

COMMONWEALTH OF MASSACHUSETTS

Essex,

ESSEX COUNTY  
SUPERIOR COURT  
No. 2377CV378C

DONAL T. COLEMAN,	Plaintiff
v.	
TOWN CLERK, TOWN OF ANDOVER,	Defendant

**DEFENDANT'S MEMORANDUM  
IN OPPOSITION TO  
PRELIMINARY INJUNCTION**

INTRODUCTION

As shown by the warrant which is attached to the Complaint, the Andover 2023 Annual Town Meeting is scheduled to begin at 7:00pm Monday, May 1, 2023. Citing no case law authority, the Plaintiff seeks a preliminary injunction to order that the Annual Town Meeting be held on a Saturday for alleged grounds of convenience for seniors and persons with disabilities. The request should be denied for reasons of procedural, substantive and legal grounds to be discussed below.

FILED  
ESSEX SUPERIOR COURT  
2023 APR 26 AM 9:08

**A. PLAINTIFF'S COMPLAINT REQUESTING A PRELIMINARY INJUNCTION IS NOT VERIFIED**

In violation of M.R Civ. P. 65, the Plaintiff did not file a verified Complaint nor an Affidavit in support of a preliminary injunction. Therefore, the request for an injunction should be denied.

**B. BY STATING THAT THE DEFENDANT IS THE "TOWN CLERK" THE COMPLAINT DOES NOT STATE A PROPER PARTY**

The Defendant is the "Town Clerk". Leaving aside that such a designated defendant is improper because the Complaint does not name the individual human being who is the Town Clerk, the Town Clerk has no authority to change the date of Town Meeting.

General Laws chapter 39, section 10 states in part:

“Every Town Meeting or Town Election, except hereinafter provided, shall be called in pursuance of a warrant under the hands of the Selectmen, notice of which shall be given at least seven days before the annual Town Meeting.....(emphasis implied)

As can be seen on the warrant attached to the Complaint, the date for the 2023 Annual Town Meeting was called by the Andover Select Board, and not by the Andover Town Clerk. Therefore, any injunction issued against the Town Clerk as requested by the Plaintiff would be a nullity having no force and effect to change the date.

C. THE TOWN PROVIDES TRANSPORTATION FOR SENIORS AND RESIDENTS WITH DISABILITIES

As stated on the attached page from the Town’s website:

“Transportation is available to seniors and residents with disabilities who are unable to drive themselves to Town Meeting through Andover Elder Services. Residents who would like to request a ride to Town Meeting should contact Elder Services during regular business hours at: (978)623-8320.”

Thus, the Town provides a reasonable transportation accommodation to seniors and residents with disabilities to enable them to attend Town Meeting. The essence of the Plaintiff’s Complaint is defeated by such a reasonable accommodation.

D. PLAINTIFF CITES NO CONTROLLING AUTHORITY FOR A REQUESTED INJUNCTION

The Complaint is devoid of any case law authority in support of the requested injunction. Although there is vague reference to the Constitution and a statute, no argument nor any specifically referenced part of the Constitution or statute is provided to the Court.

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E. PLAINTIFF HAS NOT SATISFIED THE LEGAL CRITERIA FOR A PRELIMINARY INJUNCTION

In order to prevail on a Motion for a Preliminary Injunction, the plaintiff bears the burden of satisfying the three-part test articulated in *Packaging Industries Group, Inc. v. Cheney*, 380 Mass. 609, 616-17 (1980). See *Boston Police Patrolmen's Ass'n Inc. v. Police Dep't of Boston*, 446 Mass. 46, 49 (2006); *GTE Prods. Corp v. Stewart*, 414 Mass. 721, 722-23 (1993). First, he must show a reasonable likelihood of success on the merits. Second, Mr. Coleman must demonstrate that he would be subjected to “a substantial risk of irreparable harm” if injunctive relief is denied. Third, in light of likelihood of success on the merits, plaintiff must show that his risk of irreparable harm outweighs the potential harm to the defendant if injunctive relief is granted. *Gen'l. Accident Ins. Co. of America v. Bank of New England-West, N.A.*, 403 Mass. 473, 475 (1988). Also to the extent Mr. Coleman is seeking to enjoin governmental action (such as the carrying out of an Annual Town Meeting), he must further show (as a fourth element) that injunctive relief will not adversely affect the interests of the public. *Tri-Nel Mgmt., Inc v Board of Health of Barnstable*, 433 Mass. 217, 219 (2001); *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984).

The burden of persuasion is on the party seeking injunctive relief. “(T)he significant remedy of a preliminary injunction *should not be granted* unless the plaintiff has made a *clear showing* of entitlement thereto”. *Student No. 9 v. Board of Educ.*, 440 Mass. 752, 762 (2004) (emphasis added), citing *Landry v. Attorney Gen'l*, 429 Mass. 336, 343(1999), *cert. den.*, 528 U.S. 1073 (2000). In denying a preliminary injunction the Superior Court described an injunction as “an extraordinary and drastic remedy not to be granted until the movant *clearly carries the burden of persuasion*” as to the requisite elements.” *Konanki v. Calibrate, Inc.*, 2004 WL 3152177, \*4 (Mass. Super. Ct.) (emphasis added), quoting *Morgan Stanley DW, Inc. v. Frisby*, 163 F. Supp. 2d. 1371, 1374 (N.D. Ga. 2001). See C. Wright & A. Miller, 11 Fed'l Practice & Procedure, §2948, at 129-30 (preliminary injunction is an

“extraordinary and drastic remedy”). Mr. Coleman has failed to make a clear showing of entitlement to injunctive relief; therefore, his Motion for a Preliminary Injunction should be denied.

As described above, the Plaintiff’s Complaint does not articulate grounds or authorities for success on the merits. This is not a class action in which the Plaintiff is a designated representative of a class. Since the Plaintiff is not an attorney, he does not represent anyone other than himself.

Furthermore, the Complaint does not state that it is “difficult” for the Plaintiff to attend the May 1, 2023, Annual Town Meeting. The Complaint does not articulate any specific irreparable harm to this Plaintiff if the request for a preliminary injunction was denied.

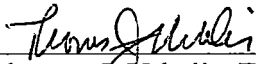
Since a public entity is involved, the Court should also weigh the risk of harm to the public interest when deciding this request for a preliminary injunction. The Town of Andover has over 36,000 residents and more than 16,000 registered voters, hundreds of whom attend the Annual Town Meeting. Planning and participation for an Annual Town Meeting occurs months in advance of the date of the Town Meeting. The Annual Town Meeting is scheduled to commence on the Monday after this Thursday, and giving proper notice of said rescheduling will cause costs and damages to the Town of Andover. Furthermore, as stated above, G.L. ch. 39, section 10 requires that notice of the Annual Town Meeting be given at least seven days before the Annual Town Meeting. The public interest is not served by having residents, who have not received required notice of the rescheduling of the Annual Town Meeting, appear on May 1, 2023, to no meeting.

The standards for the issuance of a preliminary injunction have not been met here.

CONCLUSION

For the foregoing reasons and upon the authorities cited, the Plaintiff's request for a preliminary injunction should be denied.

Andover Town Clerk

By  \_\_\_\_\_  
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(508)523-4652  
BBO# 506560

## **PRE-TOWN MEETING ARTICLE DISCUSSION**

The Town of Andover will host a Pre-Town Meeting Article Discussion on **Tuesday, April 25 at 7:00 PM at the Public Safety Center Training Room, located at 32 N Main Street.**

The event is intended to provide an opportunity for residents to learn more about warrant articles prior to Town Meeting. Town staff will provide presentations outlining the articles, and participants will have an opportunity to ask questions following each overview.

Residents may participate remotely via Zoom using the link below:

### **[Pre-Town Meeting Article Discussion Zoom Link](#)**

Event facilitators will accept questions from both remote and in-person participants.

## **2023 FINANCE COMMITTEE REPORT**

The Finance Committee Report provides an overview of all articles that will be considered during Town Meeting, including a summary of each article and recommendations made by the Finance Committee, Select Board, and other relevant Boards. A printed copy of the Finance Committee Report will be delivered to all households in Andover in April. The document is available in digital form at the link below.

### **[Click here to view the 2023 Finance Committee Report.](#)**

## **IMPORTANT DATES**

**Registration Deadline:** The deadline to register to vote in the 2021 Annual Town Meeting is Friday, April 21. Voter registration can be [completed online](#), or in-person at the Town Clerk's Office.

## **TRANSPORTATION**

Transportation is available to seniors and residents with disabilities who are unable to drive themselves to Town Meeting through Andover Elder Services. Residents who would like to request a ride to Town Meeting should contact Elder Services during regular business hours at: **(978) 623-8320**.

## **KEY ARTICLES (RESOURCES & DOCUMENTS)**

*Additional resources will be added to the chart below as they become available.*