

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

COMMON CAUSE RHODE ISLAND,
LEAGUE OF WOMEN VOTERS OF
RHODE ISLAND, MIRANDA OAKLEY,
BARBARA MONAHAN, and MARY
BAKER,

Plaintiffs,

v.

NELLIE M. GORBEA, in her official
capacity as Secretary of State of Rhode
Island; DIANE C. MEDEROS, LOUIS A.
DESIMONE JR., JENNIFER L. JOHNSON,
RICHARD H. PIERCE, ISADORE S.
RAMOS, DAVID H. SHOLES, and
WILLIAM E. WEST, in their official
capacities as members of the Rhode Island
Board of Elections,

Defendants.

**EXPEDITED/EMERGENCY RELIEF
REQUESTED**

Case No. _____

**COMPLAINT FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF, AND
DECLARATORY JUDGMENT**

INTRODUCTION

1. Rhode Island requires mail voters to have their mail-in ballot envelopes signed by either two lay witnesses or one notary. Requiring a witness or notary for mail voting places Rhode Island in a minority of states. Requiring more than one witness places Rhode Island among an even smaller minority of states. While this requirement creates a burden under any circumstances, due to the Coronavirus Disease 2019 (“COVID-19”) pandemic, Rhode Island’s ballot witnessing requirements are not only needless and difficult, they are dangerous. Recognizing this, Rhode Island’s Governor suspended these witnessing requirements for the June 2020 presidential primary election. By this lawsuit, Plaintiffs seek a ruling that, due to the unique nature of conducting an

election during the COVID-19 pandemic, the state may not enforce its requirement that mail ballots be witnessed by two lay witnesses or a notary public.

2. The nationwide outbreak of COVID-19 poses a serious threat to the health of both Americans and American elections. Rhode Island is not immune. In fact, Rhode Island's mail ballot witnessing requirement makes it *especially* vulnerable to the risk of suppressed voter participation during the COVID-19 pandemic.

3. Rhode Island's September 2020 primary and the November 2020 general election will be conducted under extraordinary circumstances. At the urging of health experts and their own governmental leaders, Rhode Islanders—especially senior citizens and those with underlying health conditions—are avoiding contact with people outside their households to protect their health and slow the spread of COVID-19. Under current state law, mail voting will require voters to violate this social distancing protocol, unless they happen to live with two people who can serve as witnesses or in the incredibly unlikely circumstance that a voter lives with a notary who is not the spouse, domestic partner, parent, guardian, child or sibling of the voter, including in-law, step, or half relatives.

4. Rhode Islanders' constitutional right to vote cannot be conditioned on their willingness to subject themselves, their families, and their communities to a heightened risk of COVID-19. This is particularly true when the state law forcing voters to interact in person with witnesses or a notary is, at best, minimally useful.

5. Plaintiffs therefore seek a temporary restraining order, preliminary and permanent injunctions, and a declaratory judgment permitting Rhode Island voters to vote by mail ballot in the 2020 elections without involving witnesses or a notary.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

7. This Court has personal jurisdiction over Defendants Nellie M. Gorbea, Diane C. Mederos, Louis A. DeSimone Jr., Jennifer L. Johnson, Richard H. Pierce, Isadore S. Ramos, David H. Sholes, and William E. West who are elected or appointed state officials and residents of Rhode Island.

8. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants reside in this District and because the events and omissions giving rise to Plaintiffs' claims occurred in this District.

9. This Court has authority to issue both declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

10. Plaintiff Common Cause Rhode Island (CC-RI) is a nonpartisan organization that promotes representative democracy by ensuring open, ethical, accountable, effective government processes at local, state, and national levels by educating and mobilizing the citizens of Rhode Island. CC-RI has approximately 5800 members throughout Rhode Island. These members, like all Americans, have had their daily lives altered by COVID-19. Many of these members are adhering to strict social distancing protocols to avoid contracting or spreading the coronavirus. Many of CC-RI's members are particularly vulnerable to COVID-19 either due to their age or other underlying health conditions. Others live in households with individuals particularly vulnerable to COVID-19. Some of these members live by themselves or with only one other non-notary person. Thus, some of CC-RI's members are registered voters who, under the current law,

will face a choice between risking their health in order to vote or not voting at all because of Rhode Island's witnessing requirement for mail voting.

11. CC-RI has diverted resources and will need to continue to divert resources from its voter registration, voter education, voter protection, and voter mobilization activities towards advocating against and educating voters about the witness requirement, to prevent the requirement from disenfranchising its members and the voters they serve. If mail voters were not required to have their mail-in ballot envelopes signed by either two lay witnesses or one notary, CC-RI could spend less of its volunteer resources and time on educating voters about the witness requirement, and more on its other critical activities including voter registration, voter education, voter protection, and voter mobilization work.

12. Plaintiff League of Women Voters of Rhode Island (LWVRI) is a nonpartisan political organization that works to encourage informed and active participation in government and to influence public policy through education and advocacy. LWVRI is an affiliate of the League of Women Voters of the United States and the average age of members nationwide is 72 years of age. LWVRI has approximately 150 members throughout Rhode Island. Similarly to the other plaintiffs (and most Americans), LWVRI's members have had their daily lives altered by COVID-19. Many of these members are adhering to strict social distancing protocols to avoid contracting or spreading the coronavirus. Many of LWVRI's members are senior citizens and are therefore particularly vulnerable to COVID-19 due to their age. Some of these members live by themselves or with only one other non-notary person. Thus, some of LWVRI's members are registered voters who, under the current law, will face a choice between risking their health in order to vote or not voting at all because of Rhode Island's witnessing requirement for mail voting.

13. LWVRI has diverted and will need to continue to divert resources from its voter registration, voter education, and voter mobilization activities towards advocating against and educating voters about the witness requirement, to prevent the requirement from disenfranchising its members and the voters they serve. If mail voters were not required to have their mail-in ballot envelopes signed by either two lay witnesses or one notary public, LWVRI could spend less of its volunteer resources and time on educating voters about the witness requirement, and more on its other critical activities including registering voters without conducting in-person registration drives and educational events.

14. Plaintiff Miranda Oakley is a registered voter in South Kingstown, Rhode Island. Ms. Oakley is 32 years old. Ms. Oakley is blind and, therefore, unable to drive. She lives with her mother and grandmother, but her grandmother is not capable of serving as a witness. Ms. Oakley is concerned both about the risk of contracting COVID-19—and the concomitant risk to herself, her mother, and her elderly grandmother—and about the potential risk of passing COVID-19 on to others beyond her household, particularly given that her mother works with elderly persons. Accordingly, Ms. Oakley is closely adhering to social distancing guidelines.

15. Plaintiff Barbara Monahan is a registered voter in North Kingstown, Rhode Island. Ms. Monahan is 88 years old and living alone in a Section 8 housing complex almost entirely occupied by elderly persons. Ms. Monahan cannot drive due to a severe back condition and, also due to this condition, is unable to vote in person. Ms. Monahan is concerned about the heightened risk of contracting COVID-19 that would arise if she were forced to break social distancing guidelines in order to have her ballot witnessed.

16. Plaintiff Mary Baker is a registered voter in Glocester, Rhode Island. Ms. Baker has been diagnosed with asthma, apnea, hypertension, diabetes, and obesity. Ms. Baker lives with

her husband. Ms. Baker is deeply concerned about the heightened risk of contracting COVID-19—and the likely life-threatening or life-ending symptoms she would experience—if she were forced to break social distancing guidelines in order to have her ballot witnessed.

17. Defendant Nellie M. Gorbea (“Secretary Gorbea” or “Defendant Gorbea”) is the Secretary of State of Rhode Island and is sued in her official capacity. Secretary Gorbea plays a central role in administering and overseeing Rhode Island elections. Secretary Gorbea is responsible for “arrang[ing], print[ing], and distribut[ing] all [mail] ballots, together with instruction sheets and the required envelopes.” R.I. Gen. Laws § 17-6-4; *see also* R.I. Gen. Laws §§ 17-20-18 & 17-20-20. At all times material hereto, Defendant Gorbea has acted or failed to act under color of state law within the meaning of 42 U.S.C. § 1983.

18. Defendants Diane C. Mederos, Louis A. DeSimone Jr., Jennifer L. Johnson, Richard H. Pierce, Isadore S. Ramos, David H. Sholes, and William E. West (“BOE Defendants”) are members of the Rhode Island Board of Elections and are sued in their official capacity. BOE Defendants play a central role in administering and overseeing Rhode Island elections. BOE Defendants “[e]xercise general supervision of the administration of the election law by local boards” and “[c]anvass and tabulate all votes cast at each state election and count, canvass, and tabulate the votes cast by mail voters.” R.I. Gen. Laws § 17-7-5(a)(1), (6). At all times material hereto, each of the BOE Defendants has acted or failed to act under color of state law within the meaning of 42 U.S.C. § 1983.

FACTS

Mail Ballots are Crucial to Voter Access in Rhode Island, Especially During the COVID-19 Pandemic

19. In 2011, the Rhode Island General Assembly expanded accessibility of mail ballots to any “elector who may not be able to vote at his or her voting place in his or her city or town on

the day of the election.” R.I. Gen. Laws § 17-20-2, 2011 Rhode Island Laws Ch. 11-190 (11-H 5748A) (eff. July 1, 2011). In doing so, the General Assembly recognized the importance of voting by mail for voters unable to vote in person for a myriad of reasons. The law does not require voters to specify any particular “excuse” for casting a mail-in ballot.

20. Rhode Island will hold two statewide election days in the remaining part of 2020. Primary elections for offices including U.S. House of Representatives, Rhode Island Senate, and Rhode Island House of Representatives will be held on September 8, 2020. The general Presidential election, and the election for U.S. Senate, U.S. House of Representatives, Rhode Island Senate, and Rhode Island House of Representatives will be held on November 3, 2020. On both the September and November 2020 election days, there will also be a variety of municipal elections throughout the state.

21. In Rhode Island’s 2020 elections, access to mail voting will be substantially more important than it has ever been in the state’s past elections due to the COVID-19 pandemic. Indeed, the June 2020 presidential preference primary, conducted with witnessing requirements for mail-in ballots temporarily lifted, demonstrates how prevalent mail-in voting is likely to be in the upcoming September primary and November general elections—83% of voters exercised their fundamental right to vote via mail-in ballot.¹ In comparison, less than 4% of the votes in the May 2016 presidential preference primary were cast by mail.²

22. SARS-CoV-2, the virus that causes COVID-19, spreads easily through respiratory droplets. The virus can also be transmitted through contact with contaminated surfaces. Health

¹ *2020 Presidential Primary Elections Task Force Preliminary Overview 3* (July 1, 2020); *see also 2020 Presidential Preference Primary Statewide Summary*, State of Rhode Island Board of Elections (updated July 2, 2020), https://www.ri.gov/election/results/2020/presidential_preference_primary/#.

² *2016 Presidential Primary Statewide Summary*, State of Rhode Island Board of Elections (updated May 4, 2016), https://www.ri.gov/election/results/2016/presidential_preference_primary/#.

experts are also researching—and cannot rule out—airborne transmission of COVID-19. But health experts agree that to minimize the chance of contracting COVID-19, it is important for individuals to maintain at least six feet of distance between themselves and others outside their household.

23. COVID-19 causes severe illness, and death, in many patients. Among infected individuals, COVID-19 is, by conservative estimates, several times more likely to cause death than seasonal influenza.³ Individuals over age 65 and those with certain underlying health conditions are at heightened risk of becoming severely ill or dying from COVID-19.⁴

24. As of July 21, 2020, there have been 3,819,139 confirmed cases of COVID-19 and 140,630 deaths attributed to COVID-19 in the United States, according to the Centers for Disease Control and Prevention (“CDC”).⁵ Rhode Island has had 17,986 confirmed cases and 996 deaths.⁶ These figures almost certainly understate the real numbers of COVID-19 victims, given the limitations in testing.

25. Although COVID-19 infection rates in Rhode Island may ebb and flow, subsequent resurgences of the disease in Rhode Island are likely to occur.⁷ This is particularly true if Rhode

³ See, e.g., Joel Achenbach, *Antibody tests support what’s been obvious: Covid-19 is much more lethal than the flu*, WASH. POST (Apr. 28, 2020), https://www.washingtonpost.com/health/antibody-tests-support-whats-been-obvious-covid-19-is-much-more-lethal-than-flu/2020/04/28/2fc215d8-87f7-11ea-ac8a-fe9b8088e101_story.html; Holly Secon, *The coronavirus death rate in the US is almost 50 times higher than that of the flu. See how they compare by age bracket.*, BUSINESS INSIDER (June 23, 2020), <https://www.businessinsider.com/coronavirus-death-rate-us-compared-to-flu-by-age-2020-6>.

⁴ People Who Are at Higher Risk for Severe Illness, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (updated June 25, 2020).

⁵ See Cases in the U.S., CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (updated July 21, 2020).

⁶ See Rhode Island COVID-19 Response Data, RI Dept. of Health, <https://ri-department-of-health-covid-19-data-rihealth.hub.arcgis.com> (updated July 21, 2020).

⁷ Indeed, evidence unfortunately already points to a current resurgence of COVID-19 cases in parts of Rhode Island. See, e.g., Paul Edward Parker, *Central Falls testing site sees positive cases leap from 1 or 2 a day to more than 20*, PROVIDENCE JOURNAL (July 18, 2020), <https://www.providencejournal.com/news/20200718/central-falls-coronavirus-testing-site-sees-positive-cases-leap-from-1-or-2-day-to-more-than-20>.

Island abandons prior measures intended to limit social contact, such as the suspension of the witnessing requirement for mail ballots. As other states have recently experienced, abandonment or relaxation of social distancing behavior leads to spikes in COVID-19 transmission.

26. The Food and Drug Administration has not approved any medication for treatment of COVID-19, though promising experimental treatments are under investigation. Likewise, there is no generally available vaccine for COVID-19, nor is a vaccine likely to become widely available before the September 2020 primary or November 2020 general election.

27. Recognizing the need for social distancing in order to reduce the spread of COVID-19, Rhode Island Governor Gina M. Raimondo issued an Executive Order on March 9, 2020 declaring a state of emergency which has been extended at least through August 2, 2020.⁸ Governor Raimondo's most recent executive order extending the state of emergency acknowledged that "aggressive and sustained efforts are still necessary to slow the spread of the COVID-19 virus and to lessen the strain on our healthcare system."⁹ Local leaders agree, as evidenced by the various localities in Rhode Island that have likewise declared states of emergency that remain in effect.¹⁰

28. Accordingly, even as Governor Raimondo has relaxed some requirements put in place to combat COVID-19 in order to reopen parts of the economy, she has renewed others and conditioned many of the relaxations on "strict adherence to social distancing, masking, screening and sanitation protocols."¹¹ Governor Raimondo has advised that "[w]orking from home is still strongly encouraged when possible"¹² and "[a]ll vulnerable populations identified by the Centers

⁸ Executive Order 20-52 (July 3, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-52.pdf>.

⁹ *Id.* at 2.

¹⁰ *See, e.g.*, Scott Souza, *Barrington Extends Coronavirus State of Emergency*, THE PATCH (July 6, 2020), <https://patch.com/rhode-island/barrington/barrington-extends-coronavirus-state-emergency>.

¹¹ Executive Order 20-50 at 4, 7 (June 29, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-50.pdf>.

¹² *Id.* at 5.

for Disease Control and Prevention (CDC), which include those who are 65 years of age and older, are still strongly advised to stay at home unless they must go to work, travel for medical treatment or obtain other necessities such as groceries, gas or medication.”¹³

29. This Court has likewise acknowledged the need for continued public health measures to address the COVID-19 pandemic and has acted accordingly. “In light of the continued guidance from the Centers for Disease Control and other health authorities and given the continued escalation of the COVID-19 pandemic,” this Court remains closed to the public and has continued to encourage its employees to maximize telework per an order set to remain in effect until at least September 30, 2020, a date more than three weeks after the September primary election.¹⁴

30. Given the current pandemic, in-person voting at the same levels as pre-COVID-19 elections will not be safe in the upcoming 2020 elections, particularly for those most vulnerable to COVID-19.

31. The danger of large-scale in-person voting during the COVID-19 pandemic is illustrated by the Wisconsin presidential primary election held April 7, 2020, which drew more than 400,000 in-person voters, owing in part to the state’s failure to provide mail ballots with sufficient time for many voters to return them. The election created 71 positive COVID-19 cases directly traceable to in-person voting.¹⁵ Even more alarmingly, an analysis by university economists has preliminarily found that, controlling for other potentially relevant factors, Wisconsin counties with more in-person voters per voting location had higher rates of positive

¹³ *Id.* at 2.

¹⁴ *Fourth General Order Regarding Continuity of Operations During Coronavirus Pandemic*, United States District Court for the District of Rhode Island (June 29, 2020), <https://www.rid.uscourts.gov/sites/rid/files/FourthGeneralOrderOperations.pdf>.

¹⁵ Chad D. Cotti et al., *The Relationship Between In-Person Voting, Consolidated Polling Locations, and Absentee Voting on COVID-19: Evidence From the Wisconsin Primary*, Working Paper 27187, NAT’L BUREAU OF ECON. RESEARCH (May 2020), available at <https://www.nber.org/papers/w27187>.

COVID-19 tests, while counties with more mail voting had lower positive COVID-19 test rates— patterns that emerged in the weeks following the primary.¹⁶

32. Mail voting represents the best option for most Rhode Island voters to participate safely in the 2020 elections.¹⁷ Defendant Gorbea herself has recognized this reality, saying that she was “encouraging everybody to just vote by mail” for the June presidential primary.¹⁸ Secretary Gorbea’s actions to this end accord with guidance from the CDC, which recommends that election officials “offer alternative voting methods that minimize direct contact and reduce crowd size at polling locations.”¹⁹

33. Governor Raimondo responded to these serious public health dangers and the need to provide Rhode Island citizens with a safe and accessible means of voting for the June presidential primary election by issuing an executive order that, among other measures, eliminated the two witness/notary requirement challenged here.²⁰ Defendant Gorbea’s 2020 Presidential Primary Election Task Force (“PPE Task Force” or “task force”) specifically reflected that “[r]emoving the two witness/notary signature requirement on ballots made it easier for older Rhode Islanders and those living alone” to vote safely. As a result of these measures, the PPE task force concluded that the executive order was a success and led to a “[d]eferred number of in-person voters [which] allowed for social distancing best practices.”²¹

¹⁶ *Id.*

¹⁷ Plaintiffs do not seek to have mail voting wholly replace in-person voting. Rather, they seek to ensure that mail voting is a possibility for all Rhode Islanders, including those who would otherwise have to choose between health and safety and exercising the constitutional right to vote.

¹⁸ Erica Ponte, *RI Secretary of State encourages mail ballot voting in presidential primary*, WPRI (May 14, 2020), <https://www.wpri.com/news/elections/ri-secretary-of-state-encourages-mail-ballot-voting-in-presidential-primary/>.

¹⁹ Recommendations for Election Polling Locations, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (updated June 22, 2020).

²⁰ Executive Order 20-27 at 2 (Apr. 17, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-27.pdf>.

²¹ 2020 Presidential Primary Election Task Force Slideshow at 4 (July 9, 2020).

34. Unfortunately, despite receiving requests²² to take the same actions to protect voters in the September 2020 primary and November 2020 general elections and despite no evidence that the dangers and public health needs have dissipated, Governor Raimondo has failed to take any similar action to ensure that voters can cast mail-in ballots in the September and November elections without jeopardizing their own, their family's, and/or their community's health by interacting with witnesses or notaries.

35. Defendant Gorbea promoted legislation to implement mail-in voting for the remaining 2020 elections, including a provision to eliminate the witness or notary requirement.²³ However, the Rhode Island General Assembly failed to pass this legislation with its opponents largely citing the provision of the legislation which would have required applications for mail-in ballots to be sent to every registered voter.²⁴ The General Assembly, however, has passed other legislation clearly demonstrating that they understand the public health risks of in-person contact at this time, for example eliminating the in-person registration requirement for Rhode Island's mobile sports betting app.²⁵

36. Like many Rhode Island voters, Plaintiffs Oakley, Monahan, and Baker intend to exercise their fundamental right to vote via mail ballot in the 2020 elections because they fear contracting and/or spreading COVID-19 if they vote in person. Absent a change in the witnessing

²² Letter from Voting Access Coalition to Governor Gina M. Raimondo (June 30, 2020), *available at* http://riaclu.org/images/uploads/VAC_letter_to_Governor_FINAL_20200630.pdf. The Voting Access Coalition includes Plaintiffs CC-RI and LWVRI.

²³ Alexandra Leslie & Melanie DaSilva, *RI secretary of state announces legislation for mail-based voting in the fall*, WPRI (June 12, 2020), <https://www.wpri.com/news/elections/r-i-secretary-of-state-set-to-introduce-legislation-for-mail-based-voting-in-the-fall/>.

²⁴ *See, e.g.*, Parker Gavigan, *A battle over mail ballots*, WJAR (July 17, 2020), <https://turnto10.com/i-team/battle-over-mail-ballots/>; Ted Nesi, *House leaders back bill to send all RI voters mail ballot applications*, WPRI (July 14, 2020), <https://www.wpri.com/news/politics-government/house-leaders-back-bill-to-send-all-ri-voters-mail-ballot-applications/>.

²⁵ *Lawmakers drop in-person requirement for online sports wagering*, State of RI General Assembly (July 16, 2020), http://www.rilin.state.ri.us/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=370997.

requirement, even mail-in ballots will not permit them to maintain the strict social distancing guidelines they have otherwise sought to follow.

37. Members of CC-RI and LWVRI similarly depend on mail voting for effective access to the franchise in 2020, given the unacceptable health risks associated with voting in person during the pandemic.

*Rhode Island's Two Witness/Notary Signature Requirement
Undermines Access to Voting During the Pandemic*

38. With exceptions related to voters in medical facilities, abroad, or out of state for military service, Rhode Island requires that “the signature on the certifying envelopes containing a voted ballot must be made before a notary public or two (2) witnesses who shall set forth their addresses on the form.” R.I. Gen. Laws §§ 17-20-2.1(d)(1), (d)(4).

39. Where the voter is voting by mail because they are “confined in any hospital, convalescent home, nursing home, rest home, or similar institution, public or private, within the State of Rhode Island,” the ballot “must be witnessed by the state supervisors” who travel in bipartisan pairs to each of the aforementioned facilities within twenty days before the election, R.I. Gen. Laws §§ 17-20-14(a), 17-20-2(2). It seems highly unlikely that voters in this category will have the ability to engage in this process due to the fact that—in response to the COVID-19 pandemic—hospitals, nursing homes, and medical facilities are still strictly limiting access by non-essential persons.²⁶

40. Voters are not required to have their ballots witnessed if they will be absent from the state on election day because of “employment or service intimately connected with military

²⁶ See, e.g., *Information for Hospital Visitors*, LIFESPAN, <https://www.lifespan.org/visiting> (last visited July 22, 2020) (allowing hospital patients to see only two *separate* visitors per day); *Visitation Restrictions at Care New England Hospitals*, CARE NEW ENGLAND, <https://www.carenewengland.org/coronavirus/visitation-restrictions.cfm> (last visited July 22, 2020) (completely prohibiting visitors for inpatients “unless an exception is required for patient well-being”)

operations” or such employment of their spouse or a legal dependent residing with them. *See* R.I. Gen. Laws §§ 17-20-2(3)-(4), 17-20-2.1(d)(3). Likewise, citizens who will be abroad during the election also do not have a witnessing requirement. *Id.*

41. Any other voters seeking to vote by mail are required to have their ballot envelope signed by either two witnesses or a notary. If they do not reside with two persons able to serve as witnesses, they face a choice: they can vote in person in the upcoming elections, or they can comply with social distancing best practices to avoid contracting or spreading COVID-19. They cannot reasonably do both.

42. The two witnesses or the notary for each ballot must actually witness the voter marking the ballot. R.I. Gen. Laws §§ 17-20-21 and 17-20-23.

43. It is difficult or impossible for the voter and witness to maintain a constant distance of at least six feet between them throughout the voting process. Moreover, the voter and witness must touch the same Signature Envelope in order to sign the certificate. Accordingly, the voter-witness interaction required by Rhode Island’s current mail voting procedure constitutes a violation of recommended social distancing and creates a substantial risk of COVID-19 transmission, unless the voter and witnesses or notary already live together. Indeed BOE Defendants “recognize[] that the mail ballot certification process – with its two witnesses or notarized signature – necessitate the very close contact that exposes people to the virus.”²⁷

44. Even in the unlikely circumstance that a voter resides with a notary, it is even more unlikely that that notary will be able to notarize the ballot for them in keeping with the Standards of Conduct for Notaries Public in the State of Rhode Island. Under those standards, notaries may

²⁷ *Decision and Order 3*, State of Rhode Island Board of Elections (April 14, 2020).

not notarize a document where the principal is the spouse, domestic partner, parent, guardian, child or sibling of the notary, including in-law, step, or half relatives.

45. According to the Census Bureau's 2018 ACS 5-year estimates, 126,661 householders live alone in Rhode Island. Of those, 52,323 are 65 years and older.²⁸ This already-substantial number does not account for persons who live with only one other person, or with two or more people, but their cohabitants may be incapable of serving or ineligible to serve as witnesses. This could include voters who live only with minors, voters living with other adults who lack the mental capacity to serve as witnesses, or voters who live with other adults who are visually-impaired or blind and therefore are unable to witness the voter completing their ballot.

46. Upon information and belief, if Rhode Island's witnesses or notary requirement for mail-in voting stays in place for the 2020 elections, many eligible voters will be deterred from voting to comply with social distancing guidelines and protect themselves from contracting or spreading COVID-19.

47. Meanwhile, other voters—potentially numbering in the tens of thousands— will interact with witnesses outside their household in order to cast mail-in ballots. Some of these interactions will lead to transmission of COVID-19. Voters, witnesses, and third parties who come into contact with them may become severely ill or die from COVID-19 cases traceable to mail voting interactions.

*Safeguards Other Than Witnessing Adequately Protect Rhode
Island Elections from Any Threat of Mail Ballot Fraud*

48. Rhode Island's witness or notary requirement for mail voting produces no benefit remotely on par with the severe burden it places on voters during the COVID-19 pandemic. While

²⁸ Census Population Survey Table Creator, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?id=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP02&tid=ACSDP5Y2018.DP02&y=2018&g=0400000US44>.

Rhode Island has a legitimate interest in preventing fraud and the appearance of fraud in elections, the marginal effect of the witness requirement as an anti-fraud measure is minimal at best.

49. Rhode Island has no significant history of fraud in mail-in voting.

50. Rhode Island's experience with mail-in voting is consistent with the experience of other states. Throughout the U.S., mail-in voting fraud is rare. A comprehensive nationwide analysis found 491 cases of absentee voting fraud from 2000 to 2012—a minuscule fraction of all mail-in ballots cast during that period. Any American is more likely to be struck by lightning than to cast a fraudulent mail-in ballot.²⁹

51. Most states achieve the same result as Rhode Island—no meaningful amount of mail-in voter fraud—*without* requiring a signed witness statement. Rhode Island is one of only twelve states where the normal mail-in voting process requires a witness or a notary. There is no evidence that states without witness requirements have more mail-in voter fraud than states with such requirements.

52. Rhode Island has other robust safeguards against mail-in voting fraud. Mail-in ballots are assessed to ensure that the name, residence, and signature on the ballot itself all match that same information on the ballot application, including ensuring “that both signatures are identical.” R.I. Gen. Laws 17-20-26(c)(2).

53. Voter fraud is also a felony in Rhode Island, punishable by up to ten years of imprisonment and a fine between \$1,000 and \$5,000. R.I. Gen. Laws § 17-23-3 & 17-20-1.

54. Governor Raimondo has previously acknowledged that the witnessing requirement is not essential to preventing voter fraud and is outweighed by the public health needs of the pandemic. She eliminated the two witness/notary signature requirement for the June presidential

²⁹ Wendy R. Weiser & Harold Ekeh, The False Narrative of Voter Fraud, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020) <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>.

primary election, instructing the Board of Elections to “take all measures necessary to compare and authenticate the signatures set forth on the application and certification envelopes” and permitting them to “request mail ballot applicants to voluntarily provide the last four digits of the voter’s Social Security number or a valid driver’s license number.”³⁰

55. The suspension of the two witness/notary requirement for the June presidential preference primary was so successful that Defendant Gorbea’s PPE Task Force proposed that Rhode Island adopt the same course for the September and November 2020 elections. Unfortunately, Governor Raimondo has failed to act on this recommendation.

56. Defendant Gorbea’s PPE Task Force stated that adopting this change would “[e]nsure[] voters who live alone or with one other person do not have to rely on someone else in order to cast a ballot.”³¹ The task force also acknowledged that the “[m]ajority of states do not have a witness or notary requirement,” with most states instead predominantly relying on signing under oath and signature matching to confirm voter identification, as Rhode Island did for the June election.³²

57. Indeed, on information and belief, BOE Defendants voted on July 13 to support the suspension of the two witness/notary requirement for the September and November 2020 elections.

CAUSES OF ACTION

Count I: Undue Burden on the Right to Vote in Violation of the First and Fourteenth Amendments As Applied to Elections During the COVID-19 Pandemic (42 U.S.C. § 1983)

58. Plaintiffs repeat and reallege paragraphs 1 through 57.

³⁰ *Id.*

³¹ *Id.*

³² 2020 Presidential Primary Election Task Force Slideshow at 10 (July 9, 2020); *see also* Executive Order 20-27 at 2 (Apr. 17, 2020), <https://governor.ri.gov/documents/orders/Executive-Order-20-27.pdf>.

59. The constitutional right to vote “is of the most fundamental significance under our constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). When analyzing the constitutionality of a restriction on voting, the Court “must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Id.* at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

60. As applied to the September 2020 primary and November 2020 general elections, Rhode Island’s witness requirement for mail voting constitutes a severe burden on the right to vote because it forces voters to choose between exercising the franchise safely or violating social distancing guidelines and exposing themselves, their families, and their communities to a heightened risk of COVID-19.

61. Rhode Island has no interest sufficient to justify maintaining the witnessing requirement for the 2020 elections. Although preventing fraud and the appearance of fraud is a legitimate state interest, that interest can be fully vindicated without the witnessing requirement. Indeed, Rhode Island officials have acknowledged as much. Mail voting fraud is rare, in Rhode Island and throughout the United States. Rhode Island already has robust safeguards unrelated to the witness requirement, including signing under oath and signature matching. Any interest the state has in its witness signature requirement is too slight to justify the severe burden imposed by applying the requirement during the COVID-19 pandemic.

62. Indeed, this Court has recognized that “[i]n-person signatures amid a pandemic, one comprised of a highly contagious virus transmitted through close human contact, actually would undermine the public interest.”³³

63. The witness requirement constitutes an unconstitutional burden on the right to vote under the First and Fourteenth Amendments, as applied to Rhode Island’s September 2020 primary and the November 2020 general election.

**Count II: Violation of Title II of the
Americans with Disabilities Act**
(42 U.S.C. § 12131, *et seq.*)

64. Plaintiffs repeat and reallege paragraphs 1 through 57.

65. Under Title II of the ADA, state and local government entities may not discriminate against qualified individuals on the basis of disability. 42 U.S.C. § 12132. Such entities are forbidden from imposing or applying eligibility criteria for public services, programs, or activities, including voting, that screen out or tend to screen out individuals with disabilities from fully and equally enjoying those programs. 28 C.F.R. § 35.130(b)(8). Public entities must also make reasonable modifications to policies, practices, or procedures, including voting and election procedures, when such modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. *Id.* This ensures that the fundamental right to vote is protected for all Americans, including Americans with disabilities.

66. Individuals with significant medical vulnerabilities that place them or members of their household at a heightened risk of severe illness or death during the COVID-19 pandemic—

³³ Memorandum and Order, *Acosta, et al. v. Restrepo et al.*, No. 1:20-CV-00262-MSM-LDA at 13 (D.R.I. June 25, 2020).

including plaintiffs Oakley, Monahan, and Baker and many members of CC-RI and LWVRI—have one or more physical impairments that substantially limit one or more major life activities and are therefore individuals with a disability within the meaning of the ADA. 42 U.S.C. § 12102.

67. Defendants’ use of eligibility criteria based on the challenged provisions of Rhode Island statutes and regulations that screen out or tend to screen out individuals with disabilities from participating safely in the September 8 and November 3, 2020 elections violates Title II of the ADA. Defendants’ failure to make reasonable modifications in policies, practices, and procedures such as the two witness/notary requirement where necessary to avoid discrimination against individuals with disabilities also violates Title II of the ADA.

68. The two witness/notary requirement is not necessary for the operation of Defendants’ voting program, and must be modified or eliminated for at least those voters whose disability status severely limits their ability to leave home or have personal contact with others amid the COVID-19 pandemic.

69. The ADA authorizes injunctive relief as appropriate to remedy acts of discrimination against persons with disabilities. 42 U.S.C. § 12188(a)(1)-(2).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Enter a declaratory judgment that R.I. Gen. Laws §§ 17-20-2, 17-20-2.1, 17-20-14, 17-20-21, 17-20-23, and all Rhode Island regulations implementing such statutes—insofar as they require voters to obtain two lay witnesses or one notary witness when completing a mail ballot, or authorize any official to reject any mail ballot for failure to obtain the signature, address, title, or notarial stamp of witness(es)—violate the First and Fourteenth Amendments, as applied to the September 2020 primary and November 2020 general elections;

2. Enter a declaratory judgment that R.I. Gen. Laws §§ 17-20-2, 17-20-2.1, 17-20-14, 17-20-21, 17-20-23, and all Rhode Island regulations implementing such statutes—insofar as they require voters with a disability or voters who live with persons with a disability to obtain two lay witnesses or one notary witness when completing a mail ballot, or authorize any official to reject any mail ballot for failure to obtain the signature, address, title, or notarial stamp of witness(es)—violate Section II of the ADA , as applied to the September 2020 primary and November 2020 general elections;

3. Enter temporary, preliminary, and permanent injunctions directing Defendants, their agents, employees, and successors, and all those persons acting in concert or participation with them to:

a. refrain from enforcing any statute or regulation that directly or indirectly requires any voter to obtain witness or notary signatures in order to cast a mail ballot, and have such ballot counted, in the September 2020 primary and November 2020 general elections;

b. direct all local officials in Rhode Island not to reject any mail ballot for failure to obtain the signature, address, title, or notarial stamp of witness(es) for the September 2020 primary and November 2020 general elections, and;

c. temporarily modify all form printed materials (including but not limited to envelopes and instructions) and/or create new form printed materials, to the extent necessary to avoid explicitly or implicitly instructing any voter to interact in person with any witness(es) for the purpose of casting a mail ballot in the September 2020 primary and November 2020 general elections;

4. Temporarily, preliminarily, and permanently restrain Defendants from enforcing the provisions of R.I. Gen. Laws §§ 17-20-2, 17-20-2.1, 17-20-14, 17-20-21, 17-20-23, and all

Rhode Island regulations implementing such statutes—insofar as they require voters to obtain two lay witnesses or one notary witness when completing a mail ballot, or authorize any official to reject any mail ballot for failure to obtain the signature, address, title, or notarial stamp of witness(es)—for the September 2020 primary and November 2020 general elections.

5. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action, and;

6. Grant such other relief as the Court may deem just and proper.

Dated: July 23, 2020

Respectfully submitted,

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