

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

BRIAN MONTEIRO,)	
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF EAST PROVIDENCE,)	
EAST PROVIDENCE CANVASSING AUTHORITY,)	C.A. No. 09-
MARYANN CALLAHAN, in her official capacity as)	
East Providence Canvassing Authority Canvassing Clerk,)	
DOROTHY M. O’GARA, in her official capacity as)	
Chairwoman of the East Providence Canvassing Authority,)	
THOMAS C. RILEY and PETER G. BARILLA,)	
in their official capacity as members of the)	
East Providence Canvassing Authority,)	
)	
Defendants.)	
)	

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Now comes Plaintiff, Brian Monteiro, seeking to have portions of the East Providence City Charter declared unconstitutional because of violations of the Due Process and Equal Protection Clauses of the United States Constitution and the Rhode Island Constitution. Specifically, Plaintiff relies on Illinois State Bd. Of Elections v. Socialist Workers Party, 440 U.S. 173 (1979), and seeks to enjoin the enforcement of the East Providence City Charter requirements that candidates for public office have their nomination papers signed by at least 200 qualified voters and that voters may only sign nomination papers for one candidate. In support of his Verified Complaint against Defendants, Plaintiff states as follows:

PARTIES

1. Plaintiff Brian Monteiro is a citizen of East Providence and was formerly a candidate for East Providence School Committee in Ward 2 in the 2008 Primary Election.
2. Defendant, City of East Providence, is a duly organized municipality under the Rhode Island Constitution and the East Providence City Home Rule Charter.
3. Defendant, the East Providence Canvassing Authority, is a duly authorized board in the City of East Providence charged with overseeing and enforcement of the elections laws within the City and determines candidates who have qualified for ballot placement based on the collection of signatures from registered voters.
4. Defendant Maryann Callahan is the Canvassing Clerk of the East Providence Canvassing Authority and is being sued in her official capacity only. The East Providence Canvassing Authority is administered by the Clerk of the Canvassing Authority.
5. Defendant Dorothy M. O’Gara is the Chairwoman of the East Providence Canvassing Authority and is being sued in her official capacity only.
6. Defendants Thomas C. Riley and Peter G. Barilla are members of the East Providence Canvassing Authority and are being sued in their official capacity only.

JURISDICTION AND VENUE

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

8. Declaratory relief is authorized by 28 U.S.C. § 2201 and 28 U.S.C. §2202.
9. Venue in the District of Rhode Island is based on 28 U.S.C. § 1391(b).

BACKGROUND FACTS

10. R.I. Gen. Laws § 17-14-7 sets out how many signatures candidates for specific offices must obtain on nomination papers to qualify to have their names placed on the ballot for election day.
11. Specifically, R.I. Gen. Laws § 17-14-7 provides as follows:

§ 17-14-7. Number of signers required for nomination papers

(a) *United States senator or governor.* The nomination papers of a candidate for the party nomination or an independent candidate for presidential elector, United States senator, or governor shall be signed, in the aggregate, by at least one thousand (1,000) voters.

(b) *Representative in Congress.* The nomination papers of a candidate for the party nomination or an independent candidate for representative in congress shall be signed, in the aggregate, by at least five hundred (500) voters.

(c) *General state offices.* The nomination papers of a candidate for the party nomination or an independent candidate for any of the general offices of the state, excluding governor, shall be signed, in the aggregate, by at least five hundred (500) voters.

(d) *State senator.* The nomination papers of a candidate for a party nomination or independent candidate for senator in any senatorial district shall be signed, in the aggregate, by at least one hundred (100) voters of the senatorial district.

(e) *State representative.* The nomination papers of a candidate for party nomination or an independent candidate for a member of the house of representatives from any representative district shall be signed, in the aggregate, by at least fifty (50) voters of the representative district.

(f) *City offices.* The nomination papers of a candidate for party nomination or an independent candidate for any local office to be filled by the voters of any city at large shall be signed, in the aggregate, by at least two hundred (200) voters of the city; provided, that in the city of Providence, at least five hundred (500) signatures shall be required.

(g) *Voting district moderator or clerk.* The nomination papers for a candidate for voting district moderator or clerk in any town shall be signed, in the aggregate, by at least ten (10) voters of the voting district.

(h) *Other offices.* The nomination papers of a candidate for party nomination for other offices covered by § 17-15-7, or for the election of delegates or for unendorsed party committee candidates, shall be signed, in the aggregate, by fifty (50) voters.

12. R.I. Gen. Laws § 17-14-9 allows voters to sign nomination papers for multiple candidates, even if the candidates are running for the same office. Specifically, R.I. Gen. Laws § 17-14-9 provides: “A voter may sign any number of nomination papers for any office the voter may lawfully vote for at the general election.”

13. R.I. Gen. Laws § 17-15-7 provides:

§ 17-15-7. Candidates nominated at primaries

(a) At the primary elections, candidates shall be nominated for the following offices, if the offices are to be filled at the succeeding election:

(1) Senators in the congress of the United States.

(2) Representatives in the congress of the United States.

(3) General officers of the state.

(4) Senators in the general assembly from the respective senatorial districts.

(5) Representatives in the general assembly from the respective representative districts.

(6) Mayors for the respective cities.

(7) Members of the city or town councils from the respective towns, wards, and districts.

(8) All other city or town officials previously nominated by party caucus, convention, or party committees, whose offices are to be filled at the regular or special election next succeeding the primary, with the exception of candidates for presidential elector who shall be selected as provided in this title.

(b) At the primary elections the members of ward, town, and district committees of the respective political parties shall be elected.

14. The Town of East Providence Charter provides:

The nomination of all candidates for elective office in the primary election provided for by this Charter shall be by petition. The petition of each candidate for office shall be signed by not less than two hundred (200) electors qualified to vote for the office as provided herein. No voter shall sign petitions for more than one (1) candidate for each office to be filled, and, should he do so, his signature shall be counted upon only the first petition filed, and shall be voided upon all other petitions.

City of East Providence Charter, Article XI, Sec. 11-7.

15. In 1957, the General Assembly approved Public Law Chapter 33 entitled “An Act Pertaining to City Elections in East Providence” (the “1957 Public Law”).

16. Section 14 of that 1957 Public Law requires nominating petitions for candidates for citywide offices in East Providence, including school committees, to “be signed by not less than two hundred (200) electors qualified to vote for said office. No voter shall sign petitions for more than one candidate for each office to be filled, and should he do so, said voter’s signature shall be counted only on the first petition filed, and shall be voided upon all other petitions.”

17. R.I. Gen. Laws § 17-1-5 provides:

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; provided, that insofar as any special statute passed prior to April 22, 1935, conflicts with the provisions of chapter 19 of this title, the provisions of chapter 19 shall prevail; and provided, further, that insofar as any special statute conflicts with the provisions of § 17-19-7.1 of this title, the provisions of § 17-19-7.1 shall prevail.

18. Plaintiff Brian Monteiro was a candidate for East Providence School Committee in Ward 2 for the 2008 Primary Election.

19. Plaintiff Brian Monteiro collected and turned in over 250 signatures from voters on his nominating petitions. Of those 250 signatures, 137 were deemed

valid by Defendant East Providence Board of Canvassers. The East Providence Board of Canvassers invalidated 19 signatures on Mr. Monteiro's nominating petitions because the voter had also signed the nominating petitions of Mr. Monteiro's opponent, Shannon Barbosa.

20. Defendant East Providence Board of Canvassers ruled that Mr. Monteiro did not qualify for placement on the ballot because he did not have 200 valid signatures on his nominating petitions.
21. The City of East Providence, through the East Providence Canvassing Authority, regularly requires all municipal candidates, whether elected citywide or not, to comply with Article XI, Sec. 11-7 of the East Providence City Charter and collect 200 signatures from eligible voters. The East Providence Canvassing Authority will not count a voter's signature on a candidate's nomination papers if that voter signed the candidate's opponent nomination papers and the opponent has previously submitted his or her nomination papers.
22. Article XI, Sec. 11-7 of the East Providence City Charter is in direct conflict with Rhode Island state law on nomination papers and required signatures.
23. Upon information and belief, no other town or municipality in Rhode Island contains the restrictions of Article XI, Sec. 11-7 of the East Providence City Charter or of the 1957 Public Law, Section 14.
24. Plaintiff Brian Monteiro intends to be a candidate for political office in the City of East Providence in the future.

COUNT I

(DECLARATORY JUDGMENT)

25. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 24 of this Verified Complaint as if fully set forth herein.
26. Pursuant to R.I. Gen. Laws §§ 17-14-7 and 17-15-7, candidates for local municipal and town offices who are elected at a district or ward level, and not at a citywide level, need only have nomination papers signed by fifty (50) voters.
27. Pursuant to R.I. Gen. Laws § 17-14-7, a candidate for state senator need only have nomination papers signed by one hundred (100) voters, and a candidate for state representative need only have nomination papers signed by fifty (50) voters.
28. Pursuant to R.I. Gen. Laws § 17-14-9, a voter is allowed to “sign any number of nomination papers for any office the voter may lawfully vote for at the general election.”
29. The East Providence City Charter requires candidates who are elected at the ward level to submit nomination papers signed by 200 voters in order to qualify to have his or her name placed on the ballot.
30. Furthermore, the East Providence City Charter allows voters to sign only one candidate’s nomination papers.
31. The East Providence City Charter, specifically Article XI, Sec. 11-7, violates R.I. Gen. Laws §§ 17-14-7 and 17-15-7 when it is applied to candidates at the ward level.

32. Furthermore, the East Providence City Charter, specifically Article XI, Sec. 11-7, violates R.I. Gen. Laws §17-14-9 when a voter's signature is only counted on one candidate's nomination papers.
33. Article XI, Sec. 11-7 of the East Providence City Charter is apparently based on the restrictions contained on the 1957 Public Law.
34. Defendants City of East Providence, East Providence Canvassing Authority, Maryann Callahan, Dorothy M. O'Gara, Thomas C. Riley and Peter G. Barilla are enforcing the requirements of Article XI, Sec. 11-7 of the East Providence City Charter.
35. Plaintiff Brian Monteiro has been specifically harmed as he collected and turned in over 150 valid signatures on his nomination papers for East Providence School Committee, Ward 2.
36. Plaintiff Brian Monteiro seeks a declaration that Article XI, Sec. 11-7 of the East Providence City Charter and the 1957 Public Law are unconstitutional under both the United States Constitution and the Rhode Island Constitution.

**COUNT II
(FEDERAL DUE PROCESS VIOLATION)**

37. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 36 of this Verified Complaint as if fully set forth herein.
38. The First Amendment to the United States Constitution provides:
- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
- USCS Const. Amend. 1.

39. The Fourteenth Amendment to the United States Constitution provides, in

relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

USCS Const. Amend. 14, § 1.

40. As a candidate for office and a registered voter, Mr. Monteiro possesses federal constitutional rights to associate, to vote and to due process of the law.

41. Pursuant to R.I. Gen. Laws §§ 17-14-7 and 17-15-7, candidates for local municipal and town offices who are elected at a district or ward level, and not at a citywide level, need only have nomination papers signed by fifty (50) voters.

42. Pursuant to R.I. Gen. Laws § 17-14-7, a candidate for state senator need only have nomination papers signed by one hundred (100) voters, and a candidate for state representative need only have nomination papers signed by fifty (50) voters.

43. There is no reasonable or rational basis for requiring East Providence ward-level candidates to obtain 200 signatures on their nominating petitions.

44. Similarly, there is no reasonable or rational basis for allowing East Providence voters to sign only one candidate's nomination papers for city elective offices, while allowing them to sign more than one nomination paper for candidates running in East Providence for state and federal elections.

45. At all times relevant herein, Defendants were acting under color of state law.

46. Defendants violated Plaintiff's constitutional rights to associate, to vote and to due process rights by enforcing the 1957 Public Law and by Article XI, Sec. 11-7 of the East Providence City Charter.

**COUNT III
(FEDERAL EQUAL PROTECTION VIOLATION)**

47. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 46 of this Verified Complaint as if fully set forth herein.

48. The Fourteenth Amendment to the United States Constitution provides, in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

USCS Const. Amend. 14, § 1.

49. As a candidate for office and a registered voter, Mr. Monteiro possesses a federal constitutional right to equal protection of the laws.

50. Pursuant to R.I. Gen. Laws §§ 17-14-7 and 17-15-7, candidates for local municipal and town offices who are elected at a district or ward level, and not at a citywide level, need only have nomination papers signed by fifty (50) voters.

51. Pursuant to R.I. Gen. Laws § 17-14-7, a candidate for state senator need only have nomination papers signed by one hundred (100) voters, and a candidate for state representative need only have nomination papers signed by fifty (50) voters.

52. There is no reasonable or rational basis for requiring East Providence ward-level candidates to obtain 200 signatures on their nominating petitions.
53. Similarly, there is no reasonable or rational basis for allowing East Providence voters to sign only one candidate's nomination papers for city elective offices, while allowing them to sign more than one nomination paper for candidates running in East Providence for state and federal elections.
54. At all times relevant herein, Defendants were acting under color of state law.
55. Defendants violated Plaintiff's equal protection rights by enforcing the 1957 Public Law and by Article XI, Sec. 11-7 of the East Providence City Charter.

**COUNT IV
(STATE DUE PROCESS VIOLATION)**

56. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 55 of this Verified Complaint as if fully set forth herein.
57. The Rhode Island Constitution provides, in relevant part:

All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.

R.I. Const. Art. I, § 2

58. As a candidate for office and a registered voter, Mr. Monteiro possesses a state constitutional right to due process of the law.
59. Pursuant to R.I. Gen. Laws §§ 17-14-7 and 17-15-7, candidates for local municipal and town offices who are elected at a district or ward level, and not

at a citywide level, need only have nomination papers signed by fifty (50) voters.

60. Pursuant to R.I. Gen. Laws § 17-14-7, a candidate for state senator need only have nomination papers signed by one hundred (100) voters, and a candidate for state representative need only have nomination papers signed by fifty (50) voters.
61. There is no reasonable or rational basis for requiring East Providence candidates to obtain 200 signatures on their nominating petitions.
62. Similarly, there is no reasonable or rational basis for allowing East Providence voters to sign only one candidate's nomination papers for city elective offices, while allowing them to sign more than one nomination paper for candidates running in East Providence for state and federal elections.
63. Plaintiff's substantive due process rights have been violated by the 1957 Public Law and by Article XI, Sec. 11-7 of the East Providence City Charter.

**COUNT V
(STATE EQUAL PROTECTION VIOLATION)**

64. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 63 of this Verified Complaint as if fully set forth herein.
65. The Rhode Island Constitution provides, in relevant part:

All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws.

R.I. Const. Art. I, § 2

66. As a candidate for office and a registered voter, Mr. Monteiro possesses a state constitutional right to equal protection of the laws.
67. Pursuant to R.I. Gen. Laws §§ 17-14-7 and 17-15-7, candidates for local municipal and town offices who are elected at a district or ward level, and not at a citywide level, need only have nomination papers signed by fifty (50) voters.
68. Pursuant to R.I. Gen. Laws § 17-14-7, a candidate for state senator need only have nomination papers signed by one hundred (100) voters, and a candidate for state representative need only have nomination papers signed by fifty (50) voters.
69. There is no reasonable or rational basis for requiring East Providence candidates to obtain 200 signatures on their nominating petitions.
70. Similarly, there is no reasonable or rational basis for allowing East Providence voters to sign only one candidate's nomination papers for city elective offices, while allowing them to sign more than one nomination paper for candidates running in East Providence for state and federal elections.
71. Plaintiff's equal protection rights have been violated by the 1957 Public Law and by Article XI, Sec. 11-7 of the East Providence City Charter.

**COUNT VI
(INJUNCTIVE RELIEF)**

72. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 71 of this Verified Complaint as if fully set forth herein.

73. Under Rhode Island law, a municipal or town candidate who is elected at the ward or district level need only obtain signatures from 50 voters in the candidate's ward or district.
74. Furthermore, under Rhode Island law a voter may sign nomination papers for multiple candidates.
75. The City of East Providence Charter, specifically Article XI, Sec. 11-7, is in violation of United States Constitution.
76. The 1957 Public Law, Section 14, violates the United States Constitution.
77. Plaintiff Brian Monteiro has no other adequate remedy at law to invalidate the City of East Providence Charter, specifically Article XI, Sec. 11-7 and the 1957 Public Law, Section 14.

WHEREFORE, Plaintiff Brian Monteiro respectfully requests that this Court enter judgment in his favor and against Defendants as follows:

- (1) A declaratory judgment declaring that 1957 P.L. Ch. 33, Section 14, and Article XI, Sec. 11-7 of the City of East Providence Charter, are null and void as they violate the United States Constitution, the Rhode Island Constitution, as well as R.I. Gen. Laws §§ 17-14-7 and 17-15-7, when they are applied to candidates at the ward level;
- (2) A declaratory judgment declaring that 1957 P.L. Ch. 33, Section 14, and Article XI, Sec. 11-7 of the City of East Providence Charter, are null and void as they violate the United States Constitution, the Rhode Island Constitution, as well as R.I. Gen. Laws §17-14-9, when a voter's signature is only counted on one candidate's nomination papers;

- (3) A temporary, preliminary and permanent injunctive relief restraining Defendants from enforcing 1957 P.L. Ch. 33, Section 14 and Article XI, Sec. 11-7 of the City of East Providence Charter as applied to candidates at the ward level and prohibiting Defendants from invalidating a voter's signature when a voter has signed nomination papers for more than one candidate;
- (4) An award to Plaintiff of reasonable attorneys' fees and costs; and
- (5) Such other and further relief as the Court deems just and proper.

Plaintiff,

DATED: February ____, 2009

BRIAN MONTEIRO

By his Attorney,

Angel Taveras (#5552)
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VERIFICATION

I, Brian Monteiro, as a person with personal knowledge of the facts which form the basis of the above-captioned action, being duly sworn, hereby state under oath that I have read the foregoing Verified Complaint and can verify that the facts set forth therein are true and accurate to the best of my knowledge, except those statements made upon information and belief, and as to such statements I believe them to be true.

Brian Monteiro

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

Subscribed and sworn to before me this ____ day of February, 2009.

Notary Public
Print Name: _____
My commission expires: _____