



Mashpee Wampanoag Tribe

2021-RES-010

JUDICIAL ADVISORY OPINION REGARDING 2021 REGULAR ELECTION

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

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

WHEREAS, the Coronavirus or COVID-19, a serious respiratory illness that spreads from person-to person, has been declared a pandemic by the World Health Organization and has resulted in severe economic hardship and negative health impacts throughout the United States and for the Tribe and its members;

WHEREAS, COVID-19 continues to spread at an alarming pace throughout the United States and therefore presents a grave an ongoing threat to the Tribe and its members;

WHEREAS, in order to prevent the transmission of COVID-19, the Centers for Disease Control and Prevention (CDC) continues to recommend that all individuals practice social distancing protocols and avoid indoor spaces where ventilation is poor, *see*; CDC, COVID-19, How to Protect Yourself and Others; <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>;

WHEREAS, the CDC further advises that the risk of severe illness with COVID-19 increases with age, and that elders and persons with underlying health conditions are at highest risk, such that extra precautions should be implemented to prevent these high-risk populations from contracting the virus, including limiting interactions with other people as much as possible, *see* CDC, COVID-19, Older Adults, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>;

WHEREAS, Native Americans are contracting COVID-19 at disproportionate rates and face disproportionate and elevated risks from contracting the virus, *see* CDC, COVID-19 Mortality Among American Indian and Alaska Native Persons – 14 States, January-June 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6949a3.htm>;



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WHEREAS, to facilitate compliance with the CDC guidelines, protect members of the Tribe from risks of COVID-19 exposure, and give meaningful effect to the constitutional requirement that “[a]ny enrolled member of the Tribe who is registered to vote shall be entitled to vote in Tribal elections,” the Council has adopted the “Emergency Tribal Ordinance Amending the Mashpee Wampanoag Tribe Election Ordinance for the 2021 Regular Election” (“Emergency Election Ordinance”) through Resolution No. 2021-RES-001, attached hereto as Appendix A, which, among other things, authorizes methods of voting for the 2021 Regular Election that are more effective in preventing COVID-19 transmission, including mail-in voting;

WHEREAS, the 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 seek clarity as to the validity of mail-in voting under the Tribal Constitution;

WHEREAS, the Supreme Court has the authority to issue an advisory opinion upon the request of the Council where the questions presented involve a “matter[] of grave importance” and the Supreme Court in the past has deemed “matters of interpretation of the Tribe’s Constitution and Tribal Law” as “precisely” the matters that are appropriate for the issuance of an advisory opinion, *In re 2014 Election of Four Tribal Council Members*, Case No. CV-13-003 (2014);

WHEREAS, the Council finds that questions regarding the validity of mail-in voting for 2021 Regular Election are particularly important given Council’s dual interest in promoting members’ lawful right to participate in tribal elections and protecting the public health of the Tribe and its members in the midst of a dangerous public health crisis.

NOW, THEREFORE, BE IT RESOLVED, that the Council hereby requests an Advisory Opinion from the Mashpee Wampanoag Tribal Supreme Court on the following questions:

1. Is voting by mail as authorized under Section 7(A) of the Emergency Election Ordinance consistent with the requirement in Article IV, Section 2 of the Mashpee Wampanoag Tribal Constitution that voting in Tribal elections shall be “by secret ballot cast at polls established by the Election Committee at such sites designated by the Election Committee”?
2. Is voting by mail as authorized under Section 7(A) of the Emergency Election Ordinance consistent with the prohibition against absentee voting in Article IV, Section 2 of the Mashpee Wampanoag Tribal Constitution?



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BE IT FURTHER RESOLVED, that for purposes of issuing an opinion on the two questions above, the Council respectfully requests that the Supreme Court consider the following legal and factual predicates regarding the mail-in voting process:

1. The Election Committee will implement voting by mail for the 2021 Regular Election as authorized by the Emergency Election Ordinance.
2. Ballots for the 2021 Regular Election will be mailed to all registered voters.
3. Registered voters can complete ballots mailed to them at home and return the ballots via United States mail to an address specified by the Election Committee.
4. At Section 7(C), the Emergency Election Ordinance adopted by Council provides that "a ballot sent via mail by a registered voter to the address designated by the Committee is officially cast at the time it is received by the Committee at such address."
5. At Section 7(F), the Emergency Election Ordinance adopted by Council provides that "[t]he address designated by the Committee where ballots cast by mail must be sent shall be deemed the polling location for all ballots cast by mail."

BE IT FURTHER RESOLVED, that the Council respectfully requests that the Supreme Court issue its advisory opinion promptly given that ballots for the 2021 Regular Election will be mailed to all registered voters on February 24, 2021, as per the Emergency Election Ordinance;

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.

CERTIFICATION

We, the undersigned Vice-Chairperson and Secretary of the Mashpee Wampanoag Tribal Council, do hereby certify that the Tribal Council is composed of 13 members of whom 9, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened, and held on the 25th day of January, 2021, and that the foregoing resolution was duly adopted by the affirmative vote of 6 members, with 2 opposing, and with 1 not voting.

DATED this 25th day of January, 2021.



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A handwritten signature in cursive script, appearing to read "Jessie Little Doe Baird".

Jessie little doe Baird, VICE CHAIRPERSON
Mashpee Wampanoag Tribal Council

ATTEST:

A handwritten signature in cursive script, appearing to read "Ann Marie Askew".

Ann Marie Askew, SECRETARY
Mashpee Wampanoag Tribal Council