

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, S.S.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

C.A. NO.

HELEN BRADY

Plaintiff,

v.

STATE BALLOT LAW COMMISSION

Defendant.

**COMPLAINT FOR JUDICIAL REVIEW AND
FOR DECLARATORY RELIEF**

Introduction

1. Helen Brady obtained more than 1000 signatures through an electronic signature gathering process authorized by the Supreme Judicial Court to remedy the constitutional violation resulting from the statutory signature gathering framework requiring in person signatures during the global pandemic. Voters accessed a website, and after viewing exact duplicates of the ballot nomination forms issued by the Secretary of State, inserted their names, addresses and signatures into fields, and that information was placed onto the printed, hard copy forms to be filed with the local clerks' offices. The city and town clerks certified 1066 names on the forms which were then submitted to the Secretary of State; where the state Democratic Party lie in waiting to object to the process she utilized. Even though 39 other candidates used the

exact same signature gathering process, only Helen Brady who planned to run against William Keating, was singled out as being non-compliant with the Court's instruction in *Goldstein v. Secretary of the Commonwealth*. The Ballot Commission wrongfully agreed with the objection, finding that the electronic signature gathering process she utilized did not meet the SJC standards nor the Secretary of State's advisory. This decision is based on errors of law, is arbitrary and capricious and violates Helen Brady's rights protected under the Fourteenth Amendment to the United States Constitution and Article 9 of the Declaration of Rights.

JURISDICTION

1. The Superior Court has jurisdiction over this complaint to G.L. c. 30A §14 to the extent it seeks review of the State Ballot Law Commission's decision. The Supreme Judicial Court for Suffolk County also has jurisdiction over this complaint to the extent it involves interpreting its order issued in the *Goldstein* case and to the extent it seeks declaratory judgment that the electronic signature gathering process utilized by the Helen Brady Campaign complies with the Court's framework established in *Goldstein v. Secretary of the Commonwealth*.

PARTIES

2. Plaintiff Helen Brady ("Brady") seeks to run as the Republican candidate for the Ninth Congressional District and to be placed on the ballot for Republican primary on September 2, 2020. Brady lives on Monument Road in Concord, Massachusetts.

3. Defendant Massachusetts State Ballot Law Commission is a five person Commission established under G.L. c. 55B §1 to consider challenges to the legality and validity of signatures certified by local clerks and Registrars of Voters.

4. Under G.L. c. 55B §4, the Commission may investigate upon objection the

legality, validity, completeness and accuracy of all nomination papers required by law to give candidates access to the ballot. The Commission may summon witnesses, administer oaths and require the production of records at a hearing on any matter within its jurisdiction.

FACTS

Background

5. 2020 is an election year in Massachusetts for certain federal and state offices. Due to the global pandemic and resulting Governor's orders restricting gatherings and limiting access to public places, three candidates for federal and state elective offices brought an action challenging the statutory nominating process's number of required signatures and signature gathering process to the extent the statutes required original or "wet" signatures. *Goldstein v. Secretary of the Commonwealth*, 484 Mass. 516 (2020).

6. Recognizing that the right to run for elective office and the related right to vote are fundamental rights under Article 9 of the Declaration of Rights, the Supreme Judicial Court agreed with the plaintiffs, held the statute unconstitutional as applied during the pandemic, and fashioned remedies to address the constitutional violations. These remedies included reducing the number of required signatures to be placed on the ballot by 50% and to allow electronic, rather than in person, signature gathering. 484 Mass. at 526-532.

7. The Court fashioned an emergency remedy to allow voters to sign nomination papers electronically, by being able to download the image of the nomination papers and either apply an electronic signature with a computer mouse or stylus, or print out a hard copy and sign it by hand. The signed nomination paper would then be returned to the candidate, or a person working on the candidate's behalf, either in electronic form, (by transmitting the "native"

electronic document or a scanned paper document.

Software Developed

8. Brian Fitzgibbons, a former Marine captain who served in Iraq, wrote an article that appeared in the Commonwealth magazine on March 23, 2020, describing how campaigns needed to adjust to the pandemic to allow nomination paper signatures to be gathered electronically. With the help of several of his small company's employees, Mr. Fitzgibbons had begun to create a web page for candidates to use, which allowed voters to access a site and sign their names electronically to nomination papers.

9. While the *Goldstein* case was being decided, one of the lawyers contacted Mr. Fitzgibbons and asked if he could fashion a website to achieve the results stated in his article. Mr. Fitzgibbons continued to work on the application, and once the decision entered, he made some adjustments to conform to the expressed standards, and the site and process was ready for use.

10. Candidates could provide access to the website through a link in a number of ways, including Facebook and by sending the link by email or text.

11. Using this technology, voters can access a site to download an image of the nomination papers, both front and back, with a colored block on the signature line indicating "sign here." Exhibit A attached. The forms are pre-populated with the candidate's information in the upper right hand corner.

12. To sign the form, the voters needed to provide various information, including typing their name and addresses into fields.

13. One of the fields required included a block within which the voters affixed their

name through use of a mouse, stylus or finger. The box was located separate from the signature block appearing on the form.

14. Voters could also print these forms, sign them, and return them to the candidates if they so choose.

15. Once a signature and other necessary information is applied into the fields, the voter hits submit, and the voter's signature is affixed to the form and returned to the voter almost immediately, showing how the signature appeared on the form, along with the additional information of the date and time submitted. In addition, each voter's signature and other identifying information was saved and stored in a secure database.

16. While the database allowed access to edit the data, no one but Mr. Fitzgibbons had access to edit the information, and he did not edit any of the information submitted.

Brady's Campaign Utilized This Electronic Process

17. Helen Brady is seeking the Republican nomination to be placed in the primary ballot as a Republican candidate for the United States House of Representatives in the Ninth District. Her campaign, like many others including plaintiffs in the *Goldstein* case, decided to use Mr. Fitzgibbons' services to develop a website and database that allows for signatures to be gathered electronically.

18. Brady distributed the website link through various means to allow voters to access the site. Using the link, voters accessed the site, downloaded the nomination form image, and inserted the requested information into fields. In addition, the voters signed in the field box and hit submit.

19. Once they hit submit, the voters received a receipt email with their signatures

applied to the forms and a date stamp next to their signatures. Exhibit _____. Each voter's information was stored in a secure database until the forms to be filed with the clerks' offices were printed.

20. The software Brady campaign used stored information that provides substantial indicia of reliability, including (i) the Submission Date (with hour, minute, and second submitted); (ii) First Name; (iii) Last Name; (iv) Email; (v) Phone Number; (vi) Street Address; (vii) Street Address Line 2; (viii) City; (ix) State; (x) Postal/Zip Code; (xi) Country; (xii) a digital “.png” image of the Signature; (xiii) the IP address of the device used to submit the nomination; and (xiv) a unique Submission ID.

21. Using the database to gather signatures, Brady obtained over 1000 signatures using only electronic means.

22. Before filing the forms with the clerks' offices, Brady printed out the nomination forms with the electronic signatures affixed to them, each form having one signature. The forms were submitted to the cities and towns for certification, and the clerks and registrars certified 1066 names, more than enough for her to be placed on the ballot according to the *Goldstein* decision.

23. Because many of the clerk's offices were not open and out of other concerns with the signature gathering process, Brady and three other candidates filed a petition on May 5, 2020 with the Single Justice for Suffolk County seeking additional post-*Goldstein* relief. That petition asked the Court to find that the candidates exhibited the necessary amount of community support to be placed on the ballot and asked the Court to exercise continued oversight of the standards applied by the Secretary to approve the electronic signatures gathered during the nominating

process.

24. Brady filed the 1066 certified names and nomination papers with the Secretary of State's Office on June 2, 2020.

25. On June 5, 2020, Leon Arthur Brathwaite, III filed objections to the certification of signatures, challenging the certifications made by the city and town clerks. Referring to the statutory signature gathering requirements in several places, the objection asked the Commission to find that the technology "did not comply with the statutory requirement that nomination papers be obtained 'in person'".

26. The Objection also challenged whether the electronic signatures were consistent with the Supreme Judicial Court's order in *Goldstein* and with the Secretary of State's advisory.

27. The objection also alleged that the signatures were otherwise not in conformance with the applicable certification regulations. For example, it alleged that certain signatures were illegible; proper addresses had not been included; and the clerks failed to insert check marks on five of the forms, among other signature specific objections.

28. The Commission held a hearing on June 16, 2020, heard testimony from one witness, Brian Fitzgibbons, and reviewed 8 exhibits.

29. Mr. Fitzgibbons testified about how he became involved in this election and how he created the electronic signature gathering process to allow signatures to be gathered.

30. Mr. Fitzgibbons also testified that 39 candidates used this same signature gathering process, and 40% of those candidates, or approximately 15 others, were Democrats.

31. On June 26, 2020, the Commission issued its decision, finding that the electronic signature gathering process did not comply with the *Goldstein* decision nor with the Secretary of

State's advisory. See Decision attached as Exhibit ____.

32. The Commission first found that the submitted nomination papers were not the original native image that the voters viewed their electronic signatures applied to, nor was it the native document made available for the voter to print out.

33. The Commission also found that the process did not comply with the Secretary's advisory because voters sign in a field separate from the line on the form. The Commission found that this process did not allow the voters to place their signature on the signature line screen image in person and in real time.

34. Finally, the Commission found that the ability to store the electronic signatures violates public policy, even though this criteria is not found in the *Goldstein* decision nor in the Secretary's advisory.

**COUNT ONE
JUDICIAL REVIEW (G.L. c. 30A §14)**

35. The Plaintiff restates the allegations contained in paragraphs 1 to 34 as if fully set forth herein.

36. The Commission's decision is an error of law because it violates the Equal Protection Clause of the 14th Amendment to the United State Constitution when it deprives a Republican candidate the right to appear on the ballot when the Commission applied its interpretation to only Brady without any rational basis while knowing that approximately 15 Democratic and 24 other Republican candidates used the same electronic signature gathering process.

37. The Commission's decision that the electronic signature gathering process did not comply with the Court's *Goldstein* decision is an error of law and is in excess of its statutory

authority. It fails to recognize that nominating a candidate and running for office are fundamental rights, protected under Article 9 of the Declaration of Rights, and this electronic signature gathering process afforded access to the ballot for the voters and candidates.

38. The decision is also an error of law because the process complies with the *Goldstein* standards. It allowed voters to download images of the nomination papers; to apply signatures using a mouse or stylus or to print a hard copy if they so choose; and to return their nomination papers in electronic form by transmitting the native document or by sending it in hand or by mail.

39. To the extent the nomination forms supplied to the clerks' offices were not the forms viewed by the voters, application of this interpretation and criteria to the *Goldstein* decision and its use of the term native format is an error of law because it prohibits the voters and candidate from exercising fundamental rights afforded under Article 9 Rights of Declaration of Rights.

40. The process outlined by the Secretary in its advisory is not subject to any deference by the Court because neither the Secretary nor the Ballot Law Commission has any expertise in electronic signature gathering means. This process has never been done before in the history of the Commonwealth. In addition, the advisory was not the subject of legislative delegation of authority to the Commission to construe a statute.

41. Even though the advisory is not subject to any deference by the Court, the Commission's decision is an error of law because the voters used a stylus or mouse to apply their signature to the nomination papers and signed in person and in real time.

42. The Commission's decision is an error of law because it lacked jurisdiction over

and had no authority to review whether the signature gathering process complied with the Court's decision in *Goldstein*.

43. The decision constitutes an error of law because it decided that policy concerns, nowhere expressed in the *Goldstein* case nor the Secretary's advisory, should trump the Article 9 Rights of voters and Brady, depriving her from appearing on the ballot.

44. The Commission's decision is not based on substantial evidence because it concluded that the voters could not print out the documents to apply their signatures. The only evidence before the Commission is that voters could print out the forms and apply their signatures to the electronic images downloaded onto their computers.

COUNT TWO EQUAL PROTECTION

45. The Plaintiff realleges the allegations contained in paragraphs 1 to 44 as if fully set forth herein.

46. The Commission has the authority to investigate and consider questions of compliance with the law on its own under G.L. c. 55B§4.

47. During the hearing, Mr. Fitzgibbons made clear that 39 other candidates used the same electronic signature gathering process, and approximately 15 of those candidates were Democrats. Not one commissioner asked the identity of any other candidate who used this process. None of the commissioners asked if the same processes were used, and the same instructions provided voters.

48. Instead, the Commission issued its decision preventing only Brady from being placed on the ballot, denying Helen Brady equal protection under the laws, while knowing that 39 other candidates also collected signatures in the same fashion.

49. Brady was treated differently without any rational basis or reason to treat her differently, denying her equal protection under the laws.

**COUNT THREE
DECLARATORY JUDGMENT**

50. The Plaintiff realleges the allegations contained in paragraphs 1 to 49 as if fully set forth herein.

51. There is a dispute within the meaning of G.L. c. 231A over whether the Commission's decision correctly interprets the *Goldstein* decision and applies its reasoning to the signature gathering process used by the Brady campaign.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court grant the following relief:

1. Report this case to the Single Justice of the Supreme Judicial court which has a petition pending before it to determine the same issues presented by this Complaint.
2. Alternatively, conduct a hearing and issue a decision vacating the Commission's decision to the extent it prevents Helen Brady from appearing on the ballot for the Ninth Congressional District.
3. Enter an order declaring that the decision is vacated and ordering that Helen Brady be placed on the ballot as a Republican candidate for Representative in Congress for the ninth Congressional District.
4. Enter an order declaring that the Commission's decision is invalid because it operates to violate the rights protected under the Fourteenth Amendment to the United States

Constitution by prohibiting a Republican from appearing on the ballot while allowing Democratic candidates, who used the same process.

5. Enter such further relief as this Court deems just and proper.
6. Award the Plaintiff her costs in bringing this action.

PLAINTIFF,

Helen Brady
By her attorneys,

Christopher A. Kenney, Esq., BBO# 556511
cakenney@KandSlegal.com
David R. Kerrigan, Esq., BBO# 550843
drkerrigan@KandSlegal.com
Kenney & Sams, P.C.
144 Turnpike Road
Southborough, Massachusetts 01772
(508) 490-8500

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