

Try Again Next Year: Examining the Constitutionality of Voter Registration Deadlines in Massachusetts

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States first started enacting laws requiring personal registration of voters in the late nineteenth century.² Since 1993, Massachusetts law requires that an individual voting in any election must register to vote twenty days prior to the day of the election.³ At the same time, Massachusetts courts have long held that the right to vote is a fundamental right protected by the Massachusetts Constitution.⁴

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² See Mark Thomas Quinlivan, Note, *One Person, One Vote Revisited: The Impending Necessity of Judicial Intervention in the Realm of Voter Registration*, 137 U. PA. L. REV. 2361, 2365-72 (1989) (describing evolution of voter registration laws).

³ See MASS. GEN. LAWS ch. 51, § 26 (2018). “[R]egistration for the next election shall take place no later than eight o’clock in the evening on the twentieth day preceding such election and no later than eight o’clock in the evening on the tenth day preceding a special town meeting.” *Id.*

⁴ See Att’y Gen. v. Suffolk Cty. Apportionment Comm’rs, 113 N.E. 581, 584 (Mass. 1916) (holding right to vote “fundamental personal and political right”).

In *Chelsea Collaborative, Inc. v. Secretary of the Commonwealth*,⁵ the Supreme Judicial Court of Massachusetts (SJC) considered whether the twenty-day voter registration blackout period is a violation of the Massachusetts Constitution based on an infringement of the fundamental right to vote.⁶ The plaintiffs in the case were two voter registration organizations and an individual who sought to vote in the presidential election of 2016, but failed to register by the deadline.⁷ The plaintiffs filed a preliminary injunction, seeking to allow the three original, individual plaintiffs who missed the registration deadline to vote in the election.⁸ Granting the preliminary injunction, the trial court judge ordered the defendants to accept and count the plaintiffs' provisional ballots, ruling that the twenty-day registration deadline was unconstitutional.⁹ On appeal, the SJC applied a rational basis

⁵ 100 N.E.3d 326 (Mass. 2018).

⁶ See *id.* at 327.

⁷ See *id.* at 329.

⁸ See *id.* at 329-30.

⁹ See *Chelsea Collaborative, Inc.*, 100 N.E.3d at 330; *Chelsea Collaborative v. Galvin*, No. SUCV2016-3354-D, 2017 WL 4125039, at *3 (Mass. Super. Ct. July 25, 2017), vacated, *Chelsea Collaborative, Inc. v. Sec'y of the Commonwealth*, 100 N.E.3d 326 (Mass. 2018) (holding twenty-day voter registration blackout period unconstitutional).

approach, and ultimately held that the twenty-day voter registration deadline is constitutional.¹⁰

The SJC's logic of weighing voting rights against the police power of the Massachusetts Legislature (Legislature) is flawed because the Massachusetts Constitution confers no express authority upon the Legislature to use its police power to regulate the voting rights of qualified citizens.¹¹ Indeed, it is well-established Massachusetts law that any statutes imposed by the Legislature are inferior to the state's constitution.¹² Suffrage rights are explicitly specified by the constitution, and the Legislature should not be permitted to alter these essential qualifications.¹³ Put simply, the Legislature has no authority to establish a voter registration deadline because the Massachusetts Constitution grants the right of suffrage to all citizens who meet the short list of

¹⁰ See *Chelsea Collaborative, Inc.*, 100 N.E.3d at 336, 341.

¹¹ See *Galvin*, 2017 WL 4125039, at *25.

¹² See *In re Opinion of the Justices*, 143 N.E. 142, 143 (Mass. 1924). “The right of suffrage is thus defined and its qualifications are specified by the Constitution. The General Court can neither add to nor subtract from these essentials.” *Id.*

¹³ See *id.*

qualifications, and registering twenty days prior to elections is not among them.¹⁴

The SJC contradicts itself by arguing that a simplified registration process justifies the twenty-day registration deadline, while at the same time recognizing that technological advancements may render the deadline to be a significant interference on the right to vote.¹⁵ Technological advancements unequivocally play a vital role in facilitating the state's ability to keep track of and verify their registration records.¹⁶ Therefore, registration deadlines are outdated and unduly burden an individual's fundamental right to vote.¹⁷

Generations of Americans have fought, and even died, to secure the freedom of all people to participate in our democracy. Without a doubt, voter registration deadlines, absent careful

¹⁴ See *Kinneen v. Wells*, 11 N.E. 916, 919 (Mass. 1887) (demonstrating lack of twenty-day registration requirement in Massachusetts law).

¹⁵ See *Chelsea Collaborative, Inc.*, 100 N.E.3d at 334-35.

¹⁶ See Andrea M. Lee, Note, *Don't Save the Date: How More Restrictive State Voter Registration Deadlines Disenfranchise Minority Movers*, 43 COLUM. J. L. & SOC. PROBS. 245, 277 (2010).

¹⁷ See *Chelsea Collaborative v. Galvin*, No. SUCV2016-3354-D, 2017 WL 4125039, at *27 (Mass. Super. Ct. July 25, 2017), *vacated*, *Chelsea Collaborative, Inc. v. Sec'y of the Commonwealth*, 100 N.E.3d 326 (Mass. 2018).

consideration, may pose a great threat to the democratic process. Individuals turned away at the polls for failing to register by a certain deadline may be the difference in the outcome of an election. The right to vote is far too precious to be regulated in a way that denies a qualified citizen the opportunity to make their voice heard. As for now, all eyes are on the Legislature to pass same-day voter registration and protect the precious freedoms guaranteed by the Massachusetts Constitution.