

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

BRISTOL, SS SUPERIOR COURT
FILED

SUPERIOR COURT DEPT.

MAR 19 2019

NO: 1973CV00259

MARC J. SANTOS, ESQ.
TENCITIZENS OF THE CITY OF FALL RIVER

VS

JASIEL CORREIA

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

In this action the plaintiffs, the Ten Citizens of the City of Fall River, seek injunctive relief to require the City of Fall River to certify that Jasiel Correia was recalled in the election held on March 12, 2019 and to then determine that the inclusion of the defendant's name on part two of the ballot, was error and in effect disenfranchises the majority of voters in favor of the recall. Determine that the next highest vote getter, Paul Coogan, has been elected as Mayor of the City of Fall River.

PARTIES:

1. The plaintiff, Ten Citizens of the City of Fall River, are a group of ten Fall River residents and registered voters, who participated in the Recall election held on March 12, 2019;
2. Each of these ten citizens were among the majority of voters in that election, 61 %, who voted to recall Jasiel Correia;
3. The inclusion of Jasiel Correia's name on the second part of the ballot resulted in his getting 'reelected' with over two thousand fewer votes than he was recalled by;
4. The Ten Citizens of the City of Fall River have been disenfranchised as a result of this anomalous ballot;
5. The Ten Citizens of the City of Fall River are listed as individual plaintiffs as follows;
6. The plaintiff, Erik W. Tolley, is an individual residing at 136 Haffards St., Fall River, MA, voted in favor of the recall and voted for another party as his replacement;

7. The plaintiff, Robert Camara, is an individual residing at 127 Gagnon St., Fall River, MA, voted in favor of the recall and voted for another party as his replacement.
8. The plaintiff, C J Ferry, is an individual residing at 300 Buffinton St., Fall River, MA, voted in favor of the recall and voted for another party as his replacement.
9. The plaintiff, Linda Pereira, is an individual residing at 99 N. Ogden St., Fall River, MA, voted in favor of the recall and voted for another party as his replacement.
10. The plaintiff, Nicholas Souza, is an individual residing at 351 Kenyon St., Fall River, MA, voted in favor of the recall and voted for another party as his replacement
11. The plaintiff, Daniel Robillard, is an individual residing at 145 Old Second St., Fall River, MA, voted in favor of the recall and voted for another party as his replacement
12. The plaintiff, Brenda Venice, is an individual residing at 25 Wright's Way, Fall River, MA, voted in favor of the recall and voted for another party as his replacement
13. The plaintiff, August Venice, is an individual residing at 25 Wright's Way, Fall River, MA, voted in favor of the recall and voted for another party as his replacement
14. The plaintiff, Melanie Leite, is an individual residing at 967 Montgomery St., Fall River, MA, voted in favor of the recall and voted for another party as his replacement
15. The plaintiff, Dave Oliveira, is an individual residing at 210 Robeson St., Fall River, MA, voted in favor of the recall and voted for another party as his replacement
16. The defendant, Jasiel Correia, is an individual residing in Fall River, MA and is the Mayor of the City of Fall River;
17. The defendant, Kelly Souza Young, is an individual, upon information and belief, residing in Fall River, MA, and is a member of the City of Fall River Board of Election Commissioners;
18. The defendant, David Dennis, is an individual, upon information and belief, residing in Fall River, MA, and is a member of the City of Fall River Board of Election Commissioners;
19. The defendant, Daryl Gonyon, is an individual, upon information and belief, residing in Fall River, MA, and is a member of the City of Fall River Board of Election Commissioners;

20. The defendant, Alison Bouchard, is the Clerk for the City of Fall River;
21. Defendants, Sousa-Young, Dennis, Gonyon and Bouchard are named in their representative capacities to the extent that they have the authority to effectuate and injunctive and other relief ordered by the Court;

JURISDICTION:

22. This Court has jurisdiction of the subject matter pursuant to MGL Ch. 56 s 59; GL Ch 231A and MGL Ch 214;

ALLEGATIONS:

23. The defendant, Jasiel Correia, was elected Mayor of Fall River, MA in November 2017;
24. In that same election, the voters of the City of Fall River approved a new City Charter;
25. Over 7900 voters approved the new charter;
26. The affirmative votes exceeded the negative votes by over 3,500 votes;
27. Following this election, the new City Charter was certified and became valid on or about January 1, 2018;
28. In provision 10-4 special acts for the City of Fall River were specifically repealed;
29. Among the provisions which were specifically repealed are the following "... Chapter 292, Acts of 1980, An Act providing for recall elections in the City of Fall River; Chapter 295, Acts of 1981; An Act relative to recall elections in the City of Fall River.";
30. In place of those former provisions, new recall provisions were included in section 8-5;
31. In Section 8-5(e) the new charter provides " The office holder shall continue to perform the duties of the office to which elected until the recall election. If not recalled, the office holder shall continue in office for the remainder of the unexpired term, subject to recall as the charter provides. If recalled, the office holder shall be deemed removed upon the qualification of the successor elected to the office, who shall hold office during the unexpired term.";

32. In contrast the repealed provision of St. 1980 c 292 had read " The incumbent shall continue to perform the duties of his office until the recall election. If then reelected, he shall continue in office for the remainder of his unexpired term... If not reelected, in the recall election he shall be deemed removed..."
33. The Charter in section 3-8 provides that "Whenever, by reason of sickness or other cause, the mayor is unable to perform the duties of the office, the president of the city council shall be the acting mayor...";
34. In Section 9-13 the Charter reads: " An elected official who has been convicted of a state or federal felony while holding office shall be deemed to have vacated the office."
35. In Section 10-5 the Charter indicates that it will take effect on its adoption by the voters;
36. In Section 8-5 the Charter describes the recall process which indicates that "Any 10 voters of the city may file with the city clerk an affidavit containing the name of the officer or officers sought to be recalled and a statement of the grounds for recall. The city clerk shall thereupon deliver to said voters making the affidavit copies of petition blanks demanding such recall, printed forms of which the city clerk shall keep available";
37. On October 27, 2018 a Recall Affidavit signed by ten registered Fall River voters was filed with the City Clerk;
38. On October 29, 2018 the petitioners received the petition blanks which were required to be returned within twenty days;
39. The petitioners were required to collect the signatures of at least 5% of the registered voters of the City of Fall River;
40. The number of signatures needed was ;
41. The petitioners collected over 7,500;
42. The petitioners filed the signed petitions on November 16, 2018 the nineteenth day after receiving the forms;
43. Upon receipt of these signed recall petitions the City Clerk submitted them to the Elections Commissioners for review and certification;
44. After reviewing the signatures Kelly Souza Young notified the City Clerk that her office had certified 4,533 signatures;
45. At 4:55 Pm on the last day to file objections, Mayor Jasiel Correia filed objection pursuant to GL Ch 55B s 7;

46. On December 20, 2018 a Board of Election Commissioners meeting had been scheduled;
47. The agenda for that meeting indicated that procedural issues would be discussed and that opening statements would occur;
48. At that meeting Ms. Kelly Sousa Young recused herself because she had supervised the certification of the signatures which were being contested by the Mayor;
49. Corporation counsel, Macy, then ruled that although three members of the Board were present the two remaining members of the Board did not constitute a quorum;
50. While the Board of Elections Commissioners is supposed to have four members one slot was vacant because Mayor Correia had not proposed a replacement member;
51. The hearing did not go forward that night;
52. While the attorneys met to discuss options for conducting a hearing on Mayor Correia's objections, no further hearings were scheduled;
53. The statute provides timelines for such hearings to occur;
54. Pursuant to GL Ch 55B s 7 the timeline for concluding such a hearing was twenty-one days which in this case was January 4, 2019;
55. On January 2, 2019 the Fall River City Council conducted a special meeting at which it ordered the Recall election to take place on March 22, 2019;
56. A ballot did issue which listed Jasiel Correia twice on the ballot, in violation of the current City Charter;
57. A Majority of voters in the recall election, 61%, voted to recall Jasiel Correia;
58. Because his name also appeared on the second part of the ballot along with four other candidates he received 35.4% of that vote;
59. Not only did 61% of the voters vote to recall him, but 64.6 % of the voters voted for someone else;
60. Because the ballot issued in this way, voters, who voted to recall Jasiel Correia, have been disenfranchised

COUNT 1:

Declaratory Judgment and Injunctive Relief for violations of
the Fall River City Charter

61. The new provisions of the City Charter have specifically deleted the prior language included in GL Ch 292 which indicated that the office holder could be reelected;
62. Where that language was specifically excluded then under the current charter the office holder is to be listed only under the first part of the ballot;
63. The Charter Commission specifically chose that language so that an office holder subject of recall was not entitled to be reelected;
64. Instead the clear language under this new procedure indicates that in a recall election under the new City charter, the voters decide whether he remains or is removed from office;
65. Under this new procedure if the office holder is recalled he is not entitled to be reelected;
66. That interpretation is consistent with another Charter provision, 8-5(g) which precludes a recalled office holder shall not be appointed to any office within two years;
67. The clear language of these provisions indicate that the office holder who is the subject of the recall is not entitled to be reelected in the same election;
68. The unambiguous language of the City Charter should have precluded Mayor Correia from running for office for a period of two years after being recalled;
69. It is inconsistent that he would be allowed to be reelected in the same election in which he is recalled;
70. While the subject of this recall petition, Mayor Jasiel Correia obtained petitions indicating his intent to run for reelection within the same election which sought to have him recalled;
71. The procedures applicable to the 2014 recall election were followed in spite of the enactment of a new2 City charter;

72. Under the provisions applicable at that time the candidates name was listed on the ballot and he was subject to reelection;
73. As that special statute has been rescinded, the procedures under the new City Charter should have been followed;
74. The applicable procedures allow the ballot to include in part one, one question, should the office holder be recalled, yes or no;
75. Then the ballot in part two would contain the names of other qualified candidates;
76. As the ballot issued under the old procedures, then the voters of Fall River have no adequate remedy at law;
77. As the ballot issued under the repealed provisions, then the voters of the City of Fall River have suffered irreparable harm;
78. As the ballot issued under the repealed provisions, then the Fall River voters who voted in favor of the Recall have been disenfranchised;

RELIEF REQUESTED:

WHEREFORE, the plaintiffs, Ten Citizens of the City of Fall River, request that this Honorable Court grant the following relief:

1. The Court issue a preliminary injunction requiring the defendants, Elections Commissioners and the City Clerk from certifying the results of the March 1st, 2019 recall election as the ballot used did not comply with the current City Charter;
2. Require the defendants, Election Commissioners and the City Clerk to certify in conformance with the City Charter the results in Part one the question whether Mayor Jasiel Correia should be recalled;
3. Require the defendants, Election Commissioners and the City Clerk to recognize that Jasiel Correia was recalled and that, as a result, he was ineligible to run separately in Part two, which under the current City Charter allows only the names of other qualified

candidates which do not include the name of the office holder subject to the recall;

4. That the Court order preliminary relief and a permanent injunction restraining the defendants from certifying a vote which does not conform to the current City Charter;
5. Make such preliminary order on an expedited basis so that the will of the majority of Fall River voters, that Jasiel Correia be recalled can be effectuated as soon as possible;
6. Award plaintiff his costs and reasonable attorney's fees;
7. Such other relief as deemed just.

Signed under the pains and penalties of perjury on March 19, 2019 by their authorized representative, Erik Tolley.

Erik Tolley



Ten Citizens of Fall River
By their Attorney,



Paul J. Machado

60 Rock St.

Fall River, MA 02720

508 678 3418

BBO # 311078