

CIVIL ACTION COVER SHEET

DOCKET NUMBER

Trial Court of Massachusetts
The Superior Court



PLAINTIFF(S): In re: Authority to Postpone the Town of Wellesley Annual Town Election
ADDRESS: 525 Washington St
Wellesley, MA 02482

COUNTY
Norfolk

DEFENDANT(S):

ATTORNEY: Thomas J. Harrington
ADDRESS: Miyares and Harrington LLP
40 Grove St., Suite 190
Wellesley, MA 02482

ADDRESS:

BBO: 556741

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO. TYPE OF ACTION (specify) TRACK HAS A JURY CLAIM BEEN MADE?
AD1 administrative action A YES NO

*If "Other" please describe:

Is there a claim under G.L. c. 93A?
 YES NO

Is this a class action under Mass. R. Civ. P. 23?
 YES NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff's counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS

(attach additional sheets as necessary)

A. Documented medical expenses to date:

- 1. Total hospital expenses \$
- 2. Total doctor expenses \$
- 3. Total chiropractic expenses \$
- 4. Total physical therapy expenses \$
- 5. Total other expenses (describe below) \$

Subtotal (A): \$

B. Documented lost wages and compensation to date \$

C. Documented property damages to date \$

D. Reasonably anticipated future medical and hospital expenses \$

E. Reasonably anticipated lost wages \$

F. Other documented items of damages (describe below) \$

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F): \$

CONTRACT CLAIMS

(attach additional sheets as necessary)

This action includes a claim involving collection of a debt incurred pursuant to a revolving credit agreement. Mass. R. Civ. P. 8.1(a).
Provide a detailed description of claim(s):

TOTAL: \$

Signature of Attorney/ Unrepresented Plaintiff: X

Date: 3/16/2020

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

none

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X

Date: 3/16/2020

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL
COURT

IN RE:

AUTHORITY TO POSTPONE THE
TOWN OF WELLESLEY ANNUAL
TOWN ELECTION

C.A. No.

VERIFIED COMPLAINT

INTRODUCTION

1. The Board of Registrars of Voters and KC Kato, in her capacity as Town Clerk of the Town of Wellesley, bring this action seeking an order authorizing the Town, through its Board of Selectmen, to postpone the March 17, 2020 Annual Town Election in the Town of Wellesley.

JURISDICTION

2. This Court has jurisdiction to hear this action and to grant the relief requested pursuant to G.L. c. 249, § 5 and Mass. R. Civ. P. 65.

PARTIES

3. The Board of Registrars of the Town of Wellesley (hereinafter “the Board”) is the duly appointed board charged with conducting elections, among other duties, for the

Town of Wellesley. The Board has its principal place of business at Wellesley Town Hall, 525 Washington Street, Wellesley, MA 02482.

4. KC Kato is the Town Clerk of the Town of Wellesley. She also serves *ex officio* on the Board. Her principal place of business is at Wellesley Town Hall, 525 Washington Street, Wellesley, MA, 02482.

FACTS

5. On March 10, 2020, the Governor of the Commonwealth of Massachusetts (the “Governor”) declared a state of emergency to respond to COVID-19, a contagious, and at times, fatal, respiratory disease.
6. On March 15, 2020, the Governor issued an emergency order (the “March 15 Order”) prohibiting gatherings of more than 25 people, in part because the Massachusetts Department of Public Health (the “MDPH”) is urging all residents of the Commonwealth to practice social distancing when outside their homes. See Ex. A (March 15 Order). The order prohibits gatherings “and any similar event or activity that brings together 25 or more persons in a single room or single space at the same time in a venue such as an auditorium...gymnasium...or any other confined indoor or outdoor space.”
7. The March 15 Order directed the Commissioner of the MDPH to issue guidance to implement the terms of the March 15 Order. The Commissioner of the MDPH issued “Guidance Regarding the Order by the Governor Prohibiting Assemblages of More than 25 People” (the “March 15 Guidance”) See Ex. B.
8. The March 15 Guidance exempted “polling locations”.

9. The March 15 Guidance, however, indicated that “[r]egardless of whether an event or gathering falls within the scope of the [March 15 Order], all higher risk individuals should avoid large gatherings. Higher risk individuals include older adults, anyone with underlying health conditions, such as heart or lung disease or diabetes, anyone with weakened immune systems, and anyone who is pregnant.” Id.
10. The March 15 Order and March 15 Guidance are effective March 17, 2020.
11. On March 16, 2020, the Town Clerk informed the Board of Registrars, at an emergency meeting, that she was having difficulty staffing the eight polling places in Wellesley for the March 17, 2020 Election due to concerns related to COVID-19 pandemic. These concerns are due to polling staff and election workers cancelling at the last minute or falling within the category of higher risk.
12. The Town has eight polling locations. Despite best efforts, the Town Clerk is concerned she will be unable to hold the Election without a sufficient number of polling staff and election workers.
13. On March 16, 2020, the board of registrars voted 2-1 to “direct Town Counsel to file for a court order to postpone the March 17, 2020 Election.” A certified copy of the vote is attached hereto as Ex. C.

WHEREFORE, the Board of Registrars of Voters and the Town Clerk of the Town of Wellesley respectfully request that this Court enter the following Order, effective immediately:

1. Notwithstanding the provisions of section 9 of chapter 39, sections 26 and 28 of chapter 51, and chapters 53 and 54 of the general laws, or of 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 governmental processes and waste of

municipal resources, the Board of Selectmen of the Town of Wellesley shall hereby be authorized to postpone its Annual Town Election, scheduled for March 17, 2020, to a date of the Board's choosing but no later than June 30, 2020, or such later date as set forth in Paragraph 6, *infra*, and, further, to conduct such Election in accord with the provisions of this Order. To the extent this Order is silent, such postponed Election shall be held in accordance with all applicable election laws.

2. The Board of Selectmen of the Town of Wellesley shall, following consultation with the Town Clerk and the Town's Executive Director of General Government Services as to logistics and feasibility, vote to reschedule the Annual Town Election, and post on the official Town website a copy of this Order, the vote of the Board of Registrars of Voters, 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 a so-called "reverse-911" call, municipal list-serve notifications, advertisement on local cable television, or issuance of a press release sent to local news media.

3. The last day to register to vote for such rescheduled Election shall be ten days prior to the date of the Election; and the Board of Registrars shall hold a registration session on that date, at a minimum, from two to four o'clock in the afternoon and seven to eight o'clock in the evening. The voting list to be used at such rescheduled Election shall include all eligible voters registered as of that date.

4. The election materials, including but not limited to absentee and official ballots originally prepared for the March 17, 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 17, 2020 Election.

5. Absentee ballots cast in connection with the March 17, 2020 Election, whether returned prior to March 17, 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. Completed applications to vote by absentee ballot in the rescheduled Election shall be accepted by the board of registrars until 12:00 noon on the last business day prior to said Election.

6. If after consultation with the Board of Health, Police and Fire Chiefs, and the Executive Director of General Government Services, the Board of

Selectmen determines that such Election cannot, consistent with public health and safety, be held during fiscal year 2020, said board shall make a separate and specific finding with respect thereto. Said board may schedule such Election to be held during the first two months of fiscal year 2021, provided that the calling and holding of such rescheduled Election shall comply with all other provisions of this act.

7. Consistent with the provisions of section 107 of chapter 41 of the General Laws, any incumbent elected official whose term would otherwise expire at the March 17, 2020 Annual Town Election shall continue to serve in such position until a successor is elected and qualified.

14. This Order shall become effective immediately.

A draft order is submitted herewith.

SWORN TO UNDER THE PENALTIES OF PERJURY THIS 16TH DAY OF MARCH,
2020



K.C. Kato

Respectfully submitted,

BOARD OF REGISTRARS OF VOTERS
AND TOWN CLERK OF THE TOWN OF
WELLESLEY,

By their attorneys:



Thomas J. Harrington, BBO# 556741

Donna Brewer, BBO# 545254

Miyares and Harrington LLP

40 Grove St., Suite 190

Wellesley, MA 02482

(617) 489-1600

tom@miyares-harrington.com

dbrewer@miyares-harrington.com

Date: March 16, 2020

VERIFICATION

I, KC Kato, state that I am the Town Clerk of the Town of Wellesley and a Registrar on the Board of Registrars of Voters of the Town of Wellesley, the named party to this action. I have read the foregoing Verified Complaint and the statements contained in Paragraphs 1 through 13 thereof are true to the best of my knowledge, information and belief.

Sworn under the penalties of perjury on March 16, 2020


KC Kato

EXHIBIT A



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER PROHIBITING GATHERINGS OF MORE THAN 25 PEOPLE AND
ON-PREMISES CONSUMPTION OF FOOD OR DRINK**

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the number of presumptive positive and confirmed cases of COVID-19 continues to rise in the Commonwealth. As of March 15, 2020, 164 cases of COVID-19 were reported by the Department of Public Health, with 10 of the 14 counties in the Commonwealth impacted;

WHEREAS, the Federal Centers for Disease Control and Prevention and the Massachusetts Department of Public Health recommend implementation of community mitigation strategies, including the cancellation of large events;

WHEREAS, the Department of Public Health is urging all residents of the Commonwealth to practice social distancing when outside of their homes; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over public assemblages in order to protect the health and safety of persons;

NOW, THEREFORE, I hereby order the following:

Gatherings of over 25 people are prohibited throughout the Commonwealth. Gatherings subject to this Order include, without limitation, community, civic, public, leisure, faith-based events, sporting events with spectators, concerts, conventions, fundraisers, parades, fairs, festivals, and any similar event or activity that brings together 25 or more persons in a single room or single space at the same time in a venue such as an auditorium, stadium, arena, large conference room, meeting hall, theatre, gymnasium, fitness center, private club, or any other confined indoor or outdoor space.

Any restaurant, bar, or establishment that offers food or drink shall not permit on-premises consumption of food or drink; provided that such establishments may continue to offer food for take-out and by delivery provided that they follow the social distancing protocols set forth in Department of Public Health guidance.

This Order shall not apply to any municipal legislative body or to the General Court or to the judiciary.

The Commissioner of Public Health is directed to issue guidance, subject to my approval, to implement the terms of this Order. The Department of Public Health, along with any board of health or authorized agent pursuant to G.L. c. 111, §30, shall enforce this Order and if necessary may do so with the assistance of State or municipal police. Violation of the terms of this Order or the guidance issued by the Commissioner of Public Health may result in penalties pursuant to Section 8 of Chapter 631 of the Acts of 1950.

This Order is effective March 17, 2020 and shall remain in effect through April 5, 2020 unless further extended. On the effective date of this Order, the March 13, 2020 Order Prohibiting Gatherings of More than 250 People is hereby rescinded.

Given in Boston at 6:30 PM this 15th day of
March, two thousand and twenty



CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

EXHIBIT B



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Public Health
250 Washington Street, Boston, MA 02108-4619

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

MARYLOU SUDDERS
Secretary

MONICA BHAREL, MD, MPH
Commissioner

Tel: 617-624-6000
www.mass.gov/dph

**GUIDANCE REGARDING THE ORDER BY THE GOVERNOR PROHIBITING
ASSEMBLAGES OF MORE 25 PEOPLE**

ISSUED MARCH 15, 2020

On March 15, 2020, Charles D. Baker, Governor of the Commonwealth of Massachusetts, issued an order (hereinafter, the Order) prohibiting gatherings of over 25 people.

1. Gatherings subject to this Order include, but are not limited to: community, civic, public, leisure, faith-based events, sporting events with spectators, concerts, conventions, fundraisers, parades, fairs, festivals, and any similar event or activity that brings together 25 or more persons in a single room or single space at the same time in a venue such as an auditorium, stadium, arena, large conference room, meeting hall, theatre, gymnasium, fitness center, private club or any other confined indoor or outdoor space.
2. The Order does not apply to normal operations at airports, bus and train stations, medical facilities, libraries, shopping malls and centers, polling locations, grocery or retail stores, pharmacies, or other spaces where 25 or more persons may be in transit.
3. Any restaurant, bar, or establishment that offers food or drink shall not permit on-premises consumption of food or drink; provided, that such establishments may continue to offer food for take-out and by delivery provided that they follow social distancing protocols that allow individual to stay 6 feet apart.
4. The Order does not apply to typical office environments, government buildings, or factories where large numbers of people are present, but it is unusual for them to be within arm's length of one another.
5. The Order does not apply to higher education or K-12 schools when classes are in session; provided, that assemblies or classes of more than 25 people are prohibited.
6. The Order does not apply to events that exclude spectators; provided, however, that members of the media may attend the event. Athletic and other events do not need to be cancelled or postponed if

spectators and other attendees are excluded. The Department of Elementary and Secondary Education shall issue guidance that shall govern scholastic athletic events.

7. This guidance is effective March 17, 2020 and shall remain in full force and effect through April 5, 2020 unless further extended.
8. Regardless of whether an event or gathering falls within the scope of the Order, all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible and to continue to wash hands, utilize hand sanitizer and practice proper respiratory etiquette.
9. Regardless of whether an event or gathering falls within the scope of the Order, all higher risk individuals should avoid large gatherings. Higher risk individuals include older adults, anyone with underlying health conditions, such as heart or lung disease or diabetes, anyone with weakened immune systems, and anyone who is pregnant.



Monica Bharel, MD, MPH
Commissioner, Massachusetts Department of
Public Health

March 15, 2020

EXHIBIT C

Town of Wellesley



Massachusetts

TOWN CLERK

Cathryn Jane Kato
525 Washington Street
Wellesley, MA 02482

TELEPHONE: (781) 431-1019x2252
FACSIMILE: (781) 237-5037
E-MAIL: kckato@wellesleyma.gov

Board of Registrars Vote to Postpone the Election

This is to certify that the following action was taken by the Board of Registrars on March 16, 2020.

VOTED 2-1, by roll call vote, that Board of Registrars direct Town Counsel to file for a court order to postpone the March 17, 2020 Election.

Toby Sullivan – Yes
Jane Kettendorf – Yes to postpone
George Porter - No

Attest:

Cathryn Jane Kato
Wellesley Town Clerk
March 16, 2020

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT
DEPARTMENT OF THE TRIAL
COURT

IN RE:

AUTHORITY TO POSTPONE THE
TOWN OF WELLESLEY ANNUAL
TOWN ELECTION

C.A. No.

TEMPORARY RESTRAINING ORDER

Upon review of the Verified Complaint, I hereby order the following:

1. Notwithstanding the provisions of section 9 of chapter 39, sections 26 and 28 of chapter 51, and chapters 53 and 54 of the general laws, or of 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 governmental processes and waste of municipal resources, the Board of Selectmen of the town of Wellesley shall hereby be authorized to postpone its annual town election, scheduled for March 17, 2020, to a date of the Board's choosing but no later than June 30, 2020, or such later date as set forth in Paragraph 6, *infra*, and, further, to conduct such election in accord with the provisions of this Order. To the extent this Order is silent, such postponed election shall be held in accordance with all applicable election laws.
2. The Board of Selectmen of the town of Wellesley shall, following consultation with the Town Clerk and the Town's Executive Director of General Government Services as to logistics and feasibility, vote to reschedule the annual town election, and post on the official town website a copy of this Order, the vote of the Board of Registrars of Voters, 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 a so-called "reverse-911" call, municipal list-serve notifications, advertisement on local cable television, or issuance of a press release sent to local news media.

3. The last day to register to vote for such rescheduled election shall be ten days prior to the date of the election; and the Board of Registrars shall hold a registration session on that date, at a minimum, from two to four o'clock in the afternoon and seven to eight o'clock in the evening. The voting list to be used at such rescheduled election shall include all eligible voters registered as of that date.

4. The election materials, including but not limited to absentee and official ballots originally prepared for the March 17, 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 17, 2020 election.

5. Absentee ballots cast in connection with the March 17, 2020 election, whether returned prior to March 17, 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. Completed applications to vote by absentee ballot in the rescheduled election shall be accepted by the board of registrars until 12:00 noon on the last business day prior to said election.

6. If after consultation with the Board of Health, Police and Fire Chiefs, and the Executive Director of General Government Services, the Board of Selectmen determines that such election cannot, consistent with public health and safety, be held during fiscal year 2020, said board shall make a separate and specific finding with respect thereto. Said board may schedule such election to be held during the first two months of fiscal year 2021, provided that the calling and holding of such rescheduled election shall comply with all other provisions of this act.

7. Consistent with the provisions of section 107 of chapter 41 of the General Laws, any incumbent elected official whose term would otherwise expire at the March 17, 2020 annual town election shall continue to serve in such position until a successor is elected and qualified.

8. This Order shall become effective immediately.

Dated: March 16, 2020

, J.