

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

SUPERIOR COURT  
CIVIL ACTION NO. NOCV2020-307

IN RE:

AUTHORITY TO POSTPONE  
THE TOWN OF BRAINTREE  
SPECIAL ELECTION

CLERK OF THE COURT  
NORFOLK COUNTY  
2020 MAR 18 PM 10:59  
JAMES J. & PAUL C.

**RULING ON MOTION FOR PRELIMINARY INJUNCTION  
TO POSTPONE ANNUAL TOWN ELECTION**

A complaint has been filed by the Town of Braintree (Town) and its Town Clerk which relates to a Special Election which has been scheduled in that town to take place on March 28, 2020. The Town and its Clerk seek through this filing injunctive relief to postpone that election and to provide for its re-scheduling.

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 affected 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 Town and Town Clerk now ask this Court through issuance of an injunction to postpone the Special Election and authority to re-schedule the Election 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, 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, authority be given 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. In his filing, the Town Clerk asserts that he is experiencing difficulty seeing to the staffing of the twelve polling locations in the Town as a result of the present health crisis. 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 sections 26 and 28 of chapter 51, chapters 53 and 54, section 21C of chapter 59 of the general laws, or 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 Mayor of the Town of Braintree shall hereby be authorized to postpone its Special Election, scheduled for March 28, 2020 and to seek its re-scheduling to a date of his choosing, with the vote of the Town Council as referenced in paragraph two herein. Said date is to be no later than June 30, 2020, or to a later date as this Court may authorize based upon showing by the Town and the Town Clerk of necessity related to the gubernatorial declaration of period of emergency and any extension of same. To the extent this Order is silent, such postponed Election shall be held in accordance with all applicable election laws.

2. The Mayor of the Town of Braintree shall, following consultation with the Town Clerk as to the logistics and feasibility, seek a vote of the Town Council to reschedule the Special Election, and post on the official Town website a copy of this Order, the vote of the Town Council, and a sample ballot, no later than twenty days prior to the date of the rescheduled Special 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 Special Election date and to cast

ballots therein, which notice may include but is not limited to a so-called "reverse 911" call, issuance of a press release sent to local news media, and publication on Town-sponsored social media pages.

3. The last day to register to vote for such rescheduled Special Election shall be ten days prior to the date of that election, and the Town Clerk 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 Special 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 28, 2020 Special Election, and bearing that date, shall be used for the rescheduled Special Election to the extent practicable; if additional ballots must be printed, they shall be identical in form to those prepared for the March 28, 2020 Special Election.

5. Absentee ballots cast in connection with the March 28, 2020 election, whether returned prior to March 28, 2020 or otherwise, and received by the Town Clerk prior to the close of polls on the date of the rescheduled Special 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 Special Election may do so if their absentee has not yet been counted.

Completed applications to vote by absentee ballot in the rescheduled Special Election shall be accepted by the Town Clerk until 12:00 noon on the last business day prior to said Special Election

This Order shall be effective immediately.

Date: March 18, 2020

A handwritten signature in black ink, appearing to read 'T. Connors', written over a horizontal line.

Thomas A. Connors  
Justice of the Superior Court