

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
NEWPORT, SC. SUPERIOR COURT

JUSTIN KATZ, ET AL :
: v. :
: TOWN OF TIVERTON, by :
: and through PAUL :
: AMARAL, BOBBY HARRIS, :
: DEETTA MORAN, SUSAN :
: SCANLON, and JEAN : NOS.: NC-2018-0153
: VEEGH, in their : NC-2018-0157
: official capacities : NC-2018-0158
: comprising the :
: TIVERTON BOARD OF :
: CANVASSERS and NANCY :
: MELLO, in her official :
: capacities as the :
: TOWN CLERK and the :
: CLERK OF THE BOARD OF :
: CANVASSERS :
: :

HEARD BEFORE THE HONORABLE STEPHEN P. NUGENT

WEDNESDAY, MAY 2, 2018

HEARING

APPEARANCES:

JUSTIN KATZ, PRO SE PLAINTIFF
NANCY DRIGGS, PRO SE PLAINTIFF
RICHARD ROM, PRO SE PLAINTIFF
ROBERT COULTER, PRO SE PLAINTIFF

ANTHONY DESISTO, ESQUIRE.....FOR THE DEFENDANTS

JESSICA L. ALMEIDA, CRI, RPR, CSR
CERTIFIED COURT REPORTER

C E R T I F I C A T I O N

I, Jessica L. Almeida, hereby certify that the succeeding pages, 1 through 47, inclusive, are a true and accurate transcription of my stenographic notes.

Jessica L. Almeida, CRI, RPR, CSR
Certified Court Reporter

WEDNESDAY, MAY 2, 2018

MORNING SESSION

1 THE CLERK: Justin Katz.

2 MR. KATZ: Ready hearing.

3 THE CLERK: Please stand and raise your right
4 hand. You do solemnly --

5 THE COURT: That's not necessary for him to
6 raise his hand. There's no testimony.

7 THE CLERK: Do you solemnly swear that the
8 testimony --

9 THE COURT: We don't need an oath.

10 THE CLERK: Yes, Your Honor.

11 THE COURT: Just argument.

12 THE CLERK: The matter before the Court is
13 Case No. NC-2018-0153, Justin Katz versus the
14 Town of Tiverton.

15 Will counsel please identify themselves for
16 the record.

17 MR. KATZ: Justin Katz, pro se.

18 THE COURT: Go ahead.

19 MS. DRIGGS: Nancy Driggs. I'm actually an
20 inactive member of the Rhode Island and Mass. Bar
21 at this moment. I'm also a resident --

22 THE COURT REPORTER: I'm sorry. Resident --

23 MS. DRIGGS: Resident of the Town of Tiverton
24
25

1 and elector petitioner.

2 MR. COULTER: Good morning, Your Honor.
3 Robert Coulter, pro se plaintiff, to be clear, on
4 Civil Action 158, which I've requested to
5 consolidate with 157 and 153.

6 In candor to the Court, I am a member of the
7 Bar, but I am self-representing today.

8 THE COURT: In the case NC-2018-0157,
9 Nancy Driggs, the other two named plaintiffs are
10 Justin La Croix and Richard Rom. Are they present?

11 MS. DRIGGS: Mr. Rom is present, Your Honor.

12 THE COURT: All right. State your name for the
13 record, please, sir.

14 MR. ROM: Richard Rom, 27 Cornell Road,
15 Tiverton, Rhode Island.

16 THE COURT: Thank you. Mr. La Croix?

17 MS. DRIGGS: Mr. La Croix, Your Honor, works
18 the third shift and could not be present today, but
19 we are prepared to address his resolutions.

20 THE COURT: He's got to be here to represent
21 himself.

22 First, some ground rules -- well, Mr. DeSisto.

23 MR. DESISTO: Anthony DeSisto for the
24 defendants, Town of Tiverton, Tiverton Board of
25 Canvassers, and Town Clerk.

1 THE COURT: Thank you.

2 First, some ground rules. The court reporter
3 who is seated to my right has to take down
4 everything that is said in this courtroom exactly
5 as it is said and when it is said. Therefore,
6 obviously this is a big room with poor acoustics,
7 so it's necessary for you to keep your voices up so
8 that she can hear you and take down what is being
9 said.

10 Also, only one person at a time can speak. So
11 let the other person finish what they're saying
12 before responding. Don't interrupt each other or
13 the Court.

14 As far as the spectators are concerned, there's
15 to be no talking in the spectator section. My
16 sheriff had to admonish some spectators this
17 morning about talking. Even though he admonished
18 them, they continued to talk. There's going to be
19 no drinking of water or coffee or anything of that
20 nature. No chewing of gum.

21 We also have competing noise coming from the
22 outside. The windows are open because it's a warm
23 day. So we have a lot of traffic that goes by
24 here. So it's necessary to keep your voice up.

25 I'm going to hear for -- the first matter to be

1 addressed is Mr. Coulter's motion to consolidate.
2 It hasn't been marked up for hearing. That
3 normally would be assigned to the motion calendar.

4 Mr. DeSisto, I don't know if you have an
5 objection or how you want that handled. As I said,
6 I'm not -- only if you're in agreement to it would
7 I consider it.

8 MR. DESISTO: I have no objection, Your Honor.

9 THE COURT: All right. Then the motion to
10 consolidate is granted. The cases which have been
11 called are consolidated for hearing on a motion for
12 temporary restraining order, which is what this is.

13 Now, I'll hear from Mr. Coulter first and then
14 I'll hear from Ms. Driggs and then I'll hear from
15 Mr. Katz.

16 So, Mr. Coulter, I'll hear you on a motion for
17 a temporary restraining order.

18 MR. COULTER: Thank you, Your Honor.

19 THE COURT: You're welcome. Go ahead.

20 MR. COULTER: Your Honor, this case is actually
21 very, very simple. The Tiverton Town Home Rule
22 Charter allows any elector of Tiverton to poll with
23 50 signatures of other electors to put a
24 resolution -- and it's for a ballot question. To
25 be very clear, it's called a resolution or a ballot

1 question. It's not called a budget resolution.
2 It's not called a budget ballot question.

3 These plaintiffs, it is undisputed, went to
4 Town Hall, polled the forms correctly, went out and
5 canvassed at least 50 -- in fact, well over 50
6 signatures, went back to Town Hall, had them sworn
7 out properly before the deadline. So all the
8 procedural issues that were before this Court last
9 year are not relevant this year.

10 What had happened this year for the first known
11 time in the history of Tiverton, Rhode Island, is
12 that the Board of Canvassers blocked some but not
13 all resolutions from reaching the ballot on
14 substantive grounds only, on substantive grounds
15 only. There's no dispute that we have perfect
16 procedural compliance. And the result of that is
17 actually really a phenomenal infringement on some
18 fundamental rights that are at stake here.

19 So our view, Your Honor, is the analysis really
20 begins and ends right there. There is no dispute
21 that these resolutions were in procedural
22 compliance. The Board of Canvassers has certified
23 the signatures, and they should go onto hearing
24 tomorrow night and onto the ballot and let the
25 people decide.

1 Now, Your Honor, we are prepared to go item by
2 item on each and every one of the resolutions and
3 have a mini argument, if you will, on whether any
4 particular resolution is, so to speak, illegal, but
5 that is just not the proper role of the Board of
6 Canvassers.

7 The Board of Canvassers is here to certify
8 the voter rolls and to protect the integrity of the
9 election process. Let these votes go to the
10 ballot. They may not even pass and it's moot. Or
11 they may pass.

12 And just like we will have other -- the
13 exhibits show there has been a lot of filings
14 here on short notice. But we have on the record,
15 Your Honor, some 72 examples of prior resolutions
16 in the last 13 years, including resolutions on this
17 very ballot that these defendants did not block
18 which have restrictions on monies being used that
19 would arguably bump elbows with the authorities of
20 others in government. That's how it works.

21 There are cases in the past where -- where a
22 town has taken action and has been later ratified
23 by the General Assembly. There's a million
24 different ways that this can go. But the bottom
25 line is there's no dispute that we have procedural

1 compliance here, and the only reason we're here --
2 we're going down a very slippery slope of asking a
3 volunteer Board of Canvassers to start making
4 decisions about whether something might -- might be
5 enforceable down the road. And that's the case,
6 Your Honor.

7 I would certainly love to have an opportunity,
8 if we need to, to go down every resolution and
9 explain why they are in fact quite enforceable, but
10 that's the case.

11 THE COURT: All right. Thank you, if you're
12 finished.

13 Ms. Driggs, would you stand here at the podium,
14 please. We have the benefit of a microphone. Keep
15 your voice up and speak right into that microphone.

16 MS. DRIGGS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 MS. DRIGGS: I am in total agreement with
19 what Mr. Coulter just said.

20 I will indicate that this is a temporary
21 restraining order, and the less this Court
22 intervenes today -- there's a case, *Burns v.*
23 *Sundlun*, which is actually cited in a case that
24 Mr. -- Attorney DeSisto gave to the Court which
25 said that they didn't even -- despite a lack of

1 standing, the question in that case presented such
2 a fundamental question of whether plaintiffs could
3 vote on an issue at a public election that they
4 heard the case and they intervened so that that
5 could happen. That is basically the fundamental
6 issue that is at play here.

7 As Mr. Coulter said, I have presented to the
8 Court with my memorandum Exhibits D-1 through D-29,
9 all of which include every certified resolution by
10 the Town of Tiverton between 2006 and last year's
11 Financial Town Referendum. And the Court can see
12 in those exhibits that there are -- 72 of them
13 placed restrictions on funds as they were applied
14 to going into the general fund. The voters placed
15 the restriction. Every one of these 72 resolutions
16 were allowed to go to the voters at either the
17 FT -- Financial Town meeting or the Financial Town
18 Referendum. And some passed; some didn't. But the
19 point is, they did contain restrictions and -- in
20 placement of funds, and the voters were allowed to
21 decide.

22 Interestingly, also as Mr. Coulter indicated,
23 there were eight elector petitions filed this year
24 on the ballot. Five were blocked and -- yeah. And
25 the other three of the elector petitions, all the

1 Budget Committee resolutions and all of the Town
2 Council resolutions went on even though they too
3 contained restrictions on the funds.

4 It would appear from the advice that the Board
5 of Canvassers got from the Town Solicitor that the
6 five that were blocked were primarily blocked
7 because they were proposals for which the Board of
8 Canvassers, Town Solicitor, I don't know, contained
9 policy content that they didn't agree with. And
10 that is just not an acceptable mandate for the
11 Board of Canvassers to consider.

12 And again, I also am prepared to go case by --
13 resolution by resolution if the Court wants to hear
14 it, but the bottom line is there is much precedent
15 for this kind of resolution since 2006 being
16 allowed to go before the voters with their vote.
17 Thank you, Your Honor.

18 THE COURT: You're welcome. Is it Mr. La Croix,
19 or is it Mr. Rom?

20 MR. ROM: Rom.

21 THE COURT: Do you want to be heard, sir?
22 You're a party to this case, 2018-0157. I think
23 you're pro se; is that correct? Representing
24 yourself.

25 MR. ROM: That's correct, Your Honor.

1 THE COURT: Go ahead if you want to be heard.

2 MR. ROM: I have nothing more to say other than
3 what you've already heard from Mr. Coulter and
4 Ms. Driggs is what my complaint is.

5 THE COURT: All right. Thank you.

6 MR. ROM: Thank you.

7 THE COURT: Mr. Katz.

8 MR. KATZ: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. KATZ: We're here today, this week, because
11 last week something remarkable, not in a good way,
12 happened in Tiverton. That was the Town Solicitor
13 advised the Board of Canvassers that in his opinion
14 some of the resolutions submitted might face
15 charter complaints were they put on the ballot and
16 enacted into law by the voters of the Financial
17 Town Referendum. He would not, when asked, specify
18 whether he was so sure of that that a Court would
19 be more likely to rule in favor of an opposition to
20 the resolutions or to these particular complaints.
21 So when somebody asked him if we put these on the
22 ballot and somebody complains, will that be more
23 likely to win than if we don't put them on the
24 ballot and somebody complains, he wouldn't say.

25 In a circumstance like this, as Mr. Coulter

1 mentioned, a volunteer board of people trying to do
2 public service on a Board of Canvassers are
3 extremely unlikely to act in a contrary manner to
4 the advice of the Solicitor, even if it's
5 overstated.

6 In this case, there was no notice, formal or
7 otherwise, that the Board of Canvassers intended to
8 consider the resolutions on process. Any elector
9 of Tiverton would have every expectation that the
10 same process that has always been followed, if you
11 have the 50 signatures, everything is valid about
12 your petition, your resolution, it goes on the
13 ballot.

14 There was no indication that there was going to
15 be judgment as to the legality or enforceability of
16 these particular resolutions. So there was no
17 opportunity for the petitioners or people like me
18 who helped organize the gathering of signatures and
19 such to find -- to construct arguments for the
20 Board of Canvassers, to find legal representation
21 if we so desired.

22 But instead the Board did something that it has
23 no authority to do, that in fact exceeds its -- its
24 authorities and blocked resolutions as if they had
25 already been deemed unenforceable, which had never

1 happened. They had been declared potentially to
2 create a liability.

3 And just for a sense of the injustice of that
4 action, if you review the Solicitor's memorandum in
5 this Court that I believe was submitted yesterday,
6 he misstates plainly what some of the resolutions
7 do.

8 For example, one the Solicitor Attorney says
9 would obligate town officials to take an action.
10 It does no such thing. It says, quote, expression
11 of desire. It's a ballot question which is allowed
12 under a referendum. It just says we, the voters,
13 would like the Town Council to do this. It's not
14 an obligation unless we are talking about the
15 consciences of the Town Council members, for
16 example.

17 On another resolution of Mr. Rom's, he states
18 that one of them would -- one of the resolutions
19 would allow any -- would object to any budget line
20 item that is depleted to one dollar or less during
21 the course of the year. That's simply not what the
22 resolution says. It's very clear it applies to,
23 quote, any line item on the budget which is adopted
24 by the electors at this Financial Town Referendum
25 showing one dollar. In other words, if it's --

1 that's the starting point. If a line item starts
2 out at less than a dollar, it can't be considered
3 for the purposes of our Charter to be an
4 unanticipated shortfall and therefore funded by the
5 Town Council. So we could argue about whether
6 that -- that would be enforceable. But the point
7 here is that the Solicitor's advice to the Board of
8 Canvassers was -- was defective in these obvious
9 ways, and these are just two of those.

10 So my -- my basic question is how it would be
11 possible that we could have a circumstance that a
12 Board of Canvassers could -- based on advice from a
13 Solicitor who characterized the resolutions
14 incorrectly could then with no notice to the people
15 who submitted those resolutions just go ahead and
16 no formal hearing and no authority listed anywhere
17 in state, local, or federal law just pass judgment
18 on whether these should be included on the ballot?
19 It's clearly not a legitimate action of the Board
20 of Canvassers.

21 I'd like to take a moment to address also the
22 question of standing. The defendants' memorandum
23 argues that the several plaintiffs of these three
24 cases are -- have only a generalized grievance. I
25 would suggest that this actually misstates the

1 grievance.

2 The plaintiffs here are not saying we have a
3 special right to have our policy -- preferred
4 policies enacted at the FTR. That's a political
5 question that we're -- we're prepared to debate
6 with our fellow residents of Tiverton.

7 We're here because we participated in the
8 process of putting forth resolutions to our
9 neighbors and were blocked. We are in that sense
10 very unique. Only six people put forward
11 resolutions and eight people collected signatures,
12 myself being one of them, and some five to eight
13 dozen signed these. So these are people who have
14 participated in a political process and been
15 stopped.

16 We are therefore unlike the rest of Tiverton's
17 residents who -- now, if we get to the Financial
18 Town Referendum and none of these resolutions pass
19 or they do pass, then we will be similarly situated
20 to everybody else who votes or has an opportunity
21 to vote because it's just the policy outcome as
22 part of the ordinary process of the Financial Town
23 Referendum.

24 Here again, we are -- we're here on the
25 process, which is clear. Electors take certain

1 steps and they receive a hearing at the Financial
2 Town Hearing and they get a vote on the proposals
3 they put forward. It's very, very clear in that
4 Town Charter. So we uniquely among electors have
5 not -- have been deprived of that outcome.

6 I want to reinforce also the statements of the
7 prior plaintiffs. The only point that really
8 matters here is that the Board of Canvassers
9 fundamentally lacks the authority to block
10 resolutions on content grounds. The closest
11 language anybody has been able to find, including
12 defendants' attorney, is that in the Charter,
13 the -- it gives the Board of Canvassers
14 jurisdiction over the Financial Town Referendum.

15 That -- having some familiarity with the
16 drafting of that language, that was intended to
17 make sure that everybody understood that the
18 Board -- this is -- the Financial Town Referendum
19 is a unique -- a unique mechanism in Town
20 government. And so it was to make sure that
21 everybody understood that the Board of Canvassers
22 would be the ones verifying signatures and not,
23 say, the Town Clerk or the Town Council. So
24 that -- that's the jurisdiction. Without some
25 details, you can't read that to grant additional

1 authority to the Board of Canvassers that they have
2 under no other law.

3 For example, if somebody that were -- were
4 voting at the Financial Town Referendum were
5 assaulted, would jurisdiction mean the Board of
6 Canvassers had authority to hear that criminal
7 case? Or if there was a parking ticket given out
8 during the Financial Town Referendum, the Board of
9 Canvassers wouldn't have the authority to hear the
10 complaint or the appeal of that parking ticket.
11 That jurisdiction just means the Board of
12 Canvassers does what the Board of Canvassers do.

13 And that's why in this case a request of
14 temporary restraining order, mandamus are
15 appropriate because we're asking the Court to say,
16 Board of Canvassers, do your job, which is to
17 certify -- make sure all the voters on the list are
18 fine and that's it. So just to go forward with
19 what you are supposed to do.

20 All of these examples I want to stress because
21 I was involved somewhat in that case that came
22 before the Court last year, *Jeremy Larkin v. The*
23 *Town of Tiverton*. In contrast to my hypotheticals
24 and all of the resolutions here today, that case
25 was clearly on the basis of process. The elector

1 in the case, Mr. Larkin, did not accurately follow
2 the process laid out for -- in that case, it was a
3 budget proposal, not a resolution, which has some
4 additional restrictions. He didn't adequately
5 follow that process, so there's no applicability
6 there.

7 And, in fact, like in the transcript from that
8 hearing last year with Judge Brian Van Couyghen, he
9 stated, quote, the electors deserve the right to
10 have the mandates of the Charter complied with,
11 otherwise the rule of law would be meaningless and
12 subject to the whim of Town officials.

13 That is what we're seeing here. Five out of
14 eight elector resolutions were swept away on some
15 allegation that somebody may file a complaint
16 against them.

17 Three -- the three others that passed -- and we
18 know these resolutions -- there is not a procedural
19 issue with these five because three other -- the
20 three other resolutions were also part of a -- sort
21 of a package of eight had followed exactly the same
22 process and had almost identical signatures to get
23 onto the ballot, and yet they were allowed on the
24 ballot while these five were singled out and not
25 allowed.

1 Regarding the defendants' citation of a 1904
2 case, *Williams v. Champlin*, that case was clearly
3 about an issue within the purview and the
4 jurisdiction of a Board of Canvassers. It was on
5 qualified voters. So the Court in that case was
6 deciding whether it could issue a mandamus order
7 based on that Board of Canvassers' legitimate
8 judgment.

9 That's not even in the same ballpark as what
10 we're talking about here. The Board of Canvassers
11 can't act as a panel of judges on anything they
12 want to and not face a mandamus or a TRO action
13 just because somewhere in some law from a century
14 ago it says they're judicial in nature. They're
15 judicial in what way? What do they have the right
16 to judge? That's the key question.

17 Now, even if the Charter were seen to have
18 granted authority to the Board of Canvassers to
19 block resolutions because they're illegal, even
20 then I would argue it does not additionally grant
21 authority to the Board of Canvassers to determine
22 that something is illegal.

23 So, for example, if this Court were to say I
24 agree with that particular -- that that particular
25 resolution is illegal, you may block that, that

1 would be this Court, a more legitimate authority,
2 suggesting that and actually finding the case of
3 unenforceability.

4 In this case, we have no finding. Nobody
5 has -- no legitimate authority has told the Board
6 of Canvassers this is an unenforceable, quote,
7 illegal resolution. The Town Solicitor offered
8 that as advice. There was no hearing and no due
9 process to determine that was in fact the case.

10 Now, even if the Board of Canvassers were given
11 the authority to determine if resolutions were
12 legally unenforceable, the reasoning in all of
13 these cases is clearly wrong. The largest example
14 here is in the latest filing from the defendants.
15 Again and again we see the phrase "budget
16 resolution." In some cases it's even underlined.
17 That phrase appears nowhere in Tiverton's Town
18 Charter. It's always at best or at most budget
19 proposals and resolutions.

20 Now, there may be some ambiguity in that,
21 whether the adjective "budget" applies to the nouns
22 "proposals" and "resolutions." But careful review
23 of the Charter shows that this is clearly not the
24 case, because whenever the Charter breaks them
25 apart, it -- the word "budget" is separated from

1 the word "proposal."

2 So -- and you have this in some exhibits from
3 my recent memorandum this morning. In Section
4 301(b), it breaks it into Section 1, "Budget
5 Proposals"; Section 2, "Resolutions." Section 2
6 never uses the word "budget." And in fact it
7 actually expands the meaning of resolution to
8 include ballot questions, which you would not read
9 under any reasonable circumstances a -- budget
10 ballot questions.

11 This happens again in Section 301(d). The
12 Charter breaks out Section 1, "Elector Budget
13 Proposals"; Section 2, "Elector Resolutions." No
14 budget in there.

15 And to just really drive this point home, in
16 Section 301(d)3), which is the single most relevant
17 paragraph in terms of the discussion here,
18 "Qualification of Petitions," it reads in full,
19 "All elector budget proposals and elector
20 resolutions shall be included on the ballot for the
21 Financial Town Referendum and presented at the
22 Financial Town Hearing provided that they are
23 accompanied by 50 electors' signatures."

24 There's simply no way to read into that that
25 the drafters of the Town Charter wanted the word

1 "budget" to be inserted in the elector resolutions
2 when they -- clearly they would have put elector
3 budget resolutions if that had been the intention.
4 And it just wasn't.

5 And a final point on this -- and this is
6 another exhibit in my memorandum this morning. If
7 you go back and look at the prior Charter, which
8 had a Financial Town -- Town Meeting process and
9 not a Financial Town Referendum process, the most
10 similar provision was Section 303, which was called
11 "Additional Financial Proposals."

12 In that version, it's very specific any
13 proposal for the expenditure of money could gather
14 50 signatures and appear on the docket at that
15 meeting.

16 The drafters of the Financial Town Referendum
17 process deliberately took that language out and
18 brought it -- the rights of the electors to put
19 referenda and ballot questions on this ballot. So
20 it was a deliberate action. There's simply no --
21 no ambiguity about it.

22 And a final point on these supposedly
23 non-budgetary resolutions. The attorney for the
24 Town cites a 1957 case, *Capone v. Nunes*. And in
25 relevant part that reads "the electors qualified to

1 vote in a financial town meeting do not constitute
2 the town."

3 Now, this case was -- what the Court was
4 arguing was that this body can't -- can't arrogate
5 to itself additional responsibilities and authority
6 because it's not everybody. At the time the
7 Financial Town Meeting was -- was limited to
8 taxpayers. And the Court was saying but the entire
9 universe of electors includes people who aren't
10 taxpayers.

11 Interestingly, the Solicitor's assistant has
12 written a legal paper about that case in which he
13 specifically explains that a constitutional
14 amendment to the Rhode Island Constitution in 1973
15 mooted that argument because you were no longer
16 allowed to exclude people who weren't taxpayers.
17 So it's a mooted case.

18 But even so, the Financial Town Referendum
19 applies to everybody. Any elector can go and vote,
20 and therefore they do in fact constitute the town.

21 To move to a different one to explain why that
22 one is clearly legitimate -- this is the one filed
23 by Mr. La Croix. When -- obviously this one --
24 this is to provide a rebate if new revenue from the
25 Twin River Casino exceeds the expectations of the

1 budget. And the defendants cite the *Warwick Mall*
2 *Trust v. The State*, which is completely inaccurate.

3 In that case, the plaintiffs were going to the
4 Court to have ruled unconstitutional an act of the
5 General Assembly. They were saying no, the General
6 Assembly can't rebate from our tax base. We have
7 to vote on that rebate. And the Court was saying,
8 well, no, the General Assembly grants you the
9 authority to tax; therefore, they grant you the
10 authority to rebate.

11 In the memo you'll see from the defendants'
12 attorney yesterday they conveniently put the three
13 dots, the ellipses, across another -- an internal
14 citation of *Crafts v. Ray* from 1900. And in there
15 it emphasizes in the quote -- in the citation is
16 "the power to tax necessarily implies a power to
17 exempt."

18 So clearly if Tiverton has the power to tax on
19 real estate, it has the power to tax -- or to
20 rebate some of that money because some other
21 revenue source came in higher than needed.

22 And as further evidence of this point, and you
23 have this in Ms. Driggs' exhibits, a resolve at the
24 Financial Town Meeting on the ballot gathered the
25 50 signatures and was placed before voters had

1 almost a very -- almost the same provision except
2 it was a rebate based on state aid for motor
3 vehicle taxes. So basically it says, if motor
4 vehicle taxes come in higher than expected, the
5 Town will rebate that amount to the people of --
6 the taxpayers of the Town.

7 As it happens, I went back and watched the
8 Financial Town Meeting. And it's a painful process
9 I wouldn't recommend. But the voters voted that
10 down. At no point did anybody in the room suggest
11 that it wasn't legitimate. It was -- the Town
12 Solicitor at the time said nothing. There was a
13 parliamentarian in the room paid by the Town. Had
14 no objection.

15 And yet now suddenly, arbitrarily on the whim
16 of the Board of Canvassers officially, that's not
17 legitimate. If -- as an added -- added input of
18 emphasis on that, in 2011 the Town created a
19 "Pay As You Throw" program that requires us to use
20 particular bags you pay \$2 for to put our garbage
21 in for curbside pickup.

22 At the time the Council voted twice on that.
23 The first was to create the program, and the second
24 was to ask the voters at the Financial Town Meeting
25 if they wanted to restrict those funds. The

1 Solicitor at the time, Andrew Teitz, actually told
2 the Town Council you don't have the authority to
3 restrict that money.

4 So clearly the practice has been the Financial
5 Town Meeting, which has been amended by the
6 Financial Town Referendum, that's the body that has
7 the authority over the budget to change item --
8 line items, restrict them, rebate taxes.

9 So now, within the confines of these suits
10 before you, though, I want to emphasize that we're
11 not asking the Court to impose our policy
12 preferences through the Financial Referendum.
13 We're asking to have our questions put forth. That
14 in fact is the status quo. The status quo is you
15 follow the process. You get a hearing and a vote.
16 It would actually be a gargantuan change if
17 suddenly the Board of Canvassers were to be
18 invested with this new power to judge resolutions
19 based on their content.

20 And if we lose -- if we lose our argument to
21 the public, our political argument, so be it. But
22 we want to have our due process rights preserved.

23 And in fact in the Solicitor's -- in the
24 defendants' memo, they talk about how we can go out
25 and change the Town Council. We're actually here

1 protecting -- if we do that, we're protecting the
2 people who might oppose us in the future. We don't
3 want that Town Council who hires that Solicitor to
4 be able to advise that Board of Canvassers at the
5 time that resolutions we don't like are not
6 applicable. We want to restrain future Town
7 Councils too to follow the process unless obviously
8 the Charter is changed.

9 On that note, the defendants cite our ability
10 to engage the political process by getting new town
11 councilors, changing the Charter, and so on. Those
12 are political processes. So is the Financial Town
13 Referendum.

14 What this amounts to is somebody preferring
15 that we take a different political process and use
16 that instead. That's -- that's not legitimate.
17 This is all a part of the political process.

18 So the proper action in this case is to put
19 these resolutions on the ballot, let the voters
20 vote. And if the voters vote them down with the
21 tax rebate based on -- then there's no -- there's
22 no -- the point -- the illegal questions were moot.
23 They were voted down and we moved on. If they're
24 not voted moot -- I mean they are voted in and
25 become law, anybody can -- who has standing can

1 challenge them. In fact, I would argue that the
2 Town Council could deem some of these resolutions
3 unenforceable and not enforce them, which would
4 lead into somebody else, probably us, to challenge
5 that in court.

6 So that is the way where the process allows
7 for all of the -- everyone to get their due
8 process. That is the status quo. And it will
9 radically harm the people of Tiverton, the public
10 interest of Tiverton to have this situation where
11 the rules can change any given year.

12 And if -- furthermore, if we don't get the
13 immediate relief of a restraining order or writ of
14 mandamus, then the threshold for good government
15 citizens to move forward and challenge their
16 government when it acts on a whim like this will be
17 higher.

18 Right now, very few people, I would say, are
19 going to go before a Court, take their time out of
20 their day, often stay up all night trying to draft
21 memos in order to challenge an unfair attack on
22 their civil rights like this is. If it becomes a
23 case that it's not even a two-week process of
24 intense research and writing, if it becomes a case
25 that is a full year-long trial, you're almost

1 guaranteeing that any town solicitor can tell any
2 board of the town, "I think you should do this."
3 They do it, and boom, the law has changed without
4 anybody's ever having voted to do that. That's all
5 I have to present to the Court.

6 THE COURT: Thank you. Mr. DeSisto.

7 MR. DESISTO: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 MR. DESISTO: Well, the one thing I agree with
10 Mr. Coulter on is that this is actually a very
11 simple case.

12 The purpose of the Financial Town Referendum is
13 for the Town of Tiverton to enact a budget. The
14 disallowed resolutions are non-budget items.

15 All of these plaintiffs, Your Honor, and they
16 haven't said it, but in one way or the other
17 they're active in the town. They're either on the
18 Charter Review Commission or they're on the Budget
19 Committee, both elected bodies.

20 So I think they're correct. I think Mr. Katz
21 was correct when he said that this is really
22 advancing their political agenda. And that's why
23 in my memorandum I thought that the best process
24 for this would be to let it be handled through the
25 electoral process. They can get on the Council,

1 enact these things by way of ordinance, get a new
2 Solicitor and go that way.

3 But on the point of the Board of Canvassers,
4 clearly they have to make determinations as to what
5 does and does not go on the Financial Town
6 Referendum.

7 Last year Mr. Katz was the complainant on a
8 budget proposal that ended up here in Superior
9 Court. The Board of Canvassers in that case
10 disallowed the budget proposal. It went to court.
11 The Town was successful. We're back here again.
12 This is turning into an annual event.

13 But it's the same thing. If the Board of
14 Canvassers has no role as to what goes on the
15 ballot for the Financial Town Referendum, it seems
16 to me they shouldn't even be part of the process.
17 The Town Clerk can just get these in and send them
18 right in. But they're not. They're there.

19 The *Champlin* case, which is still good law,
20 states that what they do is judicial in nature.
21 They did rely on my advice. They did make that
22 determination.

23 So that brings me down to the final point. And
24 again, I can go over the proposals too. They're
25 non-budget. But it seems to me that from the

1 arguments that you've heard, there is no
2 irreparable harm here. There is no standing.
3 There's no particularized interest that they've
4 articulated here.

5 They do, by the way, have another recourse,
6 which I discussed. Their likelihood of success on
7 the merits to me is slight or not at all. And the
8 reason for it is this, these budget -- these
9 resolutions that are non-budgetary in nature should
10 have been kept off. The Board of Canvassers does
11 have that ability to determine what goes on and
12 what does not go on the Financial Town Referendum
13 as we saw in the *Larkin* case. So if there's
14 success on the merits, I don't see it.

15 And when you balance the equities here -- the
16 Board of Canvassers made their determination on
17 Monday last week. Here we are, and the ballots
18 have already been sent to the printer. The
19 Financial Town Referendum is tomorrow. The vote is
20 on May 19th.

21 So when I balance out the equities here -- and
22 by the way, my advice was to preserve the integrity
23 of the process. What was happening here was to
24 turn the Financial Town Referendum into something
25 that expands beyond and to abrogate those processes

1 that are delegated in the Town Charter to other
2 boards and commissions of the Town.

3 So I think that when you balance out the
4 equities, it falls in favor of the Town. And
5 because this is a mandatory -- request for
6 mandatory injunctive relief, the plaintiffs have to
7 show a clear right. Just based on the arguments,
8 there is no clear right here.

9 I can just take a look at the Town Charter
10 myself. Tomorrow night is a discussion on budget
11 proposals. The ones that were excluded were not
12 budget proposals. The purpose of the Financial
13 Town Referendum is to enact a budget. The Board of
14 Canvassers has jurisdiction over the Financial Town
15 Referendum. I just -- I don't see it. And I
16 understand that there's an agenda here that the
17 plaintiffs want to advance. I just think this is
18 the wrong forum, and I'd ask that the TRO be
19 denied.

20 THE COURT: Thank you. The Court has reviewed
21 the papers, the complaints that have been filed,
22 the attachments, the memorandum or memoranda filed
23 by the Town and reply memoranda by the plaintiffs.

24 The Court is aware of the May 3 public hearing.
25 And frankly, that's one of the reasons why the

1 matter was scheduled for today, the day before that
2 public hearing.

3 And even though -- when the papers were
4 originally filed, my recollection is that there was
5 no request for a temporary restraining order.
6 Mr. Coulter's was the first -- those papers were
7 filed on Friday, the 27th. Mr. Coulter's papers
8 were filed on Monday, and they did include a
9 request for a hearing on a temporary restraining
10 order, which is the proper procedure to follow.

11 Now, the matters have been consolidated, so all
12 of the parties have joined in and filed motions for
13 temporary restraining orders, which is what's
14 before the Court today.

15 Now, taking each complaint in the order in
16 which it was docketed by the clerk, first
17 2018-0153, Katz versus the Town of Tiverton, the
18 complaint seeks in Count I a declaratory judgment
19 that the Charter does not permit the Board of
20 Canvassers to prohibit resolutions which were duly
21 and timely submitted by qualified electors with the
22 requisite verified signatures from being included
23 on the Financial Town Referendum ballot based on
24 policy preferences, predictions or concerns or
25 opinions as to possible effects or enforceability

1 if approved or other grounds on perceived
2 substantive merits.

3 Count II seeks injunctive relief alleging that
4 absent injunctive relief mandating inclusion of the
5 blocked resolutions on the Financial Town
6 Referendum ballot, the plaintiff will suffer
7 immediate and irreparable harm and they will be
8 deprived of voting rights under the Charter as well
9 as deprived of the opportunity to debate the
10 blocked resolutions at the associated public
11 hearing on May 3, 2018 and deprived as well of
12 seeing resolutions which Mr. Katz supported have
13 the opportunity to be approved by his fellow
14 electors at the Financial Town Referendum.

15 In Case 2018-0157, Driggs, et al, versus the
16 Town of Tiverton, the complaint seeks in Count I
17 a declaratory judgment, which is the same as the
18 Count I in the Katz case. Count II seeks
19 injunctive relief. Again, it's the same as
20 included in the Katz case. And Count III seeks
21 mandamus, specifically a writ of mandamus issued by
22 this Court commanding all of the defendants to take
23 all actions necessary within their official powers
24 to cause the plaintiff's elector resolution to be
25 included with all of the other resolutions on the

1 upcoming Financial Town Referendum ballot and in
2 the preceding official public hearing.

3 Case 2018-0158, Coulter, C-O-U-L-T-E-R, versus
4 the Town of Tiverton, again, this complaint seeks
5 Count I, a declaratory judgment, which is the same
6 as the Count I in the Katz case; Count II,
7 injunctive relief, which is the same as Count II in
8 the Katz case; and Count III, mandamus, which is
9 the same as the Count III in the Driggs, et al
10 case. As I said earlier, each of them now has
11 requested a temporary restraining order.

12 Now, the standard of review is that the
13 granting of the temporary restraining order is an
14 extraordinary remedy as stated by our Supreme Court
15 in *Brown v. Amaral*, 460 A.2d 7 at Page 10.

16 The Court must determine whether plaintiff, in
17 this case plaintiffs, one, have a reasonable
18 likelihood of success on the merits; two, will
19 suffer irreparable harm without the requested
20 relief; three, have the balance of equities weigh
21 in their favor; and four, have shown that the
22 requested injunction will maintain the status quo.

23 As stated in *Pucino v. Uttley*, 785 A.2d 183 at
24 Page 186 which cites *Iggy's Doughboys, Inc. v.*
25 *Giroux*, 729 A.2d 701 at Page 705, the moving party

1 is not required to establish a certainty of success
2 when proving the likelihood of success on the
3 merits but instead is required to make out a prima
4 facie case as stated in *DiDonato v. Kennedy*,
5 822 A.2d 179 at Page 181, a 2003 Supreme Court
6 decision citing *Fund For Community Progress v.*
7 *United Way of Southeastern New England*, 695 A.2d
8 517 at Page 521.

9 Further, the function of a temporary
10 restraining order is not ordinarily to achieve a
11 final and formal determination of the rights of the
12 parties or of the merits of the controversy, but is
13 merely to hold matters in status quo and in the
14 meantime to prevent the doing of any acts whereby
15 the rights in question may be irreparably injured
16 or endangered as cited in the *Fund for Community*
17 *Progress* case previously cited, 695 A.2d at 521,
18 quoting *Coolbeth v. Berberian*, 112 R.I. 564, a 1974
19 Supreme Court case. "An application for such
20 temporary injunctive relief is, of course,
21 addressed to a trial justice's sound discretion,
22 which should not be exercised unless the applicant
23 has at least made out a prima facie case," again
24 stated at *Coolbeth v. Berberian* previously cited at
25 Pages 564 to 566.

1 Also, as stated in that case, the *Coolbeth v.*
2 *Berberian* case, a temporary restraining order
3 should be issued only to hold matters approximately
4 in status quo and prevent the doing of any acts
5 whereby the rights in question may be irreparably
6 injured or endangered.

7 Of course, the status quo at the present time
8 is that those five resolutions are not on the
9 ballot to go before the Financial Town Referendum.

10 Now, the plaintiffs in all of these cases, all
11 three cases, have filed their respective lawsuit to
12 enforce Section 301 of the Tiverton Home Rule
13 Charter, hereinafter the Charter, which grants
14 qualified electors the right to place resolutions
15 by petition on the ballot for the Tiverton
16 Financial Town Referendum which is taking place
17 this year on May 19th, 2018.

18 The Driggs, et al and Coulter plaintiffs have
19 filed three counts against the Town as previously
20 stated, Count I, declaratory relief; Count II,
21 injunctive relief; and Count III, mandamus. The
22 Katz plaintiff has only filed the first two counts.

23 The plaintiffs originated petitions for eight
24 resolutions. However, only three were approved by
25 the Board of Canvassers at its meeting held on

1 April 23, 2018.

2 The plaintiffs have argued that all eight
3 resolutions are procedurally compliant with Section
4 301 of the Charter. The Board of Canvassers did
5 not approve the remaining five resolutions
6 submitted by the plaintiffs upon advice of the Town
7 Solicitor. The plaintiffs claim that they received
8 no indication or notice that these five resolutions
9 were at risk of not being approved until the
10 meeting on April 23. The plaintiffs have provided
11 the, quote, New Business Portion of the April 23
12 agenda of the Board of Canvassers which stated:
13 "2, New Business, discussion of the Financial Town
14 Referendum May 19, 2018; certification of ballot
15 budget proposals and resolutions; discussion on
16 ballot order for the resolutions with possible
17 lottery; certification of elector petition
18 signatures; certification of mail ballot
19 applications.

20 The plaintiffs claim that the agenda stated,
21 quote, certification, unquote, with the clear
22 implication that the resolutions would be
23 certified. As such, the plaintiffs claim that they
24 did not have a fair opportunity to prepare for and
25 be fully heard at such meeting because the agenda

1 did not provide notice that there was a possibility
2 that the resolutions might not be certified.

3 The next hearing is scheduled to take place on
4 May 3, 2018.

5 This Financial Town Hearing is a meeting where
6 the Financial Town Referendum ballots will be
7 presented or ballot will be presented and shall be
8 provided for electors to review and debate
9 equitably all budget proposals and resolutions.

10 The plaintiffs claim that absent injunctive
11 relief mandating inclusion of the blocked
12 resolutions on the Financial Town Referendum
13 ballot, plaintiffs will suffer immediate and
14 irreparable harm in that they will be deprived of
15 voting rights under the Charter and deprived of the
16 opportunity to debate the blocked resolutions at
17 the May 3 Financial Town Hearing.

18 Now, Section 301 of the Charter provides --
19 subpart (f) provides that the purpose of the
20 Financial Town Referendum is to, quote, order any
21 tax which lawfully may be ordered, make
22 appropriations, and transact any other business
23 pertaining to the affairs of the Town which may
24 legally come before such a referendum via Budget
25 Proposals and Resolutions. It should be noted --

1 as noted, the Solicitor advised that the so-called
2 five blocked resolutions were illegal.

3 The plaintiffs argue that the Board of
4 Commissioners may not block their proposed
5 resolutions for substantive reasons because there
6 is nothing in the Charter that provides for a form
7 of review or any approval process for certifying
8 the resolutions and point to several sections of
9 the Charter in support of their argument.

10 Specifically Section 301(d)1) of the Charter
11 provides, "Electors of the Town may petition that
12 an alternate budget proposal be included in the
13 Financial Town Referendum."

14 In addition, Section 301(d)2) provides that
15 "electors may petition that a resolution pursuant
16 to Section 301(b)2) be included on the ballot for
17 the Financial Town Referendum."

18 Further, Section 301(d)3) provides, "All
19 Elector Budget Proposals and Resolutions shall be
20 included on the ballot for the Financial Town
21 Referendum and presented at the Financial Town
22 Hearing provided that they are accompanied by 50
23 qualified elector signatures."

24 Section 301(b)2) acts as a gatekeeper to the
25 inclusion of resolutions and provides that, quote,

1 a resolution or ballot question may be included on
2 said ballot, provided that if adopted it shall not
3 alter the ballot entries of Section 301(b)1) (a-e).

4 Finally, Section 301(c)3) provides that,
5 "Qualified resolutions submitted by elector
6 petition in accordance with Section 301(d) shall
7 appear on the ballot."

8 The plaintiffs have alleged that their blocked
9 resolutions were qualified and that their blocked
10 resolutions do not alter the ballot entries of
11 Section 301(b)1) (a-e).

12 Therefore, they argue that they can satisfy the
13 first prong of the test articulated above; that is,
14 that they have a reasonable probability of success
15 on the merits because their blocked resolutions are
16 procedurally compliant and the Charter does not
17 provide the Board of Canvassers authority to deny
18 the proposed resolutions on substantive grounds.

19 This argument lacks merit. The crux of the
20 purpose of the Financial Town Referendum is that
21 approved ballots be legal, conform to both city and
22 state law, and concern the budget.

23 The plaintiffs' resolutions were blocked on the
24 basis of their illegality as determined by the Town
25 Solicitor and then adopted by the Board of

1 Canvassers based upon Tiverton Regulation Section
2 803, which states that the duties of a Town
3 Solicitor include providing legal advice to all
4 boards, commissions, and agencies of the town.

5 Two of the resolutions, according to the
6 Solicitor, violate the Rhode Island Constitution
7 because they purport to require certain Tiverton
8 casino revenue to be used for a tax rebate if it
9 exceeds a certain anticipated amount.

10 Our constitution states that cities and towns
11 remain powerless to levy, assess, and collect taxes
12 or to borrow money except as authorized by the
13 General Assembly. This is contained in Article 13
14 of the Rhode Island Constitution, Section 5.

15 As the General Assembly has not provided
16 authorization for this type of tax rebate, the
17 resolution fails to conform to Rhode Island law and
18 is thus illegal.

19 In *Warwick Mall Trust v. The State*, 684 A.2d
20 252 at Page 254, the Rhode Island Supreme Court
21 stated that, "If a city or town cannot levy,
22 assess, and collect taxes without General Assembly
23 authorization, then it certainly cannot abate,
24 exempt, or allocate payments it would otherwise be
25 entitled to receive as taxes or to negotiate for

1 their receipt as payments in lieu of taxes without
2 such authorization."

3 The next two so-called blocked resolutions
4 pertain to proposals that do not concern the
5 budget. The plaintiffs argue that the proposed
6 resolutions submitted by qualified electors do not
7 need to concern the Tiverton budget. However, the
8 Town Charter must not be read in isolation. The
9 Court must consider the entire Charter as a whole.
10 Individual sections must be considered in the
11 context of the entire scheme, not as if each
12 section was independent of all other sections as
13 our Supreme Court stated in *State v. Hazard*,
14 68 A.3d 479 Page 485, a 2013 Supreme Court
15 decision.

16 Here, the Financial Town Referendum is intended
17 to allow electors to vote on the finances or the
18 budget of the town. The Financial Town Referendum
19 would violate Section 407 of the Charter which
20 provides that, "All powers of the Town shall be
21 vested in the Town Council except as otherwise
22 provided by the Charter or by the Constitution and
23 laws of the State" if the Board of Canvassers were
24 to allow resolutions concerning every town topic to
25 be voted on during the Financial Town Referendum.

1 In addition, the next blocked resolution
2 violates Section 407, Subpart 14, of the Charter,
3 which provides that, the Town Council shall, "Order
4 such budget reductions or transfers of funds within
5 the Municipal Budget as may become necessary to
6 meet unanticipated requirements or shortfalls
7 during the fiscal year, as recommended by the
8 Administrator."

9 Thus, the Board of Canvassers does not have the
10 authority to allow a resolution that would require
11 any line item reduced to one dollar or less during
12 the course of the fiscal year to be subject to a
13 transfer as this authority resides within the sound
14 discretion of the Town Council.

15 Finally, the plaintiffs argue that the Board of
16 Canvassers lacks authority to block the plaintiffs'
17 resolutions. However, Section 301(g)5) states
18 that, "The Board of Canvassers shall have
19 jurisdiction over the Financial Town Referendum."
20 And as such, our Rhode Island Supreme Court has
21 stated that, "Courts will not second-guess a
22 municipal agency in matters involving discretion in
23 the absence of proof of such factors such as fraud,
24 collusion, bad faith, or abuse of power" as stated
25 by *Sullivan v. Faria*, 112 R.I. 132, Page 138, which

1 is a Rhode Island -- 1973 Rhode Island Supreme
2 Court decision.

3 As far as the objection or the claim by the
4 Town that the plaintiffs lack standing because they
5 only have a generalized interest for the purposes
6 of ruling on this motion for a temporary
7 restraining order, I'm assuming that they do have
8 standing for purposes of this hearing.

9 Also, as far as the argument that the Board of
10 Canvassers lacks authority to reject the
11 plaintiffs' resolutions, as I previously stated,
12 Section 301(g)5) of the Charter states that, "The
13 Board of Canvassers shall have jurisdiction over
14 the Financial Town Referendum." And this Court
15 will not second-guess the Town of Tiverton,
16 specifically the Board of Canvassers, as there has
17 been no showing or allegation of fraud, collusion,
18 bad faith, or abuse of power.

19 As I said, in addition, the plaintiffs,
20 specifically Mr. Katz, argues that the Board of
21 Canvassers had no authority to determine the
22 legality of the so-called blocked resolutions;
23 however, the Board was acting on the advice of the
24 Solicitor pursuant to the Tiverton Regulation
25 previously cited, 803. And as the Court has ruled,

1 there were certainly grounds for that advice by the
2 Solicitor.

3 Also, Mr. Coulter in his reply memorandum
4 addressed the issue of whether resolutions needed
5 to concern budget matters. He argues that because
6 the, quote, word proposal is almost always preceded
7 by the word budget -- strike that -- by budget and,
8 quote, resolution is never preceded with the word
9 "budget," these resolutions do not need to be
10 budget resolutions.

11 However, as I previously stated, the Charter
12 must not be read in isolation. It must be
13 considered as a whole. And as I said earlier, the
14 Financial Town Referendum is an avenue for the
15 residents of the Town of Tiverton to vote on the
16 yearly budget.

17 The residents of the Town have other avenues to
18 seek redress for their concerns that do not involve
19 budgetary matters such as voting in elections and
20 voting out, how shall we say, those officials whom
21 they disagree with and voting in those whom they
22 agree with.

23 Also, Mr. Coulter argues that the Board of
24 Canvassers' actions are subject to review by this
25 Court. As I previously stated, the action of a

1 Board of Canvassers is judicial in its nature and
2 its action cannot be reviewed by this Court either
3 by mandamus proceedings or by a writ of quo
4 warranto as stated by the Supreme Court in
5 *Williams v. Champlin*, 26 R.I. 416, a relatively
6 recent Supreme Court case decided in 1904.

7 It seems that Mr. Coulter takes issue with the
8 age of this case. Legally speaking, 1904 is
9 practically considered to be yesterday. In
10 addition, it is still binding precedent and has
11 never been reversed or abdicated by our Supreme
12 Court in the years since.

13 And even if I were to consider the request for
14 issuance of a writ of mandamus, plaintiffs have not
15 demonstrated that they have a clear and legal right
16 to the relief sought, which is the standard
17 articulated by our Supreme Court in *Muschiano v.*
18 *Travers*, 973 A.2d 515, wherein the Supreme Court
19 stated, "This Court," meaning the Supreme Court,
20 "clearly and repeatedly has established the
21 requirements for issuing such a writ: it will only
22 be issued when the petitioner has a clear legal
23 right to the relief sought; the respondent has a
24 ministerial duty to perform the requested act
25 without discretion to refuse; and three, the

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petitioner has no adequate remedy at all."

For all of the above-cited reasons, the motion for the temporary restraining order is denied. The Court will be in recess.

(A D J O U R N E D)