of voting equipment; processing absentee voter applications and mail-in voting; processing address and party changes; tallying election results; and the administration of voter registration.

15. Defendant Town Clerk for the Town of Ipswich ("Ipswich Town Clerk") is responsible for the administration of elections and all other voter-related activities in Ipswich, including (but not limited to) running election recounts.

16. Defendant Town of Rowley Registrars of Voters ("Rowley Registrars") is a board formed in accordance with Mass. Gen. Laws ch. 51, § 15. The Rowley Registrars' responsibilities include accepting and certifying nomination papers; certifying initiative or referendum petitions; conducting elections and recounts as necessary in a fair and impartial manner; maintaining accurate lists of registered voters in the town; maintenance and testing of voting equipment; processing absentee voter applications and mail-in voting; processing address and party changes; tallying election results; and the administration of voter registration.

17. Defendant Town Clerk for the Town of Rowley (“Rowley Town Clerk”) is responsible for the administration of elections and all other voter-related activities in Rowley, including (but not limited to) running election recounts.

18. Defendant William Francis Galvin is the Secretary of the Commonwealth of Massachusetts (“Secretary Galvin” or “Secretary”), and is being sued in his official capacity. The Secretary is the chief elections officer of the Commonwealth and is responsible for the administration of elections.

VENUE AND JURISDICTION

19. Venue is properly laid in this Court pursuant to Mass. Gen. Laws ch. 214, § 5, and Mass. Gen. Laws ch. 223, § 1.

20. Plaintiff’s requests for relief are appropriately brought in this Court pursuant to several Massachusetts statutes.

21. Mass. Gen. Laws ch. 214, § 1, confers upon this Court “original and concurrent jurisdiction of all cases and matters of equity cognizable under the general principles of equity jurisprudence.”

22. Mass. Gen. Laws ch. 56, § 59, states that “the superior department of the trial court shall have jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and may award relief formerly available in equity or by mandamus.”

STATEMENT OF FACTS

23. The Election was held on November 8, 2022.

24. Secretary Galvin’s office released the initial results of the Election via email to the candidates on November 28, 2022.

25. The initial count showed that 24,155 votes were cast in the Election. *See* Exhibit A (Recount Tally Sheet provided by the Secretary).

26. The initial results of the Election were certified on November 30, 2022.

27. After the initial count, Plaintiff Mirra received a total of 11,754 votes. *Id.* Ms. Kassner finished second, receiving a total of 11,744 votes. *Id.*

28. The remainder of the initial results included 11 votes for “All Others” and 646 votes called as “Blanks.” *Id.*

29. On November 22, 2022, Plaintiff Mirra received notice from Secretary Galvin’s office that Ms. Kassner filed a petition for a district-wide recount.

30. A district-wide recount—unlike a recount for a specific town precinct(s)—initiates a recount in all the towns that make up a specific district and can only be done where the margin of victory is not more than one-half of one percent (0.5%) of the votes cast for an office or question. Mass. Gen. Laws ch. 54, § 135.

31. The Second Essex District is comprised of Georgetown, Hamilton, Ipswich, Newbury, Rowley, and Topsfield.

32. The Second Essex District can be broken down further by precinct: Georgetown precincts 1, 2, and 3; Hamilton precincts 1 and 2; Ipswich precincts 1, 2, 3, and 4; Newbury precincts 1 and 2; Rowley precinct 1; and Topsfield precinct 1. *See* Ex. A.

33. On Monday, December 5, 2022, the first town recount took place in the town of Georgetown.

34. On Tuesday, December 6, 2022, two town recounts took place in the towns of Hamilton and Newbury.

35. On Wednesday, December 7, 2022, two town recounts took place in the towns of Ipswich and Rowley.

36. On Thursday, December 8, 2022, the final town recount took place in the town of Topsfield.

37. The incorrect and unlawful actions, decisions, mistakes, and inaction by Defendant Town Clerks and Registrars materially changed the outcome of the Election to the detriment of Plaintiff Mirra.

Georgetown Recount

38. The initial Georgetown count included a total of 4,044 votes cast and counted across three precincts. Ex. A.

39. The Georgetown Recount included a total of 4,043 votes—a decrease of one (1) vote from the initially reported vote total. *Id.*

40. No explanation was provided as to why the vote count decreased by one (1).

41. Ms. Kassner gained a net total of one (1) vote at the Georgetown Recount. *Id.*

42. The Georgetown Registrars erred in making a determination on a challenged ballot.

43. The challenged ballot at issue—from precinct 1, block 28—included a mark in the oval for Plaintiff Mirra. The oval for Ms. Kassner did not have any mark whatsoever. The ballot was called as a blank. Counsel for Plaintiff Mirra challenged the call. The Georgetown Registrars decided that the ballot was a blank. Counsel for Plaintiff Mirra further challenged the ballot and preserved it for litigation.

44. The voter's intent in the challenged ballot at issue could be ascertained with reasonable certainty from an inspection of said ballot.

45. The “cardinal rule” in disputes of this nature is that “if the intent of the voter can be determined with reasonable certainty from an inspection of the ballot . . . , effect must be given to that intent and the vote counted.” *O’Brien v. Bd. of Election Comm’rs of City of Boston*, 257 Mass. 332, 338–39 (1926); *see also Kane v. Registrars of Voters of Fall River*, 328 Mass. 511, 518 (1952) (“If the ballot, considered in the light of the character and location of the mark . . . , fairly indicates the voter’s intent, the vote should be counted in accordance with that intent.”).

46. A voter is “not to be disenfranchised for minor irregularities.” *McCavitt v. Registrars of Voters of Brockton*, 385 Mass. 833, 844 (1982); *Kane*, 328 Mass. at 518 (same); *see also O’Brien*, 257 Mass. at 338–39 (“Minor departures from the terms of the statute where there has been substantial compliance with its provisions and where the intent of the voter can be ascertained do not invalidate the vote.”).

47. The Georgetown Registrars improperly and unlawfully determined the challenged ballot was a blank.

48. The voter’s intent could be reasonably ascertained: to cast a vote for Plaintiff Mirra.

49. The failure of the Georgetown Registrars to call this challenged vote for Plaintiff Mirra cuts against decades of well-established Massachusetts law, and in doing so, disenfranchised the voter by thwarting the voter’s intent and infringed upon Plaintiff Mirra’s fundamental rights.

Ipswich Recount

50. The initial Ipswich count included a total of 7,457 votes cast and counted across four precincts. Ex. A.

51. The Ipswich Recount included a total of 7,471 votes—an increase of 14 votes. *Id.*

52. No explanation was provided as to why the vote count increased by 14.

53. At the Ipswich Recount, Ms. Kassner gained a net total of five (5) votes. *Id.*

54. The Ipswich Registrars made several errors of law in making determinations on challenged ballots.

55. The first challenged ballot at issue—from Ipswich precinct 4, block 37—involved an alleged overvote by the voter. In at least one other instance on this challenged ballot, the voter wrote in “Donald Trump” where no Republican candidate was listed. However, where a Republican was listed on the ballot, the voter cast his or her vote for the Republican candidate. On this challenged ballot, the voter filled in the oval for Plaintiff Mirra after mistakenly writing in Donald Trump. The election worker called the ballot as a vote for Plaintiff Mirra, determining that the will of the voter was reasonably ascertainable when viewing the ballot as a whole. Counsel for Ms. Kassner challenged the call. The Ipswich Registrars decided that the ballot was a blank. Counsel for Plaintiff Mirra further challenged the ballot and preserved it for litigation.

56. The Ipswich Registrars improperly overruled the call, opining that the ballot was a blank because Donald Trump is a real person. The Ipswich Registrars failed to evaluate the ballot as a whole, and as such ignored the voter’s intent, which was consistent and could be reasonably ascertained: to vote for the Republican candidate, or alternatively write in Donald Trump if no Republican candidate was listed on the ballot. *See O’Brien*, 257 Mass. at 338–39 (“if the intent of the voter can be determined with reasonable certainty from an inspection of the ballot . . . , effect must be given to that intent and the vote counted.”).

57. The second challenged ballot at issue—from Ipswich precinct 1, block 19—involved an alleged overvote by the voter. Throughout this challenged ballot, the voter made consistent marks in the ovals appearing next to the name of his or her desired candidate. The voter made a similarly consistent mark in the oval for Plaintiff Mirra. The voter’s mark in Plaintiff Mirra’s oval extended ever-so-slightly into the oval for Kristin Kassner. The election worker called

the ballot as a vote for Plaintiff Mirra, determining that the will of the voter was reasonably ascertainable when viewing the ballot as a whole. Counsel for Ms. Kassner challenged the call. The Ipswich Registrars improperly overruled the call and determined that the ballot was an overvote (thus a blank). Counsel for Plaintiff Mirra further challenged the ballot and preserved it for litigation.

58. The consistent markings on the second challenged ballot make the voter's intent clear: to vote for Plaintiff Mirra. The Ipswich Registrars ignored bedrock Massachusetts law by failing to give effect to the voter's reasonably ascertainable choice, *Kane*, 328 Mass. at 518, and by extension violated Plaintiff Mirra's fundamental rights afforded to him by the Massachusetts Declaration of Rights.

59. Furthermore, the Ipswich Registrars' determination was contrary to the recount guide provided by the Secretary. *See* Exhibit B (Secretary's "Election Recounts" guide) at 15, Example 14 (showing that a mark for a candidate that also "dips slightly into [the opponent's] box" shall be called for candidate and not as an overvote, and citing *Desjourdy v. Board of Registrars of Voters*, 358 Mass. 644 (1971)); *see also id.* at 13, Example 6 (the vote shall be called for the candidate despite *even more* of the mark going into the opponent's box because the apex of the voter's mark was still in the candidate's box, and citing *Kane*).

60. Additionally, Plaintiff Mirra was afforded the opportunity to inspect the mail-in envelopes to see if the signatures on the envelopes matched the voter's signature on the voter's registration card. *See* Exhibit C (Declaration of Plaintiff Mirra).

61. In Massachusetts, election officials are obligated to compare the signature on the mail-in envelope with the signature on the voter's registration. If an election official cannot determine if the mail-in envelope signature matches the signature on the voter's registration card,

it must be rejected. *See* Exhibit D (Secretary’s “2022 Information For Voters” that addresses the protocol for voting by mail); Mass. Gen. Laws ch. 54, § 94.

62. After inspection, Plaintiff Mirra found approximately 14 mail-in envelopes with signatures that drastically diverged from the corresponding voter registration cards. *See* Ex. C.

63. The Ipswich Town Clerk made a substantial error of law by failing to reject mail-in ballots with signatures that did not match the voter’s registration card.

Rowley Recount

64. The initial Rowley count included a total of 3,203 votes cast and counted across one precinct. Ex. A.

65. The Rowley Recount included a total of 3,206 votes—an increase of three (3) votes, for which no explanation was provided. *Id.*

66. Ms. Kassner gained a net total of five (5) votes at the Rowley Recount. *Id.*

67. The Rowley Registrars made several unlawful determinations concerning the challenged ballots.

68. The first challenged ballots at issue involve the unilateral ‘unspoiling’ of ballots. A set of ballots was marked as “spoiled,” and 10 of which were mail-in ballots. These 10 mail-in ballots marked as “spoiled” had been segregated from the other spoiled ballots. The 10 spoiled mail-in ballots were not accompanied by their respective mail-in envelopes. Plaintiff Mirra was told that these 10 mail-in ballots were rejected by the voting machine, marked as spoiled, and not hand-counted. The Rowley Registrars voted to disregard the “spoiled” determination for five (5) of the 10 spoiled mail-in ballots and added the five (5) spoiled ballots to the Rowley Recount tally. All five (5) spoiled mail-in ballots were called for Ms. Kassner. Counsel for Plaintiff Mirra further challenged the ballots and preserved them for litigation.

69. Massachusetts is devoid of any law or judicial authority that allows for the unspoiling of a ballot already determined to be spoiled. Moreover, a ballot determined to be spoiled is not even supposed to be included with other legally cast ballots. *See* 950 Mass. Code Regs. 52.03A(11)–(12) (A ballot marked as spoiled shall be placed by an election official “in the spoiled ballot envelope” and “shall not be placed in the ballot box” with non-spoiled ballots). Furthermore, given that the five (5) spoiled mail-in ballots were not attached to their respective mail-in envelopes, it is unclear whether the spoiled-ballot voters were given the opportunity to vote again; a double-vote would circumvent the principle of one person, one vote.

70. The second challenged ballot involved an overseas ballot cast pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”). The UOCAVA ballot in question was not accompanied by an affidavit. All other UOCAVA ballots included an appended voter affidavit. This ballot was called for Ms. Kassner. Counsel for Plaintiff Mirra challenged the ballot. The Rowley Registrars accepted the ballot as called for Ms. Kassner. Counsel for Plaintiff Mirra further challenged the ballot and preserved it for litigation.

71. The Rowley Registrars erred in giving effect to the second challenged ballot because no affidavit was included to show that the voter was legally allowed to cast a vote for the Election.

72. Additionally, prior to the Rowley Recount, the Secretary’s counsel told Plaintiff Mirra that the candidates would be given the opportunity to inspect the mail-in envelopes at the Rowley Recount. *See* Ex. C.

73. Plaintiff Mirra’s representatives told the Rowley Town Clerk that they would like to inspect the mail-in envelopes to see if the signatures on the envelopes matched the signatures on the voter’s registration cards. *Id.*

74. The Rowley Town Clerk refused to allow Plaintiff Mirra's representatives to inspect the mail-in envelopes. *Id.*

75. The Rowley Town Clerk erred by denying Plaintiff Mirra's representatives the opportunity to review the mail-in envelopes. Such refusal calls into question the integrity of the Rowley Recount and the ballots counted therein.

CLAIMS FOR RELIEF

COUNT I

De Novo Review Pursuant to Mass. Gen. Laws ch. 56, § 59

76. All preceding paragraphs of this Complaint are hereby incorporated by reference.

77. The determination of the legal effect of a ballot is a question of law. *McCavitt*, 385 Mass. at 839; *Morris v. Board of Registrars of Voters of East Bridgewater*, 362 Mass. 48, 49 (1972).

78. This Court must make a *de novo* interpretation of the voter's intent when reviewing a disputed ballot. See 18C Mass. Prac., Municipal Law and Practice § 38.64 (5th ed.) (citing *DePetrillo v. Registrars of Voters of Rehoboth*, 342 Mass. 13, 14 (1961)).

79. The challenged ballots, *supra*, raise questions about the will of the voter and the lawfulness of the determinations made by the Georgetown Registrars, Ipswich Registrars, and Rowley Registrars.

80. This Court must therefore exercise its equitable powers pursuant to Mass. Gen. Laws ch. 56, § 59, and initiate a *de novo* review of the challenged ballots.

COUNT II

Declaratory Judgment Pursuant to Mass. Gen. Laws ch. 231A, § 1

81. All preceding paragraphs of this Complaint are hereby incorporated by reference.

82. An actual and justiciable controversy exists between the parties regarding the result of the Election and the Recount.

83. Plaintiff is entitled to initiate judicial resolution of the controversy at the heart of this Complaint.

84. A justiciable controversy exists for the persons entitled to initiate the judicial resolution where there is a dispute involving a state agency's or state employee's action or inaction pursuant to a statutory duty.

85. The challenged ballots, *supra*, raise questions about the will of the voter and the lawfulness of the determinations made by the Georgetown Registrars, Ipswich Registrars, and Rowley Registrars.

86. The actions, decisions, mistakes, and inaction by Defendant Town Clerks and Registrars constitute a substantial dereliction of duties imposed by Massachusetts law.

87. This Court should declare the actions, decisions, mistakes, and inaction by the Defendant Registrars and Town Clerks were incorrect and unlawful, and declare that Plaintiff Mirra is the rightful winner of the Election, or in the alternative, that a special election is required.

COUNT III
Contested Election

88. All preceding paragraphs of this Complaint are hereby incorporated by reference.

89. Plaintiff challenges the results of the Election and Recount on the bases laid out, *supra*.

90. As a result of this election contest, this Honorable Court should find that the reported Recount results were inaccurate and that Plaintiff Mirra was the duly elected candidate, or alternatively that the Recount resulted in a tie and a special election is required.

COUNT IV
Violation of Plaintiff's Fundamental Rights

91. All preceding paragraphs of this Complaint are hereby incorporated by reference.

92. In an election dispute, the “fundamental” rights of candidates and voters are “intertwined,” entitling both to redress in the event of a constitutional violation. *Goldstein v. Sec’y of Commonwealth*, 484 Mass. 516, 524 (2020) (quotation marks omitted).

93. The Massachusetts Declaration of Rights provides that “all inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.” Mass. Decl. of Rights, Art. 9. These equal rights cannot be abridged by the failure of ministerial officers to count votes for candidates.

94. The actions, decisions, mistakes, and inaction by the Defendant Registrars and Town Clerks violated Plaintiff Mirra’s fundamental rights and disenfranchised voters who lawfully cast votes for Plaintiff Mirra.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mirra respectfully requests that the Court:

- a) conduct a *de novo* review of the ballots challenged in the Election;
- b) issue a declaratory judgment that Plaintiff Mirra is the winner of the Election, or in the alternative, that the Election is a tie and a special election must be held;
- c) order that the Election has been contested by Plaintiff Mirra;
- d) order that Defendant Town Clerks and Registrars violated the fundamental rights of Plaintiff Mirra and Massachusetts voters;

e) order that the incumbent, Plaintiff Mirra, remain seated as Second Essex District State Representative for the pendency of this litigation, *see Alicea v. Southbridge Registrars of Voters, et al.*, Mass. Super. Ct. No. 1085-CV-02624;

f) award Plaintiff the costs, including attorneys' fees, of bringing this Complaint; and

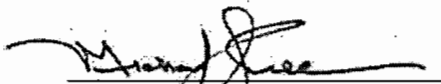
g) award such other and further relief as this Court deems necessary and proper.

REQUEST FOR HEARING

Plaintiff Mirra respectfully requests that this Court hold a hearing on this Complaint at the Court's earliest convenience.

Dated: December 21, 2022

Respectfully submitted by,



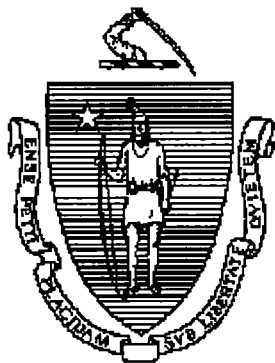
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Leonard Mirra

Exhibit A

Precinct	Original Tally					Recount Tally					Net Difference				
	Mirra	Kassner	All Others	Blanks	Total	Mirra	Kassner	All Others	Blanks	Total	Mirra	Kassner	All Others	Blanks	Total
Georgetown															
Pct. 1	873	532	0	32	1,437	873	533	0	31	1,437	0	1	0	-1	0
Pct. 2	743	530	3	21	1,297	743	530	0	23	1,296	0	0	-3	-2	-1
Pct. 3	765	509	1	35	1,310	765	509	1	35	1,310	0	0	0	0	0
Hamilton															
Pct. 1	774	1,041	1	61	1,877	774	1,041	1	61	1,877	0	0	0	0	0
Pct. 2	743	1,048	0	63	1,854	743	1,048	0	63	1,854	0	0	0	0	0
Ipswich															
Pct. 1	614	1,112	2	42	1,770	613	1,113	2	42	1,770	-1	1	0	0	0
Pct. 2	778	1,091	0	49	1,918	779	1,092	0	49	1,920	1	1	0	0	2
Pct. 3	919	924	0	43	1,886	920	925	0	43	1,888	1	1	0	0	2
Pct. 4	809	1,021	0	53	1,883	813	1,028	0	52	1,893	4	7	0	-1	10
Newbury															
Pct. 1	965	965	1	60	1,991	966	968	0	57	1,991	1	3	-1	-3	0
Pct. 2	1,021	909	1	44	1,975	1,021	907	1	43	1,972	0	-2	0	-1	-3
Rowley															
Pct. 1	1,835	1,290	2	76	3,203	1,834	1,294	0	78	3,206	-1	4	-2	2	3
Topsfield															
Pct. 1	915	772	0	67	1,754	918	775	0	61	1,754	3	3	0	-6	0
GRAND TOTAL	11,754	11,744	11	646	24,155	11,762	11,763	5	638	24,168	8	19	-6	-8	13

Exhibit B



ELECTION RECOUNTS

William Francis Galvin
Secretary of the Commonwealth
Elections Division
One Ashburton Place, Room 1705
Boston, MA 02108
617-727-2828
800-462-8683
www.sec.state.ma.us/ele
elections@sec.state.ma.us

Revised 2017

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I. INTRODUCTION

In Massachusetts, recounts are a quasi-judicial procedure based on the General Laws, court decisions, and customs developed from practical experience. The purpose of a recount is to ascertain the will and intention of the voters. McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833 (1982).

The rights of all parties are clearly delineated in state law. Section 135 of chapter 54 of the Massachusetts General Laws is the principal reference for the procedures in this booklet. Sections 134, 135B, 136, and 137 of chapter 54 also contain relevant information.

The following procedures apply generally to recounts of all offices and questions decided in all local and state preliminaries, primaries, and elections. District-wide and statewide recounts after state primaries and elections (including presidential primaries, except for ward and town committees) have additional requirements which are found in a separate section IV of this booklet.

II. BEFORE THE RECOUNT

Petitioning for a Recount

Candidates may initiate a recount by petitioning the local election official in the city or town in which the recount is being requested. Only candidates for an office to be recounted may petition for a recount. Any registered voter of the city or town may petition for a recount of a ballot question. The chart on page 4 shows petition filing deadlines and signature requirements for different types of recounts. In every case, it is wise to secure more signatures than required.

Where to get Petition Forms

Recount petition forms are available from the Election Division of the Office of the Secretary of the Commonwealth and from city or town clerks or election commissioners. The petitioner must file a separate recount petition in each ward of a city or precinct of a town in which he or she desires a recount.

The Petition Form

Candidates who request a recount must specify on the petition form the office to be recounted – not the names of the candidates for that office. The form contains a statement that the signers have reason to believe that the election records are erroneous and that a recount will affect the results of that election; however, the petitioner must also specify the particular reasons for the recount request. Care should be taken in wording the reasons for the recount on the petition as no other count may be made or other information taken from the ballots than what is specified in the petition.

In communities voting by optical scanner ballot, petitioners who want a hand count of the ballots must state this on the form by checking the appropriate box.

Voters signing a recount petition must sign in person as registered, or substantially as registered, listing their current address of registration. The standards for certification of signatures on recount petitions are contained in the Code of Massachusetts Regulations, 950 CMR § 55.03.

Voters signing petitions for recounts of political party primaries must have been enrolled in that party on or before the last day to register to vote in that primary. G.L. c. 54, § 40A.

The signature of one signer for each ward of a city or precinct of a town must be notarized in the notarization certificate printed on the petition sheet. Each petition sheet must be accompanied by a written request for a recount signed by the candidate on whose behalf it is being conducted. The candidate's request is printed on the petition form in the upper left hand corner. The candidate need only sign one petition in the proper place.

Filing Procedure

Recount petitions must be filed with city or town clerks, except in communities with election commissions. In such cases, the petitions should be filed with the election commission.

Note: When filing any recount petition for a special state election, it is also essential to file a written statement of your intention to seek a recount with the Secretary of the Commonwealth, no later than 5:00 P.M. on the sixth day after the election. G.L. c. 54, §116.

Certification

Upon receipt of recount petitions, the city or town clerk will deliver them to the registrars of voters, along with the following materials from the election: sealed envelopes containing the ballots cast, including absentee and challenged ballots; original tally sheets; envelopes containing spoiled and unused ballots; voting lists used at the election; certificates issued to voters omitted from the voting list; written affirmations of current and continuous residence; precinct clerks' election records; applications for absentee ballots and absentee ballot envelopes; the list of voters who were sent absentee ballots, indicating whether the ballots were cast or rejected as defective or whether such persons voted in-person; and the sealed envelopes containing the ballots rejected as defective.

After examining the petition and statement and certifying the registration of the signers, the registrars shall schedule the recount. A recount may not be held before the deadline for filing recount petitions.

Filing Deadlines and Signature Requirements			
Recount Area*	Local Filing Deadline After a Primary or Preliminary Election	Local Deadline After Election	Number of Registered Voter Signatures Required
City Ward (Except Boston)	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	10 or more from each ward
Boston Ward	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	50 or more from each ward
Towns With Under 2,500 Voters or Without Precincts	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	10 or more from the town
Towns With Over 2,500 Voters and precincts	5:00 p.m. on the 6th day after	5:00 p.m. on the 10th day after	10 or more from each precinct
*See the special requirements for district-wide (including statewide) recounts after the state primaries and elections, on page 10.			

Setting the Date for the Recount

After examining the recount petition and certifying the registration of the signers, the registrars must set the recount time and place and give at least three days written notice of this to each candidate for the office for which the recount was petitioned. In the case of a recount on a ballot question, they shall give notice to the person designated by the petitioners and to the appropriate committee organized on the other side. For a recount of any office or question appearing on a state primary or state election ballot, the registrars must schedule the recount to be held within six days of the filing deadline for a primary recount petition and within ten days of the filing deadline for an election recount petition. The registrars may decide when the recount will be held as soon as they receive the petition, but it may be advisable to wait until after the petition filing deadline, if other recounts are possible.

The notice sent by the registrars must include the date and time of the recount in addition to the number of agents allowed, which will be equal to the number of persons counting and checking ballots for the registrars at the recount. Upon setting the date and time of a recount for an office or question appearing on a state primary or state election ballot, the registrars shall notify the Secretary of the Commonwealth in writing of what office or question is to be recounted, the time and place of the recount, and the number of observers (agents) to which each candidate is entitled.

Discontinuing a Recount

If the candidate who filed the petition for a recount files a written request with the city or town clerk that the recount be discontinued, the clerk shall immediately order the recount discontinued and shall notify each candidate that unless a written objection is received within 72 hours after the notice was sent, the recount shall be discontinued. If a written objection is received within 72 hours, the recount must continue. If no objections are received within 72 hours, the recount is discontinued.

Preparation for the Recount

Responsibility for the good order and smooth functioning of the recount proceedings lies with the registrars or election commissioners. It is preferable to have all four registrars or election commissioners at the recount, but a minimum of three is required. If necessary, a temporary registrar may be appointed by the mayor or selectmen in accordance with the provisions and procedures set forth in section 20 of chapter 51 of the General Laws.

The registrars or election commissioners sit as “judges” of the protested ballots; they do not tally the votes, but may appoint the number of clerks necessary to do the actual recounting. In addition to the ballot readers and clerks who record the ballots (tally clerks), there should be “runners” to bring the protested ballots to the registrars for examination and decision, and if desired, a stenographer to record the protested ballots. Designated “agents” or legal counsel can make arguments respecting the protested ballots **only** to the registrars, not the ballot readers or tally clerks.

Once a recount begins, all candidates (or ballot question representatives) have exactly the same rights, regardless of whether or not they requested the recount.

Each candidate for the office in question or person representing each side of a ballot question is allowed to witness the recount, accompanied by one or more counsel if desired. Each candidate or representative may also be represented by agents. Up to one agent for each officer or clerk reading the ballots or recording the votes is allowed. These agents must be appointed by the candidate or counsel in writing and have the right, along with the candidate and counsel, to watch and inspect the ballots, tally sheets and all other papers used in the recount, and to watch every individual act performed in connection with the recount.

The general public may also witness the recount but cannot participate.

Candidates or their counsel should, prior to the recount, consult with the registrars or election commissioners regarding procedures and in turn, instruct their agents. In some communities the registrars or commissioners instruct all parties before the recount begins. Some send out instructions to the candidates or agents in advance of the recount.

The set-up of the recount will vary depending on the size of the city or town, the number of ballots to be counted, the number of teams and tables, the space available, as well as

other factors. The number of counting tables will be determined based on the number of teams counting the ballots. The table for the registrars, with places for the candidates' counsel or representatives, should be separate from the tables where the counting takes place.

All candidates for the office in question may, upon written request to the city or town clerk, obtain and examine the record books and the precinct clerk's book, where used; and may require that a count be made of the number of persons checked on the voting lists as having voted and that the figures on each ballot box register be examined. G.L. c. 54, § 108.

III. THE RECOUNT

After the registrars and their clerks are in place, the candidates' representatives and agents are admitted to the recount area upon presentation of their written authorization. Only those people directly involved in the recount can be present within the recount area; however, the public and the press must be admitted into the room where the recount is being conducted, to observe the proceedings. Members of the public must remain outside the recount area. In some communities, badges are provided to identify the people present and their different roles and some communities use a "guardrail" to designate the recount area.

The registrars must supervise the removal of the ballots from the vault, and check for proper seals and markings. The candidates' counsel may accompany the registrars and ascertain to their satisfaction that all is in order.

Ballots to be Counted by Hand

Before the ballots are counted, they are first separated into blocks of 50 and each block is put into an envelope. Each counting team will receive a block of 50 ballots and a tally sheet on which to record the votes. While all ballots are to be counted, only the office or question being recounted is to be read and tallied. Those ballots protested during the recount are counted in accordance with the decision of the majority of the board of registrars. If there is a 2 – 2 vote by the board of registrars, the ballot is counted as called by the ballot reader. The recount includes counting all ballots cast for all the candidates for the office, blanks cast, all spoiled and unused ballots, and absentee ballot envelopes and applications.

Where hand-counted paper ballots are used, the boxes should be brought into the room one at a time and an envelope containing a block of 50 ballots with its tally sheet should be delivered to each counting team one at a time.

There should be two clerks on each team, facing each other across the table, one reading the ballot and one marking the tally sheet. An agent for each candidate may stand behind each clerk to watch and may keep a tally, or make notes.

Only the registrars and their clerks are permitted to handle the ballots. No marks whatsoever are to be made on the ballots. For paper ballots, each ballot should be spread fully on the table in front of the ballot reader so that everyone at the table may view first the outside, and then the inside of the ballot. A red pen or pencil is the only writing instrument to be used at the table by the tally-clerk, who enters the ballot count on new tally sheets. Conversation should be kept to a minimum.

The candidates' counsel and agents should also try to maintain tallies.

The Will of the Voters

All parties to a recount should keep in mind that the will of the voters, if it can be determined with reasonable certainty, must be given effect. If the marks on the ballot fairly indicate the voter's intent, the vote should be counted in accordance with that intent, as long as the voter has essentially complied with the election law. The voter is not disenfranchised because of minor irregularities. Where, however, the ballot is marked in a way that leaves the intent of the voter unclear, the vote should not be counted. See section V for examples of contested ballot marks. McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833 (1982); Kane v. Registrars of Voter, 328 Mass. 511, 518 (1952); Munn v. Dabrowski, 335 Mass. 41 (1956).

Protested Ballots

When a ballot is protested by any agent, the tally clerk should not record the vote. The tally clerk should call the runner to take the ballot to the registrars' table where they may make their determination in the presence of the candidates' counsel. If all the counsel agree with the registrars' ruling, the runner returns the ballot to the table where it was originally protested and reports how the registrars ruled. The tally clerk records the vote as ruled and the ballot is resealed with the remainder of the ballots from that block. If any counsel protests the ruling of the registrars, one registrar signs the back of the protested ballot and above his signature puts the block number, the office for which the vote was protested, and the name of the candidate for whom the vote was counted. This ballot is returned to the table for counting according to the registrars' ruling, and then brought back to the registrars to be segregated with other protested ballots.

If the clerks finish counting the block before the runner returns with the protested ballot, they should wait for its return before tabulating the block total or opening a new block envelope.

Absentee Ballots Rejected as Defective

During a recount, the registrars examine the sealed inner ballot envelopes of absentee ballots which have previously been rejected as defective to determine whether each such ballot should have been rejected or accepted. The ballot must be rejected if the envelope is not signed by the voter. The envelope should not be rejected merely because a signature is difficult to read.

The registrars shall make a statement on the back of each of these inner ballot envelopes giving their reason for rejecting or accepting these ballots during the recount. The

statement must be signed by a majority of the registrars. This determination is subject to protest as each envelope is examined at the recount. If the registrars decide to accept an inner envelope originally rejected as defective, they must open the envelope, count the ballot, and attach the envelope to the ballot.

Write-in and Sticker Votes

Section 77 of chapter 54 of the General Laws provides that a voter intending to write-in a candidate on the ballot should insert "the name and residence of such candidate in the space provided." The court has recognized the address requirement as a direction to the voter rather than a mandatory requirement.

In O'Brien v. Board of Election Commissioners, 257 Mass. 332, 338-339, 153 N.E. 553, 556 (1926) the court ruled that "if the intent of the voter can be determined with reasonable certainty from an inspection of the ballot, in the light of the generally known conditions attendant upon the election, effect must be given to that intent... The omission of residence... on some ballots on which the name has been written by the voters rightly was found not to invalidate such votes." See also Maiewski v. Board of Registrars of Voters, 347 Mass. 681, 199 N.E. 2 d 680 (1964).

An "X" placed to the right of the candidate's name is permitted, but not required on a write-in or sticker vote.

Votes written in for candidates who are already printed on the ballot for the same office are considered over-votes and must be tallied as blanks.

Challenged and Provisional Ballots

If any challenged or provisional ballots were voted on Election Day, the registrars must also decide whether to count or reject each such ballot. Challenged ballots result when a voter whose name appears on a voting list is challenged at the polls for some legal reason as set forth in section 85 of chapter 54 of the General Laws. Challenged ballots will have been cast in the ballot box and counted on Election Day, and are identified with the name and address of the voter, as well as the reason for the challenge.

Provisional ballots may have been used in certain circumstances: if a voter's name did not appear on the voters list, but the voter believed they were registered; if a voter was required to present identification under the Help America Vote Act, but was unable to do so; and in primaries, if a voter believed they were listed with an incorrect party affiliation. G.L. c. 54, § 76C. The disposition of a provisional ballot is made after every primary and election, regardless of whether there is a recount.

For challenged ballots, the registrars may hold a hearing at the recount on whether or not to count each challenged ballot but must hold a hearing when requested as part of the recount. This will usually require deciding whether the challenged voter in question was eligible to vote. For this purpose, the registrars may issue summonses for witnesses or documents, and may administer oaths. G.L. c. 51, §§ 48, 49; G.L. c. 233, § 8. The registrars should also notify counsel for all candidates (or for committees concerning a

ballot question) of the time and place of these hearings, and give counsel an opportunity to examine and cross-examine witnesses, present evidence, and make arguments of law. The registrars should then vote whether to count each ballot; a tie vote results in counting a challenged ballot. The registrars should indicate on the back of each ballot their decision, signed by those registrars who agree. If they decide to count it, they should add the vote to the tally.

Optical Scanner Recount Procedures

If the recount petition does not include a request to hand count the optical scan ballot, the recount consists of inserting the optical scanner ballots, including absentee ballots, into the vote tabulator, which has been programmed and tested according to statute. Challenged ballots are examined and, if ruled acceptable, are included in the tabulation. Any optical scanner ballot which is rejected by the vote tabulator or which was mutilated so that it could not be inserted in the vote tabulator should be counted by hand.

Hand counting optical scanner ballots is similar to counting paper ballots. The general rule about giving effect to the will of the voter must be followed. Write-in votes are counted whether or not the voter has omitted the address or failed to mark the vote indicator for the write-in or sticker candidate. Sealed envelopes containing any absentee ballots rejected as defective are examined by the registrars. See page 7 for protested ballot procedures.

When the Recount is Complete

When the recount is complete, and with the candidates' counsel present if they wish, ballots must be properly sealed in their containers, certified and returned to the vault. The protested ballots must be placed in the vault in a separate, sealed and certified envelope. Only one recount is permitted. The registrars may not order a "re-count" unless the number of ballots in a block does not add up to the block count (e.g. there is a block of fifty ballots and the count shows 24 for "X," 24 for "Y" and 1 blank).

The registrars must make and sign a statement of their determination of the results of the recount. All materials, including the statement, must be returned to the city or town clerk or election commissioners, who must amend the final vote tallies. The amended records stand as the true record of the election.

The results of any recount of votes cast at a primary or state election, whether or not the tally has changed, must be reported immediately to the Secretary of the Commonwealth.

IV. AFTER THE RECOUNT

Rulings made by the board of registrars are binding and any appeal must be directed to the Superior Court in a civil action. G.L. c. 56, § 59; McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833 (1982). Any appeals should be pursued as quickly as possible after the recount has been completed. In the case of an appeal, only the ballots recorded

as protested at the recount are required to be produced, except by express order of the court.

No officer recounting ballots may, except as required by law, make any statement or give any information regarding the ballots cast.

In state elections and primaries, the results of the election are declared by the statutory deadline for certification, even if a recount petition has been filed.

In city elections, the city clerk shall not declare the result of an election until the time for filing a petition for a recount has expired. If a recount petition has been filed, the results of the election are not declared until the ballots are recounted and the results amended. G.L. c. 54, § 137.

In town elections, the results of an election are declared as soon as they are certified, even if a recount petition is filed. After the recount has been completed, if it appears that a person was elected other than the person who was previously declared to be elected, the registrars must sign a certificate of that fact. The certificate must also state the number of votes for each candidate, as determined by the recount. The signed certificate must then be filed with the town clerk. The town clerk must record the certificate and, within 24 hours, deliver a copy of the certificate to both the candidate originally declared to be elected and to the candidate who by the recount certificate appears to be elected. G.L. c. 54, § 135.

The ballots and other materials for local elections must be preserved for 30 days. Ballots and other materials from biennial state primaries and elections (in which ballots federal candidates appear on the ballot) must be preserved for 22 months. 52 USC § 20701. In order to compel a clerk to preserve materials beyond the required period, a candidate or supporter or opponent of a ballot question must file with the city or town clerk or election commission a written claim to the office or declaration of intention to contest the election within 30 days of the election. G.L. c. 54, § 134.

V. DISTRICT-WIDE RECOUNTS (Including Statewide)

While basic recount procedures also apply to district-wide (including statewide) recounts of offices or questions voted on at a state primary, state election or presidential primary (except for ward and town committees), there are some additional procedures. **These procedures may be used only if the margin of victory is not more than one-half of one percent (0.5%) of the votes cast for an office or question.**

Please note that procedures and deadlines for district-wide and statewide recounts may be changed for certain elections pursuant to state law. Questions regarding the petitioning process for a specific election should be addressed to the Elections Division.

Petitioning

Petitioners must use different petitions for voters to sign from each city and town in the district. District-wide and statewide petition forms are similar to regular recount petitions on which candidates must specify on the petition form the office to be recounted and contains a statement that the signers have reason to believe that the election records are erroneous and that a recount will affect the results of that election. Further, the petitioner must also specify the particular reasons for the recount request. In communities voting by optical scanner ballot, petitioners who want a hand count of the ballots must state this on the form by checking the appropriate box.

In district-wide or statewide recounts of state primaries, petitions must be submitted to local registrars of voters no later than 5:00 p.m. on the third day after the state primary. The petitions must then be submitted to the Secretary of the Commonwealth no later than 5:00 p.m. on the seventh day after the state primary.

In district-wide or statewide recounts of state election offices or questions, the petitions must be submitted to the local registrars of voters no later than 5:00 p.m. on the tenth day after the election. The petitions must then be filed with the Secretary of the Commonwealth no later than 5:00 p.m. on the fifteenth day following the state election.

For a district-wide recount, the petitions must be signed by one-fourth of the number of voters required to sign a nomination paper to qualify a candidate for the ballot for that office. For example, to request a recount of the office of state representative, petitioners would need to file no less than 38 signatures – one-fourth of the 150 signatures required in order for a candidate's name to be printed on the ballot for state representative. **Check with the Elections Division for the exact number.** For a statewide recount, the petition must be signed by at least 1,000 registered voters of the Commonwealth. There is no limitation on where signatures may be obtained in the district; they may all be obtained in the same city or town, however, separate petition sheets must be used for each municipality. Further, at least one signature on the entire petition must be sworn to before a notary public. For a state primary district-wide or statewide recount petitions, signers must have been enrolled in the proper party as of the last day to register to vote for the primary, which is twenty days prior to the date of the primary.

After a state primary, the Secretary of the Commonwealth will order the district-wide recount conducted as soon as it appears to him that the difference in votes is within the required margin and that a sufficient number of signatures have been submitted.

After a state election, the Secretary of the Commonwealth must hold the recount petitions until after the official tabulation of votes is made by the Governor and Council. If the difference in the number of votes cast is greater than one-half of one percent of the total number of votes cast, the district-wide recount will not be held. If the difference is one-half of one percent or less of the total number of votes cast, the Secretary of the Commonwealth will order that the registrars of each city and town conduct the recount.

Setting the Date of the Recount

The board of registrars in each city or town shall set the date of the recount for an office or question that appeared on a state primary for a date not more than 6 days after the deadline for filing a recount petition for a primary and not more than 10 days after the deadline for filing a recount petition for an election. For statewide offices and questions, the recount date is not set until after official tabulation as noted above.

Retention of Ballots

If a district-wide recount petition has been filed, all ballots must be retained by the city and town clerks for at least **60 days** after the election.

Notice

Written notice of the time and location of the recount must be given by local registrars to all candidates for the office to be recounted in a district-wide recount at least three days in advance of the recount. In the case of a recount on a question, committees that favor and oppose the question are treated as candidates and as such are entitled to receive notice of the recount and have counsel and observers attend.

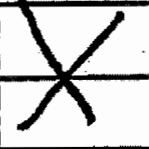
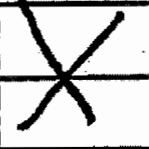
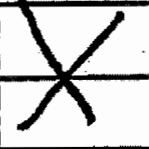



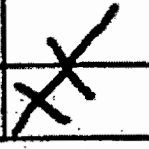
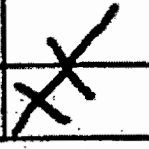
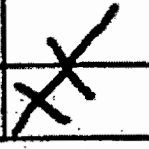
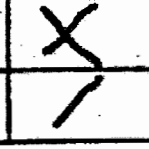

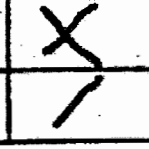

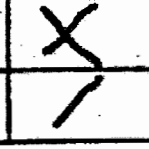

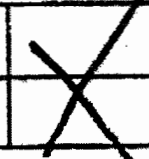
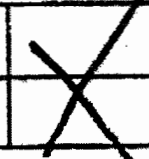
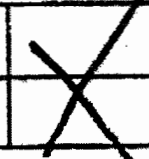
When the Recount is Complete

When the recount is complete, the registrars shall enclose and seal the ballots in envelopes or containers, keeping all protested ballots in a separate envelope; make and sign a statement of their determination of the questions raised; and return all materials to the city or town clerk. The city or town clerk will amend the records, which stand as the true record of the election, and sends copies immediately to the Secretary of the Commonwealth.

VI. EXAMPLES OF CONTESTED BALLOT MARKS

The below votes are examples of court rulings on contested ballots in election cases.

<table border="1"><tr><td data-bbox="367 1371 545 1444">Smith</td><td data-bbox="545 1371 695 1444">X</td></tr><tr><td data-bbox="367 1444 545 1518">Jones</td><td data-bbox="545 1444 695 1518"></td></tr></table> <p data-bbox="383 1528 686 1577">Count for Smith.</p>	Smith	X	Jones		<p data-bbox="743 1352 1286 1472">Example 1 Cross or check within parallel lines containing name of candidate.</p> <p data-bbox="743 1503 1146 1593">Legal References: <i>Beauchemin v. Flagg</i>, 229 Mass. 23, 118 N.E. 2d 251 (1918).</p> <p data-bbox="743 1621 1136 1682"><i>Coughlin v. LeClair</i>, 294 Mass. 434, 2 N.E. 2d 461 (1936).</p>
Smith	X				
Jones					

<table border="1"><tr><td>Smith</td><td rowspan="2"></td></tr><tr><td>Jones</td></tr></table> <p>Count as a blank.</p>	Smith		Jones	<p>Example 2 Apex of cross on line.</p> <p>Legal Reference: <i>Coughlin v. LeClair</i>, 294 Mass.434, 2 N.E. 2d 461 (1936).</p>	
Smith					
Jones					
<table border="1"><tr><td>Smith</td><td></td></tr><tr><td>Jones</td><td></td></tr></table> <p>Count for Smith.</p>	Smith		Jones		<p>Example 3 Diagonal marks used with some consistency.</p> <p>Legal Reference: <i>Gilligan v. Registrars of Voters</i>, 323 Mass. 346, 82 N.E. 2d 3 (1948).</p>
Smith					
Jones					
<table border="1"><tr><td>Smith</td><td rowspan="2"></td></tr><tr><td>Jones</td></tr></table> <p>Count for Jones.</p>	Smith		Jones	<p>Example 4 More than one line intersecting diagonal, if distinguishable from attempt to obliterate.</p> <p>Legal Reference: <i>Gilligan v. Registrars of Voters</i>, 323 Mass. 346, 82 N.E. 2d 3 (1948).</p>	
Smith					
Jones					
<table border="1"><tr><td>Smith</td><td></td></tr><tr><td>Jones</td><td></td></tr></table> <p>Count for Smith.</p>	Smith		Jones		<p>Example 5 "X" clearly appears in Smith box; diagonal line in Jones box inferred to be error.</p> <p>Legal Reference: <i>Gilligan v. Registrars of Voters</i>, 323 Mass. 346, 82 N.E. 2d 3 (1948).</p>
Smith					
Jones					
<table border="1"><tr><td>Smith</td><td rowspan="2"></td></tr><tr><td>Jones</td></tr></table> <p>Count for Jones.</p>	Smith		Jones	<p>Example 6 Apex of cross within Jones box.</p> <p>Legal Reference: <i>Kane v. Registrars of Voters</i>, 328 Mass. 511, 105 N.E. 2d 212 (1952).</p>	
Smith					
Jones					

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; padding: 5px;">✗</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="padding: 5px;">✗</td> </tr> </table> <p style="text-align: center;">Count for Jones.</p>	Smith	✗	Jones	✗	<p>Example 7 Obliteration or erasure.</p> <p>Legal References: <i>Kane v. Registrars of Voters,</i> <i>328 Mass. 511, 105 N.E. 2d 212 (1952).</i></p> <p><i>Munn v. Dabrowski,</i> <i>335 Mass. 41, 138 N.E. 2d 570 (1956).</i></p> <p><i>DePetrillo v. Registrars of Voters,</i> <i>342 Mass. 13, 171 N.E. 2d 843 (1961).</i></p> <p><i>Desjourdy v. Board of Registrars of Voters,</i> <i>358 Mass. 644, 266 N.E. 2d 672 (1971).</i></p> <p><i>Morris v. Board of Registrars of Voters,</i> <i>362 Mass. 48, 283 N.E. 2d 854 (1972).</i></p>
Smith	✗				
Jones	✗				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; padding: 5px;">✓</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="padding: 5px;"></td> </tr> </table> <p style="text-align: center;">Count for Smith.</p>	Smith	✓	Jones		<p>Example 8 Imperfect cross.</p> <p>Legal References: <i>Kane v. Registrars of Voters,</i> <i>328 Mass. 511, 105 N.E. 2d 212 (1952).</i></p> <p><i>Munn v. Dabrowski,</i> <i>335 Mass. 41, 138 N.E. 2d 570 (1956).</i></p>
Smith	✓				
Jones					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; padding: 5px;">✓</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="padding: 5px;"></td> </tr> </table> <p style="text-align: center;">Count for Smith.</p>	Smith	✓	Jones		<p>Example 9 Checks and crosses intermingled on ballot, or all checks.</p> <p>Legal Reference: <i>Munn v. Dabrowski,</i> <i>335 Mass. 41, 138 N.E. 2d 570 (1956).</i></p>
Smith	✓				
Jones					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Smith</td> <td style="width: 50%; padding: 5px;">✓</td> </tr> <tr> <td style="padding: 5px;">Jones</td> <td style="padding: 5px;"></td> </tr> </table> <p style="text-align: center;">Count for Smith.</p>	Smith	✓	Jones		<p>Example 10 "V" within Smith box; no mark in Jones.</p> <p>Legal Reference: <i>Munn v. Dabrowski,</i> <i>335 Mass. 41, 138 N.E. 2d 570 (1956).</i></p>
Smith	✓				
Jones					

<table border="1"><tr><td>Smith</td><td>X</td></tr><tr><td>Jones</td><td>0</td></tr></table> <p>Count for Smith.</p>	Smith	X	Jones	0	<p>Example 11 Consistent pattern of zeroes for candidates not voted for.</p> <p>Legal Reference: <i>Munn v. Dabrowski</i>, 335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith	X				
Jones	0				
<table border="1"><tr><td>Smith</td><td></td></tr><tr><td>Jones</td><td>3</td></tr></table> <p>Count for Jones.</p>	Smith		Jones	3	<p>Example 12 Use of numeral instead of cross.</p> <p>Legal Reference: <i>Munn v. Dabrowski</i>, 335 Mass. 41, 138 N.E. 2d 570 (1956).</p>
Smith					
Jones	3				
<table border="1"><tr><td>Smith</td><td>X</td></tr><tr><td>Jones</td><td></td></tr></table> <p>Count for Smith.</p>	Smith	X	Jones		<p>Example 13 Clear impression of cross on paper, but only one leg penciled.</p> <p>Legal Reference: <i>Desjourdy v. Board of Registrars of Voters</i>, 358 Mass. 644, 266 N.E. 2d 672 (1971).</p>
Smith	X				
Jones					
<table border="1"><tr><td>Smith</td><td>✓</td></tr><tr><td>Jones</td><td></td></tr></table> <p>Count for Smith.</p>	Smith	✓	Jones		<p>Example 14 Check mark for Smith which dips slightly into Jones' box.</p> <p>Legal Reference: <i>Desjourdy v. Board of Registrars of Voters</i>, 358 Mass. 644, 266 N.E. 2d 672 (1971).</p>
Smith	✓				
Jones					

Exhibit C

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

LEONARD MIRRA a/k/a LENNY MIRRA,

Plaintiff,

v.

TOWN OF GEORGETOWN REGISTRARS OF
VOTERS,
TOWN OF IPSWICH REGISTRARS OF VOTERS,
TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS,
TOWN CLERK FOR THE TOWN OF ROWLEY,
and
WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,

Defendants.

DECLARATION OF LEONARD MIRRA

I, Leonard Mirra, declare, upon personal knowledge and under penalty of perjury, pursuant to Mass. Gen. Laws ch. 268, § 1A, that the following is true and accurate:

1. I reside in Georgetown, MA.
2. I am the State Representative for the Second Essex District.
3. I have served as the State Representative for the Second Essex District since being elected in 2012.
4. The allegations contained within the Complaint (to which this Declaration is an exhibit) are true and accurate to the best of my knowledge.
5. On or about November 16, 2022, I spoke with counsel for Defendant William Francis Galvin, the Secretary of the Commonwealth of Massachusetts ("Secretary Galvin" or

“Secretary”), regarding the Second Essex District State Representative election (the “Election”) and a district-wide recount for the same (“Recount”).

6. I asked for the opportunity to inspect the mail-in envelopes and the corresponding voter registration cards for all six towns within the Second Essex District because I, or a representative of mine, wanted to compare the signatures on the mail-in envelopes with the signatures on the accompanying voter registration cards and see if the signatures matched.

7. Counsel for the Secretary informed me that I would be able to inspect the mail-in envelopes and corresponding voter registration cards at the Recount in all six towns within the Second Essex District, including at the Ipswich and Rowley Recounts.

8. I inspected the mail-in envelopes and accompanying voter registration cards at the Ipswich Recount. I found approximately 14 mail-in envelopes with signatures that substantially diverged from the signatures on the corresponding voter registration cards.

9. The Rowley Recount happened simultaneously with the Ipswich Recount, and as such I was unable to attend the Rowley Recount. However, I had representatives attend the Rowley Recount on my behalf.

10. My representatives told the Town Clerk for the Town of Rowley (“Rowley Town Clerk”) that they would like to inspect the mail-in envelopes to see if the signatures on the envelopes matched the voter’s signature on the voter’s registration card.

11. The Rowley Town Clerk refused to allow my representatives to inspect the mail-in envelopes.

Executed on: December 21, 2022

Location: _____

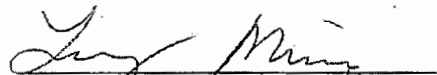

Rep. Leonard “Lenny” Mirra

Exhibit D



2022 Information For Voters

Election Security

Elections in Massachusetts are secure, verifiable, and transparent. With recent changes to our election laws, you may have questions about the safeguards in place to ensure that every vote is counted legally and accurately.

Verifiable Paper Trail

In Massachusetts, every voter casts a paper ballot. Ballots are counted either by an electronic tabulator or by election workers who tally the votes by hand.

No matter how your ballot was counted, election workers record all votes on a paper tally sheet in each polling place after polls close. All ballot counting and tallying takes place in public, with anyone welcome to observe the process.

Each local election office uses those tally sheets to compile unofficial results. Election results become official after they are checked thoroughly, certified by the local election official, reported to the Secretary of the Commonwealth's office, and certified again by the Governor and the Governor's Council.

Candidates always have the right to petition for a hand recount of ballots to verify that the official count was accurate.

Ballot Tabulators

All ballot tabulators in Massachusetts are certified for use by the federal Election Assistance Commission and the Secretary of Commonwealth.

Before each election, local election officials must hold public logic & accuracy testing of all tabulators that will be used in the election. Each tabulator is tested to make sure it is counting ballots accurately. The testing date, time, and location is publicly posted, and members of the public are welcome to observe. Local party committees are also invited to observe testing of the voting equipment.

Only tabulators that count paper ballots are certified for use in Massachusetts. No voting tabulators in Massachusetts are connected to the internet.

Voting by Mail

Your Vote by Mail ballot will be checked in as quickly as possible after it reaches your local election office. Your local election official will open the outer mailing envelope and check your inner ballot envelope for your signature. The signature on the ballot envelope will be compared to the signature on file with your local election office.

If your ballot envelope is signed and accepted, your local election official will mark your name off the voter list so that you can't vote again. The voter list used at your polling place will show that you have already voted.

If your ballot is not accepted, you will be notified that your ballot needed to be rejected and you will still be able to vote in person. If time allows, you will be sent a replacement ballot to use to vote by mail.

All mail-in ballots are checked against the voter list before they are counted. This prevents any voter from voting more than once. A mail-in ballot that arrives after someone has voted in person will be rejected when the ballot is checked in.

Ballot Counting

When you vote in person at your polling place, you place your own ballot directly into the locked ballot box, where it remains until after polls close. Ballots inserted into tabulators are counted as you insert them, while ballots inserted into other ballot boxes are counted in the polling place after polls close.

When you vote early in person or vote by mail, you place your ballot into a ballot envelope, which is kept sealed and secured until it is ready to be counted. Ballots are never unsealed until a public tabulation session has begun.

Go to:

[Offices on the Ballot in 2022](#)

[Question 1](#)

[Question 2](#)

[Question 3](#)

[Question 4](#)

[Voting in 2022](#)

[How to Register to Vote](#)

[Voting by Mail](#)

[Voting Early In-Person](#)

[Voting on Election Day](#)

[Frequently Asked Questions](#)

Election Security

[Be a Poll Worker](#)

[Military and Overseas Voters](#)

[Massachusetts Voters' Bill of Rights](#)

[Elections Home](#)

All ballots are counted in public, either at a central tabulation facility or at your polling place on Election Day. Before any early or absentee ballot is counted, the name and address on the envelope is read aloud and the voter's name is marked off on the voter list.

Observers are welcome to attend tabulation sessions, which must be publicly posted by your local election office. Any ballots not tabulated at a central tabulation facility are sent to the appropriate polling place to be inserted into the ballot box on Election Day.

Observers are also welcome in polling places to watch the voting process and the counting of ballots at the end of the night. Observers must not interfere with the voting process and must observe from a designated location outside of the voting area.

Election Results

For the November 8, 2022 State Election, unofficial election results reported on Election Night will include all ballots counted through November 8. Those results will include:

- All ballots cast during the early voting period;
- All mail-in ballots returned by November 7;
- All ballots cast in person on Election Day.

Ballots returned by mail or drop box on Election Day will be sent to be processed at the local election office, so that signatures on the ballot envelopes can be examined and voter lists can be consulted.

Mail-in ballots that arrive by November 12, 2022 will be counted as long as they are postmarked by Election Day.

After voting lists from polling places have been returned to the local election office, the election officials will check any ballots that arrived on or after Election Day against those lists to determine if the voter who returned the ballot has already voted in person. Ballots from voters who have already voted will be rejected.

Ballots that are accepted on or after Election Day will be counted during a public counting session to be held after 5 p.m. on November 12. Vote tallies will be amended to reflect those additional ballots before the results become official.

[<< Previous](#) [Next >>](#)

William Francis Galvin, Secretary of the Commonwealth of Massachusetts

[Terms and Conditions](#)

[Accessibility Statement](#)

2

CIVIL ACTION COVER SHEET		DOCKET NUMBER 2277CV01293	Trial Court of Massachusetts The Superior Court COUNTY Essex Superior Court (Salem)
Plaintiff: Leonard Mirra		Defendant: Town of Georgetown Registrars of Voters, et al.	
ADDRESS: 12 Larkspur Circle		ADDRESS: Georgetown Town Hall	
Georgetown, MA 01833		1 Library St. Georgetown, MA 01833	
Plaintiff Attorney: Michael J. Sullivan; J. Christopher Amrhein, Jr.		Defendant Attorney:	
ADDRESS: Ashcroft Law Firm		ADDRESS:	
200 State Street, 7th Floor			
Boston, MA 02109			
BBO: 487210 (MJS); 703170 (JCA)		BBO:	
TYPE OF ACTION AND TRACK DESIGNATION (see instructions section below)			
CODE NO. AD1; D13; E99	TYPE OF ACTION (specify) Complaint	TRACK A; F; X	HAS A JURY CLAIM BEEN MADE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
*If "Other" please describe:			
Is there a claim under G.L. c. 93A? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		Is there a class action under Mass. R. Civ. P. 23? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A			
The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.			
TORT CLAIMS			
A. Documented medical expenses to date			
1. Total hospital expenses			
2. Total doctor expenses			
3. Total chiropractic expenses			
4. Total physical therapy expenses			
5. Total other expenses (describe below)			
			Subtotal (1-5): \$0.00
B. Documented lost wages and compensation to date			
C. Documented property damages to date			
D. Reasonably anticipated future medical and hospital expenses			
E. Reasonably anticipated lost wages			
F. Other documented items of damages (describe below)			
			TOTAL (A-F): \$0.00
G. Briefly describe plaintiff's injury, including the nature and extent of injury:			
CONTRACT CLAIMS			
<input type="checkbox"/> This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).			
Item #	Detailed Description of Each Claim	Amount	
1.			
		Total	
Signature of Attorney/Unrepresented Plaintiff: X <i>[Signature]</i>		Date: December 21, 2022	
RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.			
CERTIFICATION PURSUANT TO SJC RULE 1:18			
I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.			
Signature of Attorney/Unrepresented Plaintiff: X <i>[Signature]</i>		Date: December 21, 2022	

CIVIL ACTION COVER SHEET INSTRUCTIONS

SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

AC Actions Involving the State/Municipality *

- AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
- AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AE1 Administrative Action involving Commonwealth, Municipality, MBTA, etc. (A)

CN Contract/Business Cases

- A01 Services, Labor, and Materials (F)
- A02 Goods Sold and Delivered (F)
- A03 Commercial Paper (F)
- A04 Employment Contract (F)
- A05 Consumer Revolving Credit - M.R.C.P. 8.1 (F)
- A06 Insurance Contract (F)
- A08 Sale or Lease of Real Estate (F)
- A12 Construction Dispute (A)
- A14 Interpleader (F)
- BA1 Governance, Conduct, Internal Affairs of Entities (A)
- BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
- BB1 Shareholder Derivative (A)
- BB2 Securities Transactions (A)
- BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
- BD1 Intellectual Property (A)
- BD2 Proprietary Information or Trade Secrets (A)
- BG1 Financial Institutions/Funds (A)
- BH1 Violation of Antitrust or Trade Regulation Laws (A)
- A99 Other Contract/Business Action - Specify (F)

* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

ER Equitable Remedies

- D01 Specific Performance of a Contract (A)
- D02 Reach and Apply (F)
- D03 Injunction (F)
- D04 Reform/ Cancel Instrument (F)
- D05 Equitable Replevin (F)
- D06 Contribution or Indemnification (F)
- D07 Imposition of a Trust (A)
- D08 Minority Shareholder's Suit (A)
- D09 Interference in Contractual Relationship (F)
- D10 Accounting (A)
- D11 Enforcement of Restrictive Covenant (F)
- D12 Dissolution of a Partnership (F)
- D13 Declaratory Judgment, G.L. c. 231A (A)
- D14 Dissolution of a Corporation (F)
- D99 Other Equity Action (F)

PA Civil Actions Involving Incarcerated Party †

- PA1 Contract Action involving an Incarcerated Party (A)
- PB1 Tortious Action involving an Incarcerated Party (A)
- PC1 Real Property Action involving an Incarcerated Party (F)
- PD1 Equity Action involving an Incarcerated Party (F)
- PE1 Administrative Action involving an Incarcerated Party (F)

TR Torts

- B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
- B04 Other Negligence - Personal Injury/Property Damage (F)
- B05 Products Liability (A)
- B06 Malpractice - Medical (A)
- B07 Malpractice - Other (A)
- B08 Wrongful Death - Non-medical (A)
- B15 Defamation (A)
- B19 Asbestos (A)
- B20 Personal Injury - Slip & Fall (F)
- B21 Environmental (F)
- B22 Employment Discrimination (F)
- BE1 Fraud, Business Torts, etc. (A)
- B99 Other Tortious Action (F)

RP Summary Process (Real Property)

- S01 Summary Process - Residential (X)
- S02 Summary Process - Commercial/ Non-residential (F)

RP Real Property

- C01 Land Taking (F)
- C02 Zoning Appeal, G.L. c. 40A (F)
- C03 Dispute Concerning Title (F)
- C04 Foreclosure of a Mortgage (X)
- C05 Condominium Lien & Charges (X)
- C99 Other Real Property Action (F)

MC Miscellaneous Civil Actions

- E18 Foreign Discovery Proceeding (X)
- E97 Prisoner Habeas Corpus (X)
- E22 Lottery Assignment, G.L. c. 10, § 28 (X)

AB Abuse/Harassment Prevention

- E15 Abuse Prevention Petition, G.L. c. 209A (X)
- E21 Protection from Harassment, G.L. c. 258E(X)

AA Administrative Civil Actions

- E02 Appeal from Administrative Agency, G.L. c. 30A (X)
- E03 Certiorari Action, G.L. c. 249, § 4 (X)
- E05 Confirmation of Arbitration Awards (X)
- E06 Mass Antitrust Act, G.L. c. 93, § 9 (A)
- E07 Mass Antitrust Act, G.L. c. 93, § 8 (X)
- E08 Appointment of a Receiver (X)
- E09 Construction Surety Bond, G.L. c. 149, §§ 29, 29A (A)
- E10 Summary Process Appeal (X)
- E11 Worker's Compensation (X)
- E16 Auto Surcharge Appeal (X)
- E17 Civil Rights Act, G.L. c.12, § 11H (A)
- E24 Appeal from District Court Commitment, G.L. c.123, § 9(b) (X)
- E25 Pleural Registry (Asbestos cases) (X)
- E94 Forfeiture, G.L. c. 265, § 56 (X)
- E95 Forfeiture, G.L. c. 94C, § 47 (F)
- E99 Other Administrative Action (X)
- Z01 Medical Malpractice - Tribunal only, G.L. c. 231, § 60B (F)
- Z02 Appeal Bond Denial (X)

SO Sex Offender Review

- E12 SDP Commitment, G.L. c. 123A, § 12 (X)
- E14 SDP Petition, G.L. c. 123A, § 9(b) (X)

RC Restricted Civil Actions

- E19 Sex Offender Registry, G.L. c. 6, § 178M (X)
- E27 Minor Seeking Consent, G.L. c.112, § 12S(X)

TRANSFER YOUR SELECTION TO THE FACE SHEET

EXAMPLE:

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

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

DUTY OF THE PLAINTIFF - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or self-represented litigant.**

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

**A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.
 FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
 MAY RESULT IN DISMISSAL OF THIS ACTION.**

COMMONWEALTH OF MASSACHUSETTS



ESSEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,

Plaintiff,

v.

TOWN OF GEORGETOWN REGISTRARS OF
VOTERS,
TOWN OF IPSWICH REGISTRARS OF VOTERS,
TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS,
TOWN CLERK FOR THE TOWN OF ROWLEY,
and
WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,

Defendants.

**EMERGENCY MOTION FOR EXPEDITED AND
LIMITED *DE NOVO* REVIEW OF TWO CHALLENGED BALLOTS, AND
PRELIMINARY INJUNCTION STAYING SWEARING-IN**

Plaintiff Leonard Mirra hereby submits this emergency motion (“Emergency Motion”) pursuant to Mass. Super. Ct. R. 9A(d)(1), asking this Honorable Court to conduct an expedited *de novo* review of two challenged ballots from the election recount conducted in the Town of Ipswich on December 7, 2022. This Court’s review of the ballots will show that the Second Essex District State Representative election (“Election”) is, at a minimum, a tie between Plaintiff Leonard Mirra and the purported winner Kristin Kassner. In conjunction with Plaintiff’s request for expedited *de novo* review, this Court should issue injunctive relief to stay the swearing-in of Ms. Kassner scheduled for January 4, 2023, until the above-captioned matter has been fully litigated.

WHEREFORE, Plaintiff Mirra respectfully requests that this Honorable Court conduct a *de novo* review of the two Ipswich ballots identified in the accompanying Memorandum of Law in Support of this Emergency Motion, and issue a preliminary injunction enjoining the swearing-in of alleged Election winner Ms. Kassner.

Dated: December 23, 2022

Respectfully submitted by,

/s/ Michael J. Sullivan

Michael J. Sullivan

MA BBO # 487210

J. Christopher Amrhein, Jr.

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Leonard Mirra

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the below via electronic mail on December 23, 2022:

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Counsel for Rowley Defendants	Yael Magen <i>Thomas A. Mullen, P.C.</i> 40 Salem Street, Building 2, Suite 12 Lynnfield, Massachusetts 01940 781-245-2284 ext.2 yaelmagen@thomasamullenpc.com
Counsel for Georgetown	Lauren F. Goldberg <i>KP Law, P.C.</i> 101 Arch Street, 12th Floor Boston, MA 02110 (617) 654-1759 lgoldberg@k-plaw.com
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/s/ J. Christopher Amrhein, Jr.
J. Christopher Amrhein, Jr.

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,

Plaintiff,

v.

TOWN OF GEORGETOWN REGISTRARS OF
VOTERS,
TOWN OF IPSWICH REGISTRARS OF VOTERS,
TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS,
TOWN CLERK FOR THE TOWN OF ROWLEY,
and
WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,

Defendants.

**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR EXPEDITED AND
LIMITED *DE NOVO* REVIEW OF TWO CHALLENGED BALLOTS, AND
PRELIMINARY INJUNCTION STAYING SWEARING-IN**

Plaintiff Leonard Mirra moves this Honorable Court to conduct an expedited *de novo* review of two challenged ballots from the recount conducted in Ipswich on December 7, 2022 (“Ipswich Recount”). This Court’s review of the ballots will show that the Second Essex District State Representative election (the “Election”) is, at a minimum, a tie between Plaintiff Leonard Mirra and the purported winner Kristin Kassner. Accordingly, this Court should issue injunctive relief to stay the swearing-in of Ms. Kassner scheduled for January 4, 2023, until the above-captioned litigation has been fully resolved by this Court.

FACTS AND PROCEDURAL HISTORY

The Election occurred on November 8, 2022. Dkt. 1 (Complaint) ¶ 23. The initial results of the Election showed that Plaintiff Mirra received 10 votes more than Ms. Kassner. *Id.* ¶ 27. Ms. Kassner petitioned for a district-wide recount (“Recount”). *See id.* ¶ 29. After the Recount, Ms. Kassner purportedly picked up a net of 11 votes, thus emerging as the alleged winner by one (1) vote. *Id.* ¶ 8.

On December 21, 2022, Plaintiff Mirra filed suit seeking *de novo* review of the challenged ballots and, *inter alia*, declaratory relief. *See generally* Compl.

APPLICABLE LEGAL STANDARD

The determination of the legal effect of a ballot is a question of law. *McCavitt v. Registrars of Voters of Brockton*, 385 Mass. 833, 839 (1982); *Morris v. Board of Registrars of Voters of East Bridgewater*, 362 Mass. 48, 49 (1972). This Court must make a *de novo* interpretation of the voter’s intent when reviewing a disputed ballot. *See* 18C Mass. Prac., Municipal Law and Practice § 38.64 (5th ed.) (citing *DePetrillo v. Registrars of Voters of Rehoboth*, 342 Mass. 13, 14 (1961)).

To obtain a preliminary injunction, “the moving party must show that, without the requested relief, it may suffer a loss of rights that cannot be vindicated should it prevail after a full hearing on the merits.” *Packaging Indus. Grp. v. Cheney*, 380 Mass. 609, 616 (1980). A court must “balance the risk of irreparable harm to the plaintiff and defendant in light of each party’s chance of success on the merits at trial,” *Planned Parenthood League of Mass., Inc., v. Operation Rescue*, 406 Mass. 701, 710 (1990) (quotation marks omitted), “in light of the part[ies]’ chance of success on the merits,” *Boston Teachers Union, Loc. 66 v. City of Boston*, 382 Mass. 553, 556 (1981). “When the balance of the equities favors the moving party, the preliminary injunction may properly issue.” *Id.*

ARGUMENT

I. THIS COURT SHOULD CONDUCT AN EXPEDITED *DE NOVO* REVIEW OF TWO IPSWICH BALLOTS

This Court's expedited *de novo* review of two ballots challenged at the Ipswich Recount will place doubt in the certified post-Recount Election results and prove that the Election is, at a minimum, a tie between Plaintiff Mirra and Ms. Kassner. This Court is vested with the authority to conduct such a *de novo* review. *See supra* (Applicable Legal Standard). Furthermore, Massachusetts law is clear that legal disputes over the results of an election are to be resolved, upon a motion, expeditiously. *See, e.g.*, Mass. Gen. Laws ch. 231, § 48D.

The relief Plaintiff Mirra seeks here is extremely limited yet enough to materially change the post-Recount Election results. Specifically, Plaintiff Mirra asks this Court for purposes of this emergency motion, to review *de novo* just *two* challenged ballots: the first from Ipswich precinct 1, block 19, Compl. ¶ 57; and the second from Ipswich precinct 4, block 37, Compl. ¶ 55. With regard to both, the election workers called the ballots as votes for Plaintiff Mirra, but the Ipswich Registrars wrongly and unlawfully overruled the call and determined the ballots were blanks instead of votes for Plaintiff Mirra. Compl. ¶¶ 55, 57. The Ipswich Registrars ignored controlling Massachusetts law and disregarded Defendant Secretary's own election recount guide. *See* Compl. ¶¶ 54–59. Given that the post-Recount margin of victory is one (1), rectifying the Ipswich Registrars' mistakes concerning the two Ipswich ballots will materially change the post-Recount Election results that have already been certified. The requested limited *de novo* review is therefore necessary and proper.

II. THIS COURT SHOULD ISSUE INJUNCTIVE RELIEF STAYING THE SWEARING-IN OF MS. KASSNER UNTIL THIS MATTER HAS BEEN FULLY AND FAIRLY LITIGATED

After this Court conducts its review, *supra*, it will either determine Plaintiff Mirra has either won the Election or the Election will likely result in a tie, and thus find the post-Recount Election results have been placed in doubt. When such doubt exists, Massachusetts courts will order a new election. *McCavitt*, 385 Mass. at 850 (“[W]henever the irregularity or illegality of [an] election is such that the result of the election would be placed in doubt, then the election must be set aside, and the judge must order a new election.”).

Notwithstanding the necessity of a new election where the results have been placed in doubt, Massachusetts courts have determined that while a post-recount election dispute is ongoing, governmental operations are not to be disrupted and an incumbent is not to be removed until the court determines the winner. *See generally Alicea v. Southbridge Registrars of Voters, et al.*, Mass. Super. Ct. (Worcester) No. 1085-CV-02624. In the *Alicea* case, Alicea, the incumbent, allegedly lost the election by one vote to Peter Durant. *Id.* A Worcester Superior Court judge conducted a *de novo* review of the challenged ballots and determined that the election was instead a tie. *Id.* Alicia remained in office as a holdover legislator. A new election was ordered by the Worcester Superior Court judge, and Peter Durant, the winner of the new election, was sworn into office in May 2011, after the matter had been fully litigated and judicial orders completed.

The *de novo* review will show Plaintiff Mirra’s success on the merits as it relates to his request for injunctive relief. Additionally, and importantly, Plaintiff Mirra, the incumbent State Representative for the Second Essex District, will be irreparably harmed if he is removed from office despite that a judicial review of just *two* ballots is enough to either completely change the outcome of the Election or to show, at a minimum, the Election resulted in a tie between Plaintiff

Mirra and Ms. Kassner. *Cf. Connolly v. Sec’y of the Commonwealth*, 404 Mass. 556, 568 (1989) (“If the ‘winning’ candidate prevails by less than three votes, under our ruling in *McCavitt*, there must be a new [] election.”) (citing *McCavitt*, 385 Mass. at 848) The balance of equities therefore favors Plaintiff Mirra.

CONCLUSION

Plaintiff Mirra respectfully requests that this Honorable Court conduct a *de novo* review of the two Ipswich ballots identified herein, and accordingly issue a preliminary injunction enjoining the swearing-in of alleged Election winner Ms. Kassner.

Dated: December 23, 2022

Respectfully submitted by,

/s/ Michael J. Sullivan

Michael J. Sullivan

MA BBO # 487210

J. Christopher Amrhein, Jr.

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Attorney for Plaintiff

Leonard Mirra

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the below via electronic mail on December 23, 2022:

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Counsel for Georgetown	Lauren F. Goldberg <i>KP Law, P.C.</i> 101 Arch Street, 12th Floor Boston, MA 02110 (617) 654-1759 lgoldberg@k-plaw.com
Counsel for Kristin Kassner, Proposed Intervenor	Gerald A. McDonough Attorney-at-Law 13 Hollis Street Cambridge, MA 02140 (617) 529-1527 gerry@gmcdonoughlaw.com

/s/ J. Christopher Amrhein, Jr.
J. Christopher Amrhein, Jr.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION NO 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,)
)
)
 Plaintiff,)

v.)

12/27/2022

TOWN OF GEORGETOWN REGISTRARS OF)
VOTERS, TOWN OF IPSWICH REGISTRARS)
OF VOTERS, TOWN CLERK OF THE TOWN)
OF IPSWICH, TOWN OF ROWLEY)
REGISTRARS OF VOTERS, TOWN CLERK)
FOR THE TOWN OF ROWLEY, and)
WILLIAM F. GALVIN, in his official)
capacity as Secretary of the)
Commonwealth of Massachusetts,)
)
 Defendants.)

RECEIVED

THIRD PARTY DEFENDANT KRISTIN KASSNER'S MOTION TO DISMISS

Pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the
Massachusetts Rules of Civil Procedure, as well as this Court's
order issued earlier today, Third Party Defendant and Intervener
Kristin E. Kassner ("Ms. Kassner"), the certified State
Representative-Elect for the Second Essex District, hereby moves
to dismiss the Complaint filed by Plaintiff Leonard Mirra ("Mr.
Mirra"). As set forth in the accompanying Memorandum in Support
of Kristin Kassner's Motion to Dismiss, the basis for Ms.
Kassner's motion is that this Court lacks jurisdiction over the
subject matter of this dispute and Mr. Mirra has failed to state

a claim for which relief can be granted.

WHEREFORE, Kristin Kassner respectfully requests that this Honorable Court dismiss the Plaintiff's Complaint, and permit the Massachusetts House of Representatives, the only governmental body with jurisdiction over this election contest, to address the matter.

Respectfully submitted,

KRISTIN E. KASSNER,
By her attorney,

Gerald A. McDonough

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(617) 529-1527
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Dated: December 27, 2022

CERTIFICATE OF SERVICE

I, Gerald A McDonough, certify that I have served the attached by causing copies to be delivered electronically to:

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Gerald A. McDonough

Dated: December 27, 2022

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION NO 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,
Plaintiff,

12/27/2022

RECEIVED

v.

TOWN OF GEORGETOWN REGISTRARS OF
VOTERS, TOWN OF IPSWICH REGISTRARS
OF VOTERS, TOWN CLERK OF THE TOWN
OF IPSWICH, TOWN OF ROWLEY
REGISTRARS OF VOTERS, TOWN CLERK
FOR THE TOWN OF ROWLEY, and
WILLIAM F. GALVIN, in his official
capacity as Secretary of the
Commonwealth of Massachusetts,
Defendants.

MEMORANDUM IN SUPPORT OF KRISTIN KASSNER'S MOTION TO DISMISS

Pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the
Massachusetts Rules of Civil Procedure, as well as this Court's
order issued earlier today, Third Party Defendant and Intervener
Kristin E. Kassner ("Ms. Kassner"), the certified State
Representative-Elect for the Second Essex District, has moved to
dismiss the Complaint in the above-captioned matter filed by
Plaintiff Leonard Mirra ("Mr. Mirra"). As set forth below, the
basis for Ms. Kassner's motion is that this Court lacks
jurisdiction over the subject matter of this dispute and Mr.
Mirra, therefore, has failed to state a claim for which relief

can be granted.

Statement of Facts

1. Mr. Mirra, the Republican Party candidate for State Representative in the Second Essex District, faced off against Ms. Kassner, the Democratic Party candidate, in the election held on November 8, 2022.

2. After the counting of the ballots by the towns that comprise the Second Essex District, Mr. Mirra was judged to have received 11,754 votes, ten more votes than Ms. Kassner's total of 11,744 votes.

3. On November 22, 2022, As a result of the closeness of the election, Ms. Kassner filed district-wide recount petitions in conformity with the law with the Secretary of the Commonwealth.

4. On November 30, 2022, the Secretary presented to the Executive Council the results of all the elections that took place on November 8th.

5. Because those results demonstrated that the difference in votes between Mr. Mirra and Ms. Kassner was less than one-half of one percent of all ballots cast, and because Ms. Kassner had petitioned for a recount of the election, the Secretary issued an order for a district-wide recount in the Second Essex District.

6. Subsequently, the six towns in the Second Essex District

conducted recounts of the election for State Representative over a four-day period, from December 5th to December 8th, 2022.

7. At the conclusion of those recounts, Ms. Kassner's total votes - 11,763 - exceeded Mr. Mirra's total votes - 11,762 - by one vote.

8. After the Secretary presented those results to the Executive Council on December 14, 2022, the Council certified the results. The Governor of the Commonwealth, Charles D. Baker, signed the certification that very same day, and the Secretary has issued that certification to Ms. Kassner.

9. Mr. Mirra took no action until he filed this complaint electronically in the Essex Superior Court at 4:37 p.m. on Wednesday, December 21, 2022, after the close of business. Ms. Kassner did not learn of the filing until the following day, December 22, 2022.

10. The only remaining task for the Secretary, or any other entity within the Executive Branch, is the ministerial task for transmitting the certification of all the candidates who prevailed in the election to the House of Representatives on January 4, 2023.

11. Ms. Kassner intends to attend the proceedings of the House of Representatives on January 4, 2023, at which time she will present her certification to the presiding officer.

Argument

Since its inception, the Massachusetts Constitution has expressly provided that “[t]he house of representatives shall be the judge of the returns, elections, and qualifications of its own members.” G.L. Const. Pt. 2, C. 1, § 3, Art. 10. As far back as 1808, the Supreme Judicial Court viewed the authority of the House of Representatives as follows:

I consider the House of Representatives not only as an integral branch of the legislature, and as an essential part of the two houses in convention, but also as a court having final and exclusive cognizance of all matters within its jurisdiction, for the purposes for which it was vested with jurisdiction. It has jurisdiction of the election of its members; of the choice of its officers; of its rules of proceeding; and of all contempts against the house, either in its presence, or by violating the constitutional privileges of its *members*. When the house is proceeding as a court, it has, exclusively, authority to decide whether the matter before it be or be not within its jurisdiction, without the legal control of any other court.

Coffin v. Coffin, 4 Mass. 1, 24 (1808).

Since the inception of the Massachusetts Constitution, the Supreme Judicial Court has been consistent in that view of the jurisdiction of the House of Representatives regarding the election of its members. In Peabody v. School Committee of Boston, 115 Mass. 383 (1874), for example, the Court stated that it is the duty of courts, “in the first place, to consider whether the case stated by the parties is within its jurisdiction.” See id. at 383-384. The Peabody Court went on to state that:

It cannot be doubted that either branch of the legislature is thus made the final and exclusive judge of all questions, whether of law or of fact, respecting such elections, returns or qualifications, so far as they are involved in the determination of the right of any person to be a member thereof; and that while the Constitution, so far as it contains any provisions which are applicable, is to be the guide, the decision of either house upon the question whether any person is or is not entitled to a seat therein cannot be disputed or revised by any court or authority whatever.

Id. at 384, citing Coffin v. Coffin, supra.

Thereafter, in Dinan v. Swig, 223 Mass. 516 (1916), the Supreme Judicial Court reiterated this view:

The power to pass upon the election and qualification of its own members thus is vested exclusively in each branch of the General Court. No other department of the government has any authority under the Constitution to adjudicate upon that subject. The grant of power is comprehensive, full and complete. It is necessarily exclusive, for the Constitution contains no words permitting either branch of the Legislature to delegate or share that power. It must remain where the sovereign authority of the state has placed it. General phrases elsewhere in the Constitution, which in the absence of an explicit imposition of power and duty would permit the enactment of laws to govern the subject, cannot narrow or impair the positive declaration of the people's will that this power is vested solely in the Senate and House respectively. It is a prerogative belonging to each House, which each alone can exercise. It is not susceptible of being deputed.

Id. at 517; see also Opinion of the Justices, 375 Mass. 795, 815 (1978) ("The constitutional authority of each branch of the Legislature to judge the elections, returns, and qualifications of its members is exclusive, comprehensive, and final");

Greenwood v. Registrars of Voters of the City of Fitchburg, 282

Mass. 74, 79 (1933) (same).

The Supreme Judicial Court more recently reiterated its view regarding the jurisdiction of the House of Representatives in Wheatley v. Secretary of the Commonwealth, 439 Mass. 849 (2003). The facts in Wheatley are quite similar to the facts in this case. After Patrick was declared the winner of the recount of a State Representative election, the Secretary transmitted those returns to the Acting Governor and the Council, who issued a certification of election to Patrick. On the same day as the Acting Governor and the Council issued the certification, Patrick's opponent, Wheatley, filed a complaint in Superior Court. In that action, the court denied Wheatley's request for injunctive relief, but ordered a new election. When the House assembled for the 2003-2004 legislative session, Patrick presented his certification to the House, which referred the matter to a special committee, and the House itself resolved the matter by a vote on March 20, 2003.

The Supreme Judicial Court became involved in the dispute through the Secretary's application for relief from judgment, seeking to avoid another election that had been ordered by the Superior Court. In its Decision, the Wheatley Court restated its previous jurisprudence regarding the House's authority:

General Laws c. 56, § 59, grants the Superior Court both the jurisdiction to enforce the various laws regulating the conduct of elections and the power to grant equitable

relief to those injured by violations of those laws. Although § 59 was enacted in 1946, see St.1946, c. 537, § 11, the judiciary's power to provide a remedy for persons harmed by defects in election procedures was recognized as far back as the beginning of the Nineteenth Century. See *Coffin v. Coffin*, 4 Mass. 1, 35 (1808) ("an elector illegally deprived of his right of voting, may demand redress for this wrong against the selectmen by a suit at law"). A court's power to remedy election irregularities, however, has a limitation: Part II, c. 1, § 3, art. 10, provides that "[t]he house of representatives shall be the judge of the returns, elections, and qualifications of its own members...." This language is as old as the Constitution itself, having remained unchanged since that document was adopted by the people in June of 1780.

See id. at 853 (footnote deleted).

As the Wheatley Court noted, the House's role as the sole arbiter of a petitioner's claim to a seat as a State Representative "is by now firmly settled at a matter of State constitutional law." See id. at 854. As the Court further noted, although the judiciary may, under § 59, order that a certificate of election issue to a particular candidate, "that certificate is nothing more than evidence that a candidate may present to the House in support of a claim of election." See id. "The House and only the House, has jurisdiction to resolve such a claim." Id. In a different context, a municipal election in the City of Boston, where the statute was similar to the constitutional provision at issue here, the Supreme Judicial Court held that an election dispute is in control of the court only "[u]p to the point that a certificate has been issued." See Banks v. Election

Commissioners of Boston, 327 Mass. 509, 512 (1951).

Mr. Mirra's failure to commence this litigation until after the Governor and Council issued the certificate to Ms. Kassner, therefore, is fatal to his attempt to vest jurisdiction of this dispute in the Superior Court. It should also be noted that in the case that Mr. Mirra had relied on extensively, Alicea v. Southbridge Registrars of Voters, et al., Mass. Super. Ct. (Worcester) No. 1085-CV-02624, Alicea initially filed the complaint on November 29, 2010, well in advance of the certification, and his opponent, Peter Durant, filed a counterclaim. Consequently, in that dispute, both of the parties accepted the jurisdiction of the court prior to the certification of the election, and no appellate court was called on to address the constitutional issues raised herein.

Ms. Kassner, possessing a certificate from the Governor and the Executive Council, intends to present her certificate to the House at the swearing in of state representative on January 4, 2022. At this time, therefore, the Executive Branch has completed all of the tasks assigned to it by the Constitution and the General Laws but one - the ministerial task of transmitting the election certification to the House on January 4th. See, e.g., G.L. c. 3, §§ 1-3; c. 54, §§ 115-117. As the case law instructs, pursuant to the Massachusetts Constitution, it is the House of Representatives, and not the judicial branch,

which is now the sole judge of this dispute.

WHEREFORE, Kristin Kassner respectfully requests that this Honorable Court dismiss the Plaintiff's Complaint so that the Massachusetts House of Representatives, the only governmental body with jurisdiction over this election contest, may address the matter.

Respectfully submitted,

KRISTIN E. KASSNER,
By her attorney,

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Dated: December 27, 2022

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Gerald A. McDonough

Gerald A. McDonough

Dated: December 27, 2022

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT
C.A. No. 2277CV01243-B

LEONARD MIRRA a/k/a LENNY MIRRA,

Plaintiff,

v.

TOWN OF GEORGETOWN REGISTRARS OF
VOTERS; TOWN OF IPSWICH REGISTRARS
OF VOTERS; TOWN CLERK OF THE TOWN
OF IPSWICH; TOWN OF ROWLEY
REGISTRARS OF VOTERS; TOWN CLERK
FOR THE TOWN OF ROWLEY, and WILLIAM
F. GALVIN, in his official capacity as Secretary
of the Commonwealth of Massachusetts,

Defendants.

12/28/2022

RECEIVED

**RESPONSE BY THE SECRETARY OF THE COMMONWEALTH TO PLAINTIFF'S
EMERGENCY MOTION FOR EXPEDITED AND LIMITED DE NOVO REVIEW OF
TWO CHALLENGED BALLOTS, AND PRELIMINARY INJUNCTION STAYING
SWEARING-IN, AND TO INTERVENOR'S MOTION TO DISMISS**

Defendant William F. Galvin, in his official capacity as Secretary of the Commonwealth, hereby submits his response to (1) Plaintiff's motion for expedited and limited de novo review of two challenged ballots and preliminary injunction staying swearing-in and (2) Intervenor's motion to dismiss. In particular, he submits this memorandum to address the questions of law that the Court asked him to address to assist the Court with its resolution of these motions.

I. THE ABILITY OF THE COURT TO ADDRESS THIS SUIT IS CONSTRAINED BY THE STATE CONSTITUTION

As a threshold matter, this Court must resolve the question of whether it has jurisdiction to entertain Plaintiff's suit and his specific request for injunctive relief concerning this election

for state representative. The Secretary's view is that – at least for now – the Court has jurisdiction to make legal determinations and to issue certain equitable orders pursuant to its authority under General Laws c. 56, § 59, which grants the Superior Court both the jurisdiction to enforce the various laws regulating the conduct of elections and the power to grant equitable relief to those injured by violations of those laws. But these equitable powers are limited by the state constitution in one critical respect.

The Massachusetts Constitution, see Part II, c. 1, § 3, art. 10, provides that “[t]he house of representatives shall be the judge of the returns, elections, and qualifications of its own members...” Under this provision, the House is vested with the authority to determine whom to seat among its members after an election. As the Supreme Judicial Court has explained, the “House’s role as the sole arbiter of a Petitioner’s claim to a seat as a representative is by now firmly settled as a matter of State constitutional law.” Wheatley v. Sec’y of Com., 439 Mass. 849, 854 (2003); see also Opinion of the Justices, 375 Mass. 795, 815 (1978) (“The constitutional authority of each branch of the Legislature to judge the elections, returns, and qualifications of its members is exclusive, comprehensive, and final”); Greenwood v. Registrars of Voters of Fitchburg, 282 Mass. 74, 79 (1933) (“Jurisdiction to pass upon the election and qualification of its own members is thus vested exclusively in the House of Representatives”); Dinan v. Swig, 223 Mass. 516, 517 (1916) (“The power to pass upon the election and qualification of its own members thus is vested exclusively in each branch of the General Court. No other department of the government has any authority under the Constitution to adjudicate upon that subject”).

Accordingly, under General Laws c. 56, § 59, this Court can ultimately “order that a certificate of election issue to a particular individual.” Wheatley, 439 Mass. at 854. Or as a

temporary measure, it can likewise order the Secretary to refrain from transmitting election results for this race to the clerk of the House of Representatives. But, as the Court emphasized in Wheatley, such a “certificate is nothing more than evidence that a candidate may present to the House in support of a claim of election.” Id. Ultimately, it is for the House to determine whom to seat, “and only the House, has jurisdiction to resolve such a claim” in a contested election (absent an alleged violation of federal law). Id.

So as a practical matter, this Court retains jurisdiction under General Laws c. 56, § 59 to issue certain equitable orders pertaining to election certificates unless and until the House exercises its prerogative under Part II, c. 1, § 3, art. 10 of the Constitution. But at the end of the day, the newly sworn in House of Representatives is tasked with determining whom to seat in this case. If the House were to exercise this constitutional power after it is sworn in and duly constituted on January 4, 2023, this Court would lack jurisdiction to review such a decision by the House. Id. at 856 (describing House’s decision to seat a member after a disputed election as “unreviewable” by judiciary). To date, the House has not determined whom to seat – nor could it do so until January 4, 2023. As such, the Court for now retains the power to act as permitted by the Constitution and by statute.

II. LEGAL ISSUES CONCERNING PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

Plaintiff asks this Court to temporarily enjoin the swearing in of the Intervenor and to order that Plaintiff remain in office while this legal process unfolds. As noted during the hearing on December 27, 2023, the House of Representatives is not a party to this suit, and under Part II, c. 1, § 3, art. 10 of the Constitution, this Court likely cannot order the House to refrain from seating a member. At most, the Court could – using its equitable powers under General Laws c. 56, § 59 – temporarily order the Secretary to refrain from transmitting election results to the

House clerk. Under this scenario, unless and until (1) the Court ordered the Secretary to transmit election results to the House clerk or (2) the House exercised its power under Part II, c. 1, § 3, art. 10 of the Constitution to judge the election of this seat, the redistricted seat contested in this election would remain vacant.

Still, this Court should only issue temporary equitable relief if Plaintiff can satisfy his substantial burden under Mass. R. Civ. P. 65. A preliminary injunction is a “significant remedy” that “should not be granted unless the plaintiffs [make] a clear showing of entitlement thereto.” Student No. 9 v. Bd. of Educ., 440 Mass. 752, 762 (2004). To make this showing, the plaintiff must demonstrate (1) that he has a likelihood of success on the merits, (2) that he will suffer irreparable injury in the absence of an injunction, and (3) that, in light of the likelihood of success on the merits, the risk of irreparable harm to plaintiffs outweighs the potential harm to the defendant in granting the injunction. Tri-Nel Mgmt., Inc. v. Bd. of Health of Barnstable, 433 Mass. 217, 219 (2001). In addition, where, as here, the plaintiff seeks to enjoin governmental action, the Court must “determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” Cote-Whitacre v. Dep’t of Pub. Health, 446 Mass. 350, 357 (2006) (quotation marks omitted).

The Secretary notes that Plaintiff has not submitted any admissible evidence with his motion, let alone evidence that would establish that extraordinary injunctive relief is appropriate here. As the Town Defendants will likely explain in their responses to Plaintiff’s motion, they worked hard to ensure that this election and subsequent recount were administered freely, fairly, and consistently with state law. Accordingly, the Secretary reserves the right to oppose Plaintiff’s motion if he submits evidence in accordance with what Rule 65 requires. That Plaintiff delayed in filing this suit – and in seeking injunctive relief – only compounds the

difficulty of the Secretary and the Court in assessing the merits of this motion. See Alexander & Alexander, Inc. v. Danahy, 21 Mass. App. Ct. 488, 494-95 (1986) (“Unexplained delay in seeking relief for allegedly wrongful conduct may indicate an absence of irreparable harm and may make an injunction based upon that conduct inappropriate”).

Respectfully submitted,

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Date: December 28, 2022

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2022, I filed the attached document(s) through the Electronic Filing Service Provider (Provider) and service will be sent electronically to registered participants and that paper copies will be sent to those indicated as non-registered participants by first-class mail

/s/ Adam Hornstine
Adam Hornstine
Assistant Attorney General

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,

Plaintiff,

v.

TOWN OF GEORGETOWN REGISTRARS OF
VOTERS,
TOWN OF IPSWICH REGISTRARS OF VOTERS,
TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS,
TOWN CLERK FOR THE TOWN OF ROWLEY,
and
WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,

Defendants,

and

KRISTIN KASSNER,

Intervenor.

OPPOSITION TO INTERVENOR'S MOTION TO DISMISS

Plaintiff Leonard Mirra hereby submits this opposition (“Opposition”) to Intervenor Kristin Kassner’s Motion to Dismiss (“Motion”) and accompanying memorandum of law in support of the Motion (“Memorandum”).

Preliminary Statement

The entire basis of Ms. Kassner’s Motion and Memorandum is that this Court lacks jurisdiction over this Election contest. This argument holds no water at this juncture.

Section 59 of Chapter 56 of the Massachusetts General Laws confers to the Superior Court broad “jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive”—the election statutes—and gives the Superior Court the power to “award relief formerly available in equity or by mandamus.” Mass. Gen. Laws ch. 56, § 59 (“Section 59”). There is no Massachusetts law or authority that strips this Court of its broad jurisdiction at this stage in the litigation, or to suggest that no such jurisdiction exists at this stage in the matter.

Accordingly, Ms. Kassner’s Motion to Dismiss for lack of jurisdiction should be denied and this matter should be allowed to proceed.

APPLICABLE LAW

Rule 12(b)(1) of the Massachusetts Rules of Civil Procedure ensures that a court has subject matter jurisdiction to hear a matter. Where a Mass. R. Civ. P. 12(b)(6) motion to dismiss seeks dismissal under Rule 12(b)(1), the court accepts the factual allegations in the plaintiff’s complaint, as well as any favorable inferences drawn from them, as true. *Audette v. Commonwealth of Massachusetts*, No. 01-01588, 2002 WL 33947185 (Mass. Super. Aug. 12, 2002) (citing *Ginther, v. Commissioner of Ins.*, 427 Mass. 319, 322 (1998)).

Additionally, Section 59 states the following, in full:

The supreme judicial court and the superior court department of the trial court shall have jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and may award relief formerly available in equity or by mandamus. The supreme judicial court shall also have jurisdiction of any civil action relative to the division of the commonwealth into congressional, councillor, senatorial, and representative districts in chapter fifty-seven, but every such action shall be filed within thirty days after the act establishing such districts has the force of a law.

Mass. Gen. Laws ch. 56, § 59.

ARGUMENT

I. THIS COURT HAS JURISDICTION PURSUANT TO SECTION 59

Despite the averments proffered by Ms. Kassner, this Court has jurisdiction over this matter pursuant to Section 59. As such, this Court may conduct a *de novo* review of the ballots challenged at the Recount, and may award relief formerly available in equity.

In relevant part, Section 59 states that “the superior department of the trial court shall have jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and may award relief formerly available in equity[.]” *Id.* Here, the Complaint’s allegations and requested relief both fall squarely within this Court’s jurisdiction under Section 59. *See generally* Compl. For example, the Complaint asks this Court to, *inter alia*, (a) conduct a *de novo* review of the ballots challenged in the Election; (b) issue a declaratory judgment that Plaintiff Mirra is the winner of the Election, or in the alternative, that the Election is a tie and a special election must be held; and (c) order that the Election has been contested by Plaintiff Mirra. Compl. at “Prayer for Relief.”¹ The requested relief is not unique to this case. In fact, there is a litany of Massachusetts election cases where Massachusetts trial courts have conducted such a review of contested ballots and issued orders in equity. A few key cases include: *McCavitt*, 385 Mass. 833; *Connolly v. Secretary of the Commonwealth*, 404 Mass. 556 (1989); *Colten v. City of Haverhill*, 409 Mass. 55 (1991); and *Delahunt v. Johnston*, 423 Mass. 731 (1996).²

¹ The determination of the legal effect of a ballot is a question of law, *McCavitt v. Registrars of Voters of Brockton*, 385 Mass. 833, 839 (1982); *Morris v. Board of Registrars of Voters of East Bridgewater*, 362 Mass. 48, 49 (1972), and this Court must make a *de novo* interpretation of the voter’s intent when reviewing a disputed ballot. *DePetrillo v. Registrars of Voters of Rehoboth*, 342 Mass. 13, 14 (1961).

² The Worcester Superior Court also conducted a similar review in *Alicea v. Southbridge Registrars of Voters, et al.*, Mass. Super. Ct. No. 1085-CV-02624.

This Court's jurisdiction at this juncture as it relates to Plaintiff's Complaint (and Emergency Motion) is confirmed by Defendant Secretary Galvin. *See* Dkt. 10 (Secretary's Response to Intervenor's Motion to Dismiss and Plaintiff's Emergency Motion). Specifically, "The Secretary's view is that – at least for now – the Court has jurisdiction to make legal determinations and to issue certain equitable orders pursuant to its authority under [Section 59], which grants the Superior Court both the jurisdiction to enforce the various laws regulating the conduct of elections and the power to grant equitable relief to those injured by violations of those laws." Dkt. 10 at 2.

Nothing in Ms. Kassner's Motion and Memorandum refutes (or can refute) the point on which both Plaintiff and the Secretary agree: that this Court has jurisdiction pursuant Section 59. In an attempt to overcome this sizeable hurdle, Ms. Kassner's Memorandum strings together a set of arguments that ignores (1) the relief requested by Plaintiff in the Complaint; and (2) this Court's broad jurisdiction to enforce Massachusetts' election laws and grant relief on the same pursuant to Section 59. Ms. Kassner argues that the House has exclusive jurisdiction over such a matter and "shall be the judge of the returns, elections, and qualifications of its own members, as pointed out in the constitution." Mass. Const. Pt. 2, C. 1, § 3, art. X. But Ms. Kassner's lead case, *Wheatley*, undercuts the argument in Intervenor's Memorandum that the House's jurisdiction means that this Court cannot have jurisdiction. Mem. at 6–8. The *Wheatley* court admits that Section 59, "grants the Superior Court both the jurisdiction to enforce the various laws regulating the conduct of elections and the power to grant equitable relief to those injured by violations of those laws." *Wheatley v. Sec'y of Commonwealth*, 439 Mass. 849, 853 (2003). What comes next is that the *Wheatley* court merely qualifies this Court's ability to rectify election issues, *id.* at 854, not strip this Court of its jurisdiction and ability to conduct a *de novo* review of challenged ballots and

award relief formerly available in equity. The Secretary acknowledges this distinction in his Response to the Motion. *See* Dkt. 10 at 1–3. Conspicuous in its absence is any authority cited in Ms. Kassner’s Motion and Memorandum to refute this distinction. The reality of Article 10 is simple: it does not divest this court of jurisdiction at this juncture, but rather gives the House jurisdiction over election disputes only after the House has begun taking action on the matter—which it has not, here. *Cf. Alicea*, Mass. Super. Ct. No. 1085-CV-02624, Dkt. 18 (“The appellate courts of the Commonwealth have advised trial judges that in the election recount cases[,] the contested ballots, if any, should be addressed *first* by the court.”) (emphasis added).

Ms. Kassner also argues that the Complaint was not timely filed. Mem. at 7–8. This requires little comment. It is clear from Massachusetts law that Section 59 empowers this Court to hear this matter at this stage in the proceeding and grant the requested relief in the Complaint, and that the certification process has no bearing on this Court’s jurisdiction at this juncture because the House does not have jurisdiction and cannot have jurisdiction until January 4, 2023, a point that Secretary Galvin states as well. *See* Dkt. 10 at 3 (“the House has not determined whom to seat – nor could it do so until January 4, 2023.”; *see also* Mass. Const. Amend. art. 10 (“The political year shall begin on the first Wednesday of January instead of the last Wednesday of May, and the general court shall assemble every year on the said first Wednesday of January, and shall proceed at that session to make all the elections, and do all the other acts which are by the constitution required to be made and done[.]”). Furthermore, Ms. Kassner acknowledges that this Court can issue an election certificate to the challenging candidate pursuant to Section 59, Mem. at 7, and that she “intends to . . . present her certification” of election to the House on January 4, 2023, Mem. at 3. Accordingly, whether or not this lawsuit was filed before or after the Recount results were certified has no bearing on this Court’s jurisdiction in this case, ability to conduct a *de novo* review

of the ballots challenged at the Recount, and power to award relief formerly available in equity (which Plaintiff seeks), or the House's ability to exercise its jurisdiction starting on January 4, 2023.

II. PLAINTIFF MIRRA HAS A LIKLIHOOD OF SUCCESS ON THE MERITS OF THE COMPLAINT

The margin of victory after the Recount is $\approx 0.0041\%$, or one (1) vote out of a total of 24,155 votes. Compl. ¶¶ 2, 9. The number of challenges—roughly 28, as noted during the preliminary hearing conducted via Zoom on December 27, 2022—far outnumbers the number of votes that separate Plaintiff Mirra and Ms. Kassner. Plaintiff Mirra's Complaint addresses approximately nine (9) ballots that could not only swing the Election in Plaintiff Mirra's favor, but also substantially increase the margin of victory for Plaintiff Mirra. Nonetheless, when factoring in bedrock Massachusetts case law, Plaintiff Mirra's declaration (Compl. Ex. C), the recount guide provided by the Secretary (Compl. Ex. B), even if every other protested ballot is determined to have been properly called, the two Ipswich ballots alone would show that Plaintiff Mirra received one more vote than Ms. Kassner because the votes were wrongly taken away from Plaintiff Mirra. *See generally* Compl.

Given the time constraints with the approaching swearing-in on January 4, 2023, Plaintiff Mirra filed an Emergency Motion, Dkt. [##], which further narrows that requested *de novo* review.³ A swift review of the contested ballots will show that Plaintiff Mirra was the rightful

³ Plaintiff Mirra e-filed the Complaint on December 21, 2022. Dkt. 1. So as to submit a thorough, detailed complaint—not a complaint rife with thin allegations—Plaintiff and his representatives requested from Defendant town officials the Recount minutes shortly after the Recount concluded. Plaintiff did not receive the minutes from Ipswich until the evening of December 19, 2022, and did not receive the minutes from Rowley until the afternoon of December 21, 2022 (approximately one hour before Plaintiff e-filed the Complaint). In short, the Plaintiff did not delay the filing of his Complaint, filing as soon as the information needed was provided; this is consistent with the timing required under Massachusetts law.

winner of both the Election and the Recount, and that Plaintiff's additional requested relief, *e.g.*, declaratory judgment, is appropriate, particularly considering the rulings in *McCavitt* and *Connolly*. *See Connolly*, 404 Mass. at 568 ("If the 'winning' candidate prevails by less than three votes, under our ruling in *McCavitt*, there must be a new [] election. (citing *McCavitt*, 385 Mass. at 848, 850).⁴

CONCLUSION

Plaintiff Mirra respectfully requests that this Honorable Court deny Ms. Kassner's Motion to Dismiss. Plaintiff also requests that this Court exercise its authority under to Section 59 and conduct a *de novo* review of the ballots challenged at the Recount, and ultimately award Plaintiff's requested (narrow) relief, including temporarily ordering the Secretary to refrain from transmitting election results to the House clerk—consistent with the Secretary's response brief, Dkt. 10 at 3–4.

Dated: December 28, 2022

Respectfully submitted by,

/s/ Michael J. Sullivan

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Attorney for Plaintiff

Leonard Mirra

⁴ In order to expedite the adjudication of this matter, Plaintiff Mirra would be willing to narrow his requested relief to just a request for *de novo* review of the contested ballots and declaratory relief on the same, which includes ordering the Secretary to temporarily refrain from transmitting the Election results to the House.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the below via electronic mail on December 28, 2022:

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/s/ J. Christopher Amrhein, Jr.
J. Christopher Amrhein, Jr.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
C.A NO. 2277CV01243

LEONARD MIRRA a/k/a LENNY MIRRA,

Plaintiff

v.

TOWN OF GEORGETOWN REGISTRARS
OF VOTERS, TOWN OF IPSWICH
REGISTRARS OF VOTERS, TOWN CLERK
OF THE TOWN OF IPSWICH, TOWN OF
ROWLEY REGISTRARS OF VOTERS,
TOWN CLERK FOR THE TOWN OF
ROWLEY, and WILLIAM F. GALVIN, in is
official capacity as Secretary of the
Commonwealth of Massachusetts,

Defendants, and

KRISTIN KASSNER,

Defendant-Intervenor.

MUNICIPAL DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
EMERGENCY MOTION FOR
PRELIMINARY INJUNCTION

I. INTRODUCTION

The Town of Georgetown Registrars of Voters (“Georgetown”), the Town of Ipswich Registrars of Voters and Town Clerk (“Ipswich”), and the Town of Rowley Registrars of Voters and Town Clerk (“Rowley”) (collectively, the “Municipal Defendants”), hereby submit this joint Opposition to Plaintiff Leonard Mirra’s (the “Plaintiff”) Emergency Motion for Expedited and Limited De Novo Review of Two Challenged Ballots, and Preliminary Injunction Staying Swearing-In (the “Emergency Motion”).

The Municipal Defendants urge the Court to deny the Emergency Motion, not because they have an interest in which candidate is seated in the House of Representatives, but only because they have a strong interest in defending the processes used in conducting the election

and the District-wide recount and in ensuring that the will of the voters can be implemented without delay. It is the position of each of the Municipal Defendants that the election laws and guidance of the Secretary of the Commonwealth were meticulously followed in the course of the election and recount, and that those procedures resulted in a fair election that was free from fraud or undue influence. The will of the voters is paramount, and their votes should not be disenfranchised simply because the election was decided by a narrow margin. For this reason, as well as for the substantive reasons set forth herein, the Plaintiff's Emergency Motion should be denied.

The Plaintiff's Emergency Motion should be denied for the following additional reasons, which will be explained in greater detail below:

1. The relief requested is beyond the court's jurisdiction. Specifically, the Plaintiff is seeking a preliminary injunction "enjoining the swearing-in of alleged Election winner Ms. Kassner." None of the defendants in this action, however, has the authority to swear-in Ms. Kassner or any other person to the position of State Representative. Rather, the Constitution requires that State Representatives must be sworn in by the Governor and the Governor's Council in the presence of the two houses of assembly. MA CONST. Pt. 2, c. 6, Art. 1. Neither the Governor nor the Governor's Council are parties to this action and even if they were, only the House of Representatives can decide who to seat for the position.
2. The public's interest in the finality of elections and the preservation of judicial economy weigh in favor of allowing the House of Representatives to exercise its constitutional authority to determine who should be seated to serve. As described in detail in the Secretary of the Commonwealth's Response to Plaintiff's Emergency Motion, with which the Municipal Defendants concur and incorporate by reference, the House of Representatives has exclusive authority to determine who should be seated to serve. Any order of this Court, then, would constitute a mere advisory opinion. Given the significant resources that have already been expended in conducting an election and then a District-wide recount, the public interest will not be served if the result of the election is held in limbo while three of the six communities in the District are forced to expend considerably more resources in litigating issues to no binding effect. Such an effort is futile and a waste of limited judicial and municipal resources, with no corresponding benefit to the plaintiff.
3. Even if the Court is inclined to consider the Plaintiff's request for injunctive relief despite the likelihood of a final resolution of the issue in the House, it

should not do so on the basis of reviewing only two ballots as requested by the Plaintiff.

4. Finally, the Plaintiff has not demonstrated a likelihood of success on the merits as to any of the challenges raised in the Complaint. Rather, the Plaintiff has misinterpreted the law as to the substantive issues raised in the Complaint, and a hearing on the issues will plainly demonstrate that the decisions made as to challenged ballots were made in accordance with state law and guidance from the Secretary of the Commonwealth. Where those decisions were thoughtfully made after argument from both candidates' counsel at the recount, the decisions should not be disturbed.

For these reasons, it is the position of the Municipal Defendants that the Plaintiff's Emergency Motion should be denied. In the alternative, if the Court is inclined to consider the issuance of injunctive relief, the Municipal Defendants respectfully request an opportunity to review the election materials and to present evidence and argument to further support their position that the election laws of the Commonwealth were properly followed and that the results of the election must stand.

II. ARGUMENT

A. The Relief Requested is Beyond the Authority of the Court to Order.

The Plaintiff seeks a preliminary injunction "enjoining the swearing-in of alleged Election winner Ms. Kassner." Emergency Motion, at 2. None of the defendants to this action, however, have the authority to swear-in Ms. Kassner or any other person to the position of State Representative. Rather, the Constitution requires that State Representatives must be sworn in by the Governor and the Governor's Council in the presence of the two houses of assembly. MA CONST. Pt. 2, c. 6, Art. 1. Neither the Governor nor the Governor's Council is named as a party to this action, and the Court does not have the authority to abrogate this Constitutional requirement. See, e.g., Opinion of the Justices to the Senate, 375 Mass. 795, 815 (1978) (proposed law to prohibit State senators and representatives from taking office unless they filed financial disclosure statements would violate constitutional rights of Senate and House of Representatives to be judges of elections, returns, and qualifications of their members).

The Emergency Motion should be denied for the additional reason that only the House of Representatives can decide who to seat for the position. See Wheatley v. Sec’y of Com., 439 Mass. 849, 851 (2003); G.L. c. 54, § 117; G.L. c. 3, § 1. In fact, not even the Legislature has the authority to enact laws that would prohibit a public official from taking the oath of office or entering on or continuing with their duties as a State senator or representative. See, e.g., Opinion of the Justices to the Senate, supra at 810-811. Because an injunction prohibiting the swearing-in of any individual to a seat in the House of Representatives is beyond the authority of the Court, such an order would constitute an abuse of discretion as a matter of law. Accordingly, the Plaintiff’s Emergency Motion should be denied.

B. The Relief Requested is Contrary to the Public Interest.

Where injunctive relief is requested against municipal entities and the Secretary of the Commonwealth, the appropriate determination is whether: (1) the moving party has shown that it has a likelihood of success on the merits; and, (2) the moving party’s requested relief “promotes the public interest, or, alternatively, will not adversely affect the public.” LeClair, Jr. v. Town of Norwell, 430 Mass. 328, 331-332 (1999), citing Commonwealth v. Mass. CRINC, 392 Mass. 79, 89 (1984). See also Town of Brookline v. Goldstein, 388 Mass. 443, 447 (1983) (“In an appropriate case, the risk of harm to the public interest also may be considered”). In this matter, the public’s interest in the finality of elections and the preservation of judicial economy weigh in favor of this Court’s denial of preliminary injunctive relief based on a wholly incomplete record, and in allowing the House of Representatives to exercise its Constitutional authority to determine who should be seated to serve.

As described in detail above and in the Secretary of the Commonwealth’s Response to Plaintiff’s Emergency Motion, with which the Municipal Defendants concur and incorporate by reference, only the House of Representatives has the authority to determine who should be seated

to serve and any order of this Court would constitute merely an advisory opinion. Given the significant resources that already have been expended in conducting an election and then a District-wide recount, the public interest will not be served if the result of the election is held in limbo while three of the six communities in the District are forced to expend considerably more resources in litigating issues to no binding effect. Such an effort is futile and a waste of limited judicial and municipal resources, with no corresponding benefit to the Plaintiff.

Rather, the public interest favors the exercise of judicial restraint “that includes recognition of the undesirability of the judiciary substituting its notions of correct policy for that of a popularly elected Legislature.” See Zayre Corp. v. Attorney General, 372 Mass. 423, 433 (1977). Additionally, “the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give [advisory] opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” Caputo v. Board of Appeals of Somerville, 330 Mass. 107, 111 (1953) (internal quotations omitted). The issuance of a preliminary injunction in this matter, based on a partial record of the recount conducted in only three of the seven towns in the District, would not be entitled to any deference by the House, and the Court should refrain from making any determinations on that basis.

In this regard, there is a well-established procedure for the House of Representatives to decide this dispute and it has invoked that procedure on numerous occasions. See Wheatley, 439 Mass. at 854. The House has the resources and the expertise to decide this matter, and is in the best position to determine the best interests of its membership. While the Court presently possesses jurisdiction over this matter, that jurisdiction may be removed at any time after January 4, 2023, even after a decision is rendered, leaving the Court in the position of issuing a ruling that is merely advisory. Cf. Greenwood v. Registrars of Voters of City of Fitchburg, 282

Mass. 74 (1933) (dismissing appeal after trial and finding showing that election should be reversed, where House had assumed jurisdiction over matter and it became moot, such that “any decision [by court] would be nugatory or unavailing”); Wheatley, supra (change in circumstances regarding House representative rendered judge’s order for new election moot). Such an undesirable result easily can be avoided if the Court exercises its discretion in favor of restraint. This will allow the House to assume its Constitutional responsibility for determining its own membership, which only serves the public interest.

C. The Court Should Not Decide the Matter in Piecemeal Fashion.

Even if the Court is inclined to issue injunctive relief, as the Court appears to have recognized at the scheduling hearing on December 27, 2022 and its December 28, 2022 order requiring *all* protested ballots to be delivered to the Court for review, it cannot do so on the basis of reviewing only two ballots as requested by the Plaintiff. Massachusetts courts have long adhered to a strict policy of avoiding piecemeal litigation, which tends to waste the limited resources of the Court and the parties, and inevitably leads to unjustified delay. See generally Long v. Wickett, 50 Mass. App. Ct. 380, 387-388 (2000) (collecting cases). Such piecemeal review cannot occur here, where the Plaintiff seeks an initial determination on only two of several contested ballots. While this process may benefit the Plaintiff if he prevails on those two ballots, it does not take into account what processes will follow if he does not prevail on those two ballots; nor does it account for the ability of the Defendant-Intervenor to raise questions as to any other ballots that she has protested. If each of the contested issues in this case are to be separately litigated, the proceeding will be a long and drawn-out affair that will unnecessarily delay the seating of a State representative. Additionally, where the Municipal Defendants will be severely prejudiced by having to respond to such a scattershot approach, the Court should reject

the Plaintiff's request for limited review of just two ballots and should set the matter down for a hearing on all contested matters.

D. The Challenged Ballots Properly Were Counted at the Recounts.

Finally, the Plaintiff has not demonstrated any likelihood of success on the merits of any challenges raised in the Complaint. Rather, the Plaintiff has misinterpreted the law, and as a hearing on the issues plainly will demonstrate that the decisions made as to challenged ballots were made in accordance with state law and guidance from the Secretary of the Commonwealth. Where those decisions were thoughtfully made by a Board of Registrars after argument from both candidates' counsel at each recount, the decisions should not be disturbed.

“The object of election laws is to secure the rights of duly qualified electors and not to defeat them.” McCavitt v. Registrars of Voters of Brockton, 385 Mass. 833, 837 (1982) (internal quotation and citation omitted). See also Fyntrilakis v. City of Springfield, 47 Mass. App. Ct. 464, 469 (1999), quoting Swift v. Registrars of Voters of Quincy, 281 Mass. 271, 276 (1932) (“The object of elections is to ascertain the popular will and not to thwart it”). “This must be borne in mind in the construction of such statutes, and the presumption is that they are enacted to prevent fraud and to secure freedom of choice, and not by technical obstructions to make the right of voting insecure.” McCavitt, supra at 837 (internal quotation and citation omitted). The court should “resolv[e] voting disputes, where at all possible, in favor of the voter.” Id.

To determine whether the Plaintiff may prevail on the merits of his claims, applicable law provides that the Court should conduct a *de novo* review of all protested ballots to ascertain the precise margin of victory for the candidate declared the winner. See Colten v. City of Haverhill, 409 Mass. 55, 57 (1991). In so doing, the “cardinal rule ... is that if the intent of the voter can be determined with reasonable certainty from an inspection of the

ballot, in light of the generally known conditions attendant upon the election, effect must be given to that intent and the vote counted in accordance therewith.” McCavitt, supra at 838, quoting O’Brien v. Bd. of Elections of Boston, 257 Mass. 332, 338 (1926).¹ Only serious irregularities that place the results of the election in doubt and violate the substantive end for which the election was held can invalidate the result. See Fytrilakis, 47 Mass. App. Ct. at 469; Swift, 281 Mass. 278. Indeed, absent direct evidence of fraud or misconduct, alleged irregularities in the processing of election materials, including comparisons of signatures and other such absentee ballot matters, are typically insufficient to cast doubt on the results of an election. See Swift, 281 Mass. at 283 (collecting cases for proposition that, absent evidence of “fraud or tampering . . . , [the] failure on the part of election officers to perform the precise duty imposed on them with respect to the [absentee ballot] envelopes does not invalidate the votes or afford any ground for nullifying the count”). Absent any such serious irregularities, fraud, or misconduct, the Emergency Motion must be denied.

In this matter, as described in detail below, the Plaintiff has not demonstrated a likelihood of success on the merits of its claims because the protested ballots properly were counted by the Registrars during the recount and there is no evidence of serious irregularities or fraud that cast doubt on the outcome of the election. As such, the Emergency Motion should be denied.²

¹ On the back of each sealed ballot, the registrars have made and signed a statement of their determination of the questions raised, which includes – in red pen or pencil – a statement regarding the candidate for whom they declare the voter to have voted in this race. See G.L. c. 54, § 135 (“The registrars shall, when the recount is complete, enclose all the ballots in their proper envelopes or containers, seal each envelope or container with a seal provided therefor, and certify upon each envelope or container that it has been opened and again sealed in conformity to law; and shall likewise make and sign a statement of their determination of the questions raised”).

² The Municipal Defendants’ Opposition addresses only those challenges that are currently raised in the Complaint or that may be before the Court on the Emergency Motion, and the allegations in the Complaint as accepted as true for purposes of this Opposition only. The Municipal Defendants reserve their right to address any additional challenges that may be raised by any party in this action and do not hereby waive any applicable defenses that they may have.

i. Georgetown – Protested Ballots.

As set forth in his Complaint, the Plaintiff challenges one ballot recorded as a “blank” from Precinct 1, Block 28; he avers that it should be counted as a vote for the Plaintiff. Plaintiff’s Complaint, at ¶ 43. The Plaintiff contends that there was a small dot in the center of the oval next to his name which shows that the intent of the voter was to cast a vote for Plaintiff. Id.

In reviewing all ballots, this Court should consider the “character and location of the mark [on each ballot] and the conditions attendant upon the election,” as well as any other “patterns that reveal the voters’ intent.” McCavitt, supra at 838 (citations omitted). See also Colten, 409 Mass. at 58 (accepting marks that extend inside and outside the contested race, and examining ballot as whole, if voter’s intent can be determined with reasonable certainty). See also Gilligan v. Registrars of Voters, 323 Mass. 346, 348 (1948) (diagonal marks on ballot in boxes next to candidates’ name, if used “consistently throughout the ballot [to] indicate clearly the intent of the voter,” may be counted). By contrast, if the marking made is inconsistent with other markings on the ballot, “it reasonably may be inferred that the [mark] ... is due to error or accident.” Gilligan, supra at 348.

In this regard, the Georgetown Board of Registrars reviewed the entire ballot and considered arguments from attorneys for both candidates during the recount. Based on this review, the Registrars determined the small mark in question was inconsistent with any other markings on the ballot, in which the voter filled out the full oval for other races, evidencing that the voter put their pen down briefly and removed it without filling out a vote for the Plaintiff, and therefore, did not intend to cast a vote for the Plaintiff. Georgetown submits that the “intent of the voter can be determined with reasonable certainty from an inspection of the ballot,” and that the voter intended to cast its vote as a “blank” because the voter did

not fill out the full oval next to Plaintiff's name, as it had for all other races. McCavitt, supra at 838, quoting O'Brien, 257 Mass. at 338. As such, "effect must be given to that intent and the vote counted in accordance therewith," id., and the Plaintiff's challenge to this ballot should be denied.

ii. Georgetown – Reported Votes Between Election and Recount.

The Plaintiff also appears to allege that a difference by one (1) vote in the reported vote total in Precinct 2 for Georgetown from the election to the recount may affect the outcome of the election. Plaintiff's Complaint, at ¶¶ 39-40. Notably, however, the total votes cast for Plaintiff did not change between the election and the recount; though Kristin Kassner gained one vote in Precinct 1, any discrepancy in the reported vote total was in the number of blank ballots counted in Precinct 2. See Exhibit A to Plaintiff's Complaint (Plaintiff received same number of votes at election and at recount). Therefore, such vote cannot reasonably be said to have affected the outcome of the election or be called for the Plaintiff. In any event, absent any evidence of actual fraud or misconduct, or specific evidence of how these discrepancies might have materially affected the election, such discrepancies do not cast doubt on the substantive outcome of the election. See, e.g., Pena v. City of Revere, 1997 WL 799478, at *7-*8 (Mass. Super. Dec. 23, 1997) (declining to order new election based on discrepancies in total number of votes reported between election day and recount); Swift, supra.

iii. Ipswich – Protested Ballots.

The Plaintiff seeks to challenge two protested ballots in the Town of Ipswich. With respect to one ballot from Precinct 4, Block 37, the Plaintiff alleges that the voter filled in the oval for the Plaintiff but also wrote-in the name "Donald Trump" as a write-in candidate for that same office. Plaintiff's Complaint, ¶ 55; Plaintiff's Memorandum of

Law in Support of Emergency Motion, at 3. With respect to a second ballot from Precinct 1, Block 19, the voter appeared to fill in marks in the ovals next to the Plaintiff's and Kristin Kassner's names. Plaintiff's Complaint, ¶ 57. Both ballots were declared by the Board of Registrars to be "overvotes" and therefore were counted as blanks. Notably, the case law is clear that an "overvote" – meaning a vote for more candidates than are to be elected for a particular office – "does not vitiate a proper expression of preference for the office" to be elected; rather, "[i]f a voter marks more names than there are persons to be elected to an office his [or her] ballot shall not be counted for *such office*." Kane v. Registrars of Fall River, 328 Mass. 511, 520 (1952) (emphasis in original), quoting G.L. c. 54, § 106. Therefore, overvotes are appropriately to be called as a blank.

Here, to the extent that any of the protested ballots evidenced an intent to vote for more than one person for the office of Second Essex District State Representative – whether the ballot was filled out for both Donald Trump and Leonard Mirra, or both Leonard Mirra and Kristin Kassner – such votes are typically declared overvotes and counted as blanks for that particular office because the will of the voter cannot reasonably be ascertained. See, e.g., Exhibit B to Plaintiff's Complaint, Secretary of the Commonwealth, Election Recounts, at p. 8 ("Votes written in for candidates who are already printed on the ballot for the same office are considered over-votes and must be tallied as blanks"); Morris v. Bd. of Registrars of Voters of E. Bridgewater, 362 Mass. 48, 53 (1972) (where protested ballot contained marks in the boxes opposite the names of two candidates, will of voter cannot be ascertained such that it "should be counted as a blank").

iv. Ipswich – Reported Votes Between Election and Recount.

The Plaintiff also appears to challenge the reported vote total of 14 votes between the election and recount in Ipswich, or the comparison of signatures on absentee or mail-in

voting envelopes. Plaintiff's Complaint, at ¶¶ 51-52, 60-61. For the reasons stated above for Georgetown, absent evidence of fraud or a lack of security with respect to the ballots, discrepancies in the number of ballots counted at the election and at the recount do not cast doubt on the substantive outcome of the election. See, e.g., Pena, 1997 WL 799478, at *7-*8 (declining to order new election based on discrepancies in total number of votes reported between election day and recount). Additionally, where there is no allegation of fraud or tampering with the processing or comparison of signatures on absentee ballot envelopes by election officials who are presumed to comply with the law and exercise their duties honestly and in good faith, the Plaintiff cannot prevail on the merits of any such signature-comparison allegations. See, e.g., Swift, 281 Mass. at 283 (collecting cases for proposition that, absent evidence of "fraud or tampering ..., [the] failure on the part of election officers to perform the precise duty imposed on them with respect to the [absentee ballot] envelopes does not invalidate the votes or afford any ground for nullifying the count").

v. *Rowley – Protested Ballots.*

The Plaintiff alleges that several ballots cast in Rowley during the election that were rejected by voting machines were marked "spoiled" and were not counted, but that these ballots were subsequently "unspoil[ed]" and counted as part of the recount. Plaintiff's Complaint, at ¶¶ 68-69. With regard to any "spoiled" ballots that were protested by the Plaintiff on the ground that they should not be counted, the election laws provide that a ballot cannot be considered "spoiled" merely because an optical scanner or voting machine rejects the ballot as unreadable. See, e.g., Swift, 281 Mass. at 280-281 (ordering that ballots left "uncanceled" due "solely to the failure of the mechanisms within the ballot box" be counted). Rather, if such ballots cannot be read by the machine and the voter has not opted to spoil the ballot and cast a new one, such ballots are deposited into

the voting machine's auxillary bin and are hand-counted by the election workers at the close of the election. Indeed, under G.L. c. 54, § 81, only a "voter" may spoil a ballot – up to three ballots total – and, in such instances, the ballot inspector segregates the ballot in a separate envelope without placing it into the voting machine and marks the ballot as "spoiled." See 950 CMR 54.04(11-12).

Here, the evidence will not show that the voters intentionally spoiled such ballots pursuant to G.L. c. 54, § 81. In marked contrast, it will show that the very person that marked the ballots as "spoiled" at the election was the Election Warden, who did so because they could not be read by the voting machine. The Rowley Board of Registrars appropriately determined that such ballots properly were required to be counted at the recount, and that the votes from such ballots appropriately were recorded. Accordingly, such voters' ballots appropriately would be counted. See *Fyntrilakis*, 47 Mass. App. Ct. at 469, quoting *McCavitt*, 385 Mass. at 841-842 ("It is a fundamental principle that a voter who has cast his ballot in good faith should not be disenfranchised 'because of the failure of a ministerial officer to perform some duty imposed upon him by law'").

vi. Rowley – Absentee Ballots.

The Plaintiff also appears to challenge an overseas absentee ballot cast in Rowley pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") because it was not stapled to an affidavit at the recount. Plaintiff's Complaint, at ¶ 70. There is no UOCAVA requirement that an affidavit be stapled to the corresponding ballot. Here, the evidence will show that the affidavit was paper-clipped to the ballot, and any claims that such a ballot should not be counted are contrary to the election laws. To the contrary, a "voter should not be disenfranchised if he substantially complies with the election law." *Colten*, 409 Mass. at 60 (1991). There is no evidence that the UOCAVA voter did not

comply with the election law in this case. Further, the evidence will demonstrate that the objection by the Plaintiff to this ballot was made in an untimely matter. As such, the Plaintiff is unlikely to prevail on the merits of any attempt to disenfranchise this absentee voter.

Additionally, to the extent the Plaintiff takes issue with materials that he allegedly was not permitted to inspect at the Rowley Recount, it is expected that the evidence will show that counsel for the Plaintiff was provided an opportunity to review any available materials. In any event, however, alleged irregularities at a recount procedure are not grounds to set aside an election. See, e.g., Crosby, 350 Mass. at 548 (declining to set aside recount results that reversed initial outcome of election based on alleged irregularities in recount procedures); Swift, 281 Mass. at 267-268 (upholding recount results even where 1,506 ballots were destroyed after election due to good faith mistake).

vii. Rowley – Reported Votes Between Election and Recount.

Finally, to the extent the Plaintiff also takes issue with the reported vote totals between the election and recount in Rowley, Plaintiff's Complaint, at ¶¶ 64-65, as discussed in detail above for Georgetown and Ipswich, such discrepancies do not require the relief requested. Pena, supra.

III. CONCLUSION

Based on the foregoing, the Municipal Defendants respectfully submit that they have employed appropriate procedures and complied with all relevant election laws in the above-captioned matter. As such, the Plaintiff is unlikely to prevail on the merits of its case at trial, and the public interest in preserving the integrity of the election requires the maintenance of the status quo here. See Mass. CRINC, 392 Mass. at 87. Therefore, the Plaintiff's Emergency Motion should be denied.

Respectfully Submitted,

TOWN OF GEORGETOWN REGISTRARS
OF VOTERS

By its attorneys,

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CERTIFICATE OF SERVICE

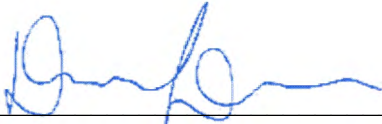
I, Devan C. Braun, hereby certify that on the below date, I served a copy of the foregoing *Municipal Defendants' Opposition* by electronic mail only to the following counsel of record:

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Devan C. Braun

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT OF
THE TRIAL COURT
CIVIL ACTION NO 2277-CV-01243

_____)
LEONARD MIRRA a/k/a LENNY MIRRA,)
))
Plaintiff,)
))
v.)
))
TOWN OF GEORGETOWN REGISTRARS OF)
VOTERS, TOWN OF IPSWICH REGISTRARS)
OF VOTERS, TOWN CLERK OF THE TOWN)
OF IPSWICH, TOWN OF ROWLEY)
REGISTRARS OF VOTERS, TOWN CLERK)
FOR THE TOWN OF ROWLEY, WILLIAM)
F. GALVIN, in his official)
capacity as Secretary of the)
Commonwealth of Massachusetts,)
And KRISTIN KASSNER,)
))
Defendants.)
_____)

**DEFENDANT KRISTIN KASSNER'S OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

With respect to the above-captioned matter, and pursuant to this Court's directive, Defendant Kristin Kassner ("Ms. Kassner"), the certified State Representative-Elect for the Second Essex District, objects as follows to the motion for a preliminary injunction filed by Plaintiff Leonard Mirra ("Mr. Mirra").

The central point of Ms. Kassner's opposition is that the remedy that Mr. Mirra seeks - barring the House of Representatives from swearing in Ms. Kassner next Wednesday and

requiring the House to continue to seat Mr. Mirra - is, as set forth below and in her Motion to Dismiss, beyond the jurisdiction of this Court. If the remedy that Mr. Mirra seeks is beyond the authority of this Court to grant, then the means to that end - the piecemeal review of just two ballots - is not a means to an end but a means without an end.¹

It is important to note, as set forth in Ms. Kassner's Motion to Dismiss, that Ms. Kassner is not attempting to debate the outcome of this dispute. There is no question but that some entity will have to address this matter. The challenge to this Court is whether the Court will decide this matter on its own, in the limited time that is available for review of these issues, or whether the Court will allow the House of Representatives, to whom the framers of the Massachusetts Constitution delegated these issues, to be the ultimate decision-maker. This may well be a case where justice is best served by judicial restraint. See Zayre Corporation v. Attorney

¹ Mr. Mirra, who has served as a State Representative for five terms, since 2013, presumably is aware of the Massachusetts Constitution and the hopelessness of his Motion. If that is true, what would explain the rationale for pursuing this course of action? Since the onset of this litigation, Mr. Mirra has carefully cultivated his position in the media in an effort to sway public opinion. See, e.g., John P. Muldoon, "Selecting Two Votes from Ipswich, Mirra Files for Victory or Tie," Ipswich Local News (Dec. 28, 2022) (describing all of Mr. Mirra's contentions). Moreover, on Wednesday, December 21, 2022, after filing the complaint but before serving it on any of the Defendants, Mr. Mirra reached out to the press with a statement that he insisted be embargoed until 10:00 a.m. on the following day. And Mr. Mirra's allegations have been published widely throughout newspapers in the Second Essex District. Mr. Mirra may well believe that he will fare better in the court of public opinion than in this Court.

General, 372 Mass. 423, 433 (1977) (“principle of judicial restraint includes recognition of the inability and undesirability of the judiciary substituting its notions of correct policy for that of a popularly elected Legislature”).

Argument

Mr. Mirra’s Claims Are Barred by Laches.

Mr. Mirra’s claims are not just jurisdictionally deficient, but also barred by the doctrine of laches. Laches on the part of the plaintiff is an unreasonable delay in instituting the action, which results in some injury or prejudice to the defendant. See, e.g., Calkins v. Wire Hardware Company, 267 Mass. 52, 69 (1929).

Since the end of the recount, on December 8th, Mr. Mirra consistently claimed that he was preparing a lawsuit. Yet Mr. Mirra took no action when the Executive Council and the Governor certified the election results on December 14th. Instead, Mr. Mirra waited until after the close of business on Wednesday, December 21st, to file his complaint, which he tried to conceal from public disclosure until the following day, right before the Christmas holiday weekend. And Mr. Mirra filed the motion for a preliminary injunction after the close of business on Friday, December 23rd, at the beginning of the three-day holiday weekend.

Ms. Kassner was only permitted to intervene as a party on

Tuesday, December 27th. She has not been allowed an opportunity to answer Mr. Mirra's complaint, nor has she had any time to prepare a defense and raise her own issues. For example, there were three missing ballots in Precinct 2 in Newbury, the only precinct in the district where there were less votes than the originally certified number of ballots that affected either candidate - i.e., Ms. Kassner who lost two votes as a result, which is enough to moot Mr. Mirra's motion.²

Mr. Mirra's rush to judgment to get a decision from this Court prior to January 4th stands in stark contrast to his inexplicable delays in initiating this litigation. To this point, Mr. Mirra's delays have only affected Ms. Kassner and the other Defendants, while it is Mr. Mirra who, pursuant to laches, should face the consequences.

The Court Lacks Jurisdiction to Provide the Remedy Sought.

Ms. Kassner has set forth her jurisdictional objections in her Memorandum in support of her Motion to Dismiss, so there is no need to rehash those arguments here. But Mr. Mirra's motion for a preliminary injunction goes far beyond his Complaint, which merely asks the Court to review the election. Mr. Mirra's motion asks this Court to tie the hands of the House of

² After the recount in Georgetown, there was one less ballot in Precinct 2 than were initially certified, but this did not change the vote count for either candidate. In contrast, in Precinct 2 in Newbury, there were three less ballots after the recount than were initially certified, reducing Ms. Kassner's total by two votes and blank votes by one.

Representatives and even go further and tell the House of Representatives which of the two candidates should be seated pending the outcome of a trial. Mr. Mirra's scheme, by cherry picking two ballots out of all those he objected to in his Complaint, is more of an attempt to sway public opinion in a rush to judgment than a good faith attempt to resolve this dispute in the one forum that actually has unquestioned jurisdiction.

The Court May Not Stay Ms. Kassner's Swearing-In.

Mr. Mirra contends that this Court can stay the swearing in of Ms. Kassner next Wednesday, should the House of Representatives choose to swear her in at that time. Ms. Kassner, taking no position in this forum as to whether or not she should be sworn in at that time, opposes the authority of this Court to make that determination, as that is a determination that should be left to the House itself.

Since its inception, the Massachusetts Constitution has expressly provided that "[t]he house of representatives shall be the judge of the returns, elections, and qualifications of its own members." G.L. Const. Pt. 2, C. 1, § 3, Art. 10. The Supreme Judicial Court has address this question on a number of occasions, but the Court's statement in Dinan v. Swig, 223 Mass. 516 (1916), is particularly compelling:

The power to pass upon the election and qualification of

its own members thus is vested exclusively in each branch of the General Court. No other department of the government has any authority under the Constitution to adjudicate upon that subject. The grant of power is comprehensive, full and complete. It is necessarily exclusive, for the Constitution contains no words permitting either branch of the Legislature to delegate or share that power. It must remain where the sovereign authority of the state has placed it. General phrases elsewhere in the Constitution, which in the absence of an explicit imposition of power and duty would permit the enactment of laws to govern the subject, cannot narrow or impair the positive declaration of the people's will that this power is vested solely in the Senate and House respectively. It is a prerogative belonging to each House, which each alone can exercise. It is not susceptible of being deputed.

Id. at 517 (emphasis added).

This Court, therefore, has no authority to tell the House of Representatives how to conduct its business, and whom to swear in or not to swear in on January 4th.

The Court May Not Require the House to Seat Mr. Mirra.

For the same reasons, this Court may not direct the House of Representatives to seat Mr. Mirra pending the outcome of a trial. It is up to the House itself to determine its membership and who may be seated.

At the same time, there are special circumstances here that the House will likely consider when making such a determination. It is true that the Constitution provides that members of the House of Representatives serve until their successors are chosen and qualified. See G.L. Const. Amend. Art. 64, § 1. But, at this point in time, it appears that, as a result of the Certification

issued by the Executive Council and signed by the Governor, Ms. Kassner has been chosen and qualified for the position of State Representative in the Second Essex District.

Moreover, it is difficult to consider either Mr. Mirra or Ms. Kassner as a successor State Representative. The Second Essex District was dramatically altered by the legislative redistricting that took effect for this election. Only the towns of Georgetown and Newbury for the prior Second Essex District were retained in the new District. Mr. Mirra never represented the other four towns in the District - Ipswich, Rowley, Hamilton, and Topsfield. The voters in Georgetown and Newbury constitute less than one-third of the voters in the new Second Essex District. In light of that redistricting, it is disingenuous to call Mr. Mirra the successor.

The Two Disputed Ballots

Although Mr. Mirra's complaint is replete with examples of what he contends are issues that should overturn the election, in his motion for a preliminary election, he focuses on just two of the protested ballots from Ipswich. As set forth below, Ms. Kassner continues to assert that the Ipswich Board of Registrars accurately counted those two ballots as blanks.³

³ At the Court hearing on December 27, 2022, Ms. Kassner had understood that she would be able to view the two disputed ballots at the Essex Superior Court Clerk's office after 3:00 p.m. on December 28, 2022. Because the Clerk changed the time for the Defendants to provide the protested ballots to

The Donald Trump Write-In Ballot

In the first protested ballot, from Precinct 4, block 37, the voter filled in the oval next to Mr. Mirra's name on the ballot, but also filled in the oval for a write-in vote and inserted the name "Donald Trump."

The right of voters to write in the name of a person not listed on the ballot for a particular office is well recognized, in Massachusetts and across the country. In Massachusetts, the relevant statute reads as follows:

If the system used employs the paper ballot, every vote cast for any person whose name does not appear upon said ballot as a nominated candidate for the particular office shall be written or affixed by sticker or paster in the appropriate place provided on said ballot for the purpose or it shall not be counted. This section shall not be construed to limit in any way the right of the voter to write in his choice for any office in the appropriate space provided.

G.L. c. 54, § 33E. While G.L. c. 54, § 77 directs voters to include the residence of the person who the voter write in on the ballot, the residence is directory, rather than mandatory, and will not affect the voter's decision. See Maiewski v. Board of Registrars of Voters of Deerfield, 347 Mass. 681, 682-683 (1964).

On the ballots themselves, voters were instructed "[t]o

December 29, 2022, at 11:00 a.m., Counsel for Ms. Kassner was unable to review those ballots prior to the Court-imposed deadline for filing this Opposition, and her counsel must rely, instead, on his own recollection from the recount.

vote for a person not on the ballot, write the person's name and residence in the blank space provided, and fill in the oval."

There is no question but that "Donald Trump" is a person, and is eligible to be a voter's write-in choice. There is no requirement that a write-in candidate be eligible to take office.

Moreover, an examination of the remainder of the ballot demonstrates that this particular voter knew exactly what he or she was doing. The voter filled in ovals throughout the ballot, and wrote in Donald Trump's name a second time for the office directly below that of State Representative. Mr. Mirra would agree that the second vote for Donald Trump was a legitimate write-in vote, but then contend that the exact same vote immediately above that vote was not legitimate.

Voters were also directed to vote for "ONE" candidate for State Representative. Any vote for more than one candidate for State Representative would be considered an over-vote and would not count. Although the ballot at the counting table was called a vote for Mirra, the Board of Registrars unanimously determined the ballot to be an over-vote and called it a blank vote.

The Second Disputed Ballot

The second decision by the Registrars in Ipswich that Mr. Mirra seeks to overturn - from Precinct 1, block 19 - is a ballot with unusual markings. This voter did not fill in any of

the ovals but, instead, consistently used a form of scribbling to mark his or her ballot. The ballot's scribbles are mostly consistent throughout the ballot, except that, in the State Representative block, and only in that block, it appears that the voter made two separate markings. One of the markings is clearly in the oval for Mr. Mirra, but the second marking is entirely separate, not an extension of the first marking as Mr. Mirra contends, and touches on the oval for Ms. Kassner.

It is not clear what this voter intended, but the Registrars viewed the ballot as two separate votes, one for each of the candidates for State Representative. The ballot was called for Mirra at the counting table, but the Board of Registrars determined that it was an overvote and called it a blank.

While this Court's review of ballots is de novo, it is also the case that votes counted by election officials are presumed to be legal and any challenger of those votes has the burden of overcoming that presumption. See McCavitt v. Registrars of Voters of Brockton, 833 Mass. 833, 846 (1982).

As the Supreme Judicial Court stated in O'Brien v. Board of Election Commissioner of the City of Boston, 257 Mass. 332 (1926):

The cardinal rule for guidance of election officers and courts in cases of this nature is that if the intent of the voter can be determined with reasonable certainty

from an inspection of the ballot, in the light of the generally known conditions attendant upon the election, effect must be given to that intent and the vote counted in accordance therewith, provided the voter has substantially complied with the requisites of the election law; if that intent cannot thus be fairly and satisfactorily ascertained, the ballot cannot rightly be counted.

See id. at 338.

The Ipswich Registrars of Voters reviewed this ballot, listened to extensive arguments from counsel for Mr. Mirra and Ms. Kassner, and discussed the matter in depth themselves before reaching the conclusion that the voter's intent could not be ascertained from the markings on the ballot. Unlike this Court, and the counsel for the parties, the Registrars of Voters regularly make such determinations and their determinations are entitled to consideration. Those who reviewed the ballot differed in their opinions, some viewing the ballot as a vote for Mr. Mirra, others viewing the ballot as an overvote and therefore a blank. But it is obvious that, in this one discrete case, there is no way to ascertain the voters intention without guessing at it.

Conclusion

FOR THE FOREGOING REASONS, Defendant Kristin Kassner respectfully requests that this Honorable Court reject the

Plaintiff's request for a preliminary injunction.

Respectfully submitted,

KRISTIN E. KASSNER,
By her attorney,

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Dated: December 29, 2022

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Dated: December 29, 2022

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,

Plaintiff,

v.

TOWN OF GEORGETOWN REGISTRARS OF
VOTERS,
TOWN OF IPSWICH REGISTRARS OF VOTERS,
TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS,
TOWN CLERK FOR THE TOWN OF ROWLEY,
and
WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,

Defendants,

and

KRISTIN KASSNER,

Intervenor.

**PLAINTIFF'S OMNIBUS REPLY TO OPPOSITIONS TO PLAINTIFF'S EMERGENCY
MOTION FOR EXPEDITED AND LIMITED *DE NOVO* REVIEW
AND PRELIMINARY INJUNCTION**

Plaintiff Leonard Mirra hereby replies to Intervenor Kristin Kassner's opposition ("Kassner Opposition"), Defendant Secretary William F. Galvin's opposition ("Secretary's Opposition"), and the Defendant Town Registrars and Clerks' opposition ("Municipal Defendants' Opposition") (together, the "Oppositions") to Plaintiff's Emergency Motion for Expedited and Limited *De Novo* Review of Two Challenged Ballots, and Preliminary Injunction Staying Swearing-In ("Emergency Motion").

ARGUMENT

I. THE OPPOSITIONS' ARGUMENT THAT PLAINTIFF PRESENTS AN INCOMPLETE RECORD WHOLLY IGNORES MASSACHUSETTS LAW REGARDING BALLOT PRESERVATION, RECOUNT CHALLENGES, AND PRODUCING COPIES OF BALLOTS

Plaintiff's Complaint and the record before this Court reflect Massachusetts' election statutes and the process created by the legislature by which said statutes are enforced. The Oppositions' assertions suggesting otherwise are hardly sincere.

As this Court is well aware, Chapter 56 of the Massachusetts General Laws provides requirements for ensuring integrity and truthfulness in the marking of ballots, Mass. Gen. Laws ch. 56, § 25, and establishes this Court's jurisdiction to make legal determinations and to issue certain equitable orders pursuant to its authority to enforce the various laws regulating the conduct of elections. *Id.* § 59 ("Section 59"). The secret ballot is fundamental to the rights of citizens of the Commonwealth and, accordingly, state election statutes do not authorize or require candidates to create documentation, *e.g.*, photographs, regarding irregular or contested ballots in real-time; rather, the statute provides for judicial review of such ballots by the Superior Court after the election and recount are complete.

The Oppositions know perfectly well that "[t]he main purpose of the election statute is to provide a convenient method for the voter qualified according to law to express in secret his preference for persons to be elected to the several offices to be filled, and on the questions to be answered at an election, and to have that expression of preference counted fairly and honestly, all in conformity to reasonable regulations." *Opinion of the Justs.*, 362 Mass. 907, 912 (1972). It is further evident that the election requirements themselves generate the record of which Plaintiff is seeking review. *See id.* ("The statutes of the Commonwealth contain in great detail requirements as to the preparation and distribution of ballots, the marking and deposit of them in ballot boxes,

the counting of those ballots and the making of official returns of the results of the voting.”). The notion that a candidate must compile a “complete” record in order to obtain expedited *de novo* review and preliminary relief under Section 59 is nowhere to be found in statutes or caselaw, and is nonsensical in light of the function of the statute. *See McCarthy v. Sec’y of Com.*, 371 Mass. 667, 676–77 (1977) (discussing Superior Court’s broad equity power under Section 59 and power to conduct *de novo* review).

II. THE PUBLIC HAS A SUBSTANTIAL INTEREST IN ENSURING THAT ELECTIONS ARE FAIR, ALL LAWFUL VOTES ARE COUNTED, AND ALL UNLAWFUL VOTES ARE REJECTED

The Oppositions—particularly Municipal Defendants’ Opposition—offer inconsistent arguments, including implying that the finality of an election is of greater importance than the accuracy of the results. Such disingenuous maneuvers serve only to protect the actions of the Defendants and interests of Ms. Kassner, not to protect the integrity of the Election.

For example, the Municipal Defendants’ Opposition argues that the “finality of elections,” the “preservation of judicial economy,” and “judicial restraint” are in the interest of the public. Municipal Defs. Opp’n at 4–5. Plaintiff agrees that those factors, in principle, are of public interest. But these factors must be applied in the context of this case. Here, the crux of this policy-rooted argument plainly ignores the allegations in Plaintiff’s Complaint, including the two Ipswich ballots challenged and preserved by Plaintiff Mirra that Plaintiff argues—on their own—have the ability to, after judicial *de novo* review, show that the result of the Election *may be* entirely different. Further, the public interest in free and fair elections that are determined by the will of the voters, not by the actions by the Municipal Defendants, remains unassailable. *See* Mass. Decl. of Rights art. 9; *see also* Compl. ¶¶ 37–94 Accordingly, the policy factors do not weigh in Defendants’ favor and instead weigh in favor of reviewing the challenged ballots and issuing the appropriate relief to

ensure that accurate results are transmitted to the House so that the House does not act on an Election where the results are in doubt. This Court's *de novo* review of the challenged ballots and injunctive relief will protect the integrity of the Election; otherwise, the irregularities and unlawful actions of the Municipal Defendants will, in effect, disenfranchise voters who intended to cast their vote for Plaintiff Mirra in an Election that is currently separated by one (1) vote.

III. PLAINTIFF'S COMPLAINT AND EMERGENCY MOTION WERE TIMELY FILED, AND SECTION 59 GIVES THIS COURT AUTHORITY TO ENJOIN THE DELIVERY OF CERTIFICATION, LEAVING THE SEAT VACANT, AND THUS DELAYING THE SWEARING-IN

The Kassner Opposition tries to re-litigate its motion to dismiss by suggesting that Plaintiff's Complaint and Emergency Motion were not timely filed and that this Court does not have jurisdiction to hear either. *See* Kassner Opp'n at 3–5. Unfortunately for Ms. Kassner, the Plaintiff, the Secretary, and the Municipal Defendants all agree that this Court has, at this juncture, broad jurisdiction under Mass. Gen. Laws ch. 56, § 59 ("Section 59") to conduct a *de novo* review of the contested ballots and award relief in equity. *See* Pl.'s Opp'n to Mot. to Dismiss at 3–6; Sec'y Opp'n at 1–3; Municipal Defs. Opp'n at 5. Further, Ms. Kassner's argument that Plaintiff's Complaint and Emergency Motion are barred by the doctrine of laches is too without merit and refuted by the Plaintiff, the Secretary, and the Municipal Defendants because the Court can presently hear this dispute and issue an award pursuant to Section 59. *See* Pl.'s Opp'n to Mot. to Dismiss at 3–6; Sec'y Opp'n at 3 (House would not have jurisdiction until January 4, 2023); Municipal Defs. Opp'n at 5 (House would not have jurisdiction until January 4, 2023).

The Secretary's Opposition makes an important distinction concerning what this Court may order in advance of January 4, 2023, in accordance with the powers afforded to it under Section 59. Specifically, the Secretary stated that this Court can "temporarily order the Secretary to refrain from transmitting election results to the House[,]" Sec'y Opp'n at 3–4, and that "[u]nder this

scenario . . . the [] seat contested in this [E]lection would remain vacant” until the House decides to act or until this Court further orders the Secretary to make return of results. *Id.* at 4. After a *de novo* review of the contested ballots—particularly the requested two Ipswich ballots that were called for Plaintiff and unlawfully ruled as blanks by the Ipswich Registrars—this Court will see that the Election results show Plaintiff Mirra was the winner.¹² This Court may then exercise its powers pursuant to Section 59 and order the Secretary to refrain from transmitting the Election results to the House, thereby leaving the seat vacant for a short period of time consistent with the expectations under the law, and thus delaying the swearing-in.

IV. PLAINTIFF MIRRA WILL BE IRREPARABLY HARMED IF THE COURT DOES NOT ISSUE INJUNCTIVE RELIEF

Without judicial intervention and action before January 4, 2023, Plaintiff Mirra will be irreparably harmed. Plaintiff Mirra will suffer a loss of his right to seek public office by way of a fair election free of doubt and irregularities in accordance with the Commonwealth’s Declaration of Rights and Constitution. *See Boston Teachers Union, Loc. 66 v. City of Boston*, 382 Mass. 553, 556 (1981) (“When the balance of the equities favors the moving party, the preliminary injunction may properly issue.”).

CONCLUSION

Plaintiff Mirra requests that this Court grant the requested relief, including temporarily ordering the Secretary to refrain from transmitting the results of this Election to the House.

¹ It should be noted that the Municipal Defendants’ Opposition and Kassner’s Opposition dedicate several pages to refute the challenged ballots detailed in the Complaint. Much of the contentions made in those two oppositions rely on either memory or alleged deference to the registrars, ignoring that this Court has the power to review the ballots *de novo* and issue its own determination on the ballots—very purpose of Section 59 in disputes of this nature.

² It should also be noted that the Municipal Defendants mischaracterized—deliberately or otherwise—the allegation in Plaintiff’s Complaint about the ballot challenged from Ipswich precinct 4, block 37. *Compare* Compl. ¶ 57 *with* Municipal Defs.’ Opp’n at 11.

Dated: December 29, 2022

Respectfully submitted by,

/s/ Michael J. Sullivan

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I hereby certify that a true copy of the above document was served upon the below via electronic mail on December 29, 2022:

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2277CV01243

LEONARD MIRRA a/k/a LENNY MIRRA

vs.

TOWN OF GEORGETOWN REGISTRARS OF VOTERS & others^{1,2}

MEMORANDUM OF DECISION AND ORDER ON:
(1) PLAINTIFF'S EMERGENCY MOTION FOR EXPEDITED
AND LIMITED DE NOVO REVIEW OF TWO CHALLENGED BALLOTS;
AND PRELIMINARY INJUNCTION STAYING SWEARING-IN; AND
(2) THIRD PARTY DEFENDANT KRISTIN KASSNER'S MOTION TO DISMISS

Plaintiff Leonard Mirra a/k/a Lenny Mirra ("Mirra") filed this civil action electronically after the close of business on December 21, 2022, contesting the results of the November 8, 2022, Second Essex District State Representative election (the "Election"). His Complaint seeks an expedited review of the ballots challenged and preserved at the December 2022 district-wide Election recount (the "Recount") and requests declaratory relief in the form of a declaration that he is the rightful winner of the Election. Named as defendants are the election authorities for three of the six towns³ in the Second Essex District (the Town of Georgetown Registrars of Voters, Town of Ipswich Registrars of Voters, Town Clerk of the Town of Ipswich, Town of Rowley Registrars of Voters, Town Clerk for the Town of Rowley) (the "Municipal

¹Town of Ipswich Registrars of Voters, Town Clerk of the Town of Ipswich, Town of Rowley Registrars of Voters, Town Clerk for the Town of Rowley, and William F. Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts

² Kristin Kassner was permitted to intervene as a third-party defendant.

³ The Second Essex District includes Georgetown, Hamilton, Ipswich, Newbury, Rowley, and part of Topsfield.

Defendants”), as well as William F. Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts (the “Secretary”). A motion to intervene filed by Mirra’s opponent and the winner of the Election following the Recount, Kristin Kassner (“Kassner”), was allowed without opposition on December 27, 2022. The matter is now before the court on: (1) Mirra’s “Emergency Motion for Expedited and Limited *De Novo* Review of Two Challenged Ballots, and Preliminary Injunction Staying Swearing-in” (Paper No. 6.) (the “PI Motion”); and (2) Kassner’s Motion to Dismiss (Paper No. 8) (the “Motion to Dismiss”). The PI Motion was filed on December 23, 2022, and a hearing with counsel for all parties (including intervenor Kristin Kassner) was held via video conference on December 27, 2022. At that hearing, counsel for Kassner advised of his plan to file the Motion to Dismiss on jurisdictional grounds immediately after the hearing. As time is of the essence in this matter, the court gave him permission to do so without complying with the requirements of Superior Court Rule 9A, and ordered Mirra to file his opposition to the Motion to Dismiss by 12:30 p.m. on December 28, 2022. Following review of the parties’ submissions, the PI Motion will be **DENIED**⁴ and the Motion to Dismiss will be **ALLOWED**.

BACKGROUND

The following facts are taken from Mirra’s Complaint, as well as the additional materials submitted by Kassner per this court’s December 28, 2022 Order (Paper No. 13). Mirra, the Republican Party Candidate for State Representative in the Second Essex District, faced off against Kassner, the Democratic Party candidate, in the Election. After the initial counting of the ballots, Mirra received 11,754 votes and Kassner received 11,744 votes, making Mirra the

⁴ The court already denied Mirra’s request for limited *de novo* review of just two challenged ballots during the hearing on December 27, 2022. Thus, what remains before the court on the PI Motion is Mirra’s request for a preliminary injunction.

winner by a ten-vote margin. Kassner petitioned for a district-wide recount, which took place over a four-day period from December 5 through December 8, 2022. After the Recount, Kassner's total votes (11,763) exceeded Mirra's total votes (11,762) by one vote. Thereafter, the Recount results were certified by the Governor's Council, the certification was signed by the Governor, and the Secretary issued the certification to Kassner.⁵ Mirra subsequently filed the Complaint in the above-captioned matter in this court after the close of business on December 21, 2022. Kassner intends to attend the swearing-in proceedings of the House of Representatives on January 4, 2023, at which time she will present her certification to the presiding officer.

STANDARDS OF REVIEW

I. Preliminary Injunction Standard of Review

The standard for granting a preliminary injunction is well settled. In actions between private parties, the moving party must show: (a) a likelihood of success on the merits; (b) it will suffer irreparable harm without injunctive relief; and (c) the anticipated harm to be suffered by the movant if the injunctive relief is denied outweighs the harm the opposing party will suffer if the injunction is issued. Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980). "Where a party seeks to enjoin government action, the judge also must 'determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.'" Garcia v. Department of Hous. & Community Dev., 480 Mass. 736, 747 (2018), quoting Loyal Order of Moose, Inc., Yarmouth Lodge # 2270 v. Board of Health of Yarmouth, 439 Mass. 597, 601 (2003); Commonwealth v. Mass. CRINC, 392 Mass. 79, 89 (1984).

⁵ Pursuant to General Laws c. 54, § 116, the Governor shall certify to the results of the election for representatives and issue certificates of election to such persons as appear to be chosen to the office of representative.

II. Motion to Dismiss Standard of Review

To survive a motion to dismiss under Mass. R. Civ. P. 12(b)(6), a complaint must allege facts “plausibly suggesting . . . entitlement to relief[.]” Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007). In determining whether a complaint meets this standard, the court accepts the factual allegations in the complaint as true and draws reasonable inferences in favor of the plaintiffs. Harrington v. Costello, 467 Mass. 720, 724 (2014).

In contrast, a motion to dismiss pursuant to Mass. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction may be based solely on the facts alleged in the complaint or on additional evidence submitted by the moving party. If the motion is not supported by additional evidence, it “presents a ‘facial attack’ based solely on the allegations of the complaint” and the court must assume the truth of those allegations for the purpose of deciding whether it has subject matter jurisdiction to hear the plaintiff’s claim. Callahan v. First Congregational Church of Haverhill, 441 Mass. 699, 709 (2004), quoting Hiles v. Episcopal Diocese of Massachusetts, 437 Mass. 505, 516 n.13 (2002). If, however, the moving party submits “documents and other materials outside the pleadings” in an attempt to “contest the accuracy (rather than the sufficiency) of the jurisdictional facts pleaded by the plaintiff,” the court must “address the merits of the jurisdictional claim by resolving the factual disputes between the plaintiff and the defendants.” Id. at 710-711. Where the defendant makes such a “factual challenge,” the factual allegations in the complaint are not presumed to be true, id. at 711, and the evidence submitted regarding subject matter jurisdiction is “not viewed in the light most favorable to the non-moving party,” Wooten v. Crayton, 66 Mass. App. Ct. 187, 190 n.6 (2006).

DISCUSSION

I. The Court Lacks Subject Matter Jurisdiction

Kassner maintains that the court lacks subject matter jurisdiction because the House of Representatives has exclusive jurisdiction over this contested election under the Massachusetts Constitution and, therefore, Mirra has failed to state a claim for relief which can be granted. Mirra asserts that the court has subject matter jurisdiction over the election dispute until the House of Representatives takes action on the matter when it convenes on January 4, 2023. Based on a review of the Massachusetts Constitution, relevant statutes, applicable case law, and the unique posture of this contested election, the court agrees with Kassner. Although Mirra is correct in his assertion that the court has the authority to enforce the election laws and grant related equitable relief, he ignores the constitutional limits of the court's power.

General Laws c. 56, § 59,⁶ grants the Superior Court jurisdiction to enforce the laws regulating the conduct of elections and the power to grant equitable relief to those injured by violations of those laws. Wheatley v. Secretary of the Commonwealth, 439 Mass. 849, 853 (2003). However, the Superior Court's power to remedy election irregularities is limited by the Massachusetts Constitution which provides, in relevant part, that "[t]he house of representatives shall be the judge of the returns, elections, and qualifications of its own members" Part II, c. 1, § 3, art. 10, of the Constitution of the Commonwealth. It is well established that the power to pass upon the election and qualification of its own members is vested exclusively in the House of Representatives. Wheatley, 439 Mass. at 854 ("The House's role as the sole arbiter of a

⁶ General Laws c. 56, § 59, states in relevant part, "[t]he supreme judicial court and the superior court department of the trial court shall have jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and may award relief formerly available in equity of by mandamus." Chapter 54 of the General Laws governs elections.

petitioner's claim to a seat as a representative is by now firmly settled as a matter of State constitutional law."); Greenwood v. Registrars of Voters of Fitchburg, 282 Mass. 74, 79 (1933) ("Jurisdiction to pass upon the election and qualification of its own members is thus vested exclusively in the House of Representatives."); Dinan v. Swig, 223 Mass. 516, 517 (1916) ("The grant of power is comprehensive, full and complete. It is necessarily exclusive, for the Constitution contains no words permitting either branch of the Legislature to delegate or share that power."). The House of Representatives has the final authority to decide a claim to a seat as a representative. See Wheatley, 439 Mass. at 854-855 (holding that absent allegation of violation of federal law, only the House has jurisdiction to resolve a claim of election and "[n]o other department of the government has any authority under the Constitution to adjudicate upon that subject?").

Kassner contends that Mirra's failure to commence this litigation until after the certificate was issued to her is fatal to his attempt to vest jurisdiction in the Superior Court. The court agrees. While the court is unaware of any legal authority identifying the precise moment in time when its jurisdiction under G. L. c. 56, § 59, ends and the House of Representatives' authority pursuant to Part II, c. 1, § 3, art. 10, of the Massachusetts Constitution begins, the court is persuaded by Banks v. Election Com'rs of Boston, 327 Mass. 509 (1951), in which the Supreme Judicial Court addressed empowering language similar to the language in Part II, c. 1, § 3, art. 10 of the Massachusetts Constitution. In Banks, the petitioners contested the results of a municipal election after a recount. Under the municipal election laws, the board of election commissioners of the city of Boston was granted "all the powers and duties relating to the determination of the results of the election" and "[t]he city counsel shall be the judge of the election and qualifications of its members" (quotations omitted). Banks, 327 Mass. at 512. The Supreme Judicial Court

ruled that the court had jurisdiction to review the election results “until the board determines such results and issues a certificate to whom it has determined to have received the vote necessary for election.” Id. Following the reasoning in Banks, this court no longer has jurisdiction to review the results of the election since the Governor has issued a certificate to Kassner. See id. (“Up to the point that a certificate has been issued, at least, the matter is in control of the court, which may in proper proceedings direct the board to whom to issue the certificate.”)

While Mirra claims that the fact that the election results have been certified has no bearing on the court’s jurisdiction because the House of Representatives has not yet convened, the court is not persuaded by this argument given the unique posture of this case where the election results have been certified but not yet presented to the House of Representatives. The cases cited by Mirra in support of his argument that the court retains jurisdiction are unpersuasive, as they all involved elections to offices other than State Representative, where the courts were not constrained by the constitutional provision at issue here and in Wheatley. See Delahunt v. Johnston, 423 Mass. 731 (1996) (primary for nomination of Democratic Party for office of United States Representative for Tenth Congressional District); Colten v. Haverhill, 409 Mass. 55 (1991) (city council election); Connolly v. Secretary of the Commonwealth, 404 Mass. 556 (1989) (Democratic primary election and general election for office of Governor’s Councillor for Third District);⁷ McCavitt v. Registrars of Voters of Brockton, 385 Mass. 333 (1982) (mayoral election). Nor is the case of Alicea v. Southbridge Registrars of Voters, Mass.

⁷ Connolly is further distinguishable because the preliminary injunction in that case was entered prior to the certification of the election results by the Governor and the Executive Council, and restrained the Secretary from transmitting the results to the Governor and the Executive Council for certification. 404 Mass. at 559.

Super Ct. No. 1085CV02624, helpful to Mirra's cause. In that case, the Superior Court held a trial on the merits in a challenge to an election for the Office of State Representative for the Sixth Worcester District, but the plaintiff filed suit on November 29, 2010, in advance of the certification, and his opponent filed a counterclaim. The parties, thus, accepted jurisdiction and never litigated the issue of jurisdiction. As a result, Alicea has no bearing on this court's analysis.

For the foregoing reasons, the court concludes that it lacks subject matter jurisdiction to hear this dispute.

II. The Court Lacks Authority to Issue the Injunctive Relief Sought

The court also notes that it lacks the authority to issue the injunctive relief sought by Mirra, specifically, to stay Kassner's swearing in on January 4, 2023, until this litigation has been fully resolved. The Constitution requires that State Representatives must be sworn in by the Governor and the Governor's Council in the presence of the two houses of assembly. Part II, c. 6, art.1 of the Constitution of the Commonwealth. The Governor, the Governor's Council, and the House of Representatives are not named as parties to this action. As the Secretary correctly points out, the most the court could do if it chose to enter injunctive relief in Mirra's favor would be to temporarily order the Secretary to refrain from transmitting election results to the House clerk.⁸

III. Entry of a Preliminary Injunction Would be Futile

Finally, even if this court were to conclude that it has jurisdiction to hear this dispute, the entry of a preliminary injunction in Mirra's favor would be futile and a waste of judicial and

⁸ Pursuant to General Laws c. 3, § 1, the Secretary shall transmit to the House of Representatives as soon as the members are called to order a certified copy of each certificate of examination of the copies of records of votes cast as transmitted to him by the Governor.

municipal resources. For whatever reason, Mirra waited until just before Christmas to file suit, with the swearing-in set to occur on January 4, 2023. While the court could make a judge available for a trial on the merits on an expedited basis, it would be impossible to complete a trial by January 4, 2023. Not surprisingly, certain necessary witnesses are unavailable on such short notice during the week between Christmas and New Year's Day that is commonly used for vacation by many people.⁹ Also not surprising is Kassner's representation at the December 27 hearing that, before a trial on the merits, she would likely seek to implead the remaining three municipalities included in the Second Essex District, which Mirra did not name as defendants in his Complaint, so that any protested ballots from those municipalities could be included in the court's analysis. After January 4, 2023, any action taken by this court would be nothing more than evidence that Mirra and Kassner may present to the House of Representatives in support of their respective claims of election. See Wheatley, 439 Mass. at 852, 854.

IV. Review of Ballots

As the court concludes that it lacks jurisdiction to hear this dispute, the court need not reach Mirra's substantive arguments regarding the protested ballots. Following the hearing on December 27, 2022, the court ordered the Municipal Defendants to produce "[a]ll protested ballots sealed and segregated by the registrars pursuant to G. L. c. 54, § 135, as set forth in the Plaintiff's Complaint" to the court clerk's office by 10 a.m. on December 29, 2022, in connection with considering the merits of Mirra's request for injunctive relief. Ballots from all three towns were produced in accordance with that order and secured in the clerk's office by the

⁹ It was represented at the hearing, for example, that two of the three town clerks for the municipalities named as defendants are on vacation.

afternoon December 28, 2022. Given the court's above conclusions, the court never opened the ballots produced and shall arrange for their return to the Municipal Defendants.

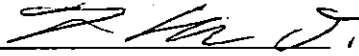
V. Conclusion

For all of the foregoing reasons, the court concludes that it lacks subject matter jurisdiction to hear this dispute, that it lacks the authority to issue the injunctive relief sought, and that, in any event, any action taken by the court at this stage in the proceedings would be an exercise in futility. As a result, Mirra lacks a likelihood of success on the merits, his PI Motion must be denied, and Kassner's Motion to Dismiss pursuant to Mass. R. Civ. P. 12(b)(1) and 12(b)(6) must be allowed.

ORDER


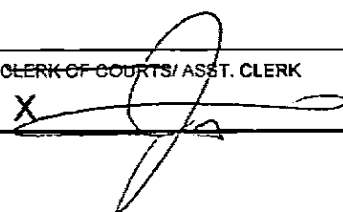
For the foregoing reasons, it is hereby **ORDERED**:

1. Plaintiff's Emergency Motion for Expedited and Limited *De Novo* Review of Two Challenged Ballots, and Preliminary Injunction Staying Swearing-in (Paper No. 6) is **DENIED**.
2. Third Party Defendant Kristin Kassner's Motion to Dismiss (Paper No. 8) is **ALLOWED**.


Thomas Drechsler
Associate Justice of the Superior Court

Dated: December 29, 2022

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JUDGMENT ON MOTION TO DISMISS		Trial Court of Massachusetts The Superior Court	
DOCKET NUMBER 2277CV01243		Thomas H. Driscoll, Jr., Clerk of Courts	
CASE NAME Leonard Mirra Also Known As Lenny Mirra vs. Town of Georgetown Registrars of Voters et al		COURT NAME & ADDRESS Essex County Superior Court - Newburyport 145 High Street Newburyport, MA 01950	
JUDGMENT FOR THE FOLLOWING DEFENDANT(S) Kassner, Kristin			
JUDGMENT AGAINST THE FOLLOWING PLAINTIFF(S) Leonard Mirra Also Known As Lenny Mirra			
<p>This action came on before the Court, Hon. Thomas Drechsler, presiding, and upon review of the motion to dismiss pursuant to Mass. R.Civ.P. 12(b),</p> <p>It is ORDERED AND ADJUDGED:</p> <p>That the complaint of the plaintiff, Leonard Mirra, against all of the defendants be and hereby is DISMISSED.</p>			
DATE JUDGMENT ENTERED 12/30/2022	CLERK OF COURTS/ ASST. CLERK 		

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,

Plaintiff,

v.

TOWN OF GEORGETOWN REGISTRARS OF
VOTERS,
TOWN OF IPSWICH REGISTRARS OF VOTERS,
TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS,
TOWN CLERK FOR THE TOWN OF ROWLEY,
and
WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,

Defendants,

and

KRISTIN KASSNER,

Intervenor.

NOTICE OF APPEAL

Plaintiff Leonard Mirra, through undersigned counsel, gives notice that he appeals from the Judgment on Motion to Dismiss entered by the Superior Court (Drechsler, T.) on December 30, 2022, including the Memorandum of Decision and Order on: (1) Plaintiff's Emergency Motion For Expedited and Limited De Novo Review Of Two Challenged Ballots and Preliminary Injunction Staying Swearing-In; and (2) Third Party Defendant Kristin Kassner's Motion To Dismiss, dated December 29, 2023, and any oral rulings in connection with the judgment, including those during the hearing on December 27, 2022.

Dated: December 30, 2022

Respectfully submitted by,

/s/ Michael J. Sullivan

Michael J. Sullivan

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Attorney for Plaintiff

Leonard Mirra

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the below via electronic mail on December 30, 2022:

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Counsel for Kristin Kassner	Gerald A. McDonough Attorney-at-Law 13 Hollis Street Cambridge, MA 02140 (617) 529-1527 gerry@gmcdonoughlaw.com

/s/ J. Christopher Amrhein, Jr.
J. Christopher Amrhein, Jr.

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

Essex, ss.

Docket No. 2022-J-_____
Superior Court Docket No. 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,
Plaintiff-Petitioner,

v.

TOWN OF GEORGETOWN REGISTRARS OF VOTERS, TOWN OF IPSWICH
REGISTRARS OF VOTERS, TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS, TOWN CLERK FOR THE
TOWN OF ROWLEY, and WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,
Defendants-Respondents,

and

KRISTIN KASSNER,
Intervenor-Respondent.

**PLAINTIFF-PETITIONER LEONARD MIRRA'S REQUEST FOR
INJUNCTIVE RELIEF PURSUANT TO MASS. R. APP. P. 6**

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Counsel for Plaintiff Leonard Mirra

Now comes Petitioner Leonard Mirra, appellant in the above-captioned action and plaintiff below (hereafter “Mirra” or “Plaintiff”) moving this Court for an injunction pending appeal pursuant to Rule 6 of the Massachusetts Rules of Appellate Procedure. Plaintiff petitions the Appeals Court for injunctive relief from the Memorandum of Decision and Order on Motion to Dismiss entered by the Superior Court (Drechsler, T.) on December 29, 2022 (the “Order”) in *Leonard Mirra, Plaintiff, v. Town Georgetown Registrars of Voters, Town of Ipswich Registrars of Voters, Town Clerk of the Town of Ipswich, Town of Rowley Registrars of Voters, Town Clerk for the Town of Rowley, and William F. Galvin, in his official capacity as Secretary of the Commonwealth of Massachusetts, Defendants, and Kristin Kassner, Intervenor*, Civil Action No. 2277-CV-01243, denying Petitioner’s Emergency Motion for Expedited and Limited *De Novo* Review of Two Challenged Ballots, and Preliminary Injunction Staying Swearing-In (“Emergency Motion”) and allowing Third-Party Defendant-Intervenor Kristin Kassner’s Motion to Dismiss.

Plaintiff filed a Notice of Appeal of the Order on December 30, 2022. The Appeal involves a requested review of the Superior Court’s determination that it lacked subject matter jurisdiction to consider Mirra’s Emergency Motion.

The House of Representatives is schedule to seat Ms. Kassner on Wednesday, January 4, 2022, and unless injunctive relief is granted, Plaintiff's rights on appeal will be severely prejudiced.

The Superior Court's Order contravenes Massachusetts law by dismissing Petitioner's Emergency Motion on the grounds that the Superior Court lacked subject matter jurisdiction. As explained in the accompanying supporting memorandum of law, the court reached this erroneous legal conclusion without considering the Plaintiff's legal analysis—with which the Secretary concurred—that nothing in Massachusetts' election statutes divests the Superior Court's jurisdiction to enforce election laws and grant appropriate relief at this juncture of the case.

This Court should intervene to protect the Commonwealth's strong public policy in this area of law, to reaffirm the trial court's important gatekeeper function to enforce the Commonwealth's election statutes, and to grant relief to the Petitioners impacted by the Superior Court's clearly erroneous ruling.

RECONSIDERATION

Petitioner has not and does not intend to file a motion for reconsideration in the Superior Court.

REQUEST FOR RELIEF

Petitioner requests that the Appellate Court:

1. Grant injunctive relief ordering the Secretary to refrain from transmitting the election results to the House, thereby leaving the seat vacant for a short period of time consistent with the expectations under the law, and thus delaying the swearing-in of Ms. Kassner pending the outcome of Plaintiff's appeal of the Order.
2. Grant such other relief as is just and appropriate; and
3. Hold a hearing on this emergency request.

Respectfully submitted,

Plaintiff Leonard Mirra

By his attorneys,

/s/ Michael J. Sullivan

MICHAEL J. SULLIVAN

MA BBO # 487210

J. CHRISTOPHER AMRHEIN, JR.

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Dated: December 30, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that this Supporting Memorandum of Law complies with the length limits for proportionally spaced font under Mass. R. A. P. 6 because it is produced in Times New Roman at size 14 and contains 442 non-excluded words as counted using the word count feature of Word for Microsoft 365.

/s/Michael J. Sullivan
Michael J. Sullivan

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2022, I served this Petition, Supporting Memorandum of Law, and Record Appendix as follows:

By e-mail on:

Counsel for Secretary Galvin	Anne Sterman Adam Hornstine <i>Office of the Attorney General</i> One Ashburton Place Boston, MA 02108 617-963-2524 anne.sterman@state.ma.us adam.hornstine@state.ma.us
Counsel for Ipswich Defendants	George A. Hall, Jr. <i>Anderson & Kreiger LLP</i> 50 Milk Street, 21st Floor Boston, MA 02109 617-621-6530 ghall@andersonkreiger.com
Counsel for Rowley Defendants	Yael Magen <i>Thomas A. Mullen, P.C.</i> 40 Salem Street, Building 2, Suite 12 Lynnfield, Massachusetts 01940 781-245-2284 ext.2 yaelmagen@thomasamullenpc.com
Counsel for Georgetown	Lauren F. Goldberg <i>KP Law, P.C.</i> 101 Arch Street, 12th Floor Boston, MA 02110 (617) 654-1759 lgoldberg@k-plaw.com
Counsel for Kristin Kassner, Proposed Intervenor	Gerald A. McDonough Attorney-at-Law 13 Hollis Street Cambridge, MA 02140

	(617) 529-1527 gerry@gmcdonoughlaw.com
--	--

/s/ Michael J. Sullivan
Michael J. Sullivan

COMMONWEALTH OF
MASSACHUSETTS
APPEALS COURT

Essex, ss.

Docket No. 2022-J-_____
Superior Court Docket No. 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,
Plaintiff-Petitioner,

v.

TOWN OF GEORGETOWN REGISTRARS OF VOTERS, TOWN OF IPSWICH
REGISTRARS OF VOTERS, TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS, TOWN CLERK FOR THE
TOWN OF ROWLEY, and WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,
Defendants-Respondents,

and

KRISTIN KASSNER,
Intervenor-Respondent.

**PLAINTIFF-PETITIONER LEONARD MIRRA'S MEMORANDUM IN
SUPPORT OF REQUEST FOR INJUNCTIVE RELIEF PURSUANT TO
MASS. R. APP. P. 6**

*Counsel for Plaintiff
Leonard Mirra*

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Now comes Leonard Mirra, Petitioner in the above-captioned action and plaintiff below (hereafter “Mr. Mirra” or “Petitioner”), and move this Court for an injunction pending appeal pursuant to Rule 6 of the Massachusetts Rules of Appellate Procedure.

This is an action relating to the November 8, 2022, Second Essex State Representative election (“Election”), and the ballots challenged and preserved at the December 2022 district-wide Election recount (“Recount”). Mr. Mirra was originally determined to have won the Election. Instead of having lost the Election by ten (10) votes, the Recount reported the Defendant-Respondent Kristin Kassner (“Ms. Kassner”) to have won the Election over Mr. Mirra by just one (1) vote.

In an order dated December 29, 2022, Superior Court Judge Drechsler dismissed Petitioner’s Complaint challenging this new result for lack of jurisdiction. The Court entered judgment the following day, December 30, 2022. The Superior Court’s ruling was based on the incorrect view that the House of Representatives had exclusive jurisdiction over this dispute at this juncture.

The Superior Court premised its ruling on a novel question of law regarding “the precise moment in time” when a trial court’s jurisdiction ends and the House of Representatives’ jurisdiction begins. *See* Record Appendix (“RA”) at 206 (Dkt. 20) (noting “the court is unaware of any legal authority” in support of its conclusion).

The Superior Court answered this important constitutional question incorrectly and improperly restricted the scope of state courts' jurisdiction over such matters.

Notably, the Defendant-Respondent Secretary Galvin agrees that the Superior Court's jurisdictional ruling was incorrect and that the Superior Court has the authority to temporarily order the Secretary to refrain from transmitting election results to the House to ensure a just and correct election outcome. RA at 81–82 (Dkt. 10). The Municipal Defendants-Respondents too agree that the Superior Court had jurisdiction over the matter. RA at 182 (Dkt. 17).

Given its finding on jurisdiction, the Superior Court did not substantively consider Mr. Mirra's request for emergency and limited *de novo* review of two challenged ballots, or otherwise his claim on the merits. RA at 205–210 (Dkt. 20).

This Appeal accordingly seeks review of the Superior Court's dismissal of Mr. Mirra's Complaint on jurisdictional grounds and additionally requests entry of injunctive relief to permit Mr. Mirra to pursue his legal remedies. The House of Representatives new political year begins on Wednesday, January 4, 2023, marking the first time it could possibly assert jurisdiction over this dispute. Accordingly, unless injunctive relief is granted—which would have the effect of simply leaving the seat vacant for the time being while accuracy of the Election and Recount results is being determined—Plaintiff's rights will be severely prejudiced if not eliminated.

Plaintiff respectfully submits that due to the emergency circumstances surrounding this challenge, which involves preserving the integrity of the Election, protecting the voters' and candidates' rights—which are fundamentally intertwined under the Massachusetts Constitution—and ensuring every vote is accurately counted, “application to the lower court for the relief sought is not practicable.” Mass. R. App P. 6.

PROCEDURAL AND FACTUAL BACKGROUND

This is an action relating to the November 8, 2022, Second Essex State Representative election (“Election”), and the ballots challenged and preserved at the December 2022 district-wide Election recount (“Recount”). The initial results of the Election showed that Mr. Mirra received 10 votes more than Ms. Kassner. RA at 15 (Dkt. 1, Complaint (“Compl.”) ¶ 27). Ms. Kassner petitioned for a district-wide recount (“Recount”). *See id.* (Compl. ¶ 29). After the Recount, Ms. Kassner purportedly picked up a net of 11 votes, thus emerging as the alleged winner by one (1) vote. RA at 12 (Compl. ¶ 8).

Mr. Mirra filed suit on December 21, 2022. RA at 11–25. The Complaint detailed several challenged ballots that should have been called for Mr. Mirra, or alternatively, should not have counted for Ms. Kassner. *Id.* The Complaint argued that the actions, decisions, mistakes, and inaction by the Registrars and Town Clerks

named as defendants were incorrect and unlawful, and materially changed the Election results to the detriment of Mr. Mirra. *Id.*

On December 23, 2022, Mr. Mirra filed an Emergency Motion for Expedited and Limited *De Novo* Review of Two Challenged Ballots, and Preliminary Injunction Staying Swearing-In (“Emergency Motion”) pursuant to Mass. Super. Ct. R. 9A(d)(1). The Emergency Motion asked the Superior Court to conduct an expedited *de novo* review of two challenged ballots from the election recount conducted in the Town of Ipswich on December 7, 2022. RA at 58–59, 61–65 (Dkt. 6, 6.1). The central contention of Mr. Mirra’s Emergency Motion was the court’s review of the ballots will show that the Election is, at a minimum, a tie between Mr. Mirra and the purported winner Ms. Kassner. In conjunction with the request for expedited *de novo* review, Mr. Mirra’s Emergency Motion also requested that the Superior Court issue injunctive relief to stay the swearing-in of Ms. Kassner scheduled for January 4, 2023, until the above-captioned matter has been fully litigated. RA at 64–65.

The Superior Court held a preliminary hearing on December 27, 2022 (“December 27th Hearing”). RA at 9. During the December 27th Hearing, Ms. Kassner—who had moved to intervene in the case without opposition— informed the court of her intention to file a motion to dismiss. The Court set a briefing schedule for the parties with regard to Mr. Mirra’s Complaint and

Emergency Motion, and Ms. Kassner's anticipated motion to dismiss. RA at 85–87 (Dkt. 11).

Ms. Kassner filed her motion to dismiss on December 27, 2022. RA at 67–79 (Dkt. 8, 8.1). Mr. Mirra filed an opposition to the motion to dismiss on December 28, 2022, in accordance with the Superior Court's briefing schedule. RA at 88–95 (Dkt. 12). The Secretary also filed a limited response to Ms. Kassner's motion to dismiss, in which the Secretary agreed with Mr. Mirra that the Superior Court had jurisdiction. RA at 80–84 (Dkt. 10). The Secretary's response noted that Mr. Mirra has not submitted any admissible evidence with his motion, RA at 83, though the evidence purportedly lacking was the protested ballots (approximately 28) that the Court ordered to be delivered to the Court, RA at 85–87 (Dkt. 11), and which the Municipal parties complied with and delivered the handful of protested ballots as ordered. RA at 209–210 (Dkt. 20).

Additionally, the Secretary and the Municipal parties opposed Mr. Mirra's Emergency Motion. RA at 80–84 (Dkt. 10), 165–177 (Dkt. 18), 178–193 (Dkt. 17). Mr. Mirra submitted an Omnibus Reply to the oppositions. RA at 194–199 (Dkt. 19). In his reply, Mr. Mirra clarified his requested injunctive relief to align with what the Secretary conceded was within the Superior Court's power: to order the Secretary to refrain from transmitting the Election results to the House, thereby leaving the seat vacant for a short period of time consistent with the expectations

under the law, and thus delaying the swearing-in. RA at 82–84 (Dkt. 10) and RA at 197–198 (Dkt. 19).

At 3:31 PM on December 29, 2022—just 43 minutes after the parties finished submitting briefing on the operative motions in accordance with the Superior Court’s expedited briefing schedule—the parties received via email the Superior Court’s 10-page “Memorandum of Decision and Order on (1) Plaintiff’s Emergency Motion for Expedited and Limited *De Novo* Review of Two Challenged Ballots, and Preliminary Injunction Staying Seating-In; and (2) Third Party Defendant Kristin Kassner’s Motion to Dismiss” (hereinafter “Order”).¹ RA at 201–210 (Dkt. 20). The Order denied the Emergency Motion and granted Ms. Kassner’s motion to dismiss. *Id.*

The Superior Court (Drechsler, J.) held that it lacked subject matter jurisdiction, opining that “[b]ased on a review of the Massachusetts Constitution, relevant statutes, and the unique posture of the contested election,” the House of Representatives has exclusive jurisdiction over this contested election, and refused to review the contested ballots that the Municipal parities had delivered as ordered. RA at 205–210 (Dkt. 20). This conclusion ignored that Mass. Gen. Laws ch. 56, § 59 (“Section 59”) confers to the Superior Court broad jurisdiction to enforce General

¹ While the title of the decision indicates that the Emergency Motion would first be addressed and then the Motion to Dismiss, the “Discussion” section of the decision reversed the order. RA at 205–210 (Dkt. 20).

Laws chs. 50–56 and issue equitable awards, and that the House of Representatives’ jurisdiction does not vest until January 4, 2023, at the earliest. RA at 197 (Dkt. 19). The conclusion also ignored additional important principles underlying Massachusetts election laws and declined to credit the admissions by the Secretary and Municipal parties that the Superior Court had (and still has) jurisdiction. RA at 197 (Dkt. 19).

Petitioner timely filed with the Superior Court a Notice of Appeal on December 30, 2022. RA at 212–214 (Dkt. 23).

APPLICABLE LEGAL STANDARD

To obtain a preliminary injunction, “the moving party must show that, without the requested relief, it may suffer a loss of rights that cannot be vindicated should it prevail after a full hearing on the merits.” *Packaging Indus. Grp. v. Cheney*, 380 Mass. 609, 616 (1980). A court must “balance the risk of irreparable harm to the plaintiff and defendant in light of each party’s chance of success on the merits at trial,” *Planned Parenthood League of Mass., Inc., v. Operation Rescue*, 406 Mass. 701, 710 (1990) (quotation marks omitted); *see also Boston Teachers Union, Loc. 66 v. City of Boston*, 382 Mass. 553, 556 (1981). “When the balance of the equities favors the moving party, the preliminary injunction may properly issue.” *Id.* In addition, where, as here, the plaintiff seeks to enjoin governmental action, the court must “determine that the requested order promotes the public interest, or,

alternatively, that the equitable relief will not adversely affect the public.” *Cote-Whitacre v. Dep’t of Pub. Health*, 446 Mass. 350, 357 (2006) (quotation marks omitted).

ARGUMENT

I. MR. MIRRA HAS ESTABLISHED THAT HE IS ENTITLED TO AN INJUNCTION PENDING APPEAL

A. THE SUPERIOR COURT HAD JURISDICTION OVER THIS MATTER

As a threshold matter, the Superior Court—and this Court—unquestionably has subject matter jurisdiction to issue an injunction to preserve the status quo pending an election challenge. As stated in the Secretary’s response to Ms. Kassner’s motion, “as a practical matter, this Court retains jurisdiction under General Laws c. 56, § 59 to issue certain equitable orders pertaining to election certificates unless and until the House exercises its prerogative under Part II, c. 1, § 3, art. 10 of the Constitution.” RA at 82 (Dkt. 10). The Municipal parties concurred:

While the Court presently possesses jurisdiction over this matter, that jurisdiction may be removed at any time after January 4, 2023, even after a decision is rendered, leaving the Court in the position of issuing a ruling that is merely advisory. *Cf. Greenwood v. Registrars of Voters of City of Fitchburg*, 282 Mass. 74 (1933) (dismissing appeal after trial and finding showing that election should be reversed, where House had assumed jurisdiction over matter and it became moot, such that “any decision [by court] would be nugatory or unavailing”).

RA at 182–183 (Dkt. 17). In short, both the Secretary and Municipal parties concur that the jurisdiction was properly laid with the Superior Court pursuant to Section 59 at all relevant times.

In response to the Emergency Motion, the Secretary also stated its view that it was well within the Superior Court’s power to, in advance of January 4, 2023, and in accordance with the powers afforded to it under Section 59, “temporarily order the Secretary to refrain from transmitting election results to the House[,]” RA at 82–83 (Dkt. 10), and that “[u]nder this scenario . . . the [] seat contested in this [E]lection would remain vacant” until the House decides to act or until this Court further orders the Secretary to make return of results. *Id.* at 83.

Like the Superior Court, this Court accordingly has the authority to exercise its powers pursuant to Section 59 and to order the Secretary to refrain from transmitting the Election results to the House, thereby leaving the seat in holdover status for a short period of time consistent with the expectations under the law, and thus delaying the swearing-in.

B. PLAINTIFF MIRRA WILL BE IRREPARABLY HARMED IF THE COURT DOES NOT ISSUE INJUNCTIVE RELIEF

Plaintiff—and the voters in the Second Essex District—will suffer a profound loss of Constitutional rights that cannot be vindicated absent this Court’s relief. Without judicial intervention and action before January 4, 2023, Mr. Mirra will be irreparably harmed irrespective of the ultimate outcome of his appeal. Mr. Mirra will

suffer a loss of his right to seek public office by way of a fair election free of doubt and irregularities in accordance with the Commonwealth’s Declaration of Rights and Constitution. *See Boston Teachers Union, Loc. 66 v. City of Boston*, 382 Mass. 553, 556 (1981) (“When the balance of the equities favors the moving party, the preliminary injunction may properly issue.”).




C. PLAINTIFF MIRRA IS LIKELY TO SUCCEED ON THE MERITS OF HIS UNDERLYING CLAIM

Plaintiff is likely to succeed on the underlying merits of this action. The limited relief Mr. Mirra seeks—specifically, the review of just two challenged ballots—is enough to materially change the post-Recount Election results. In his Emergency Motion, Mr. Mirra asked the Superior Court to review *de novo* just two challenged ballots: the first from Ipswich precinct 1, block 19, RA at 18–19 (Compl. ¶ 57); and the second from Ipswich precinct 4, block 37, RA at 18 (Compl. ¶ 55). The Superior Court declined to even open any of the ballots and ordered them returned to the Municipal Defendants. RA at 209–210 (Dkt. 20 (“Given the court’s above conclusions, the court never opened the ballots produced, and shall arrange for their return to the Municipal Defendants”)).

With regard to these key ballots, the election workers called the ballots as votes for Mr. Mirra, but the Ipswich Registrars wrongly and unlawfully overruled the call and determined the ballots were blanks instead of votes for Mr. Mirra. RA at 18–19 (Compl. ¶¶ 55, 57). The Ipswich Registrars ignored controlling

Massachusetts law and disregarded Defendant Secretary's own election recount guide when it did so. *Id.* (Compl. ¶¶ 54–59).

Specifically, for example, the record below and facts will show that the challenged ballot from Ipswich precinct 4, ward 37, falls squarely into the following example in the Secretary's guide as a vote to be counted for Mr. Mirra:

<table border="1"><tr><td style="text-align: center;">Smith</td><td rowspan="2" style="text-align: center; vertical-align: middle;"></td></tr><tr><td style="text-align: center;">Jones</td></tr></table> <p style="text-align: center;">Count for Smith.</p>	Smith		Jones	<p>Example 14 Check mark for Smith which dips slightly into Jones' box.</p> <p>Legal Reference: <i>Desjourdy v. Board of Registrars of Voters, 358 Mass. 644, 266 N.E. 2d 672 (1971).</i></p>
Smith				
Jones				

See RA at 44 (Compl. Ex. B at 15).

Given that the post-Recount margin of victory is one (1), rectifying the Ipswich Registrars' mistakes concerning even just one of the Ipswich ballots will materially change the post-Recount Election results that have already been certified.

Accordingly, Mr. Mirra is likely to succeed on the merits.

II. THIS COURT SHOULD EXERCISE ITS AUTHORITY UNDER MASS. R. APP. P. 6 TO ISSUE INJUNCTIVE RELIEF STAYING THE SWEARING-IN OF MS. KASSNER UNTIL MR. MIRRA'S APPEAL HAS BEEN HEARD AND DECIDED

After the Appeals Court's review of this matter, it will either determine Plaintiff Mirra has either won the Election, or the Election will likely result in a tie.

With the post-Recount Election results placed in doubt, Massachusetts law requires a new election. *McCavitt v. Registrars of Voters of Brockton*, 385 Mass. 833, 850 (1982) (“[W]henver the irregularity or illegality of [an] election is such that the result of the election would be placed in doubt, then the election must be set aside, and the judge must order a new election.”).

Notwithstanding the necessity of a new election where the results have been placed in doubt, Massachusetts courts have determined that while a post-recount election dispute is ongoing, governmental operations are not to be disrupted and an incumbent is not to be removed until the court determines the winner. *See generally Alicea v. Southbridge Registrars of Voters, et al.*, Mass. Super. Ct. (Worcester) No. 1085-CV-02624. In the *Alicea* case, Alicea, the incumbent, allegedly lost the election by one vote to Peter Durant. *Id.* A Worcester Superior Court judge conducted a *de novo* review of the challenged ballots and determined that the election was instead a tie. *Id.* Alicea remained in office as a holdover legislator. A new election was ordered by the Worcester Superior Court judge, and Peter Durant, the winner of the new election, was sworn into office in May 2011, after the matter had been fully litigated and judicial orders completed.

Injunctive relief preserving the status quo will enable Mr. Mirra’s appeal to be decided and his case as it relates to his request for *de novo* review to be allowed to proceed or denied and the outcome of the election contest to be decided pursuant

to the will of the voters. *Cf. Connolly v. Sec’y of the Commonwealth*, 404 Mass. 556, 568 (1989) (“If the ‘winning’ candidate prevails by less than three votes, under our ruling in *McCavitt*, there must be a new [] election.”) (citing *McCavitt*, 385 Mass. at 848). The balance of equities therefore favors Mr. Mirra.

CONCLUSION

Mr. Mirra requests that this Court issue injunctive relief temporarily ordering the Secretary to refrain from transmitting the results of this Election to the House and preserving the *status quo* pending the outcome of Mr. Mirra’s appeal.

Respectfully submitted,

Plaintiff-Appellant Leonard Mirra

By his attorneys,

/s/ Michael J. Sullivan

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J. CHRISTOPHER AMRHEIN, JR.

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Dated: December 30, 2022

CERTIFICATE OF COMPLIANCE

I hereby certify that this Supporting Memorandum of Law complies with the length limits for proportionally spaced font under Mass. R. A. P. 6 because it is produced in Times New Roman at size 14 and contains 2898 non-excluded words as counted using the word count feature of Word for Microsoft 365.

/s/Michael J. Sullivan
Michael J. Sullivan

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2022, I served this Petition, Supporting Memorandum of Law, and Record Appendix as follows:

By e-mail on:

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--	--

/s/ Michael J. Sullivan
Michael J. Sullivan

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

APPEALS COURT
DOCKET NO. 2022-J-0740

LEONARD MIRRA a/k/a LENNY MIRRA,)
)
)
 Plaintiff-Petitioner,)
)
 v.)
)
 TOWN OF GEORGETOWN REGISTRARS OF)
 VOTERS, TOWN OF IPSWICH REGISTRARS)
 OF VOTERS, TOWN CLERK OF THE TOWN)
 OF IPSWICH, TOWN OF ROWLEY)
 REGISTRARS OF VOTERS, TOWN CLERK)
 FOR THE TOWN OF ROWLEY, WILLIAM)
 F. GALVIN, in his official capacity as)
 Secretary of the Commonwealth of)
 Massachusetts, and KRISTIN KASSNER,)
)
 Defendants-Respondents.)

**DEFENDANT-RESPONDENT KRISTIN KASSNER’S OPPOSITION TO
PLAINTIFF-PETITIONER’S REQUEST FOR INJUNCTION RELIEF**

With respect to the above-captioned matter, Defendant-Respondent Kristin Kassner (“Ms. Kassner”), the certified State Representative-Elect for the Second Essex District, objects as follows to the request for injunctive relief sought by Plaintiff-Petitioner Leonard Mirra (“Mr. Mirra”).

The Superior Court Correctly Concluded that It Lacked Jurisdiction.

The central point of Mr. Mirra’s request for injunctive relief is that, in his

opinion, the Superior Court “unquestionably” had jurisdiction over the subject matter of Mr. Mirra’s complaint after the certification of the election results was issued by the Executive Council and the Governor, and the certification and summons issued to Ms. Kassner. Mr. Mirra, however, completely ignores the Supreme Judicial Court Decision, Banks v. Election Commissioners of Boston, 327 Mass. 509 (1951), on which the Superior Court relied for its decision. The Superior Court’s reliance on the Banks Decision as set forth in its opinion is as follows:

Kassner contends that Mirra's failure to commence this litigation until after the certificate was issued to her is fatal to his attempt to vest jurisdiction in the Superior Court. The court agrees. While the court is unaware of any legal authority identifying the precise moment in time when its jurisdiction under G. L. c. 56, § 59, ends and the House of Representatives' authority pursuant to Part II, c. 1, § 3, art. 10, of the Massachusetts Constitution begins, the court is persuaded by Banks v. Election Com'rs of Boston, 327 Mass. 509 (1951), in which the Supreme Judicial Court addressed empowering language similar to the language in Part II, c. 1, § 3, art. 10 of the Massachusetts Constitution. In Banks, the petitioners contested the results of a municipal election after a recount. Under the municipal election laws, the board of election of the city of Boston was granted "all the powers and duties relating to the determination of the results of the election" and "[t]he city counsel shall be the judge of the election and qualifications of its members" (quotations omitted). Banks, 327 Mass. at 512. The Supreme Judicial Court ruled that the court had jurisdiction to review the election results "until the board determines such results and issues a certificate to whom it has determined to have received the vote necessary for election." Id. Following the reasoning in Banks, this court no longer has jurisdiction to review the results of the election since the Governor has issued a certificate to Kassner. See id. ("Up to the point that a

certificate has been issued, at least, the matter is in control of the court, which may in proper proceedings direct the board to whom to issue the certificate.").

While Mirra claims that the fact that the election results have been certified has no bearing on the court's jurisdiction because the House of Representatives has not yet convened, the court is not persuaded by this argument given the unique posture of this case where the election results have been certified but not yet presented to the House of Representatives. The cases cited by Mirra in support of his argument that the court retains jurisdiction are unpersuasive, as they all involved elections to offices other than State Representative, where the courts were not constrained by the constitutional provision at issue here and in Wheatley. See Delahunt v. Johnston, 423 Mass. 731 (1996) (primary for nomination of Democratic Party for office of United States Representative for Tenth Congressional District); Colten v. Haverhill, 409 Mass. 55 (1991) (city council election); Connolly v. Secretary of the Commonwealth, 404 Mass. 556 (1989) (Democratic primary election and general election for office of Governor's Councillor for Third District);⁷ McCavitt v. Registrars of Voters of Brockton, 385 Mass. 333 (1982) (mayoral election). Nor is the case of Alicea v. Southbridge Registrars of Voters, Mass. Super Ct. No. 1085CV02624, helpful to Mirra's cause. In that case, the Superior Court held a trial on the merits in a challenge to an election for the Office of State Representative for the Sixth Worcester District, but the plaintiff filed suit on November 29, 2010, in advance of the certification, and his opponent filed a counterclaim. The parties, thus, accepted jurisdiction and never litigated the issue of jurisdiction. As a result, Alicea has no bearing on this court's analysis.

⁷ Connolly is further distinguishable because the preliminary injunction in that case was entered prior to the certification of the election results by the Governor and the Executive Council, and restrained the Secretary from transmitting the results to the Governor and the Executive Council for certification. 404 Mass. at 559.

The Superior Court’s extended discussion of its rationale for reliance on the Banks Decision belies Mr. Mirra’s contention that the Court unquestionably had jurisdiction over the subject matter of Mr. Mirra’s complaint after the certification of the election.¹

This Court Cannot Grant the Relief that Mr. Mirra Seeks.

The relief that Mr. Mirra seeks – an order from this Court ordering the Secretary of State to refrain from transmitting the result of the election to the House of Representatives is both too little and too late. Mr. Mirra’s real goal is to prevent the swearing in of Ms. Kassner tomorrow, the first Wednesday in January after the election, should the House of Representatives choose to swear her in at that time. Ms. Kassner, taking no position in this forum as to whether or not she should be sworn in at that time, opposes the authority of this Court to make that determination, as that is a determination that should be left to the House itself.

Since its inception, the Massachusetts Constitution has expressly provided that “[t]he house of representatives shall be the judge of the returns, elections, and qualifications of its own members.” G.L. Const. Pt. 2, C. 1, § 3, Art. 10. The Supreme Judicial Court has address this question on a number of occasions, but the Court’s statement in Dinan v. Swig, 223 Mass. 516 (1916), is particularly

¹ Neither Mr. Mirra nor any of the other Defendants made any reference to the Banks Decision in any of their pleadings.

compelling:

The power to pass upon the election and qualification of its own members thus is vested exclusively in each branch of the General Court. **No other department of the government has any authority under the Constitution to adjudicate upon that subject. The grant of power is comprehensive, full and complete. It is necessarily exclusive, for the Constitution contains no words permitting either branch of the Legislature to delegate or share that power. It must remain where the sovereign authority of the state has placed it.** General phrases elsewhere in the Constitution, which in the absence of an explicit imposition of power and duty would permit the enactment of laws to govern the subject, cannot narrow or impair the positive declaration of the people's will that this power is vested solely in the Senate and House respectively. It is a prerogative belonging to each House, which each alone can exercise. It is not susceptible of being deputed.

Id. at 517 (emphasis added).

This Court, therefore, has no authority to tell the House of Representatives how to conduct its business, and whom to swear in or not to swear in on January 4th.

Mr. Mirra Has No Likelihood of Success on the Merits.

Although Mr. Mirra's complaint is replete with examples of what he contends are issues that should overturn the election, in his motion before the Superior Court for a preliminary election, he focused on just two of the protested ballots from Ipswich. And now, Mr. Mirra has further diluted his objections by focusing on just one ballot which, he contends, violates the Secretary of State's guidelines for recounts. Mr. Mirra, however, has provided no affidavit as to what

that ballot looks like, and the example copied from that guide is not anything like the ballot itself -- the actual ballots instruct voters to fill in ovals, and the marks on this disputed ballot are not similar to the mark on Mr. Mirra's example. This is too weak of a record to deny Ms. Kassner the right to be seated as the State Representative for the Second Essex District and to derail the choice of the voters of the District who chose her as their Representative.

Conclusion

FOR THE FOREGOING REASONS, Defendant-Respondent Kristin Kassner respectfully requests that this Honorable Court reject Mr. Mirra's request for injunctive relief.

Respectfully submitted,

KRISTIN E. KASSNER,
By her attorney,

Gerald A. McDonough

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Dated: January 3, 2023

CERTIFICATE OF COMPLAINE

I hereby certify that this pleading complies with the length limits for proportionately spaced font size under Mass. R. A. P. 6 because it is produced in Times New Roman size 14 and contains 1,760 words as counted using the word count feature of Word for Microsoft Office 365.

Gerald A. McDonough

Gerald A. McDonough

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Gerald A. McDonough

Gerald A. McDonough

Dated: January 3, 2023

Leonard Mirra, Petitioner in the above-captioned action (hereafter “Mr. Mirra” or “Petitioner”), respectfully submits this supplement in support of his pending request for an injunction pending appeal pursuant to Rule 6 of the Massachusetts Rules of Appellate Procedure filed December 30, 2022 (“Rule 6 Request”).

This morning, January 3, 2023, undersigned counsel received an email from the Secretary of State’s Elections Division stating that Secretary’s office “intends to transmit all certified election results to the House Clerk on January 4, 2023 as required by the Constitution and section 117 of chapter 54 of the General Laws unless a court order issues enjoining us from doing so.” A true and accurate copy of said email is attached hereto as Exhibit A.

The Secretary’s statement of position supports Petitioner’s argument in his Rule 6 Request (at pages 10–11) that, absent this Court’s immediate intervention and entry of an injunction pending appeal, Petitioner—and the voters in the Second Essex District—will suffer irreparable harm and this Court may be unduly divested of subject matter and appellate jurisdiction over this action.

Respectfully submitted,

Petitioner-Plaintiff Leonard Mirra

By his attorneys,

/s/ Michael J. Sullivan
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Dated: January 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the below via electronic mail on January 3, 2023:

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Counsel for Kristin Kassner	Gerald A. McDonough Attorney-at-Law 13 Hollis Street Cambridge, MA 02140 (617) 529-1527 gerry@gmcdonoughlaw.com

/s/ Michael J. Sullivan
Michael J. Sullivan

EXHIBIT A

Transmittal of Election Results

Tassinari, Michelle (SEC) <Michelle.Tassinari@sec.state.ma.us>

Tue 1/3/2023 10:15 AM

To: kristin@kristinkassner.org <kristin@kristinkassner.org>;lenny.mirra@gmail.com <lenny.mirra@gmail.com>

Cc: Sullivan, Mike <msullivan@ashcroftlawfirm.com>;Amrhein, Christopher <camrhein@ashcroftlawfirm.com>;Gerald McDonough <gerry@gmcdonoughlaw.com>;james.kennedy@mahouse.gov <james.kennedy@mahouse.gov>;Hornstine, Adam (AGO) <adam.hornstine@state.ma.us>;Serman, Anne (AGO) <anne.sterman@state.ma.us>;Rosenberry, John (SEC) <john.rosenberry@sec.state.ma.us>

Good Morning-

We are writing to confirm that this Office intends to transmit all certified election results to the House Clerk on January 4, 2023 as required by the Constitution and section 117 of chapter 54 of the General Laws unless a court order issues enjoining us from doing so.

Michelle K. Tassinari
Director and Legal Counsel
Elections Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1705
Boston, MA 02108
617-727-2828

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

APPEALS COURT
DOCKET NO. 2022-J-0740

LEONARD MIRRA a/k/a LENNY MIRRA,)
)
 Plaintiff-Petitioner,)
)
 v.)
)
 TOWN OF GEORGETOWN REGISTRARS OF)
 VOTERS, TOWN OF IPSWICH REGISTRARS)
 OF VOTERS, TOWN CLERK OF THE TOWN)
 OF IPSWICH, TOWN OF ROWLEY)
 REGISTRARS OF VOTERS, TOWN CLERK)
 FOR THE TOWN OF ROWLEY, WILLIAM)
 F. GALVIN, in his official capacity as)
 Secretary of the Commonwealth of)
 Massachusetts, and KRISTIN KASSNER,)
)
 Defendants-Respondents.)

**DEFENDANT-RESPONDENT KRISTIN KASSNER’S REPLY TO
PLAINTIFF-PETITIONER’S “STATUS REPORT”**

Defendant-Respondent Kristin Kassner (“Ms. Kassner”) responds briefly as follows to the so-called “Status Report just filed by Plaintiff-Petitioner Leonard Mirra (“Mr. Mirra”). Although Mr. Mirra is a veteran member of the House of Representatives, his filings display a deep disrespect of that body, a coordinate branch of government to this Court. The framers of the Massachusetts Constitution expressly provided that “[t]he house of representatives shall be the judge of the returns, elections, and qualifications of its own members,” and Mr. Mirra seeks to thwart that constitutional authority. See G.L. Const. Pt. 2, C. 1, § 3, Art. 10.

The challenge to this Court at this time is whether the Court will decide this matter on its own, in the limited time that is available for review of these issues, without a full briefing of the

issue by all the interested parties, or whether the Court will allow the House of Representatives, to whom the framers of the Massachusetts Constitution delegated these issues, to be the decision-maker. This may well be a case where justice is best served by judicial restraint. See Zayre Corporation v. Attorney General, 372 Mass. 423, 433 (1977) (“principle of judicial restraint includes recognition of the inability and undesirability of the judiciary substituting its notions of correct policy for that of a popularly elected Legislature”).

Respectfully submitted,

KRISTIN E. KASSNER,
By her attorney,

Gerald A. McDonough

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Dated: January 3, 2023

CERTIFICATE OF SERVICE

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Gerald A. McDonough

Gerald A. McDonough

Dated: January 3, 2023

APPEALS COURT CLERK'S OFFICE

25

January 4, 2023

RE: No. 2022-J-0740

Lower Ct. No.: 2277-CV-01243

LEONARD MIRRA

vs.

TOWN OF GEORGETOWN RIGISTRARS OF VOTERS & others

NOTICE OF DOCKET ENTRY

Please take note that on January 3, 2023, the following entry was made on the docket of the above-referenced case:

ORDER: The plaintiff has moved pursuant to Mass. R. A. P. 6(a) for an injunction pending appeal. I have reviewed the papers filed, including the December 14, 2022 certification of the election results by Governor Charles D. Baker and the December 28, 2022 response by Secretary of the Commonwealth William F. Galvin to the plaintiff's motion. I have also reviewed the December 29, 2022 order of the Superior Court (Drechsler, J.), which denied the plaintiff's emergency motion for expedited and limited de novo review of two challenged ballots and preliminary injunction staying swearing in, and allowed the motion to dismiss of third-party defendant Kristin Kassner. In that order, the Superior Court judge concluded that the plaintiff has not shown a likelihood of success on appeal. I discern no abuse of discretion in the judge's rulings. See *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 615 (1980); *Edwin R. Sage Co. v. Foley*, 12 Mass. App. Ct. 20, 25 (1981). See also *L.L. v. Commonwealth*, 470 Mass. 169, 185 n.27 (2014). Accordingly, the motion is denied. (Grant, J.). Notice/attest/Drechsler, J.

REGISTRATION FOR ELECTRONIC FILING. Every attorney with an appeal pending in the Appeals Court must have an account with eFileMA.com. Registration with eFileMA.com constitutes consent to receive electronic notification from the Appeals Court and e-service of documents. Self-represented litigants are encouraged, but not required, to register for electronic filing.

ELECTRONIC-FILING. Attorneys must e-file all non-impounded documents. Impounded documents and submissions by self-represented litigants may be e-filed. No paper original or copy of any e-filed document is required. Additional information is located on our Electronic Filing page: <http://www.mass.gov/courts/court-info/appealscourt/efiling-appeals-faq-gen.html>

FILING OF CONFIDENTIAL OR IMPOUNDED INFORMATION. Any document containing confidential or impounded material must be filed in compliance with Mass. R. App. P. 16(d), 16(m), 18(a)(1)(A)(iv), 18(d), and 21.

Very truly yours,

The Clerk's Office

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

Essex, ss.

SJC -
Docket No. 2023-J-0740
Superior Court Docket No. 2277-CV-01243

LEONARD MIRRA a/k/a LENNY MIRRA,
Plaintiff-Petitioner,

v.

TOWN OF GEORGETOWN REGISTRARS OF VOTERS, TOWN OF IPSWICH
REGISTRARS OF VOTERS, TOWN CLERK OF THE TOWN OF IPSWICH,
TOWN OF ROWLEY REGISTRARS OF VOTERS, TOWN CLERK FOR THE
TOWN OF ROWLEY, and WILLIAM F. GALVIN, in his official capacity as
Secretary of the Commonwealth of Massachusetts,
Defendants-Respondents,

and

KRISTIN KASSNER,
Intervenor-Respondent.

**PLAINTIFF-PETITIONER LEONARD MIRRA'S EMERGENCY
PETITION FOR INJUNCTIVE RELIEF PURSUANT TO
MASSACHUSETTS GENERAL LAWS CHAPTER 211 § 3**

*Counsel for Plaintiff-Petitioner Leonard
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camrhein@ashcroftlawfirm.com

Now comes Leonard Mirra, Petitioner in the above-captioned action (hereafter “Mr. Mirra” or “Petitioner”), and respectfully petitions this Court to exercise its superintendence authority pursuant to Mass. G. L. Ch. 211, § 3 and grant expedited review of the January 3, 2023 denial by a single justice from the Appeals Court (Grant, J.) of Petitioner’s request for an injunction pending appeal pursuant to Rule 6 of the Massachusetts Rules of Appellate Procedure (“Rule 6 Request”). A true and accurate copy of the justice’s order (“Denial Order”) is attached hereto as Exhibit A.

The single justice denied Petitioner’s request for a stay in this election case based exclusively on Petitioner’s likelihood of success on the merits by applying an incorrect abuse-of-discretion standard. *See* Denial Order at 1 (observing that “the Superior Court judge concluded that the plaintiff has not shown a likelihood of success on appeal” and finding “no abuse of discretion in the judge’s rulings”). The Denial Order demonstrates that the Superior Court exercised *no* discretion in its ruling on this issue, however. Instead, the Superior Court simply denied Petitioner’s motion because it (incorrectly) found a lack of subject matter jurisdiction—a quintessential question of law an appellate court reviews *de novo*—and then concluded that it could not grant any relief, and need not consider the merits of Petitioner’s underlying claim. *See* Superior Court Order dated December 29, 2022 (“Dismissal Order”) at 5–6, 9 (finding a lack of jurisdiction based upon a

novel question of constitutional law regarding “the precise moment in time” when a trial court’s jurisdiction ends and the House of Representatives’ jurisdiction begins and declining to consider the likelihood of success on the merits because “[a]s the court concludes that it lacks jurisdiction to hear this dispute, the court need not reach Mirra’s substantive arguments regarding the protested ballots”). A true and accurate copy of the Superior Court’s Dismissal Order is attached hereto as Exhibit B.

This Court’s emergency intervention in this case at this juncture is needed to safeguard the rights of the voters in the Commonwealth and to protect the jurisdiction of Massachusetts state courts to hear election disputes. In light of the substantial public interests at stake in this matter having constitutional ramifications and the absence of other, conventional remedies, this matter qualifies for the unique exercise of authority granted to this Court under G.L. Ch. 211 § 3.

REQUESTED RELIEF

Petitioner respectfully petitions this Court to order the following relief:

1. Issue an order reversing the denial of Petitioner’s Rule 6 Request;
2. Enter a preliminary injunction ordering the Secretary of State to refrain from transmitting election results solely with respect to the Second Essex District Representative Election pending the outcome of Petitioner’s appeal of the Superior Court’s dismissal of Petitioner’s Complaint on December 29, 2022;

3. Grant such other relief as is just and appropriate; and
4. Hold a hearing on this emergency request.

PROCEDURAL BACKGROUND AND GROUNDS FOR PETITION¹

This is an action relating to the November 8, 2022, Second Essex State Representative election (“Election”), and the ballots challenged and preserved at the December 2022 district-wide Election recount (“Recount”). Petitioner was originally determined to have won the Election by ten (10) votes. Instead, the Recount reported that Defendant-Respondent Kristin Kassner (“Ms. Kassner”) won the Election over Mr. Mirra by just one (1) vote.

In an order dated December 29, 2022, Superior Court Judge Drechsler dismissed Petitioner’s Complaint challenging this new election result for lack of jurisdiction. The Court entered judgment the following day, December 30, 2022. The Superior Court’s ruling was based on the incorrect view that the House of Representatives had exclusive jurisdiction over this dispute at this juncture. The Superior Court premised its ruling on a novel question of law regarding “the precise moment in time” when a trial court’s jurisdiction ends and the House of Representatives’ jurisdiction begins. *See* Exhibit C, Record Appendix (“RA”) at 206 (Dkt. 20). The Superior Court answered this important constitutional question

¹ The procedural background and facts are set forth in Petitioner’s Memorandum in Support of his Rule 6 Request, attached with the Petition and Record Appendix hereto as Exhibit C, but will be briefly summarized here.

incorrectly and improperly restricted the scope of state courts' jurisdiction over such matters.

Petitioner immediately filed a notice of appeal of the judgment in the Superior Court. *See* Exhibit C, RA at 212–215 (Dkts. 23 and 24). Petitioner also filed his Rule 6 Request with a single justice of the Appeals Court on December 30, 2022. *See id.* (Rule 6 Petition and Supporting Memorandum).

The morning of January 3, 2023, undersigned counsel received an email from the Secretary of State's Elections Division ("Secretary") indicating, notwithstanding the Secretary's agreement that the Superior Court had jurisdiction over the action, the Secretary's office "intends to transmit all certified election results to the House Clerk on January 4, 2023 as required by the Constitution and section 117 of chapter 54 of the General Laws unless a court order issues enjoining us from doing so." A true and accurate copy of said email was submitted as a supplemental status update to Petitioner's Rule 6 Request and is attached hereto as Exhibit D.

Late in the afternoon of January 3, 2023, a single justice of the Appeals Court issued the Denial Order declining Petitioner's Rule 6 Request. The Denial Order applied the wrong standard of review in denying the Rule 6 Request. The single justice erroneously believed that the Superior Court substantively considered Petitioner's likelihood of success on the merits. It did not. Instead, the Superior

Court concluded that because it lacked jurisdiction, it could not enter any relief and need not consider whether Petitioner’s claim had merit.

Given the Secretary’s intention to transmit Election results to the House tomorrow, January 4, 2023, the misapplication of the standard of review in the Denial Order may have the effect of mooting Petitioner’s pending appeal prior to any judicial review of the two contested ballots at issue in his now-dismissed Complaint and prior to any appellate review of said dismissal.

Accordingly, the single justice’s denial of Petitioner’s Rule 6 Request itself constitutes an error of law and an abuse of discretion and “clear error of judgment in weighing the relevant factors, such that the decision falls outside the range of reasonable alternatives.” *Matter of an Impounded Case*, No. SJC-13127, 2022 WL 17838489, at *4 (Mass. Dec. 22, 2022) (internal quotations and citation omitted).

Further, even under a typical preliminary injunction analysis, Petitioner has demonstrated the likelihood of success on the merits that judicial review will determine that one or both of the contested ballots will be deemed cast as originally determined or are inconclusive—in either case resulting in circumstances that require the suspension of any swearing-in of Ms. Kassner.

Without this Court’s intervention, Petitioner—and each citizen who cast of vote for Petitioner in the Election—will suffer irreparable harm by being deprived of any judicial review of two disputed ballots, the outcome of which will either

reverse the election or will send the process back to voters to be decided in another election in accordance with Massachusetts' election statutes.

CONCLUSION

Accordingly, Petitioner respectfully submits that, in light of the substantial public interests at stake in this matter having constitutional ramifications and the absence of other, conventional remedies, this matter qualifies for the unique exercise of authority granted to this Court under G.L. Ch. 211 § 3 and requests that this Court reverse the single justice's Denial Order and grant on an expedited basis Petitioner's pending request for an injunction pending appeal pursuant to Mass. R. App. P. 6 and the aforementioned statute.

Respectfully submitted,

Plaintiff-Petitioner Leonard Mirra

By his attorneys,

/s/ Michael J. Sullivan
MICHAEL J. SULLIVAN
MA BBO # 487210
J. CHRISTOPHER AMRHEIN, JR.
MA BBO # 703170
ASHCROFT LAW FIRM, LLC
200 STATE STREET, 7TH FLOOR
BOSTON, MASSACHUSETTS 02109
PHONE: 617-573-9400
msullivan@ashcroftlawfirm.com
camrhein@ashcroftlawfirm.com

Dated: January 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2023, I served this Petition as follows:

By e-mail on:

Counsel for Secretary Galvin	Anne Sterman Adam Hornstine <i>Office of the Attorney General</i> One Ashburton Place Boston, MA 02108 617-963-2524 anne.sterman@state.ma.us adam.hornstine@state.ma.us
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Counsel for Rowley Defendants	Yael Magen <i>Thomas A. Mullen, P.C.</i> 40 Salem Street, Building 2, Suite 12 Lynnfield, Massachusetts 01940 781-245-2284 ext.2 yaelmagen@thomasamullenpc.com
Counsel for Georgetown	Lauren F. Goldberg <i>KP Law, P.C.</i> 101 Arch Street, 12th Floor Boston, MA 02110 (617) 654-1759 lgoldberg@k-plaw.com
Counsel for Kristin Kassner, Proposed Intervenor	Gerald A. McDonough Attorney-at-Law 13 Hollis Street Cambridge, MA 02140 (617) 529-1527 gerry@gmcdonoughlaw.com

/s/ Michael J. Sullivan
Michael J. Sullivan

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPREME JUDICIAL COURT
DOCKET NO. 2022

LEONARD MIRRA a/k/a LENNY MIRRA,)
)
 Plaintiff-Petitioner,)
)
 v.)
)
 TOWN OF GEORGETOWN REGISTRARS OF)
 VOTERS, TOWN OF IPSWICH REGISTRARS)
 OF VOTERS, TOWN CLERK OF THE TOWN)
 OF IPSWICH, TOWN OF ROWLEY)
 REGISTRARS OF VOTERS, TOWN CLERK)
 FOR THE TOWN OF ROWLEY, WILLIAM)
 F. GALVIN, in his official capacity as)
 Secretary of the Commonwealth of)
 Massachusetts, and KRISTIN KASSNER,)
)
 Defendants-Respondents.)

**DEFENDANT-RESPONDENT KRISTIN KASSNER’S
INITIAL RESPONSE TO PLAINTIFF-PETITIONER’S
EMERGENCY PETITION FOR INJUNCTIVE RELIEF**

Defendant-Respondent Kristin Kassner (“Ms. Kassner”) responds briefly as follows to the Emergency Petition for Injunctive Relief, filed by Plaintiff-Petitioner Leonard Mirra (“Mr. Mirra”), solely for the purpose of informing the Single Justice as to the steps that the Massachusetts House of Representatives intends to take today regarding the swearing in of Ms. Kassner, as reported in the media and

told to Ms. Kassner by representatives of the House.

Last evening, the Speaker of the House issued a public statement, now widely reported in the media, that the House would not swear in Ms. Kassner, the Representative-Elect for the Second Essex District, as well as Margaret Scarsdale, the Representative-Elect for the First Middlesex District, both of whom face court challenges from their opponents, with the other 158 Representatives-Elect later this morning. Instead, the House will direct a special committee, which is appointed every two years to examine the results of the election conveyed to the House by the Secretary of State after certification by the Executive Council and the Governor, to thoroughly review the legal issues and report its findings to the House.

Moreover, pursuant to the Massachusetts Constitution, Mr. Mirra will remain in his position as the Representative for the Second Essex District until the House concludes this matter. See G.L. Const. Amend. Art. 64, § 1 (“The terms of senators and representatives shall begin with the first Wednesday in January succeeding their election and shall extend to the first Wednesday in January in the third year following their election and until their successors are chosen and qualified”).

Finally, the Secretary of State has already forwarded the election returns to the House, and the Single Justice cannot provide the emergency relief that Mr. Mirra seeks – ordering the Secretary of State to refrain from sending the election

returns to the House with the returns from Ms. Kassner's election.

Ms. Kassner further directs the Single Justice's attention to Wheatley v. Secretary of the Commonwealth, 439 Mass. 849 (2003), where in the Supreme Judicial Court, in a similar election dispute, held that the courts have no jurisdiction to address election disputes such as this dispute where the House of Representatives itself has taken up the matter. See id.; see also G.L. Const. Pt. 2, C. 1, § 3, Art. 10 (“[t]he house of representatives shall be the judge of the returns, elections, and qualifications of its own members”). As the Wheatley Court noted:

The House's role as the sole arbiter of a petitioner's claim to a seat as a representative is by now firmly settled as a matter of State constitutional law. See *Opinion of the Justices*, 375 Mass. 795, 815, 376 N.E.2d 810 (1978) (“The constitutional authority of each branch of the Legislature to judge the elections, returns, and qualifications of its members is exclusive, comprehensive, and final”); *Greenwood v. Registrars of Voters of Fitchburg*, 282 Mass. 74, 79, 184 N.E. 390 (1933) (“Jurisdiction to pass upon the election and qualification of its own members is thus vested exclusively in the House of Representatives”); *Dinan v. Swig*, 223 Mass. 516, 517, 112 N.E. 91 (1916) (“The power to pass upon the election and qualification of its own members thus is vested exclusively in each branch of the General Court. No other department of the government has any authority under the Constitution to adjudicate upon that subject”). The House has exercised this authority on numerous occasions.

Wheatley, supra, 439 Mass. at 854.

The Massachusetts House of Representative, a coordinate branch of government, is well suited to address these matters, has publicly indicated its intent to do so later this morning, and has the constitutional authority to do so.

FOR THE FOREGOING REASONS, Defendant-Respondent Kristin Kassner respectfully requests that this Court deny Plaintiff-Petitioner's Petition for Injunctive Relief.

Respectfully submitted,

KRISTIN E. KASSNER,
By her attorney,

Gerald A. McDonough

Gerald A. McDonough, Esq.
BBO #559802
13 Hollis Street
Cambridge, MA 02140
(617) 529-1527
gerry@gmcdonoughlaw.com

Dated: January 3, 2023

CERTIFICATE OF SERVICE

I, Gerald A McDonough, certify that I have served the attached by causing copies to be delivered electronically to:

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Gerald A. McDonough

Gerald A. McDonough

Dated: January 3, 2023

20

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, Ss

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2023-0004

Appeals Court
No. 2022-J-0740

Essex Superior Court
No. 2277CV01243

LEONARD MIRRA a/k/a LENNY MIRRA

v.

TOWN OF GEORGETOWN, REGISTRARS OF VOTERS, TOWN OF IPSWICH
REGISTRARS OF VOTERS, TOWN CLERK OF THE TOWN OF IPSWICH, TOWN OF
ROWLEY REGISTRARS OF VOTERS, TOWN CLERK FOR THE TOWN OF ROWLEY,
and WILLIAM F. GALVIN, IN HIS OFFICAL CAPACITY AS SECRETARY OF
THE COMMONWEALTH OF MASSACHUSETTS and KRISTIN KASSNER

JUDGMENT

This matter came before the Court, Cypher, J., on an emergency petition for injunctive relief, pursuant to G. L. c. 211, § 3, filed by Leonard Mirra. The petitioner seeks the extraordinary power of this Court to vacate the order of the Appeals Court denying an injunction, pending an appeal of the judgment of the Essex Superior Court.

I have reviewed the petition, exhibits filed by the petitioner, the response filed by the respondent, Kristin Kassner, the order of the Appeals Court, and the memorandum and order of the Essex Superior Court. Upon consideration thereof,

it is hereby **ORDERED** that the petition be, and the same hereby is, **DENIED** without hearing.

By the Court, (Cypher, J.)

/s/ Maura S. Doyle
Maura S. Doyle, Clerk

Entered: January 4, 2023

Appendix F – Affidavits Submitted on
Behalf of Leonard Mirra

193RD GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Special Committee to Examine the Returns of Votes for Certain Representative Districts

REP. LEONARD MIRRA a/k/a LENNY MIRRA,

v.

KRISTIN KASSNER

DECLARATION OF LEONARD MIRRA

I, Leonard Mirra, declare, upon personal knowledge and under penalty of perjury, pursuant to Mass. Gen. Laws ch. 268, § 1A, that the following is true and accurate:

1. I reside in Georgetown, MA.
2. I am the State Representative for the Second Essex District.
3. I have served as the State Representative for the Second Essex District since being elected in 2012.
4. I was a candidate in the Second Essex District State Representative election (the "Election").
5. I incorporate herein all facts and allegations contained within the Complaint, *Mirra v. Town of Georgetown Registrars of Voters, et al.*, 2277-CV-01243 (Mass. Super. Ct. Essex Cty.), Dkt. 1.
6. After the initial count occurred, Ipswich reported a total of 7,457 ballots cast in the Election.
7. Following the Recount, Ipswich reported a total of 7,471 ballots cast in the Election—an increase of 14 ballots.

8. In addition to specific ballots challenged at the Ipswich Recount and preserved for litigation, my legal counsel also objected to 14-vote increase.

9. To this day, I have received no explanation for the 14-vote increase at the Ipswich Recount.

10. After inspection of the mail-in envelopes and corresponding voter registration cards in five of the six towns in the Second Essex District, my legal counsel, team, and I discovered a substantial number of signatures did not match.


11. My proxy and team were not allowed to review the mail-in envelopes and corresponding voter registration cards at the Rowley Recount despite requesting to do so.

12. On information and belief, the town clerks and election officials for the towns within the Second Essex District failed to reject ballots for voter-signature irregularities, constituting a dereliction of the duty required of them under Mass. Gen. Laws ch. 54, § 94 (Massachusetts election officials are obligated to compare the signature on the mail-in envelope with the signature on the voter's registration, and if an election official cannot determine if the mail-in envelope signature matches the signature on the voter's registration card, it must be rejected).

13. The margin of error in the Recount—*e.g.*, the unexplained 14-vote increase in Ipswich, and the failure to reject mail-in ballots with signatures that did not match voter-registration cards—far exceeds the margin of victory after the Recount: one (1) vote.

Executed on: January 11, 2023

Location: Georgetown, MA


Leonard "Lenny" Mirra

193RD GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Special Committee to Examine the Returns of Votes for Certain Representative Districts

REP. LEONARD MIRRA a/k/a LENNY MIRRA,

v.

KRISTIN KASSNER

DECLARATION OF GLENN KEMPER

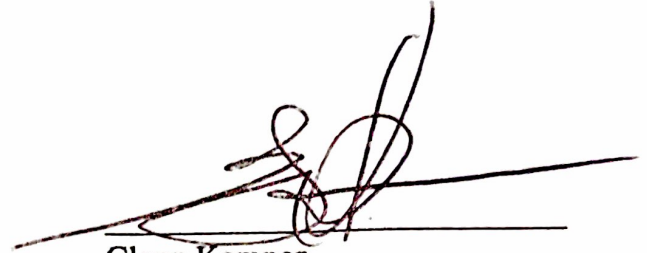
I, Glenn Kemper, declare, upon personal knowledge and under penalty of perjury, pursuant to Mass. Gen. Laws ch. 268, § 1A, that the following is true and accurate:

1. I reside in West Newbury, MA.
2. I was a volunteer during the district-wide recount (“Recount”) for the Second Essex District State Representative election (“the Election”).
3. I participated in the Recount in the town of Rowley, MA, on Wednesday, December 7, 2022.
4. At the Rowley Recount, I observed the deliberation of the Rowley Board of Registrars (“Rowley Registrars”) regarding a set of 10 spoiled mail-in ballots.
5. The Kassner team allegedly challenged five (5) of the 10 spoiled mail-in ballots and argued to the Rowley Registrars and recount lead (“Lead”) Trudy Reid—town clerk for a completely different town—that the spoiled ballots should be counted.
6. I observed the Lead instruct the Registrars to make a motion to count the ballots for Kristin Kassner. In her instruction, the Lead stated “just vote for Kassner on the contested ballots, and a judge will figure it out later.”

7. I protested the remarks of the Lead, and I asked her if it was appropriate to be instructing the Rowley Registrars on how to vote.
8. The Lead replied with a revised direction to the Rowley Registrars: "just vote."
9. The Rowley Registrars voted to count the five (5) spoiled ballots for Kristin Kassner.

Executed on: January 11, 2023

Location: West Newbury, MA



Glenn Kemper

193RD GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Special Committee to Examine the Returns of Votes for Certain Representative Districts

REP. LEONARD MIRRA a/k/a LENNY MIRRA,

v.

KRISTIN KASSNER

DECLARATION OF CHARLES TAKESIAN

I, Charles Takesian a/k/a Chuck Takesian, declare, upon personal knowledge and under penalty of perjury, pursuant to Mass. Gen. Laws ch. 268, § 1A, that the following is true and accurate:

1. I reside in Salisbury, MA.
2. I was a volunteer during the district-wide recount (“Recount”) for the Second Essex District State Representative election (“the Election”).
3. I participated in the Recount in the town of Ipswich, MA, on Wednesday, December 7, 2022.
4. At the Ipswich Recount, I observed a ballot in Ipswich Precinct 4, Block 37, where the voter appeared to fill out his ballot with a complete mark in the oval next to Lenny Mirra’s name. The voter also appeared to write in “Donald Trump” in the write-in section of the Second Essex District State Representative race, and the voter filled in the write-in oval. In at least one other instance—specifically, in the race appearing directly below the Second Essex District State Representative race—the voter wrote in “Donald Trump,” where no Republican candidate was nominated.
5. The recording clerk announced the ballot to be a vote for Lenny Mirra.

6. The observer for Kristin Kassner challenged the call, and the ballot was brought to the Ipswich Registrars.

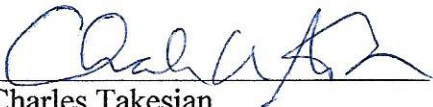
7. The Registrars decided that the ballot should be considered an overvote.

8. The ballot was counted as a blank, taking away one (1) vote from Lenny Mirra.

9. The physical ballot was preserved for litigation.

Executed on: January 11, 2023

Location: Salisbury, MA


Charles Takesian

193RD GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS
Special Committee to Examine the Returns of Votes for Certain Representative Districts

REP. LEONARD MIRRA a/k/a LENNY MIRRA,

v.

KRISTIN KASSNER

DECLARATION OF CYNTHIA RUSIS

I, Cynthia Rusis, declare, upon personal knowledge and under penalty of perjury, pursuant to Mass. Gen. Laws ch. 268, § 1A, that the following is true and accurate:

1. I reside in Manchester-by-the-Sea, MA.
2. On Wednesday, December 7, 2022, I served as counsel for Lenny Mirra during the Town of Rowley, MA, recount (“Rowley Recount”) for the Second Essex District State Representative election (the “Election”).
3. Upon reading the minutes of the Rowley Recount, I have several disagreements regarding the quasi-judicial proceedings as stated by Rowley election officials.
4. In the Rowley Recount minutes, it states “Town counsel advised the BOR that according to the Elections Recount publication from the Secretary of the Commonwealth, a hand recount involves the counting of all ballots, including spoiled ballots.” Exhibit A (Rowley Recount minutes).
5. This is a misinterpretation of the Secretary of the Commonwealth’s pamphlet. The guidance allows for counting of spoiled ballots (*i.e.*, determining the number of ballots marked spoiled). The guidance does not give permission to unspoil ballots during an election recount.

6. On the spoiled ballots issue, the Rowley Recount minutes states “Mirra’s counsel said they had not been given the opportunity to review these rejected ballots.”

7. This is an incomplete and inaccurate account of the spoiled ballots deliberation. At the beginning of the Rowley Recount, the candidates’ proxies and their attorneys were given the opportunity to review ballots marked as spoiled. To our knowledge, no challenges or objections were raised.

8. At the end of the Rowley Recount, the Mirra team was given notice for the first time that the Kassner team had objected to five (5) spoiled mail ballots. These five (5) ballots were a part of a stack of 10 spoiled mail ballots.

9. During the course of the deliberations on the spoiled ballots, the Rowley Town Clerk, Catie McClenghan (“Rowley Town Clerk”), made herself available for questioning. The Rowley Town Clerk confirmed that she handled the spoiling of the ballots in question based on well-established town procedures for absentee and mail ballots.

10. During the discussion with the Rowley Town Clerk about ballot spoiling procedures, Trudy Reid, the Town Clerk for the town of Wayland, MA, who appeared to be deputized as a recount lead (“Lead”), began to interject. The Lead attempted to dispute the Rowley Town Clerk’s statement that she behaved in accordance with well-established town procedures, saying that there were not established procedures for the handling of mail-in ballots in Massachusetts.

11. The Lead verbally and openly criticized the Rowley Town Clerk, suggesting that the Rowley Town Clerk should have handled the ballot-spoiling process in a different manner.

12. As the Rowley Town Clerk and the Lead continued to discuss the procedure for handling spoiled ballots, I interjected, asking if the discussion could focus on how the ballots were

handled—not how the process could have been handled. My objection was met with hostility from the Rowley Registrars, with one Rowley Registrar saying to me “welcome to Rowley,” in a deliberate, antagonistic fashion.

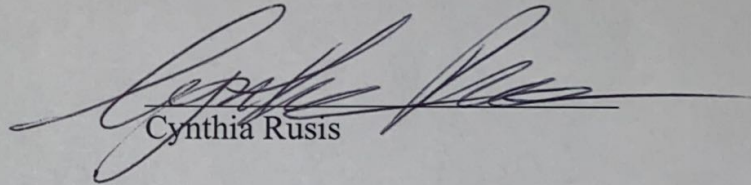
13. After this long deliberation, the Lead instructed the Rowley Board of Registrars to make a motion to count the five (5) spoiled ballots for Kristin Kassner.

14. The Rowley Board of Registrars voted to count all five (5) spoiled ballots for Kristin Kassner.

15. The spoiled ballots were preserved for litigation.

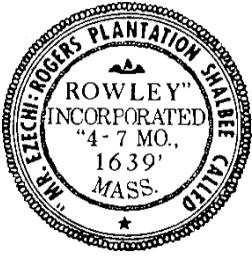
Executed on: January 11, 2023

Location: Andover, NH



Cynthia Ruis

Exhibit A



Board of Registrars

Town of Rowley
139 Main St., P O Box 351
Rowley, MA 01969
Phone: 978-948-2081 / Fax: 978-948-2162
Email: townclerk@townofrowley.org

Minutes of the Rowley Board of Registers
Recount of the 2nd Essex Representative to the General Court
December 7, 2022
Town Hall, 139 Main Street, Rowley, MA
8:30 a.m.

Members Present: Catie McClenaghan, Chair, Zeth Folds, Silva Wood and Timothy Young (Temporary Appointment made by the Board of Selectmen on December 5, 2022).

At approximately 8:15 a.m., Janet Peabody, Assistant Town Clerk, began checking in both candidates' agents and issuing name badges.

At 8:30 a.m., Town Clerk Catie McClenaghan, Election Warden Joan Petersen and Officer Patrick Silva removed the sealed boxes of voted ballots from the safe in the Assessor's office. Both candidates were advised of this action in a November 30, 2022 correspondence. No agents were present. Officer Patrick Silva transported the ballots to the 2nd floor auditorium via the outside handicap elevator.

At approximately 8:40 the Assistant Town Clerk swore in all election recount workers. They were then split into five teams of two; one reader and one recorder on each team.

Yael Magen, Town Counsel, opened the meeting at approximately 9:00 a.m. by reading the procedures for the recount. The sealed ballot boxes were then opened, and the runners began distributing ballots to the tally tables to be counted into packs of 50 each.

Observers were instructed to set in place at 9:48.

At 9:54 a.m., with five tables of 2 workers each (one reader and one recorder) plus 4 observers each (consisting of two observers from each campaign), counting began.

The last packet of ballots, Block 64, which had 48 hand-counted ballots, including five UOCAVA ballots, was recounted at Table One. The Recount Runner explained to the observers watching that this was the final packet to be counted.

During the tally of Block 64, no objections were made by either party to any of the ballots while they were read and tallied. At the end of the count of Block 64, the tally concluded to 48 ballots. The workers counted the ballots again. As the second count of the ballots took place, an observer from the Mirra campaign questioned the five UOCAVA ballots. She stated that she was challenging one them because the ballot and its associated affidavit were separated and appeared

to have been merely paper-clipped together and not stapled together, as the other four had been stapled. The runner explained that the challenge time had passed and no objections to ballots could be done at this time.

Objection was noted and the ballot was taken to the BOR for determination. Kassner's counsel objected to bringing this ballot up to the BOR, as the objection was not done in a timely manner and the recount for Block 64 had already been called and tallied. Mirra's counsel objected to the validity of the ballot on the ground that the ballot and affidavit were not stapled together. The Kassner's campaign objected to Mirra's objection. It was noted by the BOR that the ballot had a paperclip and the affidavit had marks that appear to have been made by the same paperclip. The BOR voted unanimously to count the ballot, and a member of the BOR signed the back of the ballot and wrote the objection and for whom the vote was given. The ballot was segregated.

Counsel for the Kassner campaign requested to review the ten rejected mail-in ballots, all of which had been marked as "spoiled". These were not counted on Election day because the Image Cast machine rejected them. The Warden explained that it was Rowley's practice to treat mail-in ballots rejected by the machine as "spoiled" since there was no time to contact the voter. The Kassner campaign challenged five of the ten ballots. These ballots were set aside. Mirra's counsel said they had not been given the opportunity to review these rejected ballots. Town counsel suggested that the BOR work through the five contested ballots and that the Mirra representatives be allowed to review the remainder.

The five challenged ballots were assembled as Block 65 and were reviewed by the BOR. Kassner's counsel argued that in a hand recount spoiled ballots can be counted and brought to the BOR. Kassner's counsel further argued that the will of the voter can be determined with reasonable certainty, in the five ballots, and thus should be counted for Kassner. Mirra's counsel objected to the process of counting spoiled ballots during a hand recount, and to bringing spoiled ballots to the BOR, as their claim was that in a hand recount spoiled ballots cannot be counted. Mirra's counsel further objected as to each ballot that it was spoiled. Kassner objected to Mirra's objections. Town counsel advised the BOR that according to the "Elections Recount" publication from the Secretary of the Commonwealth, a hand recount involves the counting of all ballots, including spoiled ballots. Each ballot was accepted by the BOR, which unanimously voted that the will of the voter could be determined with reasonable certainty in each case, and a member of the BOR signed the back of each ballot, writing the objection and for whom the vote was given, and these votes were added to the totals. The said ballots were segregated with other protested ballots.

The Mirra agents proceeded to review the remaining five spoiled ballots, discussed the issue for a significant amount of time, and brought no further objections.

The Mirra agents then requested to review signatures of the applications to the ballots that were received late but post marked by the 8th. This however was not possible as the town clerk time stamped the AV-8 envelope (the outer envelope) and not the AV-7 envelope (the inner envelope) where the signature appeared.

It was concluded that both campaigns had lost one vote each from the original count. In addition, the Kassner campaign gained the five rejected ballot votes, increasing Kassner's overall count by four from the original total.

	Mirra	Kassner	Blank	Write-in	Protest Sheets	Total:
TOTALS:	1834	1294	78	0	0	3206

At approximately 2:00pm, the BOR Chair made a motion to adjourn, which was seconded and unanimously voted by the members.

The packets were then placed into new boxes that were sealed and transported back to the vault by Officer Silva.

193RD GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Special Committee to Examine the Returns of Votes for Certain Representative Districts

REP. LEONARD MIRRA a/k/a LENNY MIRRA,

v.

KRISTIN KASSNER

DECLARATION OF DAVID OLDS

I, David Olds, declare, upon personal knowledge and under penalty of perjury, pursuant to Mass. Gen. Laws ch. 268, § 1A, that the following is true and accurate:

1. I reside in Merrimac, MA.
2. I was a volunteer during the district-wide recount (“Recount”) for the Second Essex District State Representative election (“the Election”).
3. I participated in the Recount in the town of Ipswich, MA, on Wednesday, December 7, 2022.
4. At the table I observed for the majority of the day, I was paired with another volunteer from Lenny Mirra’s team, and the reading clerk at this table was Groveland town clerk, Elizabeth Cunniff.
5. At the beginning of the Ipswich Recount, I observed a ballot in Ipswich Precinct 1, Block 19, where the voter appeared to fill out his ballot with a tremorous hand, making discontinuous marks in the oval next to the voter’s desired candidate in each race on the ballot.
6. For the Second Essex District State Representative race, the voter made similarly consistent marks in the oval next to Lenny Mirra’s name, demonstrating a clear intention to vote for Lenny Mirra.

7. The reading clerk—Groveland town clerk Elizabeth Cunniff—called this ballot for Lenny Mirra.

8. The observer for Kristin Kassner challenged the call, and the ballot was brought to the Ipswich Registrars.


9. Counsel for the Kassner campaign argued that the mark made in the Election included a mark that touched the oval next to Kristin Kassner's name. The registrars voted 2-1 that the mark slightly touching the oval next to Kristin Kassner's name was sufficient evidence of an overvote.

10. The ballot was counted as a blank, taking away one (1) vote from Lenny Mirra.

11. The ballot was preserved for litigation.

Executed on: January 11, 2023

Location: Merrimac, MA



David Olds

193RD GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Special Committee to Examine the Returns of Votes for Certain Representative Districts

REP. LEONARD MIRRA a/k/a LENNY MIRRA,

v.

KRISTIN KASSNER

DECLARATION OF SANDRA CAPO

I, Sandra Capo, declare, upon personal knowledge and under penalty of perjury, pursuant to Mass. Gen. Laws ch. 268, § 1A, that the following is true and accurate:

1. I reside in West Newbury, MA.
2. I am the sister of Lenny Mirra.
3. I was a volunteer during the district-wide recount (“Recount”) for the Second Essex District State Representative election (“the Election”).
4. I participated in all four (4) days of the Recount, including in the Recount in the town of Rowley, MA on Wednesday, December 7, 2022 (“Rowley Recount”).
5. I arrived at the Rowley Recount after the town had conducted its “blocking” of ballots into batches of 50 ballots. One of the members of the Mirra legal team informed me that the town was missing two (2) ballots. The Recount proceeded despite the missing ballots.
6. As the counting commenced, it appeared that the Rowley Town Clerk had deputized an individual to be the lead for the Rowley Recount (“Lead”).
7. The Lead later identified herself to me as Trudy Reid, Town Clerk for the town of Wayland.

8. The Lead had previously served as the town clerk for the towns of North Andover, MA, and Wenham, MA.

9. The Lead's comments and actions during the Rowley Recount demonstrated bias to the detriment of and contempt for the Mirra team.

10. The Lead remarked to me that she chose to leave her post in North Andover for a lesser paying job in another town because she "could not stand the Republicans" in North Andover.

11. At the Rowley Recount, counsel for the Town of Rowley, Yael Magen ("Rowley Counsel"), questioned the validity of my presence in the counting area as the candidate's proxy despite the Rowley Counsel's awareness that there was a simultaneous recount occurring in another town, at which Mr. Mirra and Ms. Kassner were in attendance. A similar line of questioning was not given to the Kassner team despite the presence of a proxy of their own.

12. At the Rowley Recount, I asked to review the mail-in-ballot envelopes to compare the voter signatures with the signatures on the corresponding voter registration card. My request was denied.

13. The reason I was given for the denial of the request to review these mail-in ballots was that "it's been a long day, we just want to go home."

14. Similarly, when the campaigns were allowed to review "spoiled" ballots several concerning events transpired.

15. At the beginning of the Rowley Recount, each campaign was allowed to review the ballots marked as spoiled. To my knowledge, no objections were raised.

16. At the end of the Rowley recount, the Rowley Town Clerk presented a set of 10 spoiled mail-in ballots that were allegedly spoiled by Rowley election workers after the ballots were determined to be unreadable by the voting machines.

17. The Kassner team challenged the set of ballots, arguing that five (5) of the 10 should be counted for Kassner.

18. The Lead summoned the Kassner team to the front of the counting area, and then instructed the Rowley Registrars to make a motion to add the ballots to the Kassner tally.

19. The Mirra legal team argued that it would be improper to include the ballots because they were spoiled.

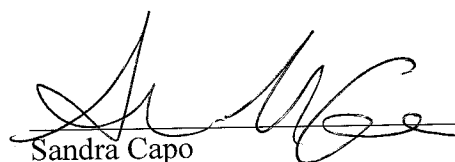
20. When I asked for a second look at the full set of 10 spoiled mail-in ballots, my request was denied. I was told that I did not need to look again.

21. The Rowley Registrars ultimately voted to count five of the spoiled ballots for Kassner.

22. Rowley election officials admitted to me that they were unsure how to proceed with the spoiled-ballot issue. I also observed Rowley election officials google what to do in this situation.

Executed on: January 11, 2023

Location: West Newbury, MA


Sandra Capo

Appendix G – Memorandums and Exhibits
A through F Submitted on Behalf of Kristin
Kassner

GERALD A. MCDONOUGH

ATTORNEY-AT-LAW

13 Hollis Street
Cambridge, MA 02140

617-529-1527
gerry@gmcdonoughlaw.com

MEMORANDUM

TO: Representatives Michael S. Day, Daniel J. Ryan, and Bradley H. Jones, Jr.,
Members of the Select Committee of the House to Examine the Return of
Votes for Certain Representative Districts

FROM: Gerald A. McDonough, Counsel for Kristin Kassner

RE: Kristin Kassner's Pre-Hearing Memo

DATE: January 12, 2023

The purpose of this Memorandum is to provide the Members of the Select Committee of the House to Examine the Return of Votes for Certain Representative Districts with information on the status of litigation filed by Leonard Mirra, who contests the results of the recount of the election in the Second Essex District, as well as a recommendation from Kristin Kassner ("Ms. Kassner") as to how the Committee should decide this matter. Accompanying this Memorandum are a number of attachments for documents referenced in this Memo.

History of the Litigation

The fact that Kristin Kassner prevailed in the recount that took place between December 5th and 8th in 2022 was apparent to both of the candidates after the recount in Topsfield on December 8th. The official results of the recount were verified in an email dated December 9th to both Ms. Kassner and Mr. Mirra from Michelle Tassinari, Director and Legal Counsel for the Elections Division of the Office of the Secretary of the Commonwealth. On December 14, 2022, the Executive Council amended the previous certification of the Return of Votes to include Ms. Kassner as the Representative-Elect for the Second Essex District. That certification was signed by the Governor and the

Secretary of the Commonwealth. (Att. A)¹ Ms. Kassner also received an individual certification of the results of the election, signed by the Governor and the Secretary. (Att. B)

Despite these acts ratifying the results of the election, and Ms. Kassner's status, Mr. Mirra waited until December 21, 2022 to file an election contest in Essex Superior Court. Mr. Mirra filed the Complaint against the Secretary of the Commonwealth and municipal officials in three of the six towns that constitute the Second Essex District, but omitted Ms. Kassner, who was and is surely an indispensable party in the litigation. (AR 004) On Friday, December 23rd, the last business day before the Christmas holiday weekend, at 6:40 p.m., after the close of business, Mr. Mirra filed a motion for expedited review of two of the contested ballots and for a preliminary injunction. (AR 046)

Ms. Kassner had to seek assent from all the parties to the litigation before she could file a motion to intervene and, due to the trial court's e-filing system, she was unable to file the motion until Tuesday, December 27th, the day on which the Superior Court held a hearing on Mr. Mirra's motion. (AR 001) At the noontime hearing, the Court allowed Ms. Kassner's motion to intervene, heard arguments from all parties, and established a schedule for briefing for Mr. Mirra's motion and the motion to dismiss that Ms. Kassner informed the Court she was prepared to file. (AR 001)

Thereafter, Ms. Kassner filed her motion to dismiss (AR 055), and the Secretary and the municipal defendants opposed Mr. Mirra's motion for a preliminary injunction while supporting Ms. Kassner's motion to dismiss (AR 068, 081). Mr. Mirra filed an opposition to the other parties' filings and Ms. Kassner's motion to dismiss (AR 073, 110). On December 29, 2022, agreeing with Ms. Kassner, the Court denied Mr. Mirra's motion for a preliminary injunction and allowed Ms. Kassner's motion to dismiss his complaint. (AR 117) The Court specifically held that "Mirra lacks a likelihood of success on the merits." (AR 126)

Thereafter, Mr. Mirra continued to seek equitable relief in the Appeals Court and the Supreme Judicial Court, but in each case the court denied him that relief. (AR 131, 173) The Appeals Court ruled that it did not find an abuse of discretion in the Superior Court's ruling that Mr. Mirra "has not shown a likelihood of success on appeal." (AR 172) After reviewing Mr. Mirra's petition, Ms. Kassner's opposition, and the memoranda issued by the Superior Court and the Appeals Court, the Supreme Judicial Court summarily dismissed Mr. Mirra's petition to that court as well. (AR 187) Every judicial forum that considered Mr. Mirra's claims concluded that he had no likelihood of success on the merits of his claims.

¹ References to documents in the attachments to this Memorandum are cited as "Att. _." References to documents in the Joint Administrative Record are cited as "AR" with the relevant page numbers. Only included in Attachment A are the relevant pages from the Return of Votes.

All that remains of Mr. Mirra's litigation is a notice of appeal that he filed in Essex Superior Court, the first step in appealing the Superior Court judgment, which, if Mr. Mirra continues the appeal, would go back to the Appeals Court which has already held that he has no likelihood of success on the merits. (AR 128) That appeal itself would also likely be dismissed on jurisdictional grounds. And Mr. Mirra has already stated publicly that he will accept the results of the Select Committee's investigation. Consequently, for all intents and purposes, the involvement of the judicial branch in this matter has concluded.

Prior Precedents

Since the amended certification of the Return of Votes on December 14, 2022, and over the opposition of Mr. Mirra, Ms. Kassner has consistently maintained that the House of Representative, pursuant to Article 10, § 3, Chapter 1, Part 2 of the Massachusetts Constitution, has exclusive jurisdiction to address the results of the recount. (AR 055) This dispute is remarkably similar to the dispute surrounding the election in the Third Barnstable Election in 2002, involving Matthew Patrick ("Mr. Patrick") and Larry Wheatley ("Mr. Wheatley"). In that case, as in this case, Mr. Wheatley filed a complaint after the Executive Council and the Governor had certified the results of the recount. The eventual decision of the Supreme Judicial Court, Wheatley v. Secretary of the Commonwealth, 439 Mass. 849 (2003), supports Ms. Kassner's position in this case.

As in this case, the Legislature in 2003 empowered a Special Committee to investigate the election, and the Special Committee held a hearing, as your Special Committee is doing on Friday, January 13th. The Special Committee's work back in 2003 resulted in a Final Report issued in March 2003 that included the following findings:

1. The House of Representatives and the Special Committee had exclusive jurisdiction over the matter;
2. Neither the House of Representatives nor the Special Committee could delegate their exclusive jurisdiction to any other governmental department;
3. Mr. Patrick, who was issued a certificate of election, was a Member of the House of Representatives, and only the House could decide issues surrounding his election and qualification;
4. Any attempted court decision in the matter would be moot; and
5. Mr. Patrick should be declared the Representative from the Third Barnstable District.

(Att. C) The House accepted the Final Report, Mr. Patrick was seated as a Member of the House, and Mr. Wheatley's complaint was eventually dismissed.

There are important differences, however, between this dispute and the election dispute in 2011, involving Geraldo Alicea ("Mr. Alicia") and Peter Durant ("Mr. Durant"). In that case, Mr. Alicea initially filed a complaint in Middlesex Superior Court on November 29, 2010, before the certification of the election results. (Att. D) Mr. Durant was allowed to intervene as a defendant and counterclaim plaintiff, and his motion for a change of venue to Worcester County was allowed. (Att. E) Because the litigation had commenced, the Executive Council did not certify any results from the election. In that case, as in 2003 and today, the Legislature appointed a Special Committee which eventually concluded, as has the Worcester Superior Court, that the election had ended in a tie, and a new election was scheduled. (Att. F)

That dispute regarding the 2010 election is distinguishable from this case because, unlike in Ms. Kassner's case, the Executive Council had yet to certify the results of the election, and both parties had accepted the jurisdiction of the Superior Court. It was similarly open to Mr. Mirra to file a complaint contesting the results of the recount before the Executive Council voted to certify the election results on December 14th, but, as the Superior Court noted, Mr. Mirra's failure to initiate litigation before the Executive Council certified Ms. Kassner as the Representative-Elect was fatal to his claim that the judicial branch had jurisdiction over this matter because jurisdiction instead lies only with this Special Committee. (AR 122)

The Special Committee Should Recommend that Ms. Kassner Be Declared the Representative from the Second Essex District.

Mr. Mirra is likely to contend that the Special Committee should second-guess the results of the recount, and that the Committee should review ballots and other materials from the recounts. Such a review is unwarranted in this case, and there is no precedent for such a review either in the 2002 or 2012 elections.

As an initial matter, and as the Supreme Judicial Court has held, votes counted by election officials are presumed to be legal and any challenger of those votes has the burden of overcoming that presumption. See McCavitt v. Registrars of Voters of Brockton, 833 Mass. 833, 846 (1982). During the recount, numerous observers oversaw the counting of the ballots, several municipal attorneys were present to give advice to the boards of registrars, and each candidate was represented by counsel. In considering each objection, the boards of registrars listened to the arguments advanced by each party's counsel, reviewed the objected-to ballots, debated among themselves as to the voters intent, and, in the end, either rejected Mr. Mirra's contention about the intent of voters or determined that the intent of the voter could not be determined with reasonable certainty.

See, e.g., O'Brien v. Board of Election Commissioners of City of Boston, 257 Mass. 332, 338 (1926).

Under state law, the local Board of Registrars are the “judges” during a recount because they are the most fit to understand the local voter. The expertise of the local registrars was demonstrated in the recount in Topsfield, where Mr. Mirra objected to a ballot where the voter had drawn a line between the candidates that the voter appeared to have supported, including Ms. Kassner, and the ovals on the ballot. While that method of indicating support for candidates was new to most of the observers, the local registrars recognized that drawing a line between a candidate’s name and an arrow on ballots had been the form of ballots used in Topsfield until recently. Coming from the community, understanding its voters, and knowing the history of Topsfield elections allowed the Topsfield Registrars to recognize that the voter was likely voting in a way that that voters in Topsfield had in fact voted for many years. In that case, the Registrars affirmed the vote for Ms. Kassner, while Mr. Mirra protested that ballot.

Moreover, and more importantly, the three municipalities who Mr. Mirra names in his Complaint – Georgetown, Ipswich, and Rowley – have vigorously opposed his motion for a preliminary injunction and the factual basis for his Complaint. (AR 081) These municipal defendants did so, not because they have an interest in which candidate is seated,

but only because they have a strong interest in defending the processes used in conducting the election and the District-wide recount and in ensuring that the will of the voters can be implemented without delay. It is the position of each of the Municipal Defendants that the election laws and guidance of the Secretary of the Commonwealth were meticulously followed in the course of the election and recount, and that those procedures resulted in a fair election that was free from fraud or undue influence. The will of the voters is paramount, and their votes should not be disenfranchised simply because the election was decided by a narrow margin.

(AR 81-82) Those municipalities addressed and rebutted every factual allegation asserted by Mr. Mirra. (AR 87-94) Unlike Mr. Mirra and Ms. Kassner, these municipalities and their officials and employees have no self-interest in the outcome of this matter – their interest is solely the public interest, and their position on these matters is entitled to substantial deference.

The work of the 193rd General Court has already begun and the people of the Second Essex District deserve representation. Ms. Kassner humbly and respectfully requests that the Special Committee, review the very detailed reports from the Towns outlining the recount process and reject any effort by Mr. Mirra to prolong this dispute and open up the

recount records and, instead, follow the example of the Legislature in 2003 and declare that Ms. Kassner is the Representative from the Second Essex District.

ATTACHMENT A

Return of Votes

For Massachusetts State Election

November 8, 2022



Compiled by
William Francis Galvin
Secretary of the Commonwealth
Elections Division

Certified by the
Governor and Council

GOVERNOR AND LIEUTENANT GOVERNOR

ATTORNEY GENERAL

SECRETARY OF STATE

TREASURER

AUDITOR

REPRESENTATIVE IN CONGRESS

COUNCILLOR

SENATOR IN GENERAL COURT

REPRESENTATIVE IN GENERAL COURT

DISTRICT ATTORNEY

SHERIFF

STATEWIDE BALLOT QUESTIONS

PUBLIC POLICY QUESTIONS

TWELFTH BRISTOL DISTRICT

Norman J. Orrall, of Lakeville (Republican) has.....	12,370
and appears to be elected.	
All Others.....	186
Blanks	4,677
Total Votes Cast.....	17,233

THIRTEENTH BRISTOL DISTRICT

Antonio F.D. Cabral, of New Bedford (Democratic) has	6,977
and appears to be elected.	
All Others.....	225
Blanks	2,144
Total Votes Cast.....	9,346

FOURTEENTH BRISTOL DISTRICT

Adam Scanlon, of North Attleborough (Democratic) has	11,212
and appears to be elected.	
All Others.....	169
Blanks	4,823
Total Votes Cast.....	16,204

FIRST ESSEX DISTRICT

CJ Fitzwater, of Salisbury (Republican) has.....	8,657
Dawne F. Shand, of Newburyport (Democratic) has.....	12,790
and appears to be elected.	
All Others.....	18
Blanks	798
Total Votes Cast.....	22,263

**SECOND ESSEX DISTRICT
(AMENDED PER RECOUNT)**

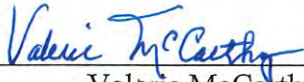
Leonard Mirra, of Georgetown (Republican) has.....	11,762
Kristin E. Kassner, of Hamilton (Democratic) has	11,763
and appears to be elected.	
All Others.....	5
Blanks	638
Total Votes Cast.....	24,168

In Council, Boston, December 14, 2022

The foregoing findings are this day adopted.



Charles D. Baker
Governor



Valerie McCarthy
Administrative Secretary



Office of the Secretary of the Commonwealth, December 14, 2022

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

A true copy.

ATTACHMENT B



*To Kristin E. Kassner
In the County of Essex*

Greetings:

Whereas, it appears, by the returns of votes for Representative in the General Court from the

Second Essex Representative District

made into the office of Our Secretary, and examined and certified by Our Governor and Council, agreeably to the requirements of our Constitution and Laws, that you the said Kristin E. Kassner have been duly elected a Representative in the General Court for said District, for and during the term of two years from the first Wednesday in January, in the year of Our Lord two thousand and twenty-three.

You are therefore hereby summoned to attend a General Court, to be holden at the Capitol, in Boston, on the first Wednesday of the month of January, being the fourth day of said month, and to take your seat in the House of Representatives accordingly, that there may be a due assembly of Representatives on said day, for transacting the legislative business pertaining thereto.

Given at the Council Chamber in Boston, with Our Great Seal hereunto affixed, this thirtieth day of November, in the year of Our Lord two thousand and twenty-two, and of the Independence of the United States of America, the two hundred and forty-seventh.

Charles Baker
By His Excellency the Governor

William F. Traynor
Secretary of the Commonwealth



ATTACHMENT C

The Commonwealth of Massachusetts

**FINAL REPORT
OF THE
SPECIAL COMMITTEE OF THE HOUSE
TO EXAMINE THE
RETURNS OF VOTES FOR REPRESENTATIVE
IN THE SEVERAL
REPRESENTATIVE DISTRICTS OF THE
COMMONWEALTH RELATIVE TO THE
THIRD BARNSTABLE DISTRICT**

March 18, 2003.

Appendix A

MAJORITY REPORT OF THE SPECIAL COMMITTEE ON ELECTIONS FOR THE THIRD BARNSTABLE DISTRICT.

INTRODUCTION

On November 5, 2002, elections were held throughout the commonwealth of Massachusetts. The race for state representative in the Third Barnstable District was one of the many contests included on the ballot. There were two candidates vying for the House seat in the Third Barnstable District; the incumbent, Matthew C. Patrick, a Democrat, and the challenger, Larry F. Wheatley, a Republican.

At the end of the election the ballots were counted. Mr. Patrick received 8,640 votes and Mr. Wheatley received 8,628 votes. Thus, Mr. Patrick prevailed by a margin of 12 votes. Mr. Wheatley asked for a recount on November 13, 2002, and Mr. Patrick requested one the next day. A recount was ordered and took place on November 23, and November 25, 2002. The result of the recount was 8,654 votes for Mr. Patrick and 8,637 votes for Mr. Wheatley. Therefore, Mr. Patrick extended his margin of victory to 17 votes.

On December 4, 2002, the Secretary of the commonwealth transmitted copies of the returns from the November 5, 2002, statewide election to the Governor and Council for examination, tabulation and certification. Included in the returns that the Secretary transmitted were the amended returns from the Third Barnstable District. All the returns were certified on December 4, 2002, by the Governor and Council in accordance with the provisions of G. L. c. 54, §§ 115 and 116.

Mr. Patrick was issued a certificate for election for Representative in the General Court in the Third Barnstable District signed by the Governor and Secretary in accordance with the provisions of General Laws Chapter 54, § 116. Said certificate was transmitted from the Secretary to Mr. Patrick on December 18, 2002.

On that same date, December 18, 2002, Mr. Wheatley filed in the Barnstable Superior Court a complaint to set aside the election. A hearing on the complaint was heard by Justice Richard F. Cannon on December 27, 2002. On December 30, 2002, Justice Cannon issued an order calling for a new election to be held no sooner than 60 days from the date of his order.

On January 1, 2003, the first Wednesday of January, in accordance with the Massachusetts Constitution, the House of Representatives was called into session. A special committee on elections consisting of three house members was appointed by the Speaker of the House. The committee ordered that pursuant to Amended Article 64 of the Massachusetts Constitution, Mr. Patrick remain as a holdover so that the Third Barnstable District could have representation in the House of Representatives until said House of Representatives made a determination as to the duly elected Representative from the Third Barnstable District.

On January 13, 2003, the Special Committee on Elections held a hearing on the Third Barnstable District House seat. Mr. Wheatley, together with his counsel, Edward O'Brien was invited to give testimony before the committee, as was Mr. Patrick, and his attorney, William McDermott. The committee also secured the presence of a stenographer to transcribe the proceedings. In addition, the committee had in its possession a copy of the official court pleadings, exhibits and transcripts from the Barnstable Superior Court hearing.

At the committee hearing, Attorney O'Brien spoke first on behalf of his client, Mr. Wheatley, followed by Mr. Wheatley himself. Next, Attorney McDermott spoke on behalf of his client, Mr. Patrick. After Attorney McDermott concluded, Attorney O'Brien spoke again in rebuttal. Both counsels submitted briefs on behalf of their clients.

While each counsel testified before the committee, they were asked, and answered, specific questions by said committee. Chairman DiMasi asked both attorneys whether they and/or their clients agreed that the House of Representatives had jurisdiction to decide this election controversy based upon the Massachusetts Constitution or any other state law. Attorney O'Brien did not believe that the House of Representatives or the special committee had jurisdiction over this matter, but Attorney McDermott did agree that the House of Representatives and the special committee appointed by them had exclusive jurisdiction to hear the case.

Attorney McDermott testified that, in his opinion, the special committee was granted its jurisdiction pursuant to Part II, c.1, s.3, art 10, (hereafter referred to as Article 10), of the Massachusetts Constitution. However, Attorney O'Brien argued that Amendment Article 101, (Amendment 101), not Article 10 of said constitution was the controlling authority and that it did not grant jurisdiction to the committee.

ARGUMENT

I. THE HOUSE OF REPRESENTATIVES AND ITS SPECIAL COMMITTEE ON ELECTIONS HAVE EXCLUSIVE JURISDICTION OVER THIS MATTER.

Part II of Chapter 1 of Section 3 of Article 10 of the Massachusetts Constitution clearly grants exclusive jurisdiction over this matter to the House of Representatives. It states in pertinent part: "*The house of representatives shall be the judge of returns, elections, and qualifications of its own members, as pointed out in the constitution; shall choose their own speaker; appoint their own officers, and settle the rules and orders of proceeding in their own house:*"

Likewise, the Supreme Judicial Court has consistently affirmed that the House of Representatives is exclusively empowered through Article 10 to decide the election of its own members. In 1874, the Supreme Judicial Court decided the landmark case of *Peabody v. School Committee of Boston*, 115 Mass. 383 (1874). In *Peabody*, the plaintiff was elected to the Boston School Committee. However, a majority of the school committee members voted at a meeting to declare that she was not duly elected because she was disqualified. The sole reason for her disqualification was the fact that she was a woman.

The Supreme Judicial Court reviewed the city of Boston's charter which stated: "*the board of aldermen, the common council, and the school committee, shall have the authority to decide upon all questions relative to the qualifications, elections and returns of their respective members.*" The Court noted that this authority was granted to the city through the legislature, so they turned to Article 10 of the constitution to assist in determining the outcome. *Id. at 384*. Relying on Article 10 the Peabody Court said: "*It cannot be doubted that either branch of the legislature is thus made the final and exclusive judge of all questions whether of law or of fact, respecting such elections, returns or qualifications, so far as they are involved in the determination of the right of any person to be a member thereof; and that while the constitution, so far as it contains any provisions which are applicable, is to be the guide, the decision upon either house of the question whether any person is or is not entitled to a seat therein cannot be disputed or revised by any court or authority whatever.*" (Emphasis Added) *Id. at 384*.

The Supreme Judicial Court further stressed in *Peabody*, that “the legislature has thus clearly manifested its intention that in Boston, and in every other city established previously to the passage of the act now before us, the question of the right of any person to a seat in either of the two boards chosen by the people to serve as their representative in the government of the city, (as in the case of the members of each branch of the legislature of the Commonwealth,) should be at once and finally determined by the body of which such person claims to be a member, so as to enable the organization to be completed, vacancies to be filled up, and the entire body to proceed with a full representation of its constituents to the transaction of its appropriate business, without waiting for the comparatively slow progress of judicial proceedings for the decision of any question of fact or of law upon which such right may depend.” *Id.* at 386.

Thus, the Court held that the decision of the school committee banning the plaintiff from a seat on said committee was final, and noted that the courts were without authority to “consider a question which the legislature, in the exercise of the powers vested in it by the constitution, ha(d) made it the duty of the school committee to decide finally and without appeal.” *Id.* at 387.

Similarly, 17 years later, in 1891, the Attorney General issued an opinion on the subject whereby he stated: “The House of Representatives, or its election committee, subject to the approval of the House, has power to determine the evident intent of the voter from an inspection of the ballot, where the strict letter of the law as to affixing or filling in the name or marking the ballot has not been complied with; as by the Constitution, (Part II), Chapter 1, Section 3, Article 10, the House of Representatives ‘shall be the judge of the returns, elections, and qualifications of its own members;’ which provision is held to give the House absolute power over the subject. But it may be proper to add that the House of Representatives of Massachusetts has been accustomed in such cases to follow the rules of law.” *Opinion of the Attorney General* 3, 8 (1891).

II. THE HOUSE OF REPRESENTATIVES AND ITS SPECIAL COMMITTEE HAVE EXCLUSIVE JURISDICTION THAT MAY NOT BE DELEGATED TO ANY OTHER GOVERNMENT DEPARTMENT.

The exclusive jurisdiction that the House has over this matter may not be delegated to any other branch of government. In *Dinan v. Swig*, 223 Mass. 516 (1916), the Supreme Judicial Court examined a statute that allowed three judges of the Superior Court to investigate an election if five or more voters petitioned that they believed an individual was elected through fraud. The three judges would be empowered, if they found fraud or corrupt practices, to declare the election void and oust an elected official from office.

The Court struck down this statute as a violation of Article 10 of the Massachusetts Constitution. It held: "*The power to pass upon the election and qualification of its own members thus is vested exclusively in each branch of the General Court. No other department of the government has any authority under the Constitution to adjudicate upon that subject. The grant of power is comprehensive, full and complete. It is necessarily exclusive, for the Constitution contains no words permitting either branch of the legislature to delegate or share that power. It must remain where the sovereign authority of the State has placed it. General phrases elsewhere in the Constitution, which in the absence of an explicit imposition of power and duty would permit the enactment of laws to govern the subject, cannot narrow or impair the positive declaration of the people's will that this power is vested solely in the Senate and House respectively. It is a prerogative belonging to each house, which each alone can exercise. It is not susceptible of being deputed.*" *Id.* at 517.

The *Dinan* Court further noted in striking down the proposed statute; "*No legislative body can be the sole judge of the election and qualification of its members when it is obliged to accept as a final decision touching the purity of the election of one of its members made by another department of the government in an inquiry to which that legislative body is not a party and which it has not caused to be instituted.*" *Id.* at 518.

Therefore, the exclusive jurisdiction of the House of Representatives is exactly that, *exclusive*. Neither the executive nor the judicial branch of government can assert jurisdiction; and the House cannot transfer its jurisdictional authority to either other branch.

III. MATTHEW PATRICK WAS ISSUED A CERTIFICATE OF ELECTION, THEREFORE HE IS A MEMBER OF THE HOUSE OF REPRESENTATIVES; AND ONLY THE HOUSE MAY DECIDE ISSUES SURROUNDING HIS ELECTION AND QUALIFICATION.

In *Banks v. Election Commissioners of Boston*, 327 Mass. 509 (1951), two men, Mr. Banks and Mr. Sullivan, claimed victory to the Ward 9 seat on the Boston City Council. The board of election commissioners refused to issue a certificate to either man, but instead allowed Mr. Sullivan to sit as a "holdover". Mr. Banks petitioned the Superior Court to count several more votes in his favor, and to discount several votes that his opponent had received. Mr. Sullivan also petitioned the Superior Court asking that the board of elections certify him and that he be declared the victor. The Superior Court referred the case to the Supreme Judicial Court.

In order to decide whether it had jurisdiction to hear the case, the Supreme Judicial Court focused on the statutory language that allowed the city council to judge the elections and qualifications of its own members. Section 50 of Chapter 486 of the Acts of 1909, as amended by Section 15 of Chapter 479 of the Acts of 1924, states: "*The city council shall be the judge of the election and qualifications of its members.*" The *Banks* Court ruled that under Section 4 of Chapter 449 of the Acts of 1895 the board had all the powers and duties relating to the "*determination of the results of the elections.*" *Id.* at 512.

Despite this clear language, the Court concluded that they did have jurisdiction. They held that: "*until the board determines such (election) results and issues a certificate to one whom it has determined to have received the vote necessary for election, there does not exist anyone who is a 'member' whose election and qualifications the city council may judge.*" *Id.* at 512. Further, the Court stated: "*Up to the point that a certificate has been issued, at least, the matter is in control of the court, which may in proper proceedings direct the board to whom to issue the certificate.*" *Id.* at 512.

The *Banks* case is very similar to the present situation in two aspects. First, in each situation there was a close election which was contested by both sides. Also, the incumbent involved in both cases was allowed to remain seated in his respective position as a "holdover". However, there is also a major distinction between *Banks* and the

present case. In *Banks*, the board of election commissioners refused to issue a certificate of election. Thus, the courts could reasonably argue that they had retained jurisdiction. In the present case however, a certificate was issued to Representative Patrick signaling that he was the elected representative from the Third Barnstable District, and ending whatever jurisdictional claim that the judiciary or executive branch may have asserted.

As a result of *Banks*, a "member" exists, when an individual is transmitted a certificate of election. Once a certificate is issued, and a member exists, the matter rests strictly with the House of Representatives, and that body alone may judge the individual's qualifications to be a member.

IV. ANY ATTEMPTED COURT DECISION ON THIS MATTER WOULD BE MOOT.

In a case that is nearly identical to the present situation, the Supreme Judicial Court held that once the House of Representatives asserts its jurisdiction to decide all matters relating to the election of its members, any court decision would be moot. In *Greenwood v. Registrars of Voters*, 282 Mass. 74 (1933), Louis N.M. DesChenes was elected as representative from the Eleventh Worcester District. The election had been held on November 8, 1932. On November 16, 1932, a recount was held and Mr. DesChenes was again declared the winner. On the following day, November 17, 1932, Mr. DesChenes was issued his certificate of election. The next day, November 18, 1932, his opponent, John J. Gilmartin filed a petition in the Supreme Judicial Court challenging the issuance of the certificate to Mr. DesChenes.

In the meantime, on January 4, 1933, the General Court was convened and Mr. DesChenes presented his certificate of election. The House of Representatives created a special commission to investigate the election. On February 7, 1933, the Supreme Judicial Court heard oral arguments on the matter. On February 15, 1933, the Court refused to order Mr. DesChenes to surrender his certificate. They noted that the House had created a special commission which held hearings, had heard testimony from witnesses and arguments from counsels. The Court stated: "*It is manifest from the facts already stated that the House of Representatives is exercising its jurisdiction over the entire subject of the returns, elections and qualifications of the member entitled to sit for the Eleventh Worcester District as between the petitioner and*

intervenor as rival claimants, and that it is proceeding to a final determination of that subject." Id. at 79.

Further, the Court held that they were without jurisdiction to act. "All cognate matters at this stage have come within the jurisdiction of the House of Representatives. The decision of such questions has become moot so far as this court is concerned and therefore, any decision would be nugatory or unavailing." *Id at 80.*

Thus, once the House of Representatives asserts its jurisdiction to decide all matters relating to the election of its members, any court decision is moot. The House of Representatives has asserted its jurisdiction over this matter by establishing a special committee on elections and holding hearings with testimony and oral arguments. Therefore, any court decision or opinion on this matter is moot and uncontrolling.

In 1965, the House of Representatives also asserted its jurisdiction regarding the election of the Representative from the Seventeenth Essex District. There, like the present case, and the *Greenwood* case, the November 3, 1964, election involving Edward S. Morrow, the incumbent Republican Representative, and his opponent Aaron M. I. Shinberg, a Democrat, was very close. Unlike the present situation and the *Greenwood* case however, neither Mr. Morrow, nor Mr. Shinberg were certified.

The House of Representatives convened on January 6, 1965, and the matter was referred to a special committee on elections. Mr. Morrow was allowed to remain seated as a holdover until the House was able to determine who was entitled to that seat. The House ultimately decided that Mr. Shinberg, the Democrat, was the duly elected Representative from the Seventeenth Essex District.

Article 10 and all the relevant case law is clear and unambiguous. Mr. Wheatley's attorney, Mr. O'Brien, does not dispute the language of Article 10. "Article 10 says what it says." (see page 23 of transcript). However, Attorney O'Brien's position is that the House may have had jurisdiction under Article 10 up until the adoption of Amendment 101. (see page 20 of transcript). He claims that Amendment 101, not Article 10 is the jurisdiction on this matter. (see page 22 of transcript). He bases that supposition on the fact that Article 10 was adopted in 1780 and Amendment 101 was amended in 1974. (see page 19 of transcript). Therefore, Attorney O'Brien argues that Amendment 101 essentially updated Article 10.

V. THERE IS NO CONFLICT BETWEEN AMENDED ARTICLE 101 AND ARTICLE 10 OF THE MASSACHUSETTS CONSTITUTION.

Amendment Article 101 of the Massachusetts Constitution provides in pertinent part: *"The House of Representatives shall consist of one hundred and sixty members. The General Court shall, at its first regular session after the year in which said census was taken, divide the Commonwealth into one hundred and sixty representative districts of contiguous territory so that each representative will represent an equal number of inhabitants . . . The General Court may by law limit the time within which judicial proceedings may be instituted calling in question any such division. Every representative, for one year at least immediately preceding his election, shall have been an inhabitant of the district for which he is chosen and shall cease to represent such district when he shall cease to be an inhabitant of the Commonwealth. The manner of calling and conducting the election for the choice of representatives, and of ascertaining their election, shall be prescribed by law."*

In addition to the constitutional language, a brief history is warranted. Amendment 101, which was most recently amended by Amendment Article 119, was adopted by joint sessions of the General Court in the years 1971 and 1973, and was approved by the people on November 5, 1974. Section 4 of Amendment 101 annulled Article 92, which had been adopted by the General Court in 1968 and 1969, and was approved by the people on November 3, 1970. Section 3 of said Article 92 annulled Articles 21 and 22 of the state constitution. Both Articles were adopted by the General Court in 1856 and 1857, and were approved by the people on May 1, 1857, and contain language similar to Amendment Article 101 as it provides for the census of the inhabitants and membership of the House of Representatives.

Thus, Amendment 101 detailing census, representative, senatorial and councilor districts, along with apportionment and residence thereof, has, in effect, been in existence since 1857. Interestingly, Article 101, while annulling several articles of the constitution, never annulled Article 10.

Thus, every case decided dealing with election controversies occurred after 1857. As mentioned, in each such case, the Supreme Judicial Court ruled that Article 10 was the proper constitutional provision that granted exclusive jurisdiction to the House of Representa-

tives to decide all factual and legal matters relating to the qualification of election of its members.

Similarly, in 1978, four years after Amendment Article 101 was amended the Supreme Judicial Court in its *Opinion of the Justices 375 Mass. 795 (1978)*, once again recognized that pursuant to Article 10 of the constitution: "*the constitutional authority of each branch of the legislature to judge the elections, returns, and qualifications of its members is exclusive, comprehensive, and final.*" *Id. at 815.*

VI. A SUPREME JUDICIAL COURT JUSTICE REFUSED TO ORDER A NEW ELECTION IN A SIMILAR SITUATION.

The Democratic primary election held on September 14, 1976 for the office of State Representative from the Twentieth Hampden District presents many similarities to the matter before this committee. In that election, William D. Mullins received 3,196 votes and Steve T. Chmura received 3,179 votes. As a result of a recount, Mr. Mullins received 3,191 votes and Mr. Chmura received 3,185 votes. In that election several irregularities occurred. In Precinct C of the town of Palmer it was discovered that at least 12 incorrect ballots had been distributed to voters. The ballots contained the names of candidates for the First Hampden District instead of the Twentieth Hampden District. When the defect was discovered the ballot box was opened and ballots were taken from the ballot box in violation of G.L., c. 56, § 50. At least three voters who claimed that they had been given incorrect ballots which were placed in the ballot box were given new ballots which contained the names of the candidates from the Twentieth Hampden District.

During an uncertain period of time, no ballots were distributed to voters in Precinct C of the town of Palmer until the correct ballots were delivered from town hall to Precinct C. At least one Republican received a Democratic ballot and stated in an affidavit that he voted for Mr. Chmura.

Ward 6 Precinct C of the city of Chicopee is part of the Twentieth Hampden District. In accordance with G.L. c. 54 § 63 as it applies to primaries in G.L. c. 53 § 24 notice of election is required to be published at least 7 days before the holding of a primary. Said notice was not published until the day before the primary.

In the town of Ludlow, a voter voted by absentee ballot and voted for Mr. Mullins. The absentee ballot was not marked in the presence

of an official authorized by law to administer oaths which was required by G.L. c. 54 § 92 at that time.

Steve T. Chmura filed a petition in the Supreme Judicial Court for Suffolk County alleging that because of these numerous irregularities a new primary for the Democratic nomination should be held or in the alternative both the names of Mr. Chmura and Mr. Mullins should appear on the November 2, 1976, ballot as no Republican had qualified for the November ballot.

On October 19, 1976, Associate Justice Francis J. Quirico of the Supreme Judicial Court ruled that despite all of those irregularities, plaintiff Chmura was not entitled to relief and the action was dismissed.

In the present case, 13 voters in a Bourne precinct were given ballots that listed the candidates for the Second Plymouth Representative District instead of the Third Barnstable District. Also, there was a 35 minute delay at a Barnstable precinct because officials ran out of ballots. During the delay, no one in line was permitted to vote. Mr. Wheatley argued that several people waiting in line to vote left. Finally, during the recount, 8 absentee ballots did not contain the race for representative from the Third Barnstable District, and thus were counted as blanks.

As mentioned earlier at least 12 voters in Palmer were given the wrong ballots in the Chmura case. Further compounding this mix-up, three people who claimed that they received wrong ballots were allowed to vote again. Additionally, as in the present situation there was a delay in the Chmura case at one of the precincts, which prevented people in line from voting. Similarly, there was a discrepancy in Chmura involving an absentee voter.

Unlike the present situation however, in Chmura, Massachusetts laws were violated. First, a Republican voter admitted he was given a Democratic ballot and voted as a Democrat. Secondly, the ballot box was opened in violation of General Law Chapter 56 § 50. In short, the situation was a mess. Yet, Justice Quirico did not order a new election. He cited *McRobbie v. Registrars of Voters of Ipswich*, 322 Mass. 530, 533 (1948) "But it is not enough to invalidate an election, that illegal votes were received. There must be proof that the reception of the illegal votes changed the result." *Id.* at 533.

In the present situation, there is simply no way to determine if any of these votes that were not counted would have changed the result of the election. Any attempt to do so would be to engage in speculation

and conjecture. Moreover, the time delay that occurred at one of the precincts seems to have been the result of an accident, similar to *Citizens for a Referendum Vote v. Worcester*, 375 Mass. 218 (1978). In *Worcester*, the city held a referendum vote on whether to appropriate money to build the Worcester Civic Center. The voting hours were fixed at 8 A.M. to 8 P.M. Seven of the 79 precincts were not open on time. The delays ranged from twelve to eighty minutes. Despite the fact that almost ten percent of the polls did not open on time, the Supreme Judicial Court did not invalidate the election. Although Massachusetts General Laws, Chapter 54, Section 60 states: "a city clerk shall send the ballots to each polling place before the opening of the polls"; the Supreme Judicial Court ruled that "not every deviation from such a provision automatically upsets the result of an election." *Id.* at 219; citing *Swift v. Registrars of Voters of Quincy*, 281 Mass. 271, 276 (1923).

VII. THE HOUSE OF REPRESENTATIVES HAS NO AUTHORITY TO ORDER A NEW ELECTION.

There is no question based upon the Massachusetts Constitution and all case law on this matter that the House of Representatives has exclusive jurisdiction over this matter. Despite this power however, the House cannot order a new election because there is currently no constitutional or statutory authority for the House of Representatives to order a new election under these circumstances. Massachusetts General Laws, Chapter 54, Section 141 states:

Upon a vacancy in the office of representative in the general court or upon failure to elect, the speaker of the house of representatives shall issue precepts to the aldermen of each city and the selectmen of each town comprising the district or any part thereof, appointing such time as the house of representatives may order for an election to fill such vacancy; provided, that if such vacancy occurs during a recess during the first and second annual sessions of the same general court, the speaker may fix the time for an election to fill such vacancy. All such elections shall be held on a Tuesday. Upon receipt of such precepts, the aldermen or the selectmen shall call an election, which shall be held in accordance with the precepts.

Under current statute, therefore, a new election can be ordered by the House only if there is either a vacancy, or a failure to elect a representative. Neither condition exists in the present situation. There is

not currently a vacancy in the office of representative from the Third Barnstable District, and the district has not failed to elect a representative. Therefore, an order for a new election cannot be adopted by the House of Representatives in this matter.

VIII. MATTHEW PATRICK SHOULD BE DECLARED THE REPRESENTATIVE FROM THE THIRD BARNSTABLE DISTRICT.

Matthew C. Patrick was elected the state representative from the Third Barnstable District on November 5, 2002. He won by 12 votes. After a recount on November 23, and 25, 2002, Representative Patrick's margin of victory increased to 17 votes. On December 18, 2002, Representative Patrick was issued a certificate of election from the Governor and the Secretary of State. On that same date, his opponent, Mr. Wheatley filed his petition in the Barnstable Superior Court, which was heard on December 27, 2002. On December 30, 2002, Judge Connon issued his ruling calling for a new election not before 60 days. On January 1, 2003, the House of Representatives was convened and allowed Representative Patrick to continue to serve in a "holdover" capacity pursuant to Article 64 of the Massachusetts Constitution. The General Court also created a special committee on elections to review this matter. On January 13, 2003, the special committee held its hearing.

The Massachusetts Constitution grants the House of Representatives exclusive jurisdiction to judge the returns, elections, and qualifications of its own members (*see Mass. Const. Part II, c.1, s.3, art. 10*). When Matthew C. Patrick was issued his certificate of election on December 18, 2002, he became a "member" whose qualifications for election the House of Representatives may judge. (*see Banks at 512*). The House of Representatives' authority to judge his qualifications for election is comprehensive, full and complete. (*see Dinan, at 517*). Up until the point that the General Court asserts its authority, a court may conceivably have jurisdiction. (*see Banks at 512; Greenwood at 79*). But, once the General Court asserts its jurisdiction, no other department of the government, including the judiciary, has authority to adjudicate on the matter. (*see Dinan at 517; Banks at 512*).

The House of Representatives has asserted its jurisdiction by convening a special committee on elections and holding hearings which afforded the parties the opportunity to give testimony and present evidence. (*see Greenwood at 79*). Thus, the House took control of the

controversy and any attempt by the judiciary to render an opinion on this matter is moot because any judicial decision is unavailing and nugatory (*see Greenwood at 80*).

Since the House of Representatives is granted this authority through the Constitution, it cannot be doubted that the House is thus made the final and exclusive judge of all questions, whether of law or of fact, respecting such elections, returns or qualifications, so far as they are involved in the determination of the right of any person to be a member. Therefore, the decision of the House of Representatives to question whether a person is or is not entitled to a seat therein cannot be disputed or revised by any court or authority whatever. (*see Peabody at 384*).

Additionally, this position was also reiterated by Assistant Attorney General Peter Sacks in his letter to House Counsel Louis A. Rizoli dated January 12, 2003. Attorney Sacks noted: "*the jurisdiction of the house is governed by the constitutional provision 'that the house of representatives shall be the judge of the returns, elections, and qualifications of its own members, as pointed out in the constitution.'* Mass. Const. Part II, c. 1, s.3, art. 10." He further stated that: "*The Supreme Judicial Court has ruled that the House's power in this regard is not invaded by judicial proceedings to determine and enforce election officials' compliance with statutory procedures for elections for seats in the House of Representatives, at least up until the time a certificate of election is issued.*" citing *Banks at 512-513*.

CONCLUSION

Based on the foregoing Matthew Patrick is hereby declared the Representative from the Third Barnstable District.

SALVATORE F. DIMASI,
Chairman.

EUGENE L. O'FLAHERTY.

Appendix B**COMMONWEALTH OF MASSACHUSETTS****THE HOUSE OF REPRESENTATIVES**

In the Matter of:

THE ELECTION FOR
REPRESENTATIVE IN THE GENERAL
COURT OF THE COMMONWEALTH
OF MASSACHUSETTS,
REPRESENTING THE THIRD
BARNSTABLE DISTRICT, BETWEEN
MATTHEW C. PATRICK and
LARRY F. WHEATLEY

**MINORITY REPORT OF THE
SPECIAL COMMITTEE ON ELECTIONS**

Representative George N. Peterson, Jr. of Grafton, as the minority party member on the Special Committee on Elections, hereby submits this Minority Report concerning the above captioned matter now pending before the special committee.

INTRODUCTION

The matter now pending before the special committee is a contest of the November 5, 2002 election for State Representative in the 3rd Barnstable District. The two contestants for that seat were incumbent State Representative Matthew C. Patrick of Falmouth ("Patrick"), a Democrat, and his Republican challenger, Larry F. Wheatley of Barnstable ("Wheatley"). A post-election recount indicated that Patrick received 17 more votes than Wheatley but also manifested certain troubling irregularities and violations of election statutes. Credible evidence shows that as a direct result of those problems at least 21 voters, and perhaps as many as 66 voters, were not given the chance to participate in the election and have their votes counted as part of the final tally. Because the number of disenfranchised voters is almost four times the apparent margin of victory, there is a very real

possibility that Wheatley would have been declared the victor and seated in the House if irregularities had not occurred. The election result therefore is in considerable doubt and a new election must be held.

PROCEDURAL HISTORY

Wheatley challenged the results of the election in Superior Court and, on December 30, 2002, obtained a ruling ordering that a new election be held to determine the will of the electorate and correct the irregularities of the first vote. Neither party filed a timely appeal of the court's decision. However, a new election has not been held or even scheduled. Instead, the House of Representatives assembled and seated Patrick under the so-called "hold-over" provisions of Article 64 of the Constitution. Then the House appointed this Special Committee to canvas the election returns in the 3rd Barnstable District and advise the members how to proceed. A hearing was held on January 13, 2002, during which evidence was received and the parties were given an opportunity to be heard. No subsequent meeting was held until March 18, 2003, at which time the Democratic majority of the special committee abruptly recommended that Patrick be seated — without a new election and notwithstanding the court's order and the irregularities the court found.

FACTS

The following facts were established by the parties on the basis of the evidence presented to the special committee during the hearing on January 13, 2003.

On November 5, 2002 a statewide election was held for numerous offices, including that of State Representative. Patrick and Wheatley were the duly-qualified contestants for election in the 3rd Barnstable District. The 3rd Barnstable District is comprised of precincts 5 and 7 of the town of Barnstable, precincts 5 and 6 of the town of Bourne, precincts 3, 4, 7, 8 and 9 of the town of Falmouth, and precincts 2, 4 and 5 of the town of Mashpee, all in the county of Barnstable. *See* c. 125 of the Acts of 2001. Initial returns showed that Patrick was the winner, having received 8,640 votes as compared to 8,628 for Wheatley (a margin of 12 votes). Wheatley (on November 13th, 2002) and Patrick (on November 14th, 2002) both requested a recount,

which was held on November 23 and 25, 2002. As a result of the recount, Patrick was declared to have received 8,654 votes and Wheatley was declared to have received 8,637 votes (a margin of 17 votes).

Wheatley claimed irregularities that violated state elections law and/or disenfranchised certain voters. First, he asserted that 13 voters in one Bourne precinct were improperly handed ballots at the polls that listed the 2nd Plymouth District representative race instead of the contest for the 3rd Barnstable District. Those voters' ballots were recorded as blanks. Second, Wheatley argued that there was a 35-minute time period during which one of the two polling places in Barnstable (his home town) ran out of ballots. The delay was from 4:30 p.m. to 5:05 p.m., traditionally a time of heavy voter turnout. Voters standing in line during that time were not allowed to cast a vote, and testimony from a police officer indicated that many voters abandoned their place in line. In fact, the line of voters shrank from approximately 75 people to 30 people. Third, Wheatley noted that certain absentee ballots presented for tabulation at the recount did not list the contest for the 3rd Barnstable District and, as a result, those ballots (which contained votes) were counted as blanks. Those ballots referred to other races, as follows:

Town	# Ballots	District Listed (Improperly)
Bourne	3	2nd Plymouth District
Falmouth	3	Barnstable, Dukes & Nantucket
Barnstable	1	2nd Barnstable District
Mashpee	1	5th Barnstable District

Thus, the evidence shows that approximately 66 qualified voters (perhaps more) were prevented from casting a vote in the election — almost four times the number of votes separating Patrick and Wheatley in the recount. Many of those voters were from Wheatley's home town.

In the weeks following the election, several significant events transpired. First, on December 4, 2002, the Governor and the Governor's Council certified the returns of the election to the Secretary of State. The certification listed Patrick as the winner of the 3rd Barnstable District race, 8,655 votes to 8,638 (a margin of 17 votes). Second, on December 18, 2002, the Secretary of State issued a Certificate of Election to Patrick, in form sufficient for him to present to the House

Sergeant-at-Arms for admission to the House Chamber on Swearing-in Day. See G.L. c. 3 §§ 1-4.¹ The certificate indicated that Patrick “appeared” to have been elected. Third, also on December 18, 2002, Wheatley filed suit within the Barnstable Superior Court to contest the election results. Wheatley’s Complaint (supported by affidavits) requested that the court (1) issue a temporary injunction restraining the Secretary of State from transmitting the certified vote totals to the House of Representatives, for purposes of seating Patrick as a Representative, (2) prohibit Patrick from sitting as a Representative (3) declare the November 5, 2002 election void, and (4) order a re-vote.²

On December 30, 2002, following notice and opportunity to be heard, the Superior Court (Connon, J.) issued a Memorandum of Decision on Wheatley’s Request for Preliminary Relief, finding that “Wheatley has shown that irregularities and statutory violations did occur”, and that those violations were sufficiently numerous “such that the election would be placed in doubt and thus a new election is necessary.” See *Memorandum of Decision* at 3, 5. On that basis, the Court ordered that a new election take place “at the earliest possible date but not sooner than 60 days from entry of judgment.” See *id.* at 5.

On Wednesday, January 1, 2003, two days after the decision of the court was made public, the House convened for purposes of organizing itself for the 183rd Session of the General Court. The House appointed a special committee, consisting of Representatives DiMasi, O’Flaherty and Peterson, to canvas the returns of the November 5, 2002 election and to report back to the House as to its findings. The House then issued an Order that Rep. Patrick’s term be permitted to continue on a temporary (“hold-over”) basis, until such time as the House is able to determine, under the Constitution, who is the duly-elected Representative from the Third Barnstable District. On that basis, Rep. Patrick did not take the oath of office for the 2003-2004 term.

¹ Certification of votes is a statutory process involving several officers. It starts with the Secretary of the Commonwealth assembling election returns and presenting them to the Governor and Council for their review. See G.L. c. 3 § 1. The Governor and Council examine and tabulate the returns and transmit their certification to the Secretary. *Id.* The Secretary then is required to transmit a list of the certified elected representatives to the House Sergeant-at-Arms not later than the Tuesday preceding the first Wednesday in January following the state election (i.e., the day before the session begins). *Id.* The Sergeant at Arms uses that list to decide who shall be admitted to take a seat as an elected representative on the first day of the session. G.L. c. 3 § 2.

² Neither party asserts that there was any intentional misconduct.

ARGUMENT

There is no decisive authority in the Massachusetts Constitution or in case law to determine whether the House of Representatives has exclusive power to decide if a new election should be held. In other words, it is unclear whether the House has jurisdiction to ignore and thereby effectively veto the court's findings and its order for a new election between Patrick and Wheatley. Given the constitutional questions at stake in the relationship between the legislative and judicial branches, the question of jurisdiction presents a "solemn occasion" for which certification of the issue to the Supreme Judicial Court is appropriate.

Assuming *arguendo* that the House has jurisdiction, the majority's recommendation that Patrick be seated without a new election is wrong. Constitutional principles, standards of accountability and the rule of law all mitigate strongly in favor of the conclusion that a new election should be held. Any other decision would thwart democracy and undermine the founding principles of the Commonwealth. Therefore, due to statutory violations and irregularities in the 3rd Barnstable District election, the special committee should recommend that the Speaker issue precepts ordering a new vote between Patrick and Wheatley, and the victor should be seated.

I. THE HOUSE'S JURISDICTION IS UNCERTAIN; THEREFORE, THE HOUSE SHOULD CERTIFY THE QUESTION OF ITS JURISDICTION TO THE SJC BEFORE EXERCISING ITS AUTHORITY CONTRARY TO COURT ORDER.

There is conflicting authority as to the ability of the House to decide this controversy, given that a court of competent jurisdiction issued a final order for a new election before the House convened and first attempted to assert its power. Because of the uncertain state of the case law and the solemnity of this occasion, and so as to prevent a constitutional crisis from developing further, the House should certify the question of its jurisdiction to the Supreme Judicial Court for review.

The majority of the special committee contends that the House has jurisdiction over this matter, arguing that the Massachusetts Constitution makes the House the sole and exclusive judge of the election and qualifications of its members. *See* Const. pt. 2 c. 1 § 3, art. 10 (here-

inafter "art. 10") ("the house of representatives shall be the judge of the returns, elections and qualifications of its own members, as pointed out in the constitution . . . and the senate and house of representatives may try and determine all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they respectively might think best.")^{3 4} The majority relies on language in Massachusetts cases holding that the grant of power confers "comprehensive, full and complete" authority. *See Dinan v. Swig*, 223 Mass. 516, 517 (1916). *See also Greenwood v. Board of Registrars of Voters*, 282 Mass. 74 (1933) (court refused to order recount of votes where Legislature had organized); *Peabody v. School Committee of Boston*, 115 Mass. 383, 384; *Coffin v. Coffin*, 4 Mass. 1 (1808).

Massachusetts cases have held that the House's powers under art. 10 apply to questions of both law and fact, and that once those powers are exercised the House's actions cannot be reviewed by the Court. *See id.* Courts also have held that since the grant of authority is specific, any general language found elsewhere in the Constitution, which otherwise would allow another branch to pass laws to control the subject, can neither narrow nor impair the House's power. *See Dinan*, 223 Mass. at 517. Finally, cases have held that the House's authority cannot be shared with or delegated to any other branch of government, under principles of separation of powers, and that no other branch of government can usurp or intrude upon that power. *See id.* at 518.⁵

The cases upon which the majority relies do not provide adequate justification for the House to exercise jurisdiction in this controversy because they are premised on factual scenarios that are plainly distinguishable from the 3rd Barnstable District situation. The critical distinguishing factor is that most cases involved court intervention *after*

³ One case has held that the first part of Art. 10 applies to internal affairs of the House only. *See Opinion of the Justices*, 331 Mass. 764, 767 (1954). However, the case dealt with the punishment of a private person who interrupted a committee hearing, thus, it is unclear if the statement applies here. The SJC could decide the issue.

⁴ Patrick's attorneys raised a "lack of subject matter jurisdiction" as an affirmative defense in his Answer to Whalley's Complaint in Court. However, the Secretary of State did not file any pleading therein that raised a lack of subject matter jurisdiction as an affirmative defense and he has not appealed the court's judgment.

⁵ Interestingly, one of the most historic debates over the limits of Art. 10 took place when women were given the right to vote. The question was whether the 19th Amendment, which extended suffrage to women, automatically also allowed them to run for the House and Senate, or whether the legislature was required to enact its own rules on the subject. *See Palfrey, "The Eligibility of Women for Public Office Under the Constitution of Massachusetts"*, 7 Mass. Law Quarterly No. 7 (1922) at 147.

the House first asserted its jurisdiction. *See Dinan, Greenwood*. For example, the *Dinan* case considered whether a three-judge panel could act independently, while the House was in session, to find facts indicating that an elected representative had engaged in corrupt election practices, and whether the panel could report and recommend those findings to the House for its action. *See* 223 Mass. at 517-18. The court said that such activity would violate the House's constitutional sovereignty to make an independent judgment of the election Rep. Swig. *See id.* *See also Roudebush v. Hartke*, 405 U.S. 15 (1972) (under federal provisions similar to art. 10, the U.S. Senate retains the ability to make a final, independent judgment as to the election of one of its members). There is no such concern in this case. Here, Judge Connon's investigation of facts and his decision ordering a new election were completed and made public *before* the House organized and asserted any jurisdiction. As the majority admits in its report, the House first asserted its jurisdiction when it convened on January 1, 2003 and appointed a special committee to review the returns of the election. *See* Majority Report at 11 (House asserted its jurisdiction by convening a special committee and holding hearings). That was a full 2 days *after* the court's order was issued.

For the same reasons, there is no issue of improper delegation or intrusion here. The House did not become qualified to judge the returns of the November, 2002 election until January 1, 2003, at the earliest. The 182nd Biennial Session of the Legislature had no authority to judge the returns of that contest because it affected the succeeding General Court. *See e.g. Town of Milton v. Commonwealth*, 416 Mass. 471, 474 (1993) (one session of the General Court cannot bind successive sessions to make an appropriation or dictate how constitutionally permissible legislative processes should work). Thus, there could not conceivably be any delegation of power until the 183rd Biennial Session of the General Court was seated, which did not happen until two days after the court issued its final judgment. *See also Greenwood*, 282 Mass. at 80 (House first becomes cloaked with jurisdiction and is put on notice to exercise its power at the time certificates of election are *presented* to the House); Mass. Gen. Laws c. 3 § 1.

Wheatley's attorneys argue against the House having jurisdiction by citing a later constitutional amendment, amendment 101, which they say supercedes art. 10. Amendment 101 states, in relevant part, "the manner of calling and conducting the elections for the choice of

representatives, and of ascertaining their election, shall be prescribed by law." Wheatley's attorneys claim the irregularities found by the court violated state election laws, which is a problem that the Superior Court Department of the Trial Court has jurisdiction to remedy. *See* Mass. Gen. Laws c. 56 § 59 ("The supreme judicial court and the superior court department of the trial court shall have jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and may award relief formerly available in equity or by mandamus . . .").

Patrick, by and through his counsel, has failed to offer any convincing authority to resolve what he has admitted is an apparent "conflict" between art. 10 and amendment 101 of the Constitution. *See* Hearing Transcript at 46. His only argument is that the House has a responsibility to decide which provision controls. *See id.* However, hundreds of years of American constitutional law disagree with that position and speak in favor of vesting jurisdiction within the courts. *See e.g. Marbury v. Madison* 5 U.S. 137 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is"). Wheatley's attorneys, on the other hand, have offered the more convincing and plausible analysis that art. 10 gives the House power to decide questions over the qualification of its members in circumstances of a valid election, while the power to rule on issues concerning the election process itself (i.e. to decide matters relating to invalid elections) are properly reserved for the courts as a matter of constitutional and statutory law.

The net result of all of those cases and constitutional provisions cited by counsel seems to be as follows. If the special committee were to recommend that the House do nothing further, and thereby tacitly ratify the Superior Court's Order for a new election, then the issue of the House's jurisdiction would be moot. However, if the special committee recommends that the House take any action conflicting with the court's judgment, then the question of the House's jurisdiction has no clear answer and appears to be an issue of first impression ripe for consideration by the Supreme Judicial Court.

Patrick, by and through his counsel, admitted at hearing that the consideration of this question is a "solemn occasion" and not a "political question". *See* Hearing Transcript at 45. Those are normally sufficient grounds for the Supreme Judicial Court to give advice to the House as to legal questions concerning its present duties. As stated recently by the Court:

The Massachusetts Constitution requires the Justices of the Supreme Judicial Court to give opinions to the Legislature, Governor, or Executive Council "upon important questions of law, and upon solemn occasions." Part H, c. 3, art. 2, of the Massachusetts Constitution, as amended by art. 85 of the Amendments. A solemn occasion exists when the Governor or either branch of the Legislature, having some action in view, has serious doubts as to the power and authority to take such action, under the Constitution, or under existing statutes. The Justices have construed this provision to mean that opinions are required "only respecting pending matters in order that assistance may be gained in the performance of a present duty." *Answer of the Justices to the Senate*, SJC-08917 (December 20, 2002) (internal citations omitted).

The House should not take action contrary to the court's order without first certifying the important and precedent-setting question of its jurisdiction to the Supreme Judicial Court for its review. The special committee's report should include such a recommendation.

A. THE HOUSE'S DECISION TO SEAT REP. PATRICK AS A "HOLDOVER" REPRESENTATIVE UNDER ARTICLE 64 OF THE CONSTITUTION WAS APPROPRIATE BUT IS WITHOUT WEIGHT AS TO A DECISION ON THE MERITS OF THIS CASE.

Under the Constitution, representatives serve a term that expires on "the first Wednesday of January in the third year following their election and **until their successors are chosen and qualified.**" Const. amend. art. 64 § 1 (as amended) (emphasis added). Thus, where there is a failure to elect a representative in a district, the incumbent will remain in office as a "hold-over" until a successor may be chosen and qualified by the House. The policy behind this provision of the Constitution is to allow the people of the district to continue to be represented in the General Court, notwithstanding a failure to elect a successor.

The House's decision to seat Patrick according to that provision was appropriate and consistent with precedent. In 1965, for example, the House permitted Edward S. Morrow of Haverhill to be seated as a hold-over under Art. 64 until a recount of election returns could be completed. *See 1965 House Journal* at 9-11, 388-389. While he was a hold-over representative, Morrow was allowed to participate in

debates and to vote in roll calls. In April of that year, Aaron I. Shamburg of Haverhill was permitted to assume the seat instead of Morrow because he was determined to have won the election by 12 votes. *See id.* at 1312-1315.

Indeed, the fact that Patrick was and remains seated as a hold-over representative resolves two important concerns related to these proceedings. First, the citizens of the 3rd Barnstable District may rest assured that they will have constant representation in the General Court, despite this contest. Second, the business of the House will not be delayed or distracted while this matter is resolved, because there is no gap in membership.

However, other than those factors, the decision to seat Patrick as a hold-over representative is insufficient and is without weight to the consideration of this present case. Patrick's attorney admitted as much during the hearing. *See* Hearing Transcript at 62. Patrick's hold-over status does not confer any advantage to him vis a vis Wheatley, and does not serve as any ratification of the results of the recount. Therefore, the House's decision according to art. 64 should not factor into this committee's report, except as indicated above.

B. A NEW ELECTION IS REQUIRED BECAUSE WHEATLEY SUSTAINED HIS BURDEN TO PROVE IRREGULARITIES AND STATUTORY VIOLATIONS CASTING THE ELECTION INTO DOUBT.

1. It Is Undisputed That At Least 14 Ballots Are Questionable.

Twenty-one ballots are at issue in this case. *See* exhs. 1-21. Eight of the 21 ballots were cast by absentee voters. *See* exhs. 1-4, 18-21. One of those ballots (from Mashpee) could not be found; however, the parties stipulated that it was cast by a 3rd Barnstable District absentee voter and that it improperly listed the 5th Barnstable District race. *See* exh. 21. The remaining 13 ballots were cast at the polls in Bourne precinct 5. They failed to list the 3rd Barnstable District race and were not disputed by Patrick at trial. *See* exhs. 5-17; trial trans. at 72. Four of those ballots were counted as blanks because they did not manifest any vote for representative. *See* exhs. 5, 9, 10, 13. The remaining 9 ballots appeared to be proper on their face, because they contained votes for state representative. However, because they listed the wrong

candidates and were intended for distribution in another precinct, they too were counted as blanks. *See* exhs. 6-8, 11,12,14-17.

In light of the evidence, this committee's determination of the present controversy must begin with the conclusion — which is not disputed by the parties — that 14 voters (13 who voted in Bourne precinct 5; 1 who voted in Mashpee) were improperly excluded from the electoral process by reason of irregularities and/or violations of law. The apparent margin of victory after the recount was only 17 votes. Therefore, if the evidence presented by Wheatley convincingly demonstrates irregularities or violations of law as to 3 or more of the remaining 7 absentee ballots, the number of irregularities will equal or exceed the apparent margin of victory, casting the result of the election into doubt and requiring that a new election be held.

2. Wheatley Has Proved That The Absentee Ballots From Falmouth And Bourne Were Cast By 3rd Barnstable District Voters.

Patrick is incorrect in his assertion that Wheatley has failed to prove, by a preponderance of evidence, that the contested absentee ballots from Bourne and Falmouth were cast by voters from the 3rd Barnstable District. Wheatley's claims do not rest on mere "naked statistical evidence", as is alleged by Patrick. Instead, there is credible, admissible evidence that the 6 absentee ballots from Bourne and Falmouth were cast by voters qualified to vote for Patrick or Wheatley. For that reason, those 6 absentee ballots should be added to the total number of questionable ballots supporting a new election in this matter, bringing the total to 20 votes.

Evidence that the 3 absentee ballots from Falmouth were cast by 3rd District voters is apparent on the face of the ballots themselves. Each ballot has a handwritten notation in its upper-right-hand corner stating the precinct from which it originated and the block of ballots within that precinct from which it was taken. *See* exhs. 2-4. Looking at those notations, it is apparent that two of the ballots were cast in precinct 9, and the third was cast in precinct 8. *See* id. Both precincts are in the 3rd Barnstable District. *See* Chapter 125 of the Acts of 2001; G.L. c. 57 § 4. It may be inferred that those notations are the result of a member of the board of registrars, at the recount, observing and certifying the origination of the ballots being protested by the candidates. *See* Mass. Gen. Laws c. 54 § 135. Significantly, those

markings are the only way to determine, after the ballots were cast, the precinct in which the absentee ballots should have been cast. The ballots were irrevocably separated from their envelopes on election day, as they should have been. *See* G.L. c. 54 § 95 (absentee ballots separated from envelopes and deposited in ballot box on election day; envelopes retained with ballots cast in election but not reunited with particular ballots).⁶ Patrick has not brought forward any evidence to contest the source or validity of those markings, which is *his* burden, and he agreed to the admission of the ballots themselves at trial.⁷ The only logical conclusion is that the ballots were cast by 3rd Barnstable District voters.

Similar markings are found on the absentee ballots from Bourne. *See* exhs. 18-20. However, as to those ballots, there is even stronger evidence that they were cast by 3rd Barnstable District voters. The absentee ballots are substantially the same as the regular ballots which, indisputably, are known to have been cast in Bourne precinct 5. *See* exhs. 6-8, 11, 12, 14-17. Both sets of ballots (regular and absentee) purport on their face to be from Bourne precincts 1-3, and list the 2nd Plymouth District race for state representative. Both groups of ballots contain votes for a candidate for state representative, but the candidate of choice was neither Patrick nor Wheatley, because their names were not listed on the ballots.⁸ Yet, each of the ballots contains an endorsement by the Town Clerk, Linda Marzelli, stating that the ballots were "called as a blank" and "reaffirmed as a blank by Registrars". Thus, there is evidence that two sets of election officials in Bourne reviewed the ballots and made no distinction between the irregular absentee ballots and those cast normally in Bourne precinct 5. The parties agree that the regular ballots were handed out to voters improperly at Bourne precinct 5, and do not dispute that they therefore were improperly counted as blanks, even though they contained votes.

Where there is evidence of two substantially similar sets of circumstances, evidence as to one set of circumstances may be admitted to

⁶ No adverse inference should be drawn from Wheatley's alleged "failure" to inspect absentee ballot envelopes at the recount, because the envelopes already had been separated from the absentee ballots on election night and thus any related evidence supporting the connection between the envelopes and the ballots was lost forever. *See* e.g. *Lucas on Evidence*, 6th ed. at § 5.10. Wheatley should not be prejudiced by those circumstances.

⁷ The only evidence offered on the point by Patrick is the opinion testimony of Mr. Koutoujian, who was not properly qualified as an expert at trial and had no knowledge as to the actual source of the Falmouth ballots.

⁸ Significantly, five of the regular ballots and all three absentee ballots contained votes for the Republican candidate in the 2nd Plymouth District race, Susan Williams Gifford.

prove conditions as to the other set. *See Carter v. Yardley*, 319 Mass. 92, 94 (1946) (evidence that other users of defendant's perfume suffered skin irritation after applying product admitted to show probability that plaintiff's injury was caused by perfume). Here, especially because there is no other evidence upon which either party could rely to prove the actual source of the absentee ballots, the similarity between the absentee and normal ballots from appropriate precincts in Bourne compels the conclusion that those votes were cast by voters in the 3rd Barnstable District. *See id.*

3. Wheatley's Burden is Only to Prove a Doubtful Result.

Given the evidence concerning the absentee ballots, it is apparent that at least 17 and perhaps as many as 20 ballots are questionable. If so, a new election is **required**. It is important to note that Wheatley's burden of proof herein is only to raise a question as to the outcome of the election that is sufficient to set the election aside and order a new vote. *See e.g. McCavitt*, 385 Mass. at 850. The majority contends that in a prior case, *Chmura v. Mullins*, a single justice of the SJC decided not to order a new election in a state representative race, despite irregularities similar to those found here. The majority contends that the single justice's decision was based on another case *McRobbie v. Registrars of Voters of Ipswich*, 322 Mass. 530, 533 (1948), which required a showing that illegal votes changed the result of the election, not just that illegal votes were received. However, what the majority fails to acknowledge is that *McRobbie* was overruled by *McCavitt v. Registrars of Voters of Brockton*, 385 Mass. 833, 850 (1982), and that the showing required of Wheatley and other plaintiffs therefore was changed. By showing that the apparent margin of victory has been eclipsed by 17 or more instances of irregularities and violations of statute, Wheatley has sustained his burden. A new election is the only way to remedy those errors and to manifest the true intent of the voters.

C. THE COMMITTEE SHOULD NOT BASE ITS DECISION ON THE DOCTRINE OF LACHES BECAUSE THAT DOCTRINE IS UNAVAILABLE TO PATRICK IN THIS CASE.

Patrick has argued that Wheatley's claims are barred by the doctrine of laches because he waited until December 18, 2002 to file a complaint within the Superior Court. However, that argument fails

because the doctrine of laches is inapplicable to the statutory claims that served as the basis for the Court's favorable decision. As explained in *Srebnick v. Lo-Law Transit Management, Inc.*, 29 Mass. App. Ct. 45; 557 NE2d 81(1990):

A judge may find as a fact that laches exists if there has been unjustified, unreasonable, and prejudicial delay in raising a claim. Laches is available, if affirmatively pleaded, as a defense to a claim that is equitable in nature. It is not generally available as a defense to a legal claim. As long as there is no statute of limitations problem, unreasonable delay in pressing a legal claim does not, as a matter of substantive law, constitute laches. (*Internal citations omitted*).

Here, there is no contention that Wheatley missed any statute of limitations relating to his election law claims, which are statutory and therefore legal in nature. Also, it is questionable whether Wheatley's claim was ripe before December 18, 2002 because the statutory violations he alleged had not yet caused him damage; a certification of the election results had yet to be made.⁹ In any event, any delay by Wheatley in filing his Complaint was mere days in duration and therefore cannot be said to have resulted in any prejudice. As a result, the committee should ignore Patrick's laches argument and should not factor it into its analysis of this matter.

D. THE QUESTION OF WHETHER PATRICK WAS DEEMED A "SUCCESSFUL CANDIDATE" IS OF NO CONSEQUENCE TO THE HOUSE'S JURISDICTION IN THIS MATTER.

Patrick's attorneys insist that Patrick was a "successful candidate" as of December 18, 2002 and that the courts therefore forfeited jurisdiction over this matter. However, that argument should be disregarded. First, the assertion that Patrick was a "successful candidate" assumes that there was a valid election, which is the very proposition that Wheatley disputes. Second, there is not any language in art. 10 that relates to "successful candidates" and the House's power with respect to them. Third, the certificate that was issued to Patrick specifically contemplates that factors might develop that would

⁹ It should be noted that Wheatley pursued the first appropriate step of requesting a recount in this matter on November 13, 2002, long before he petitioned the Court for relief and one day before Patrick requested a recount.

adversely affect his certification, as it states only that he “appears” to be elected. Significantly, that determination was made before anyone (either the Court or the House) had an opportunity to investigate the circumstances surrounding the election.

II. IF THE HOUSE ASSUMES RESPONSIBILITY FOR JUDGING THIS ELECTION, IT MUST EXERCISE THAT POWER RESPONSIBLY AND CONSISTENT WITH PRINCIPLES OF CONSTITUTIONAL LAW AND POPULAR ACCOUNTABILITY.

Assuming *arguendo* that the House has authority to decide this matter and that it asserts its jurisdiction, the House is compelled to reach the same conclusion as the Court; that is to say, the House must order that a new election be held forthwith between Patrick and Wheatley. Any result other than the ordering of a new election is impossible because the House’s powers, though potentially very broad, are not without limits. First, the House cannot take any action that otherwise offends the Constitution. *See* Const. Pt. 1 c. 1 § 1 art. 4. Second, the activities of the House with respect to elections customarily have been governed by the rule of law. *See* 6 Op.Atty.Gen. 358 (1922). Third, and perhaps most importantly, the House is accountable to the people for the actions that it undertakes. All of these factors weigh heavily in favor of a new vote.

A. THE HOUSE CANNOT VIOLATE THE CONSTITUTION BY SEATING A REPRESENTATIVE WHO WAS NOT ELECTED POPULARLY.

Notwithstanding any issues of jurisdiction, it would be unconstitutional for the House to ignore the Court’s order for a new election and seat Patrick as a full-term representative, despite election irregularities and failures, because the House does not have authority to divest the citizens of the Commonwealth of their right to elect their own representatives popularly.

The Massachusetts Constitution is replete with provisions that solidly preserve the rights of citizens to elect their own government officials. *See* Const., *Declaration of the Rights of Inhabitants of the Commonwealth* at Art. 9 (“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 . . .”). Legislative power is originally invested in the people, not the legislature. *See id.* at Art. 5 (“All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive or judicial, are their substitutes and agents, and are at all times accountable to them . . .”). Indeed, popular representation is the very basis for the formation of the House. *See* pt. 1, c. 1, § 3, art. 1 (“There shall be, in this Commonwealth, a representation of the people, elected, and founded upon the principle of equality.”) Moreover, the Constitution specifically mandates that “every member of the House of Representatives shall be chosen by written vote . . .” *See* Const. pt. 2, c. 1, § 3, art. 3.

To the extent that the House might take it upon itself to seat Patrick without obtaining an accurate sense of the electorate as to their choice of representation, it would impermissibly wrest the power of election from the people and thereby violate the Constitution. It is axiomatic that no action taken by the House can violate the Constitution. *See* Const. Pt. 1 c. 1 § 1 art. 4 (“full power and authority are hereby given and granted to the general court, from time to time, to make, ordain and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of the Commonwealth, and for the government and ordering thereof . . .”). Even the House’s authority to judge elections is subject to overriding principles of the Constitution. *See Opinion of the Justices to the Senate*, 375 Mass. 795, 810 (1978) (legislative authority to regulate the process of elections “whether exercised by the General Court or by the people directly, must be exercised consistently with the protections of Art. 9 of the Massachusetts Declaration of Rights . . .”).

Thus, whatever the action that the House might take, it must act consistently with the people’s right to vote, which will be undermined if the House does anything short of ordering that a new election be held. The majority’s recommendation should not be followed.

B. IN ALL CASES, THE HOUSE MUST FOLLOW THE RULE OF LAW.

No matter how broad the House’s powers are, the House ordinarily is governed by the rule of law in all of its undertakings, including the

judging of the election and qualification of its members.¹⁰ The Attorney General has consistently stated that principle whenever he has interpreted the House's powers to judge elections under art. 10, as follows:

The decision of the House as to the validity of an election to the House cannot be reviewed by any other tribunal. Indeed, the Legislature cannot constitutionally delegate to the judiciary department power to hear and determine the question. *Dinan v. Swig*, 223 Mass. 516. **But while the power of the House over the subject is absolute, it may be proper to add that the House of Representatives has been accustomed in such cases to follow the rules of law.**" 6 Op. Atty. Gen. 214, 215, 358, 359-60 (1922); 1 Op. Atty. Gen. 3, 8 (1922) (*emphasis added*).

Support for the proposition is also founded in the fact that the House's power to judge the qualification of its members may be exercised not only when a member is seated, but also when a member is to be removed from office. Undoubtedly, there are strict procedures that must be followed regarding the expulsion of a member of the House. Since the same Constitutional provisions guide both circumstances, the procedures that the House might establish to determine if a new election should be held should be every bit as formal and extensive as those that would be used in removing a member from office. Finally, the standards developed by the House to control its consideration of this matter should serve as good precedent for future occasions.

1. The Rule of Law Compels the House and Court to the Same Conclusion.

Under Massachusetts law, a new election *must* be held whenever there are irregularities or statutory violations that place the result of the election in doubt. *See McCavitt v. Registrars of Voters of Brockton*, 385 Mass. 833, 850 (1982) ("Whenever the irregularities or illegality of [an] election is such that the result of the election would be placed in doubt, then the election must be set aside and the judge must order a new election").¹¹ The irregularities and violations

¹⁰ Patrick's attorney admitted at hearing that the House ordinarily must follow the rule of law, and that the "rule of law" may be interpreted to mean Mass. Gen. Laws c. 50-57. See Hearing Transcript at 64-67.

¹¹ Patrick distinguishes the *McCavitt* case, and claims that Wheatley has failed to satisfy his burden of proof, on the basis that he has shown no more than that "mathematical chances somewhat favor the proposition" that the

must be proved to "violate the substantive end for which the election was held". See *Citizens for a Referendum Vote v. City of Worcester*, 375 Mass. 218, 219 (1978), quoting *Swift v. Registrars of Voters of Quincy*, 281 Mass. 271, 276, 278 (1932). Once such violations are found, the calling of a new election is *compulsory*. See *Rizzo v. Board of Election Commissioners*, 403 Mass. 20, 21 (1988) ("if there is a realistic possibility that the statutory violation influenced the outcome of the election, the election cannot stand"). See also *Memorandum of Decision* at 3-5. The paramount concern is that of resolving disputes in favor of voters. See *McCavitt*, 385 Mass. at 837.

In the *Wheatley* case, the Superior Court considered the evidence before it and found that there were not less than three statutory violations that occurred and which required a new election. *Id.* First, the court found a violation of G.L. c. 54 § 41, which requires that ballots contain the names of the candidates for election.¹² Second, the Court found that the town clerks in the several towns did not deliver proper ballots before the opening of the polls, as required by G.L. c. 54, § 60.¹³ Third, the Court found that the delays in voting and lack of ballots violated laws requiring that the polls remain open for a minimum of 13 hours.¹⁴

The Court was particularly persuaded that many of the violations occurred in Wheatley's home town (where he won by a 2-1 margin over Patrick) and that the delay in voting happened at a busy time at the polls. See *Memorandum of Decision* at 3, 5. The Court also found that the number of violations was more than enough to realistically have influenced the outcome of the election in favor of Wheatley. See *id.* at 5. On that basis, the Court ordered a new election.

eight absentee ballots containing the Second Plymouth race were cast by Third Barnstable District voters. That argument is flawed for three reasons. First, Wheatley has demonstrated sufficient evidence for the Court to conclude that the result of the election is *in doubt*. The cases uniformly hold that "whenever the irregularity or illegality of the election is such that the result of the election would be placed in doubt, then the election must be set aside." See *McCavitt*, 385 Mass. at 850. Second, it would be impossible for Wheatley to determine the identity of the absentee voters, since the ballot envelopes were irrevocably separated from the ballots on election night (before the recount was requested) and because it is impossible to ask absentee voters how they would have voted. See *id.* at 848. Third, *McCavitt* suggests that Wheatley's Complaint, alone, is sufficient to allow him to challenge the election. See *id.* at 840. Of course, the only true way to ascertain the voters' intent is to hold a new election, which is what the House should do here.

¹² G.L. c. 54, § 41 states, in relevant part, "ballots for the use of voters in a voting precinct, polling place or town shall contain the names of all candidates duly nominated for election therein."

¹³ G.L. c. 54, § 60 states, in relevant part, "the city or town clerk, on the day of every state or city election, before the opening of the polls, shall transmit to the election officers of each polling place therein, all things mentioned in the preceding section which have been provided in the polling place."

¹⁴ See G.L. c. 54, § 64 (polls may be open as early as 15 minutes before 6:00 a.m., and shall be open not later than 7:00 a.m., and shall be kept open at least 13 hours).

The majority of the special committee recommends that the House pay no more than simple lip service to the rule of law, without factoring its weight into recommendations being made to the House. *See* Majority Report at 11. The minority's recommendation is otherwise. The consequences of following the rule of law are clear: to the extent that the Superior Court was guided by the rule of law in finding that statutory violations and irregularities compel a new election, the House must reach the same conclusion by considering the same evidence and legal rules. The special committee must recommend that a new election be held forthwith.

C. REGARDLESS OF WHAT ACTION THE HOUSE TAKES, IT MUST MAKE A DECISION THAT IS CONSISTENT WITH ITS ACCOUNTABILITY TO THE PEOPLE.

The Massachusetts Constitution is adamant that, in all cases, the House of Representatives and the rest of the government must be accountable to the people. *See* Const., *Declaration of the Rights of Inhabitants of the Commonwealth* at Art. 5 ("All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive or judicial, are their substitutes and agents, and are at all times accountable to them . . .").

The *Dinan* opinion, for its discussion about the power of the House to judge its own elections, recognized the accountability of the House as a possible (and perhaps potent) constraint on the House's power. As the SJC said, "only its sense of self respect and duty to the whole Commonwealth to purge itself of a member unworthy of his office would impel it to pay heed to the [Court's] decree." *Dinan*, 223 Mass. at 518.

If this matter is acted upon by the House, principles of accountability require that the House, in its discretion, choose to exercise its powers prudently, respectfully and in such a way that reflects the will and intent of the people (as represented by the electorate). The only way for the House to do so is to order a new vote along the guidelines suggested by the Court, and to seat the winner of that contest.

D. A NEW VOTE SHOULD BE ORDERED ACCORDING TO GL c. 54 § 141.

Assuming that the House assumes jurisdiction, it should order a new vote according to Mass. Gen. Laws c. 54 § 141. The provisions of that statute are as follows:

Upon a vacancy in the office of representative in the general court or upon failure to elect, the speaker of the house of representatives shall issue precepts to the aldermen of each city and the selectmen of each town comprising the district or any part thereof, appointing such time as the house of representatives may order for an election to fill such vacancy; provided, that if such vacancy occurs during a recess between the first and second annual sessions of the same general court, the speaker may fix the time for an election to fill such vacancy. All such elections shall be held on a Tuesday. Upon receipt of such precepts, the aldermen or the selectmen shall call an election, which shall be held in accordance with the precepts.

The House should adopt an Order along those lines in this case, such that a new election will be held between Patrick and Wheatley forthwith.

The majority argues that the House is powerless to order a new election in the absence of a finding that there is a failure to elect. *See* Majority Report at 10. However, the majority's report does not justify such a finding because, incredibly, it ignores all of the evidence presented by the parties as to election irregularities. The House cannot make a credible decision in this matter without considering all of the evidence and factoring it into its judgment, as the court did. Having reviewed such evidence, the minority is convinced that voting irregularities (as found by the court) clearly constitute a failure to elect a representative in the 3rd Barnstable District. As such, the House is empowered to order the Speaker to issue precepts for a new election. Indeed, given the weight of the evidence, the issuance of such an order is compulsory.

CONCLUSION

Due to palpable irregularities and statutory violations during the 3rd Barnstable District election process, as described above, and for the foregoing legal reasons, the Special Committee on Elections should report and recommend that the House either (1)(a) allow the ruling by the Superior Court to stand, (b) abstain from further action in this matter and (c) abide by the determination of the new election ordered by Judge Connon, or (2)(a) certify the question of its jurisdiction to the Supreme Judicial Court and, if jurisdiction is found to be proper, (b) issue the following order:

Ordered, That the Speaker issue a precept giving notice that a vacancy exists in the membership of the House from the 3rd Barnstable District, and appointing a time for an election to be held in said district between Matthew C. Patrick and Larry F. Wheatley (only) for the purpose of filling that vacancy.

Respectfully submitted,

GEORGE N. PETERSON, JR.

Member, Special Committee on Elections

House Minority Whip

COMMONWEALTH OF MASSACHUSETTS

HOUSE OF REPRESENTATIVES

The State House, Room 124

Boston, MA 02133

(617) 722-2100

Dated: March 18, 2003

Appendix C

The Commonwealth of Massachusetts

In the Year Two Thousand and Three.

RESOLUTIONS RELATIVE TO DECLARING THAT MATTHEW C. PATRICK WAS
DULY ELECTED REPRESENTATIVE TO THE GENERAL COURT.

1 *Resolved*, That Matthew C. Patrick of Falmouth was duly
2 elected the Representative to the General Court from the Third
3 Barnstable District in the election held on November 5, 2002, and
4 that he is entitled to and is hereby given the seat allocated for that
5 district now occupied by him.

ATTACHMENT D

1084CV04630 Alicea v Southbridge, Registrars of Voters et al

- Case Type:
Administrative Civil Actions
- Case Status:
Closed
- File Date
11/29/2010
- DCM Track:
X - Accelerated
- Initiating Action:
Other Administrative Action
- Status Date:
12/10/2010
- Case Judge:
- Next Event:

All Information Party Event Docket Disposition

Party Information

Alicea, Geraldo
- Plaintiff

Alias

Party Attorney

- Attorney
- McDermott, Jr., Esq., William A
- Bar Code
- 330820
- Address
- Sullivan and McDermott
1988-1990 Centre Street
West Roxbury, MA 02132
- Phone Number
- (617)323-0213

[More Party Information](#)

Town of Southbridge, Registrars of Voters
- Defendant

Alias

Party Attorney

- Attorney
- Caprera, Esq., Robert G
- Bar Code
- 073120
- Address
- Caprera and Caprera Law Office
32 Everett St
Southbridge, MA 01550
- Phone Number

• (508)764-3297

[More Party Information](#)

William F. Galvin, Secretary Commonwealth of Massachusetts
- Defendant

Alias

Party Attorney

[More Party Information](#)

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/08/2010 02:00 PM	Civil C		Hearing on Order of Notice		Not Held
12/08/2010 02:00 PM	Civil G		Hearing on Order of Notice		Held as Scheduled

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/29/2010	Complaint filed	1	
11/29/2010	Origin 1, Type E99, Track X.		
11/29/2010	Civil action cover sheet filed (n/a)	2	
11/29/2010	Plaintiff Geraldo Alicea's MOTION for appointment of special process server D.H.R. & Associates, Inc.- ALLOWED (Lauriat, J) Dated 11/29/10	3	
12/08/2010	Motion of Peter J. Durant to intervene w/o opposition	4	
12/09/2010	Motioin of Intervening deft. Peter J. Durant for change of Venue ALLOWED Complaint Dismissed by reason of Forum Non Conveniens. This is without prejudice to immediate re-filing in Worcester Superior Court. parties have agreed to accept service through their counsel and to accept same pleadings, re-dated. Findings stated on Record this day DISMISSED (McIntyre, J.).dated 12/8/10 Notice sent 12/9/10	5	
12/10/2010	JUDGMENT The action is Dismissed without prejudice to immediate Re-Filing in Worcester Superior Court entered on docket pursuant to Mass R Civ P 58(a) and notice sent to parties pursuant to Mass R Civ P 77(d)	6	

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Dismissed	12/10/2010	

ATTACHMENT E

1085CV02624 Alicea v Southbridge Registrars of Voters et al

- Case Type:
Administrative Civil Actions
- Case Status:
Closed
- File Date
12/10/2010
- DCM Track:
X - Accelerated
- Initiating Action:
Other Administrative Action
- Status Date:
12/10/2010
- Case Judge:
- Next Event:

All Information Party Subsequent Action/Subject Event Docket Disposition

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/14/2010	Pre-trial memorandum of Deft Secretary of the Commonwealth's (Scanned Image)		
12/10/2010	Verified Complaint & civil action cover sheet filed	1	Image
12/10/2010	Origin 1, Type E99, Track X.		
12/10/2010	Filing fee paid in the amount of \$275.00 including \$15.00 surcharge and \$20.00 security fee.		
12/10/2010	Plaintiff's Memorandum of Law in support of Motion for speedy completion of Discovery and Trial	2	Image
12/10/2010	Complaint (P#1) Short Order of Notice to Issue, returnable on Monday 12/13/2010 at 2:00pm in Courtroom 17. (Richard T. Tucker, Justice). Notices mailed 12/10/2010		
12/13/2010	Peter J Durant's MOTION to Intervene as a matter of right for Intervenor Defendant and counterclaim plaintiff	3	
12/13/2010	Motion to Intervene as a Matter of Right (Paper #3)		Image
12/13/2010	Motion (P#3) ALLOWED (Richard T. Tucker, Justice) Notices mailed 12/14/2010		
12/13/2010	Atty Robert G Caprera's notice of appearance for Town of Southbridge Registrars of Voters filed in court		
12/13/2010	Atty Tori T Kim's notice of appearance for William F Galvin Secretary of the Commonwealth of MA filed in court		
12/13/2010	Atty Frank L McNamara Jr's notice of appearance for Peter J Durant filed in court		
12/13/2010	SERVICE RETURNED of Summons and Order of Noitce re: Town of Southbridge Registrars of Voters(Defendant) 12/13/10 accepted by deft. counsel Atty. Robert G. Caprera filed in court	4	Image
12/13/2010	SERVICE RETURNED (order of notice): Peter J. Durant 12/13/10 (no service) filed in court	5	Image
12/13/2010	SERVICE RETURNED: Summons and Order of Notice re:William F Galvin Secretary(Defendant) 10/13/10 service to Assistant Attyoney General Maryanne Reynolds filed in court	6	Image
12/31/2010	ANSWER: William F Galvin Secretary(Defendant)	7	Image
01/07/2011	ANSWER: Town of Southbridge Registrars of Voters(Defendant)	8	Image
01/07/2011	ANSWER: of deft. Registrars of voters of the town of Southbridge to counterclaim of Intervenor deft/counterclaim plff. Peter J. Durant	9	Image
01/14/2011	(Faxed)Plff's Trial Brief	10	Image
01/14/2011	(Faxed)Plff's list of Trial Witnesses	11	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/14/2011	(Faxed) Plff's Requests for rulings of law and findings of fact	12	Image
01/14/2011	(Faxed) Plff's Motion in Limine	13	
01/14/2011	Motion in Limine (Paper #13)		Image
01/14/2011	Pre-trial memorandum of Deft Secretary of the Commonwealth's		
01/14/2011	Pre-trial memorandum of Intervenor/deft and counterclaim plff Peter J Durant		
01/14/2011	Pre-trial memorandum of Deft Secretary of the Commonwealth's Pre-trial memorandum of Intervenor/deft and counterclaim plff Peter J Durant (Scanned Images)		Image
01/14/2011	Deft Town of Southbridge Registrars of Voters's MOTION in limine to to that no Trial counsel shall be allowed to examine any witness	14	
01/14/2011	Witness list of Deft, Secretary of the Commonwealth	14.1	Image
01/14/2011	Request of Plff for rulings of law and findings of fact filed in court	14.2	
01/14/2011	Trial brief filed by Town of Southbridge Registrars of Voters	14.3	Image
01/14/2011	ANSWER and Counterclaim: Peter J Durant (Defendant/intervenor)	14.4	Image
01/14/2011	COUNTERCLAIM of Intervenor/Defendant Peter J Durant v Geraldo Alicea		
01/14/2011	ANSWER by Geraldo Alicea to COUNTERCLAIM of Intervenor/Defendant, Peter J Durant	14.5	
01/14/2011	Deft Town of Southbridge Registrars of Voters's MOTION in limine to to that no Trial counsel shall be allowed to examine any witness (Paper #14) Request of Plff for rulings of law and findings of fact filed in court (Paper #14.2) ANSWER by Geraldo Alicea to COUNTERCLAIM of Intervenor/Defendant, Peter J Durant (Paper #14.5)		Image
01/18/2011	Agreed-upon list of trial Exhibits and list of exhibits to be marked for identification filed in court		
01/18/2011	Atty Lauren F Goldberg's notice of appearance for Town of Southbridge Registrars of Voters filed in court		
01/18/2011	Motion (P#13) ALLOWED (Richard T Tucker, Justice) Notices mailed 1/31/2011		
01/18/2011	Motion (P#14) No action taken, reserved. (Richard T Tucker, Justice) Notices mailed 1/31/2011		
01/28/2011	Post Trial Memorandum of Law of Deft/Plf in Counterclaim Peter J Durant	15	Image
02/01/2011	Court received Plaintiff's Reply Brief to Post-Trial Memorandum	17	Image
02/01/2011	Plaintiff's MOTION to Request Leave to file a response to post-trial memorandum of law filed by intervenor and plaintiff in counterclaim.	16	Image
02/01/2011	Motion (P#16) Assuming that the attached reply brief in plaintiff's response, the motion is ALLOWED. (Richard T. Tucker, Justice). Notices mailed 2/1/2011		
02/01/2011	FINDINGS OF FACT, RULING OF LAW AND ORDER OF JUDGMENT; The election is a tie vote. Two ballots were not counted and one eligible voter was not able to vote. Accordingly, I find and declare the election to be in doubt and ORDER a new election pursuant to G.L. c. 56, s 59; GL c.54, s171. (see order) (Richard T Tucker, Justice) entered and copies mailed 2-1-2011.	18	Image
02/01/2011	Stipulation of Facts- see Stipulation	19	
02/01/2011	Stipulation of Facts (Paper #19)		Image
02/11/2011	Court received Deft. Secretary of the Commonwealth notice of action by House of Representatives	20	Image
01/25/2012	Declaratory JUDGMENT on Finding of the Court Nunc Pro Tunc. It is Ordered and Adjudged and Declared: that the election is a tie vote. That the election is declared to be in doubt and a new election pursuant to GL Chap 56, Sec 59; GL Chap 54, Sec 141 is ORDERED. (Tucker,J.) Entered and copies mailed 1/25/12	21	Image
01/25/2012	EXHIBITS IMPOUNDED		

ATTACHMENT F

HOUSE No. 43

The Commonwealth of Massachusetts



House of Representatives,

In the Year Two Thousand Eleven

1 *Ordered,* The special committee of the House to examine the returns of votes for
2 Representative in the several Representative Districts of the Commonwealth, reports, on the
3 residue, that the accompanying Order relative to a special election for the Sixth Worcester
4 District, ought to be adopted.

5 For the committee,

6 MICHAEL J. MORAN

7 EUGENE L. O'FLAHERTY

8 GEORGE N. PETERSON, JR.

9 On November 2, 2010, elections for Representative were held throughout the Commonwealth of
10 Massachusetts. On December 10, 2010 the Governor and Council met to examine and tabulate
11 the November 2, 2010 election results as prescribed by the Constitution and Laws of the

12 Commonwealth. The Sixth Worcester District election results were not examined or included in
13 the tabulation of results transmitted to the State Secretary under Chapter 54, Section 115 of the
14 General Laws.

15 As prescribed by Chapter 54, Section 116, the Governor and Council certify the results
16 transmitted by the State Secretary. One hundred and fifty nine representative districts were
17 examined and certified by the Governor and Council and the Governor issued a summons to
18 those who appeared to be elected to meet on January 5, 2011 as evidence of their qualification to
19 serve in 187th General Court. On January 5, 2011, the Secretary of the Commonwealth laid
20 before the Honorable House of Representatives the return of votes cast for Representative at the
21 election held in the Commonwealth on November 2, 2010. The House of Representatives was
22 informed by the state secretary on January 5, 2011 that the returns for the Sixth Worcester
23 District had not been certified by the Governor and Council.

24 The returns of votes for Representatives were referred to a special committee consisting of
25 Representatives Moran of Boston, O'Flaherty of Chelsea, and Peterson of Grafton to examine
26 the election results. Mr. Moran of Boston submitted an in-part report for the special committee
27 that one-hundred and fifty nine persons had been duly elected.

28 Furthermore, there was no claim of qualification to election by any candidate for the Sixth
29 Worcester District as prescribed by Chapter 3, Section 4 since the election results were in doubt
30 and contested ballots were being adjudicated in Worcester Superior Court. No decision from the
31 court was available on January 5, 2011 for review and consideration as evidence by the special
32 committee to determine a duly elected representative for the Sixth Worcester District. Therefore

33 under Amended Article LXIV of the Constitution, Geraldo Alicea of Charlton continued to
34 represent the Sixth Worcester District until a successor is chosen and qualified.

35 Upon final examination of all available evidence, the special committee concludes that the
36 election is a tie vote and that there was failure to elect a Representative for the Sixth Worcester
37 District.

38 The special committee recommendation to the House of Representatives is to declare a failure to
39 elect pursuant to Chapter 54 Section 141 of the General Laws and order a new election to be held
40 for Representative for the Sixth Worcester District. Therefore be it

41 Ordered, That the Speaker issue a precept giving notice that there was a failure to elect for the
42 Sixth Worcester District and appointing a time for an election.

43 H.R., February 10, 2011.

44 A D O P T E D

45 STEVEN T. JAMES, Clerk of the House.

Appendix H – Supplemental Memorandum
Submitted on Behalf of Kristin Kassner

GERALD A. MCDONOUGH ATTORNEY-AT-LAW

13 Hollis Street
Cambridge, MA 02140

617-529-1527
gerry@gmcdonoughlaw.com

MEMORANDUM

TO: Representatives Michael S. Day, Daniel J. Ryan, and Bradley H. Jones, Jr.,
Members of the Select Committee of the House to Examine the Return of
Votes for Certain Representative Districts

FROM: Gerald A. McDonough, Counsel for Kristin Kassner

RE: Kristin Kassner's Post-Hearing Submission

DATE: January 17, 2023

The purpose of this Post-Hearing Memorandum is to provide the Select Committee with specific statutory citations and other legal support for some of the issues that were raised during the course of the hearing. While Mr. Mirra agrees that there was no fraud in the recount, he contends that there was "human error" by the election officials in the Second Essex District. This is both disingenuous and wrong. The municipal election officials worked tirelessly to get the recount right, and they deserve nothing but thanks and gratitude for their efforts.

Moreover, for there to be any "human error," there must first be some error, and Mr. Mirra has failed to establish that there was any error of any kind, either legal or factual. By way of illustration, Mr. Mirra contends that the protested ballot where the voter filled in the oval for Mr. Mirra but also wrote in the name "Donald Trump" in the space for write-in votes should be counted as a vote for Mr. Mirra, but he is wrong as a matter of fact and of law.

- As a factual matter, while Counsel for each candidate differed at the Select Committee's hearing as to whether the write-in oval had been filled in or not, a volunteer for Mr. Mirra, who submitted an affidavit on his behalf regarding this

ballot, stated in his affidavit that “The voter also appeared to write in ‘Donald Trump’ in the write-in section of the Second Essex District State Representative race, **and the voter filled in the write-in oval.**” See Declaration of Charles Takeshan, p. 1, ¶ 4 (emphasis added). Mr. Mirra’s Counsel, therefore, was clearly mistaken about that fact. Thus, that ballot was clearly an overvote and the Board of Registrars was correct to call the ballot a blank. See G.L. c. 54, § 106 (“If a voter marks more names than there are persons to be elected to an office . . . [the] ballot shall not be counted for such office”).

- Moreover, whether the oval was filled in or not is irrelevant because write-in votes where a voter writes in a name must be counted as a write-in vote even if there is no marking next to the written-in name. The Secretary of State’s Regulations clearly state that nothing other than the name of the person is necessary to effectuate a write-in vote. See 950 CMR 52.03(10) (“voter may cast a write-in or sticker vote for a candidate whose name does not appear on the ballot for that office. The voter is not required to mark an “X” beside the name”).

Consequently, Mr. Mirra was wrong about this particular matter on both the facts and the law. Set forth below are brief responses to the issues raised by Mr. Mirra’s Counsel at the hearing, primarily to provide the Committee with further legal support for Ms. Kassner’s response to those legal issues.

The Mail-In Ballot Signatures:

There is no statutory basis for Mr. Mirra’s complaint about the mail-in ballot signatures.

Challenges to mail-in ballots, like challenges to any ballots, must be made at the time that the ballots are cast. See G.L. c. 54, § 96 (“All ballots transmitted under any provision of sections eighty-six to one hundred and three, inclusive, shall be subject to challenge when and as cast for non-compliance with any provision of sections eighty-six to one hundred and three, inclusive, or for any other reason allowed by law”). Any challenges to mail-in ballots at or after the recount, therefore, are not challenges to those ballots “when . . . cast” and are untimely.

Additionally, there is no provision in the recount statute for doing anything with mail-in ballots other than reviewing sealed, rejected mail-in ballots for error. See G.L. c. 54, § 135 (“in the case of a recount of the ballots cast for an office, the votes cast for all of the candidates for such office, including blanks cast, shall be recounted . . . and determination shall be made whether each sealed absentee ballot envelope rejected as defective should have been rejected or accepted, and the results recorded on the blank

forms provided therefor, together with the absentee ballot envelopes and applications for such absent voting ballots”).

Finally, Mr. Mirra complains that the election officials from the Second Essex District failed to compare the signatures on mail-in envelopes with voter registration cards. See Declaration of Leonard Mirra, p. 2, ¶¶ 10-13. Mr. Mirra is again incorrect about the status of the law, because there is no requirement to compare the signatures on mail-in ballot envelopes with voter registration cards, but only with mail-in ballot applications. See G.L. c. 54, § 25B(a)(14) (requirement to compare signatures on mail-in ballot envelopes with mail-in ballot applications). Moreover, applications submitted to the Secretary of State via the online portal do not even require wet signatures. See id. § 25B(a)(6).

The Spoiled Ballots from Rowley:

In Rowley, several mail-in ballots rejected by the scanner on Election Day were set aside as spoiled, even if the spoiling was due to another election contest, and those votes were not cast for other races which were unaffected by any spoiling. The recount statute, however, specifically provides for the review of spoiled ballots. See G.L. c. 54, § 135 (“in the case of a recount of the ballots cast for an office, the votes cast for all of the candidates for such office, including blanks cast, shall be recounted and all spoiled and unused ballots shall also be counted”). There was no error in counting those spoiled ballots which should have been hand counted at the end of the Election Day.

A spoiled ballot that should have been counted made a difference in the litigation involving Rep. Alicea and Rep. Durant in 2011. The following determination made by the Superior Court in that case is compelling support for the position taken by the Rowley Board of Registrars:

The Absentee Ballot in issue was rejected by the voting machine. The tabulator could not read it, presumably because the ballot contained marks read as being votes for two pairs of candidates for Governor and Lieutenant Governor when the ballot instruction required a "Vote for ONE." When ballots are mistakenly "spoiled" by a voter, the voter can return the ballot and request a replacement if the machine rejected it and did not count it. The "spoiled" ballot is then placed in the spoiled ballot envelope and the voter marks the replacement ballot and it is reinserted in the tabulator. See G.L. c. 54, § 81.

Here the absent voter was not present at the polling place and therefore was not afforded the opportunity to obtain a replacement ballot. Upon receiving this rejected ballot the Precinct 5 Clerk erred in not

segregating the ballot in a separate envelope. Alternatively a police officer could have been requested to override the tabulator's rejection so that the ballot could enter the machine and be placed in a separate compartment therein for manual counting at the end of the night. Instead, the ballot was placed in the spoiled ballot envelope and was never counted in the Election Night Tabulation.

"A voter who has cast his ballot in good faith should not be disenfranchised 'because of the failure of a ministerial officer to perform some duty imposed upon him by law.'" McCavitt, 385 Mass. at 841-42, quoting Meyer v. Keller, 376 So. 2d 636, 638 (La. App. 1979).

Applying this legal principle I find that The Absentee Ballot is a legal ballot. If the voter's intent can be determined with reasonable certainty from an inspection of the ballot recognition of that intent must be made and the vote counted. Here upon de novo review I find The Absentee Ballot manifests the intent to cast a vote for Alicea.

Alicea v. Registrars of the Voters of Southbridge, Worcester Superior Court Civil Action No. 2010-2624, pp. 7-8 (Feb. 1, 2011). For the same reasons, the decision of the Rowley Board of Registrars to count those improperly spoiled ballots should not be overturned.

The Discrepancy between number of certified and recounted ballots:

Discrepancies between the number of certified ballots and recounted ballots is far from unusual. In fact, ensuring that the number of ballots is accurately counted is a feature of recounts. And discrepancies go both way – the number of ballots in Newbury, Precinct 2 went down from the number of certified ballots – one less blank and two less votes for Kassner.

The Municipal Defendants' brief appropriately rebuts Mirra's contention – absent evidence of fraud or tampering with ballots, such events do not cast doubt on the substantive outcome of an election. See Joint Record Appendix, pp. 90-91, citing Penta v. City of Revere, 1997 WL 799478, p. 8 (Mass. Super. Dec. 23, 1997). And Mr. Mirra has publicly stated that there was no fraud in the recount.

Individual Protested Ballots:

Although Mr. Mirra filed protests on over 30 ballots, he has publicly directed his objections primarily at only two of those protested ballots. The first protested ballot, with a write-in vote for "Donald Trump," is discussed above.

The second specific ballot to which Mr. Mirra objected was one in which the voter scribbled marks rather than filled in ovals, and it is similar to the ballot in the Alicea case, where a similar marking was considered an overvote. See Alicea v. Registrars of the Voters of Southbridge, Worcester Superior Court Civil Action No. 2010-2624, p. 8 (Feb. 1, 2011). The Alicea Court noted that it looked like the voter had a tremorous hand or compromised eyesight. In this case, the scribbled markings were similar to the disputed Alicea ballot – two scribbled markings, one mostly in the oval for Mirra, and the other next to and partly in the oval for Kassner – to which one of Mr. Mirra’s affiants agrees. See Declaration of David Olds, p. 1, ¶ 5 (“the voter appeared to fill out his ballot with a tremorous hand, making discontinuous marks”). In such a case, where the voter either voted for more than one candidate, or if the voter’s choice could not be determined, the ballot could not be counted for the State Representative contest. See G.L. c. 54, § 106 (“If a voter marks more names than there are persons to be elected to an office, or if [the] choice cannot be determined, [the] ballot shall not be counted for such office”). The Ipswich Board’s decision to call the ballot a blank was the correct decision.

Appendix I – Supplemental Memorandum
Submitted on Behalf of Leonard Mirra

193RD GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

Special Committee to Examine the Returns of Votes for Certain Representative Districts

REP. LEONARD MIRRA a/k/a LENNY MIRRA,

v.

KRISTIN KASSNER

REPRESENTATIVE LEONARD MIRRA’S SUPPLEMENTAL MEMORANDUM

Executive Summary

The Special Committee has the jurisdiction and power to enter the relief Representative Leonard Mirra seeks, specifically, either to: (1) conduct a *de novo* review of the challenged ballots and declare that Rep. Mirra was the rightful winner of the Election; or (2) alternatively, hold the House cannot seat either Rep. Mirra or Ms. Kassner because the accuracy of the Election/Recount results has been placed in substantial doubt. This Committee should enter that relief because the Massachusetts Supreme Judicial Court held in *Connolly* that town election officials are required to perform their duty under Mass. Gen. Laws ch. 54, § 94; and the town election officials did not perform their mandatory duty. The law and record also show that five (5) votes should not have been counted for Ms. Kassner because the Rowley Registrars and Rowley town counsel misinterpreted the Secretary’s guidance and wrongly believed that the term “count” meant it allowed them to count *for a candidate* instead of merely counting *the number of spoiled ballots*. This error additionally supports the relief Rep. Mirra seeks here.

INTRODUCTION

On Friday, January 13, 2023, at 10:00 AM, the Special Committee (“Committee”) created by the Massachusetts House of Representatives (“House”) held a hearing (“Hearing”) on the

election for the Second Essex District State Representative seat (“Election”). At the conclusion of the Hearing, the Committee determined that the record would remain open until close of business Tuesday, January 17, 2023, and ordered that the parties submit any supplemental materials prior to the closure of the record. Pursuant to the Committee’s order, Representative Leonard Mirra hereby submits this supplemental memorandum to address key issues raised during the Hearing.

I. THE COMMITTEE AND HOUSE HAVE THE JURISDICTION AND POWER TO ENTER THE RELIEF REPRESENTATIVE MIRRA SEEKS

At this juncture, the Committee has the jurisdiction and power to evaluate the merits and accuracy of the Election and determine that either Rep. Mirra is the rightful winner of the Election, or that the Second Essex District State Representative seat is vacant. The Massachusetts Constitution provides that the “[H]ouse . . . shall be the judge of the returns, elections, and qualifications of its own member[.]” Mass. Const., Part II, ch. 1, § 3, art. 10. The Massachusetts Supreme Judicial Court (“SJC”) has explained further that the House, once it exercises its authority to determine who it may seat, has the power to adjudicate on an election and its returns. *See* Joint Record Appendix at 69–70 (Secretary Galvin’s Response Brief at 2–3).

Without waiving his rights to seek judicial relief pursuant to the broad equitable power of the courts under Mass. Gen. Laws ch. 56, § 59, or other Massachusetts law that confers jurisdiction to the courts on an election matter, Rep. Mirra acknowledges that the Committee—and by extension, the House—has broad equitable power, akin to the courts’ power provided under Section 59, to conduct a *de novo* review of the challenged ballots; amend the results of the Election/Recount; declare a winner of the Election; or determine that the seat is vacant. Mass. Const., Part II, ch. 1, § 3, art. 10; Mass. Gen. Laws ch. 56, § 59; Ms. Kassner’s Pre-Hearing Memo, Attach. C at 13.

The House has determined in the past that a Special Committee does not have the power to order a new election. *See* Ms. Kassner’s Pre-Hearing Memo, Attach. C at 13–14. This, however, does not preclude the Committee from being the judge on the Election, its returns, and whether to seat a candidate. Mass. Const., Part II, ch. 1, § 3, art. 10. Importantly, as stated by counsel for Rep. Mirra during the Hearing, Rep. Mirra is not asking for the Committee to order a new election, but rather for the Committee to either (1) conduct a *de novo* review of the challenged ballots and declare that Rep. Mirra was the rightful winner of the Election; or (2) alternatively, hold that the House cannot seat either Rep. Mirra or Ms. Kassner because the accuracy of the Election/Recount results has been placed in substantial doubt. As a consequence, and by independent operation of law, where no one is elected or seated, the House thereafter would be required to order a new election. Ms. Kassner’s Pre-Hearing Memo, Attach. C at 13 (“a new election can be ordered by the House only if there is either a vacancy, or a failure to elect a representative.”).

II. THE TOWN CLERKS’ DUTIES UNDER MASS. GEN. LAWS CH. 54, § 94, ARE MANDATORY AS BROADLY HELD IN *CONNOLLY*, AND CANNOT BE TREATED AS DISCRETIONARY AS NARROWLY PERMITTED IN *SWIFT*

The *Connolly* decision controls over *Swift*. Massachusetts election officials are required to compare the signature on a mail-in envelope with the signature on the corresponding voter registration card and/or vote-by-mail applications, and if an election official cannot determine if the signatures match, the mail-in envelope (and thus the ballot contained within it) must be rejected. Mass. Gen. Laws ch. 54, § 94 (“Section 94”). This duty is mandatory, not discretionary. *Connolly v. Sec’y of Commonwealth*, 404 Mass. 556, 569–70 (1989) (holding that ballots that do not comply with the procedural protections of Section 94 must be “Rejected as Defective” by election officials and were “facially invalid” on recount). The SJC has made this clear:

We emphasize that election officials at the level of the original ballot count have no discretion as to the statutory requirements for a valid [mail-in] ballot. Section 94

[] requires election officials at this level to enforce the procedural protections of [Mass. Gen. Laws ch.] 54 against fraud in [mail-in] ballots.

Id. There is no wiggle room. There is no leeway. There is no discretion. The mandatory actions required under Section 94 serve to protect the integrity of an election and “minimize[] the potential for conjectural votes.” *Connolly*, 404 Mass. at 570.

The *Swift* decision—decided nearly 60 years earlier than *Connolly*—does not apply and cannot undermine the reasoning and holding in the *Connolly* decision. In 1932, the SJC decided an election dispute involving the failure of the mechanisms within the ballot box to operate as they were designed to operate. *Swift v. Registrars of Voters of Quincy*, 281 Mass. 271 (1932). In an opinion confined “strictly to the facts of the case at bar,” the SJC examined the mandatory nature of “shall” in election statutes and determined that “where every human step was . . . taken as directed by the statute” and the only fault was “by a machine,” the Court would not thwart the will of the voter by rejecting a ballot on that ground. *Id.* at 281–82. At no point did the SJC in *Swift* discuss Section 94 and in no sense may that decision be read to suggest that the statutory requirements for a valid mail-in ballot and the procedural protections against fraud in mail-in voting set forth in Section 94 could be waived. *Swift*, 281 Mass. at 281 (finding only an “implied exception where as here the uncanceled ballots were due to no act of man but to the failure of a mechanism prepared with all the care prescribed by law”).

The SJC in *Connolly* made clear that none of the examples or the lines of reasoning in the *Swift* decision carry any weight with regard to Section 94. The very nature of Section 94 is to mandate that town election officials adhere to their critical role as gatekeepers for mail-in voting. *See generally Connolly*. Where, as in here, numerous signatures on mail-in envelopes did not match the signatures on the corresponding voter registration cards, town election officials abdicated their mandatory statutory duty under Section 94 by failing to reject facially invalid mail-

in envelopes. *See, e.g.*, January 11, 2023 Declaration of Leonard Mirra ¶ 10 (“After inspection of the mail-in envelopes and corresponding voter registration cards in five of the six towns in the Second Essex District, my legal counsel, team, and I discovered a substantial number of signatures did not match.”); ¶ 12 (“On information and belief, the town clerks and election officials for the towns within the Second Essex District failed to reject ballots for voter-signature irregularities, constituting a[n abdication] of the duty required of them [Section] 94.”). Accordingly, the failure of the Second Essex District town election workers to perform their mandatory duty under Section 94 casts substantial doubt on the accuracy of the Election results.¹

III. A TOWN’S BOARD OF REGISTRARS CANNOT UNSPOIL BALLOTS AND SUBSEQUENTLY COUNT THE VOTES FOR CANDIDATES

There is no Massachusetts authority that allows for town registrars at a recount to count votes on ballots that were marked as spoiled. Mass. Gen. Laws ch. 54, § 81 (“If a voter spoils a ballot, he may obtain two others, one at a time, upon returning each spoiled one, and all ballots so returned shall immediately be marked by an election officer ‘Spoiled’”). The Rowley Registrars and Rowley town counsel misinterpreted the Secretary’s guidance and wrongly believed that the term “count” meant it allowed them to count *for a candidate* instead of merely counting *the number of spoiled ballots*. Joint Record Appendix at 28 (Secretary’s Recount Guide at 6) (“The recount includes counting all ballots cast for all the candidates for the office, blanks cast, all spoiled and unused ballots, and absentee ballot envelopes and applications.”). No other town counted spoiled ballots as votes for candidates.

¹ Given that mail-in voting is now widespread in Massachusetts as a result of the Covid-19 Pandemic, the Committee and the House have the opportunity, in conjunction with the Office of the Secretary of the Commonwealth, to insist upon adherence to mandatory statutory duties—duties put in place by this Legislature—and “emphasize” the defenses against the “potential for conjectural votes” and “protect[] . . . against fraud” in mail-in voting. *Connolly*, 404 Mass. at 569–70. As the saying goes, “never let a good crisis go to waste.”

Nor is there anything in the Title 950 (Office of the Commonwealth of Massachusetts) of the Code of Massachusetts Regulations to suggest that a spoiled ballot may be counted *for a candidate*. What Title 950 requires is for town election officials to count the spoiled ballots simply to determine how many spoiled ballots they have. *See* 950 CMR 47.09; 950 CMR 47.10; 950 CMR 52.03; 950 CMR 52.04; 950 CMR 53.04; 950 CMR 54.06. This distinction is critical. Accordingly, the five (5) votes “unspoiled” by the Rowley Registrars should not have been counted for Ms. Kassner.

Dated: January 17, 2023

Respectfully submitted by,

/s/ Michael J. Sullivan

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Appendix J – Transcript

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COMMONWEALTH OF MASSACHUSETTS

Special Committee of the House to Examine the Returns of Votes
for Certain Representative Districts

SPECIAL COMMITTEE MEMBERS

Representative Michael S. Day, Chair,

31st Middlesex District

Representative Daniel J. Ryan,

2nd Suffolk District

Representative Bradley H. Jones, Jr.,

20th Middlesex District

Date of Hearing: Friday, January 13, 2023

Time: 10:00 a.m.

Location: Room A2, Massachusetts State House



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14 Representing: Leonard Mirra

15

16 Gerald McDonough, Esq.

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20 gerry@gmcdonoughlaw.com

21 Representing: Kristin Kassner

22 ALSO PRESENT:

23 Leonard Mirra, State Representative Candidate, Kristin Kassner,

24 State Representative Candidate, General Audience

1 P R O C E E D I N G S

2
3 REPRESENTATIVE DAY: Good morning,
4 everyone. We're going to convene this Special
5 Committee of the House to examine the returns of
6 certain representative districts. Today is
7 January 13, 2023, approximately 10:00 in the
8 morning. We're here in Room A2 of the
9 Massachusetts State House.

10 I am Representative Michael Day, honored
11 to be the Chair of this Special Committee. To my
12 right is minority leader Representative Brad
13 Jones of the 20th Middlesex District. To my
14 left is the other member of the Special
15 Committee, Chairman -- I'm sorry, Representative
16 Daniel Ryan, of the 2nd Suffolk.

17 We are here today pursuant to a charge
18 from the House itself. This hearing -- we will
19 run over some preliminary matters. This hearing
20 is being recorded, it's also being live streamed,
21 close captioned, and a transcript is being
22 produced by a stenographer who is present with us
23 as well. I will review the ground rules of the
24 Committee, agreed to by the Committee and

1 transmitted to the relative parties.

2 Opening statements are going to be
3 welcomed by counsel or for the -- or by the
4 candidate, followed by questions by committee
5 members themselves. This hearing is open to the
6 public. Obviously, we're conducting it as we do
7 with other hearings, any outbursts or political
8 demonstrations are not welcome, and will not be
9 tolerated.

10 So we now turn to the matter before us
11 this morning. The House convened on January 4,
12 2023, in accordance with the Constitution of the
13 Commonwealth. We received a communication from
14 the Secretary of the Commonwealth regarding the
15 returns of the November 8, 2022 elections, for
16 representatives in general court.

17 The order was unanimously adopted by the
18 House to form a Special Committee of the House to
19 examine the returns. This is the House's custom,
20 and is consistent with the provision of Article
21 10 of our State Constitution. The Speaker and
22 members appointed, Representative Ryan, Jones,
23 and myself, to serve on that Committee, which is
24 why we're here today.

1 Each member of this Committee then
2 signed an order, which was unanimously adopted by
3 the House. At that swearing in, we found that
4 158 of our colleagues were duly elected and ought
5 to be sworn in by the Governor.

6 In two cases, the 2nd Essex and the 1st
7 Middlesex, we determined that further review was
8 appropriate. In the 2nd Essex, according to
9 Article 64, as amended by Amendment 82 to the
10 Constitution of the Commonwealth, Representative
11 Mirra serves in a holdover capacity from last
12 session until the House determines how to move
13 forward. The 1st Middlesex seat remains vacant
14 currently. We're here to hold a hearing on the
15 2nd Essex District challenge this morning.

16 REPRESENTATIVE RYAN: Mr. Chairman, I
17 move that the communication of the Secretary of
18 the Commonwealth issued to the House on January
19 4th, be entered into the record.

20 REPRESENTATIVE DAY: Representative Ryan
21 offers a motion to enter the communication in the
22 record. All in favor? Seconded by
23 Representative Jones. Any opposed? Okay, motion
24 passes. Communication will be entered into the

1 record.

2 REPRESENTATIVE RYAN: Mr. Chairman, I
3 further moved that the order you referenced
4 established in this Special Committee be entered
5 into the record.

6 REPRESENTATIVE DAY: Okay. Seconded by
7 Representative Jones. All in favor? Any
8 opposed? That -- that shall also be moved into
9 the record.

10 REPRESENTATIVE RYAN: Mr. Chairman, I
11 move that the order of the Special Committee of
12 the House, seating 158 of our colleagues be
13 entered into the record.

14 REPRESENTATIVE DAY: Second by
15 Representative Jones. All in favor? Aye. None
16 opposed. That motion is passes as well. That
17 order shall be entered into the record.

18 Prior to this publicly noticed hearing,
19 the Special Committee requested any documentation
20 from counsel or the candidates they wish to offer
21 to us in support of their claims. We received a
22 joint records appendix on behalf of both
23 Representative Mirra and Ms. Kassner.

24 REPRESENTATIVE RYAN: Mr. Chairman, I

1 moved that the joint records Appendix be entered
2 into the record.

3 REPRESENTATIVE DAY: Seconded by
4 Representative Jones. All in favor? Aye. None
5 opposed. That joint records appendix will also
6 be entered into the formal record.

7 And additionally, to that joint
8 appendix, the Committee received the following
9 documents from Attorney Sullivan on behalf of
10 Representative Mirra, a supplemental affidavit of
11 Leonard Mirra, an affidavit of Cynthia Russes
12 with an Exhibit attached A entitled Rowley
13 Recount Minutes, an affidavit of Sandra Capo, an
14 affidavit of Charles Tekesian, an affidavit of
15 David Olds, and an affidavit of Glenn Kemper. We
16 have a motion to move those into the record.

17 REPRESENTATIVE JONES: Second.

18 REPRESENTATIVE DAY: Second. All in
19 favor Aye. All right. Those -- those will be
20 moved in as well.

21 And then, finally, the committee also
22 received the following documents from Attorney
23 McDonough on behalf of his client, Ms. Kassner,
24 Memorandum dated January 12, briefing the

1 committee on Ms. Kassner's case, along with
2 attach Exhibits A through F, inclusive. Do we
3 have a motion to move that into the record?

4 REPRESENTATIVE JONES: So moved.

5 REPRESENTATIVE DAY: All right. Second.
6 Those will be moved into the record as well. I
7 believe that is the entirety of the materials
8 submitted to the Special Committee documentary --
9 documentation-wise. And so we will move all
10 those into the official record.

11 And at this time, I will call forward
12 representative Leonard Mirra and his counsel for
13 opening remarks. And I just asked you to
14 identify yourselves for the record and you're
15 welcome to proceed.

16 REPRESENTATIVE MIRRA: State
17 Representative Lenny Mirra.

18 MR. SULLIVAN: Good morning, Mr. Chair,
19 Representative Ryan and Representative Jones.
20 Michael Sullivan, I'm joined by Christopher
21 Amrhein on behalf of representative Lenny Mirra.
22 Let me proceed. I have a very brief opening.

23 REPRESENTATIVE DAY: Go right ahead,
24 Counsel.

1 MR. SULLIVAN: Thank you. First, I want
2 -- I want to recognize the Speaker and the House
3 of Representatives for creating this Special
4 Committee as consistent with the constitutional
5 obligations and authority.

6 Fair and free elections are the bedrock
7 of our society. We're grateful that this
8 Committee has been assembled to safeguard the
9 voters freedom of choice, and the candidates
10 right to seek public office, rights that are
11 fundamentally intertwined, and shall not be
12 infringed.

13 As the record clearly established,
14 Representative Lenny Mirra was initially
15 determined to be the winner of the election by a
16 margin of ten votes. His opponent, Ms. Kassner,
17 petitioned for a district-wide recount, and
18 according to the reported recount results, Ms.
19 Kassner gained a net total of 11 votes, emerging
20 as the purported post count -- recount winner, by
21 the slimmest of all margins, one vote. The only
22 closer election you could have would be a tie.

23 The Committee and the House should be
24 most interested in understanding both the facts

1 and the -- and the evidence uncovered during the
2 recount. And so several examples of that, which
3 are part of the record is the fact that there
4 were 14 extra ballots discovered at the Ipswich
5 recount that weren't identified during the
6 initial election. There was no explanation
7 provided for the substantial increase on the 14
8 extra ballots.

9 There were also, in Rowley was the
10 unspoiling of five ballots and the counting of
11 all five of those unspoiled ballots for Ms.
12 Kassner. Spoiled ballots are typically not
13 unspoiled. A ballot gets spoiled for a number of
14 reasons, including a voter determining that they
15 had made a mistake and wished to have another
16 ballot, and the initial ballot is marked spoiled.

17 The same could be true with regards to a
18 mail-in ballot where a voter subsequent decides
19 that they want to vote either in person or to
20 correct a -- a mailing -- earlier mail-in ballot.
21 Also, in Ipswich registrars incorrectly
22 overturned two ballots that were called for
23 Representative Mirra during the recount, despite
24 compelling evidence that the votes should have

1 remained counted for Mr. Mirra.

2 Also, indicated in the record, is the
3 2nd Essex District Town clerks failed to reject
4 mail-in ballots with signatures on the mail-in
5 envelopes that did not match the corresponding
6 voter registration cards or the signature
7 requesting the mail-in ballots.

8 This is an important non-discretionary
9 step required by Mass General Laws created by
10 this body, because it's a significant safeguard
11 against fraud. And one of the cases on point is
12 the Connolly versus the Secretary of the
13 Commonwealth Case, which I think both parties
14 have referenced in their submissions.

15 In the recount, counsel for Mr. Mirra
16 made formal objections to the above issues, along
17 with a number of others, that we're prepared to
18 discuss. Importantly, all of the challenged
19 ballots were preserved for litigation and should
20 be available for this Special Committee to
21 review.

22 On December 21, Mr. Mirra filed a
23 lawsuit against several second -- 2nd Essex
24 District registrars and clerks, as well as the

1 Secretary of the Commonwealth, challenging the
2 election. Shortly thereafter, Mr. Mirra
3 requested on an emergency basis, that the
4 Superior Court review just two of the Ipswich
5 ballots that would materially change the post
6 recount result of the election, even if all the
7 other challenged ballots remained the same. So
8 it was not burdensome at all in terms of
9 reviewing those two ballots.

10 At least according to the witness's
11 declaration, both of those ballots clearly
12 indicate a vote for Mr. Mirra. I think they're
13 referenced as Bates documents number 35 and 37 in
14 the submission. And it was one that had a
15 write-in of Donald Trump originally in the bullet
16 bubble filled out for Mr. Mirra, and it was
17 originally called for Mr. Mirra, and then
18 overturned by the registrars. And the case on
19 point there I think is the O'Brien Case, which we
20 cite as well.

21 On December 29th in the face of no law
22 divesting the Superior Court of jurisdiction at
23 this juncture, plus the representation by the
24 Secretary and the admission by the municipal

1 defendants that the court still had proper
2 jurisdiction, the judge, we believe wrongly
3 dismissed the complaint and denied the limited
4 relief requested, and though had all the ballots
5 in its possession, returned the ballots without
6 examining them.

7 The court claimed it had no jurisdiction
8 to hear them out. The finding of the lack of
9 jurisdiction by the court was opposed by Mr.
10 Mirra, the towns, and the Secretary of the
11 Commonwealth. Mr. Mirra's complaint thoroughly
12 describes the reasons Mr. Mirra sought his rights
13 for judicial relief and forms the basis for the
14 issue is squarely before this Committee.

15 Furthermore, to provide additional
16 evidence for this Committee, we have submitted,
17 as the chair has noted, several declarations that
18 describe the process and certain subjective
19 determinations that were made during the recount.
20 Keeping in mind, being correct on just one
21 challenged ballot, makes the difference between a
22 loss and the seat being unfilled. Being correct
23 on just two ballots, would change the results of
24 the election.

1 Mr. Mirra has only asked for one thing
2 since the recount; examine the ballots, examine
3 the flaws, and make a fully determined and
4 objective decision of what was the will of the
5 people of the 2nd Essex District.

6 In conclusion, members of the Committee,
7 the margin of error in this recount exceeds the
8 incredibly narrow margin of victory. And as the
9 court in Connolly versus Secretary of The
10 Commonwealth stated, if the margin of conjecture
11 exceeds the margin of victory, there must be a
12 new election.

13 We respectfully ask this Committee to
14 exercise all of its authorities to conduct an
15 examination of the handful of challenged ballots,
16 investigate fully those instances in which
17 election officials lack discretion, and that
18 those failures have resulted in conjecture of the
19 vote count. And after such review, determine
20 that Representative -- recommend -- determine
21 that Representative Mirra won the election, or in
22 the alternative, find that the election was a
23 tie, the seat is vacant and recommend a new
24 election to the full House. Thank you, Mr.

1 Chair.

2 REPRESENTATIVE DAY: Thank you, Counsel.

3 I know there was communications between the
4 Special Committee and counsel and candidates
5 where we said, either Committee -- or I'm sorry,
6 counsel or the candidate can speak, but
7 obviously, we'd like to afford the opportunity to
8 the candidates themselves if they want to make
9 any further points. Otherwise, we can begin
10 questioning.

11 But Representative Mirra, if you care to
12 address the Special Committee with anything
13 further, not to put you on the spot, because I
14 know we said it was an either/or. So we
15 apologize for that miscommunication, but
16 certainly we want to afford the opportunity if
17 you do wish to offer any further thoughts.

18 REPRESENTATIVE MIRRA: No, I'll only add,
19 Mr. Chairman, that I'm just thankful that we have
20 this opportunity. You know, we tried to make our
21 statement heard in court. All we wanted was a
22 hearing, all we wanted was a chance, all we
23 wanted was to have someone look at those
24 contested ballots, make a reasonable

1 determination. And believe it or not, we could
2 not get our day in court.

3 The judges would not hear it, because
4 they determined it was out of their jurisdiction.
5 I'm not sure if that's true or not, but
6 regardless of whether that's true or not, I'm
7 just very thankful that the Speaker allowed this
8 to happen, and that you're hearing this. And I
9 implore you to look at the evidence, read it
10 carefully, and please, please do look at those
11 contested ballots. I think it'll reveal a lot,
12 and regardless of what you decide, you know,
13 we'll accept the determination of this Committee
14 and move on.

15 REPRESENTATIVE DAY: Thank you,
16 Representative Mirra, as well. So we've got some
17 questions on -- on the submissions as well as the
18 presentation here today.

19 Just starting with the jurisdiction
20 issue and the jurisdiction of this Special
21 Committee, what is your position on -- on the
22 significance of the Certificate of Summons sent
23 to All Representatives-Elect by the Governor and
24 the Secretary of the Commonwealth?

1 MR. SULLIVAN: Prior to the first
2 Wednesday in the January, when the House was
3 called into session?

4 REPRESENTATIVE DAY: Yes.

5 MR. SULLIVAN: We believe -- we this --
6 we take the same position as the Secretary of the
7 Commonwealth, that the -- the courts retained
8 jurisdiction under state law up until the time --
9 up until the time when the House is called into
10 session. And even once the House is in session,
11 I think as the Secretary of the Commonwealth
12 indicated, it's unclear as to whether or not the
13 courts continued to have jurisdiction.

14 I think it's clear that the remedies
15 that are available to the court after the House
16 has taken jurisdiction and created this
17 Committee, might be a lot different than what the
18 remedies would be available to the court prior to
19 that happening. So we -- we understand and
20 respect that this body, the House, and this
21 Committee in particular, has the right to -- to
22 do what it's doing under the Constitution.

23 REPRESENTATIVE DAY: So under -- under
24 the Constitution, I guess as a follow-up, and

1 this has been decided, I think, fairly
2 consistently by a majority of the House in the
3 past, once that certificate issues doesn't it
4 become the jurisdiction of the House to decide
5 the qualifications of its members, given that
6 you've had the Governor and the Secretary and
7 registrars confirm or affirm to the body that
8 this is who we deem to be the duly elected,
9 doesn't that then become the constitutional
10 prerogative of this Special Committee, or
11 certainly of the House, to determine what that's
12 -- that actual result is?

13 MR. SULLIVAN: I think that's accurate in
14 terms of the cases I've read to date, the
15 jurisdiction rests here. Having said that, I
16 don't want to waive any rights that my client may
17 have within the courts. I respect the fact that
18 the remedies that are available to the court at
19 this point in time are far more limited than the
20 remedies they had prior to the House taking
21 jurisdiction over it.

22 And the reason why I don't want to
23 waive, is because I think that the court in this
24 particular case has raised a serious

1 constitutional question as to when the rights of
2 the courts -- the -- the court no longer has any
3 rights to hear a matter.

4 The court dismissed it based on subject
5 matter jurisdiction. I think the court dismissed
6 it at least prematurely in terms of subject
7 matter jurisdiction. So whether or not it
8 becomes important for us to continue to advance,
9 you know, that point in time, because I'm not
10 convinced this will not be the last time.

11 There might be a difference as to when
12 the courts have exclusive jurisdiction to take
13 certain steps. And I think that would be an
14 important question for the courts to address or
15 the legislature. The legislature could make it
16 clear when it wants to divest the courts of its
17 -- of the jurisdiction under the -- the statute
18 in terms of hearing contested election.

19 So I think I'm in agreement with the in
20 terms of what you said. Mr. Chairman, but I just
21 want to reserve any rights that Mr. Mirra has
22 regarding that issue in terms of jurisdiction.

23 REPRESENTATIVE DAY: Well, I -- I guess
24 that begs the question then, given what

1 Representative Mirra had just said to us, that do
2 you -- do you think that this Committee's
3 decision is determinative of this race, or is
4 there an intention to proceed with judicial
5 remedies?

6 MR. SULLIVAN: I apologize if I am
7 unclear. I don't think the court has any ability
8 to overturn the decision that this body renders.
9 So that would not be the -- kind of the basis of
10 continued litigation here, because I think there
11 is clear case law that indicates the courts do
12 not have the authority to do that.

13 REPRESENTATIVE DAY: Is there a
14 contention that there was any fraud in this
15 election?

16 MR. SULLIVAN: You know, obviously --
17 fraud, no. I think, irregularities. I think that
18 there's clear evidence that non-discretionary
19 functions were not complied with. I think, the
20 best example of that is the importance of
21 matching signatures. As kind of mail-in ballots
22 continue to escalate, there is always a risk of
23 fraud and we're not suggesting fraud, but the
24 legislature has made it clear that it's

1 mandatory. It's not discretionary, it's
2 mandatory that you compare signatures to ensure
3 that the ballot that's being presented, the
4 signature on the outside of the envelope matches
5 the signature in the possession of the
6 municipality.

7 Our point is, Representative Mirra
8 witnessed the opening of about 100 mail-in
9 ballots in Ipswich, and it was very apparent to
10 him there was no comparison of the signatures and
11 the envelopes against anything at the
12 municipality. The only verification that seemed
13 to be complied with was, was there a signature,
14 and had the person already voted. Those are the
15 only two things that appeared to be tested.

16 The legislature has imposed on the
17 clerks to compare the signatures; that wasn't
18 done. That does provide a risk. And in the
19 cases that we've identified, the courts indicate
20 what is non-discretionary, this is
21 non-discretionary. And it's non-discretionary
22 for the purposes of to avoid and minimize fraud.

23 And we don't know whether or not there
24 was fraud, but Mr. Mirra, would testify that

1 there were at least 12 of the mail-in ballots in
2 Ipswich where it was very apparent to him when he
3 finally had the opportunity to compare the
4 signatures on the envelope with a signature at
5 the municipality, that they didn't match.

6 And that -- those ballots were already
7 opened, and then commingled, so there's no ability
8 for the courts, nor for this body, to determine
9 who they voted for, and it gets to the issue of
10 conjecture. And when the margin of conjecture
11 exceeds the margin of victory, the courts have
12 said, that's the time in which to order a new
13 election.

14 REPRESENTATIVE DAY: So I -- I think we
15 need some clarity here. I'm hearing from
16 Representative Mirra that you're asking us to --
17 to determine contested ballots, not throwing out
18 ballots and ordering a new election.

19 Which one is it or is it both?

20 MR. SULLIVAN: I'm sorry -- I'm sorry,
21 Mr. Chairman --

22 REPRESENTATIVE DAY: It seemed to me that
23 you're just stating that we should order a new
24 election based on these alleged 12 ballots.

1 MR. SULLIVAN: Well --

2 REPRESENTATIVE DAY: Which -- which is
3 it? What's the remedy you're asking?

4 MR. SULLIVAN: Well, if you look at
5 the Ipswich ballots, and you made the
6 determination that were originally made in terms
7 of those ballots, that those two votes were for
8 Mr. Mirra -- Representative Mirra, that it
9 changes the outcome of the race from one vote
10 deficit to a one vote margin of victory. That
11 says to me that the election should be decided by
12 the House in favor of Mr. Mirra when you look at
13 the contested ballots.

14 If you look at the contested ballots,
15 and you look at the other issues that are being
16 raised, and you make a determination that you
17 can't determine the outcome of the election
18 because of conjecture, then that's where the
19 courts say you should order a new election.

20 So I'm not suggesting you -- you should
21 look at the ballots and make an informed decision
22 consistent to the will of the voters, and I think
23 you'll determine that in those contested ballots,
24 they should have gone to Representative Mirra.

1 And had they, then Mr. Mirra would -- would have
2 been declared the victor.

3 REPRESENTATIVE RYAN: I just -- I have a
4 question on some of these ballots that are in
5 question in, and Representative Mirra, I want to
6 thank you for your service, thus far to the
7 Commonwealth.

8 The -- you're talking about contested
9 ballots, and a number of contested ballots and
10 inconsistencies, but yet, there was only two
11 ballots that were brought to court, right? Two
12 ballots that are now being questioned, or you're
13 asking us to look at two ballots? Please
14 clarify that for me.

15 MR. SULLIVAN: All -- I apologize. All
16 the ballots, when we had the emergency hearing
17 before the court, the court instructed all the
18 town clerks to present all the contested ballots
19 to the courts, including those envelopes we were
20 questioning the signatures.

21 So all those were ordered to be
22 delivered to the court, not just the two. They
23 were all delivered to the court. The court was
24 struggling with do I have enough time to get all

1 of this done? And we suggested, if you just look
2 at the Ipswich ballots alone, you're going to see
3 that there's a serious question about the outcome
4 of the election. That should give you enough to
5 pause the results to have a full hearing.

6 The court never looked at those ballots,
7 determined it did not have subject matter
8 jurisdiction, and then sent all the ballots back.
9 So all the ballots are back with the
10 municipalities.

11 So, we're not asking you to look only at
12 the Ipswich ballots; we're asking to look at all
13 the ballots. But our point to the court was, if
14 you're concerned about expediency, you can
15 quickly look at two ballots and make a
16 determination as to whether or not it's a tie or
17 Representative Mirra won.

18 REPRESENTATIVE RYAN: So you were asking
19 those two ballots to be an example of other
20 things you may have been looking for in the other
21 ballots? So you weren't saying if we just use
22 these two ballots, we can turn this election
23 because that's --

24 MR. SULLIVAN: Well, we did say it.

1 REPRESENTATIVE RYAN: -- kind of what it
2 looks like it.

3 MR. SULLIVAN: Yes. I mean, we did say
4 that if you just look at those two ballots, the
5 outcome of the election would be different. If
6 those were the only two contested issues by
7 Representative Mirra, and if you looked at those
8 two ballots, and Mr. Mirra is right, that they
9 were wrongly called for his opponent, then it
10 does change the outcome of the elections.

11 REPRESENTATIVE RYAN: Okay.

12 MR. SULLIVAN: Our point was this: we're
13 asking for the court to intervene pretty quickly.
14 And we said, if you just look at those two
15 ballots, you'd have confidence that intervening
16 and staying the election or the swearing in would
17 make sense.

18 And the Secretary indicated to the
19 court, you know, the court can order the
20 Secretary not to deliver the -- the results to
21 the House. The court never got that far, because
22 the court -- and again, we think mistakenly, said
23 it does not have jurisdiction.

24 REPRESENTATIVE RYAN: And you have

1 further remedies in the court that you're
2 pursuing?

3 MR. SULLIVAN: And further remedies in
4 the -- the House, the -- you know, the remedies
5 -- you know, the court believed it was with the
6 House and this Committee. And thankfully, the
7 House and -- the speaker in the House formed the
8 Special Committee.

9 REPRESENTATIVE JONES: Thank you.

10 REPRESENTATIVE DAY: So yes. Just
11 picking up on those two Counsel, the -- can an
12 over vote happen?

13 MR. SULLIVAN: Sure. Absolutely.

14 REPRESENTATIVE DAY: Where multiple marks
15 are made, and then it's a call for the
16 registrars, right, this is what they do? They
17 determine when they examine the ballots whether
18 an over vote occurred?

19 MR. SULLIVAN: Sure. Absolutely.

20 REPRESENTATIVE DAY: And that could be
21 stray marks, or extra marks, or double votes.
22 Did a protest vote happen?

23 MR. SULLIVAN: What do you mean by a
24 protest?

1 REPRESENTATIVE DAY: By adding in people
2 that may not be qualified?

3 MR. SULLIVAN: Yes. I -- well, yeah, you
4 know --

5 REPRESENTATIVE DAY: Imaginary --

6 MR. SULLIVAN: I've been in recounts,
7 you've probably seen them as well where they
8 identified Donald Duck or Mickey Mouse as the
9 candidate. Sure. I mean, that does happen when
10 people vote for somebody who's not in the ballot.
11 It's a write-in, but maybe not a, you know, a
12 true person. It can be described as a protest.

13 REPRESENTATIVE DAY: And so just
14 considering what you've presented to us on what
15 we'll call the Trump ballot?

16 MR. SULLIVAN: Yes.

17 REPRESENTATIVE DAY: And how do you
18 distinguish that from the Cole v. Tucker Case?

19 MR. SULLIVAN: Which case?

20 REPRESENTATIVE DAY: The Cole versus
21 Tucker, where they said an individual was signed
22 -- trying to set up his own will against the
23 rules for voting. And he was attempting to make
24 a disorderly expression of his preference. And

1 they threw that out for not following the rules
2 and trying to stage, essentially, a protest on
3 his ballot.

4 How do you jibe that with what the
5 registrar has determined to be the intent here?

6 MR. SULLIVAN: And I apologize, I'm not
7 familiar with the case, but I will become
8 familiar. And if I have anything to add to it, I
9 request the Committee to allow me to supplement
10 my response on that question.

11 But to describe it, as I understood it
12 -- I was not there, I didn't witness the
13 examination of this ballot, but as I as I
14 understood it, this ballot had the name Donald
15 Trump written in on the write-in line on a number
16 of spots in the course of the ballot. In some
17 instances, also, where there was a Republican
18 filled in the bubble for the Republican
19 candidate.

20 I understood in the race for state
21 representative, Mr. Mirra, Representative Mirra
22 was listed first, his opponent was listed right
23 below him, and then there's a place for
24 write-ins, and Mr. Donald Trump's name was

1 written it.

2 I know that there was a pleading to
3 suggest that the bubble was completed for Donald
4 Trump as well. I'm not aware of that. And if
5 there was a bubble completed for Donald Trump and
6 a bubble completed for Mr. Mirra, I would agree
7 with you, that would be an over vote. I
8 understood that the bubble was not filled in.

9 And even if you have a write-in, if
10 there's no indication that the person voted for
11 the write-in, consistent with, I think it was the
12 O'Brien Case, which was a district attorney race,
13 where they use stickers, and the court said a
14 sticker is no different than a third or fourth
15 person listed on a ballot. And it's not the
16 sticker that determines the over vote, it's where
17 the person actually elects. So somebody could
18 write in Joseph Biden, but not vote for him, and
19 vote for somebody else.

20 And it's our contention that Donald --
21 we concur that Donald Trump was written in as a
22 write-in, but the vote was actually for
23 Representative Mirra. It was -- it was called
24 for Representative Mirra at the table. And then,

1 it went to the registrars because it was
2 protested -- objected to by Representative
3 Mirra's opponent and the registrars overruled it.
4 So all we're asking is to what look at that
5 ballot.

6 REPRESENTATIVE DAY: Are you saying that
7 overrule was unreasonable?

8 MR. SULLIVAN: Again, I didn't see the
9 ballot, the way it was described to me, I would
10 say it was absolutely unreasonable if it was
11 simply overruled because somebody wrote in Donald
12 Trump's name, but didn't vote for Donald Trump,
13 then it's inconsistent to the O'Brien Case.

14 You can write in four names as
15 write-ins. But I could still vote for you, Mr.
16 Chair, as the other representative, and my vote
17 for you is the vote that should count, not the
18 fact that I wrote in four names under you.
19 That's immaterial according to the O'Brien Case.

20 REPRESENTATIVE DAY: The registrars
21 disagreed, right? The registrars said it was a
22 over vote, and awarded a no vote or a cancelled
23 vote.

24 MR. SULLIVAN: That's the way it was

1 ultimately determined to be. It was a vote
2 taken away from Representative Mirra, and not
3 counted for anybody.

4 REPRESENTATIVE DAY: You cited in your
5 papers that this is an error of law. And then
6 you cited to Helligan and a few other cases, and
7 said that they shall be awarded to the certain
8 candidate in these instances.

9 That's a guide, right? You understand
10 that the Secretary's guide is just that? You say
11 you call it a guide. That's not a shall
12 situation, right? Each registrar, each case
13 falls and rises based on its individual parts of
14 the ballot that they're reviewing.

15 You'd agree with that?

16 MR. SULLIVAN: I do. But the -- as the
17 legislature has provided for the courts, they
18 know a review of the ballots themselves have been
19 protested. That they have a right to
20 independently ultimately make the determination.
21 And I think this --

22 REPRESENTATIVE DAY: Fair enough. I'm
23 not talking about the extent of the review. I'm
24 asking that -- those aren't shalls, those are

1 instructed, right? Those aren't requirements?

2 MR. SULLIVAN: Correct.

3 REPRESENTATIVE DAY: So the O'Brien
4 Case is instructive, it's not determinative on
5 this; fair to say?

6 MR. SULLIVAN: Well, O'Brien, I think
7 it's -- I think is determinative.

8 REPRESENTATIVE DAY: For the House?

9 MR. SULLIVAN: Well, in terms if the
10 House wants to follow those -- I -- listen, the
11 House as you've described, has broad
12 constitutional authority, right? The House has
13 been guided by the legal principles that have
14 developed in terms of election law.

15 So in terms of the courts, I would say,
16 it's precedential value that if we were before
17 the courts, we would argue that the SJC has
18 already determined that the write-in, absent
19 something more, is not an over vote.

20 REPRESENTATIVE JONES: Thank you, Mr.
21 Chairman. In Ipswich, no explanation was offered
22 as to where the extra votes came from?

23 MR. SULLIVAN: None -- none that I'm
24 aware of.

1 REPRESENTATIVE JONES: No conjecture about
2 -- well, we think this might have happened?
3 Because if we look at the vote totals from prior
4 to the recount to after the recount, it was 14
5 ballots in Ipswich overall, and almost -- almost
6 de minimis throughout the rest of the district.

7 So that raises a big question. Was
8 there ever any attempt to check -- as I remember,
9 having been an election official in my time, you
10 have the check-in book, you check in, get your
11 ballot, vote, you check out. Before we even
12 started counting, we would tally the check-in
13 book verses the checkout book.

14 Was there any reconciliation that you're
15 aware of with the ballots versus the check-in
16 book, checkout book?

17 MR. SULLIVAN: I'm not aware of that, and
18 I don't think Representative Mirra was --

19 REPRESENTATIVE MIRRA: No, I'm not aware
20 of that either.

21 REPRESENTATIVE JONES: Okay. I'm just
22 curious because that really raises the question,
23 and having been there, obviously all the ballots
24 were tallied up that day. And they were put on a

1 stage, and then I think before any recounting
2 started, there was a break for lunch. And then,
3 the recount started increasing 1, 2, 3 and 4.

4 And then, obviously, here I think it
5 became aware, that at the conclusion of the
6 recount that there was this excess number. I
7 don't think that the excess number of ballots was
8 made clear before recount started with ballots.
9 I don't think it became aware to everybody until
10 the end. If you have any information on that --

11 I think that the -- the debate
12 back-and-forth with the Chair was helpful, but I
13 think it raises the point that I think we, in
14 fact, do need to see the challenged ballots. And
15 I understand that, you know, you had a, let's
16 say, a list of issues you thought raised
17 questions about this election.

18 But you basically said to the court that
19 if you only have time to look at these, which we
20 think of the most bright line, if you will, of
21 the issues, in which case they would change the
22 outcome either to a tie or to a one vote margin.

23 And it seems to me, and I agree with the
24 Chair, I don't think -- I haven't heard any

1 information or discussion or allegations of
2 intentional fraud. But that and changing
3 election laws, and they've changed quite
4 dramatically the last couple cycles, we put an
5 increasing burden on our clerks and their staff
6 to do work.

7 And now, we're kind of into a quiet year
8 in 2023, and most towns may have a municipal
9 election, maybe a couple of town meetings. And
10 before we know it, we'll be into 2024, and
11 there'll be the town election and -- and town
12 meetings, but they will also be faced with the
13 presidential primary, state primary, and
14 presidential election and they'll be right back
15 at it.

16 And sometimes they're under trained,
17 understaffed, overworked, under-resourced. And
18 that only heightens the possibility of human
19 unintentional error. And I think, and then
20 sometimes the decisions that are made in the ways
21 recounts are handled at a municipal level, only
22 potentially compound the possibility for error.

23 And as we've said, as that as the margin
24 for error grows, it makes it real challenging to

1 make sure that the will of the voters is adhered
2 to, but I think that's what you have to do. But
3 I absolutely think that we need to look at the at
4 least those challenged ballots. Because,
5 frankly, you weren't given the opportunity, or a
6 judge didn't give you the opportunity to -- to
7 present and make a decision on it.

8 And I do think that is partially due to
9 the fact that we had the latest election you
10 possibly can. November 8th election as opposed
11 to a November 2nd election, let's say, and that
12 -- that the calendar conspired against you, if
13 you will.

14 But, you know, this is -- this is the
15 closest an election can be, and the fact that
16 we're faced with two of these in one session, and
17 then the last time was a decade ago, and the time
18 before that was a decade before that, I think
19 highlights that we're potentially going to be
20 faced with more of these going forward in light
21 of the change in election law.

22 And I also think one of the important
23 things that we as a body, because there's two
24 things is the -- the issues related to this case

1 and the other case are just some of the
2 underlying discussions that we have to have about
3 elections. And what's that you mentioned the
4 standard of signatures, even if we determined
5 that that's not relevant here, if different
6 clerks in different towns use a different
7 standard in checking signatures, that can have a
8 very serious impact on the outcome of elections
9 that are, you know, district based.

10 Maybe within a community it won't make a
11 big deal on a municipal town selectman race, but
12 then it may have. And we need to make sure that
13 there is a -- a standard or practice that is
14 adhered to by all clerks in doing that.

15 And I think that comes with training and
16 oversight and resources for our town clerks who
17 we've asked to do more and more and more, and
18 it's not as if during election season they get to
19 shut down from all their other responsibilities.
20 It's not as if nobody dies, nobody wants a dog
21 license, nobody wants a fishing license, nobody
22 wants to get married, and nobody has a child, all
23 those responsibilities entail. So I think I've
24 gone on too long.

1 REPRESENTATIVE DAY: No, not at all.

2 REPRESENTATIVE JONES: Get a few things
3 up there. Thanks.

4 REPRESENTATIVE DAY: Just a couple legal
5 loose ends there, that we wanted to tie up with.
6 You disagree with the decisions that the
7 registrar has made in certain ballots, but you're
8 not alleging a due process deprivation by the
9 recount, right? Both sides were represented by
10 counsel, both sides had the opportunity to
11 object, both sides were heard fully, they weren't
12 shut out, and both sides then listened to the
13 decision by the registers at that time.

14 Is that fair to say?

15 MR. SULLIVAN: Yeah. I think that's fair
16 to say regarding the contested ballots, Mr.
17 Chairman. I think the issue concerning the
18 matching of the signature on the envelope, and
19 the actual signature at the municipality. I
20 don't think that there was any opportunity for
21 Representative Mirra. We would challenge that,
22 based on the way it was set up at that moment in
23 time.

24 REPRESENTATIVE DAY: Again, those would

1 be two different remedies, right? You're looking
2 at certain votes, which you want to --

3 MR. SULLIVAN: Before the vote, even --

4 REPRESENTATIVE DAY: No, but that's -- a
5 remedy for that would be ordering a new election,
6 right?

7 MR. SULLIVAN: Correct. That's correct,
8 yes.

9 REPRESENTATIVE DAY: And it's -- I think
10 it's fair to say, it's been the position the
11 House we don't have the authority to do that
12 absent a vacancy?

13 MR. SULLIVAN: You have to order a
14 vacancy in the office, right? Yeah.

15 REPRESENTATIVE DAY: Would have to
16 declare that there was no election completed.

17 MR. SULLIVAN: Right.

18 REPRESENTATIVE DAY: On the -- you had
19 mentioned that typically spoiled ballots aren't
20 unspoiled. It happens, right?

21 MR. SULLIVAN: I'm not aware that spoiled
22 ballots get unspoiled, but somebody could
23 certainly correct me on that point.

24 REPRESENTATIVE DAY: Well, you had cited

1 to the Code of Mass Regulations to support your
2 proposition that they shouldn't be unspoiled
3 ever. There's a follow-up code that requires
4 that all spoiled and unused ballots shall be
5 counted and determination shall be made which --
6 whether each sealed absentee ballot and envelope
7 rejected as defective should have been rejected
8 or accepted.

9 How do you jibe those two positions?

10 MR. SULLIVAN: In terms of the absentee
11 ballot, be identified as a spoiled, which is
12 different than other ballots --

13 REPRESENTATIVE DAY: All spoiled are to
14 be counted, right?

15 MR. SULLIVAN: Yes.

16 REPRESENTATIVE DAY: Under this code, all
17 spoiled and unused ballots shall be counted and
18 then, determinations be made.

19 MR. SULLIVAN: I'll take another look at
20 that, Mr. Chairman, and see whether or not I have
21 further clarification on that point.

22 REPRESENTATIVE DAY: Anything further?

23 REPRESENTATIVE JONES: No, I wasn't going
24 to as a question just yet, but will follow up.

1 MR. SULLIVAN: Can we make just one
2 additional point before we step aside here. And
3 I think Representative Jones raised it, in terms
4 of the timeliness of the election, that the
5 recount in this particular race took place in the
6 first week of December.

7 Which when I look back at other
8 recounts, it's a couple of weeks later. In most
9 instances that I know -- and Mr. Mirra has been
10 criticized by his opponent's counsel for the time
11 in which he filed the complaint in the Superior
12 Court challenge in the election.

13 Mr. Mirra was waiting for the minutes
14 from the town clerks to make sure that he had a
15 wholesome and complete analysis of the votes that
16 were being challenged by the clerk. I think the
17 Rowley minutes came in the afternoon or evening
18 of the 21st of December, and that's when the
19 complaint was filed.

20 Based on the statute, it clearly was
21 filed well within the timeline of the statute.
22 And at least, according to the Secretary of the
23 Commonwealth, which we agree with, well within
24 the time that the court still had jurisdiction

1 over the matter. So and I know that is not going
2 to weigh in in terms of what this committee does.
3 But I did notice it was in some of the pleadings
4 that had been submitted, so --

5 REPRESENTATIVE MIRRA: Mr. Chairman, if I
6 could just add something quickly in closing. I
7 just want to speak briefly. I don't want anyone
8 to think that this was a "stolen election".
9 Those are very inflammatory words, especially
10 these days. I don't think there was any kind of
11 massive fraud involved; there was no conspiracy
12 involved. There was no nefarious intent here.
13 When you find 14 extra ballots, honestly Mr.
14 Chairman, I think it's a simple matter of human
15 error, and I don't want anyone to come out of
16 this thinking that the election was "stolen. "

17 The voting machines were not hacked with
18 or tampered with. Those machines are amazingly
19 accurate and, you know, at a time when the trust
20 and credibility in our voting system is at all
21 time lows, I want this to serve as an example
22 where we're going to remedy -- we're going to
23 remedy any kind of problems with our election
24 system.

1 But I don't want anyone come away from
2 this thinking that it was "stolen. " I think it
3 was held fairly. I think every town clerk did
4 their best to hold a fair and open election. And
5 I think any of the issues that we brought up
6 today, honestly, are simply a matter of human
7 error.

8 REPRESENTATIVE DAY: Thank you,
9 Representative Mirra, I appreciate your grounds.

10 MR. SULLIVAN: Thank you.

11 REPRESENTATIVE DAY: Now, we welcome up
12 Ms. Kassner and counsel. I'd ask you to identify
13 yourselves for the record, and then the floor is
14 yours.

15 MR. MCDONOUGH: Good morning. I'm Gerald
16 McDonough, I'm here representing Kristin Kassner.

17 MS. KASSNER: Rep elect
18 Kristin Kassner.

19 MR. MCDONOUGH: May I proceed?

20 REPRESENTATIVE DAY: Please.

21 MR. MCDONOUGH: If I can, I -- I'd like
22 to make a few brief remarks, and -- and then let
23 Ms. Kassner say a few words as well. And -- and
24 then I'll reserve my response to all the factual

1 and legal allegations that my bother counsel
2 mentioned after Ms. Kassner is done, or maybe in
3 the course of questioning from the
4 representatives.

5 REPRESENTATIVE DAY: Sure. Counsel, if
6 we could just ask you to pull the microphone a
7 little closer, so we can --

8 MR. MCDONOUGH: Okay. So as initial
9 matter, I just want to thank this committee for
10 convening this -- this hearing. And I especially
11 want to thank the Speaker of the House, Ron
12 Mariano. I think this has been handled
13 completely appropriately.

14 I think this is -- you know, even
15 though, you know, we had a lot of angst among our
16 supporters about seating Mr. Mirra as a holdover,
17 but that's -- the Constitution requires that.
18 There's no -- this isn't a bag job, there's no
19 funny business going on the part of the
20 legislature. We appreciate the care that you've
21 shown in the process that you put into place.

22 And I -- and I think also, it's
23 important to note that in all the steps in the
24 judicial process, we have maintained -- since

1 certification on December 14, we have taken the
2 position that this matter is in the exclusive
3 jurisdiction of the House. Now, had Mr. Mirra
4 brought a lawsuit on December 9th after the
5 recount, or on December 13th, or even maybe as
6 late as December 14th, he could have made a
7 change in that, but it didn't happen.

8 For example, in the Alicea Case back in
9 2011, there was no certification, and there was
10 an existing lawsuit going on. So in that case, I
11 think the Special Committee took a step back and
12 waited to see what would happen, and in that case
13 both individuals accepted the jurisdiction of the
14 -- of the court. Mr. Alicea filed the complaint.
15 Mr. Durant took -- filed a counterclaim, so that
16 both -- both candidates were accepting the
17 jurisdiction of the court, so I think that's
18 quite different.

19 But I think throughout this proceeding,
20 in the judicial forum, we have prevailed at every
21 step. We prevailed in Superior Court on the
22 motion to dismiss the complaint and on opposition
23 to the motion of preliminary injunction. We
24 prevailed then in the Appeals Court, and we

1 prevailed in Superior Court.

2 I think I'm ready to retire, having had
3 so many victories in just one little legal
4 proceeding. But, you know, it's quite clear that
5 the judicial system has taken a look at this and
6 has decided that this forum here, the House, is
7 where this case should be resolved.

8 We also want to thank -- we also thank
9 Mr. Mirra for his service to the Commonwealth
10 over the years as a State Representative. I had
11 a brother who served in this distinguished body,
12 and I know the difficulties and hardships that
13 you-all go through. And I think we need to
14 applaud Mr. Mirra for his service. I'm not
15 asking for a loud applause.

16 But -- and I also want to thank opposing
17 counsel, Chris Amrhein, from that restaurant in
18 South Boston, his family, and -- and Michael
19 Sullivan, the former U.S. Attorney. You know,
20 the -- these are -- are very, very good top of the
21 line lawyers. They're zealous in their
22 representation of their client. And it's the --
23 it's a challenge, but they've also been extremely
24 professional and courteous to me, and I

1 appreciate all of that.

2 And I also want to thank the -- all the
3 public employees and individuals who were
4 involved in the recount. We had -- in each
5 recount you have a Board of Registrars, who are
6 unpaid, who make determinations. You have clerk,
7 an assistant clerk from the individual town.

8 You have municipal lawyers. You have
9 people at -- at different tables, some of them
10 are -- are municipal employees from that town,
11 like Ipswich, some are clerks from other towns
12 who come just to help out, and some are other
13 wardens or clerks in the election process, and
14 some are -- are just individual residents of the
15 town who are volunteering.

16 There's massive effort that needs to go
17 in to run these recounts. And I think they did
18 an extraordinary job. And we were there. I was
19 at four different recounts myself. I personally
20 reviewed some of the ballots that have been
21 talked about here today. I argued above those
22 ballots with opposing counsel, but there was
23 opposing counsel on both sides.

24 And I think that, you know, that the

1 clerks -- what I am a little disturbed about is,
2 there is an -- in at least one of those
3 affidavits that you received, there is some kind
4 of criticism of the clerks there, and I just
5 think it's unwarranted. I think the clerks do an
6 outstanding job.

7 And the fact that you see so many clerks
8 when you're -- when you're in Ipswich, you see
9 clerks from other communities in the area, who
10 come by just to help out. The clerks are unsung
11 heroes and heroines of our democratic system. And
12 they deserve as much support and praise as we can
13 give them. They're extraordinary.

14 I appreciate the remarks that you made,
15 Representative Jones, about the clerks. They are
16 just invaluable resources. So I think -- I think
17 I'm going to stop at that point, and then I'm
18 going to turn it over to Kristin to make a few
19 points.

20 MS. KASSNER: Thank you. I certainly
21 want to thank this committee, and the Chair,
22 Speaker Mariano, the body, for bringing us here
23 today after a long post election that brought us
24 here. I also want to thank Jerry McDonough, he's

1 been wonderful, in certainly a process that we're
2 not used to.-- not all of us have gone through,
3 and many of us have actually not gone through and
4 has been just a guiding light through this
5 process, and again, here today.

6 All of the volunteers, as mentioned, the
7 volunteers at the recount, we alone had 120
8 people that were volunteering at the different
9 recounts managing and organizing that from the
10 team. I want to thank all of them, some of them
11 are here today. Thank you for being here. I
12 also just wanted to say that I've had -- we've
13 had full faith in the electoral process
14 throughout this experience, and as well during
15 the election and post-election, the recount, as
16 well as here.

17 I ran for this position, I've been
18 working in municipal government for 20 years as a
19 professional planner, really working to make our
20 communities better for people and the
21 environment. Our campaign was built protecting
22 people, building a strong future, and protecting
23 our freedoms and that will be my priority in the
24 legislature, and after a year-long campaign, a

1 close election, a complicated recount, and some
2 court proceedings, I'm ready to take on this new
3 challenge.

4 And I've continued to meet with
5 constituents preparing for the legislation
6 deadline at the end of next week to address
7 really important issues that are facing both the
8 Commonwealth as well as our community and our
9 districts of the 2nd Essex, which includes
10 Ipswich, Rowley, Newbury, Georgetown, and
11 Topsfield -- Hamilton-Topsfield Precinct 1, and
12 issues facing especially water infrastructure
13 protection of the rivers, and the economy.

14 And I hope that we will help you do
15 everything that you need from us, and hope to --
16 that we can get to an expeditious resolution so
17 we can -- I can get to work to serve the great
18 people of the 2nd Essex District. So, thank you
19 again.

20 REPRESENTATIVE DAY: Counsel, do you have
21 further? Thank you, Ms. Kassner.

22 MR. MCDONOUGH: If it's appropriate for
23 the committee, I would like to respond to the
24 individual allegations that were made by my

1 brother counsel. I think there were four -- four
2 general ones. There was the extra ballots in
3 Ipswich, there was the spoiled ballots in Rowley,
4 who was the individual ballot problems, alleged
5 problems, and then, the mail-in signatures.

6 And so let me deal first with the --
7 with the absentee ballot signatures. Challenges
8 to absentee ballots, like challenges to any
9 ballot, must be made at the time that the
10 absentee ballot is opened or at the time that the
11 voter presents him or herself at the polling
12 place. That then allows the -- the municipal
13 worker, the warden, to put a marking on the back
14 of the ballot. It says the ballot is challenged
15 and giving who challenged it and write down the
16 reasons for it, then that record is maintained.

17 So the appropriate time to challenge
18 absentee, you know, write-in, mail-in ballots is
19 when they're opened, and Mr. Mirra said that he
20 was in Ipswich when they opened up 1,000 mail-in
21 ballots. So that was his opportunity and his
22 time to challenge those ballots. You do not
23 challenge absentee ballots at the recount itself.

24 And the challenges to absentee ballots

1 are covered by Chapter 54, Section 96. But also
2 in the recount statute, there's no provision for
3 examining signatures on absentee ballots. What
4 the provision actually says is, that you can
5 review unopened -- you can review rejected
6 absentee ballots and those envelopes and
7 materials must be preserved. Any challenge, of
8 course, that's made, can be reviewed at a
9 recount. But the challenges needed to be made at
10 an earlier point before the recount.

11 Now, let me move on to the Rowley
12 spoiled ballot issue. Those spoiled ballots were
13 mail-in ballots. Usually, when you go in to vote
14 in-person, and you have a ballot, and you spoil
15 it, it's spoiled. There might be an over vote
16 for Governor. They might have voted for, you
17 know, Maura Healey, and, you know, and -- and the
18 Republican candidate for Governor. But --

19 REPRESENTATIVE DAY: He's forgettable,
20 don't worry about it.

21 MR. MCDONOUGH: -- but, you know, that
22 would be -- that would be an over vote, and the
23 machine would reject that ballot. And usually,
24 the voter is there and the voter is able to then

1 decide, no, I want to vote for both of them. And
2 they'll press a button and it'll go into the
3 ballot box.

4 In other cases, the voter will say, oh
5 my goodness, I didn't know I made an over vote.
6 So in that case the person is given a new ballot,
7 and then the ballot goes into a spoiled envelope.
8 As the clerks have admitted, and it's in the
9 affidavits here, what they did up in Rowley was,
10 they -- they took every ballot that had been, you
11 know, that was rejected by the machine, and
12 marked it as spoiled.

13 So the ballot could have bee spoiled
14 based on a race for attorney general, or
15 governor, or state senate, or something else, not
16 in the state rep race. So by spoiling that
17 ballot, they took away votes for -- from that
18 voter, for all the other people for whom the
19 ballot should not -- was not spoiled. It's only
20 the spoiled vote on the ballot that should be
21 rejected.

22 So, when our lawyers in Rowley asked to
23 examine the spoiled ballots and examined the
24 spoiled ballots, there were five mail-in ballots

1 where there were appropriate votes for Kristin
2 Kassner, and that was not the reason that the
3 ballot had been spoiled. And so the -- the Board
4 correctly decided to count those votes for
5 Kristin Kassner.

6 And I just might remind you that back in
7 2011 in the Alicea Case, what happened in court
8 there was, there was one ballot that was an
9 absentee ballot that had been spoiled. But it
10 was spoiled for the race for governor, not for
11 the race for state representative. And the judge
12 in that case determined that that ballot should
13 be counted for Alicea, and that's how it ended up
14 in a tie. So it's no different from that. That
15 ballot was improperly spoiled in 2003, these
16 ballots were improperly spoiled in 2022.

17 The third issue is -- is the -- the
18 discrepancy between the number of certified and
19 recounted ballots, particularly In Ipswich, were
20 there were 14. All I can say to that, as
21 somebody who has been at way too many recounts,
22 is every recount finds additional ballots. It's
23 rare that you don't find additional ballots, and
24 those additional ballots broke more for Ms.

1 Kassner then for Mr. Mirra.

2 But it's not unusual to see there be
3 more ballots that are found and counted during
4 the recount. And the recount is a different
5 process than that on election night or happens
6 during the week, all the ballots are looked at in
7 public. It's a public meeting. Everybody can
8 see everything that's going on. And those
9 ballots were appropriately counted.

10 And we could raise an issue ourselves in
11 the 2nd Precinct in Newbury, there were three
12 less ballots counted on -- during the recount,
13 than were counted during the initial
14 certification. And one of those was a blank, so
15 that's irrelevant.

16 But two of those were for Kristin
17 Kassner. So if we want to argue about, you
18 know, these different ballots that should be
19 counted, or whatnot, it's going to take a lot of
20 forensic work to look into that. But I think
21 that -- I think that everything we know about
22 recounts is that there's always discrepancies
23 between the counts on the day of the election and
24 the following days and the final.

1 The last thing about the individual
2 protested ballots. I think it's it's quite clear
3 in the statute Chapter 54, Section 106, if a
4 voter marks more names than there are persons to
5 be elected on an office, his ballot shall not be
6 counted for such office. So -- and the two
7 you've heard about -- you've only heard about two
8 of them here today. These two up in -- up in
9 Ipswich.

10 There are 30-something challenges that
11 -- protested ballots by Mr. Mirra, that are
12 sitting in envelopes somewhere. Among those, are
13 ballots that -- that the voters filled in using
14 mail-in ballots, used a pencil rather than a pen
15 to fill in the oval. Those were all objected to.
16 I ended up objecting to one of them myself just
17 to test to see whether they joined me in my
18 objection when I made it, when it was a Kassner
19 vote.

20 But, you know, there were many, many
21 things. There was a ballot where someone had --
22 had filled in both circles for Kassner and for --
23 for Mirra, and then Kassner, and then put an X
24 next to the -- over the oval for -- for Mr. Mirra

1 and wrote, "No" to the left of that. And while
2 leaving this oval filled in for Ms. Kassner and
3 put a, "Yes" next to that, That seemed to be
4 pretty clear as to what the voter's intent was in
5 that ballot, but that was protested and that's
6 one of the ballots that's still at issue here.

7 So there's -- there's many, many
8 different ballots. I think these election
9 officials did the best they could with -- with
10 making determinations. And you don't always have
11 to make a determination for a ballot. You can
12 make -- the -- the clerk's themselves, the
13 registrars themselves can decide that a ballot
14 cannot be -- the intent of the voter cannot be
15 reasonably ascertained.

16 And if you look -- and that, you know, I
17 know the scribbled ballot, the one that's -- that
18 Mr. Mirra has talked about endlessly, it's very
19 similar to that -- going back to the Alicea Case,
20 it's very similar to that ballot in the Alicea
21 case. And that case, the ballot was rejected
22 because of the governor's race, the voter had
23 done scribbles in the oval for one candidate, and
24 then scribbles underneath that and a little bit

1 in the circle for the -- for the other candidate
2 for governor. And that was rejected by the
3 scanner as an over vote.

4 And the court had no -- no problem with
5 that. The court's only issue was whether or not
6 the scribbling mark in Mr. Alicea's oval worked
7 and we think that that was a determination that
8 was made by the Board of Registrars. I was
9 there, I argued it and it looked like two
10 different markings there on that ballot.

11 And it looked like the -- from the
12 perspective of the registrars of voters, they
13 could not reasonably ascertain the intent of the
14 voter. And so that is that's our position on it.
15 That was our position then.

16 Again, I just want to thank you all for
17 the time, and I'd be welcomed to hear any
18 questions you might have.

19 REPRESENTATIVE DAY: Thank you, Counsel.
20 and Ms. Kassner as well. I guess I would start
21 off with the same questions we had for
22 Representative Mirra and -- and his counsel.

23 What is your opinion on the significance
24 of the certificate and the summons sent?

1 MR. MCDONOUGH: Well, I -- I think that
2 the certification on December 14 and the summons
3 to -- to Ms. Kassner that was issued at the same
4 time is a bright line in terms of election
5 contests. Once that determination is made,
6 everything that the Secretary of State has to do
7 from that point is administerial, and the --
8 after the Secretary signs it, the Secretary just
9 has to take that and send that over to the -- to
10 the House of Representatives.

11 I'm not sure that any court could have
12 the authority to order the Secretary to change
13 that certification when it was voted on by the
14 Executive Council, signed by the Secretary of the
15 -- of the council and signed by the Governor. So
16 we think that's -- that's a bright line
17 distinction.

18 And I think that when I mentioned the
19 Banks Case and my -- in my motion to dismiss in
20 Superior Court, I think I only focused a sentence
21 on that. But the Banks Case was picked up by
22 Judge Drechsler there. And -- and really -- he
23 really looked at it extensively.

24 And -- and that was something that was

1 not apparent to the -- to the Secretary of State
2 when the Secretary of State filed their
3 opposition to the motion for preliminary
4 injunction. It was not apparent to the
5 municipal attorneys as well. They didn't mention
6 the Banks Case. I don't think they had done work
7 on that.

8 But then, after that, we discovered that
9 there was an order from a Special Committee here,
10 the Special Committee from 2003. And if you look
11 at that order, they spend an incredible amount --
12 that legislature spent an incredible amount of
13 time talking about the Bank's Case and talking
14 about when authority of the court ended and the
15 exclusive jurisdiction moved to the -- to the --
16 to the House of Representatives.

17 So that certification in -- in my mind,
18 is a bright line that if you -- if you want to
19 initiate litigation, you have to initiate it
20 before there's a certification. Otherwise, you
21 have to deal with the House of Representatives,
22 which we are doing here.

23 REPRESENTATIVE DAY: And does your client
24 agree that -- or I should ask, what's your

1 position on the involvement of the judicial
2 branch at this point in time in this matter?

3 MR. MCDONOUGH: At this point in time,
4 you know, we've been through the Superior Court,
5 the Appeals Court, and the SJC, and they've not
6 only upheld our position, the Appeals Court and
7 the Superior Court said that Mr. Mirra has no
8 likelihood of success on the merits. He has
9 filed a motion for --

10 REPRESENTATIVE DAY: Sorry. Counsel,
11 actually, I should have put a finer point on it.

12 You agree that the involvement of the
13 judicial branch ceases now that the Special
14 Committee has taken jurisdiction?

15 MR. MCDONOUGH: It -- yes. But somebody
16 needs to file a motion to that -- for that with
17 the -- with the Appeals Court because there's a
18 notice of appeal there.

19 REPRESENTATIVE DAY: That's in the --

20 MR. MCDONOUGH: Yeah.

21 REPRESENTATIVE DAY: -- the courts for
22 you all to deal with, right?

23 MR. MCDONOUGH: Right.

24 REPRESENTATIVE DAY: And the decision of

1 this Special Committee will be accepted?

2 MR. MCDONOUGH: This is it. You know,
3 if we don't prevail here, this is it.

4 REPRESENTATIVE RYAN: Just for
5 clarification to one -- on the certification and
6 that the House of Representatives, the body
7 itself, in these previous cases, by us convening
8 this group in having these hearings, we have
9 taken Jurisdiction, correct?

10 MR. MCDONOUGH: Yes.

11 REPRESENTATIVE RYAN: Thank you.

12 MR. MCDONOUGH: I believe that when the
13 Special Committee was set up -- you know, it's
14 questioned about -- it was -- that the House of
15 Representatives did nothing after the
16 certification. But as soon as the House of
17 Representatives did something, it has exclusive
18 jurisdiction.

19 Now, the House decided in 2011 not to
20 exercise that jurisdiction in the Alicea Case.
21 They did set up a Special Committee, but they
22 waited for the end of the court proceedings. But
23 that was the choice that the candidates, I
24 believe, made.

1 REPRESENTATIVE RYAN: Just wanted to
2 emphasize that we have taken jurisdiction.

3 MR. MCDONOUGH: Yes.

4 REPRESENTATIVE RYAN: Thank you.

5 REPRESENTATIVE JONES: Just to clarify, a
6 certification is certificate that's mailed to the
7 community? Is that what you're referring to?
8 Because, immediately after the first November 8
9 election, there is -- there was a certification
10 by the Governor's Council of the November 8
11 results, that was then assigned. And then, that
12 triggered the -- the ability to file for the
13 recount.

14 MR. MCDONOUGH: What happened was that
15 there was a first certification on November 30.

16 REPRESENTATIVE JONES: Right.

17 MR. MCDONOUGH: And that triggered the
18 recount.

19 REPRESENTATIVE JONES: Because of
20 signatures, were requesting it.

21 MR. MCDONOUGH: Yes.

22 REPRESENTATIVE JONES: Right.

23 MR. MCDONOUGH: Because there was --
24 there had been sufficient signatures --

1 REPRESENTATIVE JONES: The subsequent
2 certification after the recount was completed,
3 and then -- and that was on November 14th.

4 MR. MCDONOUGH: Right.

5 REPRESENTATIVE JONES: And that led to
6 the certificate?

7 MR. MCDONOUGH: Yes.

8 REPRESENTATIVE JONES: Let's make a
9 distinction between the certificate and the
10 certification because -- .

11 MR. MCDONOUGH: Yeah, it's -- it's it's
12 the return of votes. I think it's called. And
13 then, there is a certificate -- there's a
14 summons, actually, that Ms. Kassner --

15 REPRESENTATIVE JONES: Right.

16 MR. MCDONOUGH: -- had -- she violated, I
17 hope she doesn't go to jail for not abiding by
18 that summons to appear at the House Chamber on
19 the -- she was in the gallery.

20 REPRESENTATIVE DAY: Counsel, do you or
21 your client allege that there was any fraud?

22 MR. MCDONOUGH: There was no fraud
23 anywhere in the in the election. No, the whole
24 thing was for very professionally run.

1 REPRESENTATIVE DAY: Any intentional
2 misdeeds by registrars?

3 MR. MCDONOUGH: No. No. And I'll --
4 I'll say that about, you know, Mr. Mirra's
5 supporters, and who was attorney -- there are a
6 lot of attorneys who were involved in this. We
7 had some attorneys actually from -- from the
8 Republican National Committee came up from
9 Washington, DC to help on this. It was almost a
10 national case.

11 But they were all professional, his
12 volunteers were all very professional and very --
13 you know, I had good conversations with -- with
14 many of those people. They're good people.

15 REPRESENTATIVE DAY: What your response
16 to -- and if I'm misquoting, please Counsel, let
17 me know, that O'Brien is controlling here on the
18 -- on the intent issue?

19 MR. MCDONOUGH: Well, I -- O'Brien is
20 like a seminal case. But in this case, you know,
21 I saw the ballot in Ipswich. There was an oval
22 filled in for Mr. Mirra, and then Donald Trump's
23 name was written in and the oval was filled in
24 for Donald Trump. Two ovals were filled-in in

1 that ballot. There's no mistake about it in my
2 mind. I made a copy of it.

3 REPRESENTATIVE JONES: So then -- so
4 you'd have no objection --

5 MR. MCDONOUGH: I didn't make a copy of
6 the ballot. I made my own visualization.

7 REPRESENTATIVE JONES: Okay. But you
8 would then have no objection if we reviewed those
9 contested ballots?

10 MR. MCDONOUGH: Those two?

11 REPRESENTATIVE JONES: Or any of the ones
12 that are outstanding?

13 MR. MCDONOUGH: I -- I think if this
14 committee has got, you know, like Judge Drechsler
15 said, I don't think that examining this piecemeal
16 is the way to go. If they wanted to -- if they
17 had filed a complaint about two ballots, then
18 that might work. But there's a whole lot of
19 issues here and there's a whole lot of issues to
20 determine. And then, we're going to respond to a
21 lot of those issues.

22 I mean, we didn't even have an
23 opportunity to answer the complaint and -- and
24 make any allegations. So we're -- you know, I

1 think it's -- it's a waste of time. I -- I think
2 to be honest with you, I think it's a slap in the
3 face to those registrars who, you know -- and I
4 was there. You were there as well. I believe it
5 was a -- .

6 REPRESENTATIVE JONES: Was it a unanimous
7 vote?

8 MR. MCDONOUGH: No, it was a two-to-one
9 vote, but there was a lot of discussion about it
10 among the three registrars. They didn't do this
11 cavalierly. They didn't go in there saying,
12 we're going to do this for Mirra or we're going
13 to do this for Kassner.

14 They spent an awful lot of time
15 discussing it. These were -- I mean, this is
16 what they do. This is what registrars do. This
17 is what, you know, I do it kind of part-time, but
18 they do it full-time looking at this. So I think
19 it just -- I think it's unnecessary. And really
20 a slap in the face to those registrars.

21 REPRESENTATIVE JONES: Just -- you
22 mentioned the spoiled ballots.

23 MR. MCDONOUGH: Yeah.

24 REPRESENTATIVE JONES: Did you review the

1 spoiled ballots in all six communities?

2 MR. MCDONOUGH: Yes.

3 REPRESENTATIVE JONES: And are those all
4 kept separately so that you can distinguish
5 between -- you mentioned like spoiled ballot that
6 somebody maybe voted twice, and asked for another
7 ballot. In which case you'd agree that that
8 first spoiled ballot shouldn't be looked at for
9 any of the reasons because they've had another
10 chance to fill in an entire ballot?

11 MR. MCDONOUGH: Yes.

12 REPRESENTATIVE JONES: Are those all
13 kept?

14 MR. MCDONOUGH: They are all kept, all
15 the spoiled ballots--

16 REPRESENTATIVE JONES: I know they are
17 all kept. Are they all kept, you know, not in
18 one big envelope that says spoiled so you can
19 distinguish between somebody who's had a chance
20 to vote again versus someone who's not had a
21 chance to vote again?

22 MR. MCDONOUGH: You know, the -- the
23 mail-in ballots are different from in-person
24 ballots.

1 REPRESENTATIVE JONES: Spoiled ballots?

2 MR. MCDONOUGH: No. In-person ballots
3 are different than mail-in ballots. Mail-in
4 ballots, I believe, are the yellow on the top, or
5 something like that. So these were all mail-in
6 ballots that were objected to, that -- that had,
7 you know, that -- you know, that -- that had --

8 REPRESENTATIVE JONES: They were all
9 spoiled on election day?

10 MR. MCDONOUGH: They were spoiled on
11 election day. As the clerk said, they were
12 spoiled because they were -- they were just
13 treated as spoiled because the machine rejected
14 them, which is inappropriate. It -- it shouldn't
15 happen that way.

16 Should have been -- they should have
17 been separated and -- and put it in a special
18 place to be counted later. And I think the clerk
19 understands that was a mistake. Mistakes happen.

20 REPRESENTATIVE JONES: Right. No -- no.
21 I -- I appreciate you saying that, because that's
22 exactly -- when you say the registrar had spent
23 time and tried to render a decision, but they're
24 human beings and mistakes happen, and that's why

1 I think we, ultimately as the final judge in
2 this, may need to look at those contested issues.
3 I agree with you.

4 REPRESENTATIVE DAY: Okay. I thank you
5 both for appearing and -- and for coming forward
6 today. And I want to commend both sides on this
7 ability that you've exhibited in this, and
8 particularly for the remarks you both delivered
9 on the integrity of our elections. It's welcome,
10 especially in the national setting here today.

11 We're going to close this hearing, but I
12 want to take just take one more privilege to
13 follow the lead of counsel and candidates to
14 thank the folks that helped out with this today.
15 So Seamus Colbert from ILS down the end, Julianne
16 Ryan for our stenographer. Our House court
17 officers who are here helping us out.

18 The clerk of the House, Steven James,
19 and staff for their work in helping us get to
20 this point. April Presgucci from the State
21 Library. Kyle Richardson, in our close
22 captioning service. The legislature has set up
23 an accessibility service called PART. So Lashae
24 Flowers and Jamie Pellegrino, who are helping

1 interpret our words, which is not always easy to
2 do given the way I talk.

3 Colleen McGonagle from the House business
4 office. State -- from Leader Jones' office,
5 Melissa Cavanaugh and Michael Smith. From
6 Representative Ryan's office, Sean Getchald and
7 Colleen Belotti. And for my office, Talia Quinn,
8 Michael Musto, Counsel Alex O'Connell, and
9 Patrick Pendergast for their work in helping us
10 get ready for this hearing. We will take this
11 matter under advisement, and I believe what that
12 means --

13 REPRESENTATIVE JONES: Is the record
14 still open if either counsel wants to do a
15 follow-up submission to address any questions, if
16 they want to in writing?

17 REPRESENTATIVE DAY: Yeah. I think we
18 can move. Yeah.

19 REPRESENTATIVE RYAN: Can we make a
20 motion about it?

21 REPRESENTATIVE DAY: Sure.

22 REPRESENTATIVE RYAN: Motion to leave the
23 record open for follow up in --

24 REPRESENTATIVE DAY: Second.

1 REPRESENTATIVE RYAN: -- Submissions.

2 REPRESENTATIVE DAY: Yeah. Okay. All
3 agree?

4 REPRESENTATIVE JONES: Yes.

5 REPRESENTATIVE DAY: All right. So the
6 record will remain open. We ask you to -- if
7 there is follow-up, to get that to us as quickly
8 as possible.

9 MR. MCDONOUGH: Could we set a time,
10 like, the end of business today or Monday, or --

11 REPRESENTATIVE JONES: Why don't we say
12 Tuesday because Monday is a holiday.

13 REPRESENTATIVE DAY: So let's say Tuesday
14 at the latest. All right. With that, we will
15 conclude this hearing.

16 (Whereupon, the proceeding is concluded at 11:15 a.m.)

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C E R T I F I C A T E

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COMMONWEALTH OF MASSACHUSETTS

COUNTY OF PLYMOUTH, ss.

I, Julianne Ryan, a Professional Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing Special Committee Hearing Transcript was taken by me on January 13, 2023; That the said testimony was taken audiographically and then transcribed under my direction. To the best of my knowledge, the within transcript is a complete, true and accurate record of said hearing.

I am not connected by blood or marriage with any of the said parties, nor interested directly or indirectly in the matter in controversy.

In witness whereof, I have hereunto set my hand and Notary Seal this 17th day of January, 2023.

Julianne Ryan
COURT REPORTER
MY COMMISSION EXPIRES:
OCTOBER 12, 2029

Appendix K - Resolutions Seating Kassner

Appendix G

The Commonwealth of Massachusetts

In the Year Two Thousand and Twenty-Three

RESOLUTIONS RELATIVE TO DECLARING THAT KRISTIN E. KASSNER WAS DULY ELECTED REPRESENTATIVE TO THE GENERAL COURT.

Resolved, That Kristin E. Kassner of Hamilton was duly elected the Representative to the General Court from the Second Essex District in the election held on November 8, 2022 and that she is entitled to and is hereby given that seat allocated for the Second Essex District.