

VERMONT SUPERIOR COURT  
CHITTENDEN COUNTY

CIVIL DIVISION  
Docket No. \_\_\_\_\_

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JACK EDWARD DAGGITT )  
ANTHONY L. REDINGTON )  
LEANORA TERHUNE )  
LYNN R. MARTIN )  
CHARLES SIMPSON )  
ANITA RAPONE )  
BARBARA WYNROTH )  
LOUIS MANNIE LIONNI )  
Plaintiffs, )  
 )  
v. )  
 )  
CITY OF BURLINGTON; d.b.a )  
BURLINGTON CITY COUNCIL; )  
MIRO WEINBERGER, MAYOR; )  
BOARD OF PARK AND RECREATION COMMISSIONERS; )  
BURLINGTON PARKS, RECREATION & WATERFRONT; )  
 )  
Defendants )

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**VERIFIED COMPLAINT FOR PRELIMINARY AND  
PERMANENT INJUNCTIVE RELIEF**

**I. INTRODUCTION**

1. Plaintiffs bring this action for equitable relief on behalf of the voters of Burlington. The Burlington City Charter requires City Council to seek voter permission before pledging City credit or acquiring bonds. City Council has gone rogue, and is rushing to complete a project that it lacked authority to approve in the first place. Circumventing its obligation to submit the true purpose for the \$4 million City Park

overhaul to a vote, the Council seeks to cheat the Plaintiffs and the entire city out of their rightful role in town governance. To prevent the Council from rushing through an illegal bid and expending bond funds from unrelated bond financed projects in violation of the City Charter, Plaintiffs seek a preliminary injunction, an injunction, declaratory judgement, and a mandamus to preserve the park as it is until City officials properly present this issue to the voters.

## **II. PARTIES**

2. Jack Edward Daggitt is a natural person residing at [REDACTED] Burlington, Vermont 05401. Daggitt is a registered voter and a signatory of the petition to place the advisory question before the voters regarding the City Hall Park.

3. Anthony Redington is a natural person residing at [REDACTED] Burlington, Vermont 05401. Redington is a registered voter in Ward 2 and a signatory of the petition to place the advisory question before the voters regarding the City Hall Park.

4. Leanora Terhune is a natural person residing at [REDACTED] Burlington, Vermont 05401. Terhune is a registered voter and a signatory of the petition to place the advisory question before the voters regarding the City Hall Park.

5. Lynn R. Martin is a natural person residing at [REDACTED] Burlington, Vermont 05401. Martin is a registered voter and a signatory of the petition to place the advisory question before the voters regarding the City Hall Park.

6. Charles R. Simpson is a natural person residing at [REDACTED] Burlington, Vermont 05401. Simpson is a registered voter and a signatory of the petition to place the advisory question before the voters regarding the City Hall Park.

7. Anita Rapone is a natural person residing at [REDACTED] Burlington, Vermont 05401. Rapone is a registered voter and a signatory of the petition to place the advisory question before the voters regarding the City Hall Park.

8. Barbara Wynroth is a natural person residing at [REDACTED] Burlington, Vermont 05401. Wynroth is a registered voter and a signatory of the petition to place the advisory question before the voters regarding the City Hall Park.

9. Louis Mannie Lionni is a natural person residing at [REDACTED] Burlington, Vermont 05401. Lionni is a registered voter and a signatory of the petition to place the advisory question before the voters regarding the City Hall Park

10. The abovementioned natural persons are taxpayers in the City of Burlington.

11. The City of Burlington is a municipality in Chittenden County, Vermont.

12. Burlington City Council is the legislative body of the City of Burlington.

13. Miro Weinberger is a natural person and the Mayor of Burlington.

14. The Board of Park and Recreational Commissioners is an advisory Board of the City of Burlington, created by §§ 120, 203, and 213 of the City Charter for the purpose of undertaking “any park-related duties” that City Council delegates to it, and the authority to request that the City Council and the Mayor submit bonds to purchase or improve park property for voter approval.<sup>1</sup>

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<sup>1</sup> City of Burlington, *Position Description for Member of Board of Park and Recreation Commissioners*, <https://www.burlingtonvt.gov/CityCouncil/Member-of-the-Board-of-Park-and-Recreation-Commissioners>

15. Burlington Parks, Recreation & Waterfront is a commission of the City of Burlington, and is “managing” the City Hall Park project.<sup>2</sup>

### III. JURISDICTION AND VENUE

16. Venue is properly vested in the Chittenden County Superior Court according to the Vermont Court Rules statute, in that all Plaintiffs reside in Chittenden county and this action concerns City Hall Park, which lies in Chittenden county.

17. This Court has jurisdiction over these proceedings pursuant to 4 V.S.A. §§ 31 (1) and (3), which grant jurisdiction to this court to adjudicate actions for mandamus, civil actions, and prohibitions, which constitute the substance of this complaint.

### IV. FACTS

18. For well over two centuries, the people of Burlington have cherished and defended their urban greenspace known as City Hall Park. In 1798, attendees at the Burlington Proprietor’s Meeting voted to set aside a modest plot of land in the heart of Burlington for common use.<sup>3</sup> Three decades later, Burlington citizen John Norton Pomeroy filed a successful lawsuit against the City of Burlington to remove the government buildings that had begun encroaching on this public oasis.<sup>4</sup>

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(last visited Feb. 15, 2019)

<sup>2</sup> Burlington Parks Recreation Waterfront Vermont, *City Hall Park FAQs*, <https://enjoyburlington.com/city-hall-parks-faqs/> (last visited Feb. 15, 2019).

<sup>3</sup> Suzanne Mantegna, University of Vermont Historic Research Preservation Program. *Burlington, Vermont: Early 20th Century Postcard Views* (2012) [www.uvm.edu/~hp206/2012/mantegna/cityhallparkse.html](http://www.uvm.edu/~hp206/2012/mantegna/cityhallparkse.html)

<sup>4</sup> *Id.* at 3-82.

19. On June 23, 1983, the Division for Historic Preservation notified then-mayor Bernie Sanders that the Division had officially added the City Hall Park Historic District to the National Register of Historic Places.<sup>5</sup> This district includes the park as well as several surrounding residences.<sup>6</sup>
20. Generation after generation of Burlington residents and visitors have used this space for recreation, reflection, and civic engagement.
21. The Burlington City government first began contemplating a City Hall Park redesign in 2011.<sup>7</sup>
22. Despite widespread opposition, the City proposes an elaborate and extensive overhaul of public property. The construction bid promises to demolish and reconstruct sidewalks, utilities, and curbs; remove the central fountain; add a splash pad and granite walls; add substantial additional paving; deforest and partially replant the tree population; and overhaul the landscaping and irrigation. The City plans to replace the public's access to nature with access to Ethernet.<sup>8</sup>
23. These structural overhauls will destroy the cherished character of City Hall Park.
24. At no point was this plan ever submitted for voter approval.

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<sup>5</sup> Letter from Eric Gilbertson to Mayor Bernie Sanders (June 23, 1983), *available at* [www.burlingtonvt.gov/sites/default/files/PZ/Historic/National-Register-PDFs/CityHallParkHD.pdf](http://www.burlingtonvt.gov/sites/default/files/PZ/Historic/National-Register-PDFs/CityHallParkHD.pdf)

<sup>6</sup> National Register of Historic Places Inventory Nomination Form, *City Hall Park Historic District, Burlington Vermont (1983)*, *available at* [www.burlingtonvt.gov/sites/default/files/PZ/Historic/National-Register-PDFs/CityHallParkHD.pdf](http://www.burlingtonvt.gov/sites/default/files/PZ/Historic/National-Register-PDFs/CityHallParkHD.pdf).

<sup>7</sup> Sara Katz, *City Hall Park Artist Request for Qualifications*. Burlington City Arts, <http://www.burlingtoncityarts.org/CityHallPark> (last visited Feb. 15, 2019).

<sup>8</sup> City of Burlington, *Invitation for Bids, Burlington City Hall Park Improvement Project* (Jan. 10, 2019), [www.burlingtonvt.gov/RFP/city-hall-park-improvement-project](http://www.burlingtonvt.gov/RFP/city-hall-park-improvement-project) (last visited Feb. 15, 2019).

25. To mollify public outrage and to obscure the fact that City Council has seized control of bond funds earmarked and approved by the voters for other purposes, the City has been encouraging residents to submit comments.

26. Since 2011, about 1,000 citizens have given City planners their opinions on the project through the nonbinding forum of public comment, which planners have total freedom to ignore.<sup>9</sup>

27. The City Charter requires that the voters, not the City Council, must approve a bond, the purpose of the bond must be listed on the ballot, the ballot question must be submitted to the voters to approve the bond, approval requires two thirds of the voters, and funding for a City Hall Park project of this nature did not go through this City Charter required process.

28. The non-binding process solicitation of comments implemented by the Defendants violates this requirement.

29. In an attempt to eschew its obligation to obtain voter consent, City Council plans to tap into funding that voters have approved for other purposes.

30. None of these other, properly approved purposes include commercializing City Hall Park in the name of public good.<sup>10</sup>

31. On June 25, 2018 City Council approved the design plan. The City prepares to spend upwards of an additional \$4 million dollars to perform this extensive overhaul.

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<sup>9</sup> Katie Jickling, *Will of the People? Advisory Questions Offer High Hopes but Get Few Results*, Seven Days VT. (Jan. 23, 2019).

<sup>10</sup> Appendix A, Sample Ballots: 3/3/15, Question 3; 11/8/16, Questions 1 and 4; 11/6/18, Question 2.

32. The project may actually cost significantly more than the original estimate: the City so far has received two bids: \$5,170,561 from SD Ireland and \$6,464,375 from Engineering Construction.

33. A Burlington City official announced on December 27, 2018, that the city would commandeer funding for the City Hall project from three previously approved City bonds that voters had already approved for other purposes.

34. The City Council has shown no qualms about violating Charter provisions preconditioning the City's ability to issue bonds on approved ballot articles *listing the purpose of those bonds*.

35. On December 27, 2018, the Burlington Free Press reported that "Burlington's share will likely be a combination of tax-increment financing,<sup>11</sup> stormwater funds, and capital building funds, according to Olivia LaVecchia, spokeswoman for the Mayor's Office.<sup>12</sup>"

36. All three of these funding sources are bonds for which the City Council had obtained voter approval by listing the purpose of each bond on the Town Meeting day ballot.

37. Following an increase in public scrutiny of this project's funding sources, Mayor Weinberger told the Vermont Digger on January 21, 2019 that the funding will come from property taxes (\$1.2 million), the TIF (\$1.2 million), and an institutional bond that UVM and Champlain College use to pay the city for its services to them (\$1 million). As

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<sup>11</sup> Tax increment financing ("TIF") is a bond that the city anticipates to pay off with revenue from upticks in property taxes and new construction projects.

<sup>12</sup> Joel Banner Baird. *City Hall Park Project: Opponents Seek Burlington Ballot Measure*, Burlington Free Press, (Dec. 27 2018).

with the funding sources that City officials reported in the previous month's version of their story, voters had already approved spending these funds for purposes that Town Meeting Day ballots explicitly described. Again, none of the approved purposes for these bonds included anything remotely related to cutting iconic trees, demolishing historic walkways, and otherwise replacing the cherished character of City Hall Park with a corporate plaza.

38. The language in the TIF from the March 2015 Town Meeting Ballot included a detailed list of five specific purposes of the bond, but mentions nothing about City Hall Park or its proposed reconstruction.

39. The bond from UVM and Champlain College pays for salaries and infrastructure (such as bus service for students). Nowhere does the City explain how that fund could somehow have a \$1 million surplus, or why students can expect \$1 million in benefits from the park reconstruction that might justify allowing their tuition to foot that bill.

40. While City Council may have certain discretion over budgetary decisions, the City Charter preconditions bond fund use for any given purpose upon voter approval of that specific purpose.

41. The Council makes no attempt to source its funding for the City Hall Park renovation from the annual appropriation that is "expended for the purpose of providing necessary funds for the care and improvement of city park property,"<sup>13</sup> and thus this Court need not ask whether the Defendants could prove that the city park overhaul project is either "necessary" or an "improvement."

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<sup>13</sup> 24 App. V.S.A. ch. 3, § 67.



42. At no point did the City Council ever submit to a vote the question of spending \$4 million of its taxpayers' resources (plus interest, as most of the funds are from borrowed money) on this controversial project, with which a substantial segment of the public have expressed serious qualms.<sup>14</sup>

43. Should the Council argue that a public majority approves this project, the Council should have nothing to lose by letting the voters clarify this assumption on town meeting day.

44. The City has violated the City Charter by wresting the rightful decision-making authority on whether and how to spend bond funds away from the voters. This maneuver attempts to avoid the necessary public vote on the City Hall Park project, demonstrating the Council's attempt to seize unlimited spending power over the public coffers.

45. The voters have challenged City Council's wrongful attempt to exclude them from this process by petitioning to submit the park reconstruction project to a vote.

46. Following the proper procedures for inserting an article on the town meeting day ballot, Plaintiffs and other concerned citizens collected over 3,300<sup>15</sup> petition signatures to insert the following language onto the town meeting ballot:

"Whereas, City Hall Park needs work, but the city's current redevelopment plan removes approximately 40% of the trees and increases paved area to cover about 1/3 of the park, at an estimated cost of \$4 million; Shall we,

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<sup>14</sup> Petitioners collected so many signatures for the petition to place this issue on the ballot that the town Clerk stopped counting after reaching 5% of the registered voters, 1,999 signatures. To put this into perspective, Burlington's March 2018 voter participation data revealed that 12,064 people voted. The under-counted petition signatures alone amount to over 16% of the typical voter turnout. City of Burlington, *Election Results* (2018) [www.burlingtonvt.gov/CT/Elections/Results](http://www.burlingtonvt.gov/CT/Elections/Results) (accessed Feb. 15, 2019).

<sup>15</sup> As of January 16, 2019, the Burlington City Clerk acknowledged in an email that the petition had more than the 2,000 valid signatures necessary to submit the City Hall renovation to a vote on the Town Meeting Day ballot.

the citizens of Burlington, advise the Mayor and City Council to: (A) cancel the current plan for City Hall Park that was approved by the City Council ... and (B) instead, repair, maintain, and improve the Park by preserving more existing trees and shaded areas, repairing grass and existing walkways, increasing lighting and benches, and retaining the historic character of the park?”

47. The voters were forced to raise this issue through the only avenue left available to them, an “advisory” article on the Town Meeting Ballot.

48. Had the City Council abided by the City Charter, a Town Meeting Ballot article would have vested the voters with *binding* authority to decide whether to allow bond spending for the City Hall Park project.

49. While an advisory opinion still falls short of the power that the City Charter, by its plain terms, vests in Burlington voters, the City Council refuses to even allow voters to *advise*, let alone *decide* this issue.

50. On January 29, 2019, by a vote of 6-6, the Burlington City Council voted to refuse to put the petitioned question on the ballot. Despite abundant support for this article, the City Council is charging forward with the project without putting the matter before the voters or even allowing the petitioned advisory article onto the ballot.

51. The City began soliciting bids for the construction contract last month and opened bids on February 11, 2019.

52. According to a statement from Mayor Weinberger, the contractor will receive the notice to proceed and will start cutting the approximately 20 large, mature, healthy, and valuable trees in February.

53. If the project adheres to the City’s schedule, irreparable harm will occur before the March 5 Town Meeting vote.

54. The City Council is rushing to begin construction before Town Meeting day in order to solidify their illegal progress and to further encumber voters trying to assert their rightful veto over spending city bonds on this purpose.

55. Moving forward with permanent changes to the City Hall Park without a vote by the public on whether to use bond funds for the project would allow the Council to flaunt its disregard for the City Charter. Hastily commencing demolition would cement the procedural sidesteps and unauthorized expenditures before the voters could properly approve or deny using bonds for this purpose.

56. The more steps the City takes in violation of its own Charter, the harder the task becomes to resolve this aberration. Once the trees are cut, this task becomes impossible.

57. In order to pledge city credit or obtain bonds for a certain purpose, the Council must first list that purpose on a duly warned ballot, which two thirds of the city's voters must then approve. The Board of Park and Recreation Commissioners must similarly obtain voter approval before using municipal bonds to enter contracts to improve or obtain city park property.

58. Burlington's City Charter specifies the process that the Defendants would be required to follow before taking these actions:

Whenever the legal voters of said City, by two-thirds vote of all voters present and voting on the question at any special or annual City meeting *duly warned for the purpose* ... shall give authority to the City Council thereof to pledge the credit of said City.<sup>16</sup>

59. Before Council may pledge the City's credit, a duly warned ballot question *naming the purpose for using the credit* must pass by at least a two thirds majority.

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<sup>16</sup> 24 App. V.S.A. ch. 3, § 63(a) (emphasis added).

60. No ballot question has yet referenced City Hall Park as a purpose. Depending on which of the Mayor's conflicting statements this Court decides to evaluate, the funding to demolish and rebuild the City Hall Park will come from: the tax-increment financing bond, the stormwater funds bond, the capitol building funds bond, property taxes, private donations, and the bond from UVM and Champlain College.<sup>17</sup>

61. Burlington's City Council may not issue bonds to acquire or improve parks without following the procedures outlined in the City Charter:

[T]he Mayor of said City shall call a meeting of the qualified voters of the City and submit to them the proposition to issue bonds of the City, the proceeds of the sale of which shall be exclusively applied, under the direction and at the discretion of the Board of Park and Recreation Commissioners, to the acquisition and improvement of land and facilities for public Parks and Recreation Programs, *but the said Board shall make no contract of expenditure thereof involving liability to the City of Burlington exceeding the amounts of the bonds thus issued.*<sup>18</sup>

62. The Mayor failed to call a meeting of the city's voters to approve bonds using this mechanism.

63. The Board of Park and Recreation Commissioners may not enter a contract to spend money on any Burlington park space because any amount of money would exceed "the amount of the bonds thus issued," which is \$0 for City Hall Park.

64. Siphoning funding from other, unrelated bonds and funding sources subverts the process that the City Charter requires for spending money to purchase or improve parks.

65. The Board is prohibited from entering any contracts that involve spending bond money on park improvement without submitting this proposal to a vote.

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<sup>17</sup> Joel Banner Baird. *City Hall Park Project: Opponents Seek Burlington Ballot Measure*, Burlington Free Press (Dec. 27 2018).

<sup>18</sup> 24 App. V.S.A. ch. 3, § 213.

**V. STANDING**

66. Plaintiffs have standing as resident taxpayers in the City of Burlington.

**VI. COUNT I: Violations of §63, §213 and §6 of the Burlington City Charter.**

67. The Defendants attempt to pledge City Credit without obtaining permission to use bonds for park renovation from Burlington voters, is in violation of the Burlington City Charter. Defendants violated § 63 and § 213 of the City Charter by pledging bond funding to reconstruct City Hall Park without submitting this proposition and this purpose to the voters.

68. The Defendants' refusal to put the petitioned question on the ballot was in violation of § 6 of the Burlington City Charter under the standard established in *Skiff v. South Burlington School District*: the school district (or, in the instant matter, the city council) has discretion to omit a question from the ballot "where the result of the vote is not legally binding because it is beyond the authority of the voters to decide at town meeting." As bonds would be used for demolishing and rebuilding City Hall Park, and as a bond and its purpose are each a matter within the authority of the voters to decide, the council lacked discretion to omit the petitioned ballot question to cancel the project.

**VII. COUNT II: Claim based on 42 U.S.C. § 1983 for unconstitutional deprivation of the rights of citizens in Burlington to vote.**

67. By and through the actions described above, Defendants deprived eligible voters of the right to vote on how the City will pledge its credit and spend its bonds, all in violation of the 14<sup>th</sup> Amendment to the United States Constitution, a violation that is actionable pursuant to 42 U.S.C. § 1983.

## VIII. RELIEF REQUESTED

WHEREFORE, the Plaintiffs respectfully request the following relief from this Honorable Court:

- A. Plaintiffs seek a preliminary injunction on the City of Burlington and its officials, to prevent irreversible change to the park while the Court reviews these proceedings.
- B. Plaintiffs ask this Court for a permanent injunction to preclude the City of Burlington and its officials from pledging city credit for the purpose of reconstructing City Hall Park, without having properly submitted that purpose to the voters for approval.
- C. Plaintiffs seek a mandamus to compel the City Council to place the properly petitioned advisory article on the ballot, and to properly list the purpose of reconstructing City Hall Park on a duly warned ballot item to attempt to secure bonds to use for this project.
- D. Plaintiffs seek entry of appropriate declaratory judgement that any contract the City enters with any party concerning the implementation of the City Hall reconstruction project be declared illegal and void.
- E. Plaintiffs seek Attorney's Fees and Costs as provided in 42 U.S.C. 1988.

Respectfully submitted for:

JACK EDWARD DAGGITT  
ANTHONY L. REDINGTON  
LEANORA TERHUNE  
LYNN R. MARTIN  
CHARLES SIMPSON  
ANITA RAPONE  
BARBARA WYNROTH  
LOUIS MANNIE LIONNI

By their attorney,

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Dated this \_\_\_ Day of February, 2019 in Burlington Vermont.

State of Vermont

County of Chittenden

Appeared before me the above signed James Marc Leas on this date and swore or affirmed that the allegations set forth are true based on his personal knowledge or belief.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

# **APPENDIX A**

## **Burlington Sample Ballots:**

**March 3, 2015 (Question 3)**

**November 8, 2016 (Questions 1 and 4)**

**November 6, 2018 (Question 2)**



# **APPENDIX B**

## **Plaintiff Verification**