UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

THE COMMITTEE FOR MASSACHUSETTS VOTER IDENTIFICATION BALLOT QUESTION, Plaintiff-Appellant, v. HON. WILLIAM FRANCIS GALVIN, in his official capacity as Secretary of the Commonwealth of Massachusetts, Defendant-Appellee.	No.: 25-1696

PLAINTIFF-APPELLANT'S REPLY IN SUPPORT OF MOTION TO VACATE DISTRICT COURT JUDGMENT AS MOOT

Plaintiff-Appellant, the Committee for Massachusetts Voter Identification Ballot Question ("Committee"), respectfully submits this reply in support of its motion to vacate the underlying district court decision as moot pursuant to *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

INTRODUCTION

It is undisputed that when a governmental defendant discloses the records at issue in a suit over public records, the case becomes moot. And when such mootness occurs during the course of an appeal, the proper course is to vacate the underlying district court decision. This is exactly what happened here, where Defendant-Appellee provided the Committee with a copy of the Massachusetts statewide voter roll at issue in this federal litigation.

Defendant-Appellee does not dispute that his disclosure of records mooted the case. Rather, he argues that vacatur is unwarranted for two reasons: first, the Committee is "solely responsible" for causing the mootness by requesting the same records under state law; and second, mooting a legal issue that is important is not in the public interest. Both arguments fail.

To begin with, the Committee was not "solely responsible" for the mootness. Simply *requesting* records, which the Committee has done continuously as a political organization, is not sufficient to moot a public records case. It was, instead, Defendant-Appellee's *disclosure* of the requested records that mooted this

litigation. The production of records at issue by governmental agencies moots public records litigation and requires vacatur of the underlying decision. In arguing otherwise, Defendant-Appellee ignores the D.C. Circuit cases mooting and vacating district court rulings under the Freedom of Information Act (FOIA) whenever government agencies disclosed requested records on appeal.

The public interest also favors vacatur. Defendant-Appellee voluntarily changed his position despite no legal change in the Committee's status between December 2023 and October 2025 and despite the fact that the Committee submitted virtually identical requests both times. The public interest favors vacatur where mootness results from intervening events not caused by the party that lost below. It is immaterial whether the legal question is one of first impression, or whether there are third parties involved in parallel actions who may or may not benefit from vacatur. Vacatur "clears the path for future relitigation of the issues between the *parties* and eliminates a judgment, review of which was prevented through happenstance." *Munsingwear*, 340 U.S. at 40 (emphasis added).

The motion to vacate should be granted.

ARGUMENT

I. The Committee Was Not the Sole Cause of the Mootness.

As stated in its opening motion, the Committee regularly requests the official statewide voter roll from Defendant-Appellee, since he is the only official

in charge of maintaining such a list. *See* 1993 Mass. ALS 475; 1993 Mass. Ch. 475; 1993 Mass. S.B. 1824. The statewide voter registration list is also critical to the Committee's political purpose of supporting a ballot initiative to place a question about a voter identification law on the Massachusetts general election ballot.

Defendant-Appellee's argument that the Committee is "solely responsible" for mooting the case is flatly wrong. Opp'n at 11. It was not the act of making a request, or of becoming a political organization eligible to make it, that mooted the case. Rather, it was Defendant-Appellee's voluntary disclosure of the records at issue that caused the mootness. *See Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir. 1982) (per curiam) ("once the records are produced the substance of the controversy disappears and becomes moot since the disclosure which the suit seeks has already been made." (citing *Crooker v. United States State Dep't*, 628 F.2d 9, 10 (D.C. Cir. 1980))).

In other words, disclosure was the only act by the parties that caused the mootness, and the Committee had no control over that. Indeed, the Committee may make all the requests it wants, but until Defendant-Appellee produces the statewide registration list the case is not moot and the controversy is ongoing. Ignoring the actual cause of the mootness, *viz.*, the disclosure of the requested records, Defendant-Appellee fails to address the case law cited in the Committee's opening

motion finding vacatur proper whenever a government defendant disclosed documents at issue in public records litigation. *See* Mot. at 5 (citing *Armstrong v. Exec. Office of the President*, 97 F.3d 575, 582 (D.C. Cir. 1996); *Hall v. CIA*, 437 F.3d 94, 99-100 (D.C. Cir. 2006)).

Like the FOIA, the NVRA mandates government disclosure of certain public records, including the statewide voter registration list. *Pub. Int. Legal Found. v. Bellows*, 92 F.4th 36, 41-42 (1st Cir. 2024). Whenever a government defendant discloses requested records under the FOIA, the proper remedy is to dismiss the appeal and vacate the lower court judgment. *See Armstrong*, 97 F.3d at 582; *Hall*, 437 F.3d at 99-100; *Crooker*, 628 F.2d at 10. This remedy must also apply where a government defendant discloses requested records under the NVRA. Defendant-Appellee fails to address the Committee's arguments on this point. *See* Mot. At 5.

II. The Public Interest Favor Vacatur.

The Committee's qualification to receive state voter rolls under state law—as well as Defendant-Appellee's assessment-of-the-moment as to whether the Committee *is* qualified—are subject to constant change.[1] That is why the Committee is determined to make these requests under the NVRA, which does not

[1] The Committee disputes Defendant-Appellee's position that the Committee's eligibility to receive the statewide voter records depends on whether the Committee is sponsoring a question that will appear on the ballot at the next statewide election. Opp'n, 7, 11. The statutes do not include this requirement. Mass. Gen. Laws ch. 51, § 47C.

include such qualifications or assessments. If Defendant-Appellee denies the Committee's request again in the future, which the Secretary openly admits he will (*see* Opp'n at 11), vacatur will allow relitigation of the federal issue raised by this case. *Munsingwear*, 340 U.S. at 40.

Defendant-Appellee contends that the public interest weighs against vacatur because the legal question is one of "nationwide first impression," "broadly valuable" to the legal community, and not dependent on the facts or parties to the case. Opp'n at 12. But the entire purpose of vacatur is to afford the *parties* the opportunity to relitigate issues that became moot on appeal by happenstance, *Munsingwear*, 340 U.S. at 40-41.

It would be strange indeed to find that the public interest weighs against vacatur based on considerations *not* dependent on the facts or parties to the case. Whether there are parallel cases working their way through the courts now is irrelevant to whether the Committee deserves its day in court to resolve the legal issues raised below but mooted on appeal. Defendant-Appellee cites no case rejecting vacatur on the grounds of the public interest where the factors described in *Munsingwear* weigh in favor of vacatur.

CONCLUSION

For the foregoing reasons, the Committee respectfully requests that the Court grant the motion to vacate the district court judgment below and remand with instructions to dismiss as moot, with each party bearing its own costs.

Respectfully submitted,

Dated: January 5, 2026

/s/ Brian M. Gaff
Brian M. Gaff (1st Cir. No. 67003)
215 South Broadway, Suite 308
Salem, NH 03079-3374
857-719-0100
781-581-9134 (fax)
bgaff@lawbmg.com

Attorney for Plaintiff-Appellant The Committee for Massachusetts Voter Identification Ballot Question.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and 27(a)(2)(B), this document contains 1,144 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14 point Times New Roman font.

/s/ Brian M. Gaff
Brian M. Gaff (1st Cir. No. 67003)

Attorney for Plaintiff-Appellant

Dated: January 5, 2026