

STATE OF RHODE ISLAND  
NEWPORT, SC.

SUPERIOR COURT

JUSTIN KATZ,

Plaintiff

v.

C.A. No. NC-2018- 7153

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**

**Introduction**

This is an action to enforce Section 301 of the Tiverton Home Rule Charter granting duly qualified electors the right to debate at hearing and vote on resolutions duly petitioned by qualified electors to be included in Tiverton's Financial Town Referendum.

**Parties**

1. Plaintiff Justin Katz 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.

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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**

5. This Court has jurisdiction over this matter pursuant to the Uniform Declaratory Judgment Act, R.I. Gen. Laws § 9-30, and the Due Process Clauses of the United States Constitution and the Rhode Island Constitution.

**Background**

6. 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 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.

7. 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.

8. 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).

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

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(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.
10. 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.
11. 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.

**Factual Allegations**

12. Six various duly qualified electors of the Town of Tiverton originated petitions for, as applicable and collectively among them, eight Resolutions (such eight Resolutions, “Elector Resolutions”). 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 which were notarized by the person obtaining the signatures.
13. 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.
14. 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.
15. The School Committee submitted no Resolutions for this year's annual FTR.
16. 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

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of Canvassers approved three of the eight submitted Elector Resolutions, but did not approve the other five Resolutions to be included on the FTR ballot (such five, the "Blocked Resolutions").

17. None of the Blocked Resolutions altered ballot entries contemplated by Section 301 (b) 1.) A. through E. of the Tiverton Home Rule Charter.
18. 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.
19. The Tiverton Town Solicitor was present at the April 23, 2018 meeting of the Board of Canvassers and did not allege that such Board was required under law to block the Blocked Resolutions.
20. 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.
21. The Plaintiff signed petition forms for all of the Blocked Resolutions.
22. In addition to personally signing petitions for all of the Blocked Resolutions, the Plaintiff also expended time and effort of soliciting 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.
23. If the Blocked Resolutions were not originated by other electors, the Plaintiff would have originated at least some of those Resolutions himself, or Resolutions substantively identical.
24. The Plaintiff desires to debate and support the Blocked Resolutions at the public hearing required before the FTR, and elsewhere in the public sphere.
25. The Plaintiff intends to vote at the upcoming FTR, desires to vote on the Blocked Resolutions, and if on the ballot intends to, unless persuaded otherwise at the official public hearing or through other public debate and discourse, vote to approve all of the Blocked Resolutions.

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26. 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. Furthermore, the attending Town Solicitor would not advise the members as to whether litigation against the Board of Canvassers for failing to approve all Blocked Resolutions would be more likely to succeed in court than hypothetical litigation against the Board for approving such Resolutions.
27. Within hours after the Board of Canvassers hearing, the Plaintiff advised the Town Clerk in writing that litigation was likely imminent and requested that the Board of Canvassers refrain from printing ballots until it reconsidered the matter or until resolved through litigation.
28. 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**

29. The Plaintiff incorporates the foregoing enumerated paragraphs by reference.
30. 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.
31. By preventing the Blocked Resolutions from proceeding to official public hearing and to the FTR ballot, the Plaintiff has been deprived as of his rights as an elector to consider, debate, and vote to approve or reject the Blocked Resolutions in violation of the Tiverton Home Rule Charter, all in violation of due process 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**

32. The Plaintiff incorporates all foregoing enumerated paragraphs by reference.

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33. Absent injunctive relief mandating inclusion of the Blocked Resolutions on the FTR ballot the Plaintiff will suffer immediate and irreparable harm in that he 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 on May 3, 2018, and deprived as well of seeing Resolutions which he supported have the opportunity to be approved by his fellow electors.
34. 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.
35. 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 Blocked Resolutions on the FTR ballot and, by implication, 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.

RESPECTFULLY SUBMITTED, pro se, by



Justin Katz  
189 Cottrell Road  
Tiverton, Rhode Island 02878  
(401) 835-7156  
justin@justinkatz.com

Dated: April 26, 2018

[Verification follows on next page]

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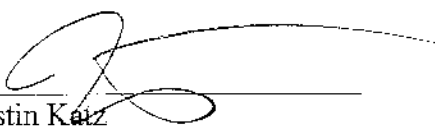
**Verification by Plaintiff**

STATE OF RHODE ISLAND  
Newport County, SC.


I, Justin Katz, 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 they are true to the best of my knowledge and belief.

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

  
Justin Katz

Subscribed and sworn to before me on this 26th day of April, 2018:

  
Notary Public  
My commission expires on: \_\_\_\_\_

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