

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

18 CvS 4822

TODD EDWARD ROTRUCK,

Plaintiff,

v.

TOWN OF SUMMERFIELD,

Defendant.

**COMPLAINT
AND MOTION FOR
TEMPORARY AND PRELIMINARY
INJUNCTIVE RELIEF**

Plaintiff Todd E. Rotruck, through counsel and pursuant to Rules 7 and 8 of the North Carolina Rules of Civil Procedure, complains of Defendant Town of Summerfield as follows:

SUBSTANCE OF THE ACTION

1. Plaintiff Todd E. Rotruck ("Rotruck") brings this civil action seeking mandamus, declaratory relief, and injunctive relief in response to the actions of Defendant Town of Summerfield's employee Scott Whitaker in his capacity as Town Manager to summarily and unilaterally exclude Rotruck from participating as a duly elected member of Town of Summerfield's Town Council, and prevent Rotruck from fulfilling his responsibilities as an officer of Town of Summerfield elected by the people, thereby violating Rotruck's constitutional rights and the laws of the State of North Carolina.

PARTIES AND JURISDICTION

2. Rotruck is an individual resident in Guilford County, North Carolina.

3. Town of Summerfield ("Summerfield") is a body politic, incorporated and operated by virtue of the laws of the State of North Carolina within corporate boundaries situated within Guilford County, and thereby possessing all powers, rights, duties, rights, privileges, and immunities conferred and imposed on towns and cities by the general law of the State

4. Summerfield maintains primary offices for the conduct of its business as a municipal corporation at its “Town Hall” located at 4117 Oak Ridge Road in Summerfield, North Carolina.

5. This Court has proper personal jurisdiction, and jurisdiction over the subject matter under the judicial power vested in the General Court of Justice, Superior Court Division by N.C. Gen Stat. §§ 7A-240 and 7A-245, and Plaintiff has met all conditions precedent to initiating and maintaining this civil action.

6. Venue for this civil action is proper in Guilford County, North Carolina pursuant to N.C. Gen Stat. § 1-82.

FACTUAL BACKGROUND

7. As one of two candidates receiving the most votes, Rotruck was elected to Summerfield’s Town Council (the “Council”) by the people of Summerfield (eligible registered voters residing in Summerfield who cast ballots in the November 7, 2017 general election), receiving 1,089 votes in record voter turnout conditions.

8. Rotruck was officially and properly sworn into office as a member of Council on December 12, 2017, and he had attended and participated actively in every meeting of the Council since, until April 23, 2018, when he was precluded from participating in a special meeting of the Council, against his will. Notably, as part of his participation as a member of Council elected by the people, Rotruck joined other members of the Council in openly questioning whether or not the Council should renew the employment contract of Summerfield’s Town Manager, Scott Whitaker.

9. On February 16, 2018, Janelle Robinson, an individual resident of Summerfield, filed a residency challenge with the Guilford County Board of Elections, claiming that Rotruck had ceased residing in Summerfield (the “Challenge”).

10. On February 26, 2018, Summerfield's Town Manager, Scott Whitaker, was quoted in local media about the Challenge, stating that it could be "something that the town as a whole is going to have to deal with swiftly."

11. On March 8, 2018, Janelle Robinson met privately with Summerfield's Town Manager, Scott Whitaker, and Reece Walker (a member of the Council), in Whitaker's office in Summerfield's Town Hall, but for unknown reasons the standard video and audio recordings routinely made of activity transpiring in Summerfield's Town Hall are incomplete for March 8, 2018 such that there is no audio or video available documenting the presence of Janelle Robinson and Reece Walker at Town Hall for the meeting with Scott Whitaker on that date.

12. Rotruck has maintained at all times that he established legal residence in Summerfield during 2016, and that he continues to legally reside there to this day.

13. On April 17, 2018, the Guilford County Board of Elections conducted a quasi-judicial hearing with respect to the Challenge (the "Hearing") and, at the conclusion of the Hearing, voted to sustain the Challenge, finding that Rotruck's current residence was in the City of Greensboro, not Summerfield, and that Rotruck accordingly was not eligible to vote in Summerfield for purposes of the May 8, 2018 primary election.

14. The Guilford County Board of Elections did not issue a formal written decision or order, or any minutes, at the conclusion of the Hearing on April 17, 2018 to memorialize its official findings and determination regarding the Challenge, but a representative of the Board of Elections (Charles Collicut) indicated that a written decision or order would be forthcoming in approximately one week. (N.C.G.S. § 163A-767 requires the Board of Elections to "keep minutes recording all proceedings and findings at each of its meetings.")

15. The day after the Hearing, Rotruck submitted a public records request to the Board of Elections, but as of yet Rotruck has not been furnished with the requested records.

16. Rotruck also inquired with a representative of the Board of Elections about a transcript of the Hearing, but as of yet has not been furnished with a transcript of the Hearing or been informed that the Hearing transcript is completed and available.

17. Since the Hearing, Rotruck has repeatedly stated to the media, members of the Council, Summerfield's Town Manager (Scott Whitaker), and Summerfield's "town attorney" (William Hill) that he will appeal the outcome of the Hearing, as he is entitled to do pursuant to N.C. Gen. Stat. § 163A-919(c).

18. Almost immediately following the Hearing's conclusion, William Hill, Summerfield's "town attorney" ("Hill") adopted the position in communications with members of the Council that "the office formerly held by Mr. Rotruck became vacant when the Board of Elections issued its decision." Hill adopted this position based on hearsay (third-party and media reports) because he was not personally present at the Hearing.

19. Since the Hearing, Rotruck has maintained at all times that he remains a member of the Council and that his seat is not vacant.

20. On April 18, 2018, the day after the Hearing, Hill sent an email to Council members (including Rotruck) in which he mischaracterized the unwritten decision of the Board of Elections that Rotruck could not vote in the May 8, 2018 primary in Summerfield by claiming instead that the Board of Elections had conclusively "ruled" that Rotruck "was ineligible to serve on the council," and advising Council that Rotruck's "seat on council is currently vacant."

21. Later on April 18, 2018, Rotruck responded by sending an email to Hill and the other members of the Council confirming that he was "putting town attorney and Council on notice that I will appeal the Board of Elections" and advising them that "if the Town votes to remove me before the appeal is decided, I will have no choice but to seek an injunction in court to preserve the status quo (myself in office) pending resolution of the appeal."

22. The following day, on April 19, 2018, Hill began to implement his personal, unilateral decision to immediately remove Rotruck from the Council by sending an email to all of the members of the Council *except for Rotruck* further discussing steps toward filling the “vacancy” that he was now decreeing to exist on Council. Although acknowledging in the email that “there has been some confusion regarding the process to formally declare the seat vacant,” and admitting that he had nothing formal in writing as of yet by recommending that he “formally read whatever notice the BOE provides,” Hill nonetheless emphasized “I would advise you the seat is vacant” and “Todd would not be seated.”

23. Later on April 19, 2018, Hill sent another email to all of the members of the Council except for Rotruck advising them that an “‘official’ copy” of the Board of Elections findings had been requested.

24. The following day, on April 20, 2018, a “Special Called Meeting Agenda” was circulated for a special meeting of the Council to be convened on April 23, 2018 (the “Agenda”). The Agenda was circulated on official Summerfield letterhead which identifies the members of the Council, and the official letterhead had been modified to remove Rotruck’s name from the list of members of the Council. Moreover, the Agenda referred to the “Council seat vacancy” in the present tense and without any qualifying term such as “potential,” further underscoring that although no vote had been taken by Council, a determination had been made by other persons acting on behalf of the Town that Rotruck had already been removed from the Council. Upon information and belief, the Agenda was prepared and circulated on April 20, 2018 by Summerfield’s Town Manager Scott Whitaker (“Whitaker”), in reliance on Hill’s unilateral, individual decree the previous day that Rotruck’s seat on the Council was now vacant. The Agenda was not sent by Hill or Whitaker to Rotruck, nor did they advise Rotruck prospectively that they would prevent him from participating in the April 23, 2018 special meeting.

25. From April 20, 2018 through present, Hill and Whitaker have systematically excluded Rotruck from email exchanged with the other members of the Council.

26. On or about April 20, 2018, Rotruck's name was removed from the list of Council members contained on Summerfield's official website. Upon information and belief, this was done at the request and direction of Whitaker.

27. Rotruck learned of the special Council meeting called for April 23, 2018 through media reports and arrived for the meeting moments before it was scheduled to begin, anticipating that he would take his seat on the dais with the other Council members only to discover that his seat had been removed from the dais, along with his name placard. Upon information and belief, Whitaker undertook to remove Rotruck's chair and name placard from the dais.

28. Upon observing that his chair had been removed from the dais, Rotruck obtained a folding chair from the audience area of the meeting room in which the special meeting was being convened, placed the folding chair on the dais, and sat in it, intent on participating in the meeting along with the other Council members who were all present

29. Hill then stated openly that it was illegal for the meeting to proceed with Rotruck seated on dais, because Rotruck was no longer a member of the Council, although Hill and Whitaker were seated on the dais and neither of them is a member of Council. When Rotruck announced that he disagreed with Hill's statements and planned to remain on the dais and participate, Hill threatened to summon the sheriff to have Rotruck arrested and removed. At that point, Rotruck agreed to leave the dais under protest, and the other Council members proceeded with the meeting.

30. As of the date of the filing of this civil action, the Council has never taken a vote as to whether or not to remove Rotruck from the Council based on the outcome of the Hearing. Rather, Rotruck's exclusion from Council, including his removal from email exchanges, from

the Summerfield letterhead, from the Summerfield website, and from the dais has been solely pursuant to Hill's unilateral decree as "town attorney," and, upon information and belief, through implementation of Hill's decree by Whitaker.

31. North Carolina law does not allow a town attorney (such as Hill) or a town manager (such as Whitaker) to make the decision to remove an elected official from the Council, as Hill and Whitaker have done to Rotruck. Instead, N.C.G.S. § 160A-148(1), which governs Whitaker's duties and prerogatives, given Summerfield's adherence to the Council-Manager form of government, only allows Whitaker to "appoint and suspend or remove all city officers and employees *not elected by the people*."

32. Upon information and belief, all actions of Whitaker and Hill described above were undertaken in the course and scope of their employment with, and/or apparent authority to act as an agent of, Summerfield, and the the actions of Whitaker and Hill are accordingly imputed to Summerfield.

FIRST CLAIM FOR RELIEF
(Petition for Writ of Mandamus)

33. Rotruck realleges and incorporates by reference as if fully set forth herein the allegations of the preceding paragraphs.

34. In the absence of action by the Council, neither Whitaker nor Hill had any authority to declare Rotruck's seat on the Council to be vacant.

35. Hill and Whitaker's vigilante-like actions as described above to exclude Rotruck from Council emails, agenda distributions, and notifications, to threaten him with arrest for seeking to take his seat on the dais at the April 23, 2018 special meeting, to remove his name from the official Summerfield letterhead and website, to remove his placard and chair from the dais, and to otherwise unilaterally decree him *persona non grata* with respect to the Council

violate the laws of the State of North Carolina, and are contrary to the limited powers given to Whitaker as a municipal manager under Part 2 of Chapter 160A of the North Carolina General Statutes.

36. After being properly sworn into office as a member of the Council on December 12, 2017, N.C. Gen. Stat. § 128-6 mandates that Rotruck “shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom.”

37. N.C. Gen. Stat. § 128-6 mandates that Rotruck, as an elective officer “shall continue” in that position until a successor is “elected or appointed, and duly qualified.”

38. The actions described above of Hill and Whitaker are illegal to the extent there has been no judicial determination, upon a proper proceeding, that Rotruck be removed from his elective office as a member of Council, and no successor to Rotruck has been elected, appointed, or qualified.

39. The holding of elective public office, such as Rotruck’s position as a member of the Council, is a privilege, implicates a liberty interest, and is protected by Article I, Section 6 of the North Carolina Constitution, “except as in this Constitution disqualified.”

40. Article I, Section 19 of the North Carolina Constitution affords sacrosanct protections to Rotruck coterminous with the scope of “due process of law” as provided for in the Fourteenth Amendment to the United States Constitution, which provides: “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.”

41. To the extent any removal of Rotruck from the Council deprives him of a privilege and infringes upon a recognized liberty interest he possesses, such removal implicates

Rotruck's due process rights under the constitutions of both the State of North Carolina and the United States.

42. In communications to Council, Hill relies on N.C. Gen. Stat. § 160A-59 to justify his unilateral, individual decree that Rotruck's seat on Council is vacant. That statute states: "When any elected city officer ceases to meet all of the qualifications for holding office pursuant to the Constitution, or when a council member ceases to reside in an electoral district that he was elected to represent, the office is ipso facto vacant."

43. Given Rotruck's insistence that he currently resides in Summerfield, the absence of any "minutes recording all proceedings and findings" from the Hearing as required by N.C.G.S. § 163A-767, and the existence of unexpired appeal rights with respect to the Hearing that are fundamental to Rotruck's due process rights under the North Carolina and United States constitutions, the above-described actions of Whitaker and Hill are not only unauthorized and insubordinate in the absence of any action by the Council, but they further constitute a wrongful, illegal, and unconstitutional interpretation and application of N.C. Gen. Stat. § 160A-59 to the extent Whitaker and Hill take it upon themselves to officiously serve as judge, jury, and executioner, conclusively determining among themselves that Rotruck has ceased to reside in the electoral district he was elected to represent, and proceeding to remove him from his elected office on that basis, all contrary to his due process rights under the constitutions of the United States and the State of North Carolina.

44. The issuance of an order and/or writ in the nature of mandamus to Summerfield is accordingly warranted (i) commanding Summerfield to reverse the actions of Whitaker and Hill, as employees and agents of the Town, respectively, to remove Rotruck from Council (and their actions otherwise inconsistent with Rotruck's status as a member of Council), (ii) commanding Summerfield to instruct Whitaker and Hill, as employees and agents of the Town, respectively,

to refrain from further action inconsistent with Rotruck's status as a current member of the Council pending (a) proper judicial determinations as to Rotruck's current eligibility to serve on Council consistent with the laws of the State of North Carolina, and the constitutions of the State of North Carolina and the United States, and (b) subsequent official direction from the Council consistent with such judicial determinations; and (iii) commanding Council to refrain from voting to (or otherwise taking action to) remove Rotruck from Council or limit Rotruck's full participation as a member of Council) pending proper judicial determinations as to Rotruck's current eligibility to serve on Council that are consistent with the laws of the State of North Carolina, and the constitutions of the State of North Carolina and the United States.

SECOND, ALTERNATIVE CLAIM FOR RELIEF
(Declaratory Judgment)

45. Rotruck realleges and incorporates by reference as if fully set forth herein the allegations of the preceding paragraphs.

46. In the alternative, to the extent issuance of a writ of mandamus is found to be an improper vehicle for redress for Rotruck based upon the factual allegations contained herein, Rotruck avers that an actual controversy exists between him and Summerfield requiring a declaration as to his rights to serve as a member of Council, and seeks a declaration from the Court pursuant to Article 26 of Chapter 1 of the North Carolina General Statutes that: (i) the special meeting of the Council called to order on April 23, 2018 was illegally convened because it was convened without Rotruck being allowed to take his seat and participate as an elected member of Council; (ii) the actions of Whitaker and Hill, as employees and agents of the Town, respectively, to remove Rotruck from Council (and their actions otherwise inconsistent with Rotruck's status as a member of Council) are invalid and require reversal because such actions are contrary to the laws of the State of North Carolina and infringe on constitutional protections

afforded Rotruck under the constitutions of the United States and the State of North Carolina; (iii) to avoid violating the laws of the State of North Carolina and infringing on constitutional protections afforded Rotruck under the constitutions of the United States and the State of North Carolina, Whitaker and Hill, as employees and agents of the Town, respectively, must refrain from further action inconsistent with Rotruck's status as a current member of the Council pending proper judicial determinations as to Rotruck's current eligibility to serve on Council, consistent with the laws of the State of North Carolina and the constitutions of the State of North Carolina and the United States, and subsequent official direction from the Council consistent with such judicial determinations; and (iv) to avoid violating the laws of the State of North Carolina and infringing on constitutional protections afforded Rotruck under the constitutions of the United States and the State of North Carolina, the Council must refrain from voting to (or otherwise taking action to) remove Rotruck from Council or limit Rotruck's full participation as a member of Council) pending proper judicial determinations as to Rotruck's current eligibility to serve on Council that are consistent with the laws of the State of North Carolina, and the constitutions of the State of North Carolina and the United States. 45. Plaintiffs are entitled to an award of punitive damages pursuant to N.C. Gen. Stat. §1D-1 *et seq.* to be assessed against Defendants in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF
(Motion for Temporary Restraining Order and Preliminary Injunction)

47. Rotruck realleges and incorporates by reference as if fully set forth herein the allegations of the preceding paragraphs

48. Rotruck has shown a likelihood of success on the merits and will suffer irreparable injury if the actions of Summerfield through its employee, Whitaker, to exclude Rotruck from participating as a member of Council are not enjoined, and, given the press of

municipal business, no adequate relief at law is possible or available to Rotruck to protect his due process and other constitutional rights if the conduct of Whitaker is not quickly enjoined to allow Rotruck to participate as a member of Council.

49. Rotruck has been and will continue to be injured by the wrongful actions of Summerfield (via its employee, Whitaker), and Rotruck has suffered and will continue to suffer immediate and irreparable harm if Summerfield is not temporarily and preliminarily enjoined from (1) allowing Whitaker to take further action inconsistent with Rotruck's status as a current member of the Council pending (a) proper judicial determinations as to Rotruck's current eligibility to serve on Council consistent with the laws of the State of North Carolina, and the constitutions of the State of North Carolina and the United States, and (b) subsequent official direction from the Council consistent with such judicial determinations; and (2) voting (through Council) or otherwise taking official action to remove Rotruck from Council or limit Rotruck's full participation as a member of Council pending proper judicial determinations as to Rotruck's current eligibility to serve on Council that are consistent with the laws of the State of North Carolina, and the constitutions of the State of North Carolina and the United States.

50. Pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 1-485 *et seq.*, Rotruck therefore seeks, and hereby moves for and requests, entry by the Court of a temporary restraining order prohibiting further action by Summerfield inconsistent with Rotruck's status as a current member of Council pending (i) proper judicial determinations as to Rotruck's current eligibility to serve on Council consistent with the laws of the State of North Carolina, and the constitutions of the State of North Carolina and the United States, and (ii) subsequent official direction from Council consistent with such judicial determinations, and Rotruck further moves for the entry of a preliminary injunction against Summerfield as soon as a hearing can be set for the same to confirm Rotruck's entitlement to preliminary injunctive relief.

51. Rotruck reserves the right to submit affidavits in support of this request for injunctive relief to the Court to verify and supplement the allegations contained herein.

PRAYER FOR RELIEF

WHEREFORE, Rotruck respectfully prays unto the Court for the following relief:

1. That the Court issue a writ of mandamus to the Town of Summerfield commanding Town of Summerfield to act as described in the First Claim for Relief, above;
2. Alternatively, that the Court render declaratory judgment, as described in the Second, Alternative Claim for Relief, above;
3. That the Court issue a temporary restraining order and preliminary injunction, to protect Rotruck's due process and other constitutional rights pending a full trial of this matter on the merits, in accordance with the Third Claim for Relief, above;
4. That the costs of this action be taxed to Summerfield;
5. That the Court award to Rotruck such other and additional damages as Rotruck substantiates through evidence; and
6. That the Court grant unto Rotruck such other and further relief as the Court deems just and proper.

This the 25th day of April, 2018.



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N.C. State Bar No. 20085

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