

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DR. SHIVA AYYADURAI,

Plaintiff,

v.

WILLIAM FRANCIS GALVIN, in his official
capacity as the Secretary of the Commonwealth
of Massachusetts and his individual capacity,
MICHELLE TASSINARI, in her individual
capacity, DEBRA O'MALLEY, in her individual
capacity, AMY COHEN, in her individual capacity,
and NATIONAL ASSOCIATION OF STATE
ELECTION DIRECTORS

Defendant.

CIVIL ACTION
NO. 1:20-cv-11889-MLW

**RESPONSE TO PLAINTIFF'S JUNE 11, 2021 STATUS REPORT BY ALL
CURRENT DEFENDANTS**

The current Defendants – Secretary William Francis Galvin, Michelle Tassinari, Debra O'Malley, the National Association of State Election Directors, and Amy Cohen – hereby submit this response to Plaintiff's status report of June 11, 2021. Although the Court's Order of June 1, 2021 [Docket No. 135] required Plaintiff to file a status report that set forth the "parties' respective views on any disputed issues" to be presented to the Court at the upcoming hearing on June 15, 2021, Plaintiff has refused to comply with that obligation. The report filed by Plaintiff instead misstates the Defendants' positions that were discussed during the parties' meet and confer. Although the Defendants urged Plaintiff to edit his report to reflect the Defendants' positions more accurately, Plaintiff declined to do so. Accordingly, Defendants jointly file this

response to articulate their positions on Plaintiff's proposed agenda of matters to be discussed at the June 15, 2021 hearing and to add one other item to the proposed agenda for the Court's consideration.

1. Proposed Amended Complaint. Defendants do not oppose Plaintiff's proposal to file a motion for leave to file a new Second Amended Complaint by July 15, 2021, although Defendants reserve the right to oppose any motion to amend and to move to dismiss any new Second Amended Complaint.

2. Jurisdictional Discovery. Defendants oppose commencing discovery on jurisdictional issues. Defendants contend that any discovery requests that Plaintiff intends to propound at the same time he submits a new Proposed Second Amended Complaint are premature. Defendants believe that the current motions to dismiss, including the motion to dismiss on jurisdictional grounds, should be decided without any discovery. But if this Court permits Plaintiff to file a new Complaint, it will likely contain different claims, different parties, and different allegations, and any motions to dismiss a new Complaint will accordingly present different arguments. Therefore, Defendants believe that discovery is premature until Plaintiff submits a new Complaint, the Court allows that new Complaint to be filed, and the Defendants move to dismiss it; at that point, the Court should reassess the need to conduct jurisdictional discovery.

3. Resolution of Motions to Dismiss Claims on behalf of Individual Defendants in their Personal Capacities. The individual Defendants who have been sued in their personal capacities request that the Court adjudicate their motions to dismiss. As the Court explained at the May 20, 2021 hearing, it was likely to dismiss these claims as being barred by qualified immunity, among other reasons. Plaintiff indicated during the parties' meet and confer that he was still considering maintaining claims against the individual Defendants in a new Second

Amended Complaint. The individual Defendants encourage the Court to adjudicate their pending motions to dismiss the claims asserted against them.

Respectfully submitted,

Defendants,

WILLIAM FRANCIS GALVIN, in his official and individual capacities, MICHELLE TASSINARI, in her individual capacity, and DEBRA O'MALLEY, in her individual capacity,

By their attorneys,

MAURA HEALEY
ATTORNEY GENERAL

/s/ Adam Hornstine
Anne Sterman (BBO No. 650426)
Adam Hornstine (BBO# 666296)
Assistant Attorneys General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
617-963-2048
Anne.Sterman@mass.gov
Adam.Hornstine@mass.gov

NATIONAL ASSOCIATION OF STATE
ELECTION DIRECTORS and AMY COHEN,

By their attorneys,

/s/ Nolan J. Mitchell
Nolan J. Mitchell
Quarles & Brady LLP
1701 Pennsylvania Avenue
Suite 700
Washington, D.C. 20006
Telephone: (202) 780-2644
Facsimile: (202) 372-9572
E-mail: Nolan.Mitchell@quarles.com

Date: June 11, 2021

CERTIFICATE OF SERVICE

I, Adam Hornstine, Assistant Attorney General, hereby certify that I have this day, June 11, 2021, served the foregoing **Report**, upon all parties, by electronically filing to all ECF registered parties.

/s/ Adam Hornstine
Adam Hornstine