

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT

CHELSEA COLLABORATIVE, MASSVOTE,  
EDMA ORTIZ, WILYELIZ NAZARIO LEON,  
and RAFAEL SANCHEZ,

*individually and on behalf of all others similarly  
situated,*

Plaintiffs,

v.

WILLIAM FRANCIS GALVIN, in his Official  
Capacity as Secretary of the Commonwealth of  
Massachusetts, DIANE R. COLELLA, in her  
Official Capacity as Election Commissioner for the  
City of Revere, JEANNETTE CINTRON  
WHITE, in her Official Capacity as City Clerk  
of the City of Chelsea, and NICHOLAS P.  
SALERNO, in his Official Capacity as the Chairman  
of the Somerville Election Commission,

Defendants.

16-33546



**MEMORANDUM OF LAW IN SUPPORT OF INDIVIDUAL NAMED PLAINTIFFS'  
EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs Edma Ortiz, Wilyeliz Nazario Leon, and Rafael Sanchez (“Plaintiffs”) are registered voters in the Commonwealth of Massachusetts who face disenfranchisement in the November 8, 2016 election (the “Election”), because they missed an arbitrary, statutory twenty-day registration cutoff. G.L. c. 51 §§ 1F, 26, 34 (“Voter Cutoff Law”). Under the Voter Cutoff Law, Plaintiffs are barred from voting until the *next* election, even though no one doubts they are otherwise qualified to vote in *this* one. Because this law violates Plaintiffs’ fundamental right to vote, and because this violation can be addressed only through immediate injunctive relief, Plaintiffs seek a preliminary injunction that would enable them to vote in the Election.

The right to vote is precious; it is safeguarded by the Massachusetts Constitution and its Declaration of Rights, and it can be restricted only by measures that serve a compelling state interest and that use the least restrictive means to achieve that interest. MASS. CONST. amend. art. III; MASS. DECL. OF RIGHTS art. IX; *Cepulonis v. Sec’y of Commonwealth*, 389 Mass 930, 935 (1983). But the Voter Cutoff Law strips away Plaintiffs’ right to vote simply because they registered within twenty days of the Election. *See* Compl., Ex. C (Decl. of Edma Ortiz (“Ortiz Decl.”)); *id.*, Ex. D (Decl. of Wilyeliz Nazario Leon (“Leon Decl.”)); *id.*, Ex. E (Decl. of Rafael Sanchez (“Sanchez Decl.”)). This is disenfranchisement, plain and simple, and is not even arguably the least restrictive means to achieve a compelling state interest.

The Commonwealth’s voter registration system has long been guided by the principle that registration must be permitted “up to a time as near that of actually depositing the votes as would be consistent with the necessary preparation for conducting the election in an orderly manner . . . .” *Kinneen v. Wells*, 144 Mass. 497, 502 (1887). Today, this principle is incompatible with a twenty-day cutoff. The Commonwealth processes voter registration forms rapidly online. G.L. c. 51 § 33A. In fact, several groups of voters are exempt from the Voter Cutoff Law, and the Commonwealth’s speedy registration system enables them to vote even when they register the day before an election. *Id.* c. 51 § 50. The Commonwealth cannot constitutionally disenfranchise Plaintiffs merely because they missed the twenty day cut-off.

Accordingly, for the reasons explained below, this Court should issue a preliminary injunction requiring defendants William Francis Galvin, the Secretary of the Commonwealth, Diane R. Colella, the Election Commissioner for the City of Revere, Jeannette Cintron White,

the Chelsea City Clerk, and Nicholas P. Salerno, Chairman of the Somerville Election Commission,<sup>1</sup> to allow Plaintiffs to cast regular ballots in the Election.<sup>2</sup>

### **FACTUAL BACKGROUND**

On November 8, 2016, voters in the Commonwealth will cast votes for the United States president, elected representatives, and key ballot initiatives, including the proposed expansion of charters schools and, for certain municipalities like the City of Chelsea, whether to adopt the Community Preservation Act, G.L. c. 44B.<sup>3</sup> Each Plaintiff is eligible to vote in the Election and wants to do so. Specifically, each is a citizen of the United States, a Massachusetts resident, and over the age of 18.<sup>4</sup> *See* Leon Decl. ¶¶ 3-6; Ortiz Decl. ¶¶ 3-6; Sanchez Decl. ¶¶ 3-5; *see also* MASS. CONST. amend. art. III (setting out qualifications of voters); G.L. c. 51 § 1 (same). Additionally, none is currently incarcerated, under guardianship, or has been disqualified from voting because of corrupt practice in respect to elections. Leon Decl. ¶¶ 11-14; Ortiz Decl. ¶¶ 17-19; Sanchez Decl. ¶¶ 10-12; *see also* MASS. CONST. amend. art. III; G.L. c. 51 § 1.

The Massachusetts Constitution does not require registration in advance of an election. Nonetheless, the Voter Cutoff Law dictates that an otherwise constitutionally eligible voter cannot vote in local, state, and federal elections unless registered “no later than eight o’clock in

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<sup>1</sup> As alleged in the Complaint Defendant Galvin is generally responsible for overseeing elections in Massachusetts, including the maintenance of a computerized central registry of voters and the online voter registration system. G.L. c. 51 § 47C; Compl. ¶ 15. Defendant White is responsible for administering elections within Chelsea. Compl. ¶ 16. Defendant Colella is responsible for administering elections within Revere. *Id.* ¶ 17. Defendant Salerno is Chairman of the Somerville Election Commission, which conducts elections and oversees the collection of voter lists and election results. *Id.* ¶ 18.

<sup>2</sup> If the Court is unwilling to grant the preliminary relief requested, Plaintiffs in the alternative request an Order allowing them to vote in the Election via provisional ballot so that their ability to secure relief is preserved through the pendency of this suit.

<sup>3</sup> *See Information for Voters: 2016 Ballot Questions*, SEC’Y OF COMMONWEALTH (2016) [http://www.sec.state.ma.us/ele/elepdf/IFV\\_2016.pdf](http://www.sec.state.ma.us/ele/elepdf/IFV_2016.pdf).

<sup>4</sup> The Massachusetts Constitution provides that the voter must have been a resident for six months, MASS. CONST. amend. art. III, but *Dunn v. Blumstein* held that such lengthy durational residency requirements were unconstitutional. 405 U.S. 330, 359-60 (1972). Accordingly, G.L. c. 51 § 1 removes the durational residency requirement and provides that voters must simply be “a resident in the city or town where he claims the right to vote at the time he registers.”

the evening on the twentieth day preceding [the] election . . . .” G. L. c. 51 § 26; *see also* G.L. c. 51 §§ 1F, 34. The registration cutoff for the Election fell at 8 p.m. on October 19, 2016. Although Plaintiffs registered to vote, they did so after this twenty-day cutoff. Leon Decl. ¶¶ 2, 9-10; Ortiz Decl. ¶¶ 2, 15; Sanchez Decl. ¶ 2, 6.

For instance, twenty-one year-old Wilyeliz Nazario Leon recently moved to the Commonwealth from Puerto Rico and had no idea that there was a registration cutoff. Leon Decl. ¶¶ 3-8. She felt bad when she learned that she had missed the deadline and would not be able to vote in her first Presidential election. *Id.* ¶¶ 7-9. Edma Ortiz was similarly disheartened to learn that there was a registration cutoff when she went to register one day after the deadline. Ortiz Decl. ¶ 12. Her registration was delayed because she unexpectedly flew to Puerto Rico when her mother suddenly died. *Id.* ¶¶ 7-9. Rafael Sanchez was also entirely unaware of the registration cutoff. Sanchez Decl. ¶ 7. He only learned about it when picking up his grandson at daycare the day after the deadline had passed. *Id.* ¶ 6.

Although the timing of Plaintiffs’ registrations poses no constitutional bar to their casting ballots, the Commonwealth by statute now prohibits Plaintiffs from voting in the Election. Accordingly, on November 1, 2016, Plaintiffs filed a class complaint seeking a declaration that the Voter Cutoff Law violates the Massachusetts Constitution and its Declaration of Rights and a permanent injunction enjoining defendants from enforcing the Voter Cutoff Law against members of the putative class. Plaintiffs also moved for a preliminary injunction permitting the individual named Plaintiffs to vote in the Election. Finally, Plaintiffs seek to certify a class action under Massachusetts Rule of Civil Procedure 23 defined as all Massachusetts residents who, after registering to vote, are or will be prohibited from voting in at least one election due to

the Commonwealth's rule barring otherwise eligible voters from voting unless they registered to vote before the twenty-day cutoff imposed by the Voter Cutoff Law.

### ARGUMENT

Plaintiffs are registered voters whose right to vote is protected by the Massachusetts Constitution and Declaration of Rights. Yet, unless a preliminary injunction is issued, Plaintiffs will be barred from exercising their right to vote—that is, disenfranchised—in the Election. In determining whether to issue preliminary injunctive relief, courts evaluate:

- 1) plaintiffs' reasonable likelihood of success on the merits;
- 2) the potential for irreparable harm to the plaintiffs if the injunction is denied;
- 3) the balance of relevant impositions, *i.e.*, the hardship to the defendants if enjoined as contrasted with the hardship to the plaintiffs if no injunction issued; and
- 4) the impact on the public interest.

*Siemens Bldg. Techs., Inc. v. Div. of Capital Asset Mgmt.*, 439 Mass. 759, 762 (2003) (citation omitted); *see Packaging Indus. Grp., Inc. v. Cheney*, 380 Mass. 609, 617 (1980) (“What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party’s chance of success on the merits.”); *see also Loyal Order of Moose, Inc., Yarmouth Lodge #2270 v. Bd. of Health of Yarmouth*, 439 Mass. 597, 601 (2003) (setting out preliminary injunction standard).

#### **I. PLAINTIFFS HAVE A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS OF THEIR CONSTITUTIONAL CLAIM**

Plaintiffs will likely succeed on the merits because the Voter Cutoff Law violates their fundamental right to vote. Disenfranchisement—even of one person, even for one election—is not to be taken lightly. *See Kinneen*, 144 Mass. at 499 (postponing individuals’ right to vote diminishes the right and triggers constitutional concerns). Yet the Voter Cutoff Law disenfranchises thousands of people every election as a matter of course. *See Compl.*, Ex. F

(Report of Prof. Burden at 6-13). Voting restrictions are permissible only when they are supported by a compelling governmental interest and are the least restrictive means to achieve that interest. *Cepulonis*, 389 Mass. at 935. It is unlikely that the defendants could meet this standard in a trial on the merits because the Voter Cutoff Law is an unnecessarily sweeping means of pursuing the timely and secure processing of voter registration forms.

**A. A law impinging on the fundamental right to vote must promote a compelling state interest in the least restrictive manner.**

Voting is “a sacred privilege” guaranteed to every citizen of the Commonwealth. *Swift v. Registrars of Voters of Quincy*, 281 Mass. 271, 277 (1932); *Att’y Gen. v. Suffolk Cty. Apportionment Comm’rs*, 224 Mass. 598, 601 (1916) (voting is a “fundamental personal and political right”). By empowering citizens to hold their elected officials accountable—and, in the case of ballot initiatives, by empowering citizens to enact laws—this right is “the ‘preservative of all rights.’” *Mass. Pub. Interest Research Grp. v. Sec’y*, 375 Mass. 85, 94 (1978) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

The Massachusetts Constitution guarantees the right to vote to all citizens, eighteen years of age or older, who are residents of the Commonwealth. MASS. CONST. amend. art. III ; *see also* G.L. c. 51 § 1 (statutory qualifications). The *only* three constitutional exceptions address: (a) persons who are incarcerated in a correctional facility due to a felony conviction; (b) persons under guardianship; and (c) persons disqualified by law because of “corrupt practices in respect to elections.” MASS. CONST. amend. art. III. Unlike some state constitutions, the Massachusetts Constitution does not require voters to be registered with the state for any length of time before Election Day. *Compare* MASS. CONST. amend. art. III (no registration deadline), *with* N.Y.

CONST. art. II, § 5 (ten-day registration deadline); OR. CONST. art. II, § 2 (20-day registration deadline); VA. CONST. art. II, § 2 (30-day registration deadline).

A statute “impinging” upon the fundamental right to vote can be upheld only when it “promotes a compelling State interest which could not be achieved in any less restrictive manner.” *Cepulonis*, 389 Mass. at 935 (quoting *Mass. Pub. Interest Research Grp.*, 375 Mass. at 93). Consistent with that command, registration must extend as late as possible while still allowing the Commonwealth to conduct the election in a timely and secure manner. *Kinneen*, 144 Mass. at 502; *see also Capen v. Foster*, 29 Mass. 485, 494 (1832) (noting that the legislature’s ability to craft “reasonable and uniform” voting regulations “afford[s] no warrant for such an exercise of legislative power, as, under the preten[s]e and color of regulating, should subvert or injuriously restrain the right itself”).

**B. The Voter Cutoff Law impinges upon the fundamental right to vote.**

The Voter Cutoff Law impinges on the right to vote by mandating the sweeping, automatic disenfranchisement of otherwise eligible voters. This burden is significant both in its scale and its individual impact, and thus it acutely triggers the Commonwealth’s obligation to show that the cutoff is the least restrictive means to serve a compelling government interest.

The Voter Cutoff Law routinely prevents thousands of otherwise eligible Massachusetts voters from voting. *See Compl., Ex. F*, at 8-13 (Report of Prof. Burden (Burden Report)). Within the City of Boston, more than 2,300 voters were unable to participate in the 2012 Presidential Election because they registered less than twenty days before Election Day; another 4,400 Boston voters were unable to participate in the 2016 Presidential Primary for the same reason. *Compl., Ex. G ¶ 4* (Decl. of Rahsaan D. Hall, Esq. (Hall Decl.)). In addition, studies consistently indicate that the Voter Cutoff Law deters thousands of eligible Massachusetts voters from registering during the final twenty days before an election. *See Burden Report* at 8-13.

Thus, through both outright disenfranchisement of registered voters and the deterrence of eligible voters who would otherwise register in the run-up to the election, the Voter Cutoff Law completely disenfranchises thousands of voters, and amounts to a severe burden on the right to vote. *See generally Fla. Democratic Party v. Scott*, Case No. 4:16cv626-MW/CAS, 2016 WL 6080990, at \*3 (N.D. Fla. Oct. 10, 2016).

For each and every one of these eligible voters, the impact of the Voter Cutoff Law is severe. In any given election, it prevents individuals from helping to determine who will hold the highest federal or state offices, who will have the power to appoint Supreme Judicial Court Justices, or who will hold the municipal positions with a direct impact on their daily lives. In this Election, the Voter Cutoff Law will not only bar Plaintiffs from choosing elected officials, but also from voting on ballot initiatives concerning important issues like education and the taxation and regulation of marijuana. For these reasons, taking away an individual's ability to vote—which the Voter Cutoff Law does for an entire election cycle—impinges upon the fundamental right to vote. *Cf. Kinneen*, 144 Mass. at 499; *see also Ayers-Schaffner v. DiStefano*, 860 F. Supp. 918, 921 (D.R.I. 1994), *aff'd* 37 F.3d 726 (1st Cir. 1994) (“[T]he relevant question is whether plaintiffs’ right to vote in *any* election has been burdened.”).

Plaintiffs Wilyeliz Nazario Leon, Edma Ortiz, and Rafael Sanchez can amply demonstrate the severe burden imposed by the Voter Cutoff Law, as well as its unreasonable and arbitrary nature.

Without preliminary injunctive relief, twenty-one year-old Wilyeliz Nazario Leon will be unable to vote in her first Presidential election. Leon Decl. ¶¶ 7, 9. Ms. Leon recently moved to the Commonwealth over the summer and had already registered to vote in Puerto Rico. *Id.* ¶¶ 3-6. She had no idea that there was a registration cutoff in the Commonwealth and was



disappointed to learn that she had missed it. *Id.* ¶¶ 8-9. Though her constitutional qualifications to vote are indisputable, the Voter Cutoff Law denies her any voice in the Election. *Id.* ¶¶ 3-6, 9-14.

Edma Ortiz is also severely burdened by the Voter Cutoff Law. Ortiz Decl. ¶¶ 2, 14. Ms. Ortiz wanted to register earlier, but her working obligations require her to work nights and sleep during the day, and she could not easily register online because she does not own a computer. *Id.* ¶¶ 7-8. The unexpected death of her mother, which required emergency travel to Puerto Rico, further delayed her registration. *Id.* ¶¶ 9-10. Ms. Ortiz ultimately attempted to register on October 20, 2016, and she was disillusioned when she learned she had missed the registration cutoff. *Id.* ¶¶ 11-12. The issues in this election are very important to Ms. Ortiz, and she was eager to vote to support immigrant rights because she feels it is particularly significant in the United States right now. *Id.* ¶ 14. Yet, although she meets all the constitutional criteria, the Voter Cutoff Law will not let her do so unless she receives preliminary injunctive relief.

Absent preliminary injunctive relief, the Voter Cutoff Law will also disenfranchise Rafael Sanchez. Sanchez Decl. ¶ 2. Mr. Sanchez was unaware of the registration deadline, which he learned about only while attempting to register outside of his grandson's daycare center on October 20, 2016. *Id.* ¶ 6. Mr. Sanchez meets all of the constitutional criteria to vote. *Id.* ¶¶ 3-5, 9-12. He is particularly concerned about discrimination against Latinos and was motivated to vote for only the second time in his life because he thinks this election is extremely important with respect to this issue. *Id.* ¶ 8. But the Voter Cutoff Law will prevent Mr. Sanchez from exercising this fundamental right.

**C. The Voter Cutoff Law is not the least restrictive way to promote a compelling state interest.**

Because the Voter Cutoff Law “impinges on” the right to vote, it is unconstitutional unless it is the least restrictive means to serve a compelling government interest. *Cepulonis*, 389 Mass. at 935.<sup>5</sup> But the law cannot pass this test. Even assuming that the Commonwealth has a strong interest in timely and securely processing its voter forms, a registration deadline must extend as close to the election “as would be consistent with the necessary preparation for conducting the election in an orderly manner and with a reasonable scrutiny of the correctness of the list.” *Kinneen*, 144 Mass. at 502. The Voter Cutoff Law falls far short of doing so for three reasons.

First, the Commonwealth’s current technical capacity to quickly assess a voter’s information renders a twenty-day cutoff superfluous. As early as 1887, the Supreme Judicial Court in *Kinneen* recognized that the facts determining someone’s eligibility to vote are typically “simple, and susceptible of rapid investigation.” *Id.* This observation applies with much greater force today, in an era in which the Commonwealth operates the Central Registry of Voters, “[a] statewide computer system connecting each city and town, the Registry of Motor Vehicles, and the office of the Secretary of the Commonwealth.” 950 MASS. CODE REGS. 58.01-03 (2016); *see also* G.L. c. 51 § 47C (corresponding statutory law). The Central Registry of Voters includes all the information required to verify voter eligibility, including names and residential addresses. *See id.* In addition to this integrated, computerized system, the Commonwealth in 2014 enacted and put into practice a system of online voter registration, which allows for rapid processing of

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<sup>5</sup> Although *Cepulonis* contrasted the total disenfranchisement caused by an absentee ballot statute with a statutory registration deadline, 389 Mass. at 937, that comparison was not necessary to the Supreme Judicial Court’s holding. The constitutionality of the Voter Cutoff Law—or, for that matter, any registration cutoff—was neither presented to, nor decided by, *Cepulonis*. Moreover, *Cepulonis* long pre-dated the computer-driven registration system challenged here.

registrations. G.L. c. 51 § 33A. Such a significant technological advance expands the Commonwealth's capacity for processing registrations and compels the conclusion that the cutoff comes needlessly early.

Second, a twenty-day cutoff is unnecessary to preserve the integrity of the electoral process. Massachusetts has numerous provisions to deter fraudulent registration. Specifically, G. L. c. 56 § 8 provides that fraudulent registration is a crime punishable by imprisonment up to five years, a fine of up to ten thousand dollars, or both. *See* WILLIAM FRANCIS GALVIN, MASSACHUSETTS OFFICIAL MAIL-IN VOTER REGISTRATION FORM, *available at* <https://www.sec.state.ma.us/ele/elepdf/Voter-reg-mail-in.pdf> (prominently announcing the penalties contained in G.L. c. 56 § 8)). In addition, applicants must swear to their eligibility to vote by signing their voter registration applications under penalty of perjury, which is a felony. G.L. c. 268 §§ 1, 1A. Coupled with the Central Registry of Voter's verification process and the Commonwealth's online registration system, these penalties prevent registration fraud without the need for a twenty-day cutoff.

Third, the Commonwealth already processes voters in far less time than twenty days, revealing the arbitrary and unreasonable underpinnings of the Voter Cutoff Law. For example, under the Commonwealth's new early voting law, anyone who registered to vote on October 19, 2016, was permitted to cast a ballot *five days later* when early voting commenced on October 24. *Id.* c. 54 § 25B. Yet, under the Voter Cutoff Law, anyone who registered to vote on October 20 will not be permitted to cast a ballot *nineteen days later* in the Election. There is no plausible reason for this different treatment. Similarly, the Commonwealth exempts entire groups of voters from the Voter Cutoff Law. New citizens, sailors, military members, family members of military members, and prisoners may in certain circumstances register the *day before* the

election. *Id.* c. 50 § 1; *id.* c. 51 § 50. The Commonwealth has already established a system for providing these voters with certificates to present at polling stations to confirm their registration, ensuring a timely and orderly processing of their votes. *Id.* c. 51 § 51. It is not reasonable to deny this same system to Plaintiffs Edma Ortiz, Wilyeliz Nazario Leon, and Rafael Sanchez.

Given this record, the Voter Cutoff Law cannot be the least restrictive way to promote a compelling state interest. *Cf. Cepulonis*, 389 Mass. at 935. The fact that fourteen states and the District of Columbia have enacted legislation that allows voters to register and vote on Election Day (“Election-Day Registration” or “EDR”) further supports this conclusion.<sup>6</sup> *See* National Conference of State Legislatures, *Same Day Voter Registration* (Sept. 28, 2016), available at <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>. Indeed, elections officials from other states have successfully implemented Election-Day Registration statutes in a practical and efficient manner. *See* Ex. A, Fitzgerald Decl. ¶ 9 (Commissioner of Elections in Polk County, Iowa); Ex. B, Swensen Decl. ¶¶ 10-13 (Salt Lake County Clerk for the State of Utah); Ex. C, Albrecht Decl. ¶¶ 7-10 (Executive Director of the Milwaukee, Wisconsin Election Commission); *cf. Cepulonis*, 389 Mass. at 935-36 (relying in part on the experience of other states to determine the Commonwealth’s approach was not the least restrictive method). The lengthy advance deadline imposed by the Voter Cutoff Law is unnecessary, and consequently, is unconstitutional.

## **II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF AN INJUNCTION IS NOT GRANTED**

“A plaintiff experiences irreparable harm” where, as here, there will be “no adequate remedy at final judgment.” *GTE Prod. Corp. v. Stewart*, 414 Mass. 721, 724 (1993) (citing John

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<sup>6</sup> California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Iowa, Maine, Minnesota, Montana, New Hampshire, Vermont, Wisconsin, Wyoming. In addition, Utah has created a pilot program to test election day registration through 2016 and North Dakota has abolished voter registration altogether.

Leubsdorf, *The Standard for Preliminary Injunctions*, 91 HARV. L. REV. 525, 551 (1978)). Typically, “[w]hen an alleged deprivation of a constitutional right is involved, no further showing of irreparable injury is necessary.” *O’Brien v. Mass. Bay. Transp. Autho.*, No. CA 951659E, 1995 WL 808707, at \*3 (Mass. Supr. Ct. Apr. 6, 1995) (citing CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2948).

Few civic activities are as important as participation in an election, which is “precious,” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966), and “of the most fundamental significance,” *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) (collecting cases). “An individual’s ability to participate in local and national elections is arguably the most cherished right enshrined in our constitution.” *Ga. Coal. for the Peoples’ Agenda v. Deal*, No. 4:16-cv-269-WTM, 2016 WL 6039239, at \*1 (S.D. Ga. Oct. 14, 2016) (granting an emergency preliminary injunction enjoining the enforcement of a voter registration deadline). This right “is no less sacrosanct for aspiring eligible voters than it is for current eligible voters.” *Fla. Democratic Party*, 2016 WL 6080990, at \*1 (granting plaintiffs’ request for a temporary restraining order enjoining defendants from enforcing a voter registration deadline).

Notably, “the time-sensitive nature” of a right can transform “a temporary delay of its exercise into a complete denial of the right.” See *Planned Parenthood League of Mass., Inc. v. Operation Rescue*, 406 Mass. 701, 709-710 (1990) (reinstating preliminary injunction where plaintiffs’ right to obtain an abortion would be lost due to the “inevitable delay” between the present and the grant of relief). Such is the case here. The Voter Cutoff Law will strip Edma Ortiz, Wilyeliz Nazario Leon, and Rafael Sanchez of the right to vote in this election cycle. “There can be no do-over” once the Election passes. *Fla. Democratic Party*, 2016 WL 6080990,

at \*4 (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014)). Thus, without the preliminary injunction, Plaintiffs will suffer a loss of rights that cannot be vindicated after a full hearing on the merits of their claims. See *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (abridgement of right to vote constitutes irreparable harm); *Council of Alt. Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997) (same); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (same).

### **III. THE CERTAINTY OF HARM TO PLAINTIFFS OUTWEIGHS ANY RISK OF HARM TO DEFENDANTS**

This Court must “choose the alternative that will inflict the least probable irreparable harm.” *Westinghouse Broad. Co. v. New England Patriots Football Club, Inc.*, 406 N.E. 2d 399, 400 (Mass. App. Ct. 1980) (citing John Leubsdorf, *The Standard for Preliminary Injunctions*, 91 HARV. L. REV. 525, 541 (1978)). Here, the balance of hardships favors Edma Ortiz, Wilyeliz Nazario Leon, and Rafael Sanchez.

This case pits the fundamental right to vote against administrative convenience. See *Fla. Democratic Party*, 2016 WL 6080990, at \*4. As described above, if a preliminary injunction is not granted, Edma Ortiz, Wilyeliz Nazario Leon, and Rafael Sanchez will be disenfranchised in the Election. Rather than experiencing a “mere inconvenience,” Plaintiffs will be “stripped of one of our most precious freedoms.” *Id.* On the other side of the ledger, defendants will suffer little harm if they are required to let these three individuals vote. Indeed, courts recently ordered Florida and Georgia to extend their respective registration deadlines, explicitly or implicitly recognizing the administrative feasibility of such actions. *Ga. Coal. for the Peoples’ Agenda*, 2016 WL 6039239, at \*2; *Fla. Democratic Party*, 2016 WL 6080990, at \*5. The injunctive relief requested here is at least as practicable. The Commonwealth already has, and is using, mechanisms to accommodate individuals who register within days of voting. See, e.g., G.L. c.

54 § 25B (early voting provision). And, in any event, Edma Ortiz, Wilyeliz Nazario Leon, and Rafael Sanchez have already provided the information needed to verify their eligibility to vote by registering. Sanchez Decl. ¶ 6; Ortiz Decl. ¶ 15; Leon Decl. ¶ 10. Any alleged administrative inconvenience is therefore slight and cannot justify the deprivation of Edma Ortiz, Wilyeliz Nazario Leon, and Rafael Sanchez's constitutional right to vote. *Cf. Taylor v. Louisiana*, 419 U.S. 522, 535 (1975) (rejecting "administrative convenience" of the state as insufficient justification for excluding women as a class from jury service who have not volunteered).

#### **IV. PUBLIC INTEREST WEIGHS IN FAVOR OF INJUNCTION**

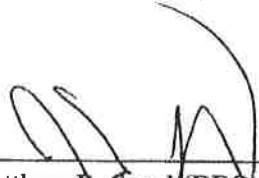
Finally, injunctive relief is appropriate because it will further the strong public interest in protecting constitutional rights. *Jaykay-Bos., Inc. v. City of Bos.*, No. 99-0252B, 1999 WL 65655, at \*4 (Mass. Supr. Ct. Feb. 3, 1999). This interest is particularly powerful when it comes to safeguarding the fundamental right to vote. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry*, 376 U.S. at 17. Therefore the public interest favors permitting as many qualified voters to vote as possible. *League of Women Voters of U.S. v. Newby*, No. 16-5196, 2016 WL 5349779, at \*8 (D.C. Cir. Sept 26, 2016) (quoting *Obama for Am.*, 697 F.3d at 437) (citing *League of Women Voters of N.C.*, 769 F.3d at 247); *see also Fish v. Kobach*, No. 16-3147, 2016 WL 6093990, at \*33 (10th Cir. Oct. 19, 2016) ("The public interest in broad exercise of the right to vote will be furthered rather than harmed by the district court's injunction."). Consequently, there is substantial public interest in allowing Edma Ortiz, Wilyeliz Nazario Leon, and Rafael Sanchez, all eligible and registered voters, to participate in the Election. *See Fla. Democratic Party*, 2016 WL 6080990, at \*5 (holding that a preliminary injunction permitting plaintiffs to register was "undoubtedly in the public interest").

CONCLUSION

For the foregoing reasons, Edma Ortiz, Wilyeliz Nazario Leon, and Rafael Sanchez respectfully request that this Court issue a preliminary injunction ordering defendants to allow them to vote in the Election.

Dated: Boston, Massachusetts  
November 1, 2016

Respectfully submitted,



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