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March 18, 2020

VIA ELECTRONIC MAIL

Sen. Rebecca L. Rausch
Chair, Joint Committee on Municipalities and
Regional Government
24 Beacon Street, Room 218
Boston, MA 02133
Becca.Rausch@masenate.gov

Rep. James J. O'Day
Chair, Joint Committee on Municipalities and
Regional Government
24 Beacon Street, Room 540
Boston, MA 02133
James.O'Day@mahouse.gov

Re: Requested Legislation for Local Elections During National Emergency

Dear Sen. Rausch and Rep. O'Day:

We write on behalf of our clients, the Towns of Acton, Belmont, Concord, Winchester, and Wrentham regarding urgent legislation needed in these towns, and undoubtedly many others, that are scheduled to hold local elections over the next few weeks. Given the rapidly growing COVID-19 emergency, the ability to hold these elections safely is in serious jeopardy. While we understand and appreciate that legislation is being developed to address municipal elections that are likely to be affected by the emergency over the coming months and through the fall, urgent action is needed to address this issue for those municipalities holding elections before April 17.

Several municipalities in Massachusetts are scheduled to hold local elections on March 31, if not sooner. In those communities, election warrants typically must be posted at least a week in advance (i.e., no later than March 24), and in some cases they already have been. Town Clerks, Town Managers/Administrators, and Select Boards in these municipalities must address this issue while simultaneously addressing all of the other contingency plans that have to be made to address COVID-19, from municipal staffing, to economic concerns, to closed schools, and, of course, public health and safety concerns. While municipalities with elections scheduled in late April or beyond may be able to wait until more comprehensive legislation is enacted to postpone their elections, towns like Acton, Belmont, Concord, Winchester, and Wrentham cannot. They must decide before the end of this week, at the latest, what course of action to take. At the moment, none of the courses of action available to these municipalities is particularly appealing.

These municipalities can, of course, attempt to hold their municipal elections in the midst of the COVID-19 emergency. As you can imagine, the public servants that run elections in these communities are not eager to subject poll workers, many of whom are elderly, or the public to

March 18, 2020

Page 2

the dangers of COVID-19, or to force poll workers and voters to choose between flouting the social distancing protocols urged by all responsible public health officials and exercising their civic rights and duties.

Alternatively, municipalities could simply postpone elections on their own under these circumstances, without any clear basis for their legal ability to do so. Although they would be doing so with certainty they are on the right side of public health, municipalities are understandably wary of postponing an election without clear guidance from the state that they can.

Municipalities can also request that the Governor file special legislation on their behalf to postpone their elections. However, they cannot guarantee that legislation will move with sufficient speed, particularly given the myriad other bills that the Legislature is currently dealing with on an emergency basis. Moreover, many municipal officials are disinclined to flood the Governor's office, or the Legislature, with multiple pieces of special legislation all asking for the same thing. Especially in these times where priority lists far exceed hours in the day, that does not seem a wise use of the Executive or Legislative Branch's time.

Finally, municipalities can (and if forced to, will) seek judicial relief from the Superior Court. At least one municipality (Wellesley) has already done so. However, as you may be aware, the Supreme Judicial Court has asked the Trial Courts of the Commonwealth to limit their work to emergency motions only, and it is unclear under the Superior Court's March 17, 2020 Standing Order regarding the COVID-19 emergency whether or not such a petition could even still be filed with or heard by that Court in a timely manner. While emergency motions to move elections that would otherwise expose thousands of voters to public health risks certainly should qualify for judicial intervention, this does not seem to us, or to the officials we've spoken to, to be the best use of judicial resources in a difficult time.

Accordingly, we are asking that you immediately take up the attached legislation to help us resolve this issue in the coming days. Prompt action on your part can alleviate the pressure municipal officials are feeling around this issue, freeing them up to do the vitally important work of responding to the current crisis. The proposed legislation will be in use for only a matter of weeks and can easily be replaced with subsequent legislation that we understand is already being developed. However, for the municipalities that need legislative intervention now, the attached legislation is of utmost importance.

Please do not hesitate to contact Mina Makarious at 617-621-6525 if you have any questions.

Sincerely,

/s/Nina Pickering-Cook, Town Counsel, Town of Acton

/s/George A. Hall, Town Counsel, Town of Belmont, Town of Wrentham

/s/Mina S. Makarious, Town Counsel, Town of Concord

/s/Arthur P. Kreiger, Town Counsel, Town of Winchester

March 18, 2020

Page 3

cc: Jeff Beckwith, Massachusetts Municipal Association
Jim Lampke, Massachusetts Municipal Lawyers Association
John Mangiaratti, Town Manager, Town of Acton
Patrice Garvin, Town Administrator, Town of Belmont
Stephen Crane, Town Manager, Town of Concord
Lisa Wong, Town Manager, Town of Winchester
Kevin Sweet, Town Manager, Town of Wrentham
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Sen. William Brownsberger
Sen. Michael J. Barrett
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Rep. Shawn Dooley