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**TO:** Truro Town Moderator Paul Wisotzky (*By Electronic Mail Only*)

**CC:** Truro Town Clerk Elizabeth Verde (*By Electronic Mail Only*)  
Truro Town Manager Darrin Tangeman (*By Electronic Mail Only*)

**FROM:** Lauren F. Goldberg, Esq.

**RE:** Preparing for the Continued Special Town Meeting

**DATE:** November 13, 2023

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**Question**

You have requested advice concerning the holding of the special town meeting originally scheduled for October 21, 2023, and which has twice been adjourned to a specific time, date and place. You ask whether you continue to have authority, in accordance with the General Laws, to once again open the special meeting solely for the purpose of adjourning to a particular date, time and place.

**Short Answer**

In my opinion, a Town Moderator has responsibility and authority to “preside and regulate the proceedings [of town meeting], decide all questions of order, and make public declaration of all votes”. This broad authority expressly includes, in my opinion, authority to open the scheduled Special Town Meeting solely for the purpose of continuing it based upon concerns about voters’ ability to participate in the meeting. Where there are appeals pending to removal of two people from the voter list, your concerns about persons being improperly excluded from Town Meeting are reasonable, in my opinion.

**Detailed Analysis**

General Laws c.39, §§10 and 15 outline the authority of the Moderator at Town Meeting to regulate all proceedings and decide all questions of order. Courts examining the authority of the Moderator under state law have routinely confirmed this authority, explaining that the good faith determination of questions of order are not reviewable. See, e.g., Doggett v. Hooper, 306 Mass. 129, 133 (1940) (and cases cited therein).

In particular, G.L. c.39, §15 states, in relevant part, “the moderator shall preside and regulate the proceedings, decide all questions of order, and make public declaration of all votes”. General Laws c.39, §10 expounds on this authority, making clear that the Moderator has broad discretion to recess a meeting on the Moderator’s own initiative if he believes voters are being deprived of the opportunity to participate in the meeting for any reason. Specifically, the statute states:

Whenever the moderator determines that voters are being excluded from the town meeting because there is no room for them in the places provided or that voters in attendance are being deprived of the opportunity to participate therein for any reason whatsoever, he shall either, on his own motion recess the meeting for any period during the day of the meeting or, after consultation with the members of the board of selectmen then present, adjourn the same to another date, not later than fourteen days following the date of said meeting, when places and facilities sufficient to accommodate all voters attending and to enable them to participate therein shall be available. [Emphasis added].

The Town Moderator’s judgment about whether persons are being deprived of the opportunity to participate falls squarely within his right to decide all questions of order and make procedural determinations.

#### October 17, 2023 Voter Registration Complaints

The Board of Registrars has addressed the 66 complaints filed on October 17, 2023. However, two persons who were removed from the voter list have filed appeals with the Board of Registrars pursuant to the provisions of G.L. c.51, §49. The relevant portion of the statute states that a person who is removed from the list who did not appear at the hearing may come:

before the registrars before the election or town meeting following and show[ ] sufficient cause for his failure earlier to appear, the hearing shall be reopened and the matter decided on its merits, as determined from the evidence presented on both sides.

I understand that additional notices of removal are being sent today, Monday, November 13, 2023 to others who were removed. Whether these notices will even be received by Thursday, November 16, 2023 is unclear.

As such, the Town Clerk has expressed concern about proceeding with the meeting while these two appeals are pending and while additional appeals may be filed this week. You have also expressed concern that people who properly should be on the list may be improperly excluded if you proceeded with Town Meeting on Thursday before these appeals can be heard. In my opinion, consistent with my previous opinion on this topic, the Moderator’s authority over the procedures of Town Meeting continues to include the authority to delay the date of Town Meeting because of concerns that persons will be improperly excluded from Town Meeting.

#### Date of Continued October 21, 2023 Special Town Meeting

I understand that you intend to continue the Special Town Meeting until November 28, 2023 at 5:30 at the Truro Center School. In my opinion, this is reasonable for the reason outlined above – running the meeting and ensuring that only qualified voters participate is the Moderator’s responsibility. I am informed that it has been suggested that the votes on up to six articles at the Special Town Meeting may be taken by secret ballot. The Clerk’s office has obviously had to prioritize the voter registration hearings and related public records requests over

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the past several weeks. Preparing for even one secret ballot vote requires significant planning and can prove challenging. I am also informed that the Town needs additional secret ballot materials for the meeting. While such materials have been ordered and are expected to arrive this week, there is no guarantee that they will be delivered before Thursday. Further, delaying the date of Town Meeting allows for proper effort to be devoted to planning for the meeting generally and with regard to the use of secret ballots. Additionally, it is difficult to schedule the continued meeting for a date earlier than November 28<sup>th</sup> or 29<sup>th</sup>. As you know, next week is the busiest travel week of the year and holding a Special Town Meeting on that Saturday will potentially be further complicated as many people may already have plans to be out of Town. You have confirmed that neither the audiovisual contractor nor the school are available to hold Town Meeting this Saturday or at any time prior to November 28<sup>th</sup>.

Please let me know if there are further questions on this issue.