

STATE OF RHODE ISLAND

SUPREME COURT

NO.

Lisa Baldelli-Hunt,
In her capacity as the Mayor of
the City of Woonsocket,

Petitioner

v.

Daniel Gendron,
John Ward,
James Courmoyer,
Valerie Gonzalez,
Denise Sierra,
Roger Jalette, and
David Soucy,
In their official capacities as the
Members of the Woonsocket City Council,

Respondents.

**PETITION FOR EXTRAORDINARY RELIEF
AND REQUEST FOR STAY AND CONFERENCE**

I. Introduction.

This Petition is brought, pursuant to Article I, Rule 13¹ of the Rules of the Supreme Court, inter alia, to protect the due administration of justice and the law

¹Undersigned counsel beg the indulgence of the Court in including our legal authorities in the Petition instead of filing a separate Memorandum of Law; the time constraints in preparing the Petition prevented us from so doing. We appreciate the court's consideration.

and prevent the disenfranchisement of the voters of the City of Woonsocket (the “City” or “Woonsocket”) by the unlawful attempt to remove from office the duly elected Mayor being undertaken by the Woonsocket City Council (the “Council”), and establish title to elective office, and in so doing, to determine the constitutionality of Chapter XVI, Article 2, Sections 1 through 7² (the “Removal Provisions”) of the Woonsocket City Charter (the “Charter”) and the determination of the entitlement to the office of the Mayor, currently held by the Honorable Lisa Baldelli-Hunt (the “Mayor” or “Petitioner”), who was most recently (re-)elected in 2020.³

As will be more fully explicated below, the Petitioner seeks as additional relief herein, a stay of any and all proceedings about to be undertaken by the Council until this matter can be fully adjudicated, and undersigned counsel respectfully request a conference with a Single Justice of the Court.⁴

²The applicable provisions of Chapter XVI, Article 2 are included in the copy of the City Charter attached hereto as Exhibit A. Section 1 provides that “the Council, by resolution, may remove from office any of its members and may remove any other elective or appointive officers of the city, including the mayor.”

³Mayor Baldelli-Hunt was originally elected to a 3 year term in 2013, and then re-elected to successive 2-year terms in 2016, 2018, and 2020. She is unopposed for re-election in 2022.

⁴At a Council meeting held on Monday, September 12, the Council voted by resolution to engage the services of Attorney James Marusak to represent the Council in this matter. Undersigned counsel has been in contact with Mr. Marusak (see correspondence dated September 14, 2022, attached hereto as Exhibit B),

II. Jurisdiction.

Jurisdiction in this matter is three-fold, pursuant to (a) the power of the Supreme Court under Article X, Section 2 of the Rhode Island Constitution to issue prerogative writs, and under the provisions of R.I.G.L. §8-1-2 “to issue . . . all other extraordinary writs and processes necessary for the furtherance of justice and the due administration of the law; it may entertain informations in the nature of quo warranto and petitions in equity to determine title to any office;”⁵ (b) the provisions of R.I.G.L. §8-6-1, providing that “[t]he supreme . . . court[] shall have power to enter such judgments, decrees, and orders, and to . . . issue such citations, executions, and other writs and processes, as may be necessary or proper to carry into full effect all the powers and jurisdiction which are or shall be conferred upon them respectively by the constitution or by law”; and (c) the provisions of R.I.G.L. §10-14-1, providing that “[t]he title to any office, to determine which the writ of quo warranto lies at the common law, may be brought in question by petition to the supreme court.”⁶

confirmed his representation, and has provided him a copy of this Petition. Likewise, although not a party to this litigation, Petitioner’s counsel has also notified the Attorney General of this filing and provided his office a copy as well.

⁵See, Estate of Sherman v. Almeida, 610 A.2d 104, 105-06 (R.I. 1992); Carpenter v. Sprague, 119 A. 561, 563 (R.I. 1923), and citing Hyde v. Superior Court, 66 A. 292 (R.I. 1907).

⁶See, e.g., Fargnoli v. Cianci, 397 A.2d 68, 73 (R.I. 1979).

III. Facts and Background.

On September 6, 2022, as a result of long-simmering disputes and multiple, continuing conflicts between the City Council and the Mayor⁷, the City Clerk served the Mayor with a Complaint pursuant to Chapter XVI, Article 2, Section 1 of the City Charter, purporting to seek her removal from office.⁸ The Complaint was brought by one member of the Council⁹, and charged a multiple instances of

⁷This Court is (unfortunately) well-acquainted with the political divisiveness in Woonsocket. In writing—just last year—for the unanimous Court in City of Woonsocket v. RISE Prep Mayoral Academy et al., 251 A.3d 495, 503 (R.I. 2021), which the Court ruled against the Council, Justice Goldberg noted that

The trial justice [Superior Court Associate Justice Sarah Taft-Carter] found that Councilman Cournoyer's "testimony was defensive[,] * * * was self-serving[,] and it was not credible." She noted that Councilman Cournoyer "appeared to have an axe to grind with the Mayor, who is President of the Board." The trial justice observed the unfortunate circumstance in which "the Council has attempted to place politics into" the courtroom.

This matter is, unfortunately, the latest chapter in the ongoing saga of the Council's efforts to wrest executive authority from the Mayor—in violation of the Charter—and to otherwise subvert and interfere with her mandate to represent the voters of Woonsocket.

⁸A copy of the Complaint and its attached Exhibits is appended hereto as Exhibit C.

⁹Section 3 of the Removal Provisions allows initiation by either any member of the Council or by fifty (50) electors. This Complaint was brought by one Council member, Denise Sierra, who is not a candidate for re-election to the Council in 2022. The remaining members are all standing for re-election, including Daniel Gendron (the current Council President), John Ward (the current Vice President),

alleged misfeasance, all based on purported violations of various ordinances or charter provisions committed by the Mayor, all in defiance of the wishes of the Council. The Mayor immediately sought the advice of the City Solicitor concerning her representation and, on September 7, the Solicitor advised her that she should engage her own counsel, as he had a conflict of interest. Having previously been required to engage counsel in the past in other matters relating to City government¹⁰, the Mayor sought to engage various outside counsel, both of whom were unable, due also to conflicts of interest, to represent her in this matter. She was ultimately able to engage undersigned counsel on Monday, September 12 and provide them with the full package of documents. The Complaint here consists of 9 separate charges and 26 attached Exhibits.¹¹

James Cournoyer, Valerie Gonzalez, Roger Jalette, and David Soucy. The most consistent and vocal critics of the Mayor have been President Gendron and Councilman Cournoyer.

¹⁰Oddly enough, one Count of the Complaint (Charge III), accuses the Mayor of improperly engaging outside counsel to represent the interests of the City for a matter in which the City Solicitor refused to act.

¹¹Section 4 of the Removal Provisions provides that the officer sought to be removed shall be furnished with the charges in writing and allowed to be heard in defense with the aid of counsel, and that the Council shall have the power to subpoena witnesses and documents in connection therewith. Even a cursory examination of the materials indicates that there are many other documents that would be required to be produced and a number of witnesses that would be required to testify (first, of course, having been identified and interviewed), and adequate time allocated for all this to occur.

Section 5 of the Removal Provisions requires that the Council “hear and determine [the] charges” within ten (10) days after receipt of the Complaint, unless adjourned for cause to a time not exceeding thirty (30) days in total (including the initial 10 days), or longer if at no fault of the Council the charges cannot be heard until the impediment to hearing has been removed. The hearing on this Complaint has been scheduled for Thursday evening, September 15 at 7:00 p.m. at City Hall.¹²

Finally, as the removal of the Mayor will result in a vacancy in that office, the Charter provides that “the president of the council shall be and become the mayor. . . .”¹³

IV. The Law

The legal arguments here concern violations by the Council of three bedrock provisions of constitutional law. First is the naked attempt to disenfranchise the voters of Woonsocket from their selection of the current Mayor to represent them as the chief executive officer of their municipal government. Second is the Council’s unabashed effort to usurp the executive power of the Mayor, by abusing

¹²Although counsel here seek a stay of the Council proceedings in their entirety until this matter is adjudicated (see footnote 3 above) there are clearly significant due process implications in conducting a hearing of this magnitude on the unreasonably short notice provided by the Removal Provisions.

¹³Charter, Chapter IV, Section 7.

its limited legislative authority to create a vacancy in that office and then misuse the terms of the charter to fill that vacancy with one of their own. And third, the Removal Provisions of the Charter are completely devoid of both state and federal constitutional due process protections.

A. Disenfranchisement.

There is no dispute that in the election of November 2020, the voters of Woonsocket duly elected Mayor Baldelli-Hunt to the office she now holds. The efforts of the Council to undo that mandate consist of using an unconstitutional Charter provision and misusing their authority to exercise it. This creates the very real threat that the will of the voters can be undone—not only today, but at any time in the future when a City Council no longer agrees with the Mayor’s executive administration of power. Whether or not, for quo warranto purposes, the entitlement to the office is in doubt now—e.g., in the case of a contest between two pretenders to the office because of a disputed election or qualification to hold it¹⁴—the entitlement, or the determination as to who is at any time entitled to hold the office, is always in question as long as the Removal Provisions are allowed to stand.¹⁵ This is in direct conflict with the language and the intent of R.I. Const.

¹⁴Compare, e.g., Mellor v. Leidman, 211 A.2d 633 (R.I. 1965).

¹⁵Obviously, if the Council is allowed to proceed with its removal process and the Mayor is removed (which, given the history of the relationship between the

Article II, Section 1, which provides that every Rhode Islander “. . . shall have the right to vote for all offices to be elected. . .”, and Article IV, Section 2, providing that in “all elections held by the people for . . . city. . .officers, the person or candidate receiving the largest number of votes cast shall be declared elected.” It is also in derogation of R.I.G.L. §45-4-10, providing that “Mayors of cities shall be elected by a plurality of the electors qualified to vote in the election of general officers, who shall vote for the candidates for that office.”

Finally, although it appears that this Court has not previously dealt directly with this issue, the Massachusetts Supreme Judicial Court has had occasion to consider it. In Turner v. City of Boston, 969 N.E.2d 695 (Mass. 2012), a sitting Boston City Councillor was convicted of federal criminal offenses. Before he was sentenced, the Council voted to remove him pursuant to a recently adopted Council rule. On a question certified to it by the United States District Court, the SJC found the removal unlawful and noted that

Turner's status as an elected municipal officer is particularly significant. His removal by the city council meant that the voters of the council district that he represented lost the councillor that they had voted into office. In a sense, the council's action served as a disavowal or restriction of their voting rights. "Restrictions on the right to vote are to be read narrowly." Cepulonis v. Secretary of the Commonwealth, 389 Mass. 930, 933, 452 N.E.2d 1137 (1983),

Council and the Mayor [see footnote 7 above] is a foregone conclusion), quo warranto will be the more prevalent focus of this litigation.

citing Boyd v. Registrars of Voters of Belchertown, 368 Mass. 631, 633, 334 N.E.2d 629 (1975).

Turner, 969 N.E.2d 695 at 704.

B. Subverting the Executive.

The effort to subvert the authority of the executive—in essence to collapse the separation of powers mandated by the Charter—is the core of the Council’s efforts. Multiple Charter provisions are at play here.

First, Chapter I, Section 10 provides that the “legislative powers of the City are vested in the city council,” Chapter IV, Section 2 provides that the mayor is “the chief executive and administrative officer of the city and shall be responsible for the administration and management of all offices, departments and agencies” And Chapter XVI, Article 3, Section 1 provides that “[n]o member of the council shall interfere, directly or indirectly, with the conduct of any department” The Charter also provides (in Chapter I, Section 6) that the “laws of the state not inconsistent with the state constitution shall have the same force and effect in the city as local laws”, acknowledging that the state constitution represents “the supreme law of the state, and any law inconsistent therewith shall be void” R.I. Const., Article VI, Sec. 1. The Constitution itself provides, in Article XIII [Home Rule For Cities and Towns], Section 2 [Local legislative powers] that every city and town may adopt a charter and enact local laws “relating to its . . . affairs of government not inconsistent with this Constitution. . . .”

Finally, Article V provides that the “powers of government shall be distributed into three separate and distinct departments: the legislative, executive and judicial.”

The Charter acknowledges the authority of the Constitution, which clearly provides for separation of powers. The Charter also acknowledges this separation in its own provisions limiting the legislative authority to the Council and the executive authority to the Mayor, and reinforces that separation with a provision prohibiting interference by the legislative branch in the affairs of the executive branch. Unable to lawfully force the Mayor to bend to its political will, the Council has sought to unlawfully manipulate the Charter instead and remove the Mayor.¹⁶ The actions of the Council here are in complete derogation of the doctrine of separation of powers. See Quattrucci v. Lombardi, 232 A.3d 1062, 1065-66 (R.I. 2020):

"The doctrine of separation of powers is an inherent and integral element of the republican form of government," In re Advisory from the Governor, 633 A.2d 664, 674 (R.I. 1993), that "prohibits the usurpation of the power of one branch of government by a coordinate branch of government." Moreau v. Flanders, 15 A.3d 565, 579 (R.I. 2011) (quoting Town of East Greenwich v. O'Neil, 617 A.2d 104, 107 (R.I. 1992)). The doctrine is presented in article 5 of the Rhode Island Constitution and states, "The powers of the government shall be distributed into three separate and distinct departments: the legislative, executive and judicial." R.I. Const., art. 5.

¹⁶Similarly, R.I.G.L. §45-4-15 provides that all town officers shall hold their offices until the next election of town officers. Here, the Council has eschewed the constitutionally approved methodology of challenging the Mayor in a free and fair election for removal through a contrived unlawful process.

We previously adopted the separation-of-powers test set forth in Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), *aff'd*, 462 U.S. 919, 959, 103 S. Ct. 2764, 77 L. Ed. 2d 317 (1983).] See In re Advisory from the Governor, 633 A.2d at 674; see also State v. Jacques, 554 A.2d 193, 195-96 (R.I. 1989).

"The twin purposes of preventing concentrations of power dangerous to liberty and of promoting governmental efficiency are served if we define a constitutional violation of the separation of powers as an assumption by one branch of powers that are central or essential to the operation of a coordinate branch, provided also that the assumption disrupts the coordinate branch in the performance of its duties and is unnecessary to implement a legitimate policy of the Government." Jacques, 554 A.2d at 196 (brackets omitted) (quoting Chadha, 634 F.2d at 425).

"Functionally, the doctrine may be violated in two ways. One branch may interfere impermissibly with the other's performance of its constitutionally assigned function. Alternatively, the doctrine may be violated when one branch assumes a function that more properly is entrusted to another." Woonsocket School Committee v. Chafee, 89 A.3d 778, 793 (R.I. 2014) (deletion omitted) (quoting City of Pawtucket v. Sundlun, 662 A.2d 40, 58 (R.I. 1995)).

Quattrucci v. Lombardi, 232 A.3d at 1065-66.¹⁷

C. Due Process.

There is no question that a municipal officer cannot be dismissed except for cause, and that in so doing the municipal authority is required to provide

¹⁷The Petitioner recognizes that this Court in Moreau v. Flanders, 15 A.3d 565, 579 (R.I. 2011) held "that the separation of powers doctrine is a concept foreign to municipal governance"; however, as noted above given the Woonsocket Charter provisions and its incorporation of State law, including the State Constitution, the doctrine of separation of powers is an inextricable part of the Woonsocket municipal legal framework.

constitutional due process protections. These proceedings are thus quasi-judicial in nature and subject to review by this Court. Riccio v. Town Council of Bristol, 286 A.2d 881, 885-87 (R.I. 1972).¹⁸ The procedure mandated by the Removal Provisions offends every notion of due process known to man. In the context of what is unquestionably an adversarial proceeding, the Removal Provisions could not pass any constitutional compliance test. First, a member of the Council—the body that will hear and determine the validity of the charges—is the complainant. Second, the rest of the Council is the prosecuting authority, conducting the proceeding, and controlling the attendance of witnesses. Third, the entire Council, including the complainant, makes the findings of fact and conclusions of law, and then imposes the penalty of removal. And finally the forfeiture of the Mayor’s office is claimed by the President of the Council who supervised the entire proceeding. Moreover, all this must occur within a window of 10 days, which can be extended to 30 days; however the hearing and the determination must be accomplished within that time frame. This requires counsel to be engaged, to thoroughly analyze the charges in the complaint, examine and evaluate (and where possible test) the evidence, to locate and review all relevant documents (not simply the documents attached as exhibits to the complaint), to conduct discovery, to identify, locate and analyze witnesses (not only those who may be subpoenaed by

¹⁸See also, Mellor v. Leidman, 211 A.2d 633, 637 (R.I. 1965), a quo warranto case.

the Council, and then, in essence, try the case (which may or may not also require preparing the client to testify). This time limitation is its own due process violation.

In addition—and of extreme importance in this case—is the Council’s control of the witnesses. This is manifested in two critical respects.

First, for the most part, the witnesses will be employees of the City, many if not all of whom were hired, appointed or otherwise engaged by the Mayor. The Council has already subpoenaed at least 6 or 7 such individuals, including at least two Department heads. These employees are aware that in the event the Mayor is removed from office, the Council President—who is presiding over the removal proceeding—automatically becomes the new Mayor.¹⁹ See, e.g., Ward v. Monroeville, 409 U.S. 57 (1972). These circumstances are rife with the opportunity to improperly influence testimony and to impose reprisals²⁰ on those who testify unfavorably to the Council or who refuse to testify on grounds of executive privilege (should it be invoked).²¹

¹⁹Charter, Chapter IV, Section 7.

²⁰This could include anything from termination, to reassignment, reduction in hours or salary, changes in job duties and myriad other diminution of employment status.

²¹The Removal Provisions, at Section 7, provide for fines or imprisonment for failure to comply with a subpoena or order of the Council.

Second—and even more offensive to due process—is that the Mayor may—in fact is likely to—call some if not all of the Council members as witnesses.²² This creates the untenable circumstance that the Council as a whole—as the fact-finding and outcome-determining body—will be required to pass on the credibility of their own members, and worse yet, make those determinations not as against the credibility of other third party witnesses, but against that of the Mayor herself.

There is no other adversarial proceeding with these characteristics anywhere in the free world. And, as made clear above, Home Rule governance notwithstanding, no provision of any municipal charter can survive a conflict with the state or federal constitutions.²³

Consequently, regardless of whether this Court ultimately determines that the Removal Provisions do not effect either an unconstitutional disenfranchisement of voters or an unconstitutional separation of powers, there can be no doubt that as written and as applied, they absolutely effect an unconstitutional denial of due process and equal protection.

²²For example Charge VI of the Complaint concerns the negotiation, adoption and execution of the Police contract. The hearing will undoubtedly require the testimony of Councilman Cournoyer. See footnote 7, above.

²³R.I. Const. Article XIII, Section 2. In addition, Article XIII, Section 11 of the Constitution provides that the allowance of Home Rule shall not diminish the judicial powers of the state. We submit that this includes this Court's ability to enforce the constitution and to interpret local laws in conformity therewith.

D. Additional Considerations.

As the Court is aware, all municipal charters, and the Constitution itself, provide that elected officials may not occupy their respective offices if they have been convicted of felonies (or in some cases crimes of moral turpitude); or if they die, resign, cease to reside within the legal boundaries of the municipality, or are declared incompetent. The common characteristic of all these disabilities to serve are that they are occasioned by the officer, by God, or by a physician. In the present case, the Council itself seeks to create the vacancy, knowing that once it succeeds in so doing, the Council President “shall be and become the Mayor.”²⁴

Two additional facts are noteworthy here. First is that the Removal Provisions provide alternate methods to initiate removal; the signatures of 50 electors are sufficient to initiate a removal proceeding, or alternatively, a single member of the Council (in this case one who is not herself a candidate for re-election) can bring a Complaint which is sufficient to trigger the hearing provisions that are demonstrably lacking in due process protections concerning timeliness, notice, opportunity to prepare and defend, and which require essentially immediate finding and determination by the Council, which consists of one member (the President) who has a measurable stake in the outcome, as he will automatically become the Mayor; another, the Vice President who also has a stake in the

²⁴Charter, Chapter IV, Section 7.

outcome as he will automatically become the Council President; along with the member bringing the Complaint. All three of these individuals should be subject to recusal, which would leave only 4 Council members to vote on the removal. Consequently, this procedure allows one individual to complain and 4 other individuals to oust from office a chief executive who has been elected and re-elected by the voters of Woonsocket 6 times in succession, most recently by more than 7,500 registered voters, and who is so effective a chief executive that (again) she has no opponent in the upcoming election.²⁵

Second, the same chapter of the Charter which contains the Removal Provisions also contains the recall provisions [Chapter XVI, Article 2, Sections 8 through 13], which also require the commencement of a Recall Proceeding by ten (10) registered voters (Section 9) and then the signatures of ten (10%) percent of the voters (Section 10). Again, as in the case of the first alternative in the Removal Provisions, there was no attempt to involve the electorate—obviously because the Council recognized the futility of that approach.²⁶

²⁵In terms of involving the electorate, it is also noteworthy that R.I.G.L. §17-14-7(f) requires the signatures of one hundred (100) registered voters.

²⁶This can be charitably characterized as attempting to disenfranchise the voters (in removing their duly elected choice for Mayor) by again disenfranchising the voters (in not giving them opportunity to participate in either removal or recall).

Finally, it is informative to look at one last fact. The Complaint alleges a series of acts of malfeasance in a variety of charter and ordinance violations. Yet neither the Complainant nor the Council has sought to file a complaint with the Rhode Island Ethics Commission, or with the Attorney General, or brought an action in the Superior Court to declare unlawful and enjoin her actions. Given the Council's last outing against the Mayor in Superior Court this is not a surprise.

E. The Irreparable Harm.

The Petitioner has asked that the actions of the Council be stayed pending the adjudication of this Petition. The irreparable harm caused by failure to grant that relief is severe. The government of the City will be in chaos. The Council, then in control of the Mayor's office, can essentially dismantle the City government by the issuance of executive orders and the passage and enactment of veto-proof ordinances, reversing whatever the Mayor has done during her term with which the Council disagreed.

More importantly, the Council will be in control of the Mayor's staff, and will have the ability to remove or replace any and all Mayoral appointees.²⁷

Personnel will be uncertain of the future or continuing employment. This will be particularly true of members of the Mayor's staff, many of whom the Council has

²⁷For example, Charter, Chapter IV, Section 4 provides that the Mayor appoints all department heads.

already subpoenaed to testify, who may or may not testify favorably to the Mayor. They will be subject to unbridled reprisal by the new administration. Moreover, the Council and the new Mayor will pressurize their action to account for the fact that Mayor Baldelli-Hunt will be back in office following her re-election on November 8, 2022 and her swearing-in on December 6. She will then have to reconstruct her administration, her staff and her departments. This is an impossible task and one that neither the Petitioner nor her staff, nor the citizens of Woonsocket should be required to endure. This circumstance in particular minimizes any harm to the Council in granting the stay.

Finally, if the removal process is allowed to proceed as currently provided for in the Charter, regardless of the outcome, the Removal Provisions remain violative of due process as they would be applicable in the case of any other Mayor or any other Council.

D. Relief.

The Petitioner seeks the following relief:

1. That Chapter XVI, Article 2, Sections 1 through 7 of the Woonsocket City Charter be declared unconstitutional and void.
2. That Lisa Baldelli-Hunt be declared the lawful holder of the office of Mayor of the City of Woonsocket.

3. That pending a determination as to the validity of the Charter provisions, the actions of the Woonsocket City Council being undertaken, including without limitation the hearing currently scheduled for September 15, 2022, and any other similar actions in pursuance of the aforementioned Charter provisions, be stayed.

4. Any other relief this Court deems appropriate.

Respectfully submitted,
Mayor Lisa Baldelli-Hunt,
By Her Attorneys,

/s/ Anthony M. Traini

Anthony M. Traini (#4793)
117 Metro Center Boulevard, Suite 2001
Warwick, RI 02886-1774
Tel: (401) 621-4700
Fax: (401) 621-5888
Email: amt@atrainilaw.com

/s/ Michael J. Lepizzera, Jr.

Michael J. Lepizzera, Jr. (#4995)
Lepizzera & Laprocina, Counsellors at Law, Ltd.
117 Metro Center Boulevard, Suite 2001
Warwick, RI 02886-1774
Tel: (401) 739-7397
Fax: (401) 384-6960
Email: mlepizzera@leplap.com

/s/ Scott K. DeMello

Scott K. DeMello (#7675)
Lepizzera & Laprocina, Counsellors at Law, Ltd.
117 Metro Center Boulevard, Suite 2001
Warwick, RI 02886-1774
Tel: (401) 739-7397
Fax: (401) 384-6960
Email: sdemello@leplap.com

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2022:

[X] I served this document through the electronic filing system upon the following counsel:

Miriam Weizenbaum, Esq.
[Dept. of Attorney General](#)
150 South Main Street
Providence, RI 02903
E: mweizenbaum@riag.ri.gov

James P. Marsusak, Esq.
Gidley, Sarli & Marusak, LLP
1 Turks Head Place Suite 900
Providence, RI 02903
E: JPM@gsm-law.com

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/s/Brandi L. Thomas
Brandi L. Thomas