

3

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2077CV00285 B

IN RE: PETITION OF THE TOWN OF ANDOVER

**MEMORANDUM OF DECISION AND ORDER ON
COMPLAINT TO POSTPONE ANNUAL ELECTION**

The Town Manager of the Town of Andover ("Town") has filed a Verified Complaint seeking relief in the nature of mandamus pursuant to G.L. c. 249, § 5. The Town seeks to postpone its annual election scheduled for March 24, 2020, given the recent declaration of a state of emergency by Governor Baker due to the COVID-19 pandemic.

On March 18, 2020, the Court conducted a hearing telephonically pursuant to Superior Court Standing Order 3-20 on the Town's request for certain injunctive relief related the annual election.

After thorough consideration of the Verified Complaint (Paper No. 1) and the argument of counsel at said hearing, for the reasons stated below, the request for injunctive relief is **ALLOWED**.

BACKGROUND

On March 10, 2020, the Governor declared a state of emergency in response to the 2019 novel Coronavirus ("COVID-19"), a highly contagious and sometimes fatal respiratory disease. In conjunction therewith, on March 15, 2020, the Governor issued an Order Prohibiting Gatherings Of More Than 25 People And On-Premises Consumption Of Food Or Drink ("Emergency Order"), which prohibits, *inter alia*, the

gathering of more than twenty-five persons in a single room or space because such gatherings may accelerate transmission of COVID-19. Also on March 15, 2020, at the direction of the Governor, the Commissioner of the Massachusetts Department of Public Health issued Guidance Regarding The Order By The Governor Prohibiting Assemblages Of More Than 25 People ("Guidance"). The Emergency Order and Guidance became effective on March 17, 2020, and remain in effect through, at least, April 5, 2020.

The Town's Select Board ("Board") previously scheduled the Town's Annual Election of municipal officers to take place on March 24, 2020. However, given the pandemic, the Town Manager is rightly concerned that the Town may not have sufficient workers at the polling places, and that holding the election on the scheduled date may endanger Town voters and workers.

Although the Guidance exempts normal operations at "polling locations" from the 25 person limitation of the Emergency Order, the Guidance reinforces the need to avoid large gatherings due to the higher risk COVID-19 poses to particular groups, such as older adults, persons with underlying health conditions or weakened immune systems, and pregnant persons.

On March 16, 2020, the Board conducted a public meeting and approved filing of the instant legal action by the Town Manager to seek the postponement of the Town's annual election to a date prior to the end of the current fiscal year of June 30, 2020.

In light of the Governor's declaration of a state of emergency, and his Emergency Order and accompanying Guidance, the Town requests this Court to issue an Order in

the nature of an injunction postponing the annual Town election and granting it authority to reschedule it to a date prior to the end of the current fiscal year.

DISCUSSION

"[R]elief in the nature of mandamus is an extraordinary remedy which will be granted only when there exists no other adequate and effective remedy." Simmons v. Clerk-Magistrate of the Boston Div. of the Housing Court Dept., 448 Mass. 57, 60 (2006) (citation omitted). The unique and urgent circumstances presented warrants relief in the nature of mandamus and the injunctive relief requested by the Town.

In the present circumstances, as outlined in the Emergency Order and the Guidance, conducting the Town election on the scheduled date of March 24, 2020, may expose Town voters and poll workers to significant danger, especially persons who are particularly vulnerable to the COVID-19 virus. To be sure, conducting a Town election in the immediate future will not only expose persons to health risks, it may have the effect of disenfranchising them.

The Court finds that injunctive relief in the form of postponement of the Town election is necessary to avoid irreparable harm to the public, Town voters, and Town workers. See Garcia v. Department of Housing and Community Development, 480 Mass. 736, 747 (2018) (citations omitted). Moreover, the Court finds there is no countervailing interest of significant enough weight that would warrant denial of the requested relief. Id. (citations omitted). Further, the Court finds that the requested injunctive relief promotes the public interest and will not adversely affect the public. Id. (citations omitted).

As such, the Town's request for injunctive relieve is **ALLOWED**.

ORDER

For the above reasons, **IT IS HEREBY ORDERED** that:

1. The Town of Andover's request for injunctive relieve is **ALLOWED**.

Notwithstanding the provisions of G.L. c. 39, § 9; G.L. c. 51, §§ 26 and 28; G.L. c. 53; and, G.L. c. 54, and any other general or special law or by-law to the contrary, in order to protect the rights of eligible voters and avoid disruption of local government processes and waste of municipal resources, the Select Board of the Town of Andover is hereby authorized to postpone the Annual Town Election, scheduled for March 24, 2020, to a date of the Board's choosing, but no later than June 30, 2020 ("Rescheduled Election"), and, further, to conduct such Rescheduled Election in accord with the provisions of this Order.

3. The Select Board of the Town of Andover shall vote to reschedule the Annual Town Election, and post on the official Town website a copy of this Order, and a sample ballot, no later than 20 days prior to the date of the Rescheduled Election. Notice of such action shall be provided to the public in other ways reasonably calculated to enable eligible voters to learn of the Rescheduled Election date and to cast ballots therein, which notice may include, but is not limited to, municipal list-serve notifications, advertisements on local cable television, or issuance of a press release sent to local news media.


4. The last day to register to vote for such Rescheduled Election shall be ten days prior to the date of the Rescheduled Election. The voting list to be used at such Rescheduled Election shall include all eligible voters registered as of that date.

5. The election materials including, but not limited to, absentee and official ballots originally prepared for the March 24, 2020 Election, and bearing that date, shall be used for the Rescheduled Election to the extent practicable; if additional ballots must be printed, they shall be identical in form to those prepared for the March 24, 2020 Election.

6. Absentee ballots cast in connection with the March 24, 2020 Election, whether returned prior to March 24, 2020, or otherwise, and received by the Town Clerk prior to the close of polls on the date of the Rescheduled Election shall be processed in accord with applicable law; provided, however, that any voter who chooses to vote in person on the date of the Rescheduled Election may do so if their absentee ballot has not yet been counted.

7. Consistent with the provisions of G.L. c. 41, § 107, any incumbent elected official whose term would otherwise expire at the March 24, 2020 Annual Town Election shall continue to serve in such position until a successor is elected and qualified via the Rescheduled Election.

8. This Order is effective immediately.

A handwritten signature in black ink, appearing to read "Jeffrey T. Karp", is written over a horizontal line. The signature is stylized with several loops and a long horizontal stroke extending to the right.

Jeffrey T. Karp
Associate Justice, Superior Court
Dated: March 18, 2020 at 2:55 p.m.