

This may be more than you were looking for, but here goes....just one person's perspective, and I am certainly not saying that these comments are one size fit all. I know that clients make the call, and that right now we are doing all we can to support them. Still, I ask that, as we all look to help our clients with these elections challenges, that you consider this perspective. Proud to be part of such a talented group, devoted to public service...

As you may know, I served as legal counsel to the State Elections Division in a former life. In my current role, I have supported cities and towns all over the state with elections matters, including running elections, adopting, revising and implementing training policies and procedures, providing training to clerks and poll workers, assisting with the planning for and running of recounts, drafting recount special acts, litigating recount cases, including, most recently, a 9-day trial in Salem on a one-vote election. I've assisted cities and towns draft special legislation to validate, ratify and confirm elections held without proper notice, where the ballot was missing the names of candidates or offices, or where they included them in error. I've included this mini-CV to convey a full picture of my "boots on the ground" experience with elections issues, and, likewise, my experience dealing with Governor's Legislative Office, the Elections Division and the courts on these matters.

Immediately after the COVID-19 issue snowballed, we started hearing from town clerks about elections issues. Knowing the limited resources of cities and towns, particularly now, we drafted special legislation to address the matter and an eUpdate to explain the reasoning, sent that to our clients and posted it on our website. We also drafted a somewhat generic version for the use of the legislature/governor/etc. We went to court to delay the date of the election in Westborough, and even then, asked for an order in the form of the special legislation that we had drafted.

Know that the Secretary of State has limited authority with respect to "stopping" elections unilaterally. While, the Secretary can seek a court order to delay the date of a state special election, and still could, such elections are called by the General Court. So we are left with the same choice we always have – go to court or request special legislation to change the application of the law.

I know that the Legislature and administration are aware of the number of local elections that will be held in the next several months; and similarly, I know they are aware of the special state elections at the end of March. An updated general bill was provided by the Secretary's office and has reached the desks of decision makers. The legislature does not act instantaneously, but they are definitely on this. We also mentioned this during the Mayors' call with the Governor and Lt. Governor this morning and they are also aware of it.

As for the special state election, I understand that there is general interest in immediately seeking a court order to stop the election. In my view, there is a significant amount of time to address this. I have been speaking to people at the highest levels of government, explaining that the logistics of an election are virtually impossible under the current circumstances, for several reasons, including that we need our city and town clerks to be well, that holding an election requires coordination amongst a number of municipal departments, including city/town administration, public works, and the police. We've stressed that an election requires a high level of human resources and coordination, and that such resources are currently needed elsewhere. Compounding the issue is the difficulty of how to approach this from a practical point of view, how do we protect clerks and their staff, as well as poll workers, many of who are likely to fall into the group characterized as most vulnerable? Will there be a sufficient number of police officers to even cover the polls?

To the extent that we are able, I believe there is great value in giving the state a few more days to work this out. I think leadership at the local level has been inspiring and reassuring. I also think that it might do wonders for the State to take the lead on this, acknowledge that this is the right approach (i.e., delay), and allow cities and towns to follow suit with the legislation that has been filed for local elections.

From a less philosophical point of view, for local elections, it seems an extreme output of resources, both local and judicial, to deal with this town by town or city by city when we are all in the same exact space. As for the state elections, any lawsuit will necessarily require the involvement of the Secretary of

State and the Attorney General. To the extent that we are able, there is value in avoiding adding to the number of issues that they are all dealing with, diverting resources that might be needed elsewhere. Finally, I do not relish the optics of cities and towns on one side of the legal argument on this and the Attorney General/State on the other; there simply isn't room, in my view, in light of what is going on, to have such a "divided" house.

What our cities and towns can do now, is let their State Representatives and State Senators know their position on these issues, specifically asking for help. Although their names appear on ballots, State Representatives and State Senators do not all necessarily know how complex the process is to run an election, and the number of people that must be involved to make it seem so seamless.

If the Legislature don't act by the beginning of next week, I agree, we will likely need to re-evaluate. I am advising my clients to give the legislature a few days to work things out, recommending, in the meantime, that they reach out to their state senators and representatives.

I am happy to discuss this further with anyone...of course.

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[Copied from L.G.'s posting to the MMLA ListServ 3/18/20]