

STATE OF RHODE ISLAND
NEWPORT, SC.

SUPERIOR COURT

ROBERT COULTER,

Plaintiff

v.

C.A. No. NC-2018-_____

TOWN OF TIVERTON, by and through
PAUL AMARAL, BOBBY HARRIS,
DEETTA MORAN, SUSAN SCANLON,
and JEAN VEEGH, in their official
capacities 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,

Defendants

VERIFIED COMPLAINT
FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF AND/OR ISSUANCE OF A WRIT OF MANDAMUS

Introduction

This is an action to enforce Section 301 of the Tiverton Home Rule Charter granting duly qualified electors the right to place resolutions by petition on the ballot in Tiverton’s Financial Town Referendum.

Parties

1. Plaintiff Robert Coulter is an individual resident within Tiverton, Rhode Island and is a qualified elector of the Town of Tiverton.
2. Defendant Town of Tiverton is a duly organized municipal corporation located in the State of Rhode Island.
3. Defendants Paul Amaral, Bobby Harris, DeEtta Moran, Susan Scanlon, and Jean Veegh are the presently serving members of, and presently comprise, the Tiverton Board of Canvassers. They are named here in their official capacities only.

4. Defendant Nancy Mello is the presently serving Town Clerk of the Town of Tiverton and by virtue of such position is also the Clerk of the Board of Canvassers. She is named here in her official capacities only.

Jurisdiction and Venue

5. This Court has jurisdiction over this matter pursuant to the Uniform Declaratory Judgment Act, R.I. Gen. Laws § 9-30-1 *et seq.*, in law and in equity under R.I. Gen. Laws § 8-2-13 and § 8-2-14, and under the Due Process Clauses and Equal Protection Clauses of the United States Constitution and the Rhode Island Constitution.
6. Venue is proper in this Court pursuant to R.I. Gen. Laws § 9-4-3 and § 9-4-4.

Background

7. By and through amendment of the Tiverton Home Rule Charter in 2011 approved by the electors of the Town and Tiverton and ratified by the Rhode Island General Assembly, Tiverton replaced its theretofore longstanding process of town meetings with a referendum process known as the “Financial Town Referendum” (“FTR”) which, among other things, permits the Tiverton Budget Committee, the Tiverton Town Council, the Tiverton School Committee, and qualified Tiverton electors (in the case of electors, by petition with signatures of at least fifty electors) to submit ballot questions and resolutions (“Resolutions”) for debate at a required public hearing and inclusion on FTR ballots for voting by the electors. This year the annual FTR is scheduled for May 19, 2018.
8. Section 301(d) (Petitions) of the Tiverton Home Rule Charter provides:
 - 1.) Elector Budget Proposals: ...
 - 2.) Elector Resolutions: No later than 28 days before the Financial Town Referendum electors may petition that a Resolution pursuant to Section 301 (b) 2.) be included on the ballot for the Financial Town Referendum.
 - 3.) Qualification of Petitions: The Town Clerk shall cause petition signatures to be verified by the Board of Canvassers, such verification to be completed no later than 21 days before the Financial Town Referendum. All Elector Budget Proposals and Elector Resolutions shall be included on the ballot for the Financial Town Referendum and presented at the Financial Town Hearing provided that they are accompanied by 50 qualified elector signatures.
9. Section 301(b)2.) of the Tiverton Home Rule Charter provides:
 - 2.) Resolutions: Pursuant to Section 301 (c), a resolution or ballot question may be included on said ballot, provided that if adopted it shall not alter the

ballot entries of Section 301 (b) 1.) A. through E. Electors shall be instructed to “Approve or Reject” resolution(s).

10. Section 301(c) of the Tiverton Home Rule Charter provides in relevant part:

(c) Access to Ballot

1.) ... Resolutions submitted by the Budget Committee shall appear on the ballot.

2.) ... Resolutions submitted by the Town Council and or the School Committee shall appear on the ballot.

3.) ... Qualified Resolutions submitted by elector petition in accordance with Section 301 (d) shall appear on the ballot.

11. Leading up to the FTR, the Tiverton Home Rule Charter requires an associated public hearing known as the “Financial Town Hearing”. This year the hearing is scheduled for May 3, 2018. Section 301(e) states the purpose of such hearing:

Purpose: The ballot pursuant to Section 301 (b) as it will be presented at the Financial Town Referendum shall be provided for electors to review and equitably debate all budget proposals and resolutions.

12. While there is generally no right as of law for electors to speak and debate at public meetings (such as those of the Budget Committee or the Town Council), the public does have a right to speak at the Financial Town Hearing, and such hearing is typically videotaped and covered by local media. In addition, originators of Resolutions or their representatives are granted dedicated seating and opportunity to present and debate their sponsored Resolutions.

Factual Allegations

13. The Plaintiff and five other duly qualified electors of the Town of Tiverton originated petitions for, as applicable and collectively among them, eight Resolutions (such eight Resolutions, “Elector Resolutions”). The Plaintiff originated one of the eight Elector Resolutions.

14. Petitions for all eight Elector Resolutions were timely returned combining for at least fifty signatures accompanying each Elector Resolution, all on petition forms prepared by the Town Clerk with the requisite affidavits by the persons obtaining signatures.

15. The Budget Committee submitted Resolutions of its own, and all of those Resolutions were approved for inclusion on the FTR ballot at a meeting held by the Board of Canvassers on April 23, 2018.

16. The Town Council also submitted Resolutions, and all of those Resolutions were approved by the Tiverton Board of Canvassers at its April 23, 2018 meeting for inclusion on the FTR ballot.
17. The School Committee submitted no Resolutions for this year's annual FTR.
18. At the same meeting held on April 23, 2018 where the Board of Canvassers approved all of the Resolutions submitted by the Budget Committee and the Town Council, the Board of Canvassers approved three of the eight submitted Elector Resolutions, but did not approve five Elector Resolutions, including the Plaintiff's Resolution, to be included on the FTR ballot (such five, the "Blocked Resolutions").
19. None of the Blocked Resolutions altered ballot entries contemplated by Section 301 (b) 1.) A. through E. of the Tiverton Home Rule Charter.
20. Upon information and belief, the Board of Canvassers has verified that each Elector Resolution was accompanied by at least fifty signatures of qualified Tiverton electors, and no objection has been raised that any Resolution missed a filing deadline or lacked required information or procedural action. Instead, the Board of Canvassers appeared to base its decision to prevent the Blocked Resolutions from reaching the ballot on policy preferences and/or on speculation as to whether a Resolution, if approved by the voters, might not be enforceable.
21. Upon information and belief, the Board of Canvassers has never restricted access to an FTR ballot based on the content of a Resolution. However, in 2017, the Board of Canvassers disapproved access to the FTR ballot for a budget proposal by elector petition on the procedural grounds that the petitioners did not provide requisite information, thus invalidating their petition.
22. The Plaintiff applied for the preparation of official petition forms from Defendant Mello on April 17, 2018 but received no indication or notice that his Resolution was at risk of being blocked until hearing about the actions of the Board of Canvassers at its April 23, 2018 meeting.
23. The "New Business" portion of official agenda for the April 23, 2018 meeting of the Board of Canvassers gave no indication that the Plaintiff's Resolution would be blocked. That portion of the agenda stated:

2. New Business

- Discussion of the Financial Town Referendum (FTR) May 19, 2018
- Certification of Ballot Budget Proposals and Resolutions
- Discussion on ballot order for Resolutions with possible Lottery
- Certification of Elector Petition Signatures
- Certification of Mail Ballot Applications

24. Because the Board of Canvassers' posted agenda for its April 23, 2018 meeting only stated "[c]ertification" with the clear implication that the Resolutions would be certified (and perhaps subject to lottery as to their order of appearance on the ballot), that agenda did not provide sufficient notice that there was a possibility that Resolutions might not be certified. Thus the Plaintiff did not have fair opportunity to prepare for and be fully heard at such meeting.
25. The Plaintiff signed petition forms for all of the Blocked Resolutions.
26. In addition to personally signing petitions for all of the Blocked Resolutions, the Plaintiff also expended time, effort, and incidental expense of soliciting, explaining, and obtaining signatures from other duly qualified electors of the Town of Tiverton on the petitions of the Blocked Resolutions, and timely submitted such petitions, and made the requisite affidavits under oath before a Notary Public.
27. The Plaintiff desires to debate and support his Resolution at the May 3, 2018 public hearing required before the FTR, and elsewhere in the public sphere.
28. The Plaintiff intends to vote at the upcoming FTR.
29. The Plaintiff desires to vote on his Resolution, desires that his Resolution have the opportunity for consideration and possible approval by the entire Tiverton electorate, and if included on the ballot intends to vote to approve his Resolution.
30. At its April 23, 2018 meeting, the Board of Canvassers was aware that litigation was possible if it did not permit all of the Elector Resolutions to proceed to ballot.
31. On April 24, 2018, the Plaintiff notified the Board of Canvassers and the Clerk of the Board of the Canvassers in writing that the Plaintiff, among others, was preparing to file this action and asked the Board to reconsider.
32. On April 27, 2018, the Plaintiff again wrote to the Board of Canvassers in advance of the Board's meeting that day.
33. Upon information and belief, despite the warnings of litigation and requests to reconsider, the Board of Canvassers has neither refrained from taking next steps to cause FTR ballots to be printed nor given any indication that such steps are intended or likely.

Count One – Declaratory Judgment

34. The Plaintiff incorporates the foregoing enumerated paragraphs by reference.
35. The acts and omissions of the Defendants which have prevented the Blocked Resolutions from proceeding to official public hearing and to the FTR ballot are in violation of the Tiverton Home Rule Charter.

36. By preventing the Blocked Resolutions from proceeding to official public hearing and to the FTR ballot, the Defendants have deprived the Plaintiff of his rights as an elector under the Tiverton Home Rule Charter to propose Resolutions for consideration, debate, and vote by the Tiverton electorate to approve or reject Resolutions, all in violation of due process constitutional rights.
37. By permitting some but not all Resolutions, and especially some but not all Elector Resolutions, to proceed to official public hearing and to the FTR ballot, the Defendants have deprived the Plaintiff of his rights as an elector under the Tiverton Home Rule Charter to propose Resolutions for consideration, debate, and vote by the Tiverton electorate to approve or reject Resolutions, all in violation of equal protection constitutional rights.

WHEREFORE, the Plaintiff prays for relief as follows:

- (A) Judgment declaring that the Tiverton Home Rule Charter does not permit the Tiverton Board of Canvassers to prohibit Resolutions which were duly and timely submitted by qualified electors with the requisite verified signatures from being included on FTR ballots based on policy preferences, predictions or concerns or opinions as to possible effects or enforceability if approved, or other grounds on perceived substantive merits;
- (B) Reimbursement for costs and fees; and
- (C) Such other and further relief as this Honorable Court may deem equitable and just.

Count Two – Injunctive Relief

38. The Plaintiff incorporates all foregoing enumerated paragraphs by reference.
39. Absent injunctive relief mandating inclusion of the Blocked Resolutions on the FTR ballot the Plaintiff will suffer immediate and irreparable harm in that they will be deprived of voting rights under the Tiverton Home Rule Charter, deprived of the opportunity to debate the Blocked Resolutions at the associated official public hearing set for May 3, 2018, and deprived as well of seeing Resolutions which he supported have the opportunity to be approved by their fellow electors.
40. The public interest favors the upholding of the rule of law and the enforcement of laws to provide for access to ballots, robust speech and debate, voter participation, the integrity of election process, and the finality of elections.
41. The balance of the equities is in favor of the Plaintiff.

WHEREFORE, the Plaintiff prays for relief as follows:

- (A) Preliminary and permanent injunctions mandating that the Tiverton Board of Canvassers and the Town Clerk include the Plaintiff's Blocked Resolution on the FTR ballot and at the preceding official public hearing.

- (B) Reimbursement for costs and fees; and
- (C) Such other and further relief as this Honorable Court may deem equitable and just.

Count Three – Mandamus

- 42. The Plaintiff incorporates all foregoing enumerated paragraphs by reference.
- 43. The Plaintiff has a clear right to inclusion of their Resolutions on the ballot for the FTR.
- 44. The Plaintiff has a clear right to be heard at the official public hearing preceding the FTR.
- 45. The duty of the Defendants to include the Plaintiff's Elector Resolution on the FTR ballot is ministerial and non-discretionary.
- 46. No other clear, adequate, and speedy remedy exists at law.

WHEREFORE, the Plaintiff prays for relief as follows:

- (A) A writ of mandamus, issued by this Honorable Court, commanding all of the Defendants to take all actions necessary within their official powers to cause the Plaintiff's Elector Resolution to be included with all of the other Resolutions on the upcoming FTR ballot and in the preceding official public hearing.
- (B) Reimbursement for costs and fees; and
- (C) Such other and further relief as this Honorable Court may deem equitable and just.

* * *

RESPECTFULLY SUBMITTED, pro se, by

Robert Coulter
34 Lawton Avenue
Tiverton, Rhode Island 02878
(401) 525-0469
rcoulter@outlook.com

Dated: April 30, 2018

[Verification follows]

Verification by Plaintiff

STATE OF RHODE ISLAND
_____, SC.

I, Robert Coulter, a competent person of the full age of majority, am the Plaintiff in the civil action to which this Verification is attached.

I hereby certify that the factual allegations set forth in the foregoing civil complaint are true and correct as to my own knowledge except for those allegations made upon information and belief, and to those excepted allegations I hereby certify that those are true to the best of my knowledge and belief.

The foregoing certifications are made under the pains and penalties of perjury.

Robert Coulter

Subscribed and sworn to before me on this 30th day of April, 2018:

Notary Public
My commission expires on: _____