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FUNDAMENTAL CONSTITUTIONAL RIGHT PREVAILS—THE SUPREME JUDICIAL COURT OF MASSACHUSETTS DECLARES MINIMUM SIGNATURE REQUIREMENTS UNCONSTITUTIONAL IN LIGHT OF THE COVID-19 PANDEMIC

GOLDSTEIN V. SECRETARY OF THE COMMONWEALTH, 142 N.E.3D 560 (MASS. 2020).

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I. INTRODUCTION

In *Goldstein v. Secretary of the Commonwealth*,[1] the Supreme Judicial Court of Massachusetts considered whether the minimum signature requirements that candidates for public office must meet in order to be listed on the primary election ballot were unconstitutional in light of the circumstances created by the COVID-19 pandemic.[2] The Massachusetts Constitution, in contrast to the United States Constitution, explicitly enumerates the right to seek elected office as a fundamental right.[3] The three plaintiffs brought an emergency petition seeking a declaration that the minimum signature requirements, in light of the circumstances, posed an "unconstitutionally severe burden on the fundamental rights" of Massachusetts citizens seeking to appear on the ballot.[4] This Comment first examines the factual background that led to the Supreme Judicial Court of Massachusetts ultimately declaring the minimum signature requirements to be unconstitutional as applied to the plaintiffs and similarly situated candidates. Next, this Comment discusses the majority's analysis and the specific concerns of the concurrence. Lastly, this Comment argues that the majority made the correct decision to protect the fundamental constitutional right of the plaintiffs by granting equitable relief, but that the concurrence's concerns are distressing and raise significant questions for Massachusetts election officials.

II. STATEMENT OF THE CASE

2020 will forever be known as the year of the COVID-19 pandemic. The COVID-19 virus "spreads mainly between people who are in close contact with each other."[5] The World Health Organization recommended that individuals take many precautions to combat the spread of COVID-19, including "physical distancing, wearing a mask, . . . [and] avoiding

1. 142 N.E.3d 560 (Mass. 2020).

2. *Id.* at 563–64.

3. MASS. CONST. pt. 1, art. IX., provides: "All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments."

4. *Goldstein*, 142 N.E.3d at 563–64.

5. *Coronavirus Disease (COVID-19): How Is It Transmitted?*, WORLD HEALTH ORG. (Dec. 23, 2021), https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted.

crowds and close contact."[6] As the spread of COVID-19 accelerated throughout the United States, state governments responded and relied on their respective agencies to battle the virus's impact on their populations.[7]

Massachusetts Governor Charlie Baker first took action on March 10, 2020, when he "declared a state of emergency throughout the Commonwealth."[8] Five days later, Governor Baker ordered the closing of all schools and prohibited in-person dining at food establishments, as well as gatherings larger than twenty-five people.[9] He then lowered the limit of gatherings to ten people and ordered "all nonessential businesses to close their physical workplaces and facilities" on March 23, 2020.[10] The next day, the Department of Health ("DPH") announced a Stay-at-Home Advisory, in which it declared that it was critical that individuals stay home other than leaving for essential errands, and to maintain a physical distance of six feet (also known as "social distancing") from others when leaving the home.[11]

The DPH issued another advisory on April 10, 2020 in which it recommended wearing face masks when it is not possible to social distance,[12] and Governor Baker took further action on May 1, 2020 when he ordered all Massachusetts residents to wear a mask in public places when social distancing is not possible.[13] These efforts did slow the spread of the virus initially over the course of the summer, but the relaxation of these measures eventually led to increased COVID-19 cases and

6. *Coronavirus Disease (COVID-19)*, WORLD HEALTH ORG. (May 13, 2021), https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19.

7. *See* ANNA PRICE & LOUIS MYERS, LAW LIBR. OF CONG., UNITED STATES: FEDERAL, STATE, AND LOCAL GOVERNMENT RESPONSES TO COVID-19, at 1–2 (2020), https://tile.loc.gov/storage-services/service/ll/llglrd/2020725113/2020725113.pdf.

8. *Goldstein*, 142 N.E.3d at 567.

9. *Id.* at 567–68.

10. *Id.* at 568; *see also* Mass. COVID-19 Order No. 13 (March 23, 2020), https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download.

11. MASS. DEP'T OF PUB. HEALTH, DPH PUBLIC HEALTH ADVISORY (2020), https://www.mass.gov/doc/download-public-health-advisory-3242020/download [hereinafter DPH ADVISORY]; *Goldstein*, 142 N.E.3d at 568. Essential errands include going to the grocery store or pharmacy. DPH ADVISORY, *supra*. For more on the Department of Public Health and its response to COVID-19, see MASS. DEP'T OF PUB. HEALTH, *Coronavirus Disease 2019 (COVID-19)*, MASS.GOV, https://www.mass.gov/coronavirus-disease-2019-covid-19 (last visited Aug. 18, 2022).

12. MASS. DEP'T OF PUB. HEALTH, ADVISORY REGARDING FACE COVERINGS AND CLOTH MASKS (2020), https://archives.lib.state.ma.us/handle/2452/825483; *Goldstein*, 142 N.E.3d at 568.

13. Mass. COVID-19 Order No. 31 (May 1, 2020), https://www.mass.gov/doc/may-1-2020-masks-and-face-coverings/download.

hospitalizations,[14] and Governor Baker responded with revised measures on November 2, 2020.[15]

In addition to being the year in which the COVID-19 pandemic raged, 2020 was an election year. The Massachusetts primary election took place on September 1, 2020, and the general election for certain federal, state, and county offices occurred on November 3, 2020.[16] To appear on the ballot in Massachusetts elections, candidates are statutorily required to "submit nomination papers containing a minimum number of certified voter signatures."[17] Certified voter signatures, among other qualifications, must be "wet"—voters must handwrite their signatures in person on the nomination papers.[18] In 2020, nomination papers were made available to candidates on February 11th.[19]

After obtaining the requisite number of signatures, candidates must meet two deadlines. First, "candidate[s] must submit the nomination papers to local election officials for certification."[20] Local election officials review each signature, which could be deemed invalid for several

14. *See* Mike Deehan, *Baker Announces New Limits on Private Gatherings, Stay-At-Home Advisory*, GBH NEWS (Nov. 2, 2020, 3:45 PM), https://www.wgbh.org/news/local-news/2020/11/02/watch-live-gov-baker-gives-update-on-covid-19-reopening-in-massachusetts.

15. On November 2, 2020, Governor Baker instructed Massachusetts residents to stay home from 10 p.m. to 5 a.m., required certain businesses that had reopened over the summer to close at 9:30 p.m., revised his previous mask order to require the wearing of face masks even in public places where social distancing is possible, and prohibited private indoor and outdoor gatherings greater than ten and twenty-five people. *See* Mass. COVID-19 Order No. 53 (Nov. 2, 2020), https://www.mass.gov/doc/covid-19-order-53/download (requiring certain businesses to close at certain times); Mass. COVID-19 Order No. 54 (Nov. 2, 2020), https://www.mass.gov/doc/covid-19-order-54/download (revising previous order regulating gatherings); Mass. COVID-19 Order No. 55 (Nov. 2, 2020), https://www.mass.gov/doc/covid-19-order-55/download#:~:text=1.,location%2C%20whether%20indoors%20and%20outdoors. (revising previous order requiring face masks).

16. *Goldstein*, 142 N.E.3d at 564–65.

17. *Id.* at 565. Different elected offices have various thresholds for the number of certified signatures a candidate must obtain. *Id.* For example, a candidate for the United States Senate must obtain 10,000 certified voter signatures, a candidate for the United States House of Representatives must obtain 2,000 certified voter signatures, and a candidate for the Massachusetts General Court (state legislature) must obtain 150 certified voter signatures. *Id.*

18. *Id.* at 566. In addition to being handwritten (with an exception for voters with a physical disability preventing them from writing), a voter signature qualifies as "certified" only if the voter is "registered in the geographic area for which the candidate is seeking nomination." *Id.* at 565–66. And if a candidate is seeking election for a particular political party, a voter signature qualifies as "certified" only if the voter is registered with the same party or is an Independent. *Id.* at 565 & n. 9.

19. *Id.* at 566.

20. *Id.*; *see also* MASS. GEN. LAWS ANN. ch. 53, § 7 (West 2021).

reasons.[21] Second, the "nomination papers certified by local election officials must then be filed with the Secretary" of the Commonwealth.[22] Candidates seeking to run for state district and county offices must submit their nomination papers to the Secretary "on or before the last Tuesday in May of an election year", and those seeking election to federal or statewide offices must submit their nomination papers "on or before the first Tuesday in June" of an election year (June 2nd for 2020).[23] The first deadline involving the nomination papers—the deadline for submitting them to local election officials for certification—is calculated from the second deadline and comes twenty-eight days before that deadline.[24] Shortly after the nomination papers are filed, the preparation of ballots for the primary election begins.[25]

The three plaintiffs here sought to be a candidate for either federal or state office in the Massachusetts primary election.[26] In prior election cycles, candidates would obtain voter signatures by visiting locations "where large numbers of potential registered voters" would traditionally be, such as grocery stores and malls.[27] But due to the COVID-19 pandemic and the measures imposed by the Governor, candidates could not obtain voter signatures in these places in a safe and reasonable manner.[28] On April 8, 2020, the plaintiffs brought an emergency petition in the county court requesting:

> a declaration that, in light of the emergency circumstances arising from the COVID-19 pandemic, the signature

21. *Goldstein*, 142 N.E.3d at 566. Signatures may be deemed invalid because "the voter is not registered at the address provided, the voter's name as signed does not match the voter's name as registered, the voter's signature or address is illegible, the voter is enrolled in the wrong party, or the voter's signature already appeared on the candidate's nominating papers." *Id.* at 566–67 (citing 950 MASS. CODE REGS. § 55.03(1) (2004).

22. *Id.* at 567; *see also* MASS. GEN. LAWS ANN. Ch. 53, § 7 (West 2021).

23. *Goldstein*, 142 N.E.3d at 567; *see also* MASS. GEN. LAWS ANN. ch. 53, §§ 10, 48 (West 2021). The deadlines in this instance were May 26, 2020, for state district and county offices and June 2, 2020, for federal or statewide offices. *Goldstein*, 142 N.E.3d at 567.

24. *Goldstein*, 142 N.E.3d at 566; *see also* ch. 53, §§ 7, 46. The 2020 certification deadline for those seeking election to state district and county offices was April 28, and it was May 5 for those seeking election to federal or statewide offices. *Goldstein*, 142 N.E.3d at 566.

25. *See Goldstein*, 142 N.E.3d at 567. There is a three-day period after the filing deadline with the Secretary for registered voters to make objections. *Id.*

26. *Id.* at 565. Robert Goldstein sought to run as a Democrat for the United States House of Representatives for Massachusetts's Eighth Congressional District. *Id.* Kevin O'Connor sought to run as a Republican for the United States Senate. *Id.* Melissa Bower Smith sought to run as a Democrat for the Massachusetts House of Representatives for the Fourth Norfolk District. *Id.*

27. *Id.* at 568.

28. *Id.*

> requirements in [Mass. Gen. Laws ch.] 53, §§ 7 and 44 (minimum signature requirements), to be listed on the ballot for a party's nomination pose an "unconstitutionally severe burden on the fundamental rights" of all Massachusetts would-be candidates.[29]

The plaintiffs sought to dispose of the minimum signature requirements for the primary election or, alternatively, asked for equitable relief, including a substantial decrease of the number of required signatures, an extension of the filing deadlines, and allowing electronic signatures.[30] The plaintiffs contended that the minimum signature requirements are unconstitutional when applied in the extraordinary circumstances produced by the COVID-19 pandemic, not that the requirements are facially unconstitutional.[31] In other words, in light of the dangers of the COVID-19 pandemic, the plaintiffs argued that these requirements "create an undue burden on a prospective candidate's constitutional right to seek elected office."[32] Secretary William Francis Galvin agreed that the COVID-19 pandemic created an undue burden for prospective candidates, but maintained that "only the Governor and Legislature," not he, had the authority to provide the relief sought.[33] The Governor and legislature expressed interest in working toward a legislative solution to this predicament, but one was not achieved as of the submission of the opinion in this case.[34] One justice of the Supreme Judicial Court of Massachusetts reserved and reported the plaintiffs' emergency petition to the full court.[35]

III. BACKGROUND

The question of whether the minimum signature requirements place an undue burden on a prospective candidate's fundamental constitutional right to run for public office under the circumstances of the COVID-19 pandemic requires an analysis of three things: (1) the state constitutional right to seek elected office, (2) the framework through which the Supreme Judicial Court of Massachusetts analyzes alleged violations of this right, and (3) the principle of separation of powers in Massachusetts.[36]

29. *Id.* at 563–64.
30. *Id.* at 564.
31. *Id.*
32. *Id.*
33. *Id.* at 564, 568.
34. *Id.* at 568.
35. *Id.* at 564.
36. *Id.* at 568–75.

A. The State Constitutional Right to Seek Elected Office

The Massachusetts Constitution "is the world's oldest functioning written constitution" and "served as a model for the United States Constitution."[37] After the Commonwealth's electorate soundly rejected the first proposed constitution in 1778, a second constitutional convention began on September 1, 1779.[38] The drafting duties were delegated to John Adams.[39] Adams completed his draft, and after some edits by the rest of the delegates, the convention submitted Adams's draft for ratification.[40] On June 15, 1780, the constitution labelled as "the most important [constitution] to be written between 1776 and 1789," was adopted.[41] The Massachusetts Constitution emphasizes the protection of individual rights "by placing a list of the most prominent at the beginning of the constitution."[42] Each of the thirty articles on the list, named the Declaration of Rights, describes a protected individual right, with some "provisions as old as the Magna Carta."[43]

Like the right to vote, one of these individual rights is the right to seek elected office in Massachusetts. Article IX of the Massachusetts Declaration of Rights provides that "[a]ll elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments."[44] In other words, "[a]ll persons possessing the requisite qualifications have a right to invite the votes of their fellows and to be elected to office."[45] In the 242 years since the adoption of the Massachusetts Declaration of Rights, Article IX "has never been amended."[46]

Notably, the fundamental constitutional right in Massachusetts to seek elected office[47] has no federal counterpart or federal "analog"—that is, there is nothing in the United States Constitution guaranteeing the

37. MASS. CT. SYS., *John Adams & the Massachusetts Constitution*, MASS.GOV, https://www.mass.gov/guides/john-adams-the-massachusetts-constitution (last visited Aug. 18, 2022).

38. *E.g.*, LAWRENCE FRIEDMAN & LYNNEA THODY, THE MASSACHUSETTS STATE CONSTITUTION 9–10 (G. Alan Tarr ed., 2011).

39. *Id.* at 10.

40. *Id.*

41. *Id.* (alteration in original) (quoting DONALD LUTZ, POPULAR CONSENT AND POPULAR CONTROL: WHIG POLITICAL THEORY IN THE EARLY STATE CONSTITUTIONS 129 (1980)).

42. *Id.* at 11.

43. *Id.*

44. MASS. CONST. pt. 1, art. IX.

45. FRIEDMAN & THODY, *supra* note 38, at 47 (quoting Wood v. Bd. of Election Comm'rs of Cambridge, 168 N.E. 181, 182 (Mass. 1929) (citation omitted)).

46. *Id.* at 45.

47. Goldstein v. Sec'y of the Commonwealth, 142 N.E.3d 560, 568 (Mass. 2020).

right to run for public office.[48] However, "[a]lthough candidacy is not expressly mentioned in the [United States] Constitution, the Framers stressed the importance of minimizing restrictions on the electoral process."[49] Yet, it is unclear how protected the right to run for office was intended to be in the United States Constitution.[50] As a result, the implied right to run for office in the United States Constitution has not been protected as strongly as other fundamental rights.[51] The Supreme Court of the United States has never endorsed the position that the right to seek elected office is a fundamental constitutional right.[52]

B. Reasonable Regulation of the Right to Seek Elected Office

As is the case with many fundamental rights, the Massachusetts judiciary has maintained that "[t]he right to stand for election is subject to regulation reasonably necessary to achieve legitimate public objectives."[53] In the past, the Supreme Judicial Court of Massachusetts "has sustained statutes which reasonably regulate elections and access to a place on the ballot."[54] The court has specifically considered the minimum signature requirements at the center of *Goldstein* in *Libertarian Association of Massachusetts v. Secretary of the Commonwealth*.[55] In *Libertarian Association*, the plaintiff Libertarian party collected signatures for a pair of candidates for the party's nomination for President and Vice President of the United States.[56] However, the pair failed to win the nomination at the party's convention.[57] The plaintiff party then attempted to transfer the certified voter signatures it obtained for the candidates who lost to the candidates who secured the party's nomination at the convention.[58] The Supreme

48. Nicole A. Gordon, *The Constitutional Right to Candidacy*, 25 U. KAN. L. REV. 545, 545 (1977).

49. *Id.* at 547–48 (footnote omitted). The Framers not only debated the necessity of unrestricted voting, but also the need for unimpeded participation for those seeking election. *Id.* at 546–48.

50. *Id.* at 550.

51. *See id.* at 551–62 (describing the level of protection the Supreme Court of the United States has given the right to seek elected office through the First and Fourteenth Amendments).

52. *Id.* at 562.

53. FRIEDMAN & THODY, *supra* note 38, at 47.

54. Goldstein v. Sec'y of the Commonwealth, 142 N.E.3d 560, 569 (Mass. 2020) (quoting Opinion of the Justices, 333 N.E.2d 380, 381 (Mass. 1975)).

55. 969 N.E.2d 1095 (Mass. 2012).

56. *Id.* at 1101.

57. *Id.* at 1102.

58. *Id.*

Judicial Court of Massachusetts rejected this attempt and ruled that the minimum signature requirements withstood constitutional scrutiny.[59]

When assessing the constitutionality of state ballot access restrictions, the Supreme Court of the United States applies a sliding scale approach.[60] The Court "weigh[s] the 'character and magnitude' of the burden the State's rule imposes on [the plaintiffs'] rights against the interests the State contends justify that burden, and consider[s] the extent to which the State's concerns make the burden necessary."[61] When a regulation imposes a severe burden on plaintiffs' rights, the Court applies strict scrutiny—in other words, the regulation "must be narrowly tailored and advance a compelling state interest."[62]

Because the right to run for public office is enumerated in the Massachusetts Constitution, but not in the United States Constitution,[63] the Supreme Judicial Court of Massachusetts has recently acknowledged "that the Massachusetts Declaration of Rights may be more protective of voting rights than the Federal Constitution."[64] Thus, to differentiate from federal constitutional jurisprudence, the Supreme Judicial Court of Massachusetts applies strict scrutiny to statutes that "significantly interfere" with fundamental rights related to voting, rather than using the phrase "severe burden."[65]

In *Libertarian Association*, the Supreme Judicial Court of Massachusetts held that the minimum signature requirements that prospective candidates for elected office must meet to be on a Massachusetts ballot impose no more than "modest burdens" under normal circumstances.[66] Therefore, "there need be only a rational basis" for the requirements to be constitutional.[67] This threshold is easily met under normal circumstances because Massachusetts's "'interest in ensuring that a candidate makes a preliminary showing of a substantial measure of support [before] appearing on the ballot' is legitimate."[68] The

59. *Id.* at 1117.

60. *Id.* at 1112.

61. *Id.* (quoting Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997)).

62. *Id.* And regulations that impose lesser burdens are subject to less exacting review. *Id.* (quoting *Timmons*, 520 U.S. at 358).

63. *See supra* p. 9.

64. Goldstein v. Sec'y of the Commonwealth, 142 N.E.3d 560, 569 (Mass. 2020).

65. *Id.*; *see also* Chelsea Collaborative, Inc. v. Sec'y of the Commonwealth, 100 N.E.3d 326, 331 (Mass. 2018).

66. *Libertarian Association*, 969 N.E.2d at 1117.

67. *Id.* (quoting Barr v. Galvin, 626 F.3d 99, 110 (1st Cir. 2010)).

68. *Id.* (quoting *Barr*, 626 F.3d at 111); *see also* James S. Jardine, *Ballot Access Rights: The Constitutional Status of the Right to Run for Office*, 1974 UTAH L. REV. 290, 303 (1974) (stating that states have four general interests in regulating access to the ballot: "(1)

minimum signature requirements achieve this interest because only candidates that "have demonstrable support among the voting public" will get on the ballot,[69] and the requirements thus protect "the integrity of elections by avoiding overloaded ballots and frivolous candidacies."[70]

Nevertheless, the Supreme Judicial Court of Massachusetts has realized that in extraordinary times, the rational basis framework followed in *Libertarian Association* may need to be tweaked. As society changes and technology evolves, statutory requirements that were "once considered constitutionally permissible may later be found to interfere significantly with a fundamental right."[71]

C. Separation of Powers

Article XXX of the Massachusetts Declaration of Rights states:

> In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.[72]

The principle of separation of powers set forth here does not allow the judiciary to "substitut[e] its notions of correct policy for that of a popularly elected Legislature."[73] Yet, there is an exception to this principle in which the judiciary must act. There are four extraordinary circumstances that must be met for this exception to apply: (1) a fundamental constitutional right must be violated, (2) the legislature must have the opportunity to provide a remedy, (3) the legislature must then fail to use that opportunity to provide a remedy, and (4) an aggrieved litigant must "file[] suit seeking remedial relief for the

maintaining the integrity of the ballot, (2) preventing voter confusion, (3) ensuring competent candidates, and (4) administrative convenience").

69. *Goldstein*, 142 N.E.3d at 570 (quoting *Barr*, 626 F.3d at 111).

70. *Id.* Overloaded ballots and frivolous candidacies "diminish victory margins, contribute to the cost of conducting elections, confuse and frustrate voters, increase the need for burdensome runoffs, and may ultimately discourage voter participation in the electoral process." *Id.* (quoting Libertarian Party of Me. v. Diamond, 992 F.2d 365, 371 (1st Cir. 1993)).

71. *Id.*

72. MASS. CONST. pt. 1, art. XXX.

73. *Goldstein*, 142 N.E.3d at 571 (quoting Commonwealth v. Leno, 616 N.E.2d 453, 457 (Mass. 1993)).

constitutional violation."[74] In addition, where these extraordinary circumstances are met, the Massachusetts judiciary may not provide a remedy that is "more intrusive than it ought reasonably be to ensure the accomplishment of the legally justified result."[75]

IV. THE COURT'S ANALYSIS

The seven justices of the Supreme Judicial Court of Massachusetts unanimously agreed that the court needed to take action to protect the plaintiffs' fundamental constitutional right to run for public office.[76] Justice Kafker, however, did not join the majority and authored a concurrence in which he expressed concern that those responsible for running the Commonwealth's elections did not have ability to adapt to the situation and come up with a solution themselves.[77]

A. The Majority Opinion

The Supreme Judicial Court of Massachusetts declared that the minimum signature requirements for candidates seeking election in the September 1, 2020 Massachusetts primary election were unconstitutional under the limited circumstances of the COVID-19 pandemic.[78] In his opinion for the court, Chief Justice Gants analyzed two issues before discussing the equitable remedies that the Supreme Judicial Court of Massachusetts could both deny and grant. First, the court used a sliding scale approach to weigh the burden imposed on the plaintiffs' right to gain access to the primary election ballot against the Commonwealth's interest in justifying that burden.[79] Second, the court addressed whether the judiciary could make a decision that traditionally belongs to the legislature without violating the principle of separation of powers.[80]

74. *Id.*
75. *Id.* at 571–72 (quoting Perez v. Boston Hous. Auth., 400 N.E.2d 1231, 1247 (Mass. 1980)).
76. *Id.* at 574–75.
77. *Id.* at 575 (Kafker, J., concurring).
78. *Id.* at 574–75 (majority opinion).
79. *Id.* at 570–71.
80. *Id.* at 571–72.

1. The Minimum Signature Requirements Are Unconstitutional as Applied to the Plaintiffs and Other Similarly Situated Candidates.

The Supreme Judicial Court of Massachusetts found that due to the circumstances of the COVID-19 pandemic, the minimum signature requirements were "unconstitutional as applied to the plaintiffs, and other similarly situated candidates."[81] The majority noted that while the minimum signature requirements "impose only modest burdens on prospective candidates for public office" in ordinary times, the requirements "may significantly interfere with the fundamental right to run for political office in a time of pandemic."[82] The court did not dwell on the drastic changes in Massachusetts under the state of emergency that the Governor put in place at the beginning of the pandemic's outbreak, and simply recognized that prospective candidates could not go to traditionally crowded public places to collect signatures.[83]

To add on, because people were encouraged to avoid being closer than six feet apart when encountering each other, and because it was unclear if the COVID-19 virus could live on surfaces, "people [were] reluctant to touch any pen or piece of paper that ha[d] been touched by another."[84] Thus, the court found that a candidate seeking to obtain signatures in the traditional ways "may fear that doing so might risk the health and safety not only of the person requesting the signature but also of the persons who are signing, of the families they live with, and potentially of their entire community."[85] The majority concluded that because "a person needing signatures for ballot access requires personal contact with voters,"[86] the minimum signature requirements significantly interfered with a candidate's right to run for office in the time of the COVID-19 pandemic.[87]

The court held that this significant interference, combined with the government conceding that there was no compelling state interest justifying why the minimum signature "requirements should still apply under the present circumstances," caused the requirements to be "unconstitutional as applied to the plaintiffs, and other similarly situated

81. *Id.* at 571.
82. *Id.* at 570.
83. Most people stayed home, only essential business remained open, in-person dining at restaurants was prohibited, virtual meetings replaced in-person meetings, malls closed, and public streets in town centers were almost empty. *Id.*
84. *Id.*
85. *Id.*
86. *Id.* (quoting Batchelder v. Allied Stores Int'l, Inc., 445 N.E.2d 590, 595 (1983)).
87. *Id.* at 571.

candidates."[88] Chief Justice Gants wrote that the way in which the pandemic unconstitutionally interfered with the candidates' fundamental right to run for office is the same as "[i]f the Legislature had enacted a law [in March at the beginning of the pandemic] imposing harsh new requirements that made it substantially more difficult for candidates to" meet the minimum signature requirements.[89] The Supreme Judicial Court of Massachusetts would have undoubtedly declared such a law unconstitutional.[90]

2. There Was No Violation of Separation of Powers.

After finding the minimum signature requirements to be unconstitutional under the circumstances that the COVID-19 pandemic created, the majority addressed Massachusetts's principle of separation of powers. The court held that it had discretion to fashion equitable relief here because the four extraordinary circumstances that must be met for the judiciary to "substitute[e] its notions of correct policy for that of a popularly elected Legislature" were present.[91]

First, the fundamental constitutional right of the plaintiffs and similarly situated candidates to seek public office was violated.[92] Second, the Massachusetts legislature had the opportunity to provide a remedy and expressed a willingness to enact a legislative solution.[93] Third, the legislature failed to use that opportunity to provide a remedy.[94] And fourth, aggrieved litigants, the three plaintiffs here, "file[d] suit seeking remedial relief for the constitutional violation."[95]

Thus, the court decided that it must provide equitable relief "[i]n order to avoid the unconstitutional aspects of the statute, and to achieve the basic legislative purpose" of the minimum signature requirements.[96] The court also noted that "the issuance and scope of equitable relief rests within the [court's] sound discretion."[97] However, the majority recognized that because it would be making a policy judgment that is left to the legislature in ordinary times, the remedy it grants "must be 'no more

88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.* (quoting Commonwealth v. Leno, 616 N.E.2d 453, 457 (Mass. 1993)).
92. *See id.*
93. *Id.* at 568.
94. Two bills were introduced in the legislature to remedy the constitutional violation, but neither were enacted by the time of this opinion. *Id.*
95. *Id.* at 571.
96. *Id.* (quoting Commonwealth v. United Food Corp., 374 N.E.2d 1331, 1343 (Mass. 1978)).
97. *Id.* (quoting Johnson v. Martignetti, 375 N.E.2d 290, 298 (Mass. 1978)).

intrusive than it ought reasonably be to ensure the accomplishment of the legally justified result.'"[98]

Furthermore, the court provided examples of other states providing "narrowly tailored equitable relief to protect the constitutional rights of voters" to emphasize that providing equitable relief in this case would not be unprecedented.[99] In addition to granting equitable relief to protect voting rights in the time of a natural disaster, the majority recognized that "at least one court has declared minimum signature requirements to be unconstitutional in the light of the pandemic and, as a result, reduced the number[]" of signatures candidates needed to obtain.[100]

3. Requests for Equitable Relief That Are Not Justified.

Next, the Supreme Judicial Court of Massachusetts continued by acknowledging that there are forms of equitable relief "that could preserve the legislative purpose that a candidate demonstrate a certain level of support in order to win a place on the ballot and yet protect the public from the health risks associated with obtaining 'wet' signatures."[101] Before discussing forms of equitable relief that it granted, the court addressed two forms of relief requested by the plaintiffs that it did not find justified.[102]

First, the majority held that it could not "declare the minimum signature requirements void altogether."[103] The court rejected this request because while the burden of meeting the minimum signature requirements in the time of the COVID-19 pandemic outweighed Massachusetts's justification for having candidates meet the requirements, the Commonwealth still "ha[d] a legitimate interest in ensuring that a candidate makes a preliminary showing of support among the electorate before appearing on the ballot."[104] The court then pointed out that candidates did have more than a month to gather signatures in the traditional ways without constraints before the Governor began imposing significant restrictions.[105] And while the process to obtain signatures became unconstitutionally burdensome, the

98. *Id.* at 571–72 (quoting Perez v. Boston Hous. Auth., 400 N.E.2d 1231, 1247 (Mass. 1980)).
99. *Id.* at 572 n.14.
100. *Id.*
101. *Id.* at 571.
102. *Id.* at 572.
103. *Id.*
104. *Id.*
105. *Id.* "[N]omination papers were first made available" on February 11, 2020, and it was forty-one days until the Governor first imposed significant restrictions in response to the COVID-19 pandemic on March 23, 2020. *Id.*

court pointed out that the remedies it does find justified will allow candidates to get the signatures they need in a safe manner.[106]

Second, the majority declined to "extend the deadline[] for submitting nomination papers to local election officials and for filing the certified nomination papers with the Secretary" for all candidates.[107] The court deferred to the Secretary's experience and judgment here, and found that pushing back the deadlines for candidates for federal and statewide offices would not give the Secretary and local election officials enough time to prepare and transmit ballots.[108] Therefore, the deadlines for federal and statewide office candidates "to submit nomination papers to local election officials for certification" and "to file the certified nomination papers with the Secretary" would remain May 5, 2020 and June 2, 2020, respectively.[109]

4. Requests for Equitable Relief That Are Justified and Granted.

Chief Justice Gants concluded the majority opinion by discussing the plaintiffs' three requests that the court found to be justified and therefore granted.[110] First, the court granted an extension for the submission and filing deadlines for nomination papers for candidates seeking election to state district and county offices.[111] Due to the Secretary's concerns for preparing and transmitting ballots on time, the court extended these "deadlines only [one week] to match the deadlines that apply to party candidates running for [f]ederal and [s]tatewide offices."[112] Thus, the court pushed back the deadline to submit nomination papers from April 28, 2020, to May 5, 2020, and the deadline to file certified nomination papers from May 26, 2020, to June 2, 2020.[113]

Second, the court reduced the minimum number of signatures required to get on the primary ballot for all candidates by 50%.[114] The court agreed with the Secretary that a reduction was equitable due to the circumstances created by the COVID-19 pandemic.[115] The majority

106. *Id.*
107. *Id.* at 572–73.
108. *Id.* at 572. Pushing back the June 2, 2020 filing deadline for federal and statewide candidates would not allow local election officials enough time to comply with federal law requiring ballots to be sent to military and overseas voters by July 18, 2020. *Id.* The plaintiffs did not dispute this. *Id.*
109. *Id.* at 573.
110. *Id.* at 573–74.
111. *Id.*
112. *Id.* at 572–73.
113. *Id.* at 573.
114. *Id.* at 574.
115. *Id.* at 573.

presumed that the differing number of signatures required for different offices represents "a balance between the number of people represented by the elected office and the burden involved in obtaining the signatures."[116] Accordingly, the court deemed it fair to reduce the minimum number of signatures required for all offices by the same percentage.[117]

The Secretary recommended a 50% reduction for all offices, and the court agreed because of the connection this percentage has to the violation of the candidate's constitutional right to seek elected office.[118] Candidates had forty-one days from the time nomination papers were made available to obtain signatures in the traditional ways before the Governor began imposing significant restrictions on public and private gatherings.[119] The court noted forty-one days is approximately half of the time all candidates are given to collect signatures before the submission deadline.[120] The court concluded that even though it was extremely difficult—yet not impossible—to obtain signatures once the Governor imposed harsher restrictions, a 50% reduction to the minimum signature requirement would not significantly interfere with a candidate's constitutional right to run for public office when combined with the third and final form of equitable relief the court granted.[121]

Third, the Supreme Judicial Court of Massachusetts declared that candidates would be allowed to obtain and submit electronic signatures.[122] The court noted that at the time of this opinion, other states including New Jersey and Florida had "implemented the use of electronic signatures and submissions for purposes of securing access to the ballot . . . in response to the [COVID-19] pandemic."[123] However, the court found that too many unknowns existed, including "potential logistical, legal, and cybersecurity related concerns," to radically change a nomination system requiring "wet" (handwritten in person) signatures to allow electronic signatures.[124]

Nevertheless, the court liked the Secretary's proposal to allow candidates to post their nomination papers online for voters to sign

116. *Id.* For example, a state senator represents fewer constituents than a United States senator, so the former only needs to obtain 300 signatures while the latter must gather 10,000. *Id.*
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.*
121. *Id.* at 574.
122. *Id.*
123. *Id.* 574 & n.16.
124. *Id.* at 574. The court also recognized that the pandemic caused local and state governments to be understaffed and restricted in their operations. *Id.*

electronically or to "print out a hard copy and sign it by hand."[125] After signing, the voter would then return the signed nomination paper to the candidate in electronic or paper form.[126] The candidates would then "have to submit the nomination papers to local election officials in hard copy paper format" as they would in ordinary times, but the court found that this process would reduce the risks that come with obtaining "wet" signatures in the time of the COVID-19 pandemic.[127] Chief Justice Gants concluded with ordering the Secretary to inform candidates on how they could effectively obtain electronic signatures.[128]

B. The Concurring Opinion

Justice Kafker[129] concurred with the majority's decision to grant the equitable remedies it did due to Massachusetts's current electoral infrastructure and the need to act immediately.[130] He wrote separately "to emphasize that those responsible for [the] election process must have the necessary tools to quickly adapt to the current pandemic and the future crises to follow."[131] Here, Justice Kafker wrote, that the Secretary and those who assist him in the electoral process should have been able to solve this problem in a straightforward manner by allowing electronic signatures, and that it is concerning that these officials did not have the requisite technology to implement the solution of filing electronic signatures during a crisis such as the COVID-19 pandemic.[132]

Justice Kafker noted that electronic signatures would be "wet" signatures' "nearest equivalent," and therefore the "least intrusive remedy" the court could grant.[133] Not only would this remedy be the least intrusive, but Justice Kafker recognized that "[e]lectronic signatures are the norm in the private sector and many areas of government."[134] Given

125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. Justice Kafker is an expert on state constitutional law. To learn more about his views on state constitutional law, see for example Scott Kafker, *Surveying Constitutional Territory: Book Review of Lawrence Friedman & Lynnea Thody's* The Massachusetts State Constitution, 42 RUTGERS L.J. 913 (2011); Scott L. Kafker & David A. Russcol, *The Eye of a Constitutional Storm: Pre-Election Review by the State Judiciary of Initiative Amendments to State Constitutions*, 2012 MICH. ST. L. REV. 1279 (2012).
130. *Goldstein*, 142 N.E.3d at 575 (Kafker, J., concurring).
131. *Id.* at 579.
132. *Id.* at 575.
133. *Id.* at 576.
134. *Id.* The people of Massachusetts already can register to vote using their electronic signature's picture contained in the registry of motor vehicles, the legislature has declared

the fact that electronic signatures are acceptable in many areas, Justice Kafker argued that they should be permissible for ballot requirements, and that a serious candidate would easily meet the minimum signature requirements digitally, primarily via social media.[135]

Thus, Justice Kafker did not understand why the Secretary contended that Massachusetts "election officials lack the technological capacity at this time to readily accept electronic signatures for ballot nominations."[136] He found the Secretary's arguments—namely that election officials face significant limitations in receiving and verifying electronic signatures—inexplicable in the modern era.[137] In addition, Justice Kafker was confused why candidates would have to submit nomination papers in person after being allowed to collect electronic signatures because forcing candidates to do so will cause them unnecessary exposure to the COVID-19 virus.[138]

Furthermore, Justice Kafker found the alternative remedies that the court chose to grant due to Massachusetts's inability to adapt to allowing electronic signatures without restrictions to raise a constitutional separation of powers issue.[139] He wrote that even though the court's decision to reduce the minimum number of signatures required to appear on the ballot seemed to be the least intrusive remedy at the court's disposal, it is a policy decision that should be left to the legislature to make.[140]

Simply stated, Justice Kafker found Massachusetts's "failure to be able to solve manageable technological problems on the eve of an election [to be] confounding and distressing," and that the COVID-19 pandemic will cause "long-term logistical challenges" for which the Commonwealth must be able to adapt to face.[141] He pointed out that other states, including Arizona, have a system for allowing candidates to obtain electronic signatures on nomination papers.[142] Justice Kafker also noted that Massachusetts has the technological means to address his concerns in the future: on January 1, 2020, "the Commonwealth began implementing an automatic voter registration process," resulting in local

that an electronic signature satisfies laws requiring signatures, and several business filings are allowed to be signed and completed electronically. *Id.*

135. *Id.*

136. *Id.* at 576–77.

137. *Id.* Justice Kafker, for example, did not understand how a "wet" signature is less suspect than an electronic one. *Id.* at 577.

138. *Id.*

139. *Id.*

140. *Id.* at 577–78.

141. *Id.* at 578.

142. *Id.* For more on Arizona's electronic voter system, see *Welcome to E-Qual*, AZ.GOV https://apps.azsos.gov/equal/ (last visited Aug. 18, 2022).

registrars having an ever-increasing database containing registered voters' electronic signatures.[143] Therefore, Justice Kafker concluded that the Commonwealth's election officials should be able to compare electronic signatures on a candidate's nomination papers with those in their registered voter database for verification purposes, and thus "scale up to wider use of electronic signatures in the near future."[144]

V. ANALYSIS AND IMPLICATIONS

With its decision in *Goldstein*, the Supreme Judicial Court of Massachusetts provided the plaintiffs' fundamental constitutional right to run for public office the protection it deserves. Yet, while the majority appropriately granted equitable relief to remedy the violation of the plaintiffs' right to seek elected office, the magnitude of the concerns Justice Kafker emphasized in his concurrence are extremely distressing.

The right to run for public office in Massachusetts is a fundamental constitutional right and as is the case for several fundamental rights, the Supreme Judicial Court of Massachusetts has upheld "statutes which reasonably regulate elections and access to a place on the ballot."[145] The minimum signature requirements are examples of such regulations. Therefore, the court was correct to apply the *Libertarian Association* framework to determine if the minimum signature requirements withstood constitutional scrutiny.

The court properly weighed the burden that the minimum signature requirements imposed on the plaintiffs' right to seek elected office against Massachusetts's interest in protecting the integrity of its elections. This is a legitimate interest, and the minimum signature requirements unquestionably meet the rational basis threshold because they impose only modest burdens on candidates in ordinary times.[146] Furthermore, the court correctly relied on precedent establishing that "statutory requirements that were once considered constitutionally permissible may later be found to interfere significantly with a fundamental right as societal conditions and technology change."[147]

143. "As a part of this process, automatic voter registration agencies, such as the registry of motor vehicles, must transmit a voter's electronic signature to the Secretary," who then sends the signature to local election officials where the voter lives. *Goldstein*, 142 N.E.3d at 578–79 (footnote omitted).

144. *Id.* at 579.

145. *Id.* at 569 (majority opinion) (quoting Opinion of the Justices, 333 N.E.2d 380, 381 (Mass. 1975)).

146. *Id.* at 569–70.

147. *Id.* at 570.

In relying on this precedent, the court pointed out a plethora of restrictions on daily life that the COVID-19 pandemic caused, and correctly concluded that the once modest burdens candidates faced in meeting the minimum signature requirements now significantly interfered with their fundamental right to seek elected office.[148] The majority also correctly relied on recent precedent in which the Supreme Judicial Court of Massachusetts "recogniz[ed] that the Massachusetts Declaration of Rights may be more protective of voting rights than the Federal Constitution."[149]

By recognizing that the Massachusetts Constitution provides greater protection to the right of the Commonwealth's citizens to run for public office than the United States Constitution does, the court's analysis fits squarely in line with a revolution known as the "New Judicial Federalism." This development, which began in the American legal system in the early 1970s,[150] "describes the fact that state judges in numerous cases have interpreted their state constitutional rights provisions to provide *more* protection than the national minimum standard guaranteed by the federal Constitution."[151] One subset of state constitutional rights that has been analyzed in the light of the New Judicial Federalism are unique rights provisions—that is, those "[s]tate constitutional rights provisions with no federal counterpart or federal 'analog.'"[152]

The right to run for public office in Massachusetts is one such example of a state constitutional right that has no federal counterpart. Therefore, while the Supreme Judicial Court of Massachusetts notes that its analysis would be the same whether it applied a "significant interference" or "severe burden" formulation when applying strict scrutiny to the minimum signature requirements, using the "significant interference" formulation represents a lower threshold to be met than "severe burden."[153] And a lower threshold is warranted as the right to run for office is explicitly stronger under the Massachusetts Constitution than the United States Constitution.

Because the court decided that the plaintiffs' right to seek elected office was being significantly interfered with, the court correctly recognized that the Commonwealth's usual justifications no longer

148. *Id.*
149. *Id.* at 569.
150. ROBERT F. WILLIAMS, THE LAW OF AMERICAN STATE CONSTITUTIONS 114 (2009).
151. *Id.* at 117; *see also* Jardine, *supra* note 68, at 316 (stating that "state bills of rights and constitutional provisions covering the electoral process create a distinct and often stronger basis of claimed protection of candidacy rights than does the federal constitution").
152. WILLIAMS, *supra* note 150, at 117.
153. *Goldstein*, 142 N.E.3d at 569.

provided a rational basis for the minimum signature requirements. The court properly noted its precedent in *Libertarian Association* that a regulation that significantly interferes with a fundamental right "must be narrowly tailored and advance a compelling state interest."[154] And as the Commonwealth conceded that there is no compelling state interest in upholding the minimum signature requirements as is during the COVID-19 pandemic, the Supreme Judicial Court of Massachusetts was right to hold them unconstitutional as applied to the plaintiffs.

Moving on, the court was correct to hold that there was no separation of powers issue by granting equitable relief itself in *Goldstein*. While Article XXX of the Massachusetts Declaration of Rights states that the judiciary shall not carry out legislative functions,[155] the court noted the exception to this principle that it has applied in the past and applied it here. The fundamental constitutional right to run for public office was violated, the legislature had an opportunity to provide a remedy and failed to do so, and the plaintiffs sought a remedy for the violation.[156] Furthermore, there is no indication that the equitable relief the court provides in *Goldstein* is "more intrusive than it ought reasonably be to ensure the accomplishment of the legally justified result."[157] The court did not rewrite the minimum signature requirements or declare them facially unconstitutional; it just adapted them to preserve their purpose of protecting the integrity of the 2020 election.

Turning to the equitable remedies the court did not grant, it is easy to see that the Supreme Judicial Court of Massachusetts was right not "to declare the minimum signature requirements void altogether."[158] Even though the people of Massachusetts had to live under unprecedented restrictions, the court correctly recognized that the Commonwealth still "ha[d] a legitimate interest in ensuring that a candidate makes a preliminary showing of support among the electorate before appearing on the ballot."[159] And candidates still could make this preliminary showing of support. Any serious candidate would have begun collecting signatures during the forty-one days from the time nomination papers were made available on February 11, 2020 until March 23, 2020 when the Governor imposed restrictions that significantly interfered with the candidates' ability to collect signatures. Those forty-one days,

154. Libertarian Ass'n of Mass. v. Sec'y of the Commonwealth, 969 N.E.2d at 1112 (quoting Timmons v. Twin Cities Area New Party, 520 U.S. 351, 358 (1997)).

155. MASS. CONST. pt. 1, art. XXX.

156. *Goldstein*, 142 N.E.3d at 571.

157. *Id.* at 571–72 (quoting Perez v. Boston Hous. Auth., 400 N.E.2d 1231, 1247 (Mass. 1980)).

158. *Id.* at 572.

159. *Id.*

plus the remedies that the court did provide, allowed the candidates to satisfy the Commonwealth's legitimate interest in a safe manner.

The Supreme Judicial Court of Massachusetts was also correct to defer to the Secretary's judgment regarding the inability to extend the nomination papers' submission and filing deadlines past May 5, 2020 and June 2, 2020, respectively. The Secretary is the Commonwealth's chief elections official.[160] It was proper for the court to defer to Secretary Galvin's authority on this matter because by being responsible for conducting elections, he is in the best position to know how much time is needed to prepare and transmit ballots to voters. Ultimately, the court was right to extend the deadlines for state district and county offices to match the May 5, 2020 and June 2, 2020 deadlines originally for those running for federal and statewide offices. Every candidate, regardless of the office being sought, had their constitutional right to run for office violated, so each deserved to have as much time as possible to obtain signatures while still giving the Secretary enough time to complete his election duties.

Next, the court declared that it would reduce the minimum number of signatures required to get on the primary ballot by 50% for all candidates.[161] The rationale the majority gave for granting this form of equitable relief is sufficient. To decrease by the same proportion across all offices is sensible because the minimum number of signatures that need to be obtained varies based on the number of constituents that a particular office represents.[162] By decreasing the minimum number of signatures to be gathered by 50% for all offices, the same ratio that applies in ordinary times would still be in place here. Fifty percent is a reasonable percentage to reduce the number of required signatures by because from February 11, 2020 until March 23, 2020, roughly half of the time candidates were given to obtain signatures, candidates were free to gather signatures in the traditional ways prior to the extreme circumstances created by the COVID-19 pandemic. It became much more difficult to obtain signatures after the Governor imposed significant restrictions to combat the spread of COVID-19. Thus, regardless of whether candidates were slow to start or had collected all of the necessary signatures by March 23, 2020, it became extremely more challenging, but not impossible, to obtain signatures after that point.

160. For more on resources Secretary Galvin provides regarding elections and voting in Massachusetts, see *Elections Division*, SEC'Y OF THE COMMONWEALTH OF MASS. https://www.sec.state.ma.us/ele/eleidx.htm (last visited Aug. 18, 2022).

161. *Goldstein*, 142 N.E.3d at 574.

162. A United States senator represents far more constituents that a local representative in Massachusetts.

But, given the court's final decision to allow candidates to obtain electronic instead of "wet" signatures, serious candidates could easily obtain 50% of the required signatures and still earn their place on the primary ballot.

However, when it comes to electronic signatures, Justice Kafker makes several points in his concurrence in which the Commonwealth's answer or lack thereof is inexplicable.[163] Although the majority's decision to extend the submission and filing deadlines, reduce the number of minimum signatures required, and allow electronic signatures is not more intrusive than needed to remedy the violation of the plaintiffs' fundamental constitutional right to run for public office, Justice Kafker correctly noted that simply allowing electronic signatures without granting any other equitable relief would be "[t]he least intrusive remedy."[164]

In this modern, high-tech era, the Secretary's contentions that Massachusetts's electoral infrastructure would not be able to accommodate something as straightforward as the submission of electronic signatures is perplexing. Justice Kafker recognized that electronic signatures are already used in a plethora of public and private sectors, that the legislature has already taken action to acknowledge and verify "registered voters' electronic signatures," and that serious candidates would not have any issue meeting the minimum signature requirements with tools such as social media sites at their disposal.[165] And the fact that other states already have the election infrastructure in place to accept electronic signatures on nomination papers[166] makes the Secretary's argument that Massachusetts is not ready to fully replace "wet" signatures with electronic ones look foolish. At least the fact that Massachusetts appears to have the technological means to address Justice Kafker's concerns in the near future is a small consolation.[166] Nonetheless, absent the requisite technological capacity, the Massachusetts judiciary may have to act again to provide equitable relief in a crisis similar to the one created by the COVID-19 pandemic, and that is a situation "that must be avoided."[167]

It is also baffling that after being allowed to obtain electronic signatures, the majority declared that candidates would be required "to submit the nomination papers to local election officials in hard copy paper

163. *Goldstein*, 142 N.E.3d at 575–79 (Kafker, J., concurring).
164. *Id.* at 576.
165. *Id.*
166. Justice Kafker specifically referenced Arizona. *Id.* at 578.
166. *Id.* at 578–79.
168. *Id.* at 579.

format."[168] If the primary purpose of obtaining electronic signatures is to reduce the risk of contracting COVID-19, having to interact with local election officials is contrary to this purpose. Why a candidate could not just email its nomination papers to the local election officials and have them print out a hard copy is illogical.

Notwithstanding the concerns that Justice Kafker emphasized in his concurrence, the Supreme Judicial Court of Massachusetts, in light of the technological limitations that the Secretary presented regarding the Commonwealth's inability to transform its nomination system to permit the broad use of electronic signatures, correctly declared the minimum signature requirements for candidates in the September 1, 2020, primary election to be unconstitutional. In doing so, the court granted equitable relief that was no more intrusive than it reasonably needed to be in order to remedy the violation of the fundamental constitutional right to run for public office in Massachusetts.

VI. CONCLUSION

In *Goldstein v. Secretary of the Commonwealth*, the Supreme Judicial Court of Massachusetts protected the fundamental constitutional right of the Commonwealth's citizens to run for public office. By declaring the minimum signature requirements unconstitutional as applied to the plaintiffs and similarly situated candidates, the court's decision exhibits the continuation of the New Judicial Federalism, as the court determined that the Massachusetts Constitution provides a greater degree of protection for the right to seek elected office than the United States Constitution. However, even though the Supreme Judicial Court of Massachusetts properly decided to grant equitable relief, it is evident that Massachusetts needs to advance its election infrastructure's technological capabilities to prevent this issue from arising under emergency conditions similar to those created by the COVID-19 pandemic in the future.

168. *Id.* at 574.