
COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

SUFFOLK, ss.

No. SJ-2025-0378

COMMITTEE TO RECALL MAX TASSINARI,
Petitioner,

v.

TOWN CLERK DENISE QUIST,
Respondent.

EMERGENCY PETITION FOR RELIEF IN THE NATURE
OF MANDAMUS AND CERTIORARI

RESPONSE OF THE SECRETARY OF THE COMMONWEALTH

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INTRODUCTION

Pursuant to the Court’s request, Secretary of State William Francis Galvin (“Secretary Galvin” or the “Secretary”) respectfully provides this response to the Committee to Recall Max Tassinari’s (the “Committee”) Emergency Petition for Relief in the Nature of Mandamus and Certiorari. As the Commonwealth’s chief election officer, Secretary Galvin is responsible for overseeing the orderly administration of elections in the Commonwealth and has an interest in ensuring that voters’ rights and the applicable legal requirements are upheld in federal, state, and local elections.

Here, it is plain from the facts pled by the Committee that they have not met the requirements of the Winthrop Town Charter to qualify a recall of At-Large Councilor Max Tassinari to be put to the voters; that the Winthrop Board of Registrars of Voters acted without legal authority when they purported to order the placement of the recall on the November 4, 2025 ballot; and that the recall is not eligible for placement on the ballot on November 4, 2025 or any other time. As such, the Committee’s emergency request for mandamus and certiorari relief should be denied.

FACTUAL BACKGROUND

Seeking to recall At-Large Town Councilor Max Tassinari, the Committee initiated the process set forth in Winthrop’s Town Charter by first submitting an affidavit supporting the recall, signed by at least 4% of the registered voters in the Town. Pet. Memo of Law, p. 5; Appendix Ex. 1.¹ The Committee then had 28 days to collect the signatures of 20% of the registered voters in Winthrop. Pet. Memo of Law, p. 5. On August 19, 2025, the Town Clerk certified the submission of 1,994 signatures, short of the 20% required. Pet. Memo of Law, p. 5, App. Ex. 3. Subsequently, the Committee filed with the Winthrop Board of Election Registrars (the “Board”) a document they called an objection under G.L. c. 55B, § 7. Pet. Memo of Law, p. 5; App. Ex. 10. The Board noticed a meeting for September 3, 2025, at which they heard the “objection.” Pet. Memo of Law, p. 5; App. Ex. 13. After that meeting, the Board issued a “Proposed Decision” signed by the Chair in which the Board purported to order that the recall be placed on the November 2025 ballot. Pet. Memo of Law, p. 5; App. Ex. 16. The Town Clerk notified the Town Council of the Board’s decision. Pet. Memo of Law, p. 6; App. Ex. 17. Days later,

¹ Petitioners’ Memorandum of Law in support of their Petition was filed as an attachment to their Petition and is paginated as a continuation of the page numbers in the Petition; for ease of reference, Secretary Galvin uses the Petitioners’ pagination. The page numbers therefore reflect the cumulative pagination of the combined filing.

the Town Clerk issued a memo concluding that the Board did not have the legal authority to order that the recall be placed on the ballot where she had previously determined that an insufficient number of signatures had been submitted, and notifying the Town Council that the recall would not appear on the November 4, 2025 ballot. Pet. Memo of Law, p. 6; App. Ex. 18. The instant suit followed.

ARGUMENT

I. The Committee Has Not Provided Any Basis for Mandamus or Certiorari Relief.

A writ of mandamus is “an extraordinary remedy, invoked sparingly by the court in its discretion.” *Anzalone v. Admin. Off. of Trial Ct.*, 457 Mass. 647, 655 (2010). Because of the extraordinary nature of the remedy sought by Petitioners, mandamus relief is never granted as “a matter of right but of sound judicial discretion.” *Lutheran Serv. Ass’n of New England, Inc. v. Metro. Dist. Comm’n*, 397 Mass. 341, 345 (1986). Moreover, because an action for mandamus relief “is of equitable origin, all issues of law and discretion are open for [the Court’s] consideration.” *Id.* Such extraordinary equitable relief can only be deployed to compel a “government official to perform a clear cut duty.” *Simmons v. Clerk-Magistrate of the Boston Div. of the Hous. Court Dep’t*, 448 Mass. 57, 59–60 (2006); *Lutheran Serv.*, 397 Mass. at 344 (“relief in the nature of mandamus is

appropriate to compel a public official to perform an act which the official has a legal duty to perform”).

Review under the certiorari statute is a “limited procedure reserved for correction of substantial errors of law apparent on the record created before a judicial or quasi judicial tribunal.” *Indeck v. Clients’ Sec. Bd.*, 450 Mass. 379, 385 (2008). “Certiorari allows a court to correct only a substantial error of law, evidenced by the record,” and “may rectify only those errors of law which have resulted in manifest injustice to the plaintiff or which have adversely affected the real interests of the general public.” *State Bd. of Ret. v. Bulger*, 446 Mass. 169, 173 (2006) (internal quotation marks omitted). “A plaintiff relying on the certiorari statute must sufficiently allege ‘(1) a judicial or quasi judicial proceeding, (2) from which there is no other reasonably adequate remedy, and (3) a substantial injury or injustice arising from the proceeding under review.’” *Hoffer v. Bd. of Reg. in Medicine*, 461 Mass. 451, 456 (2012) (quoting *Indeck*, 450 Mass. at 385).

A. The Committee Cannot Demonstrate That The Requirements In The Winthrop Town Charter For Placing Their Recall On The Ballot Have Been Met.

The Committee has not, and cannot, demonstrate that the requirements set forth in the Winthrop Town Charter for placing the recall of Councilor Tassinari on

the November, 2025 ballot have been satisfied. As such, they cannot show any basis upon which they are entitled to the relief they seek.

1. The Committee Did Not Present Sufficient Signatures to Proceed with the Recall.

The language of the Charter is plain: in order to initiate a recall of an at-large councilor like Tassinari, an affidavit must be submitted containing the name of the officer sought to be recalled and the grounds for recall, signed by at least 4% of the registered voters in the town. Town of Winthrop Charter, § 5-1(k). That much was done, and consequently, the Town Clerk issued the required petition blanks for circulation by the recall proponents. *Id.*

Because Councilor Tassinari holds an at-large seat, the Committee was then required to gather the signatures of at least 20% of registered Winthrop voters within 28 days; they failed to do so. Petition, p. 5. The Committee gathered just shy of 2000 signatures that could be certified by the Town Clerk, well short of the required 2800 signatures. Petition, p. 5.

The Committee advances no argument that they gathered the signatures of at least 20% of registered Winthrop voters, conceding that they gathered “nearly 2,000 certified signatures.” Pet. Memo., p. 4. Instead, they assert – without any basis – that the number of signatures required was 20% of the votes cast in the last election, or approximately 882. Pet. Memo, p. 5. But despite making that claim in

the “Statement of Facts” section of their memorandum, the Committee offers no legal or factual argument in support of that assertion. Nor could they: it flies in the face of the plain language of the charter provision, which specifies that recall petitions must be “signed by at least 20% of the voters of the town for any officer elected at large.” Charter, § 5-1(k). The plain and reasonable interpretation of that language is that the Committee’s petition to recall Tassinari – an at-large councilor – required the signatures of 20% of the registered voters in Winthrop. Nowhere does the recall provision make any reference to the number of signatures required being linked to the votes cast at any particular election. The Committee advances a wholly unsupported interpretation of the language that appears to be based on nothing other than the convenient result it would achieve for them. Thus, the Court should deny the Committee the relief they seek because they failed to gather the signatures required to initiate a recall.

2. Subsequent Steps Dictated by the Charter Have Not Been Taken, Precluding Ballot Placement.

Because the Committee did not gather sufficient signatures, the Town Clerk could not certify that they had done so, and the remaining required steps set forth in the Charter did not take place; as a result, it would be inappropriate and premature to place the recall on the November 4, 2025 ballot. The governing charter provisions specify that “[i]f the petition shall be found and certified by the

town clerk to be sufficient”, the Clerk is to certify the petition to the town council within five days. Charter, § 5-1(k). The Town Council is then to provide written notice to the officer sought to be recalled; and only if the officer does not resign within five days is the town council to order a recall election on a date fixed between 64 and 90 days from the date of the Clerk’s certificate. *Id.* Petitioners do not, and cannot, dispute that none of those steps have happened. And they offer no basis to short-circuit these required procedures and move directly to placing the recall on the November 4, 2025 ballot. Instead, they ask this Court to take the extraordinary and legally unsupported step of ordering the recall to be placed on the ballot. The Court should decline.

B. The Board of Election Registrars Lacked Authority to Place the Recall on the Ballot.

Neither the Winthrop Charter nor any state statute empowered the Board to order the recall placed on the ballot. The charter assigns them only the ministerial task of certifying the number of voter signatures on the petition once it is submitted to them by the Town Clerk. Charter, § 5-1(k). The “objection” filed with them by the recall proponents, purportedly pursuant to G.L. c. 55B, § 7, was not a valid objection on which the Board was permitted to rule. G.L. c. 55B, § 7 empowers the Board to hear “objections to certificates of nomination, nomination papers, or withdrawals for town offices, or to petitions for local ballot questions.” That

provision empowers them to hear objections to *certified* local ballot questions – i.e., ballot questions for which the Town Clerk has certified that she was presented with sufficient signatures. It is a method by which opponents may object that the measure was improperly certified because some of the signatures were not proper and so there were not a sufficient number presented. It does not give the Board the authority to render a legal opinion as to the number of signatures required, or to qualify additional signatures that the Clerk did not certify.

Here, the Board convened to review and discuss an appeal to allow the recall to be presented to the voters despite having not been certified by the Clerk. Petition, Ex. 13. That appeal sought relief that the Board had no authority to give – placement of the recall on the ballot despite the Clerk’s determination that insufficient signatures were presented. Nonetheless, the Board produced a “Proposed Decision” finding that it had jurisdiction over the “objection” and ordering that the recall be placed on the November 2025 ballot. Petition, Ex. 16. Though signed by the Chair, it was captioned a “Proposed Decision” and was undated. Petition, Ex. 16. It cited no legal basis for the Board’s determination that it had jurisdiction or for the Board’s order; presumably, that is because none exists. Having no statutory authority to render any order with respect to the number of signatures required, the Board’s “Proposed Decision” was appropriately

disregarded by the Clerk. Neither the Town Clerk nor this Court should – or can – act upon this unfounded “Proposed Decision” to place the recall on the ballot.

II. Even if the Recall Requirements Had Been Met, the Winthrop Charter and State Law Preclude Placement on the November 4, 2025 Ballot.

Even if the Court were persuaded by the Committee’s baseless assertion that they presented sufficient signatures to advance their recall petition, and even if the Court were inclined to short-circuit the remaining steps required by the Winthrop Charter before a petition is eligible for the ballot, the recall could not appear on the November, 2025 ballot by operation of both state law and the Town Charter. G.L. c. 54, § 42C provides that “a city or town clerk shall not print on a city or town election ballot any question to the voters for which he receives final written notice after the thirty-fifth day before such election.” For the November 4, 2025 election, state law would therefore require that final written notice be received by the Town Clerk no later than September 30, 2025. If the Town Clerk receives final written notice after September 30, 2025, the recall cannot appear on the ballot for the November 4, 2025 election. *See* G.L. c. 54, § 42C.

The Town Charter’s recall provisions also would preclude the recall from appearing on the November 4, 2025, ballot. The Town Charter’s recall provisions specify that if all of the prerequisites for a recall to appear on the ballot are met, the election for the qualifying recall petition is to be held between 64 and 90 days of

the town clerk's certificate, which in this case has not yet issued, but the November 4, 2025 election is already less than 64 days away. Even if the Court were to deem the certificate issued, Secretary Galvin cautions against ordering an earlier election than the charter permits. Ballot printing and administrative deadlines aside, public policy weighs heavily against shortchanging the advance notice provided to voters before they are asked to vote on the recall, as well as the opportunity for Councilor Tassinari to persuade the voters that he should not be recalled. Any recall could not and should not be put to the voters before 64 to 90 days following the issuance of the Clerk's certificate, which would require a special election at a later date than November 4, 2025.

CONCLUSION

For the foregoing reasons, Secretary Galvin respectfully requests that Petitioners' Emergency Petition for Relief in the Nature of Mandamus and Certiorari be DENIED.

Respectfully submitted,

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Date: September 29, 2025

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2025, I filed the attached document(s) through the Electronic Filing Service Provider (Provider) for electronic service to the following registered Users:

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