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COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

BROCKTON DIVISION SUPERIOR COURT
CIVIL ACTION NUMBER 2383CV00390

TOWN OF HULL, petitioner

**MEMORANDUM OF DECISION AND ORDER ON SECOND
EMERGENCY MOTION FOR INJUNCTIVE RELIEF AND
EMERGENCY MOTION OF PATRICK FINN TO INTERVENE**

The Town of Hull filed this action seeking equitable relief relating to a Town election held on May 15, 2023. In a Memorandum of Decision and Order dated May 17, 2023, this Court denied the Town's Verified Emergency Motion to Extend Voting Hours Nunc Pro Tunc and to Permit Counting of Ballots Cast on Monday, May 15, 2023 Between 8:00 P.M. and 10:00 P.M. The Town, in effect, now seeks reconsideration of that decision. In addition, one of the candidates who ran for election, Patrick Finn, moves to intervene. For the reasons discussed below, the Emergency Motion of Patrick Finn to Intervene is **ALLOWED** and the Town's Second Emergency Motion For Injunctive Relief is **ALLOWED**.

BACKGROUND

Hull's annual election of Town officers was held on May 15, 2023. Around 5:38 p.m. on May 15, a six-alarm fire broke out at 5 Q Street in Hull. The police and fire departments were forced to close Nantasket Avenue to traffic at P Street, which prevented access by car to Hull High School, the only polling place in the Town. Some voters attempting to travel to Hull High School were told by police or other public safety officials at the scene that the road was closed and they "were not going to be able to vote." Accordingly, some people left not realizing that they eventually would be allowed to pass through to the High School.

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The road was reopened around 7:00 p.m. The Town Clerk, in consultation with Town Counsel, decided that the best course of action was to extend the voting hours from 8:00 p.m. to 10:00 p.m. to give a voting opportunity to those residents who could not drive to the polls between 5:38 and 7:00 p.m. The Town made a good faith effort to notify Town residents about the extended voting hours.

When the polls closed at 10:00 p.m. on May 15, the Town Clerk tallied those ballots cast during the regular voting hours of 7:00 a.m. to 8:00 p.m. and issued an unofficial tabulation based on the electronic voting machines. The Town Clerk segregated and secured the 80 ballots cast between 8:00 p.m. and 10:00 p.m. and has not yet examined those ballots.

On May 16, 2023, the Town filed a Verified Emergency Motion for equitable relief pursuant to G.L. c. 56, § 59. The Town requested that the Court issue an emergency order extending the hours of voting, *nunc pro tunc*, in the Town of Hull Annual Election held on Monday, May 15, 2023 from 8:00 p.m. to 10:00 p.m. and permitting the counting of those ballots cast between 8:00 p.m. and 10:00 p.m.

In its May 17, 2023 Memorandum of Order and Decision, the Court noted that the margin of victory in one race was only fifteen votes, close enough to be impacted by the blocking of the road to the polling place and the counting of the additional 80 ballots. The Court denied the equitable relief requested by the Town, stating:

when the temporary road closure occurred, citizens attempting to travel to the High School to vote were informed by public safety officials that they would not be able to vote due to the emergency but were not informed at that time that there would be remedial action to ensure residents' right to vote. There is no information before the Court as to how many voters were so affected or their identities. Although the Town made a good faith effort to notify Town residents about the extension of voting hours, there is no guarantee that those citizens who were initially prevented from voting 1) received this information and 2) were able to avail themselves of the additional opportunity to vote. Accordingly, there

exists a very real likelihood that citizens were disenfranchised during the May 15, 2023 Town election.

In support of its Second Emergency Motion, the Town has proffered the affidavit of Lori West, the Town Clerk, who avers that by 8:00 p.m. on May 15, a total of 2,398 ballots had been processed by the voting machines. It costs the Town approximately \$20,000 to conduct an election. Because of the statutory procedures and filing deadlines for conducting elections, a new election could not be held before July 27, 2023. The use of early and absentee ballots likely would be high, creating additional work for the Clerk's Office. In addition, a new election requires coordination with the Department of Public Works with respect to ballot boxes. West believes that a July election would result in significantly lower turnout than the turnout on May 15, 2023. Numerous citizens who voted between 8:00 p.m. and 10:00 p.m. on May 15 have contacted West to express their concern that their votes will be disregarded. The elected incumbent of each Town office serves until his or her successor is elected and sworn in.

In addition, the Town has proffered the affidavit of Michelle Tassinari, the Director and Legal Counsel to the Election Division for the Secretary of the Commonwealth. On May 15, 2023, she recommended to Town Counsel that he seek a court order to extend the polling hours and if that was not possible, to extend the polling hours and seek a validating court order after the fact. No state law authorizes the Election Division to approve an extension or delay in polling hours; thus, court action is required. Tassinari avers that the voter turnout for the May 15 Hull Annual Election was 35% higher than in the past five years. Tassinari opines that it is unnecessary to now open the polls for an additional amount of time. She believes the best solution is to allow the counting of the ballots cast between 8:00 p.m. and 10:00 p.m. on May 15.

Finally, the Town has proffered the affidavit of Deputy Police Chief Neil Reilly stating that he sent out the Code Red telephone alert to Hull residents informing them of the extension

of the polling hours on May 15. There are 14,986 phone numbers in the Code Red system, but many residents enter more than one number. The system sends out a call two times. On May 15, between the two calls, 5,517 calls were received out of the 14,986 calls made.

Motion to Intervene

Patrick Finn, a candidate for a seat on the redevelopment authority, has filed a motion to intervene in this matter. The Town does not oppose that motion. Accordingly, the Court allowed Finn's motion to intervene, and Finn's counsel participated in the oral argument on the Town's second emergency motion.

Counting only the ballots cast on May 15 during the regular voting hours of 7:00 a.m. to 8:00 p.m., Finn won his race by fifteen votes. Finn emphasizes that the polling place remained open at all times on May 15, and there is no evidence that any Hull resident was prevented from voting due to the emergency road closure. Finn therefore urges the Court to deny any equitable relief, leaving the Town Clerk free to disregard the 80 ballots cast during the extended voting hours and certify the election results.

DISCUSSION

Although the Town's motion is entitled "Second Emergency Motion For Injunctive Relief," the Town concedes that it is, in effect, a motion for reconsideration of the Court's May 17, 2023 decision. A motion to reconsider pursuant to Superior Court Rule 9D calls upon the broad discretion of the motion judge. *Commonwealth v. Charles*, 466 Mass. 63, 84 (2013); *Audubon Hill S. Condo. Ass'n v. Community Ass'n Underwriters of Amer., Inc.*, 82 Mass. App. Ct. 461, 470 (2012). If there is no material change in circumstances, such as newly discovered evidence or a development of relevant law, a judge is not obliged to reconsider a case, issue, or

question of law after it has been decided, absent a particular and demonstrable error in the original decision. *Blake v. Hometown Amer. Communities, Inc.*, 486 Mass. 268, 278 (2020); *Charles*, 466 Mass. at 83-84.

The Town has presented additional facts by way of three affidavits. However, none of this evidence is newly discovered. The Town further has presented the Court with case citations which do not represent a new development in the law and could have been cited previously. Thus, the Town's Second Emergency Motion does not present any material change in circumstances. Nonetheless, the Court will exercise its discretion to reconsider the Town's request for equitable relief with respect to the May 15, 2023 election.

The primary concern with that election is that although the polls remained open at all times during regular voting hours, police, fire, or other public safety officers, who undisputedly are official agents of the Town, informed some potential voters that they would not be able to vote that day. It is not and cannot be known whether those individuals learned of and were able to avail themselves of the extended voting hours or were disenfranchised. However, where at all possible, the court resolves voting disputes in favor of the voter. *McCavitt v. Registrar of Voters of Brockton*, 385 Mass. 833, 837 (1982). The purpose of election laws is to secure the rights of voters and not to defeat them. *Brady v. State Ballot Law Comm'n*, 485 Mass. 345, 346 (2020); *McCavitt v. Registrar of Voters of Brockton*, 385 Mass. at 837. The court should make that object paramount when considering a request for equitable relief under G.L. c. 56, § 59 and should not sanction a result which tends to reduce citizen participation. See *McCavitt v. Registrar of Voters of Brockton*, 385 Mass. at 848. Irregularities in the conduct of an election do not invalidate the result unless shown to violate the substantive end for which the election was held. *Swift v. Registrar of Voters of Quincy*, 281 Mass. 271, 278 (1932); *Fyntrilakis v.*

Springfield, 47 Mass. App. Ct. 464, 469 (1999). See also *Citizens for Referendum Vote v. Worcester*, 375 Mass. 218, 219 (1978). Where there has been substantial compliance with the election laws, a citizen who casts his or her ballot should not be disenfranchised. *Colten v. Haverhill*, 409 Mass. 55, 61 (1991); *McCavitt v. Registrar of Voters of Brockton*, 385 Mass. at 842-844.

The May 15, 2023 election produced a strong turnout, 35% higher than any other annual election in the past five years. The Town argues persuasively that a wholly new election, falling in mid-summer, would result in participation by fewer citizens. Moreover, the Town acted in good faith and made a reasonable attempt to ensure that all residents had an adequate opportunity to vote on May 15 despite the emergency road closing. The Court is satisfied that there was substantial compliance with the election laws and that it is in the public interest to count the votes of both the 2,398 residents who voted during regular hours and the 80 residents who voted during the extended 8:00 p.m. to 10:00 p.m. hours, rather than to disregard those votes by holding a new election. See *McSweeney v. Cambridge*, 422 Mass. 648, 655-656 (1996) (noting that even special election may be said to disenfranchise the prior voters to some extent in favor of those voting in the later one).

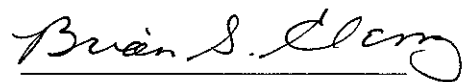
Nonetheless, it is the Court's view that to ensure that no resident is disenfranchised by the actions of Town safety officials in telling potential voters that they would not be able to vote on May 15, 2023, the fairest course of action is to require the Town to open a polling place for two additional hours, roughly the amount of time the emergency fire impacted access to the polls. This will afford an adequate opportunity for Hull residents who did not vote at any time on May 15 to cast their ballot should they desire to do so. The Town Clerk, in consultation with Town Counsel, shall have the discretion to determine the date, time, and location of those two

additional hours of voting and shall provide effective notice to all Hull residents of the additional hours as well as the availability of absentee ballots. Thereafter, the Town Clerk shall certify the results of the Town of Hull Annual Election by totaling all the votes cast on May 15, 2023 and all votes properly cast during the additional two hour voting period.

ORDER

For the foregoing reasons, it is **ORDERED** that the Town's Second Emergency Motion be **ALLOWED**. It is hereby **ORDERED**, *nunc pro tunc*, that polls in the Town of Hull were authorized to remain open in the Town of Hull Annual Election from 8:00 p.m. to 10:00 p.m. on May 15, 2023. It is further **ORDERED** that the Town Clerk count all ballots cast in the Town of Hull Annual Election from 8:00 p.m. to 10:00 p.m. on May 15, 2023.

Finally, it is **ORDERED** that the Town re-open the polls in the Town of Hull Annual Election for two hours, on a date and at a time and location of its choice, to allow voting by those residents who did not cast any vote on May 15, 2023, and that the Town Clerk count all such ballots in certifying the results of the Town of Hull Annual Election.



Brian S. Glenny
Justice of the Superior Court

DATED: May 26, 2023