

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT
CIVIL ACTION
NO.19-259BRISTOL SS SUPERIOR COURT
FILED
TEN CITIZENS OF THE CITY OF FALL RIVER,
Plaintiff,

MAR 22 2019

vs.MARC J SANTOS, ESQ.
CLERK/MAGISTRATEJASIEL CORREIA & others,¹
Defendants.**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

The plaintiff, Ten Citizens of the City of Fall River, has brought this action for a declaratory judgment and an injunction prohibiting the Board of Election Commissioners of the City of Fall River from certifying a recall election held in the city on March 12, 2019. The defendants include the Mayor of Fall River, Jasiel Correia, and members of the Board of Election Commissioners, as well as the Clerk for the City of Fall River. A hearing was conducted on the plaintiff's motion for a preliminary injunction. After review of the materials submitted and consideration of the argument of counsel, the court rules as follows.

BACKGROUND

The current mayor, Jasiel Correia, was the subject of a duly petitioned recall election, which occurred in Fall River on March 12, 2019. Correia also complied with the statutory prerequisites of having his name placed on the ballot as a candidate for election, along with four other candidates for mayor. The city used a two-question ballot consistent with the city charter.

¹ Alison Bouchard, Kelly Sousa Young, David Dennis, and Daryl Gonyon

The first part concerned the recall and asked voters to vote for or against the recall of Correia as mayor. Directly below that part, the ballot listed the candidates for mayor and instructed voters to vote for one of the five candidates listed on the ballot. Approximately 61% of the voters voted to recall Correia. Correia was then returned to office by a plurality of approximately 35%. The next highest candidate received approximately 33% of the votes cast for mayor.

In 2017, Fall River adopted, by citywide vote, a new charter. The process involved numerous public hearings and meetings of the duly elected charter commission, both on the charter itself and public information meetings on the content of the proposed charter. The 2017 charter specifically repealed special legislation that governed the manner in which recall elections for Fall River were to be conducted. The special legislation contained words that expressly allowed the subject of a recall election to seek reelection on the same ballot as the recall vote. In fact, that very issue was the subject of litigation in 2014, the last time Fall River conducted a recall election. Specifically, the special legislation stated, in pertinent part, “If then reelected, he shall continue in office . . .” and “If not reelected in the recall election, he shall be deemed removed upon the qualification of his successor . . .” However, the 2017 charter, and not the special legislation, now governs the procedure for recall elections in Fall River.

DISCUSSION

The plaintiff contends that there is a significant difference between the 2017 charter and the repealed special legislation. The new charter, according to the plaintiff’s argument, removed the wording that expressly authorized the subject of a recall election to then be a candidate and place his or her name, as a candidate for reelection, on the same ballot as the recall vote. The plaintiff argues that the 2017 charter prevents the current officeholder who is the subject of a

recall election from being a candidate, or more specifically from being his own successor, and in essence, that Correia should not have been placed on the March 12, 2019 ballot.²

On the other hand, the defendants contend that the 2017 charter does not expressly prohibit the officeholder who is the subject of the recall vote from being a candidate for that office. The defendants argue that by voting for the recall, the voters were also then allowed to vote for any of the five candidates including Correia. Any of the five candidates receiving a plurality of the votes would be the “successor.” The defendants further argue that where, as here, the incumbent mayor was recalled by an overwhelming majority, but then received a plurality as a candidate for reelection, the charter does not prevent or preclude him from succeeding himself. This, the defendants argue, is no different than an incumbent officeholder who seeks reelection, and wins, at a regularly held election.

The party seeking a preliminary injunction must show a likelihood of success on the merits, that irreparable harm will result from the denial of the requested injunction, and that in light of the moving party’s likelihood of success on the merits, that the risk of irreparable harm to the moving party outweighs the potential harm to the nonmoving party if the injunction were to be granted. See *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980).

Additionally, where the party seeks to enjoin governmental action, it must be determined that the requested order promotes the public interest or, alternatively, that the equitable relief sought will not adversely affect the public. See *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984).

² The defendants argue that there was ample opportunity for citizens to raise this issue prior to the election, and to do so now is prejudicial and untimely. While this court agrees with the defendants that the issue could have been addressed prior to the vote, the plaintiff is not precluded from raising the issue at this time.

As previously stated, the issue here is whether or not the 2017 charter prevents a current officeholder who is the subject of a recall election from being a candidate or more specifically stated, from being on the ballot, and if elected, from being a successor to himself. The section of the 2017 charter that deals with recall elections is Section 8-5 Recall. Paragraphs (a) through (d) deal with and specify the procedures by which a recall petition is initiated and how a recall election is to be conducted. The plaintiff does not assert that those mandates were not followed.

The particular section at issue is paragraph (e):

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. If the successor fails to qualify within 30 days after receiving notification of election to the office, the recalled office holder shall thereupon be deemed removed and the office vacant.

The plaintiff contends that this provision was intended to prevent the officeholder who was the subject of the recall from being a candidate in the recall election. In other words, the plaintiff argues that in this case, Correia is not eligible to be a candidate in the election for mayor because he cannot succeed himself. However, the term “successor” was not newly inserted and, in fact, was used in the special legislation. While the ordinary meaning of “successor” is one that succeeds to an office of another or who replaces or follows a predecessor, Black’s Law Dictionary (10th ed.), in the context of the 2017 charter and specifically 8-5(e), “successor” is not directed at a particular individual, but rather, the next elected person, whomever it may be.

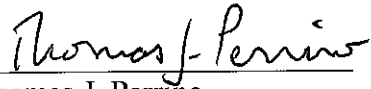
Moreover, the plain meaning of this provision, see *Sebago v. Boston Cab Dispatch, Inc.*, 471 Mass. 321, 339 (2015) (statutory language given effect consistent with plain meaning), does not allow the court to conclude that it expressly prohibits an officeholder who is the subject of the recall from being his own successor. If the drafters of the 2017 charter had intended this

interpretation to be so, they could have expressly stated. Based on the affidavits submitted and arguments presented, there was ample opportunity for such an express provision to be included. As previously noted, the charter commission members removed express wording that allowed the subject of a recall election to be reelected, but it did not insert an express prohibition of such a scenario. While the 2017 charter no longer expressly permits the officeholder who is the subject of a recall from also being a candidate, the plaintiff has not shown that the 2017 charter expressly excludes a recalled candidate from succeeding himself. See *Commissioner of Corr. v. Superior Court Dep't of the Trial Court for the Cnty. of Worcester*, 446 Mass. 123, 126 (2006) (courts do not read into nor add words that Legislature had option to, but chose not to, include).

Based on the materials submitted, including affidavits that are taken at face value, the plaintiff here has not made the required showing of a likelihood of success on the merits of their claim that the procedures as set forth in the 2017 charter regarding recall elections were not followed. Further, the potential harm to the defendants if the vote is not certified, viewed in light of the plaintiff's lack of showing a likelihood of success on the merits, outweighs any risk of irreparable harm to the plaintiff if the vote is certified. Finally, the requested order, if granted, would place the results of an otherwise duly conducted election in doubt, thereby adversely affecting the voting public of Fall River. The request for an injunction prohibiting the City of Fall River and the Fall River Board of Election Commissioners from certifying the results of the March 12, 2019 recall election is **DENIED**.

ORDER

For the foregoing reasons, it is **ORDERED** that the plaintiff's, Ten Citizens of the City of Fall River, Motion for Preliminary Injunction be **DENIED**.


Thomas J. Perrino
Justice of the Superior Court

DATED: March 22, 2019