COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

TERRY Y. ALLEN, et al.,

Plaintiffs,

v.

BOARD OF REGISTRARS OF THE TOWN OF AMHERST,

Defendant.

CIVIL ACTION NO.

COMPLAINT FOR
DECLARATORY RELIEF AND RELIEF IN THE NATURE OF MANDAMUS

NATURE OF THE ACTION

1. This action arises from the decision of the Board of Registrars (the "Board") of the Town of Amherst, Massachusetts (the "Town") not to certify 246 of the 1,088 signatures submitted in support of a Petition (as defined below) filed under the Town Charter. The Board's failure to certify more than 20% of the signatures submitted left proponents just 22 signatures short of the 864 (5% of voters) required for petitions under that charter.

2. Even though G.L. c. 53, § 7, authorizes persons signing petitions to sign "substantially" as registered and not "exactly" as registered, and that "[i]f the registrars can reasonably determine from the form of the signature the identity of the duly registered voter, the name shall be deemed to have been signed substantially as registered," and the Secretary of State's regulations governing certification of petition signatures, 950 CMR 55.00, et seq. (the

"Regulations"), expressly direct boards of registrars to certify legible signatures except under certain limited circumstances, the Board wrongfully failed to certify at least 76 signatures. In so doing, the Board violated not only the statutory and regulatory requirements for certification of petition signatures, but Plaintiffs' right to petition the government for redress of grievances and fundamental right to vote under both the United States Constitution and the Massachusetts Declaration of Rights.

3. As just a few examples of the Board's failure to comply with G.L. c. 53, § 7 and the Regulations, the Board disallowed signatures where signatories:

A. (i) did not sign a middle name or initial on the Petition even though the middle name or initial was listed on the Town's voter rolls, or (ii) did sign a middle name or initial on the Petition when the middle name or initial was not listed on the voter rolls, even though G.L. c. 53, § 7, states: "[f]or the purposes of this section a registered voter who in signing his name to a nomination paper inserts a middle name or initial in, or omits a middle name or initial from, his name as registered shall be deemed to have signed his name substantially as registered";

B. abbreviated in their address on the Petition the words "Lane" and "Street," as "Lne" and "St.," where the voter rolls spelled out the words "Lane" or "Street"; C. who live on an avenue named "Crossbrook" spelled out the complete name of their street while the voter rolls erroneously list the street name as "Cross Brk"; D. who did not include the abbreviations or words "Court," "St.", or "Rdg." after their street address when the voter rolls included these words, even though there are no other streets in the Town with the same name as the streets where the signatories reside;

E. included in their address on the Petition the name of the town in which they resided, Amherst, the state, Massachusetts, and/or zip code, even though the name of the town, state, and/or the zip code was not listed on the residential address section of the voter rolls but was included in the mailing address section;

F. signed the petition with a common or known first name, even though the Regulations expressly provide that "registrars shall certify names in which . . . a common or known nickname is used"; and

G. signed the petition with their first initial and surname and no other registered voter with that initial lives at the indicated address, even though the Regulations expressly provide that "registrars shall certify names in which . . . one initial is used with a surname, if no other registered voter with that initial lives at the indicated address." 4. Plaintiffs seek:

A. a declaratory judgment that, as more specifically described below, declares that the Board:

i. breached its duty to the Plaintiffs and violated G.L. c. 53, § 7, the Regulations, the United States Constitution, and the Massachusetts Declaration of Rights, by failing to certify the at least 76 signatures on the Petition described below; and ii. breached its duty to the Plaintiffs and violated the Town Charter by concluding that proponents of the Petition had not satisfied the 5% threshold for a Voter Veto petition contained in that charter; and

B. relief in the nature of mandamus compelling the Board to certify the at least 76 signatures addressed herein and conclude that proponents of the petition satisfied the 5% threshold contained in the Town charter.

PARTIES

5. Plaintiff, Terry Y. Allen, is a registered voter in Amherst, Massachusetts, with an address at 1 Bedford Court. The Board declined to certify her signature on the Petition. 6. Plaintiff, Skyler J. Arndt-Briggs, is a registered voter in Amherst, Massachusetts, with an address at 29 Henry St. The Board declined to certify her signature on the Petition. 7. Plaintiff, Ruthann Beskrowni, is a registered voter in Amherst, Massachusetts, with an address at 242 N. East St., Amherst, Massachusetts. The Board declined to certify her signature on the Petition.

8. Plaintiff, Barry B. Brooks, is a registered voter in Amherst, Massachusetts, with an address at 51 Valley View Dr. The Board declined to certify his signature on the Petition 9. Plaintiff, Sean M. Cahillane, is a registered voter in Amherst, Massachusetts, with an address at 5 Webster Ct. The Board declined to certify his signature on the Petition. 10. Plaintiff, Jian Chang, is a registered voter in Amherst, Massachusetts, with an address at 23 Phillips St. The Board declined to certify her signature on the Petition. 11. Plaintiff, Abby E. Charland, is a registered voter in Amherst, Massachusetts, with an address at 169 Summer St. The Board declined to certify her signature on the Petition. 12. Plaintiff, William J. Cray, is a registered voter in Amherst, Massachusetts, with an address at 41 Shays St. The Board declined to certify his signature on the Petition. 13. Plaintiff, Maria L. De Alba, is a registered voter in Amherst, Massachusetts, with an address at 12 Longmeadow Dr. The Board declined to certify her signature on the Petition. 14. Plaintiff, Luis De Alba-Rivera, is a registered voter in Amherst, Massachusetts, with an address at 12 Longmeadow Dr. The Board declined to certify his signature on the Petition.

15. Plaintiff, Gruff Owen Davies, is a registered voter in Amherst, Massachusetts with an address at 41 Blue Hills Rd. The Board declined to certify his signature on the Petition. 16. Plaintiff, Daniel Denton-Thompson, is a registered voter in Amherst, Massachusetts, with an

address at 88 Crossbrook. The Board declined to certify his signature on the Petition.

17. Plaintiff, Barbara R. Elkins, is a registered voter in Amherst, Massachusetts with an address at 54 Wildwood Lane. The Board declined to certify her signature on the Petition. 18. Plaintiff, Madelyn D. Farr, is a registered voter in Amherst, Massachusetts, with an address at 170 East Hadley Rd. The Board declined to certify her signature on the Petition. 19. Plaintiff, Oriole H. Feshbach, is a registered voter in Amherst, Massachusetts, with an address 39 Pokeberry Rdg. The Board declined to certify her signature on the Petition. 20. Plaintiff, Sidney Feshbach, is a registered voter in Amherst, Massachusetts, with an address at 39 Pokeberry Rdg. The Board declined to certify his signature on the Petition. 21. Plaintiff, Mariaelena Garcia, is a registered voter in Amherst, Massachusetts, with an address at 74 N. Whitney St. The Board declined to certify her signature on the Petition. 22. Plaintiff, Thomas N. Gardner, is a registered voter in Amherst, Massachusetts, with an address at 59 Valley View Dr. The Board declined to certify his signature on the Petition.

23. Plaintiff, Eleanor Manire-Gatti is a registered voter in Amherst, Massachusetts, with an address at 130 University Drive. The Board declined to certify her signature on the Petition.

24. Plaintiff, Jennifer Goodheart, is a registered voter in Amherst, Massachusetts, with an address at 32 Jenks St. The Board declined to certify her signature on the Petition.

25. Plaintiff, Hang Lim, is a registered voter in Amherst, Massachusetts, with an address at 49 Jenks St. The Board declined to certify her signature on the Petition. 26. Plaintiff, Jeffrey C. Lee, is a registered voter in Amherst, Massachusetts, with an address at 815 South East St. The Board certified Mr. Lee's signature on the Petition. 27. Plaintiff, Maud Beeching Low, is a registered voter in Amherst, Massachusetts, with an address at 29 Summer St. The Board

declined to certify her signature on the Petition. 28. Plaintiff, Gabor Z. Lukacs, is a registered voter in Amherst, Massachusetts, with an address at 44 Beston St. The Board declined to certify his signature on the Petition. 29. Plaintiff, John J. Michaels, is a registered voter in Amherst, Massachusetts, with an address at 18 North Prospect St. The Board declined to certify his signature on the Petition. 30. Plaintiff, Susan I. Milliken-Rogers, is a registered voter in Amherst, Massachusetts, with an address at 82 Crossbrook. The Board declined to certify her signature on the Petition.

31. Plaintiff, Linda Lorraine Moffa, is a registered voter in Amherst, Massachusetts, with an address at 242 N. East St. The Board declined to certify her signature on the Petition. 32. Plaintiff, Maria E. Moos, is a registered voter in Amherst, Massachusetts, with an address at 83 North Whitney Street. The Board declined to certify her signature on the Petition. 33. Plaintiff, Janet Isabel K. Murphy, is a registered voter in Amherst, Massachusetts, with an address at 81 Crossbrook. The Board declined to certify her signature on the Petition. 34. Plaintiff, Jayendran Pillay, is a registered voter in Amherst, Massachusetts, with an address at 66 Spaulding St. The Board declined to certify Mr. Pillay's signature on the Petition.

35. Plaintiff, Regina B. Rheault, is a registered voter in Amherst, Massachusetts, with an address at 71 N. Prospect St. The Board declined to certify her signature on the Petition. 36. Plaintiff, Phyllis Robey, is a registered voter in Amherst, Massachusetts, with an address at 4 Chestnut Court. The Board declined to certify her signature on the Petition. 37. Plaintiff, Virginia L. Schnurr, is a registered voter in Amherst, Massachusetts, with an address at 39 Ward St. The Board declined to certify her signature on the Petition. 38. Plaintiff, Jameison Francis Sennott, is a registered voter in Amherst, Massachusetts, with an address at 232 North East St.

The Board declined to certify Mr. Sennott's signature on the Petition.

39. Plaintiff, Sheila Sennott, is a registered voter in Amherst, Massachusetts, with an address at 232 North East St. The Board declined to certify Ms. Sennott's signature on the Petition.

40. Plaintiff, Karen C. Silverstein, is a registered voter in Amherst, Massachusetts, with an address at 32 N. Prospect St. The Board declined to certify her signature on the Petition. 41. Plaintiff, Mariangeles R. Vicente, is a registered voter in Amherst, Massachusetts, with an address at 121 Tracy Cir. The Board declined to certify her signature on the Petition. 42. Plaintiff, Joseph A. Waskiewicz, is a registered voter in Amherst, Massachusetts, with an address at 324 Meadow St. The Board declined to certify his signature on the Petition. 43. Plaintiff, Robert M. Winston, is a registered voter in Amherst, Massachusetts, with an address at 37 Salem St. The Board declined to certify his signature on the Petition. 44. Plaintiff, Jane F. Ziff, is a registered voter in Amherst, Massachusetts, with an address at 24 Moorland St. The Board declined to certify her signature on the Petition.

45. Defendant, Board of Registrars of the Town of Amherst, is located in Hampshire County, MA, with an address at 4 Boltwood Avenue, Amherst, MA. 01002. **JURISDICTION AND VENUE**

46. This Court has subject matter jurisdiction over this matter under:

A. G.L. c. 56, § 59, because that statute grants this Court jurisdiction of civil actions to enforce the provisions of chapters fifty to fifty-six, inclusive, and this action concerns enforcement of G.L. c. 53, § 7;

B. G.L. c. 231, § 1, because it satisfies the requirements for a declaratory judgment action in that there is an actual controversy as to whether, among other things, the

Board violated G.L. c. 53, § 7 and the Regulations in denying certification of twenty-two or more signatures of the more than 200 signatures it failed to certify; and

C. G.L. c. 249, § 5, because this action satisfies the requirements for mandamus in that Plaintiffs seek entry of an order compelling the Board to certify the signatures it concludes the Board should have certified, and compelling the Board to conclude that proponents of the Petition have satisfied the 5% threshold for Voter Veto petitions under the Town charter.

47. This Court has statewide jurisdiction, and therefore has personal jurisdiction over the Board.

48. As this Court has jurisdiction throughout the Commonwealth, venue as to the Town is proper in this Court. G.L. c. 56, § 59; G.L. c. 249, § 5, and G.L. c. 231A, § 1, et seq.

FACTS

Relevant Provisions of the Town Charter

49. In 2018, the voters of the Town adopted a new charter changing, among other things, the legislative branch of Town government from a Town Meeting to a Town Council. A true and accurate copy of the Amherst Home Rule Charter dated September 25, 2017, is attached hereto as Exhibit A (the "Charter").

50. Section 8.4 of the Charter provides voters with a remedy if the Town Council takes an action with which a sufficient number of voters disagree. It establishes the procedures for a "Voter Veto" of Town Council actions.

51. That section provides, in relevant part:

A. If, within 14 days following the date on which the Town Council has voted finally to approve any measure, a petition on a form prepared by the Town, physically signed by a minimum of 5% of the registered voters as of the date of the most recent Town election, and addressed to the Town Council protesting against the measure or any part thereof is filed with the Clerk of the Town Council, the effective date of that measure shall be temporarily suspended. The Town Council shall, at the next regular Town Council meeting, reconsider its vote on the measure or part thereof protested against.

B. If the measure is not repealed, the number of signatures is found sufficient by the Board of Registrars, and the Town Attorney finds that the measure or part thereof may be lawfully protested against, the Town Council shall provide for the submission of the question for a determination by the voters either at a special election, which it may call at its sole discretion or at the next regular Town election. Pending this submission and determination, the effect of the measure shall continue to be suspended.

C. Within 10 days following the filing of the petition, the Board of Registrars shall ascertain the number of voters that signed the petition. The Board of Registrars shall cause a certificate showing the results of its examination to be attached to the petition and shall return the petition to the Clerk of the Town Council. A copy of the Board of Registrars' certificate shall also be mailed to the first 10 voters who signed the petition.

See Exhibit A, Town Charter, § 8.4(a)-(b).

52. In determining whether proponents of a Voter Veto or the Board of Registrars has met the deadline for an act to be completed under the Charter, the Charter provides that the day of the act or event shall not be included. See § 9.5 of the Exhibit A, the Charter. ***The Town Council Decision and the Voter Veto Petition***

53. On April 5, 2021, the Town Council approved a measure approving and authorizing borrowing of funds for the expansion and renovation of the Jones Library (the "Measure"). See Board of Registrars' Certificate dated April 22, 2021, a true and accurate copy of which is attached hereto as Exhibit B (the "Certificate").

54. On April 20, 2021, proponents of the Voter Veto petition timely filed with the Town

Clerk's Office 1,088 signatures collected during the pandemic to protest the Measure (the "Petition"). Id.

55. The 1,088 signatures were 246 more signatures than were required to meet the 864 signatures the Board determined were required to satisfy the Charter's Voter Veto provision's 5% threshold. Id.

56. On April 21, 2021, the Board of Registrars voted to delegate the authority for reviewing and certifying signatures to the Town Clerk's office. See letter from Board member Demetria Shabazz dated May 23, 2021, attached hereto as Exhibit C.

57. Although section 8.4(b) of the Charter afforded the Board ten days to review the signatures on the Petition, the Board issued a Certificate with respect to its review and decision on certification of the 1,088 signatures on the Petition the next day. Id. The Certificate was signed by Assistant Town Clerk, Amber Martin. Id.

58. In that Certificate, the Board reported that it had certified 842 signatures pursuant to 950 CMR section 55.03, a total of 4.8% of registered voters. Id. The Board thus failed to certify 246 of the 1,088 signatures submitted, or more than 20% of the total submitted.

59. The Board concluded, "The petition failed to produce enough signatures of registered voters to initiate next steps in the voter veto process." Id.

60. After receiving the signed petitions the Board had reviewed for certification, certain proponents of the Petition requested and received from Assistant Town Clerk, Ms. Martin, an electronic copy of the Amherst Voting Rolls from a Voter Extract file (the "Voter Rolls"). Receipt of this file has enabled them to compare the signatures on the Petition the Board declined to certify with the information on the Voter Rolls.

Applicable Statutory, Regulatory, and Constitutional Provisions

61. By St. 1971, c. 512, the Massachusetts Legislature amended G.L. c. 53, § 7, by adopting "An Act liberalizing the requirement that a voter signing a nomination paper sign as he is registered." According to the Supreme Judicial Court, this amendment was intended to relax the requirements for signature certification.

62. As amended, G.L. c. 53, § 7, provides that "[e]very voter signing a nomination paper shall sign in person as registered or substantially as registered, and shall state the address where he or she is currently registered . . ." (emphasis added). It provides further, "[i]f the registrars can reasonably determine from the form of the signature the identity of the duly registered voter, the name shall be deemed to have been signed substantially as registered."

63. By its terms, G.L. c. 53, § 7, expressly provides that it "shall apply in all cases where any statute, special act, or home rule charter requires the certification of the signature of a voter by boards of registrars of voters," such as on the Voter Veto Petition.

64. The Regulations govern certification of signatures on petitions submitted to boards of registrars of voters such as the Board. See 950 CMR 55.00, et seq. 65. Section 55.01 of 950 CMR states that the Regulations "shall be interpreted to achieve and maintain accuracy, uniformity, and security from forgery and fraud in the procedures of local registrars of voters, and to promote the right of eligible voters to sign such papers and petitions. (emphasis added).

66. On its face, G.L. c. 53, § 7, appears to reasonably regulate access to the ballot. 67. That statute, however, and the Regulations promulgated thereunder, must also be applied consistently with the fundamental right to vote expressed in Article 9 of the Massachusetts Declaration of Rights and in the United States Constitution, and the fundamental right to petition the government for redress of grievances, as expressed in Article 19 of the

Massachusetts Declaration of Rights and the First Amendment to the United States Constitution.

68. The Board failed to comply with G.L. c. 53, § 7, in not certifying the at least 76 signatures described below and then concluding that proponents of the Petition had not satisfied the 5% threshold for a Voter Veto petition. The Board thus denied Plaintiffs the right to have their signature/"vote" on the Petition counted, and their right to vote on whether to repeal the Measure. This denial violated their fundamental right to vote under Article 9 of the Massachusetts Declaration of Rights and the United States Constitution, and their right to petition the government for redress of grievances protected under Article 19 of the Massachusetts Declaration of Rights and the First Amendment to the United States Constitution.

The Regulatory Procedures for Reviewing Signatures and the Board's Partial Implementation of that Process

69. Under 950 CMR 55.02(2), when boards of registrars review signatures on a petition, they are to place a check mark in the left column next to the names they certify; they are to place the proper capital letter symbol, N,S,D,R,E,W,T, as indicated in 950 CMR 55.03(1), next to each name they do not certify.

70. In reviewing the Petition, the Board placed a check mark in the left column of the signatures it certified, an "N" next to certain signatures it declined to certify, and an "S" next to certain other signatures it declined to certify. The Board did not place an "N" and an "S" next to any signature, nor did it place any other letter 950 CMR 55.03(1) lists as grounds for not certifying a signature next to the name of any signatory on the Petition.

71. Section 55.03(1) of 950 CMR provides, with respect to the "N" and "S" bases for

declining to certify a signature, "The registrars shall certify a voter's name signed on a nomination paper or petition unless:

> (a) The name is not that of a registered voter at that address or the address is illegible (N).
>
> (b) The name is not signed substantially as registered-the registrars cannot identify the signature as that of a voter because of form of signature (S).
>
> (c) The name is illegible (S).

(emphasis added).

The Board Bears the Burden of Proving That It Properly Declined to Certify the At Least 76 Signatures at Issue in this Case.

72. Because proponents of the Petition submitted nomination papers to the Board containing 246 more signatures than the Board ruled were required to meet the Charter's 5% threshold, the burden is on the Board to show that its refusal to certify those 246 signatures was

not in violation of, among other things, G.L. c. 53, § 7. Four Thousand Five Hundred Sixty Eight Registered Voters of Worcester v. City Clerk of Worcester, 392 Mass. 424, 425, 465 N.E.2d 1209, 1210 (1984) citing McCarthy v. Secretary of the Commonwealth, 371 Mass. 667, 359 N.E.2d 291 (1977).

73. The Board determined that Petition proponents fell 22 signatures short of the 5% threshold. Thus, provided the Board cannot meet its burden of proving that it properly declined to certify at least 225 out of the 246 signatures, this Court should grant the declaratory relief requested and enter an order of mandamus compelling the Board to certify those signatures, and conclude that proponents of the Petition satisfied the 5% threshold contained in the Town charter for a Voter Veto.

The Board Cannot Satisfy its Burden As To Fifty-Nine of the Signatures it Declined To Certify on the Basis of the "N" Designation.

74. As noted, the Secretary's regulations require boards to certify a voter's name on a petition "unless: (a) The name is not that of a registered voter at that address or the address is illegible (N)." 950 CMR 55.03(1). The Board failed to comply with this stricture.

75. As set forth in detail in paragraphs 76 to 84 below, the Board erred in failing to certify at least 59 signatures as follows:

A. six signatures where the legible addresses matched precisely the addresses on the Voter Rolls;

B. three signatures where the address on the Voter Rolls abbreviated words such as "Lane" or "Street," but where the signatories did not abbreviate those words on the Petition;

C. three signatures where the Voter Rolls erroneously list a street name as "Cross Brk", the name of the street on the Town's website is "Crossbrook," the voters who live there wrote the name as "Crossbrook" or "Crossbrook Ave," and there is no other street in Town with the name "Crossbrook";

D. six signatures where the words or letters "Court," "St.", or "Rdg" appeared on the Voter Rolls, and the signatories failed to include the words "Court," "St.," or "Rdg," even though there are no other streets in town with the same name as the street where the signatories did not include the words "Court," "St.," or "Rdg."'

E. seven signatures where the signatories included the town name "Amherst," the state, "MA," and/or the zip code, after their street address, even though the Town name, state, and zip code is not listed on the "residential address" section of the Voter Rolls, though it sometimes appears under the "mailing address";

F. one signature where the voter inadvertently left the letter "s" off the end of the name of his street on a page where everyone signing on the petition page before and after him included the "s" so there was no doubt about the street on which he resided, and there is no street in the Town with the same name without the "s";

G. four signatures where there was nothing printed on the reverse side of the Petition;

H. twenty-eight signatures where the voter's address matched the address on the Voter Rolls but the voters did not include their apartment number; and

I. one signature where the voter signed on two lines, with the signature and printed

name on one line, and his address on the next line;

76. The Board erroneously placed an "N" on the Petition next to the signatures of 6 voters whose legible addresses matched exactly the signatories' addresses on the Voter Rolls. Accordingly, the Board should have readily determined that the name was that of a registered voter at that address, and certified these signatures.

A. The Voter Rolls contain the name of Plaintiff, Sean M. Cahillane with an address at 5 Webster Ct. The Petition contains the signature of "Sean Cahillane 5 Webster Ct." See Exhibit D-1, an excerpt from the Voter Rolls, and Mr. Cahillane's signature on the Petition, page 203, line 3. As the address is an exact match, the Board should have certified Mr. Callihane's signature.

B. The Voter Rolls contain the name of Plaintiff, Abby E. Charland, with an address at 169 Summer St., Apt. 21. The Petition contains the signature of "Abby Charland 169 Summer St., Apt. 21." See Exhibit D-2, an excerpt from the Voter Rolls, and Ms. Charland's signature on the Petition, page 20, line 6. As the address is an exact match, the Board should have certified Ms. Charland's signature.

C. The Voter Rolls contain the name of Tamara J. Clark with an address at 33 Kellogg Apt. 4. The Petition contains the signature of "Tamara Clark 33 Kellogg. Apt. 4." See

Exhibit D-3, an excerpt from the Voter Rolls, and Ms. Clark's signature on the Petition, page 50, line 4. As the address is an exact match, the Board should have certified Ms. Clark's signature.

D. The Voter Rolls contain the name of Brenda Jean Dapprich with an address at 19 Tamarack Dr. The Petition contains the signature of "Brenda Dapprich 19 Tamarack Dr." See Exhibit D-4, an excerpt from the Voter Rolls, and Ms. Dapprich's signature on the Petition, page 50, line 7. As the address is an exact match, the Board should have certified Ms. Dapprich's signature.

E. The Voter Rolls contain the name of Yahve Benjamin Pabon with an address at 22 Lessey St. Apt. 420. The Petition contains the signature of "Yahve Pabon 22 Lessey St. Apt. 420." See Exhibit D-5, an excerpt from the Voter Rolls, and Mr. Pabon's signature on the Petition, page 52, line 9. As the address is an exact match, the Board should have certified Mr. Pabon's signature.

F. The Voter Rolls contain the name of Plaintiff, Jayendran Pillay, with an address at 66 Spaulding St. The Petition contains the signature of "Jay Pillay 66 Spaulding St." See Exhibit D-6, an excerpt from the Voter Rolls, and Mr. Pillay's signature on the Petition, page 22, line 3. As the address is an exact match, the Board should have certified Mr. Pillay's signature. (While the Board placed an "N" next to Mr. Pillay's signature rather than an "S," thus indicating it did not object to his not signing with his nickname, "Jay," the Secretary's regulations make clear that signing with a common or known nickname is not grounds for denying certification.

See 950 CMR 55.03(3)(b)).

77. The Board failed to certify three signatures where the address on the Voter Rolls abbreviated the words "Lane," "Street," or "Road," but where the signatories did not abbreviate those words on the Petition. The Board should have readily determined that the voter had signed "substantially as registered," that the name was that of a registered voter at that address, and certified these signatures. Specifically,

A. The Voter Rolls contain the name of Plaintiff, Barbara R. Elkins, with an address at 54 Wildwood Ln. The Petition contains the signature of "Barbara R. Elkins 54 Wildwood Lane." See Exhibit E-1, an excerpt from the Voter Rolls, and the Petition, page 18, line 1.

B. The Voter Rolls contain the name Neil A. Zagorin with an address at 705 Station Rd. The Petition contains the signature of "Neil Zagorin 705 Station Road." See Exhibit E-2, an excerpt from the Voter Rolls, and the Petition, page 18, line 1.

C. The Voter Rolls contain the name Mark Taylor Brinsfield with an address at 47 Autumn Ln. The Petition contains the signature of "Mark Taylor Brinsfield 47 Autumn Lane." See Exhibit E-3, an excerpt from the Voter Rolls, and the Petition, page 68, line 3.

78. While the Board initially certified the signatures of three voters who correctly spelled out, rather than abbreviated the name of the street on which they lived as the Town's voter rolls did, the Board ultimately placed an "N" next to their signatures. Specifically, the following three voters wrote their street name as "Crossbrook" even though the Voter Rolls for all three list the street name as "Cross Brk." According to the Town's website, the proper name of the street is "Crossbrook." http://gis.amherstma.gov/apps/streetsearch.aspx. One voter also added the abbreviation "Ave." after the street name. While the Town's records do not indicate that Crossbrook is an "Ave.," the Board should readily have determined that the person had signed "substantially as registered" and that the name was that of a registered voter at that address because there is no other street in town with the name "Crossbrook", the Board should have certified these signatures. Specifically,

A. The Voter Rolls contain the name of Plaintiff, Daniel C. Denton

Thompson, with an address at "88 Cross Brk". Mr. Denton-Thompson signed the Petition with an address at "88 Cross Brook Ave". See Exhibit F-1, a copy of an excerpt from the Town's Voter Rolls, and Mr. Denton-Thompson' signature on the Petition, page 68, line 4.

B. The Town's Voter Rolls contain the name Plaintiff, Susan I. Milliken Rogers, with an address at is "82 Cross Brk." Ms. Milliken-Rogers signed the Petition with an address at "82 Crossbrook". See Exhibit F-2, a copy of an excerpt from the Voter Rolls, and the Petition, page 68, line 3.

C. The Town's Voter Rolls contain the name Plaintiff, Janet Isabel K. Murphy, with an address as "81 Cross Brk." Ms. Murphy signed the Petition with an address at "81 Crossbrook". See Exhibit F-3, a copy of an excerpt from the Voter Rolls, and the Petition, page 68, line 1.

79. The Board refused to certify seven signatures where the words "Court," or the abbreviations, "St.", or "Rdg", appeared on the voter registration cards, but the signatories did not include the word "Court" or the abbreviations "St." or "Rdg." In each case, there is only one street in the Town with the name such that the Board should have readily determined that the

voter had signed "substantially as registered," that the name was that of a registered voter at that address, and certified these signatures. Specifically,

A. The Voter Rolls contain the name of Plaintiff, Terry Y. Allen, with an address at 1 Bedford Ct. Ms. Allen signed the Petition with the address "1 Bedford", without the abbreviation "Ct." See Exhibit G-1, a copy of an excerpt from the Voter Rolls, and Ms. Allen's signature and address on the Petition, page 82, line 9. There is only one street in Amherst with the name "Bedford". http://gis.amherstma.gov/apps/streetsearch.aspx.

B. The Voter Rolls contain the name of Plaintiff, Oriole H. Feshbach, with an address at 39 Pokeberry Rdg. Ms. Feshbach signed the petition with the address "39 Pokeberry", without the letters "Rdg". See Exhibit G-2, a copy of an excerpt from the Voter Rolls, and Ms. Feshbach's signature and address on the Petition, page 55, line 18. There is only one street in the Town with the name "Pokeberry" http://gis.amherstma.gov/apps/streetsearch.aspx.

C. The Voter Rolls contain the name Plaintiff, Sidney Feshbach, with an address at 39 Pokeberry Rdg. Mr. Feshbach signed the Petition with an address of "39 Pokeberry", without the letters "Rdg". See Exhibit G-3, a copy of an excerpt from the Voter Rolls and Mr. Feshbach's signature and address on the Petition, page 55, line 17. There is only one street in Amherst with the name "Pokeberry," http://gis.amherstma.gov/apps/streetsearch.aspx.

D. The Voter Rolls contain the name of Plaintiff, MariaElena Garcia, with an

address at 74 North Whitney St. Ms. Garcia signed the Petition with an address at "74 N. Whitney". See Exhibit G-4, a copy of an excerpt from the Voter Rolls, and the Petition, page 16, line 1. There is only one street in the Town with the name "North Whitney," http://gis.amherstma.gov/apps/streetsearch.aspx.

E. The Voter Rolls contain the name of Plaintiff, Hang Lim, with an address at 49 Jenks St. Ms. Lim signed the Petition with an address at "49 Jenks", without the "St." See Exhibit G-5, an excerpt from the Voter Rolls, and the Petition, page 83, line 19. There is only one street in the Town with the name "Jenks," http://gis.amherstma.gov/apps/streetsearch.aspx.

F. The Voter Rolls contain the name of Plaintiff, Joseph A. Waskiewicz, with an address at 324 Meadow St. Mr. Waskiewicz signed the Petition with an address at "324 Meadow"; he did not include the abbreviation "St." See Exhibit G-6, an excerpt from the Voter Rolls, and Mr. Waskiewicz's signature on the Petition, page 42, line 2. There is only one street in Amherst with the name "Meadow" http://gis.amherstma.gov/apps/streetsearch.aspx.

80. The Board refused to certify six signatures where the signatories included the town name "Amherst," the state, "MA," and/or their zip code, after their street address even though the Town name, state, and zip code, is not listed on the "residential address" section of

the Voter Rolls; it sometimes appears under the "mailing address" section. The addition of the town name, state, "MA," and/or zip code does not mean that the voter did not sign "substantially as registered" and that the name was not that of a registered voter at that address. The Board should have certified these signatures. Specifically,

A. The Voter Rolls contain the name Rita K. Burke with an address at 50 Henry Street. Ms. Burke signed the Petition with an address at "50 Henry Street Amherst." See Exhibit H-1, a copy of an excerpt from the Voter Rolls, and her signature and address on the Petition, page 98, line 1.

B. The Voter Rolls contain the name William S. Elsasser with an address at 33 Kellogg #64. Mr. Elsasser signed the Petition with an address at "33 Kellogg #64, Amherst." See Exhibit H-2, a copy of an excerpt from the Voters Rolls, and the Petition, page 2, line 1.

C. The Voter Rolls contain the name Plaintiff, Eleanor Manire-Gatti, with an address at 130 University Drive. Ms. Manire-Gatti signed the Petition with an address at "130 University Drive, Amherst 01002." See Exhibit H-3, an excerpt from the Voter Rolls, and the Petition, page 120, line 1.

D. The Voter Rolls contain the name of Plaintiff, Virginia L. Schnurr, with an address at 39 Ward St. Ms. Schnurr signed the Petition with an address at "39 Ward Street,

Amherst, MA." See Exhibit H-4, an excerpt from the Voter Rolls, and the Petition, page 16, line 4.

E. The Voter Rolls contain the name Ruth E. Ireland with an address at 41 Pelham Rd. Ms. Ireland signed the Petition with an address at "41 Pelham Rd. Amherst." See Exhibit H-5, a copy of an excerpt from the Voter Rolls, and the Petition, page 20, line 6.

F. The Voter Rolls contain the name of Plaintiff, Maud Beeching Low, with an address at 29 Summer St. Ms. Low signed the Petition with an address at "29 Summer St. Amherst." See Exhibit H-6, a copy of an excerpt from the Voter Rolls, and the Petition, page 044, line 1.

G. The Voter Rolls contain the name of Plaintiff, Gabor Z. Lukacs, with an address at 44 Beston St. Mr. Lukacs signed the Petition with an address at "44 Beston St. 01002." See Exhibit H-7, a copy of an excerpt from the Voter Rolls, and the Petition, page 54, line 6.

81. The Board failed to certify the signature of one voter who inadvertently left the letter "s" off the end of the name of his street on a Petition page. The Voter Rolls state that Plaintiff William J. Cray's address is "41 Shays St." Mr. Cray signed his name on the Petition

with the address "41 Shay Street." See Exhibit I, a copy of an excerpt from the Voter Rolls, and the Petition, page 18, line 3. Because five other signatories on that page of the Petition before and after Mr. Cray wrote the street name "Shays," and there is no "Shay" St. in Amherst, http://gis.amherstma.gov/apps/streetsearch.aspx, the Board should have readily determined that Mr. Cray had signed "substantially as registered," that his name was that of a registered voter at that address, and certified his signature.

82. The Board failed to certify four signatures where the voters signed the Petition on the front side while the reverse side was blank; the Board wrote on this page of the Petition, "not on proper form." There is nothing in G.L. c. 53, § 7, that authorizes boards of registrars to deny certification of signatures on petitions such as the Petition on the basis that there is no text on the reverse side of the page. Additionally, the "exact copy" rule that applies to petitions for state ballot initiatives or state referenda, does not apply to the Petition. See, G.L. c. 53, § 22A.

Accordingly, the Board erred in not certifying the following signatures:

A. The Voter Rolls contain the name Amy Auslande Hirsch with an address at 400 Flat Hill Road. Ms. Hirsch signed the Petition with an address at "400 Flat Hills Road." See Exhibit J-1, a copy of an excerpt from the Voter Rolls, and the Petition, page 212, line 1.

B. The Voter Rolls contain the name of Susan N. Katz with an address at 71 Morgan Circle. Ms. Katz signed the Petition with an address at "71 Morgan Circle." See Exhibit J-2, a copy of an excerpt from the Voter Rolls, and the Petition, page 5, line 1.

C. The Voter Rolls contain the name of Plaintiff, Phyllis F. Robey, with an address at 4 Chestnut Ct. Ms. Robey signed the Petition with an address at "4 Chestnut Court." See Exhibit J-3, a copy of an excerpt from the Voter Rolls, and the Petition, page 4, line 2.

D. The Voter Rolls contain the name of Judy L. Simpson with an address at 30 McClellan St. Ms. Simpson signed the Petition with an address at "30 McClellan St." See Exhibit J-4, a copy of an excerpt from the Voter Rolls, and the Petition, page 5, line 1.

83. The Board failed to certify 28 signatures where the street address matched the signatory's street address on the Voter Rolls, but the signatories did not also list their apartment

number at that address even though such number appeared on the Voter Rolls. These signatures should have been certified because these names are those of registered voters at the addresses provided. G.L. c. 53, § 7, requires voters to "state the address where he or she is currently registered." That "address" refers to the number of the property and the name of the street, but not an apartment number, is apparent from the Secretary's regulations. Section 55.03(4) of 950 CMR states: "For example, a name is not "signed substantially as registered", and registrars shall not certify it, if: (b) [t]he address is different, even if only the house number is different, or if a post office box number rather than a street address appears." If failure to list an apartment number were grounds not to certify a signature, the Secretary would have referenced "apartment numbers" and not only "house numbers" in the Regulations. Because the following voters signed "substantially as registered," and the name was that of a registered voter at the address written, the Board should have certified these signatures.

A. The Voter Rolls contain the name of Plaintiff, Maria L. De Alba, at 12

Longmeadow Dr., Apt. 18. Ms. De Alba signed the Petition and listed her address as "12 Longmeadow Dr. Amherst, MA." See Exhibit K-1, a copy of an excerpt from the Voter Rolls, and the Petition, page 133, line 12.

B. The Voter Rolls contain the name of Plaintiff, Luis De Alba-Rivera, at 12 Longmeadow Dr., Apt. 18. Mr. De Alba-Rivera signed the Petition and listed his address as "12 Longmeadow Dr. Amherst MA" See Exhibit K-2, a copy of an excerpt from the Voter Rolls, and the Petition, page 133, line 11.

C. The Voters Rolls contain the name Marita J. Banda at 170 East Hadley Road, Apt. 41. Ms. Banda signed the Petition and listed her address as "170 E Hadley Road." See Exhibit K-3, a copy of an excerpt from the Voter Rolls, and the Petition, page 58, line 5.

D. The Voter Rolls contain the name Chris H. Bartolich at 170 East Hadley Road, Apt. 118. Bartolich signed the Petition and listed the address as "170 E. Hadley Road, Amherst." See Exhibit K-4, a copy of an excerpt from the Voter Rolls, and the Petition, page 58, line 9.

E. The Voter Rolls contain the name of Plaintiff, Ruthann Beskrowni at 242 North East St., Apt. 22. Ms. Beskrowni signed the Petition and listed the address at "242 N. East

St." See Exhibit K-5, a copy of an excerpt from the Voter Rolls, and the Petition, page 191, line 6.

F. The Voter Rolls contain the name Kyle Ian Dawson at 500 West St., Apt. 1. Mr. Dawson signed the Petition and listed his address as "500 West St." See Exhibit K-6, a copy of an excerpt from the Voter Rolls, and the Petition, page 48, line 8.

G. The Voter Rolls contain the name Caroline Brady DeVane at 410 Old Montague Rd., Apt. 5. Ms. Devane signed the Petition and listed the address at "410 Old Montague Rd". See Exhibit K-7, a copy of an excerpt from the Voter Rolls, and the Petition, page 207, line 1.

H. The Voter Rolls contain the name Dechen Dolma at 170 East Hadley Rd., Apt. 35. Dolma signed the Petition and listed the address as "170 E. Hadley Rd." See Exhibit K-8, a copy of an excerpt from the Voter Rolls, and the Petition, page 58, line 8.

I. The Voter Rolls contain the name Plaintiff, Madelyn D. Farr, at 170 East Hadley Rd., Apt. 132. Ms. Farr signed the Petition and listed her address as "170 E Hadley Rd." See Exhibit K-9, a copy of an excerpt from the Voter Rolls, and the Petition, page 58, line 6.

J. The Voter Rolls contain the name Steven E. Hallett at 112 North Whitney St., Apt. 1. Mr. Hallett signed the Petition and listed his address as "112 N. Whitney St." See Exhibit K-10, a copy of an excerpt from the Voter Rolls, and the Petition, page 20, line 8.

K. The Voter Rolls contain the name Shaneeka Latisha Harrell at 217 South Pleasant St., Apt. 3. Harrell signed the Petition and listed the address as "217 S. Pleasant St." See Exhibit K-11, a copy of an excerpt from the Voter Rolls, and the Petition, page 174, line 12.

L. The Voter Rolls contain the name Robert B. King at 12 Longmeadow Dr., Apt. 15. Mr. King signed the Petition and listed his address as "12 Longmeadow Dr., Amherst, MA". See Exhibit K-12, a copy of an excerpt from the Voter Rolls, and the Petition, page 133, line 13.

M. The Voter Rolls contain the name of Plaintiff, Linda Lorraine Moffa, at 242 North East St., Apt. 18. Ms. Moffa signed the Petition and listed her address as "242 N. East St." See Exhibit K-13, a copy of an excerpt from the Voter Rolls, and the Petition, page 191, line 7.

N. The Voter Rolls contain the name Charlene M. Moran at 25 Greenleaves Dr., Apt. 532. Ms. Moran signed the Petition and listed her address as "25 Greenleaves Dr." See Exhibit K-14, a copy of an excerpt from the Voter Rolls, and the Petition, page 12, line 9.

O. The Voter Rolls contain the name Jennifer Muniz-Rodriguez at 170 East Hadley Rd., Apt. 71. She signed the Petition and listed her address as "170 E Hadley Rd." See Exhibit K-15, a copy of an excerpt from the Voter Rolls, and the Petition, page 72, line 1.

P. The Voter Rolls contain the name Elaine M. O'Brien at 170 East Hadley Rd., Apt. 83. She signed the Petition and listed her address as "170 E Hadley Rd." See Exhibit K-16, a copy of an excerpt from the Voter Rolls, and the Petition, page 21, line 16.

Q. The Voter Rolls contain the name Jack Reilly at 615 Main St., Apt. 46. Mr. Reilly signed the Petition and listed his address as "615 Main St. Amherst, MA 01002". See Exhibit K-17, a copy of an excerpt from the Voter Rolls, and the Petition, page 193, line 2.

R. The Voter Rolls contain the name of Plaintiff, Regina M. Rheault, at 71 North Prospect St., Apt. 1. Ms. Rheault signed the Petition and listed her address as "71 N. Prospect St." See Exhibit K-18, a copy of an excerpt from the Voter Rolls, and the Petition, page 62, line 5.

S. The Voter Rolls contain the name Handan Senbasaranozkili at 170 East Hadley Rd., Apt. 40. He signed the Petition and listed his address as "170 E. Hadley Rd." See Exhibit K-19, a copy of an excerpt from the Voter Rolls, and the Petition, page 58, line 7.

T. The Voter Rolls contain the name Plaintiff, Jameison Francis Sennott, at 232 Northeast St., Apt. 17. He signed the Petition and listed his address as "232 Northeast St." See Exhibit K-20, a copy of an excerpt from the Voter Rolls, and the Petition, page 21, line 14.

U. The Voter Rolls contain the name Plaintiff, Sheila Sennott, at 232 Northeast St., Apt. 17. She signed the Petition and listed her address as "232 Northeast St." See Exhibit K-21, a copy of an excerpt from the Voter Rolls, and the Petition, page 191, line 3.

V. The Voter Rolls contain the name of Plaintiff, Karen C. Silverstein, at 32 North Prospect St., # 4. She signed the Petition and listed her address as "32 N Prospect St." See Exhibit K-22, a copy of an excerpt from the Voter Rolls, and the Petition, page 74, line 3.

W. The Voter Rolls contain the name Susan M. Stanley at 497 East Pleasant St., Apt. 86. She

signed the Petition and listed her address as "497 east Pleasant St." See Exhibit K-23, a copy of an excerpt from the Voter Rolls, and the Petition, page 151, line 12.

X. The Voter Rolls contain the name David Stephen Unger at 410 Old Montague Rd., Apt. 5. He signed the Petition and listed his address as "410 Montague Rd". See Exhibit K-24, a copy of an excerpt from the Voter Rolls, and the Petition, page 207, line 2.

Y. The Voter Rolls contain the name Theresa Jean Veneski at 22 Lessey St., Apt. 214. She signed the Petition and listed her address as "22 Lessey St., Amherst". See Exhibit K-25, a copy of an excerpt from the Voter Rolls, and the Petition, page 15, line 15.

Z. The Voter Rolls contain the name Anastasia Wilson at 83 North Whitney St., Apt. 5. She signed the Petition and listed her address as "83 N. Whitney Amherst". See Exhibit K-26, a copy of an excerpt from the Voter Rolls, and the Petition, page 16, line 6.

AA. The Voter Rolls contain the name Arline Gerald Wright at 12 Longmeadow Dr., Apt. 12. She signed the Petition and listed her address as "12 Longmeadow Dr. Amherst". See Exhibit K-27, a copy of an excerpt from the Voter Rolls, and the Petition, page 133, line 14.

BB. The Voter Rolls contain the name Maria E. Moos at 83 North Whitney St., Apartment 8. She signed the Petition and listed her address at 83 N. Whitney Amherst". See Exhibit K-28, a copy of an excerpt from the Voter Rolls, and the Petition, page 16, line 5.

84. The Board failed to certify one signature where the voter signed and printed his name on one line, and wrote his address on the next line. This signature should have been certified because the voter signed "substantially as registered" and it should have been apparent to the Board that the name was that of a registered voter at the address provided on the line below the signature and printed name, and certified his signature. Specifically, the Voter Rolls contain the name of Plaintiff, John J. Michaels with an address at 18 North Prospect St. Mr. Michaels signed the Petition and printed his name on page 62, line 2 of the Petition, and printed his address of "18 N. Prospect St." on line 3. See Exhibit L, a copy of an excerpt from the Voter Rolls, and the Petition, page 62, lines 2-3.

The Statutory and Regulatory Standards for Certifying Signatures

85. As noted above, G.L. c. 53, § 7, requires that a signature be signed "substantially" as registered, not "exactly" as registered." It provides further, "[i]f the registrars can reasonably

determine from the form of the signature the identity of the duly registered voter, the name shall be deemed to have been signed substantially as registered." It provides one example of a situation where a board of registrars may not decline to certify a signature because of a variation between the signature on file and the signature on a petition: "[f]or the purposes of this section a registered voter who in signing his name to a nomination paper inserts a middle

name or initial in, or omits a middle name or initial from, his name as registered shall be deemed to have signed his name substantially as registered."

86. The Regulations provide guidance on types of signatures that should be deemed signed "substantially as registered." They are, however, as applied to some signatures, improperly more stringent than the above-quoted language of the statute.

87. Section 55.03(3) of 950 CMR provides similarly, "In general, a name is 'signed substantially as registered' if it can reasonably be determined to be that of a registered voter." That section then provides specific examples of signatures that must be certified: "[f]or example, registrars shall certify names in which:

> (a) A middle initial is inserted or omitted.
> (b) A common or known nickname is used.
> (c) Two initials are used with a surname.
> (d) One initial is used with a surname, if no other registered voter with that initial lives at the indicated address.
> (e) "Jr." or "Sr." is inserted or omitted.
> (f) Ditto marks are used to indicate a correct address.
> (g) The name is printed.

(emphasis added).

The Board Cannot Satisfy its Burden as to Seventeen Signatures It Declined to Certify on the Basis of the "S" Designation.

88. As set forth in detail in paragraphs 89 to 94 below, the Board erred by failing to certify 17

signatures where the signature matched the name on the Voter Rolls and in failing to certify signatures that G.L. c. 53, § 7, and the Regulations provide should be certified, as follows: A. Denial of 2 signatures with no basis;

B. Denial of 5 signatures because a middle initial or name was inserted or omitted;

C. Denial of 1 signature because a common or known nickname was used;

D. Denial of 2 signatures because two initials were used with a surname;

E. Denial of 4 signatures because one initial was used with a surname when no other registered voter with that initial lives at the indicated address.

F. Denial of 3 signatures because the name was printed.

89. The Board erroneously failed to certify two signatures where the voter signed the Petition exactly as registered.

A. The Voter Rolls contain the name of Leangmeylean Hok at 111 Logtown Rd. The Petition contains the legible signature, "Leangmeylean Hok 111 Logtown Rd." See Exhibit M-1, an excerpt from the Voter Roll and the Petition, page 181, line 2.

B. The Voter Rolls contain the name of Tiffany Joseph at 124 Meadow St. The Petition contains the legible signature, "Tiffany Joseph 124 Meadow St. 01002" See Exhibit M-2, an excerpt from the Voter Rolls and the Petition, page 62, line 9.

90. The Board failed to comply with G.L. c. 53, § 7, and 950 CMR 55.03(3)(a) by not certifying four signatures where the signatory inserted or omitted a middle initial or name. These four signatures should have been certified.

A. The Voter Rolls contain the name of Plaintiff, Barry B. Brooks, at 51 Valley View Dr. The Petition contains the signature, "Barry Brooks 51 Valley View Dr. Amherst." See Exhibit N-1, an excerpt from the Voter Rolls and Petition, page 205, line 4.

B. The Voter Rolls contain the name of Robin G. Diamond, at 31 Woodlot Rd. Ms. Diamond signed the Petition, "Robin Diamond 31 Woodlot Rd." See Exhibit N-2, an

excerpt from the Voter Roll and Petition page 205, line 4.

C. The Voter Rolls contain the name Jennifer M. Fabrizi at 150 East Leverett Rd. Ms. Fabrizi signed the Petition, "Jennifer Fabrizi, 150 East Leverett Rd.", without her middle initial. See Exhibit N-3, an excerpt from the Voter Roll and Petition page 76, line 1.

D. The Voter Rolls contain the name Judith Rae Ostendorf at 918 East Pleasant St. Ms. Ostendorf signed the Petition, "Judith Ostendorf, 918 E. Pleasant St.", without her middle name. See Exhibit N-4, an excerpt from the Voter Roll and Petition page 150, line 3.

E. The Voter Rolls contain the name of Plaintiff, Jane F. Ziff, at 24 Moorland St. Ms. Ziff signed the Petition, Jane Ziff, 24 Moorland", without her middle initial or the abbreviation "St." See Exhibit N-5, an excerpt from the Voter Roll and Petition page 195, line 3.

91. The Board failed to comply with G.L. c. 53, § 7, and 950 CMR 55.03(3)(b) by not certifying two signatures where the signatory used a common or known nickname and, even if the nickname were not common, the Board "can reasonably determine from the form of the signature the identity of the duly registered voter." The Voter Rolls contain the name of Plaintiff, Mariangeles R. Vicente, at 121 Tracy Cir. Ms. Vicente signed the Petition, "Mari Vicente, 121 Tracy Cir." See Exhibit O, an excerpt from the Voter Roll and Petition page 139, line 5. "Mari" is a common nickname for "Mariangeles". In addition, as discussed above, the absence of her middle initial is not grounds to deny certification. 950 CMR 55.03(3)(a).

92. The Board failed to comply with 950 CMR 55.03(3)(c) by not certifying two signatures where the Board "can reasonably determine from the form of the signature the identity of the duly registered voter" in part because the signatory used two initials with a surname.

A. The Voter Rolls contain the name of Plaintiff, Thomas N. Gardner, at 59 Valley View Dr. Mr. Gardner signed the Petition, "TN Gardner, 59 Valley View Dr." See Exhibit P-1, an excerpt from the Voter Roll and Petition page 75, line 11.

B. The Voter Rolls contain the name Plaintiff, Robert M. Winston, at 37 Salem St. Mr. Winston signed the Petition "Rm Winston, 37 Salem St." See Exhibit P-2, an excerpt from the Voter Roll, and the Petition, page 14, line 1.

93. The Board failed to comply with G.L. c. 53, § 7 and 950 CMR 55.03(3)(d) by not

certifying four signatures where the signatory used a first initial with a surname when there was no other registered voter with that initial at that address. The Board should have certified these signatures:

A. The Voter Rolls contain the name of Hillary A. Milens at 18 Bedford Ct. Ms. Milens signed the Petition, "H. Milens" and listed her address as "18 Bedford Ct." See Exhibit Q-1, an excerpt from the Voter Roll and Petition page 18, line 8. There is no other voter

registered at 18 Bedford Ct. whose first initial is "H". See excerpts from the Voter Rolls for the other residents of 18 Bedford Ct. at id.

B. The Voter Rolls contain the name of Plaintiff, Skyler J. Arndt-Briggs, at 29 Henry St. Ms. Arndt-Briggs signed the Petition, "S. Arndt-Briggs 29 Henry St." See Exhibit Q-2, an excerpt from the Voter Roll and Petition page 99, line 16. There is no other voter registered at 29 Henry St. whose first initial is "S". See excerpts from the Voter Rolls for the other residents of 29 Henry St. at id. Also, her voter registration card shows that she signs her last name first. Id.

C. The Voter Rolls contain the name of Plaintiff, Jian Chang, at 23 Phillips St. Ms. Chang signed the Petition, "Chang, J., 23 Phillips St." See Exhibit Q-3, an excerpt from the Voter Roll and the Petition, page 78, line 1. There is no other voter registered at 23 Phillips St. whose first initial is "J." See excerpts from the Voter Rolls for the other residents of 23 Phillips St. at id.. Even though she listed her last name first and used only her first initial, Ms. Chang signed substantially as registered. See 950 CMR 55.03(3)(d) and Exhibit R-3. Accordingly, the Board should have certified Ms. Chang's signature.

D. The Voter Rolls contain the name Plaintiff, Jennifer Goodheart, at 32 Jenks St. Ms. Goodheart signed the Petition, "J. Goodheart 32 Jenks St." See Exhibit Q-4, an excerpt from the Voter Roll and the Petition page 12, line 9. There is no other voter registered at 32 Jenks St. whose first initial is "J". See excerpts from the Voter Rolls for the other residents of 32 Jenks St. at id. Accordingly, under 950 CMR 55.03(3), the Board should have certified Ms. Goodheart's signature on the Petition.

94. The Board failed to comply with G.L. c. 53, § 7, and 950 CMR 55.03(3)(g) by not certifying the signatures of three voters who printed their names next to their signatures. These names should have been certified.

A. The Voter Rolls contain the name of Plaintiff, Gruff Owen Davies, at 41 Blue Hills Rd. Mr. Davies' signature on the Petition is difficult to read, but he printed next to his signature, "Gruff Davies, 41 Blue Hills Rd. Amherst" See Exhibit R-1, an excerpt from the Voter Roll and Petition page 002, line 17. Based on the printed name and the address, under 950 CMR § 55.03(3)(g), the Board should have certified Mr. Davies' signature.

B. The Voter Rolls contain the name Corinna Frieda Serviente at 170 East Hadley Rd., Apt. 46. Ms. Serviente signed the Petition and printed her name, Corinne Serviente 170 E. Hadley Rd #46." See Exhibit R-2, an excerpt from the Voter Roll and Petition page 60, line 9. Based on the printed name and address, under 950 CMR § 55.03(3)(g), the Board should have certified Ms. Serviente's signature.

C. The Voter Rolls contain the name Amilcar Shabazz at 29 Chapel Rd. Mr. Shabazz printed his name "Amilcar Shabazz, 29 Chapel Rd." See Exhibit R-3, an excerpt from

the Voter Roll and Petition page 2, line 17. Based on the printed name and address, under 950 CMR § 55.03(3)(g), the Board should have certified Mr. Shabazz's signature.

COUNT I
(For Declaratory Relief)

95. Plaintiffs restate and reallege the allegations of the paragraphs set forth above as if restated and realleged herein.

96. The Board, as a public entity, owed a duty to the Plaintiffs and other signatories on the Petition to comply with G.L. c. 53, § 7, and the Regulations, and not to violate their rights under the United States Constitution and the Massachusetts Declaration of Rights, in deciding whether to certify the signatures on the Petition.

97. There is an actual controversy between the Plaintiffs and the Board as to whether the Board:

A. Breached its duty to the Plaintiffs and the other signatories on the Petition and violated G.L. c. 53, § 7, and the Regulations, by failing to certify at least 76 signatures on the Petition that it should have certified;

B. Breached its duty to the Plaintiffs and the other signatories on the Petition under the Town Charter and otherwise erred by concluding that proponents of the Petition had not satisfied the 5% threshold for a Voter Veto petition set forth in the Town Charter;

C. Violated Plaintiffs' right to petition the government to redress grievances

under Article 16 of the Massachusetts Declaration of Right and the First Amendment to the United States Constitution by (i) failing to certify at least 76 signatures on the Petition that it was required to certify; (ii) violating G.L. c. 53, § 7, and the Regulations; and (iii) erroneously concluding that proponents of the Petition had not satisfied the 5% threshold under the Town Charter; and

D. Violated Plaintiffs' fundamental right to vote under Article 9 of the Massachusetts Declaration of Rights and the United States Constitution by (i) failing to certify at least 76 signatures on the Petition that it was required to certify; (ii) violating G.L. c. 53, § 7, and the Regulations; and (iii) erroneously concluding that proponents of the Petition had not satisfied the 5% threshold under the Town Charter, in that such violations resulted in the Board not counting at least 76 "votes" on the Petition that it should have counted and depriving those signatories and other proponents of the Petition the right to vote on whether to repeal the Measure.

98. Plaintiffs have been injured by the Board's:

A. Breach of its duty to the Plaintiffs and the other signatories on the Petition by violating G.L. c. 53, § 7, and the Regulations in failing to certify at least 76 signatures on the Petition that it should have certified;

B. Breach of its duty to the Plaintiffs and the other signatories on the Petition under the Town Charter by concluding that proponents of the Petition had not satisfied the 5% threshold for a Voter Veto petition set forth in the Town Charter;

C. Violation of Plaintiffs' right to petition the government to redress grievances under Article 16 of the Massachusetts Declaration of Right and the First Amendment to the United States Constitution by (i) failing to certify at least 76 signatures on the Petition that it

was required to certify; (ii) violating G.L. c. 53, § 7, and the Regulations; and (iii) erroneously concluding that proponents of the Petition had not satisfied the 5% threshold under the Town Charter; and

D. Violation of Plaintiffs' fundamental right to vote under Article 9 of the Massachusetts Declaration of Rights and the United States Constitution by (i) failing to certify at

least 76 signatures on the Petition that it was required to certify; (ii) violating G.L. c. 53, § 7, and the Regulations; and (iii) erroneously concluding that proponents of the Petition had not satisfied the 5% threshold under the Town Charter, in that such violations resulted in the Board not counting at least 76 "votes" on the Petition that it should have counted and depriving those signatories and other proponents of the Petition the right to vote on whether to repeal the Measure.

99. Plaintiffs are entitled to declarations that the Board:

A. Breached its duty to the Plaintiffs by violating G.L. c. 53, § 7, and 950 CMR 55.00, et seq., and failing to certify the at least 76 signatures on the Petition described above;

B. Breached its duty to the Plaintiffs by violating the Town Charter in concluding that proponents of the Petition had not satisfied the 5% threshold for a Voter Veto petition as a result of its wrongfully failing to certify the at least 76 signatures on the Petition described above;

C. Violated Plaintiffs' right to petition the government to redress grievances under Article 16 of the Massachusetts Declaration of Right and the First Amendment to the United States Constitution by (i) failing to certify at least 76 signatures on the Petition that it was required to certify; (ii) violating G.L. c. 53, § 7, and the Regulations; and (iii) erroneously

concluding that proponents of the Petition had not satisfied the 5% threshold under the Town Charter; and

D. Violated Plaintiffs' fundamental right to vote under Article 9 of the Massachusetts Declaration of Rights and the United States Constitution by failing to certify at least 76 signatures on the Petition that it was required to certify; (ii) violating G.L. c. 53, § 7, and

the Regulations; and (iii) erroneously concluding that proponents of the Petition had not satisfied the 5% threshold under the Town Charter, in that such violations resulted in the Board not counting at least 76 "votes" on the Petition that it should have counted and depriving those 76 and other proponents of the Petition of the right to vote on whether to repeal the Measure.

100. Entry of the requested declarations would lead to resolution of the dispute between the Plaintiffs and the Board.

WHEREFORE, PLAINTIFFS REQUEST THE RELIEF SET FORTH BELOW.

COUNT II
(For Relief in the Nature of Mandamus pursuant to G.L. c. 249, § 5)

101. Plaintiffs restate and reallege the allegations of the paragraphs set forth above as if restated and realleged herein.

102. As a result of the Board's violations of law as set forth above, the Plaintiffs are entitled to entry of an order of mandamus directing the Board to (a) certify at least 76 additional signatures on the Petition, and (b) conclude that the proponents of the Petition have satisfied the 5% threshold for a Voter Veto petition set in the Town Charter.

WHEREFORE, PLAINTIFFS REQUEST THE RELIEF SET FORTH BELOW.

PRAYERS FOR RELIEF

Plaintiffs respectfully requests that this Court:

A. On Count I, enter Judgment in favor of Plaintiffs declaring that the Board: 1. Breached its duty to the Plaintiffs by violating G.L. c. 53, § 7, and 950 CMR 55.00, et seq., and failing to certify the at least 76 signatures on the Petition described above;

2. Breached its duty to the Plaintiffs by violating the Town Charter in concluding that proponents of the Petition had not satisfied the 5% threshold for a Voter Veto petition as a result of its wrongfully failing to certify the at least 76 signatures on the Petition described above;

3. Violated Plaintiffs' right to petition the government to redress grievances under Article 16 of the Massachusetts Declaration of Right and the First Amendment to the United States Constitution by (i) failing to certify at least 76 signatures on the Petition that it was required to certify; (ii) violating G.L. c. 53, § 7, and the Regulations; and (iii) erroneously concluding that proponents of the Petition had not satisfied the 5% threshold under the Town Charter; and

4. Violated Plaintiffs' fundamental right to vote under Article 9 of the Massachusetts Declaration of Rights and the United States Constitution by (i) failing to certify at least 76 signatures on the Petition that it was required to certify; (ii) violating G.L. c. 53, § 7, and the Regulations; and (iii) erroneously concluding that proponents of the Petition had not satisfied the 5% threshold under the Town Charter, in that such violations resulted in the Board not counting at least 76 "votes" on the Petition that it should have counted and depriving those 76 and other proponents of the Petition of the right to vote on whether to repeal the Measure.

5. On Count II, enter Judgment in favor of the Plaintiffs directing the Town to certify on the Petition the at least the 76 signatures described herein, and conclude that the proponents of the

Petition have satisfied the 5% threshold required by the Charter;

6. On both Counts, enter Judgment in favor of the Plaintiffs granting them their reasonable attorneys' fees and costs in this matter including, without limitation, those arising from the Board's violation of their federal constitutional rights; and

7. On both Counts, enter Judgment in favor of Plaintiffs granting them such other relief as may be appropriate and just.

TERRY Y. ALLEN, et al., TERRY Y. ALLEN, et al., Respectfully submitted, Respectfully submitted,

By their attorneys, By their attorneys,

\s\ Carol Gray /s/ Thomas O. Bean
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