

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT 2020 SEP -4 PM 3:40

TRACEY MARTEL,)
ROBERT FRENIER,)
BRIAN SMITH,)
RAOUL BEAULIEU, and)
MARY BEAUSOLEIL,)

Plaintiffs,)

v.)

JAMES C. CONDOS,)
In his official capacity as the)
SECRETARY OF STATE OF)
VERMONT,)

Defendant.)

CLERK
BY EH
DEPUTY CLERK

Civil Action No. 5:20-cv-131

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs Tracey Martel (“Martel”), Robert Frenier (“Frenier”), Brian Smith (“Smith”), Raoul Beaulieu (“Beaulieu”), and Mary Beausoleil (“Beausoleil”) and, collectively with Martel, Frenier, Smith, and Beaulieu, (“Plaintiffs”), by their undersigned counsel, for their Complaint for Injunctive and Declaratory Relief (“Complaint”) against James C. Condos, in his official capacity as the Secretary of State of Vermont (“Condos” or “Defendant”), state as follows:

PARTIES AND JURISDICTION

1. Martel is a natural person residing in Victory, Vermont. Martel is registered to vote in Victory, Vermont. Martel is the Town Clerk of Victory, Vermont and in that role is responsible for the administration of Victory’s elections.

2. Frenier is a natural person residing in Chelsea, Vermont. Frenier is registered to vote in Chelsea, Vermont. Frenier served as a member of the Vermont House of Representatives for the Orange-1 District from 2017 through 2018.

3. Smith is a natural person residing in Derby, Vermont. Smith is registered to vote in Derby, Vermont. Smith has served as a member of the Vermont House of Representatives for the Orleans-1 District from 2017 through the present.

4. Beaulieu is a natural person residing in North Hero, Vermont. Beaulieu has been a registered voter in the town of North Hero for 34 years.

5. Beausoleil is a natural person residing in Lyndon, Vermont. Beausoleil is registered to vote in the town of Lyndon and previously served as a Justice of the Peace in Lyndon.

6. Condos is a natural person residing in Vermont. Condos is the incumbent Secretary of State of Vermont and in this role is an officer of the Executive department of the government of Vermont.

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and the laws of the United States. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1343 because this action is brought to redress the deprivation of Plaintiffs' civil rights under color of State law and to secure relief for the protection of Plaintiffs' right to vote.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the sole Defendant resides in this District and because the events and omissions giving rise to this action occurred in this District.

BACKGROUND

THE U.S. CONSTITUTION AND VERMONT CONSTITUTION PROTECT “FULL VALUE” OF EACH CITIZEN’S VOTE FROM DILUTION

9. The U.S. Constitution protects “the right of all qualified citizens to vote, in state as well as in federal elections.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). This right to vote “is more . . . than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. . . . It also includes the right to have the vote counted at full value without dilution or discount.” *Id.* at 555 n.29 (quoting *South v. Peters*, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)). State laws that abridge their citizens’ right to have the “full value” of their votes counted “without dilution or discount” violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *See id.* at 555-56.

10. The Constitution of the State of Vermont (“Vermont Constitution”) likewise provides “[t]hat all elections ought to be free and without corruption,” and provides “that all voters, having a sufficient, evident, common interest with, and attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in this constitution.” *See* Vt. Const., ch. I, art. 8.

11. Fraudulently-cast ballots dilute the votes cast by honest citizens and thereby violate the constitutionally-protected rights of those citizens. *See*,

e.g., *Anderson v. United States*, 417 U.S. 211, 226-27 (1974); *Baker v. Carr*, 369 U.S. 186, 207 (1962).

U.S. CONSTITUTION VESTS POWER TO SET TIME, PLACE AND MANNER OF ELECTIONS IN STATE LEGISLATURE; VERMONT CONSTITUTION FORBIDS DELEGATION OF LEGISLATIVE POWER TO EXECUTIVE BRANCH

12. The U.S. Constitution vests the power to determine “[t]he Times, Places and Manner of holding Elections for Senators and Representatives” in the legislature of each state. U.S. Const., art. I, § 4.

13. The U.S. Constitution also vests in the state legislatures the power to determine the manner in which Electors are chosen to serve in the Electoral College and elect the President and Vice President. *See* U.S. Const., art. II, § 1.

14. Under the Vermont Constitution, the “Supreme Legislative power” is vested in the Senate and House of Representatives, which together form the Vermont General Assembly. *See* Vt. Const., ch. II, § 2.

15. The Vermont Constitution explicitly prohibits the delegation of legislative power to the executive or judicial branches of government, providing, “The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others.” Vt. Const., ch. II, § 5.

EXTANT VERMONT LAW PROVIDES FOR ROBUST AND SECURE ABSENTEE VOTING

16. In Vermont, the Vermont General Assembly has exercised the power vested in it by the U.S. Constitution and provided a robust statutory scheme for the conduct of elections within the state. *See* 17 V.S.A. § 2101 *et seq.*

17. Of particular note given the ongoing COVID-19 pandemic and the appurtenant disruption of regular business throughout Vermont and the United States (“Pandemic”) are Vermont’s provisions for early and absentee voting, 17 V.S.A. § 2531 *et seq.*

18. Under existing Vermont law, a voter may request an early voter absentee ballot (“Absentee Ballot”) by applying for an Absentee Ballot with the town clerk of the town in which they are registered to vote. *See* 17 V.S.A. § 2531(b)(1). Applications for an Absentee Ballot may be made in person, in writing or via telephone. *See* 17 V.S.A. § 2532(a)(1). A voter can authorize a family member, health care provider, or any other person to apply for an Absentee Ballot on their behalf. *See* 17 V.S.A. § 2532(a). An application may be made until the town clerk’s office closes on the day before the election. 17 V.S.A. § 2531(a)(1). Once a valid application is made, voters generally receive their Absentee Ballot by mail or by picking them up from the town clerk’s office. 17 V.S.A. § 2539(a). Voters who request an Absentee Ballot due to illness, injury or disability receive their Absentee Ballots either by mail, electronic mail, or by personal delivery by a pair of Justices of the Peace (of different political parties). 17 V.S.A. §§ 2538, 2539(b). A voter may make a single application for Absentee Ballots for each election taking place in a single year, but a voter must make a new application each election year in which they wish to receive any Absentee Ballots. 17 V.S.A. § 2532(d).

19. Voters who vote using an Absentee Ballot must sign a certificate bearing their name in which they swear or affirm that they are a legal voter of the town in which they cast their Absentee Ballot. 17 V.S.A. § 2542.

20. The system the Vermont General Assembly has prescribed for the use of Absentee Ballots contains several features that safeguard the validity of the election by preventing fraudulent or otherwise dilutive votes:

a. Under this statutory regime, the town clerk of each town is responsible for both issuing Absentee Ballots to voters who apply for them and receiving and tabulating those same Absentee Ballots after they are completed and returned by the voter. The town clerk is therefore aware in advance of the persons who are likely to vote using Absentee Ballots and is also aware whether a voter who arrives at the polling place in person on election day had previously requested an Absentee Ballot.

b. Voters are required to proactively apply for an Absentee Ballot before an Absentee Ballot is issued to them, greatly reducing the risk that Absentee Ballots will be erroneously issued to voters who are no longer Vermont residents or who do not intend to vote by mail.

21. These protections are particularly important for Vermont's elections because a large portion of those elections take place in rural districts consisting of only a few thousand voters. In several recent elections for seats in the General Assembly, the margin of victory has been less than 10 votes, with some elections being decided by a single vote. Even a small lapse in electoral

security may therefore result in a material dilution in Vermont citizens' constitutionally-protected voting rights. See Affidavit of Robert Frenier ¶ 2.

22. The primary elections held in Vermont in August 2020 saw record turnout from Vermont voters, both in terms of the number of votes cast by Absentee Ballot and the number of votes cast overall. See Associated Press, *Preliminary results show record turnout for Vermont primary* (Aug. 13, 2020), <https://apnews.com/f7ec72343a8281743eb394a91f67c99f>.¹ The success of the August 2020 primary elections conclusively demonstrated the robustness of Vermont's existing statutory scheme for requesting and submitting Absentee Ballots.

23. Each Plaintiff is an eligible and registered voter in the State of Vermont. Each Plaintiff has regularly voted in prior Vermont state and federal elections, including each having voted in the last election for state Governor and for U.S. President.

24. Each Plaintiff plans and intends on voting in the upcoming November General Election to be held in Vermont. Each plaintiff believe that this General Election can be held safely, with no additional health risk to any voter, under pre-existing Vermont election laws, which each Plaintiff understands allows any voter who desires an early absentee mail-in ballot to easily obtain, with no in-person appearance required.

¹ The Associated Press's article was based on preliminary results of "over 155,000" votes announced by Condos. The final, official turnout for the August primary was 174,242 votes cast. See Vt. Sec. of State, *Vermont Election Results: Official Results*, (last accessed Aug. 31, 2020), <https://electionresults.vermont.gov/Index.html#/voteturnout>.

25. If the Directive is permitted to go into effect, and if General Election mail-in ballots are automatically distributed to every eligible voter (any voter on a voter check-list), without any request for such a ballot from that voter, many castable ballots will inevitably fall in the hands of persons other than the voter to whom the mail-in ballot was directed, including some mail-in ballots that will be sent to persons to have moved, died or otherwise become ineligible.

26. Some or many of these misdirected or misreceived ballots can and will be cast by a person other than the voter to which the ballots were addressed or by an otherwise ineligible voter. Each such miscast ballot will directly impact and dilute the individual vote of each legitimate Plaintiff voter, for which each Plaintiff will have no remedy once such miscast ballots are received and counted.

27. The Directive's provisions for the unregulated return of mail-in ballots by persons other than the voter will compound and exacerbate the harm to and dilution of each Plaintiff's legitimate vote caused by the distribution of unrequested mail-in ballots.

28. Each Plaintiff and each Plaintiff's individual legitimate vote in the November 2020 General Election will be directly, specifically and particularly impacted, harmed and diluted by the implementation of the Directive and by the mailing of unrequested mail-in ballots to each voter.

VERMONT GENERAL ASSEMBLY PASSES TEMPORARY ELECTIONS PROCEDURE LAW IN
RESPONSE TO PANDEMIC

29. On March 30, 2020, Vermont Governor Phil Scott ("Governor") signed H. 681 into law as Vermont Law No. 92 ("Act 92"). Act 92, which

explicitly referenced the Pandemic as the reason for its passage, provides, *inter alia*, for changes to Vermont’s election procedures “for the purpose of protecting the health, safety, and welfare of voters, elections workers, and candidates in carrying out elections.” See Act 92 §§ 1, 3.

30. Act 92 was subsequently amended on June 26, 2020 through the passage into law, without the Governor’s signature, of S. 348 as Vermont Law No. 135 (“Act 135”).

31. As relevant to the present action, Act 92 (as amended by Act 135) provides:

Sec. 3. ELECTIONS IN THE YEAR 2020; SECRETARY OF STATE; GOVERNOR; TEMPORARY ELECTIONS PROCEDURES

(a) In the year 2020, the Secretary of State is authorized, in consultation with the Governor, to order or permit, as applicable, appropriate elections procedures for the purpose of protecting the health, safety, and welfare of voters, elections workers, and candidates in carrying out elections, including:

- (1) requiring mail balloting by requiring town clerks to send ballots by mail to all registered voters;
- (2) creating early or mail ballot collection stations;
- (3) permitting municipal clerks to process and begin counting ballots in a 30-day window preceding the day of an election;
- (4) permitting drive-up, car window collection of ballots by election officials;
- (5) extending the time for municipal clerks to process and count ballots; and
- (6) extending voting hours on the day of an election.

(b) For any temporary elections procedure the Secretary of State orders or permits under this section, the Secretary shall adopt any

necessary corresponding procedures that ensure the public can monitor polling places and the counting of votes.

(c) If the Secretary of State orders or permits the mailing of 2020 General Election ballots to all registered voters pursuant to subsection (a) of this section, the Secretary shall:

(1) inform the Governor as soon as reasonably practicable following the Secretary's decision to do so; and

(2) require the return of those ballots to be in the manner prescribed by 17 V.S.A. § 2543 (return of ballots) as set forth in Sec. 1a of this act,² the provisions of which shall apply to that return.

DEFENDANT ISSUES UNCONSTITUTIONAL DIRECTIVE THAT CONTRADICTS EXISTING
VERMONT LAW

32. On July 20, 2020, Defendant issued the “First Statewide Elections Directive” (“Directive”), purportedly pursuant to the authority granted by Act 92 and Act 135. A true and correct copy of the Directive is attached hereto as **Exhibit 1**.

33. The Directive illegally permits the processing of ballots returned by mail in the presence of election officials of only one party, in contravention of 17 V.S.A. §§ 2546(b) & 2584, which requires the participation of at least two election officials of different political parties. *See* Directive at 2.

² There is no “Sec. 1a” in either Act 92 or Act 135. On July 2, 2020, the Governor issued a letter addressed to the Vermont General Assembly noting this “cross-reference to a section of the bill that does not exist” and his attendant concern that this error “leav[es] the authority of the Secretary of State ambiguous as it relates to ballot returns.” The Governor further stated this error was the reason he withheld his signature from Act 135. A true and correct copy of the Governor’s July 2 letter to the Vermont General Assembly is attached hereto as **Exhibit 2**. This provision effectively makes it impossible for the Secretary of State to lawfully order or permit general election ballots to be mailed to all voters, as it is impossible for the Secretary of State to provide for the return of those ballots “as set forth in” a non-existent section of the relevant statutes.

34. The Directive also illegally permits local Boards of Civil Authority (“BCAs”) to change the location of polling places as late as 15 days prior to an election for any reason, in contravention of 17 V.S.A. § 2502(c) which prohibits changing the location of polling places within 30 days of an election except in case of emergency. *See* Directive at 3. The Directive also places the onus on each BCA to inform voters of these late changes in poll location, without mandating that a BCA give voters *any* notice to voters of the change. *See id.*

35. The Directive provides that “[a] ballot will be mailed to every active voter on the statewide voter checklist.”³ Directive at 4. All voters on the statewide checklist are considered “active” unless their BCA has affirmatively challenged their residency in the town where they are registered to vote. *See id.*

36. While Act 92 contemplated that the mass issuance of ballots by mail would be conducted by the town clerks, the Directive provides that these mailed ballots “will be mailed from a central location by the Secretary of State’s Office.” *Compare id. with* Act 92 § 3(a)(1).

37. The Directive purported to override “any provisions of law contained in Title 17 of the Vermont Statutes Annotated to the contrary,” and in fact conflicts with existing Vermont election law in several areas. The Directive is therefore *ultra vires* and contrary to the U.S. Constitution and Vermont Constitution.

³ The statewide voter checklist is populated with the contents of the voter checklists maintained by the town clerk for each town in Vermont.

38. The U.S. Constitution vests the power to determine the time, place and manner of federal elections in Vermont exclusively in the Vermont legislature.

39. The Vermont Constitution vests the state's legislative power exclusively in the Vermont General Assembly, and specifically forbids the executive department of Vermont's government from exercising legislative power.

40. Defendant, as an official of the executive department of the Vermont government, therefore has no power under the U.S. Constitution to set the time, place or manner of Vermont's federal elections, and also has no power to alter existing Vermont election law under the Vermont Constitution. Defendant purported to exercise both of these powers in issuing the Directive, and the Directive is therefore unconstitutional under both the U.S. Constitution and the Vermont Constitution.

41. The issuance of the Directive was also *ultra vires* because no provision of Act 92, Act 135 or any other law imbued Defendant with the authority to issue regulations that contravene or override existing law. Even if, *arguendo*, the General Assembly could delegate to Defendant the power to make changes to existing Vermont election law (which it cannot do under the Vermont Constitution), it has not done so in this case.

CONDOS SENDS ABSENTEE BALLOT REQUEST POSTCARDS TO INCORRECT AND INVALID ADDRESSES

42. After issuing the Directive, Condos caused absentee ballot request forms printed on postcards (“Postcards”) to be sent to every person listed on the statewide voter checklist.

43. The issuance of the Postcards was not provided for by the Directive or any provision of Vermont law, but was intended to be a test of the process by which Condos intended to mail ballots to all voters on the statewide voter checklist pursuant to the Directive.

44. The mailing of the Postcards revealed numerous problems with Defendant’s plan to mail ballots to every person appearing on the state’s voter checklist.

45. Postcards were sent to multiple voters at addresses they no longer used or at which they no longer resided, indicating the state’s voter checklist is not up to date.

46. Multiple voters were not sent a Postcard at all despite appearing on the voter rolls. Some of these voters have been registered to vote at the same address for decades.

47. Postcards were sent to several people who are no longer eligible to vote in Vermont:

a. A Postcard was sent to a former Vermont resident at a Florida address. After that voter contacted the town clerk for his former residence to remove his name from the voter rolls, he discovered his spouse also remained on the town’s voter checklist despite having a Florida address.

b. Former Vermont residents who now reside in New Hampshire received Postcards at their New Hampshire address despite previously making a written request to be taken off their former town's voter checklist.

c. A former Vermont resident who had previously requested Absentee Ballots at several addresses due to his military service was sent a Postcard to an address in New York. The addressee had not been a valid Vermont voter since 2017 and had not resided at the New York address since 2006. The town clerk's office for this former resident should have been aware that this New York address was no longer valid because the former resident had successfully requested Absentee Ballots for at least three other addresses between 2006 and 2017.

48. Some Vermont residents received Postcards addressed to former residents at their same address. Other voters received Postcards that were intended for another Vermont voter but that were sent to the incorrect address.

49. Adding to the confusion, the Postcards are styled as "Request[s] for Early Absentee Voter Ballot" and provide a space for recipients to indicate whether they wish to receive an Absentee Ballot for the general election in November. There is no indication on the face of the Postcard that Defendant plans to send recipients a mail-in ballot regardless of whether they request an Absentee Ballot.

50. The mishaps encountered in the course of sending the Postcards to Vermont voters illustrate the problems that will arise when Defendant attempts

to send mail-in ballots to Vermont voters. The Postcards were sent by the same means that Defendant proposes to use to send the mail-in ballots, and the Postcards were sent to the persons and addresses listed in the state's voter checklist, the same set of names and addresses that will be used to address the mail-in ballots.

51. The problems illustrated by Defendant's attempt to send Postcards to every registered voter in Vermont are caused in large part by the over-inclusive method the Directive prescribes for determining who should receive a mail-in ballot. Under the Directive, every person appearing on the state voter checklist is to receive a mail-in ballot unless their voter registration is affirmatively challenged by their town's BCA. But under Vermont law, BCAs are not obligated to perform any investigation or due diligence of the persons listed on their voter checklists to ensure the addresses on their checklists are current or that the persons listed on the checklists remain qualified to vote in that town. As a result, and as demonstrated by Defendant's recent experience with the Postcards, town voter checklists (and by extension the statewide voter checklist) are woefully outdated and inaccurate. Because Defendant continues to rely on these inaccurate checklists to direct the mail-in ballots, mail-in ballots will be sent to persons who are not intended to receive them and not all valid Vermont voters will receive mail-in ballots intended for them.

THE DIRECTIVE VIOLATES PLAINTIFFS' RIGHTS BY ENABLING MASSIVE VOTER FRAUD IN VERMONT'S ELECTIONS

52. The errors that will occur in sending mail-in ballots to voters under the Directive violates Vermont voters' constitutionally-protected rights by

creating arbitrary differences in the ease with which Vermont voters can vote in the November general election. As demonstrated by the recent experience with the Postcards, not all Vermont voters will receive a mail-in ballot despite being validly registered to vote in their town. Those Vermont voters who do not receive a mail-in ballot will be disadvantaged relative to voters who do receive a mail-in ballot.

53. The mass mailing of mail-in ballots contemplated by the Directive also violates Vermont voters' constitutional rights by creating myriad opportunities for their votes to be diluted by illegally submitted ballots. As demonstrated by the recent experience with the Postcards, many people will receive mail-in ballots despite not being authorized to cast them, whether because those recipients are not valid Vermont voters at all or because the recipient received a mail-in ballot intended for another voter. The mass mailing of ballots contemplated by the Directive will therefore result in the creation of a large pool of ballots that are ripe for fraudulent use. These improperly-received ballots can easily be completed by the recipient or by a third party and the town that receives them would have few or no ways to verify that the ballot was completed by a valid Vermont voter or by the person whose name appears on the ballot's envelope.

54. The risk of voter fraud is particularly acute because the Directive fails to provide any measures to restrict "ballot harvesting," a practice where organized groups, usually politically-motivated third parties (campaign workers, political activists, paid personnel), go door-to-door and offer to collect

and turn in ballots for voters, in some cases ‘helping’ voters fill out their ballots in a way that aligns with the ballot harvester’s political goals. “Ballot harvesting gives third parties who may be completely unknown to both the voter and election officials the opportunity to potentially tamper with absentee ballots.” See generally Michael Morley, *Election Emergency Redlines*, at 25, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3564829 (last accessed Aug. 31, 2020).

55. The Directive restricts ballot harvesting only by political candidates or “campaign staff members”,⁴ thus implicitly legalizing ballot harvesting by anyone who is not within these two categories including political parties, politically-aligned organizations, and even a candidate’s family and friends. See Directive at 1.

56. The Directive also ensures that any theoretical restriction on ballot harvesting will not be effectively enforced; the Directive explicitly states that local election officials “*shall not be required to enforce*” restrictions on ballot harvesting and are required only to “report any suspected violations” to the Secretary of State’s office, who in turn will report them to the Attorney General’s office for investigation. Directive at 1 (emphasis added). Any investigation the Attorney General’s office undertakes will be fruitless, as any

⁴ The Directive does not define “campaign staff member” and therefore leaves ambiguous who is prohibited from engaging in ballot harvesting. The only reference to “campaign staff” in Vermont election law is found in 17 V.S.A. § 2901, which provides in part, “Candidate’s committee’ means the candidate’s campaign staff, whether paid or unpaid.”

such investigation will necessarily take place after the election and are unlikely to conclude before the votes are counted and the election results are certified.

57. Upon information and belief, partisan political organizations are already planning door-to-door ballot harvesting campaigns in Vermont with the objective of unduly influencing the result of Vermont's General Election this year.

COUNT I
**Violation of the Fourteenth Amendment to the U.S. Constitution,
Vermont Constitution Chapter I, Article 8, and 42 U.S.C. § 1983
(Violation of Right to Vote)**

58. All other allegations in this Complaint are realleged as if fully set forth herein.

59. The Fourteenth Amendment to the U.S. Constitution protects citizens' right to vote, including their right to have the full value of their vote counted without any dilution or discount.

60. Chapter I, Article 8 of the Vermont Constitution likewise protects the right of Vermont citizens to vote and to have free and uncorrupted elections.

61. Defendant issued the Directive in his official capacity as Secretary of State of Vermont, purportedly in reliance on authority vested in the Secretary of State of Vermont by the Vermont General Assembly in Act 92 and Act 135. The Directive was therefore issued under color of state law.

62. Defendant's Directive dilutes the votes of validly registered Vermont voters by creating and distributing a large number of mail-in ballots that are ripe for fraudulent use. Some of these mail-in ballots will be sent via

mail to persons who are not valid Vermont voters because Defendant has not provided for sufficient means to ensure the state voter checklist contains only current Vermont residents. Other mail-in ballots will be sent to persons other than the voter for whom they are intended because Defendant has not provided for sufficient means to ensure the state voter checklist contains only the current address for Vermont voters. In both cases, the recipient of these mail-in ballots (or another third party, such as a ballot-harvesting organization) can easily complete and return the mail-in ballot and thereby fraudulently submit a vote they are otherwise not permitted to cast under Vermont law, particularly because Defendant has provided for no means to ensure mail-in ballots are cast only by the valid Vermont voters for whom they are intended.

63. Defendant's Directive also violate the voting rights of Vermont voters by arbitrarily placing some Vermont voters at an advantage relative to other Vermont voters. The mass mailing of mail-in ballots contemplated by the Directive will result in many mail-in ballots being mis-delivered or not delivered at all. As a result, some Vermont voters will receive mail-in ballots while some will not. Those Vermont voters who do not receive a mail-in ballot will suffer a disadvantage relative to those voters who do receive a mail-in ballot because voters who do not receive a ballot will have fewer means by which to vote. This disparity is especially burdensome in light of the ongoing Pandemic and the attendant risks of in-person voting.

64. Defendants' violations of Plaintiff's rights are especially severe because, due to the small size of many Vermont towns and legislative districts

and the close margins that decide many Vermont elections, even a low incidence of fraudulent voting or small burdens imposed on Vermont voters' ability to cast their votes can materially affect the outcome of elections in Vermont.

65. Absent relief from this Court, Plaintiffs will suffer irreparable harm to their voting rights as a result of Defendant's actions in promulgating the Directive and the actions Defendant will take in accordance with the Directive, particularly by distributing mail-in ballots via mass mail. Plaintiffs have no remedy at law for Defendant's violations of their right to have their votes count for their full, undiluted value.

66. The harm to Plaintiffs' constitutionally-protected voting rights that Plaintiffs will suffer in the absence of relief outweighs any burden Defendant might suffer if the Court grants the relief Plaintiffs seek.

67. The public interest favors granting the relief Plaintiffs seek, particularly given the Vermont Constitution provides "[t]hat all elections ought to be free and without corruption".

COUNT II

Violation of U.S. Constitution, Article I, Section 4 & Article II, Section I; Vermont Constitution, Chapter II, Section 5; and 42 U.S.C. § 1983 (Unconstitutional and *Ultra Vires* Use of Legislative Power)

68. All other allegations in this Complaint are realleged as if fully set forth herein.

69. Defendant issued the Directive in his official capacity as Secretary of State of Vermont, purportedly in reliance on authority vested in the

Secretary of State of Vermont by the Vermont General Assembly in Act 92 and Act 135. The Directive was therefore issued under color of state law.

70. The Directive purported to override “any provisions of law contained in Title 17 of the Vermont Statutes Annotated to the contrary,” and therefore purports to change the requirements of Vermont law. In so doing, Defendant by issuing the Directive purports to exercise legislative powers vested in the Vermont General Assembly by the Vermont Constitution.

71. The Directive conflicts with existing Vermont election law in several areas:

a. The Directive permits the processing of ballots returned by mail in the presence of election officials of only one party, in contravention of 17 V.S.A. §§ 2546(b) & 2584, which requires the participation of at least two election officials of different political parties.

b. The Directive permits BCAs to change the location of polling places as late as 15 days prior to an election for any reason, in contravention of 17 V.S.A. § 2502(c) which prohibits changing the location of polling places within 30 days of an election except in case of emergency.

c. The Directive provides for mail-in ballots to be mailed by the Secretary of State’s office to all voters who appear on the statewide voter checklist and whose registration is not subject to an active challenge from a BCA, in contravention of Vermont’s Absentee Ballot laws, 17 V.S.A. § 2531 *et seq.*, which provide for Absentee Ballots to be distributed by town clerks only after receipt of a valid application for an Absentee Ballot.

72. The U.S. Constitution vests the power to determine the time, place and manner of federal elections in Vermont exclusively in the Vermont legislature.

73. The Vermont Constitution vests the state's legislative power exclusively in the Vermont General Assembly, and specifically forbids the executive department of Vermont's government from exercising legislative power.

74. Defendant, as an official of the executive department of the Vermont government, therefore has no power under the U.S. Constitution to set the time, place or manner of Vermont's federal elections, and also has no power to alter existing Vermont election law under the Vermont Constitution. Defendant purported to exercise both of these powers in issuing the Directive, and the Directive is therefore unconstitutional under both the U.S. Constitution and the Vermont Constitution.

75. The issuance of the Directive was also *ultra vires* because no provision of Act 92, Act 135 or any other law imbued Defendant with the authority to issue regulations that contravene or override existing law. Even if, *arguendo*, the General Assembly could delegate to Defendant the power to make changes to existing Vermont election law (which it cannot do under the Vermont Constitution), it has not done so in this case.

76. Absent relief from this Court, Plaintiffs will suffer irreparable harm to their voting rights as a result of Defendant's actions in promulgating the Directive and the actions Defendant will take in accordance with the Directive,

particularly by distributing mail-in ballots via mass mail. Plaintiffs have no remedy at law for Defendant's violations of their right to have their votes count for their full, undiluted value.

77. The harm to Plaintiffs' constitutionally-protected voting rights that Plaintiffs will suffer in the absence of relief outweighs any burden Defendant might suffer if the Court grants the relief Plaintiffs seek.

78. The public interest favors granting the relief Plaintiffs seek, particularly given the Vermont Constitution provides "[t]hat all elections ought to be free and without corruption".

COUNT III
Violation of Act 95, Act 135, and 42 U.S.C. § 1983
(*Ultra Vires* Promulgation of Arbitrary and Unreasonable Directive)

79. All other allegations in this Complaint are realleged as if fully set forth herein.

80. Defendant issued the Directive in his official capacity as Secretary of State of Vermont, purportedly in reliance on authority vested in the Secretary of State of Vermont by the Vermont General Assembly in Act 92 and Act 135. The Directive was therefore issued under color of state law.

81. Act 92 and Act 135 permit Defendant as Secretary of State to issue "appropriate elections procedures" only "for the purpose of protecting the health, safety, and welfare of voters, elections workers, and candidates in carrying out elections". See Act 92 § 3(a); Act 135 § 1(a).

82. The Directive does not protect the health, safety or welfare of Vermont's voters, elections workers or candidates. The procedures provided for

in the Directive provide no health benefits to any participant in Vermont's elections over and beyond the existing statutory scheme for the issuance and use of Absentee Ballots. The record voter turnout during the August 2020 primary election in the face of the ongoing Pandemic confirms that the existing Absentee Ballot procedures adequately provide for the safe and efficient conduct of Vermont elections.

83. Defendant's issuance of the Directive is *ultra vires* because it was promulgated outside the conditions imposed by Vermont law in Act 92 and Act 135. The Directive creates mischief and the opportunity for fraud with no countervailing benefit to the health, safety or welfare of any voters, election workers, or candidates in Vermont elections.

84. Absent relief from this Court, Plaintiffs will suffer irreparable harm to their voting rights as a result of Defendant's actions in promulgating the Directive and the actions Defendant will take in accordance with the Directive, particularly by distributing mail-in ballots via mass mail. Plaintiffs have no remedy at law for Defendant's violations of their right to have their votes count for their full, undiluted value.

85. The harm to Plaintiffs' constitutionally-protected voting rights that Plaintiffs will suffer in the absence of relief outweighs any burden Defendant might suffer if the Court grants the relief Plaintiffs seek.

86. The public interest favors granting the relief Plaintiffs seek, particularly given the Vermont Constitution provides "[t]hat all elections ought to be free and without corruption".

RELIEF REQUESTED

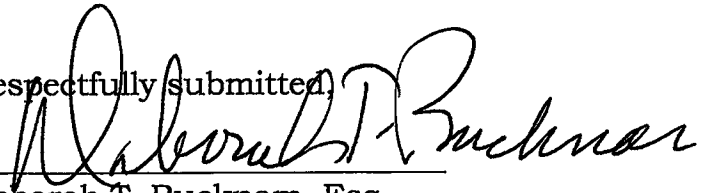
WHEREFORE, Plaintiffs respectfully request the following relief:

1. The Court find and declare that the Directive is unconstitutional, *ultra vires*, and contrary to law; and

2. The Court enter an injunction rescinding the Directive and preventing Defendant from distributing mail-in ballots via mass mailing to all persons listed on the statewide voter checklist as contemplated by the Directive.

Dated: September 4, 2020

Respectfully submitted,



Deborah T. Bucknam, Esq.
BUCKNAM LAW, P.C.
434 Eastman Road
Walden, Vermont 05836
Phone: (802) 748-5525
Facsimile: (802) 748-4888
DBucknam@vtlegalhelp.com

David A. Warrington (VSB No. 77293)
(pro hac vice to be applied for)
KUTAK ROCK LLP
901 East Byrd Street, Suite 1000
Richmond, Virginia 23219
Phone: (202) 828-2437
Facsimile: (202) 828-2488
david.warrington@kutakrock.com

Harmeet K. Dhillon, Esq.
(pro hac vice to be applied for)
Dhillon Law Group, Inc.
177 Post St., Suite 700
San Francisco, CA 94108
415-433-1700
harmeet@dhillonlaw.com
Attorneys for Plaintiffs
Tracey Martel, Robert Frenier, Brian Smith,
Raoul Beaulieu and Mary Beausoleil



State of Vermont
Office of the Secretary of State
128 State Street
Montpelier, VT 05633-1101

[phone] 802-828-2363
<https://sos.vermont.gov>

James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary

July 20, 2020

First Statewide Elections Directive

Election Procedures for Statewide Elections in 2020

Pursuant to the authority granted in Act 92 (2020) and Act 135, (2020) the Secretary of State issues the below Directive for the 2020 primary and general elections.

This Directive reflects our best effort to balance every Vermonter's constitutional right to vote with the health and safety concerns we all share in these unprecedented and unpredictable times during this COVID-19 health crisis.

Further, this Directive departs as little as possible from our voting traditions and our safe and secure voting processes while proactively ensuring no Vermonter has to choose between their health and their right to vote.

The intent of this Directive is not to cast doubt upon our recovery prospects - we have no way of knowing what the coming months will bring. However, we do know if there is a resurgence a few months from now, as we are already seeing, it will be too late to act to avoid compromising Vermonters' health and the exercise of their sacred franchise.

Notwithstanding any provisions of law contained in Title 17 of the Vermont Statutes Annotated to the contrary, and pursuant to the authority granted to the Secretary of State by Act 92 (2020) and Act 135 (2020), the Secretary of State issues the following directive with regards to election processes for the August Statewide Primary and November General Election in the year 2020:

- **For both the August Primary and November General Election:**
 - **Ballot Return.** Ballots may not be returned to the Clerk by any candidate whose name appears on the ballot for that election, or any campaign staff member of any such candidate, unless that candidate or campaign staff member: (a) is returning their own ballot; (b) is returning the ballot of an immediate family member, as defined in 17 V.S.A. §2532 (a person's spouse, children, brothers, sisters, parents, spouse's parents, grandparents, and spouse's grandparents), who has requested their assistance with the return of that ballot, (c) is returning the ballot of a voter for whom the candidate or campaign staff member is a caretaker, and who has requested their assistance with the return of that ballot; or (d) is a Justice of the Peace performing his or her official duties pursuant to 17 V.S.A. §2538. The Municipal Clerk or other Local Election Official (LEO) accepting the return of ballots shall not be required to enforce this provision but shall report any suspected violations to the Secretary of State's Office who shall refer them to the Attorney General's Office for investigation. Candidates violating this section may be subject to the penalties found at 17 V.S.A. §2017.

- **Ballot Processing.** LEOs may process ballots returned by mail or voted in the Clerk's office through the tabulator or into a secure ballot box during the 30 days preceding election.
 - At a minimum, ballots shall be processed in the presence of at least two election officials who, if possible, shall be from different parties.
 - The process shall be conducted in accordance with guidance issued in conjunction with the Directive by the Secretary of State's Office.
 - The process shall be conducted during normal business hours if practicable or, if conducting the process at a time other than normal business hours or at a time when your office is closed due to COVID-19, notice of the date(s), time(s), and location of the processing shall be posted at the Clerk's office and two other public places at least three days in advance.
 - Any member of the public requesting to observe the process shall be provided an opportunity to do so. Upon request of a member of the public to observe the process, if in-person observation by members of the public is not possible due to restrictions related to COVID-19, the process may be live-streamed in some manner to allow for remote viewing or may be recorded and the recording provided to those who request it for viewing.
 - In towns that count their ballots by hand, the voted ballots shall be deposited in a secure ballot box to be commingled with any ballots cast at the polls on Election Day and counted after the close of the polls.
 - Pursuant to this Directive, strict chain of custody procedures regarding voted ballots, ballot boxes, and tabulators shall be issued by the Secretary of State for conducting this process.
- **Outdoor Polling Places.** Polling places may be held outside. A bad weather alternative must be available at the same physical location as the outdoor polling place. All rules governing interior polling places contained in current law shall apply to the exterior polling places. The accessible voting system must be available for those who request to use it. Candidates and members of the public that would otherwise be allowed to campaign outside the polling place must be kept a reasonable distance from the area where voting is occurring such that any campaigning does not disrupt or interfere in any way with the voting process.
- **Drive-Through Polling Places.** Polling places may be conducted by a drive-through voting method. Any such drive-up voting procedure shall enable voters to complete the voting process without leaving their vehicle. Walk-up voters must also be accommodated when a drive-through polling place is being used. An opportunity for a person to register to vote, if necessary, must be provided prior to the voter being provided a ballot. The accessible voting system must be available for those who request to use it. Each voter shall be:
 - Checked off the entrance checklist by an election official in the same manner as the voter would be in a standard polling place;
 - Provided a ballot to vote and directed to an identified location where their vehicle may be parked during the voting process;
 - Able to deposit their ballot directly into a secure ballot box that may be brought to the window of the vehicle or located in such a manner that it can be accessed from the vehicle, or be provided an envelope or folder in which to place their voted ballot before handing it back to an election official for processing; and,
 - Checked off an exit checklist, in towns that use them, before leaving the voting location.

- **Outdoor Voting Ballot Handling.** If a polling place is being conducted outside or by a drive thru method, ballots may be periodically transferred from a ballot box used for those procedures to another secure container for counting after the close of the polls or to election officials who are processing ballots through the tabulator. Any such transfer shall be done in the presence of two election officials, if possible, of different parties.
- **Overseas Voters with Disrupted USPS Service.** Military or overseas voters who are in a country for which mail service to the US has been suspended, and who have no other means of returning their ballot by mail, may return their ballot directly to the Clerk by email. The marked ballot should be returned as a PDF or photo file attached to an email to the Clerk. A photo or scanned image of a signed certificate containing the language included on the standard absentee ballot certificate envelope shall be returned by the voter along with the ballot. The LEO shall notify the Secretary of State's office prior to allowing any military or overseas voter to return their ballot by this method.
- **Change of Polling Place.** The location of a polling place may be changed no less than 15 days prior to the election. The Board of Civil Authority (BCA) must vote to change the location and the Secretary of State must be notified within 24 hours. The polling location shall also be updated in the Vermont Election Management System, by the Clerk, within 24 hours of the BCA approving the change. Every reasonable effort should be made to inform the public of the new location. These efforts should include but are not limited to, posting notice of the new location:
 - In all locations where the original Warning was posted;
 - In additional locations in the town or city such as general stores, transfer stations, and other locations that are frequently used by residents;
 - On the town or city website, if one exists;
 - On a town or city list serve or other online forum such as Front Porch Forum; or
 - If the BCA deems it necessary, by publication in a newspaper no less than 5 days prior to the election.

Emergency Change of Polling Place. If less than 15 days before the election, the location of the polling place may only be changed in accordance with 17 V.S.A. §2502(C)(2), which allows such a change only in the case of an emergency.

- **Election Officials from other Towns.** The BCA may appoint election officials who are not registered voters or residents of the town, including 16 and 17-year-olds pursuant to 17 V.S.A. 2454, if necessary, due to shortages in poll workers. Any election official must be a resident of Vermont.
- **Home Delivery of Ballots.** In-home delivery of ballots by Justices of the Peace in accordance with 17 V.S.A. §2538 is only required if a town or city has two Justices of the Peace that are willing, able, and available to provide this service. Justices of the Peace performing this service are not required to enter the home and must be allowed to observe the voting process as is required of them from a safe distance outside the home. Justices may be unable to perform this service if the voter is located in a hospital or other health care or long-term care facility that is not allowing visitors or members of the public to enter. Ballots should be mailed or electronically delivered to voters in any such facility upon their request.
- **Masks.** If a mask is required to enter a polling location, LEOs should make disposable masks available. If a voter refuses to wear a mask to enter that location, an alternative means of casting a ballot must be provided to the voter. Voters may be provided a ballot and certificate envelope in order to vote

their ballot outside or in their vehicle and may return the voted ballot to an election official in the signed certificate envelope to be brought inside the polling place and processed. Other reasonable alternative procedures may be implemented that allow a voter who refuses to wear a mask to cast their ballot in a distanced area within the polling place, if possible, or without entering inside the polling place.

- **Appearing In-Person without a Ballot on Election Day After Receiving One by Mail.** If a voter who has been mailed an absentee ballot requests to vote in person at the polls on Election Day, and the checklist indicates that they have not returned a ballot or otherwise voted in that election, the voter shall be allowed to cast a ballot at the polls. The voter will not be required to produce the ballot that was mailed to them in order to vote on Election Day. The voter will be required to sign an affidavit that they have not previously returned the ballot sent to them or cast any other ballot.
- **Processing Mailed Ballots on Election Day at the Polling Place.** Notwithstanding the language in 17 V.S.A. §2546(b), and in cases where ballots have not previously been processed into the tabulator or ballot box during the 30 days preceding the election, when processing ballots returned by mail at the polling place, a minimum of two election officials shall be present for that processing. The certificate envelopes shall be opened, and ballots cast through the tabulator or into the ballot box in a manner that protects the privacy of the votes cast by the voter.

- **For the August Primary only:**

- **Programming Costs.** The Secretary of State's office will pay for the total programming costs for any towns that choose to use their tabulator for the August Primary.
- **Unvoted Ballots.** The unvoted ballots returned by voters may be discarded during the 30 days preceding the election as ballots are being processed, once the voter has been checked off the checklist. The unvoted ballots must be disposed of in a manner that renders them unable to be voted.
- **Local Issue Ballots.** If a municipality is holding a local election on the same day as the August Primary, the legislative body may vote to send ballots for that election to any voter who requests a ballot for the August Primary.

- **For the November General Election only:**

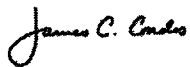
- **Mailed Ballots.** A ballot will be mailed to every active voter on the statewide voter checklist. "Active" voters are any voters that have not been sent a challenge letter by the BCA asking the voter to affirm their residency, or who have responded to any such letter and have affirmed their residence.
 - Ballots will be mailed to all active registered voters starting Friday, September 18.
 - Ballots will be mailed or otherwise delivered to all military and overseas voters no later than the September 19 deadline mandated by federal law.
 - All ballots will be mailed from a central location by the Secretary of State's Office.
 - For mailing purposes, the Secretary of State will use the mailing address contained in any pending request for a General Election ballot first, and if none will use the mailing address in the voter's record second, and if none the legal address in the voter's record.
 - The issue date for all ballots will be recorded in the statewide election management system by the Secretary of State on a batch basis as they are sent. Clerks will only be required to record the date that ballots are returned. Clerks will be required to enter the request, issue, and

return date for any ballots requested by voters after the statewide mailing is sent, including for those voters who may register after that date.

- Postage for the mailing of ballots and the return of ballots to the Clerks by voters will be paid by the Secretary of State's office. All envelopes will be pre-paid.

This Directive is subject to modifications and addition through further directives as deemed necessary by the Secretary of State in response to the changing nature of the COVID-19 virus and its impact on public health and safety during our elections in 2020.

The Secretary of State, in collaboration with the Department of Health, will issue guidance and/or further addendums to this Directive regarding safe procedures for the conduct of polling places based on current CDC guidance. This may include the safe conduct of poll workers, hand-counting of ballots, polling place social distancing, masking, and cleaning of polling places and equipment.



James C. Condos
Vermont Secretary of State

Compl Exhibit 2

PHILIP B. SCOTT
Governor



State of Vermont
OFFICE OF THE GOVERNOR

July 2, 2020

Vermont General Assembly
115 State Street
Montpelier, Vermont 05633

Dear Legislators:

Today, S. 348, *an act relating to temporary elections procedures in the year 2020* will go into law without my signature due to a technical flaw.

There appears to be a cross-reference to a section of the bill that does not exist, leaving the authority of the Secretary of State ambiguous as it relates to ballot returns.

It is my understanding that Legislative Council explained this mistake to the House Government Operations Committee and recommended clean-up, but there was a decision made to enact this legislation rather than taking the time to rectify.

This is particularly concerning in light of the concerns expressed by many regarding the return process for ballots mailed to all Vermonters.

I have said publicly if the General Assembly decided to remove me from this process, I would not stand in the way. For these reasons, I am letting S. 348 become law without my signature and I hope the General Assembly will correct the bill's flaws and ensure full and adequate oversight of the mail-in ballot program it has created upon return in August.

Sincerely,

A handwritten signature in black ink, appearing to read "P. B. Scott", with a long horizontal line extending to the right.

Philip B. Scott
Governor

PBS/kp

c: The Honorable Mitzi Johnson, Speaker of the House
The Honorable Tim Ashe, President Pro Tempore
The Honorable William MaGill, Clerk of the Vermont House of Representatives
The Honorable John Bloomer, Secretary of the Vermont Senate

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Tracey Martel, Robert Frenier, Brian Smith, Raoul Beaulieu, and Mary Beausoleil

DEFENDANTS James C. Condos, in his official capacity as the Secretary of State of Vermont

(b) County of Residence of First Listed Plaintiff Essex
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Washington
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Deborah T. Bucknam, Bucknam Law, P.C., 434 Eastman Rd., Walden, VT 05836, (802) 748-5525; David A. Warrington, Kutak Rock LLP, 901 E. Byrd St., Ste. 1000, Richmond, VA 23219, (202) 828-2437; Harroet K. Dhillon, Dhillon Law Group, Inc., 177 Post St., Ste. 700, San Francisco, CA 94108, (415) 433-1700

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Const., art. I § 4; U.S. Const., art. II § 1; U.S. Const., amd. XIV; 42 U.S.C. § 1983

Brief description of cause:
Plaintiffs seek injunctive relief against Defendant's ultra vires Directive that infringes on their right to vote

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
Preliminary & Permanent Injunction JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 9/4/20 SIGNATURE OF ATTORNEY OF RECORD Deborah T. Bucknam

FOR OFFICE USE ONLY

RECEIPT # 1334 AMOUNT \$400.00 APPLYING IFP _____ JUDGE 1013 MAG. JUDGE _____