

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

**FILED**

SEP 28 2009

HIPOLITO FONTES,  
  
Plaintiff,  
  
v.

**U.S. DISTRICT COURT  
DISTRICT OF R.I.**

C.A. No. 09-\_\_\_\_\_

THE CITY OF CENTRAL FALLS;  
THE CITY OF CENTRAL FALLS BOARD  
OF CANVASSERS AND REGISTRATION;  
GERTRUDE CHARTIER, in her official  
Capacity as Registrar of the City of Central Falls  
Board of Canvassers;  
ALFRED GREGORIE, in his official capacity  
as a Chairman of the City of Central Falls Board  
of Canvassers; MELVIN GOLDENBERG, in his  
official capacity as Clerk of the City of Central  
Falls Board of Canvassers;  
ROSEMARIE CANAVAN, in her  
official capacity as a Member of the City of  
Central Falls Board of Canvassers;  
CHARLES D. MOREAU; and  
PATRICK LYNCH, in his official capacity  
as Attorney General of the State of Rhode Island  
  
Defendants.

**CA 09 - 437**

**VERIFIED COMPLAINT**

This is a civil action seeking injunctive and declaratory relief concerning ballot-access violations of the United States Constitution, the Rhode Island Constitution, and the City of Central Falls Charter. Plaintiff, Hipolito Fontes, was impermissibly disqualified as a candidate for Mayor of Central Falls. In support of his Verified Complaint, Plaintiff states as follows:

**Parties, Jurisdiction, and Venue**

1. Plaintiff Hipolito Fontes ("Fontes") is a resident of the City of Central Falls, Rhode Island ("Central Falls"), and a candidate for Mayor of Central Falls.

2. Defendant Central Falls is a duly organized municipality under the Rhode Island Constitution and Central Falls Charter. Central Falls has been made a party defendant pursuant to R.I. Gen. Laws § 9-30-11.

3. Defendant Central Falls Board of Canvassers and Registration (“Board of Canvassers”) is a commission duly organized under the Central Falls Charter.

4. Defendant Gertrude Chartier (“Chartier”) is Registrar of the Board of Canvassers and is named in her official capacity only.

5. Defendant Alfred Gregorie (“Gregorie”) is a Member of the Board of Canvassers and is named in his official capacity only.

6. Defendant Melvin Goldenberg (“Goldenberg”) is the Clerk of the Board of Canvassers and is named in his official capacity only.

7. Defendant Rosemarie Canavan (“Canavan”) is a Member of the Board of Canvassers and is named in her official capacity only.

8. Defendant Charles D. Moreau (“Moreau”) is Mayor of Central Falls and resides at 141 Jenks Avenue, Central Falls, Rhode Island.

9. Defendant Patrick Lynch is the Attorney General of the State of Rhode Island and is named in his official capacity only. The Attorney General has been made a party defendant pursuant to R.I. Gen. Laws § 9-30-11.

**Jurisdiction and Venue**

10. This Court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, and 42 U.S.C. § 1983.

11. Declaratory relief is authorized by 28 U.S.C. §§ 2201-2202.

12. Venue in the District of Rhode Island is based upon 28 U.S.C. § 1391(b).

### Facts Common to All Counts

13. Plaintiff Fontes is a candidate for Mayor of Central Falls for the 2009 election.

14. Moreau is the incumbent Mayor of Central Falls and is seeking re-election.

15. At the outset of his candidacy, Fontes understood that he needed to collect at least two-hundred (200) valid signatures of Central Falls voters to appear on the ballot as a candidate for Mayor of Central Falls consistent with state and local law.

16. After Fontes submitted candidacy papers to the Board of Canvassers, the Board of Canvassers did not provide Fontes with the “walking list” that it distributed to other candidates for Mayor and other city offices. The “walking list” sets forth lists of registered voters numerically by street. Instead, the Board of Canvassers provided Fontes with a city-wide list of voters alphabetically by last name.

17. Beginning in August 2009, Fontes began collecting voter signatures for his mayoral candidacy. Fontes eventually secured a “walking list” from another candidate. Fontes, along with campaign volunteers, collected signatures by walking door-to-door to homes of registered Central Falls voters.

18. On several occasions, Fontes observed campaign workers for Defendant Moreau following him as he collected voter signatures. Sometimes, Fontes collected voter signatures in a zig-zag pattern from one side of the street to the next to reach homes with multiple eligible voters. Fontes observed Defendant Moreau’s campaign workers following him in a similar pattern. Moreau’s campaign workers asked voters that signed Fontes’s nomination papers to also sign Moreau’s nomination papers. Moreau’s campaign workers informed at least one voter that it was permissible to sign nomination papers of different candidates for Mayor.

19. In late August 2009, Fontes asked the Board of Canvassers for a list of

nomination signatures submitted by Defendant Moreau. Defendant Chartier informed Fontes that he needed to file a formal open records request pursuant state law. Defendant Chartier also informed Fontes that, pursuant to state law, the Board of Canvassers was not required to respond to a formal records request for ten (10) business days, and the deadline would occur after the September 4, 2009, deadline for submitting nomination signatures.

20. By September 4, 2009, Fontes accumulated three hundred thirty-three (333) signatures of Central Falls voters in support of his candidacy for Mayor of Central Falls.

21. The Board of Canvassers informed Fontes that September 4, 2009, was the deadline for submitting signatures for his mayoral candidacy.

22. Fontes submitted signatures to the Board of Canvassers on several occasions prior to September 4, 2009.

23. Before September 4, 2009, two voters attempted to remove their signatures from Defendant Moreau's nomination papers and add them to Fontes' papers at the Board of Canvasser's office. Defendant Chartier refused to allow those two voters to change their signatures. Two additional voters who also wished the remove their signatures from Moreau's nomination signatures and add them to Fontes' signatures did not attempt to do so after learning that the Board of Canvassers would not allow it.

24. The Board of Canvassers opens to the public at 8:30 a.m.

25. On September 1 or 2, 2009, Fontes entered the Board of Canvassers office shortly before 8:30 a.m. Fontes observed that Defendant Moreau was already in the office. Defendant Chartier ran blank paper through the automated time stamp on several occasions until the stamp read 8:30 a.m. Defendant Chartier stamped Defendant Moreau's nomination papers precisely at 8:30 a.m. Defendant Chartier then agreed to receive Fontes' nomination papers, and time

stamped them after Moreau's papers.

26. On September 4, 2009, prior to 8:30 a.m., Fontes waited outside the office of the Board of Canvassers. A member of the Moreau's staff informed Fontes that he could not enter until 8:30 a.m. As Fontes waited outside for the Board of Canvassers to open, he observed the same staff-member enter the Board of Canvassers office.

27. Upon Fontes' entry into the Board of Canvassers office on September 4, 2009, he observed that Moreau's staff-member had gained access to the office of the Board of Canvassers prior to 8:30 a.m. Fontes immediately attempted to file his nomination papers with the Board of Canvassers.

28. Defendant Chartier accepted Defendant Moreau's nomination papers on September 4, 2009, before the office opened to the public.

29. Defendant Chartier ran blank paper through the automated time stamp on several occasions until the stamp read 8:30 a.m. Chartier time-stamped Defendant Moreau's nomination papers precisely at 8:30 a.m. Defendant Chartier time-stamped Fontes' papers two (2) minutes later, at 8:32 a.m.

30. At lunchtime on September 4, 2009, the Board of Canvassers' office was closed. Fontes observed a member of the Mayor's staff slip nomination papers under the Board of Canvasser's door. A member of Fontes' campaign staff waited for the Board of Canvassers office to re-open to submit nomination papers. When the office reopened, Defendant Chartier refused to accept Fontes' nomination papers first, and instead took Defendant Moreau's papers off the floor and time-stamped them prior to stamping Fontes' nomination papers.

31. On or after September 4, 2009, Defendants Chartier and the Board of Canvassers reviewed the nomination papers of Fontes and Defendant Moreau.

32. On or about September 5, 2009, when the Board of Canvassers was closed to the public, after previously refusing to allow Fontes to review Defendant Moreau's nomination signatures, the Board of Canvassers allowed members of Defendant Moreau's campaign staff to review the nomination papers of Fontes.

33. On or about September 5, 2009, the Board of Canvassers determined that one hundred thirty-three (133) voters in Fontes' nomination papers either signed both Fontes and Moreau's nomination papers or were deficient for some other reason.

34. Defendant Chartier telephoned Fontes on September 5, 2009, and informed him that he had enough signatures to appear on the ballot as a candidate for Mayor of Central Falls.

35. On or about September 8, 2009, the Board of Canvassers determined that, in addition to the 133 previously disqualified signatures, one additional voter signed both Fontes and Moreau's nomination papers; one signature on Fontes's nomination papers was signed by an inactive voter, and one signature did not match the signature on the voter registration card.

36. On the morning of September 8, 2009, Defendant Chartier telephoned Fontes and informed him that the three (3) additional signatures had been stricken from his nomination papers. As a result, Chartier informed Fontes that he did not have enough signatures to appear on the ballot as a candidate for Mayor of Central Falls. Chartier told Fontes that he could challenge the decision at a hearing scheduled for that evening, September 8, 2009, and that if he wished to lodge a complaint, he should "bring it in."

37. Fontes duly wrote out a complaint and brought it to the September 8, 2009, hearing before the Board of Canvassers.

38. The Board of Canvassers refused to consider Fontes' written complaint.

39. On September 8, 2009, the Board of Canvassers, by and through Defendants

Gregorie, Goldenberg, and Canavan, voted unanimously to disqualify Plaintiff Fontes from the ballot for Mayor of Central Falls because, according to them, he collected only one hundred ninety-seven (197) valid signatures.

40. The Board of Canvassers refused to consider the validity of the 133 signatures that it previously disqualified. Instead, the Board of Canvassers voted solely on the issue of invalidating the three additional irregularities discovered on the morning of September 8, 2009.

41. 197 valid signatures is three voters shy of the two-hundred (200) valid signatures required by R.I. Gen. Laws § 17-4-7(f) and Art. VI, § 6-110 of the Central Falls Charter.

42. Defendants invalidated many of Fontes' nomination signatures on the sole basis that the signatures appeared on both Fontes and Moreau's nomination papers.

43. When these invalidated signatures are added to the 197 signatures accepted by the Board of Canvassers, Fontes gathered a sufficient number of valid signatures to appear as a candidate for Mayor of Central Falls.

44. Defendants, personally and through the conduct of their agents, servants, and employees, acted under color of state law.

**Count I**  
**(Equal Protection under the United States Constitution pursuant to Section 1983)**

45. Fontes realleges Paragraphs 1-44.

46. R.I. Gen. Laws § 17-14-7 requires candidates for city office to collect the signatures of at least two-hundred (200) city voters.

47. R.I. Gen. Laws § 17-14-19 allows voters to sign nomination papers for multiple candidates, even if the candidates are running for the same office.

48. Notwithstanding these sections, R.I. Gen. Laws § 17-1-5 states in pertinent part, "The provisions of any chapter or section under this title are subject to the provisions of any

special statutes respecting any particular town or city, none of which are repealed by this title.”

49. On November 18, 1953, the General Assembly of Rhode Island passed Pub. Laws 1953, ch. 3239, titled, “An Act Pertaining To Municipal Primaries And Elections In the City Of Central Falls, And Validating Certain Provisions In The City Of Central Falls Home Rule Charter.”

50. R.I. Pub. Laws 1953, ch. 3239, § 11 states in pertinent part, “Nominating petitions for city officers to be elected at large, shall require the signatures of not less than two-hundred qualified electors of the city . . . Should an elector sign more nominating petitions for any office than the number of candidates for said office for which he would be eligible to vote in the municipal election, his signature shall be void except as to the said number of petitions for said office signed by him first-filed.”

51. Similarly, art. VI, § 6-110 of the Central Falls Charter states in pertinent part: “Nominating petitions for city officers to be elected at large shall require the signatures of not less than two hundred qualified electors of the city . . . Should an elector sign more nominating petitions for any office than the number of candidates for said office for which he would be eligible to vote in the municipal election, his signature shall be void except as to the said number of petitions for said office signed by him first filed.”

52. Defendants determined that Defendant Moreau filed nomination papers before Fontes on numerous occasions.

53. Relying on the aforementioned sections of the Central Falls Charter and the Rhode Island Public Laws, Defendants rendered void signatures in Fontes’ nomination papers that otherwise would have qualified Fontes for the 2009 election for Mayor of Central Falls.

54. Defendants distinguished Fontes and Moreau by class when they determined that



Moreau filed first and Fontes filed second.

55. R.I. Pub. Laws 1953, ch. 3239 distinguishes candidates in Central Falls and other municipalities by class, in violation of the Equal Protection Clause of the United States Constitution, as enforced by 42 U.S.C. § 1983.

56. Defendants' discrimination by class is a violation of the Equal Protection Clause of the United States Constitution, as enforced by 42 U.S.C. § 1983.

**Count II**  
**(Equal Protection under the Rhode Island Constitution)**

57. Fontes realleges Paragraphs 1-56.

58. Defendants distinguished Fontes and Moreau by class when they determined that Moreau filed first and Fontes filed second.

59. R.I. Pub. Laws 1953, ch. 3239 distinguishes candidates in Central Falls and other municipalities by class, in violation of the Equal Protection Clause of the Rhode Island Constitution.

60. Defendants' discrimination by class is a violation of the Equal Protection Clause of the Rhode Island Constitution.

**Count III**  
**(Due Process Under The United States Constitution Pursuant To Section 1983)**

61. Fontes realleges Paragraphs 1-60.

62. On several occasions, Defendants, or one or more of them, allowed Defendant Moreau and his representatives into the office of the Board of Canvassers before the office opened to the public.

63. Upon information and belief, Defendant Moreau or his agents followed Fontes as he collected signatures in an attempt to collect the same signatures.

64. Upon information and belief, Defendant Moreau and other Defendants made an arrangement so that, regardless of Fontes' actions, the Defendants would file Moreau's nomination papers before they filed Fontes's nomination papers. The explicit purpose of this arrangement was to attempt to render void as many signatures in Fontes's nomination papers as possible in hope of disqualifying him from the ballot.

65. Defendants subsequently rendered Fontes' signatures void and voted to disqualify him from the ballot.

66. There is no state interest in distinguishing between first-filed nomination papers and later-filed nomination papers for the same office.

67. Candidates for the same office have no way of knowing whether signatures on their nomination papers also appear on the nomination papers of other candidates for the same office. For example, a candidate could collect a signature from a voter first, but file the nomination papers with the Board of Canvassers second.

68. R.I. Pub. Laws 1953, ch. 3239 and Art. VI, § 6-110 of the Central Falls Charter violate the rights guaranteed by the Fourteenth Amendment to the United States Constitution, as enforced by 42 U.S.C. § 1983.

69. Defendants' actions are violations of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, as enforced by 42 U.S.C. § 1983.

**Count IV**  
**(Due Process Under The Rhode Island Constitution)**

70. Fontes realleges Paragraphs 1-69.

71. On several occasions, Defendants, or one or more of them, allowed Defendant Moreau and his representatives into the office of the Board of Canvassers before the office opened to the public.

72. Upon information and belief, Defendant Moreau or his agents followed Fontes as he collected signatures in an attempt to collect the same signatures.

73. Upon information and belief, Defendant Moreau and other Defendants made an arrangement so that, no matter what Fontes' actions, the Defendants would file Moreau's nomination papers before they filed Fontes nomination papers. The explicit purpose of this arrangement was to render void as many signatures in Fontes nomination papers as possible.

74. Defendants subsequently rendered Fontes' signatures void and voted to disqualify him from the ballot.

75. There is no state interest in distinguishing between first-filed nomination papers and later-filed nomination papers for the same office.

76. Candidates for the same office have no way of knowing whether signatures on their nomination papers also appear on the nomination papers of other candidates for the same office. For example, a candidate could collect a signature from a voter first, but file the nomination papers with the Board of Canvassers second.

77. R.I. Pub. Laws 1953, ch. 3239 and Art. VI, § 6-110 of the Central Falls Charter violate the due process rights guaranteed by the Rhode Island Constitution.

78. Defendants' actions are violations of the Due Process Clause of Rhode Island Constitution.

**Count V**  
**(First Amendment and Freedom of Association under the United States Constitution Pursuant To Section 1983)**

79. Fontes realleges Paragraphs 1-78.

80. Fontes gathered a sufficient number of valid signatures to appear as a candidate for Mayor of Central Falls.

81. Defendants' actions have infringed Fontes' right to appear on the 2009 ballot for Mayor of Central Falls, in violation of First Amendment and Freedom of Association rights guaranteed under the United States Constitution, as enforced by 42 U.S.C. § 1983.

**Count VI**  
**(Violation of Central Falls City Charter)**

82. Fontes realleges Paragraphs 1-81.

83. Art. VI, § 6-110 of the Central Falls City Charter requires the Board of Canvassers to count signatures for the first-filed nomination papers for the Mayoral election.

84. On several occasions, Fontes entered the office of the Board of Canvassers during normal business hours before Moreau.

85. Moreau or his representative did not enter the office of the Board of Canvassers during normal business hours.

86. Fontes was entitled to have his nomination papers filed before Moreau.

87. Defendants, or one or more of them, violated the Central Falls Charter by refusing to file Fontes' nomination papers before it filed Moreau's nomination papers.

**Count VII**  
**(Declaratory Judgment)**

88. Fontes realleges Paragraphs 1-87.

89. Plaintiff Fontes has suffered injury as he was disqualified from the 2009 ballot for Mayor of Central Falls.

90. Fontes seeks a declaration that R.I. Pub. Laws 1953, ch. 3239 and Art. VI, § 6-110 of the Central Falls Charter are unconstitutional under the United States Constitution and the Rhode Island Constitution, insofar as said law and charter allows Defendants to void signatures submitted by candidates for the same political office based on the first-filed rule.

WHEREFORE, Plaintiff requests the following relief:

(a) A declaratory judgment that R.I. Pub. Laws 1953, ch. 3239 and Art. VI, § 6-110 of the Central Falls Charter are unconstitutional under the United States Constitution and the Rhode Island Constitution, insofar as said law and charter allows Defendants to void signatures submitted by candidates for the same political office based on the first-filed rule;

(b) Temporarily, preliminarily, and permanently restrain and enjoin Defendants from enforcing the provisions of R.I. Pub. Laws 1953, ch. 3239 and Art. VI, § 6-110 of the Central Falls Charter, insofar as said law and charter allows Defendants to void signatures submitted by candidates for the same political office based on the first-filed rule;

(c) Order the Central Falls Board of Canvassers to add Fontes to the ballot for the 2009 election of the Mayor of the City of Central Falls;

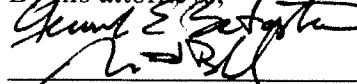
(e) Award Plaintiff attorneys' fees in this action pursuant to 42 U.S.C. § 1988(b);

(f) Award Plaintiff his costs of suit; and

(g) Award such other relief as the Court deems just and proper.

HIPOLITO FONTES,

By his attorneys,



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Armando E. Batastini (# 6016)

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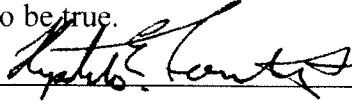
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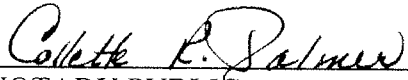
**VERIFICATION**

I, Hipolito Fontes, hereby verify, under the penalties of perjury: (a) that I have read the foregoing Verified Complaint; and (b) that the allegations contained in the Verified Complaint are true and accurate based upon my personal knowledge, except such allegations as are made upon information and belief, which allegations I believe to be true.

  
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STATE OF RHODE ISLAND  
COUNTY OF Providence

In Providence, Rhode Island, in said county, on the 17<sup>th</sup> of September, 2009, before me personally appeared Hipolito Fontes, to me known and known by me to be the person executing the foregoing instrument, and he acknowledged said instrument by him so executed to be his free act and deed.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: 3/16/2010