

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

SAVE THE BAY

Plaintiff

v.

Gina Raimondo, *in her capacity as*
Governor of the State of Rhode Island
Defendant

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C.A. No.:

COMPLAINT FOR DECLARATORY RELIEF

Introduction

1. This action seeks a declaration of the meaning of Rhode Island General Laws §§ 46-23-2 and 46-23-2 concerning the composition of the Coastal Resources Management Council (the Council).
2. This Court has jurisdiction pursuant to the Uniform Declaratory Judgments Act, Rhode Island General Laws § 9-30-1, *et seq.*
3. Providence County is the appropriate venue under Rhode Island General Laws § 9-4-4.

Parties

4. Plaintiff Save The Bay, Inc., located at 100 Save The Bay Drive, Providence, Rhode Island, is a non-profit organization with over 10,000 members and supporters. The mission of Save The Bay is to protect and improve Narragansett Bay and its watershed. Members and supporters of Save The Bay enjoy public access to the shoreline and surf,

fish, swim, and boat on Narragansett Bay and beachcomb, study the ecosystem, and birdwatch on the shoreline abutting the waters of the state.

5. Gina Raimondo is the duly elected Governor of the State of Island and is named only in her official capacity.

Factual Allegations

6. The Governor has an obligation, set forth in Article IX, Section 2 of the Rhode Island Constitution, to “take care that the laws be faithfully executed.”
7. It is the statutory duty of the Rhode Island Coastal Resources Management Council (the Council) “...to preserve, protect, develop, and where possible restore the coastal resources of the state for this and succeeding generations ...” Rhode Island General Laws § 46-23-1(a)(2).
8. Pursuant to § 46-23-1(a)(2), the Council’s primary guiding principle shall be preservation and restoration of ecological systems for this and succeeding generations.
9. Individual members of Save The Bay have been, and will continue to, be impacted by decisions of the Council concerning alteration of coastal resources.
10. The majority of members of Save The Bay are from coastal communities.
11. Protecting, preserving and restoring Rhode Island’s coastal resources is germane to Save The Bay’s mission.
12. This request for a Declaratory Judgment does not require the participation of individual members. Save The Bay is a membership-based organization that routinely acts as proxy for the will of its members.

13. The public health and welfare of coastal communities are particularly affected by decisions of the Coastal Resources Management Council.
14. Rhode Island General Laws, §§ 46-23-2 and 46-23-2.1, govern the appointment, terms and qualifications of members of the Coastal Resources Management Council and the Governor.
15. Rhode Island General Laws § 46-23-2(a)(1) provides that the Council “shall consist of sixteen (16) members” and it further provides that “two (2) of whom shall be members of the house of representatives, at least one of the members shall represent a coastal municipality, appointed by the speaker, two (2) of whom shall be members of the senate, each of whom shall represent a coastal municipality, appointed by the president of the senate, two (2) of whom shall be from the general public appointed by the speaker of the house for a term of two (2) years, two (2) of whom shall be from a coastal municipality appointed by the speaker of the house for a term of three (3) years.”
16. The 2004 Amendments to the Rhode Island Constitution prohibit members of the Rhode Island House of Representatives and the Senate from serving on, or appointing members of the Council.
17. The Governor is specifically authorized by §46-23-2(a)(2) and (3) to appoint a total of seven (7) members to the Council, in addition to the Director of the Rhode Island Department of Environmental Management (Director).
18. In accordance with Rhode Island General Laws, § 46-23-2(a)(2), four (4) of the members of the Council appointed by the Governor shall be elected or appointed officials of local government that further meet the following qualifications:
 - a. One (1) from a municipality of less than twenty-five thousand (25,000) population;

- b. One (1) from a coastal municipality of more than twenty-five thousand (25,000) population;
- c. One (1) from a coastal municipality of less than twenty-five thousand (25,000) population; and
- d. One (1) from a coastal community of more than twenty-five thousand (25,000) population.

19. The Director is an ex officio member of the Council under Rhode Island General Laws § 46-23-(a)(5).

20. Upon information and belief, the Council is currently comprised of ten (10) members.

21. Further, in accordance with § 46-23-2(a)(2), "...each municipal appointment shall cease if the appointed or elected official shall no longer hold or change the office which he or she held upon appointment..".

22. In accordance with § 46-23-2(a)(4), "[n]o more than two (2) persons on the Council shall be from the same community."

23. Further, in accordance with § 46-23-2.1(c) and (d), "[e]lected or appointed municipal officials shall hold seats on the council, only so long as they remain in their elected or appointed office", and vacancies "shall be filled in the manner of the original appointment but only for the unexpired portion of the term."

24. Upon information and belief, the Governor has failed to make appointments as mandated by § 46-23-2 and § 46-23-2.1.

25. Upon information and belief, there are not four members of the Council who were elected or appointed officials from municipalities at the time of appointment specified in § 46-23-2(a)(2).

26. Upon information and belief, the statutes establishing the membership and terms of the Council have not been amended since the separation of powers amendment to the Constitution was passed in 2004.
27. Upon information and belief, the Governor has exceeded her statutory appointment authority.
28. Decisions made by the Council and the regulations and policies it promulgates directly impact water quality, habitat, costal buffers and wetlands and directly impact the members of Save The Bay and their use and enjoyment of Narragansett Bay.
29. Decisions made by the Council and the regulations and policies it promulgates directly impact Save The Bay members and the mission of Save The Bay to protect, preserve and restore the coastal resources of the state.
30. Members of Save The Bay, Save The Bay, Inc., our public trust resources and all Rhode Island residents have been and will continue to be injured by decisions made by a Council that does not comport with legislatively mandated qualifications, including the balance of elected and appointed officials.
31. The qualifications of the members of the Council and the appointment authority of the Governor present significant and concrete issues of statutory interpretation, as well as substantial public interest, to members of Save The Bay, and all Rhode Island citizens.

Count I

(Uniform Declaratory Judgments Act)

32. Save The Bay realleges and reincorporates the allegations set forth in paragraphs 1 through 31, above.
33. Save The Bay seeks a declaration clarifying the number of Council members that the Governor is authorized to appoint to the Council and the qualifications of those members.
34. Save The Bay seeks a determination as to whether the Council as comprised complies with the law.

WHEREFORE, Save The Bay respectfully prays that this Honorable Court:

1. Issue a Declaratory Judgment declaring the number of Council members the Governor has the authority to appoint;
2. Issue a Declaratory Judgment declaring the requirements for Council members that the Governor has the authority to appoint, including that at the time of appointment the Council shall include four elected or appointed officials of local government:
 - a. one member shall be from a municipality of less than twenty-five thousand population;
 - b. one member shall be from a coastal municipality of more than twenty-five thousand population;
 - c. one member shall be from a coastal municipality of less than twenty-five thousand population; and
 - d. one member shall be from a coastal community of more than twenty-five thousand population.

3. Issue a Declaratory Judgment declaring that the Governor's appointments to the Council do not include members that were elected or appointed officials of local government at the time of appointment as required by law;
4. Issue a Declaratory Judgment declaring that the Governor's appointments to the Council do not meet the requisite qualifications; and
5. Issue a Declaratory Judgment declaring that the appointments of Council members in excess of the Governor's statutory authority to appoint are null and void.

Respectfully submitted,

Save the Bay by:

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