

November 3, 2023

Mr. Steve Kerrigan, Chair
Democratic State Committee
11 Beacon Street, Suite 410
Boston, MA 02108

Ms. Amy Carnevale, Chair
Massachusetts Republican State Committee
400 West Cummings Park, Suite 5650
Woburn, MA 01801

Re: Ballot Access for State Primary Elections

Dear Chair Kerrigan and Chair Carnevale:

We write to raise concerns about the manner in which candidates for statewide office in Massachusetts are placed on the primary ballot—a process that not only lacks transparency but also raises important legal issues, including whether the rights of communities of color are adequately protected in the process. Our hope is that by raising these concerns now, they can be remedied for future primaries.

Lawyers for Civil Rights (LCR) is a non-profit legal organization that fosters equal opportunity and fights discrimination on behalf of people of color and immigrants. As part of that work, we regularly engage in advocacy to protect equal voting rights on behalf of our client communities. This includes voting rights litigation,¹ an Election Protection program,² and legislative advocacy as part of the Election Modernization Coalition.³ Since its founding in 1920, the **League of Women Voters of Massachusetts** has been a respected and trusted voice for citizen participation

¹ See, e.g., *Huot et al. v. City of Lowell et al.*, 1:17-cv-10895 (D. Mass. 2017) (voting rights case on behalf of Asian-American and Hispanic voters); *Worcester Interfaith et al. v. City of Worcester*, 4:21-cv-40015 TSH (D. Mass. 2019) (voting rights case on behalf of Black and Hispanic voters); *Bertin v. Galvin*, No. SJ-2020-0520 (action to compel compliance with vote-by-mail requirements during COVID-19 pandemic).

² See <http://lawyersforcivilrights.org/our-impact/voting-rights/election-protection-across-new-england/>

³ See <http://lawyersforcivilrights.org/our-impact/voting-rights/election-modernization-coalition-recommendations-for-early-voting/>

in our democracy. With 45 local Leagues throughout the state and over 3,000 members, LVWMA has been at the forefront of efforts to empower and educate Massachusetts voters and effect change on a wide range of issues, with a particular emphasis on election laws and campaign finance. **MassVOTE** works to promote a culture of active political participation by providing civic organizations the tools they need to organize, register, and educate voters, with an emphasis on historically disenfranchised communities. MassVOTE builds civic coalitions to advocate for democratic reforms that make the electoral process more accountable and accessible to all people.

I. Compliance With State and Party Requirements For Placement On The Primary Ballot

To be placed on the primary ballot, a candidate must meet a signature requirement, M.G.L. ch. 53, § 6 (requiring 5,000 or 10,000 signatures depending on the office), and for the Democratic Party, also receive “at least 15 percent of the Convention vote.” Democratic Party Charter, Art VI, sec 3.⁴

The 15 percent requirement in particular appears to suffer from a number of shortcomings in practice. For example, under Massachusetts law, caucuses—where delegates to the Convention are selected—must be noticed as follows:

Notice of caucuses, signed by the chairman and secretary, shall be issued by each city and town committee not less than seven days prior to the day on which they are to be held. The notices shall state the place where and the day and hour when the several caucuses are to be held. They shall be conspicuously posted in at least five places on the public ways, and, if practicable, in every post office in the city or town, or shall be published at least twice in one or more local newspapers. The hour fixed for calling the caucus to order shall not be later than eight o'clock in the evening. The notice shall designate by name or office the person who shall call such caucus to order, and he shall preside until a chairman is chosen[...]

M.G.L., ch. 53, § 83. The Massachusetts Democratic Party rules in 2023 somewhat similarly provide:

The minimum notice to the local Democrats shall consist of an announcement indicating date, time, virtual registration link and purpose of the meeting appearing in www.massdems.org and submitted to local newspapers or other online local media with at least one documented communication with the local paper and one newspaper or online newspaper of Affirmative Action and Outreach if available. Each ward and town committee shall inform the Chair of Democratic

⁴ The details in this section focus primarily on the Democratic Party process. However, we are aware that many of the same issues affect the Republican Party process as well, and for that reason are directing this letter to both Parties.

State Committee, in writing, no later than June 3, 2023, of the date, time and location of the ward or town's caucus.

2023 “Preliminary Call to Convention” at 25. Yet it is our understanding that neither set of notice requirements is met with any regularity.

Similarly, rules concerning which local committees may hold caucuses and elect delegates do not appear to be uniformly enforced. City, ward, and town committees are required under Massachusetts law to file a list of the officers and members of their committees, together with the addresses of such officers, with various entities including the Office of Campaign and Political Finance (OCPF).⁵ State law also requires a minimum level of voter participation in each caucus for the caucus vote to be considered valid:

A caucus of the voters, or of a specified portion thereof in a ward of a city, or in a town, may be called and held for the nomination of candidates to be voted for at any city election, or at any election of town officers for which official ballots are used, or for the selection of delegates to a convention, or for the appointment of a committee. The proceedings of such caucuses shall be invalid unless at least twenty-five voters participate and vote therein.⁶

However, it is our understanding that numerous local committees that OCPF has labelled “inactive” nonetheless continue to hold caucuses and that minimum participation requirements are not always met.⁷

Finally, there does not appear to be any centralized list of town and ward committee members. Given the importance of these elected positions, this information should be readily available to the public. However, it appears that no central depository exists for results of ward and town committee election results—either with the party or with the State.

⁵ M.G.L. ch 52, § 5 states that: “The secretary of each city, ward and town committee shall, within ten days after its organization, file with the state secretary, with the city or town clerk and with the secretary of the state committee of the political party which it represents, a list of the officers and members of the committee, together with the addresses of such officers. [...] The secretary of such committee shall file with the director of the office of campaign and political finance a list of the officers of the committee, together with the addresses of such officers, within ten days after organization of such committee, or within ten days, of any change in the list of officers of such committee.”

⁶ M.G.L. ch 53, § 117.

⁷ Indeed, Democratic Party documents appear to disregard this requirement. *See* 2023 Preliminary Call to Convention at 26 (“There shall be no quorum requirement for the local caucus.”).

II. Other Problematic Aspects Of The Current Process

Even if the above rules and laws were consistently followed in the nomination process, other underlying issues exist. For example, the use of a plurality voting rule for caucuses turns the caucuses into de facto winner-take-all systems for the gubernatorial race (though not necessarily for down ballot candidates). *See* 2023 “Preliminary Call to Convention” at 29. In similar contexts, this type of voting system has been held to be legally problematic where it dilutes the vote of communities of color. *See supra* note 1 (citing cases where plurality, at-large systems violate the Voting Rights Act).

Moreover, the dual requirement itself—of both signatures and 15% of the vote at the Convention—is more onerous than that which exists in most other States. For example, Connecticut and Utah employ an “either/or” procedure where candidates may gain access to the ballot through either signatures **or** by earning a certain percentage of delegates.⁸ Notably, the 15% requirement imposed by the Massachusetts Democratic Party is not provided for under State law, but rather is only a party requirement.⁹

Confusing and opaque electoral processes tend to disproportionately harm communities of color—which is of particular concern given significant equity issues that exist in Massachusetts. Turn-out rates for Massachusetts residents of color are far lower than for white residents—disparities that greatly exceed those of many other states.¹⁰ Massachusetts also lags in representation, with far fewer state officials of color than in the overall State population.¹¹

⁸ *See* Conn. Gen. Stat. § 9-400(a); Utah Code § 20A-9-101(12)(c). For examples of other states’ processes, *see Major Party Nominating Procedures in States with Conventions*, Office of Legislative Research, Connecticut General Assembly (Jan. 2019), *available at* <https://www.cga.ct.gov/2019/rpt/pdf/2019-R-0033.pdf>.

⁹ Four decades ago, Massachusetts’ Supreme Judicial Court held that party rules may go beyond statutory requirements for ballot access. *See Langone et al. v. Sec’y of the Commonwealth et al.*, 388 Mass. 185 (1983). However, it is unclear whether this same conclusion would be reached today, in light of the issues with the caucus process described above and subsequent legal developments. *See, e.g., Utah Republican Party v. Cox*, 885 F.3d 1219, 1225 (10th Cir. 2018) (upholding law that effectively prohibited parties from “restrict[ing] access to the primary ballot just to candidates who emerge from the party convention”), *revised and superseded on denial of rehearing*, 892 F.3d 1066 (10th Cir.).

¹⁰ *See* Kaiser Family Foundation (KFF), State Health Facts, *available at* <https://www.kff.org/other/state-indicator/voting-and-voter-registration-as-a-share-of-the-voter-population-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

¹¹ *See* MassInc, Tufts University, MassForward (rev. 2020) at 5 (“Asian, African-American, and Latino residents are significantly under-represented [in the Massachusetts legislature]”),

Making our democratic processes as open and accessible as possible is a key step towards closing these gaps.

III. Moving Forward

“Ballot access is of fundamental importance in our form of government because through the ballot the people can control their government.” *Batchelder v. Allied Stores Int’l, Inc.*, 388 Mass. 83, 89-90 (1983). As the Supreme Judicial Court has recognized, the right to access the ballot and the right to vote are “fundamental and intertwined.” *Goldstein v. Sec’y of the Commonwealth*, 484 Mass. 516, 524 (2020) (internal quotations omitted); *see also id.* (recognizing that “the Massachusetts Declaration of Rights may be more protective of voting rights than the Federal Constitution”).

As stated, our goal with this letter is to spur forward-looking reforms that make sense for the 21st century and remove the specter of legal challenges. It may be, for example, that State law about noticing caucuses should be modernized along the lines of Democratic Party rules and updated with language access requirements, but in any event the laws and rules should be aligned, transparent, and consistently followed.

De-linking the caucus process from ballot access should also be examined, particularly if the practical and legal issues with the caucus process are not addressed. As noted above, a shift to an “either/or” or “signatures only” requirement for ballot access has already been made by many other states.

We hope that both Parties will move expeditiously to reform and modernize processes for gaining access to the primary ballot, to create systems that are fair, equitable, and free of legal infirmities.

Sincerely,

/s/ Oren Sellstrom

LAWYERS FOR CIVIL RIGHTS
LEAGUE OF WOMEN VOTERS OF MASSACHUSETTS
MASSVOTE

cc: Secretary of the Commonwealth William Galvin
Michelle Tassinari, Director and Legal Counsel, Elections Division

available at <https://massincmain.wpenginepowered.com/wp-content/uploads/2019/11/MassForward.pdf>.