

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, ss.

SUPERIOR COURT
ACTION NO. 2180CV00081

TERRY Y. ALLEN and others¹

vs.

BOARD OF REGISTRARS OF THE TOWN OF AMHERST

MEMORANDUM OF DECISION AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT AND PLAINTIFFS' MOTIONS TO AMEND AND FOR DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION

Before me are cross-motions for summary judgment (##18 & 18.3) and related motions to strike (##18.7 & 18.9) as well as two additional motions of the plaintiffs: Plaintiffs' Motion Requesting Leave of the Court to Amend Complaint and Expedited Scheduling (#30), in which the plaintiffs request leave to add four counts (Counts V-VIII) to the first amended complaint; and Plaintiffs' Motion for Declaratory Judgment and for a Preliminary Injunction (#31), in which the plaintiffs request that the court award the relief sought in the proposed additional counts. After review of the parties' submissions and hearing on July 16, 2021, August 13, 2021, and November 30, 2021, for the reasons set forth below, the court will allow the defendant's motion for summary judgment and deny the plaintiffs' motions for summary judgment, to amend the first amended complaint, and for preliminary injunction.

BACKGROUND

On April 5, 2021, the Amherst town council passed a measure authorizing and approving

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the borrowing of funds for the expansion and renovation of the Jones Library. The measure was approved by a vote of ten councilors in favor, with two opposed and one abstaining. On April 20, 2021, opponents of the library renovation measure timely filed, in accordance with the voter veto procedure set forth in Section 8.4 of the Amherst Home Rule Charter, a petition containing 1,088 signatures. The voter veto procedure requires that the petition contain signatures of a minimum of 5% of the town's registered voters. The Board of Registrars of the Town of Amherst (Board) determined that 864 certified signatures were required to meet this threshold. On or about April 22, 2021, the Board reported that, "pursuant to 950 CMR section 55.03," it had certified 842 of the 1,088 signatures on the petition. It concluded, therefore, that the petition had failed to produce enough signatures of registered voters to initiate next steps in the voter veto process.

On May 20, 2021, plaintiffs filed this action in the Supreme Judicial Court for Suffolk County and, on June 22, 2021, the case was transferred to this court for entry and disposition. In the first amended complaint, which contains four counts, the plaintiffs allege that the Board erroneously failed to certify at least 76 signatures by, among other things, not certifying signatures of voters who did not include apartment numbers in their addresses on the petition; not certifying signatures of voters who included the town in their addresses on the petition; and not certifying the signatures of voters who did not abbreviate "Lane" or "Road" in their addresses on the petition where the voters' address on the voter roll did abbreviate "Lane" or "Road." In Count I, the plaintiffs seek a declaration that the Board breached its duty to the plaintiffs by violating G.L. c. 53, § 7, 950 Code Mass. Regs. §§ 55.00, and the Amherst Home Rule Charter and violated the plaintiffs' rights to petition government to redress grievances and to vote under the Massachusetts Declaration of Rights and the United States Constitution. In Count II, the plaintiffs seek an order of mandamus directing the Board to "(a) certify ... the at least 76 signatures described [in the first amended complaint] and (b) conclude that the

proponents of the Petition have satisfied the 5% threshold for a Voter Veto petition set in the Town Charter.” In Count III, the plaintiffs seek a judgment that the Board violated the plaintiffs’ rights under 42 U.S.C. § 1983 by depriving them of their Federal constitutional rights to vote and to petition government to redress grievances, and in Count IV, the plaintiffs seek an award of reasonable attorneys’ fees and costs under 42 U.S.C. § 1988.

On July 13, 2021, the plaintiffs filed a motion entitled “Emergency Motion to Set Schedule for Briefing, Hearing and Disposition on its Motion for Summary Judgment on Counts I and II of Their Amended Complaint” in connection with their motion for summary judgment, which they represented would be served in hand on July 19, 2021, and, on July 16, 2021, the court held a hearing concerning the plaintiffs’ motion for summary judgment and request for expedited hearing. In the emergency motion to set schedule, the plaintiffs argued that if they were successful in placing their question on the ballot, it would be in the best interest of all parties concerned that the question be placed on the ballot for the November 2, 2021 town biennial election and that, in order for the question to be placed on the November 2, 2021 ballot, the plaintiffs’ motion for summary judgment would need to be decided by late August. On July 19, 2021, the plaintiffs filed and served their motion for summary judgment. The motion for summary judgment seeks judgment on Counts I and II of the first amended complaint. On July 21, 2021, the court issued an order on the plaintiffs’ emergency motion to set schedule, expediting some deadlines and scheduling an evidentiary hearing for August 23, 2021, so that, if the plaintiffs prevailed on their motion for summary judgment, the voter veto question could be placed on the November 2, 2021 ballot.

On August 2, 2021, the Amherst town council voted to place a question on the ballot for the November 2, 2021 town election asking if the measure approved by the town council on April 5, 2021, should be affirmed. On August 3, 2021, the Board filed a motion entitled “Defendant’s Emergency Motion to Stay Proceedings on Plaintiffs’ Motions for Summary

Judgment and Preliminary Injunction.” On August 5, 2021, the plaintiffs filed a motion for preliminary injunction and 9A package. The requested preliminary injunction would have provided the same relief requested in Count II of the first amended complaint.

On August 13, 2021, the court conducted another hearing. On August 16, 2021, the plaintiffs filed the motion for summary judgment 9A package including defendant’s cross-motion for summary judgment on all counts of the first amended complaint.² On August 19, 2021, concluding that the town council-approved ballot question was equivalent to the question that could be placed on the ballot if the plaintiffs were to prevail on their motion for summary judgment and that, therefore, need for an expedited hearing and decision on the plaintiff’s motion for summary judgment no longer existed, the court issued a decision on the emergency motion to stay vacating the court’s July 21, 2021 scheduling order and canceling the hearing on the plaintiffs’ motion for summary judgment scheduled for August 23, 2021. Also on August 19, 2021, the court issued a decision denying the plaintiffs’ motion for a preliminary injunction, noting that, in light of the placement of the town council-approved ballot question on the November 2, 2021 ballot, the plaintiffs had failed to demonstrate that they would suffer irreparable harm from denial of their motion.

On October 26, 2021, the plaintiffs filed an “emergency” motion for declaratory judgment requesting a declaration that “the library referendum question on the November 2, 2021 ballot requires a 2/3 vote to prevail, as mandated by M.G.L. Chapter 44, Section 7.” The court denied the motion by order dated November 1, 2021, for failure to comply with Superior

² In both its motion for summary judgment and its memorandum in support, the defendant requests that the court enter judgment in its favor and dismiss all counts of the first amended complaint. In Plaintiffs’ Reply to Defendant’s Opposition to Their Motion for Summary Judgment on Counts I and II of Their Amended Complaint and Memorandum in Support of Plaintiffs’ Opposition to Defendant’s Cross-Motion for Summary Judgment, the plaintiffs state, erroneously, that the defendant does not identify on which claims it is moving for summary judgment, assert that they assume the defendant moves only on Counts I and II of the first amended complaint, and purport to “reserve[] the right to supplement [their] papers” if the defendant is actually moving for summary judgment on any other counts. The plaintiffs have no authority to “reserve the right to supplement” their papers, however.

Court Rule 9A. On November 3, 2021, following approval of the ballot measure by more than a simple majority but less than a two-thirds majority, plaintiffs filed a Motion Requesting Leave of the Court to Amend Complaint and Expedited Scheduling and another “emergency” motion for declaratory judgment and a preliminary injunction.³ The court denied both November 3 motions for failure to comply with Superior Court Rule 9A.

On November 22, 2021, the plaintiffs filed the two additional motions now before the court. In the motion to amend (#30), the plaintiffs seek leave to amend the first amended complaint to add four new counts. In the motion for declaratory judgment and preliminary injunction (#31), the plaintiffs ask the court to provide the relief sought in the proposed additional counts. Specifically, the plaintiffs request that the court (1) allow amendment of the first amended complaint to add a fifth count seeking a declaration that “a 2/3 vote is required for the November 2, 2021, library project referendum to succeed as mandated by M.G.L. Chapter 44, Section 7” and then “[i]ssue a declaratory judgment that a 2/3 vote is required for the library project to be successful due to the mandate of M.G.L. Chapter 44, Section 7;” (2) allow amendment of the first amended complaint to add a sixth count seeking a preliminary injunction to enjoin the Town of Amherst from taking any actions in furtherance of the library renovation and then enjoin the Town of Amherst “from taking any action on the results of the November 2, 2021, library project referendum until the Court has ruled on Plaintiffs’ request for declaratory relief; (3) allow amendment of the first amended complaint to add a seventh count seeking a preliminary injunction requiring rescission of the Town Clerk’s “Standards for Certifying Signatures” and then require the Town to rescind the standards; and (4) allow amendment of the first amended complaint to add an eighth count seeking “equitable relief based on [the Board]’s failure to certify at least 76 signatures on the Voter Veto petition” and then “[p]rovide any

³ The November 3 motions sought the same relief as Plaintiffs’ Motion Requesting Leave of the Court to Amend Complaint and Expedited Scheduling (#30) and Plaintiffs’ Motion for Declaratory Judgment and for a Preliminary Injunction (#31), both now before the court.

equitable relief the Court deems appropriate growing out of [the Board]’s failure to certify at least 76 signatures on the Voter Veto petition.”

ANALYSIS

A. Motion to Amend and Motion for Declaratory Judgment and Preliminary Injunction.

“Although leave to amend should be ‘freely given when justice so requires,’ Mass. R. Civ. P. 15 (a) ..., such leave may be denied where amending the complaint would be futile.” *Chang v. Winklevoss*, 95 Mass. App. Ct. 202, 212 (2019). “An amended complaint is futile if the amended claims would not survive a motion to dismiss for failure to state a claim.” *Id.* Allegations are sufficient to survive a motion to dismiss under rule 12(b)(6) if they “plausibly suggest [and are] (not merely consistent with)” an entitlement to relief. See *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). The factual allegations must “raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact) . . .” *Id.*, quoting *Bell Atl. Corp.*, 550 U.S. at 557. “While a complaint attacked by a . . . motion to dismiss does not need detailed factual allegations . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions . . .” (quotation omitted). *Id.*, quoting *Bell Atl. Corp.*, 550 U.S. at 545.

1. **Proposed Counts V and VI.** In proposed Count V, the plaintiffs seek a declaration that “a 2/3 vote is required for the November 2, 2021, library project referendum to succeed as mandated by M.G.L. Chapter 44, Section 7” and in proposed Count VI, they seek a preliminary injunction enjoining Amherst from taking any actions in furtherance of the library renovation. In their motion for declaratory judgment and for a preliminary injunction, they request that the court grant the relief sought in proposed Counts V and VI.

Section 7 governs how municipalities may incur debt and states that “[c]ities and towns

may incur debt, by a two-thirds vote . . .” G.L. c. 44, § 7. The term “two-thirds vote” is defined in G.L. c. 44, § 1. Section 1 states:

“Majority vote’ and ‘two-thirds vote’, as applied to towns or districts, the vote of a majority or two thirds, respectively, of the voters present and voting at a meeting duly called, and, as applied to cities, the vote taken by yeas and nays of a majority or of two thirds, as the case may require, of all members of each branch of the city government where there are two branches, or of all members where there is a single branch of the city government, or of a majority or two thirds of the commissioners where the government consists of a commission; and in every case subject to the approval of the mayor, where such approval is required by the charter of the city.”

G.L. c. 44, § 1. Amherst is a “city.” See Amherst Home Rule Charter, § 1.4 (“For the purposes of classifying Amherst in those instances where the laws of the Commonwealth may distinguish between municipalities classified as ‘towns’ and those classified as ‘cities’, it is intended that this Charter shall be construed as providing a city form of government”). The town council exercises the legislative powers of Amherst city government and the town manager heads the executive branch. See Amherst Home Rule Charter, § 1.3. To incur debt in compliance with G.L. c. 44, § 7, then, incurrence of the debt must be approved by two thirds of the members of the Amherst town council. The parties agree that the library renovation measure was approved by two thirds of the members of the Amherst town council. Amherst complied with G.L. c. 44, § 7.

The plaintiffs argue, however, that approval of the library renovation measure ballot question by less than a two-thirds majority of those voting in the November 2, 2021 town election does not meet the requirement of G.L. c. 44, § 7, that debt be incurred only through “a two-thirds vote.” The plaintiffs’ argument is without merit. As noted above, the vote of the town council on April 5, 2021, satisfied the two-thirds vote requirement of G.L. c. 44, § 7. Nothing in G.L. c. 44, § 7, requires a further approval by a city’s voters or specifies by what margin such an approval would need to be. Addition of proposed Counts V and VI to the first amended complaint would be futile. See *Chang*, 95 Mass. App. Ct. at 212; *Iannacchino*, 451 Mass. at 636.

2. **Proposed Count VII.** In their motion to amend, plaintiffs request leave to add a seventh count claiming that certain “Standards for Certifying Signatures” are “inconsistent with state law” and seeking a preliminary injunction requiring the town clerk to “rescind” them. In their motion for declaratory judgment and for a preliminary injunction, the plaintiffs request that the court enter a preliminary injunction requiring Amherst to rescind the “Standards for Certifying Signatures.” The defendants argue (1) that the proposed amendment fails to provide sufficient notice of the claim; and (2) that the plaintiffs lack standing.

“Standards for Certifying Signatures” is a heading in a document entitled “Signature Gathering Helpful Guidelines” (Guidelines). Although proposed Count VII does not state how the “Standards for Certifying Signatures” are inconsistent with State law, in their reply to the defendants’ opposition to the motion to amend, the plaintiffs claim that three statements appearing under the “Standards for Certifying Signatures” heading are inconsistent with 950 Code Mass. Regs. § 55.03. The allegedly inconsistent statements are: (1) “If voter lives in an apartment building, the apartment number must be listed; (2) “If voter shares the same name as someone else in their household, they should specify ‘Jr’ or ‘Sr’”; and (3) “Voter must sign as registered to vote: avoid nicknames or using initials.” As these allegations could easily be added to proposed Count VII, the court considers whether, with these allegations, proposed Count VII would survive a motion to dismiss for failure to state a claim.⁴

“[T]he question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *Barbara F. v. Bristol Division of Juvenile Court Dept.*, 432 Mass. 1024, 1024 (2000), quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975). “From an early day it has been an established principle in this Commonwealth that only persons who have themselves suffered, or *who are in danger of suffering, legal harm* can compel the courts to

⁴ The issue of standing may properly be raised under Mass. R. Civ. P. 12(b)(1) or (6). See *Doe v. Governor*, 381 Mass. 702, 705 (1980).

assume the difficult and delicate duty [of adjudicating disputes or particular issues].” *Id.*, quoting *Doe v. The Governor*, 381 Mass. 702, 704 (1980). “Injuries that are speculative, remote, and indirect are insufficient to confer standing.” *Id.*, quoting *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 323 (1998).

According to the defendants, the plaintiffs lack standing because the plaintiffs do not and cannot allege that the statements from the Guidelines that the plaintiffs claim are inconsistent with State law have caused the plaintiffs injury where the Guidelines were not issued until *after* the Board reported, on or about April 22, 2021, that the voter veto petition failed to produce enough signatures of registered voters to initiate next steps in the voter veto process. The plaintiffs counter that they may suffer injury in the future as a result of the Guidelines because they may sign nomination papers in the future and the Board may incorrectly fail to certify their signatures. These combined possibilities are too speculative to confer standing. See *id.*⁵

3. Proposed Count VIII. In their motion to amend, the plaintiffs request leave to add an eighth count to the first amended complaint seeking “equitable relief based on [the Board]’s failure to certify at least 76 signatures on the Voter Veto petition” and in their motion for declaratory judgment and for a preliminary injunction, the plaintiffs ask the court to “[p]rovide any equitable relief the Court deems appropriate growing out of the Defendant’s failure to certify at last 76 signatures on the Voter Veto petition . . .” The defendants argue that the proposed amendment does not meet the requirements of Mass. R. Civ. P. 8(a) and would be futile as the placement on the November 2, 2021 ballot of the library renovation measure question has rendered claims that the Board erroneously failed to certify signatures and, as a

⁵ An additional hurdle to standing here is that the Guidelines are, on their face, guidance for individuals seeking nomination to elected city positions but are not a binding statement of criteria the Board will use for certification of signatures on nomination papers. If the Board fails to certify signatures in the future, those whose signatures are erroneously not certified may then have suffered an injury but that injury will not be the result of the Guidelines. See *Ginther*, 427 Mass. at 323 (“the complained of injury must be the direct consequence of the complained of action”).

result, erroneously concluded that the voter veto petition failed to produce enough signatures to initiate next steps in the voter veto process moot. Plaintiffs previously sought a preliminary injunction compelling the Board to issue a certificate stating that the voter veto petition submitted on April 20, 2021 contained the requisite number of signatures of registered voters, for the purposes of causing the voter veto question to be placed on the November 2, 2021 ballot. After the Town Council voted to place the library renovation measure on the November 2, 2021 ballot, this court denied the plaintiffs' motion for preliminary injunction on the ground that, because the library renovation measure would be on the ballot, allowing Amherst voters to vote on whether the library renovation measure approved by the Town Council should take effect, the plaintiffs had failed to show that any irreparable harm would result from denial of their request for a preliminary injunction.

In the motions before the court, the plaintiffs again seek equitable relief in connection with their claim that the Board erroneously failed to certify signatures on the voter veto petition, although the outcome they sought by signing the voter veto petition – placement of the library renovation measure before the voters of Amherst – has occurred. This time, the plaintiffs argue that equitable relief is appropriate because the library renovation measure was approved by the voters of Amherst by less than a two-thirds majority, but they have failed plausibly to allege that passage of the referendum by less than a two-thirds majority was inconsistent with State law or that a different standard of approval would have applied to the voter veto ballot question had it been placed on the ballot. Amendment of the first amended complaint to add proposed Count VIII would be futile. See *Chang*, 95 Mass. App. Ct. at 212; *Iannacchino*, 451 Mass. at 636.

B. Motions for Summary Judgment

“Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *Cannata v. Berkshire Natural Resources Council, Inc.*, 73 Mass. App. Ct. 789, 791 (2009). “In ruling on a summary judgment

motion, the judge views the evidence and all reasonable inferences therefrom, ‘in the light most favorable to the nonmoving party.’” *Jenkins v. Bakst*, 95 Mass. App. Ct. 654, 656 (2019), quoting *Premier Capital, LLC v. KMZ, Inc.*, 464 Mass. 467, 475 (2013). “The moving party bears the burden of affirmatively demonstrating the absence of a triable issue.” *Lev v. Beverly Enterprises-Mass., Inc.*, 457 Mass. 234, 237 (2010). If the moving party meets its burden, the nonmoving party must “show with admissible evidence the existence of a dispute as to material facts.” *Godbout v. Cousens*, 396 Mass. 254, 263 (1985). “Only those facts that, if true, provide a basis for a reasonable jury to find for a party are material.” *Carey v. New England Organ Bank*, 446 Mass. 270, 278 (2006). “[C]onclusory statements, general denials, and factual allegations not based on personal knowledge [are] insufficient to avoid summary judgment.” *O’Rourke v. Hunter*, 446 Mass. 814, 821 (2006). “[A] party moving for summary judgment in a case in which the opposing party will have the burden of proof at trial is entitled to summary judgment if he demonstrates, by reference to material described in Mass. R. Civ. P. 56(c), unmet by countervailing materials, that the party opposing the motion has no reasonable expectation of proving an essential element of that party’s case.” *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716 (1991). “A nonmoving party’s failure to establish an essential element of her claims ‘renders all other facts immaterial’ and mandates summary judgment in favor of the moving party.” *Roman v. Trustees of Tufts College*, 461 Mass. 707, 711 (2012).

The defendant moves for summary judgment on all four counts in the first amended complaint on the ground that the placement of the library renovation question on the November 2, 2021 ballot rendered the plaintiffs’ claims moot. Because I agree with the defendant, I do not reach the plaintiffs’ arguments in favor of summary judgment on Counts I and II of the first amended complaint.⁶

⁶ After three hearings during which the parties presented arguments concerning the substance of the plaintiffs’ claims as well as the defendant’s mootness argument, I conclude that an additional hearing on the parties’ motions for summary judgment is unnecessary.

1. **Counts I and II.** In Count I, the plaintiffs seek a declaration that the Board breached its duty to the plaintiffs by violating G.L. c. 53, § 7, 950 Code Mass. Regs. §§ 55.00, and the Amherst Home Rule Charter and violated the plaintiffs' rights to petition government to redress grievances and to vote under the Massachusetts Declaration of Rights and the United States Constitution when it failed to certify at least 76 signatures on the voter veto petition. In Count II, the plaintiffs seek an order of mandamus directing the Board to "(a) certify ... the at least 76 signatures described [in the first amended complaint] and (b) conclude that the proponents of the Petition have satisfied the 5% threshold for a Voter Veto petition set in the Town Charter."

"It is well-established that courts do not ordinarily adjudicate cases, like this one, in which 'a court can order no further effective relief'" (quotation omitted). *Guardianship of Tara*, 97 Mass. App. Ct. 11, 13-14 (2020), quoting *Branch v. Commonwealth Employment Relations Bd.*, 481 Mass. 810, 817 (2019). See also, e.g., *Lawyers' Committee for Civil Rights and Economic Justice v. Court Administrator of the Trial Court*, 478 Mass. 1010, 1011 (2018) (petition to single justice properly dismissed as moot where plaintiff already received documents sought through petition). Here, the plaintiffs received the outcome they sought to achieve by bringing Counts I and II – the placement of the library renovation measure before the voters of Amherst. The fact that the plaintiffs also requested a declaratory judgment "does not alter the outcome, as there is no longer any actual controversy." *Lawyers' Committee for Civil Rights and Economic Justice*, 478 Mass. at 1011. "Declaratory judgment ... 'is a vehicle for resolving actual, not hypothetical, controversies.'" *Boston Herald, Inc. v. Superior Court Department of the Trial Court*, 421 Mass. 502, 504 (1995), *Quincy City Hosp. v. Rate Setting Comm'n*, 406 Mass. 431, 439 (1990).

The plaintiffs' assertion that the issues presented in Counts I and II of their first amended complaint are capable of repetition yet evading review is unavailing. Even if the issues

presented are “capable of repetition, [they] will not necessarily evade review in the ordinary course of events.” *Lawyers’ Committee for Civil Rights and Economic Justice*, 478 Mass. at 1011. The flexibility in the voter veto procedure for placement of a voter veto question on the ballot – either at a special election or at the next regular town election – allows time for litigation. See Amherst Home Rule Charter, § 8.4(a). Thus, I conclude that “[i]f, in fact the issues should reappear, they need not evade review before they become moot. The litigants and this court will be in a position, respectively, to present and to decide them promptly.” *Lockhart v. Attorney General*, 390 Mass. 780, 785 (1984) (dismissing challenge to Attorney General’s refusal to certify initiative petition as proper where changed circumstances rendered challenge moot). See also *M.C. v. Commissioner of Correction*, 399 Mass. 909, 911 (1987), quoting *Blake v. Massachusetts Parole Bd.*, 369 Mass. 701, 708 (1976) (judge should have allowed defendants’ motion for summary judgment on mootness ground; “the issue presented here could easily be resolved [before becoming moot] ‘if parties show even minimal resoluteness in carrying on litigation’”).

2. Counts III and IV. In Count III, the plaintiffs seek a judgment that the Board violated the plaintiffs’ rights under 42 U.S.C. § 1983 by depriving them of their Federal constitutional rights to vote and to petition government to redress grievances, and in Count IV, the plaintiffs seek an award of reasonable attorneys’ fees and costs under 42 U.S.C. § 1988 as a “prevailing party” on their § 1983 claim. The plaintiffs do not seek an award of damages.

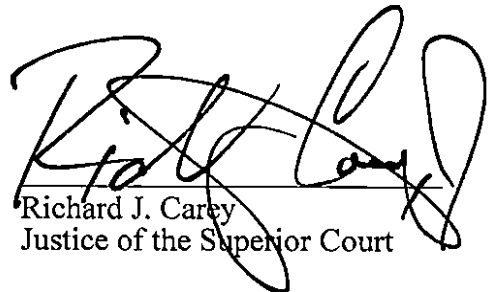
In order to prevail on a § 1983 claim, a “plaintiff must prove that the defendant has deprived [her] of a right secured by the Constitution and laws of the United States” (quotation omitted). *Mancuso v. Massachusetts Interscholastic Athletic Ass’n, Inc.*, 453 Mass. 116, 122-123 (2009), quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970). The plaintiffs will be unable to prove that the defendants deprived them of their rights to vote or petition the government to redress grievances in this case where they obtained the outcome they sought – the

placement of the library renovation measure on the ballot, see *Kourouvacilis*, 410 Mass. at 716, and will not be a “prevailing party” under § 1988. Cf. *Ford v. Bender*, 768 F.3d 15, 30 (2014) (plaintiff was not prevailing party where declaratory relief granted under section 1983 was moot when entered).

ORDER

For the reasons set forth above, it is hereby **ORDERED** that:

1. the Plaintiffs’ Motion Requesting Leave of the Court to Amend Complaint and Expedited Scheduling (#30) and Plaintiffs’ Motion for Declaratory Judgment and for a Preliminary Injunction (#31) are **DENIED**;
2. the Plaintiffs’ Motion for Summary Judgment (#18) is **DENIED**;
3. the Defendant’s Cross-Motion for Summary Judgment (#18.3) is **ALLOWED**;
4. the Defendant’s Motion to Strike (#18.7) is **DENIED**; and
5. the Plaintiff’s Motion to Strike Defendant’s Response to Their Statement of Facts and Motion to Strike the Great Majority of the Defendant’s “Additional Facts” (#18.9) is **ALLOWED** with respect to the defendant’s responses to the numbered paragraphs of the plaintiffs’ statement of facts; is **ALLOWED** with respect to paragraphs 213 and 221 of the defendant’s Statement of Additional Material Facts; and **DENIED** with respect to paragraphs 171-198 and 222-236 of the defendant’s Statement of Additional Material Facts.


Richard J. Carey
Justice of the Superior Court

Date: January 10, 2022