

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT
CIVIL ACTION NO. NOCV2020-305

IN RE: *Petition of The Town of Wellesley*

**AUTHORITY TO POSTPONE THE
TOWN OF WELLESLEY ANNUAL
TOWN ELECTION**

RULING ON COMPLAINT TO POSTPONE ANNUAL TOWN ELECTION

This complaint was filed by the Board of Registrars of the Town of Wellesley (Board) who are the duly-appointed entity authorized to conduct elections in that municipality of the Commonwealth. The Town's Board of Selectmen previously had scheduled the Town's annual election of municipal officers to take place on Tuesday March 17, 2020.

On March 10, 2020, the Governor of the Commonwealth declared a state of emergency to respond to COVID-19, a contagious and sometimes fatal respiratory disease. In conjunction therewith, the Governor issued an Emergency Order which effected a wide range of public activities, *inter alia*, barring the gathering of more than twenty-five persons together for fear that this might accelerate transmission of the highly contagious disease. While a Guidance which the Governor issued accompanying the Order did list included among exemptions normal operations at "polling locations," that Guidance reinforced the need that large gatherings even outside of the precise scope of the Order were to be avoided, citing the higher risk which this disease poses to particularized groups, which include older adults, persons with underlying health conditions or weakened immune systems, and pregnant persons. (Guidance Regarding the Order by the Governor Prohibiting Assemblages of More than 25 People, ¶¶ 2 and 9). The Order issued by the

Governor is effective as of March 17, 2020, and by its terms, is in effect through April 5, 2020.

In light of the Governor's declaration of emergency and his Order and the accompanying Guidance, the Board now asks this Court to issue an Order in the nature of an injunction postponing the annual town election and re-scheduling it to a later date during this fiscal year which ends on June 30, 2020. Citing the uncertainty posed by this present emergency public health crisis, The Board further requests that the Town's Board of Selectmen be given authority, in the event that Town officials determine that the election cannot be held by that date consistent with public health and safety, that upon a separate and specific finding to that effect, to further postpone the election to a date within the first two months of the 2021 fiscal year.

After review, the Court determines that circumstances which surround the current health emergency declared by the Governor warrants the Court's grant of relief in the nature of injunction. In the present circumstances, conducting of the election on the scheduled date could have the effect of exposing voters and poll workers to significant physical hazard as the Governor in his Order has outlined. With reference to the specifics set forth in his Guidance to enforcement of the Order, conducting of any election would have a special impact on persons who are particularly vulnerable to the COVID-19 virus, exposing them to accentuated risk or, in paying observance to the contents of the advisement in the Guidance potentially disenfranchising them. The Court determines that injunctive relief in the form of postponement of the election is necessary based upon potential for irreparable harm to the polity and to Town voters and workers. See *Packaging Industries Group v. Cheney*, 380 Mass. 609, 617-618 (1980). It finds no countervailing interest of significant enough heft that could warrant its denial. *Id.* The Court also makes the determination that "the requested order promotes the public interest."

See *LeClair v. Town of Norwell*, 430 Mass. 328, 331-332 (1999) quoting *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984).

The Court enters the following ORDER:

1. Notwithstanding the provisions of section 9 of G. L. Chapter 39, sections 26 and 28 of G. L. chapter 51, and G. L. chapters 53 and 54, or any other 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 this Court may authorize based upon showing by the Board of necessity related to the gubernatorial declaration of period of emergency and any extension of same.

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 the 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 twenty 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, advertisements on local cable television, or issuance of 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

during hours, 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 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 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. 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.

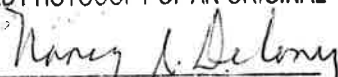
This Order shall be effective immediately.

Date: March 16, 2020



Thomas A. Connors
Justice of the Superior Court

I ATTEST THAT THIS DOCUMENT IS A
CERTIFIED PHOTOCOPY OF AN ORIGINAL
ON FILE.


Deputy Assistant Clerk