

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK  
COUNTY, ss

SUPERIOR COURT

C.A. No. ~~09-4078~~ - F

MASSACHUSETTS REPUBLICAN PARTY )

Plaintiff Petitioner )

v. )

DEVAL PATRICK, )  
Governor of the Commonwealth of Massachusetts )

Defendant )

2009 SEP 24 AM 10:51  
MICHAEL J. ...  
CLERK/MAGISTRATE

**VERIFIED COMPLAINT and MOTION FOR A PRELIMINARY INJUNCTION**

Now come the Plaintiff, Jennifer A. Nassour, Chairman of the Massachusetts Republican Party, and moves this Honorable Court having jurisdiction pursuant to Massachusetts Rule of Civil Procedure, and rules of the Superior Court Rules, for a preliminary injunction against the Governor of the Commonwealth of Massachusetts from appointing an interim Senator to fill a current vacancy in the United States Senate.

**AS GROUNDS THEREFORE**, the Plaintiff says:

1. The Governor's invocation of article II of amendment 48, The Referendum, II, declaring an emergency to enact the law allowing for an interim senator to fill a vacant U.S. Senate seat is

an unconstitutional act that brings immediate and direct harm to the Massachusetts Republican Party, the citizens of Commonwealth of Massachusetts and myself as a voter facing imminent disenfranchisement.

2. The General Court rejected an emergency preamble; and, the Governor does not have the Constitutional authority to file with the Secretary of the Commonwealth a letter, in accordance with article 48, The referendum, II, declaring that the preservation of the public convenience requires that the law be immediately effective.
3. The Governor's letter to the Secretary of the Commonwealth declaring an emergency law can only be used when a law is subject to a referendum; and further, only when the law could be subject to suspension of its operation under The Referendum, III, Section 3. In such an instance, the Governor's letter declaring an emergency law would have the effect of terminating that suspension. No such suspension of law threat is viable in this case.
4. The law, as signed, cannot be subject to a referendum petition or a request for suspension.
5. According to the Secretary of the Commonwealth's web site, submission of original petitions to Attorney General to originate an initiative petition for a constitutional amendment were due August 5, 2009. That date has passed, and with a special election slated for January 19, 2010 a referendum cannot be had.

6. The attached letter to the Secretary of the Commonwealth has not solicited a response from the Secretary or his Office;
7. A legal decision so issued by the Supreme Judicial Court in an Opinion of the Justices to the Governor (368 Mass 889, October 27, 1975). In following said SJC's 1975 opinion, Governor Patrick is not within his constitutional powers, and accordingly,
8. The Supreme Judicial Court has set forth that the Governor's declaration of emergency can only be used to close the threat of a referendum suspension of the law. As that is not the case in this instance, the people of the Commonwealth do not have The Referendum III, section 3 suspension as an option, as was intended by the authors of our constitutional protections and processes. So, no such threat exists.
9. According to the SJC: "The gubernatorial authority to forestall or undo the suspensive effect of a referendum petition was imported into article 48 as one of the means of providing some check on the power of a small minority of the voters to nullify adopted legislation until the next eligible Statewide election."
10. As stated herein, there is no circumstance of such a referendum suspension threat regarding the current matter. As asserted, this cannot even be factually so in this case;
11. Accordingly, we assert that the Governor is acting outside of his constitutional authority of protecting the citizen's from a "small minority of the voters."

12. Therefore, the Governor is acting outside his authority to unilaterally overrule the will of the General Court, our Commonwealth's representatives.

**WHEREAS**, Petitioner has established a likelihood of success on the merits; shown that irreparable harm will result from denial of the injunction; and that, in light of Petitioner success on the merits, the risk of irreparable harm to said party outweighs the potential harm to the nonmoving party in granting the injunction.

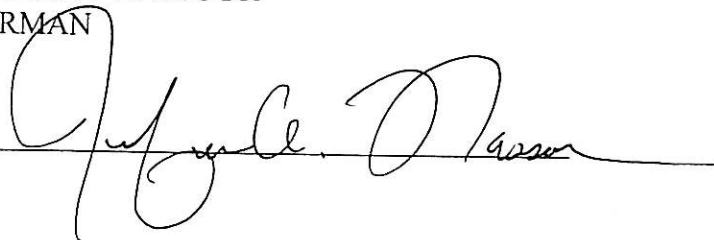
**FOR THESE REASONS**, and others, Petitioner respectfully request full equitable and legal relief and that that the Governor be subject to this esteemed court's opinion and order that an interim appoint to the Unites States Senate under emergency law an unconstitutional exercise of his authority.

Respectfully submitted,

MASSACHUSETTS REPUBLICAN PARTY

JENNIFER A. NASSOUR  
CHAIRMAN

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Jennifer A. Nassour", is written over a horizontal line. The signature is cursive and somewhat stylized.

**VERIFIED COMPLAINT**

In support of this Motion and Complaint, I, Jennifer A, Nassour assert the aforementioned as if fully restated herein and herewith affirm and acknowledge that such is

accurate and true to the best of my knowledge and belief under pains of penalty and perjury.

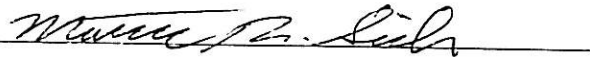
JENNIFER A. NASSOUR  
CHAIRMAN

By: \_\_\_\_\_



NOTARIZED, This 24 day of September, 2009

BY: \_\_\_\_\_



### CERTIFICATE of SERVICE

I hereby certify that a true and accurate copy of the foregoing document and the attachment has been served the Honorable Deval Patrick, Governor of the Commonwealth, and William Galvin, Secretary of the Commonwealth by hand delivery at their published places of business within the Commonwealth on September 24, 2009.

Respectfully submitted,

MASSACHUSETTS REPUBLICAN PARTY

JENNIFER A. NASSOUR  
CHAIRMAN

By: \_\_\_\_\_

