

**10/02/2025 #17 Memorandum of Decision & Judgment:** as on file. "This matter is before the court, Gaziano, J., on a petition pursuant to G. L. c. 249, §§ 4 and 5, seeking relief in the nature of certiorari and relief in the nature of mandamus.

The petitioner, the Committee to Recall Max Tassinari, seeks an order compelling the respondent, the Town Clerk for the Town of Winthrop, to prepare the November 2025 election ballot to include a question concerning the recall of Town Councillor Max Tassinari, or in the alternative, to "annul the [respondent]'s refusal" to perform this alleged duty. Pet., No. SJ-2025-0378, Dkt. 1, at 2, 5, 19 (Sept. 10, 2025) (Pet.).

The petitioner represents to this court that it "complied with the recall process established by the Winthrop Town Charter, submitting more than the required number of certified signatures." Pet., at 1. According to the petition, the process for a recall, as provided in the Winthrop town charter, requires, inter alia, that its proponents "collect signatures equal to 20% of the voters." Id. at 5. The proponents of the recall petition at issue "collected 2,284 signatures. Of these, 1,994 were ultimately certified by the [respondent]." Id.

Specifically, the petition takes issue with the respondent's determination that the town charter "required signatures from 20% of the entire electorate--about 2,800 signatures--instead of 20% of the votes cast at the last election (approximately 882 signatures)." Pet., at 5. On this basis, the petitioner purported to object pursuant to G. L. c. 55B, § 7, to the determination that the recall petition lacked the required signatures. See Pet., at 5; Appx., No. SJ-2025-0378, Dkt. 2, at Ex. 11 (Sept. 10, 2025) (Appx.).

That statute provides for "[o]bjections . . . to petitions for local ballot questions[.]" G. L. c. 55B, § 7. Where the Town of Winthrop's Board of Registrars purported to "sustain the objection," the petitioner argues that § 7 compels the respondent to include the disputed recall petition on the ballot. Pet., at 1, 5, 19. In describing the applicable procedures, the petition explicitly references "the process laid out in Section 5.1 (k) of the Town Charter." Id.

**But the plain language of the Winthrop town charter is at odds with the petitioner's interpretation of its terms and with the basis for the petitioner's purported objection pursuant to G. L. c. 55B, § 7. See Appx., at Ex. 11. Article 5, § 5-1 (k), of the town charter requires in relevant part that, as to a recall petition "for any officer elected at large," the petition "shall have been signed by at least 20% of the voters of the town[.]" Resp.'s Appx., No. SJ-2025-0378, Dkt. 11, at 22 (Sept. 25, 2025) (Resp.'s Appx.).**

**Article 1, § 1-9 (s), of the town charter expressly states that "[t]he word 'voters' shall mean registered voters of the town of Winthrop." [1] Resp.'s Appx., at 4.**

To obtain relief in the nature of certiorari, "the following three elements must be present: (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 (citation omitted)." Frawley v. Police Comm'r of Cambridge, 473 Mass. 716, 726 (2016). "A request for relief in the nature of mandamus is a call to a government official to perform a clear cut duty (quotation and citation omitted)." Mederi, Inc. v. Salem, 488 Mass. 60, 65 (2021).

In other words, "[t]he writ of mandamus will not issue unless the respondent is under a legal duty to perform some particular act or acts (quotation and citation omitted)[.]" Boxford v. Massachusetts Highway Dep't, 458 Mass. 596, 606 (2010). Moreover, "relief in the nature of mandamus is extraordinary and may not be granted except to prevent a failure of justice in instances where there is no other adequate remedy (citation omitted)." Mederi, Inc., supra at 65. Here, the respondent had no legal duty to do what the petitioner asks, i.e., to prepare the ballot to include a recall petition that failed to meet the requirements for inclusion imposed by the plain language of the town charter. See Boxford, 458 Mass. at 606. What is more, there is no "substantial injury or injustice" or "failure of justice" where a recall petition that fails to meet those requirements is not included on the ballot (citations omitted). Frawley, 473 Mass. at 726; Mederi, Inc., 488 Mass. at 65.

To the extent that the petitioner argues that the respondent was compelled by G. L. c. 55B, § 7, to include the recall petition on the ballot based on the Board of Registrars' action sustaining the petitioner's purported objection, that statute does not prescribe a "clear cut duty" to the respondent in this regard (citation omitted). Mederi, Inc., 488 Mass. at 65. **On the contrary, the plain language of that statute provides only for an objection to a ballot question, not for an objection in support of a ballot question to a refusal to include it on the ballot. See G. L. c. 55B, § 7. And where, as here, the petitioner's purported objection pursuant to § 7 lacked merit, contradicting as it did the plain language of the town charter, there was no "substantial injury or injustice" or "failure of justice" in declining to place the petition on the ballot despite the action of the Board of Registrars (citations omitted). Frawley, 473 Mass. at 726; Mederi, Inc., 488 Mass. at 65.**

**For all the foregoing reasons, the petitioner is not entitled to relief in the nature of certiorari or relief in the nature of mandamus. Upon consideration, it is ORDERED that the petition is DENIED without hearing.** The motion to dismiss, filed by Intervenor Max Tassinari, is hereby DENIED AS MOOT." (Gaziano, J.)

[1] Article 5, § 5-1 (k) of the town charter also provides that "for any recall election, at least 20% of the voters as of the most recent regular town election must vote" in the resulting election for the vote to have any effect. Resp.'s Appx., at 23. This requirement is not at issue, as the recall petition has not been submitted to the voters for election, and in any event, this language does not help the petitioner because it does not alter the definition of voters, described supra, but only prescribes the point in time used to calculate the number of those voters.

10/02/2025 #18 eNotice to Counsel/Parties Re: Paper #17 filed.