



Mashpee Wampanoag Tribe

2020-RES-058

REQUEST FOR JUDICIAL ADVISORY OPINION REGARDING CONSTITUTIONAL PROVISIONS RELATED TO 2021 GENERAL ELECTION

WHEREAS, the Mashpee Wampanoag Tribe (“Tribe”) is a federally-recognized Indian tribe with a duly-enacted Constitution;

WHEREAS, the Mashpee Wampanoag Tribal Council (“Tribal Council”), the governing body of the Tribe, deems it essential under Article VI, § 2.A. of the Mashpee Wampanoag Tribal Constitution (“Constitution”) to promote and protect the political integrity, economic security and general welfare of the Tribe and members of the Tribe;

WHEREAS, the Tribal Council recognizes that the 2019 novel Coronavirus is a contagious, and at times fatal, respiratory disease that threatens the health and welfare of members of the Tribe;

WHEREAS, on January 30, 2020, the World Health Organization designated the 2019 novel Coronavirus outbreak as a Public Health Emergency of International Concern;

WHEREAS, the worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and the Commonwealth significantly affect the life and health of our people, as well as the economy, and is a disaster that impacts the health, security, and safety of the public;

WHEREAS, on March, 13th 2020, President Trump declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the



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“Stafford Act”). This increases federal support to the Department of Health and Human Services (HHS) in its role as the lead federal agency for the ongoing COVID-19 pandemic response;

WHEREAS, on March 16, 2020, Tribal Council took additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of the people of the Tribe by declaring a STATE OF EMERGENCY;

WHEREAS, due to the STATE OF EMERGENCY and continuing threat caused by COVID-19, the Tribe has limited access to the Tribal Government Center and suspended in-person Tribal Council meetings and monthly General Membership meetings;

WHEREAS, Article IX, Section 1, Procedures of the Tribal Council, of the Constitution provides in pertinent part:

- (a) The Tribal Council shall meet in official session at least once a month[] every calendar year at such time and place as shall be established by ordinance.”

WHEREAS, Article IX, Section 4, General Tribal Membership Meeting, provides that:

- (a) There shall be a General Tribal Membership meeting called at least once a month by the Tribal Council and open to all tribal members. The purpose of the meeting shall be to discuss problems and issues concerning Tribal affairs; to review the policies, goals, and priorities of the Tribal Council; to review the functioning of Tribal programs and to make recommendations to the Tribal Council for change.
- (b) The Tribal Council shall set the meeting for the second Sunday of each month at such appropriate time and place and shall provide reasonable notice to Tribal members of that meeting by posting such notice in accordance with Section 3 of this Article.

WHEREAS, Article VI, Section 1, Tribal Council, provides that:

- (c) For a person...to be eligible for election or appointment to the Tribal Council that person shall:

- (5) be able to demonstrate attendance at a minimum of six Tribal Council or



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General Tribal Membership meetings, or a combination of those meetings, within the 12 months preceding the Tribal general election....

WHEREAS, the Tribal Council has determined that it is necessary to request an advisory opinion from the Mashpee Wampanoag Tribal Supreme Court (the "Supreme Court") in order to answer the following questions posed by Tribal Council regarding the above-mentioned Constitutional provisions that relate to the 2021 General Election:

1. Does the Court find it constitutional for the Tribe to suspend General Tribal Membership Meetings due to COVID-19 despite the language found in Article IX, Section 4 of the Constitution?
2. Does the Court find it constitutional to hold Tribal Council meetings via teleconference or zoom conference despite limited Tribal member access that could prohibit candidates from meeting election requirements under Article VI, Section 1(c)(5) of the Constitution?
3. How should the Tribe proceed with the 2021 General Election given Article VI, Section 1(c)(5) requires attendance at six (6) Tribal Council meetings or General Tribal Membership meetings if tribal members cannot meet this requirement due to: (1) suspension of General Tribal Membership Meetings; and (2) limited access to Tribal Council Meetings?

WHEREAS, the Supreme Court has the authority to issue an advisory opinion upon the request of the Tribal Council where the matter involves a "matter[] of grave importance" and the Supreme Court has in the past deemed election issues, at issue here, to rise to such a level, *In re the matter of 2014 Election of Four Tribal Council Members*, Case No# CV-13-003 (2013).

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Council hereby requests an Advisory Opinion from the Mashpee Wampanoag Tribal Supreme Court regarding the following questions of law related to Article IX, Section 1 and Section 4 and Article VI,



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Section 1(c)(5) of the Constitution:

1. Does the Court find it constitutional for the Tribe to suspend General Tribal Membership Meetings due to COVID-19 despite the language found in Article IX, Section 4 of the Constitution?
2. Does the Court find it constitutional to hold Tribal Council meetings via teleconference or zoom conference despite limited Tribal member access that could prohibit candidates from meeting election requirements under Article VI, Section 1(c)(5) of the Constitution?
3. How should the Tribe proceed with the 2021 General Election given Article VI, Section 1(c)(5) requires attendance at six (6) Tribal Council meetings or General Tribal Membership meetings if tribal members cannot meet this requirement due to: (1) suspension of General Tribal Membership Meetings; and (2) limited access to Tribal Council Meetings?

BE IT FINALLY RESOLVED, nothing in this resolution shall be read or construed to effect, modify, limit, or waive the sovereign immunity of the Tribal Council or the Tribe, its departments, agencies, organizations, officers, agents, employees and/or instrumentalities.

All resolutions or parts of resolutions inconsistent with this resolution are repealed. This resolution is effective immediately and shall continue pursuant to the authority vested in the Tribal Council pursuant to Article VI, § 2.A. of the Constitution.



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CERTIFICATION

We, the undersigned Chairman and Secretary of the Mashpee Wampanoag Tribal Council, do hereby certify that the Tribal Council is composed of 13 members of whom 8, constituting a quorum, were present at a regular meeting thereof, duly and regularly called, noticed, convened, and held on the 14th day of October, 2020, and that the foregoing resolution was duly adopted by the affirmative vote of 6 members, with 0 opposing, and with 2 not voting.

DATED this 26th day of October, 2020.

A handwritten signature in cursive script that reads "Cedric Cromwell".

Cedric Cromwell, Chairperson
Mashpee Wampanoag Tribal Council

ATTEST:

A handwritten signature in cursive script that reads "Ann Marie Askew".

Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribal Council