

Thaddeus R. Maciag, Esq.  
MACIAG LAW, LLC  
475 Wall Street  
Princeton, New Jersey 08540  
908-704-8800  
*Attorney for Plaintiffs*

KATHLEEN HORGAN and KATHRYN  
OKESON,

Plaintiffs,

vs.

BOROUGH OF RED BANK, ANGELA  
MIRANDI, RED BANK DEMOCRATIC  
MUNICIPAL COMMITTEE, EDWARD  
ZIPPRICH, in his capacity as Chairman of  
the Red Bank Democratic Committee,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

Docket No.: MON-L-

**VERIFIED COMPLAINT IN LIEU OF  
PREROGATIVE WRITS**

**IN SUPPORT OF ORDER TO SHOW  
CAUSE AND TEMPORARY  
RESTRAINTS**

Plaintiffs Kathleen Horgan and Kathryn Okeson hereby states by way of the instant complaint ("Complaint") as follows:

**OVERVIEW**

1. Under New Jersey law, municipal governing bodies are afforded the option – but not the obligation – to fill vacancies with temporary appointments. For partisan vacancies, temporary appointments are made following the statutory recommendation of three names by the local partisan municipal committee.

2. This prerogative writ action challenges the Red Bank Borough Council's ("Council's") appointment of Angela Mirandi, whose name was purportedly submitted by the Red Bank Democratic Municipal Committee ("RBDMC"), when in fact the RBDMC never held a meeting with all of its members invited to review candidates or select the subject three names.

3. RBDMC Chairman (and Red Bank Councilman) Edward Zipprich did not afford each of the members of the RBDMC with any opportunity to carry out their statutory obligations in addressing the vacancy. Instead, Zipprich claims to have set up a sham “ad hoc” committee comprised of hand-picked loyalists, many of whom are not even elected to the RBDMC, to select the three names, to the exclusion of RBDMC members that he is not politically aligned with.

4. Because Angela Mirandi was appointed to the Red Bank Borough Council pursuant to the illegal recommendation of the RBDMC, this Court must invalidate her appointment and the seat must be declared vacant until it can be filled by voters as part of a process that is actually fair, transparent, and open.

### **PARTIES**

5. Plaintiff Kathleen Horgan is a citizen of Red Bank with an address of 146 Branch Avenue, Red Bank, New Jersey 07701. Horgan is a registered member of the Democratic Party. Horgan is a Councilwoman of Red Bank. Horgan is also an elected member of the Defendant RBDMC.

6. Plaintiff Kathryn Okeson is a citizen of Red Bank with an address of 8 Chapin Avenue, Red Bank, New Jersey 07701. Okeson is a registered member of the Democratic Party. Okeson is the appointed Secretary of the Defendant RBDMC.

7. Defendant Borough of Red Bank (“Borough”) is a municipal corporation of the State of New Jersey with a principal place of business of 90 Monmouth Street, Red Bank, New Jersey 07701

8. Defendant Angela Mirandi is a citizen of Red Bank with an address of 8 W. Lake Road, Red Bank, New Jersey 07701. Mirandi is currently held out by the Borough as a sworn member of its governing body.

9. Defendant RBDMC is a body politic organized and established pursuant to N.J.S.A. 19:5-2 et seq.

10. Defendant Edward Zipprich is a citizen of Red Bank with an address of 229 River Road, Red Bank, New Jersey 07701. Zipprich is the Chairman of the Red Bank Democratic Committee and is named in this official capacity. Zipprich also serves as a Councilman of Red Bank.

#### **VACANCY IN RED BANK COUNCIL**

11. On January 19, 2022, Red Bank Councilman Erik Yngstrom filed his resignation from office effective that day.

12. Yngstrom's resignation caused a vacancy in the Council.

13. The filling of this vacancy is governed by the Municipal Vacancies Law, N.J.S.A. 40A:16-1 et seq.

14. In relevant part, N.J.S.A. 40A:16-11 provides as follows: "If the incumbent whose office has become vacant was elected to office as the nominee of a political party, the municipal committee of the political party of which the incumbent was the nominee shall, no later than 15 days after the occurrence of the vacancy, present to the governing body the names of three nominees for the selection of a successor to fill the vacancy. The governing body shall, within 30 days after the occurrence of the vacancy, appoint one of the nominees as the successor to fill the vacancy."

15. Because Yngstrom was elected to the Council as a Democratic nominee, the RBDMC was authorized to “present to the governing body the names of three nominees for the selection of a successor to fill the vacancy,” pursuant to N.J.S.A. 40A:16-11.

16. N.J.S.A. 19:5-2 establishes that the RBDMC “shall consist of the elected members of the county committee resident in the respective municipalities.”

17. N.J.S.A. 19:5-2 further provides that the RBMDC must hold an annual meeting each year “at an hour and place to be designated in a notice to be given by the chairperson to each member and member-elect.”

### **RBDMC’s HISTORY AND FAILURE TO HOLD MEETING**

18. The RBDMC is a body politic that is organized and conducts its business pursuant to N.J.S.A. 19:5-2.

19. To this end, in accordance with said statute, on July 22, 2020, Zipprich sent a letter to all RBDMC members noticing a “[b]i-annual reorganizational meeting” to be conducted on July 27, 2020 as part of a socially distanced gathering. A true copy of this notice is attached as **Exhibit A**. This date was selected in accordance with statute as modified by Governor Murphy’s Executive Order 164 due to the COVID-19 pandemic.

20. As stated on the notice, Kathryn “Kate” Okeson had declared her candidacy to serve as Secretary of the RBDMC.

21. It should be noted that, due to the then-ongoing COVID-19 pandemic, the RBDMC even went to the lengths of having ballots “hand delivered” to the individual homes of RBDMC members to be cast in the election for Chairman. A true copy of an e-mail from Zipprich dated July 27, 2020 is attached hereto as **Exhibit B**.

22. Okeson was approved as Secretary at the ensuing reorganization meeting. Zipprich was also re-elected as Chairman.

23. As Secretary of the RBDMC, Okeson has not ever maintained and has not ever been present for the RBDMC adopting any bylaws at a meeting during her ongoing tenure.

24. As a member of the RBDMC, Horgan has never been present for the RBDMC adopting any bylaws at a meeting during her tenure.

25. On March 2, 2021, the RBDMC held a meeting to conduct nominations for Borough Council. While this task is not even a statutory obligation, the minutes nevertheless reflect that all of the members of the RBDMC were invited and a majority were present at the meeting. A true copy of meeting minutes are attached as **Exhibit C**.

26. Besides the July 27, 2020 and March 2, 2021 meetings, Horgan and Okeson have not received notice of any other meetings or proceedings of the RBDMC during the body's current two-year term that expires in June 2022.

27. Unlike the RBDMC's practices on July 27, 2020 and March 2, 2021 inviting all of the members of the RBDMC to attend the subject meeting (and in the former instance personally hand delivering ballots to RBDMC members due to the COVID-19 pandemic), neither the RBDMC nor Zipprich ever provided any notice, held any meeting, or afforded any votes to all of the members of the RBDMC to consider and/or select three names to be recommended to fill the Yngstrom vacancy in accordance with statute.

28. To this end, Kathleen Horgan, who is an elected member of the RBDMC, never received any notice from the RBDMC or Zipprich regarding the Yngstrom vacancy whatsoever, including but not limited to an invite to a meeting to act upon same.

29. To this end, Kathryn Okeson, who is the appointed Secretary of the RBDMC, never received any notice from the RBDMC or Zipprich regarding the Yngstrom vacancy whatsoever, including but not limited to an invite to a meeting to act upon same.

30. Upon information and belief, other members of the RBDMC that are not politically aligned with Zipprich, including Councilwoman and RBDMC member Kate Triggiano, never received any notice from the RBDMC or Zipprich regarding the Yngstrom vacancy whatsoever, including but not limited to an invite to a meeting to act upon same.

31. Thus, the RBDMC and Zipprich never held a valid meeting upon notice to each of its members and appointed officers to act upon the Yngstrom vacancy.

32. While the RBDMC is authorized by statute to maintain bylaws, pursuant to N.J.S.A. 19:5-2, the RBDMC's own secretary certifies that the organization does not maintain any bylaws.

33. Thus, the RBDMC and Zipprich did not have any lawful basis to have acted on the Yngstrom vacancy to the exclusion of Horgan, Okeson, Triggiano, and potentially other members of the RBDMC from attending a meeting, participating in, or acting upon the Yngstrom vacancy.

34. Zipprich's action in submitting three names to the governing body was never authorized by the RBDMC as established under statute and is thus invalid.

#### **BOROUGH COUNCIL'S ILLEGAL APPOINTMENT OF MIRANDI**

35. According to Red Bank Mayor Pat Menna in his public remarks at the Council's February 9, 2022 meeting, on or about February 8, 2022, Zipprich sent a letter to Menna submitting three names on behalf of the RBDMC.

36. Menna stated that he received “a letter of recommendation from the Chairman, Councilman Zipprich, and I thank him for it. He did provide that letter to me yesterday, and it provided the names of three individuals.” The three names were purportedly Stephen Hecht, Angela Mirandi, and John Jackson.

37. Zipprich made this submission even though the entire RBDMC never held a meeting to act upon the Yngstrom vacancy.

38. Menna recommended the appointment of Hecht. This nomination was moved by Horgan but failed for lack of second.

39. Councilman Ballard then moved and seconded the appointment of Mirandi, which was seconded by Councilwoman Sturdivant. After discussion, the nomination passed on a 3-1-1 vote. Horgan voted no and Triggiano abstained.

40. Following the vote, Councilman Ballard explained that he “saw the resumes” and thought that Mirandi was the person that the Council “needs.”

41. Horgan said “she never saw any resumes on any individuals” and questioned why that was the case, specifically noting her role as a member of the RBDMC.

42. Councilwoman Triggiano said she “did not see any past applications or anything, and I just abstained, because at the end of the day, I did not have any say, and we all know that.”

43. Horgan then explicitly questioned Zipprich why he never provided any information regarding the candidates in his capacity as Chairman of the RBDMC to Horgan or Triggiano, each of whom are members of same.

44. This began to illustrate that the RBDMC, Zipprich, and his allies engaged in a process to select the three subject names to the exclusion of Horgan, Okeson, Triggiano, and potentially other individuals that are not politically aligned with Zipprich.

45. Zipprich responded: “As Chairman of the party, which is separate and apart from governance as you well know, I had under the bylaws of the municipal committee appointed an ad hoc committee that was chaired by former Mayor McKenna and included members of the governing body, members of the municipal committee, who, along with the Chair and Vice Chair, who collected information on the candidates, reviewed their professional backgrounds, and in addition to collecting information on the candidates, met and put them through a vetting process to understand their willingness to serve and willingness to work together with all of us to make sure we move Red Bank forward in 2022.” Zipprich confirmed that Mirandi was “put forward” by this ad hoc committee.

46. Such bylaws could not have been adopted unless done so in a sham process to the exclusion of Horgan and Okeson, the latter of whom is the body’s secretary; and any such bylaws could not supersede applicable statutory law.

47. Despite providing details on how he set up the ad hoc committee, Zipprich then claimed that he had “removed [him]self from the process” and was out of the country when it took place.

48. Zipprich stated that former Mayor Ed McKenna was the “leader” of the ad hoc committee. McKenna is not even an elected member of the RBDMC.

49. Zipprich claimed that the three names that were selected had received 78% support from the RBDMC, which exceeded a purported 75% margin that was required. Again, there are no bylaws providing for these thresholds unless they were adopted in a sham process.

50. Pursuant to the governing body action taken on February 9, 2022, Mirandi was sworn into office as a member of the Council in a public ceremony on February 14, 2022.

#### **COUNT ONE – REMOVAL FROM OFFICE**

51. Plaintiff repeats and realleges each of the foregoing allegations and makes the same a part hereof as if set forth at length.

52. Zipprich and the RBDMC failed to hold a meeting that afforded each of its members an opportunity to act upon the Yngstrom vacancy in accordance with their statutory obligations and rights under N.J.S.A. 19:5-2.

53. According to the RBDMC's own secretary, the organization does not maintain bylaws whatsoever.

54. Thus, there was no legal authority for Zipprich to submit three names listed in the letter to Mayor Menna on behalf of the RBDMC.

55. Even if Zipprich's public statements are accepted as true, Title 19 does not allow the RBDMC to adopt or act upon bylaws that disenfranchise their elected members from carrying out their statutory obligations, in favor of unelected individuals that were hand-selected by Zipprich for an ad hoc committee.

56. The use of such bylaws and the ad hoc committee process outlined by Zipprich prevented the elected members of the RBDMC from carrying out their offices under N.J.S.A. 19:5-2.

57. Mirandi's name was submitted by Zipprich to the Council and approved as part of an illegal and ultra vires process that deprived the elected members of the RBDMC from making a recommendation they are statutorily tasked with making.

58. Accordingly, Mirandi's appointment to the Borough Council was based upon invalid pretenses.

59. Mirandi's appointment must be invalidated and she must be removed from office.

60. The RBDMC and Council are now past the thirty (30) day deadline to act upon the Yngstrom vacancy pursuant to N.J.S.A. 40A:16-11.

61. Because the RBDMC never validly submitted three names to the Red Bank Borough Council, the governing body did not “fail to appoint one of the nominees” from the RBDMC allowing for any further process under N.J.S.A. 40A:16-11.

62. WHEREFORE, Plaintiffs demand judgment:

- a. Ordering that Angela Mirandi is removed as a member of the Red Bank Borough Council;
- b. Enjoining the Borough of Red Bank and its officials and agents from taking any actions in furtherance of Angela Mirandi serving as a member of the Red Bank Borough Council;
- c. Declaring that the vacancy in Borough Council caused by the resignation of Erik Yngstrom shall remain unfilled until a councilmember is duly elected by the voters of Red Bank in the next general election.

**COUNT TWO – NEW JERSEY CIVIL RIGHTS ACT**

63. Plaintiff repeats and realleges each of the foregoing allegations and makes the same a part hereof as if set forth at length.

64. The actions by Defendants RBDMC and Zipprich have deprived Horgan of her statutory right to carry out her role as an elected member of the RBDMC pursuant to N.J.S.A. 19:5-2.

65. N.J.S.A. 10:6-2© provides that “[a]ny person who has been deprived of any . . . substantive rights, privileges or immunities secured by the . . . laws of this State . . . may bring a civil action for damages and for injunctive or other appropriate relief.”

66. In turn, N.J.S.A. 10:6-2(f) provides that, “[i]n addition to any damages, civil penalty, injunction, or other appropriate relief awarded in an action brought pursuant to subsection © of this section, the court may award the prevailing party reasonable attorney’s fees and costs.”

67. Defendants RBDMC and Zipprich excluded Horgan and others from the process in addressing and making recommendations concerning the Yngstrom vacancy, and fail to proffer any reason supporting same.

68. WHEREFORE, Plaintiffs demand judgment:

- a. Finding that Plaintiffs’ statutory rights have been violated by Defendants RBDMC and Zipprich;
- b. Awarding Plaintiffs attorney fees and costs of court; and
- c. Such other further relief as this Court deems proper and just.

MACIAG LAW, LLC

/s/ Thaddeus R. Maciag

Thaddeus R. Maciag, Esq.

Attorney for Plaintiffs

Date: February 22, 2022

### **CERTIFICATION PER R. 4:5-1**

The undersigned hereby certifies pursuant to R. 4:5-1 that I am unaware of any the controversy herein being the subject of any other action pending in any other Court action or arbitration proceeding, nor am I aware of any other Court action or arbitration proceeding being contemplated, nor that any other party should be joined in this action, based on facts known to date. Defendants reserve their right to join additional Defendants

if additional facts are presented. I acknowledge Defendants' continuing obligation to amend this Certification pursuant to R. 4:5-1.

MACIAG LAW, LLC

/s/ Thaddeus R. Maciag  
Thaddeus R. Maciag, Esq.  
Attorney for Plaintiffs

Date: February 22, 2022

**CERTIFICATION PER RULE 1:38-7(b)**

The undersigned hereby certifies pursuant to R. 4:5-1(b)(3) and R. 1:38-7(b) that any confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

MACIAG LAW, LLC

/s/ Thaddeus R. Maciag  
Thaddeus R. Maciag, Esq.  
Attorney for Plaintiffs

Date: February 22, 2022

**DESIGNATION OF TRIAL COUNSEL**

Thaddeus R. Maciag, Esq. is hereby designated as Trial Counsel for Defendants in this matter.

MACIAG LAW, LLC

/s/ Thaddeus R. Maciag  
Thaddeus R. Maciag, Esq.  
Attorney for Plaintiffs

Date: February 22, 2022

**VERIFICATION**

1. I am a Plaintiff in the above-captioned litigation.

2. I hereby certify that the foregoing statements set forth in this Complaint are true and accurate to the best of my knowledge, based upon information available to me at this time. I am aware that if any of the statements made herein by me are willfully false, I am subject to punishment.

Dated:

*February 22, 2022*

By

  
\_\_\_\_\_

Thaddeus R. Maciag, Esq.  
 MACIAG LAW, LLC  
 475 Wall Street  
 Princeton, New Jersey 08540  
 908-704-8800  
*Attorney for Plaintiffs*

KATHLEEN HORGAN and KATHRYN  
 OKESON,

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BOROUGH OF RED BANK, ANGELA  
 MIRANDI, RED BANK DEMOCRATIC  
 MUNICIPAL COMMITTEE, EDWARD  
 ZIPPRICH, in his capacity as Chairman of  
 the Red Bank Democratic Committee,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION  
 MONMOUTH COUNTY

Docket No.: MON-L-

**ORDER TO SHOW CAUSE WITH  
 TEMPORARY RESTRAINTS**

THIS MATTER having been brought before the Court by Plaintiffs, by and through their counsel Thaddeus R. Maciag Esq., Maciag Law LLC, seeking relief by way of temporary restraints through a summary action pursuant to R. 4:67-1(a), and based upon the facts set forth in the verified complaint filed herewith; and it appearing that immediate and irreparable damage will probably result before notice can be given at a hearing held, and for good cause shown.

It is on this \_\_\_\_ day of \_\_\_\_\_, 2022 **ORDERED** that the defendant(s) appear and show cause before the undersigned Judge on the \_\_\_\_ day of \_\_\_\_\_, 2022, before the Superior Court of New Jersey, Monmouth County Vicinage, Law Division, or as soon thereafter as the parties can be heard, why judgment should not be entered preliminarily enjoining and restraining Defendants by:

1. Ordering that Angela Mirandi is removed as a member of the Red Bank Borough Council;

2. Enjoining the Borough of Red Bank and its officials and agents from taking any actions in furtherance of Angela Mirandi serving as a member of the Red Bank Borough Council;

3. Declaring that the vacancy in Borough Council caused by the resignation of Erik Yngstrom shall remain unfilled until a councilmember is duly elected by the voters of Red Bank in the next general election; and

4. Any such other relief as the Court deems equitable and just.

and it is further **ORDERED THAT** pending the return date herein, Defendants are temporarily enjoined and restrained as follows:

1. Angela Mirandi is temporarily removed as a member of the Red Bank Borough Council; and

2. The Borough of Red Bank and its officials and agents are enjoined from taking any actions in furtherance of Angela Mirandi serving as a member of the Red Bank Borough Council.

and it is further **ORDERED THAT**

1. Any of the defendants may move to dissolve or modify the temporary restraints herein contained on two (2) days' notice to the Plaintiffs' attorney.

2. A copy of this order to show cause and verified complaint be served by Plaintiff upon all Defendants through electronic mail, as well as regular mail to all known addresses of the Defendants, which shall serve in lieu of a Summons, this being original process.

3. The plaintiffs must file with the Court its proof of service of the pleadings on the defendants no later than three (3) days before the return date.

4. Defendants shall file and serve a written response to this order to show cause and the request for entry of injunctive relief and proof of service by \_\_\_\_\_. The original documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of

these offices is available in the Civil Division Management Office in the county listed above and online at [njcourts.gov/forms/10153\\_deptyclerklawref.pdf](http://njcourts.gov/forms/10153_deptyclerklawref.pdf). You must send a copy of your opposition papers directly to Judge \_\_\_\_\_, whose address is \_\_\_\_\_, New Jersey. You must also send a copy of your opposition papers to the plaintiff's attorney whose name and address appears above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of \$\_\_\_\_\_ and serve your opposition on your adversary, if you want the Court to hear your opposition to the injunctive relief the plaintiff is seeking.

5. The plaintiffs must file and serve any written reply to the defendants' order to show cause opposition by \_\_\_\_\_. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge \_\_\_\_\_.

6. If the defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiffs file a proof of service and a proposed form of order at least three days prior to the return date.

7. If the plaintiffs have not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

8. Defendants take notice that the plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this order

to show cause; not counting the day you received it. These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at [njcourts.gov/forms/10153\\_deptyclerklawref.pdf](http://njcourts.gov/forms/10153_deptyclerklawref.pdf). Include a \$\_\_\_\_\_ filing fee payable to the “Treasurer State of New Jersey.” You must also send a copy of your Answer to the plaintiff’s attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the order to show cause is not an Answer and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

9. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [njcourts.gov/forms/10153\\_deptyclerklawref.pdf](http://njcourts.gov/forms/10153_deptyclerklawref.pdf).

10. The court will entertain argument, but not testimony, on the return date of this Order to Show Cause, unless the Court and parties are advised to the contrary no later than \_\_\_\_\_ days before the return date.

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J.S.C.

[ ] Opposed

[ ] Unopposed

Thaddeus R. Maciag, Esq.  
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908-704-8800  
*Attorney for Plaintiffs*

KATHLEEN HORGAN and KATHRYN  
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ZIPPRICH, in his capacity as Chairman of  
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Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

Docket No.: MON-L-

**ORDER**

This matter having come before the Court on the application of Plaintiffs, by and through their counsel Thaddeus R. Maciag Esq., Maciag Law LLC, for an order granting Plaintiffs' application for injunctive relief; and the Court having considered the moving papers and papers filed in opposition thereto; and the Court having heard oral argument of the parties, if any; and for good cause having been shown; and for the reasons set forth on the record on the return date of this application,

IT IS ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 2022;

ORDERED that the Plaintiffs' application for injunctive relief is hereby GRANTED;  
and, it is

FURTHER ORDERED that Angela Mirandi is removed as a member of the Red Bank Borough Council; and it is

FURTHER ORDERED that the Borough of Red Bank and its officials and agents are

enjoined from taking any actions in furtherance of Angela Mirandi serving as a member of the Red Bank Borough Council; and it is

FURTHER ORDERED that the vacancy in Borough Council caused by the resignation of Erik Yngstrom shall remain unfilled until a councilmember is duly elected by the voters of Red Bank in the next general election; and, it is

FURTHER ORDERED that a copy of this order shall be served by Plaintiffs upon all Defendants if not already served via e-courts.

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J.S.C.

Per R. 1:6(a)

\_\_\_\_\_ Opposed

\_\_\_\_\_ Unopposed

# EXHIBIT A



July 22, 2020

Dear Red Bank County Committee Member:

Congratulations on your (re-) election!

In a July 17<sup>th</sup> memo from County Democratic Chairman David G. Brown, II, he reminds us that the Bi-annual reorganization meeting must take place on July 27<sup>th</sup> subject to Governor Murphy's Executive Order 164, dated July 13, 2020

Therefore, the Red Bank Democratic Municipal Committee invites you to participate in our reorganizational meeting and swearing in ceremony on Monday, July 27<sup>th</sup> at 5:30 p.m. at a social distance gathering at 229 River Road. Please wear your mask.

Your attendance at this meeting is important because the County Democratic Reorganization meeting is being held at 7:45 p.m. via Zoom Conference on Tuesday, July 28<sup>th</sup>. Only those members who are duly elected in the Primary Election of July 7, 2020 to Monmouth County Democratic Committee shall have the right to vote.

At the Red Bank Democratic County Committee meeting, the below individuals have declared their candidacy and shall be considered by the County Committee for election. No nominations will be accepted from the floor on the night of the election.

Office of Municipal Chair	Edward J. Zipprich
Office of Municipal Vice Chair	Lauren Nicosia
Office of Secretary	Kate Okeson
Office of Treasurer	Juanita Lewis

Please let us know if you will be able to attend.

Democratically yours,

Edward J. Zipprich  
Chair, RBDMC

# EXHIBIT B

(email addresses and phone number redacted)

From: EJZip@ <eizip@>

Date: Mon, Jul 27, 2020 at 3:52 PM

Subject: Red Bank Democratic Municipal Committee Election

To: Lauren Nicosia < >, Juanita Lewis < >, Kate Okeson  
< >

Cc: Elijah Nishiura < >, David Brown II < >,  
< >

Dear Red Bank Democratic County Committee member,

As you know, today was to be our reorganization day but due to a legal suit filed by the Board of Elections, we received notice Saturday 7/25 that the meeting would have to be delayed a week.

In the meantime, Ben Forest filed on Saturday night to oppose me for the Red Bank Democratic Chair.

After consulting with our Municipal Committee members, Lauren Nicosia, Juanita Lewis, Kate Okeson and County Chairman David G. Brown, II we have decided to hold a paper ballot election in a safe and healthy manner.

Ballots will be hand delivered to your home by Monday night. Because of issues related to Postal Service slow downs, Chairman Brown has arranged with Red Bank resident Elijah Nishiura to pick your ballot up and deliver it to the chairman's office.

Chairman Brown will count the votes via Zoom chat with the candidates and their slate on Monday August 3rd at 5 p.m.

Results will be emailed to you following the count.

Please complete the ballot and call Elijah at 732 6 9 to arrange your pick up by Sunday August 2nd.

Democratically yours,

Edward J. Zipprich  
Chair, Red Bank Democrats

# EXHIBIT C

In attendance:

JP Nicolaides

Ed Zipprich Chair

Lauren Nicosia Vice Chair

Juanita Lewis Treasurer

LeRoi Jones

Bruce Maida

Pat Pinto

Fred Stone

Mary Foster

Barbara Boas

David Brown

Remedios Quiroz

Vanessa Banks

Kathy Horgan

Boris Kofman

Rich Angowski

Dorothy Davis

Pat Bennett, board of elections

Kate Okeson Recording Sec'y

Convening at 5:03pm, 3/2/21

According to Roberts rules of Order

Rules as established for the last contested convention, 2018

and as transmitted by email

Using mail in balloting

Names of those on ballot are those who submitted letters of interest by mail in accordance of our rules.

nominations from the floor via mail in ballot

Ballots will now be opened and tallied (5:08pm)

Chairman Zipprich and Vice Chair Nicosia alternately open ballot envelopes and hand to Pat Bennett for tally.

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

HY/KT: 1

BM/HY: 1

LJ/BM: 1

LJ/BM: 1

LJ/BM: 1

one abstention

(16 total, 1 abstention)

LJ: 14

BM: 15

HY: 2

KT: 1

Bruce: Thank the committee, thanks chair for professional process

LJ: thank you, ready to hit the ground running

Chair: Thank you all

adjourned at 5:18pm

End of meeting

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KATHLEEN HORGAN and KATHRYN  
OKESON,

Plaintiffs,

vs.

BOROUGH OF RED BANK, ANGELA  
MIRANDI, RED BANK DEMOCRATIC  
MUNICIPAL COMMITTEE, EDWARD  
ZIPPRICH, in his capacity as Chairman of  
the Red Bank Democratic Committee,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO.: MON-L-

**MEMORANDUM OF LAW  
IN SUPPORT OF APPLICATION  
FOR ENTRY OF  
ORDER TO SHOW CAUSE WITH  
TEMPORARY RESTRAINTS**

**MEMORANDUM OF LAW  
IN SUPPORT OF NOTICE OF APPLICATION  
FOR ENTRY OF ORDER TO SHOW CAUSE  
WITH TEMPORARY RESTRAINTS AND INJUNCTIVE RELIEF**

**STATEMENT OF THE CASE**

This case involves the invalid temporary appointment of a Borough Councilmember because it was not based upon a lawful recommendation of the partisan Municipal Committee. In this case, the Red Bank Council appointed Angela Mirandi to fill a vacancy on the Borough Council, based upon her purported nomination as one of three names that were submitted to the Mayor by Ed Zipprich, who serves as both Chairman of the Red Bank Democratic Municipal Committee (“RBDMC”) and as a Councilman.

However, the three names set forth in Zipprich's letter could not have been authorized by the RBDMC, as the Verified Complaint establishes that certain elected members of the RBDMC were never even contacted or invited to a meeting to select candidates in response to the subject vacancy. Because the Council's action appointing Mirandi was based upon the illegal recommendation of the RBDMC that was made to the exclusion of certain of its elected members, Mirandi's appointment must be invalidated and she must be removed from office.

This matter warrants preliminary injunctive relief because the Plaintiffs can demonstrate a likelihood of success on the merits. One plaintiff is a member of the RBDMC who demonstrates that she and likely others who are politically adverse to Zipprich were unlawfully excluded from acting upon the Zipprich vacancy. The other plaintiff is the RBDMC's Secretary, and she confirms to her knowledge that the body does not maintain any bylaws whatsoever – let alone bylaws that would allow for a process in selecting candidates to the exclusion of the RBDMC's elected members.

The interests of justice favor removal of Mirandi because her continued presence will call into question the validity of all upcoming governing body actions, including but not limited to the adoption of a budget and bond ordinances. In addition, the temporary appointment of Mirandi is an entirely discretionary action, not one that was required to be taken. The Appellate Division has recently made clear that temporary appointments are optional, and that a seat can rightfully be left vacant until it can be acted upon by voters.

That would be the proper course here. Given the impropriety of actions by the RBDMC – through its Chairman and Councilman Zipprich – the proper course is for this Court to preliminarily enjoin Mirandi's appointment and order that the seat remain vacant until voters can resolve the dispute as part of an above-board process.

### **STATEMENT OF FACTS**

The essential facts of this matter are set forth in the Statement of the Case presented hereinabove, and are further set forth in the Verified Complaint with Exhibits filed herewith, and in the interest of judicial economy, are not re-stated here.

### **LEGAL ARGUMENT**

Plaintiff has moved for entry of an Order to Show Cause with Temporary Restraints, temporarily restraining Defendant Angela Mirandi from holding office as a Red Bank Councilwoman. Further to such a temporary restraining order, Plaintiffs are asking this court to enter final relief in the form set forth in the Proposed Form of Final Order.

It is well settled that the factors to be considered in determining whether to grant interim injunctive relief are: (1) whether there is a reasonable probability of success on the merits; (2) whether the claim is founded on the settled legal right; (3) whether the relief is necessary to prevent irreparable harm; and (4) whether the relative hardship to the parties weighs in favor of granting the relief. Crowe v DiGioia, 90 N.J. 126 (1982). For the reasons set forth below, it is submitted that injunctive relief is appropriate in this matter.

#### **A: Plaintiffs Have a Reasonable Probability of Success on the Merits**

##### **1. The RBDMC Never Validly Submitted Three Names to the Council.**

Plaintiff can demonstrate that she has a reasonable probability of success on the merits, because the RBDMC and Zipprich engaged in a blatant violation of Title 19 by selecting three names to the exclusion of its duly elected members.

As set forth in the Verified Complaint, the Yngstrom vacancy is governed by the Municipal Vacancies Law, N.J.S.A. 40A:16-1 et seq. In relevant part, N.J.S.A. 40A:16-11 provides that “the **municipal committee of the political party** of which the incumbent was the

nominee **shall**, no later than 15 days after the occurrence of the vacancy, **present to the governing body the names of three nominees** for the selection of a successor to fill the vacancy.” (emphasis added).

The “municipal committee of the political party” is a reference to the statutory body that is established under N.J.S.A. 19:5-2. That statute provides that “[t]he members of the municipal committees of political parties shall consist of the elected members of the county committee resident in the respective municipalities.” Defendant RBDMC constitutes the body politic under this statute for the Democratic Party in Red Bank.

The statute prescribes that the RBDMC must hold an annual re-organization meeting “at an hour and place to be designated in a notice to be given by the chairperson to each member and member-elect.” *Ibid.* The statute also affords the body the “power to adopt a constitution and bylaws for its proper government.” *Ibid.*

To start, it should be noted that the members of the RBDMC are “trustees, and his [or her] relation to his [or her] party and the other members of that party has been clearly set down.” *Bontempo v. Carey*, 64 N.J. Super. 51 (Law Div. 1960). “The county committee and its chairman are, in a sense, trustees of party interests for the registered voters of the party in that county.” *Ibid.* These individuals are recognized as holding a “party” office under Title 19. N.J.S.A. 19:1-1.

In *Deamer v. Jones*, 42 N.J. 516 (1964), our Supreme Court reviewed a challenge to a party office election that was conducted pursuant to N.J.S.A. 19:5-2 et seq. The Court upheld a voice vote that was used, rather than the secret ballot sought by the plaintiffs. *Id.* at 521. Importantly, in upholding the election, the Court noted that “members of the county committee

were adequately informed of the need to fill the vacancy, and they were given full opportunity to express their wishes as to which candidate should be the new State Committeeman.” Ibid.

In Filippone v. O’Connor, 116 N.J. Super. 399, 400 (Law Div. 1971), this Court reviewed an order to show cause by two individuals contending that they should be deemed duly elected and qualified members of the Republican committee in Bernards Township. These individuals were elected on a write-in basis. Ibid. The chairman solicited “solicited acceptances and party certifications from all the successful write-in candidates except the two plaintiffs. He also notified all the others of the hour and place of the annual meeting of the municipal committee.” Ibid. The chairman denied the two write-in individuals office because they had not tendered a written acceptance. Id. at 401. While the judge noted our courts’ “reluctan[ce] to interfere in intraparty controversies in the absence of the violation of a controlling statute or the infringement of a clear legal right,” he concluded that “plaintiffs’ legal rights have been clearly violated by the decision of the municipal committee to deny them the offices to which they were elected.” Id. at 403 (citing Deamer, 42 N.J. at 516). The Court therefore certified the election of the two write-in candidates and removed the two other individuals that were appointed by the Chairman. Ibid.

In this case, the Verified Complaint establishes that the RBDMC – which is statutorily comprised of its elected members under Title 19 – never scheduled or held a meeting that was open to all of its members to act upon the Yngstrom vacancy.

The Deamer case demonstrates that a party office election is proper when members are *adequately informed* of a vacancy that needs to be acted upon, and that they are given a *full opportunity to express their wishes*. This did not occur with the RBDMC. Rather, Chairman Zipprich failed to inform whatsoever or give any opportunity to certain members to express their

wishes regarding the Yngstrom vacancy. The RBDMC and Zipprich instead acted to the exclusion of its members whom Zipprich is not politically aligned, namely Horgan and Triggiano.

This was inconsistent with the RBDMC's past actions, including its July 2020 reorganization meeting and March 2021 candidate selection meeting – each of which were conducted upon notice to all members – and in the former case, conducted using ballots that were personally delivered to members' homes due to the COVID-19 pandemic. This is a stark contrast to the current instance, where “trustees” of the Democratic party were denied the opportunity to act upon the Yngstrom vacancy, which is a matter of great public concern, and is the most significant statutory power possessed by elected members of the RBDMC.

Thus, there was no legal basis for Zipprich to submit three names to the governing body to the exclusion of the RBDMC's membership, which were then improperly acted upon by the governing body.

While our Courts are sometimes loath to review intra-party disputes, in this case, the rights of Horgan, Okeson, Triggiano, and other members of the RBDMC were violated. And, in turn, Red Bank Democratic Party voters were deprived of having their full elected leadership able to determine the proper course to fill the Yngstrom vacancy. Thus, the three names submitted by Zipprich were not validly submitted on behalf of the RBDMC, and the consequent action appointing Mirandi must be invalidated.

To the extent Zipprich orally claimed that he established an “ad hoc” committee in accordance with bylaws, the validity of this is belied by the Verified Complaint. Okeson, who was duly appointed as the RBDMC's secretary, certifies that the organization does not maintain and has not maintained any bylaws. Horgan, an elected member of the RBDMC, confirms that

she was never present for any adoption of bylaws. Thus, any purported bylaws that allowed for this “ad hoc” process were necessarily adopted to the exclusion of Horgan and Okeson – and perhaps other members of the RBDMC who are not aligned with Zipprich. Even if there were duly adopted bylaws that allowed for an “ad hoc” review of candidates, which there were not, bylaws cannot be adopted that frustrate the ability of duly elected members of the RBDMC to carry out their office. This would violate the plain language and intent of N.J.S.A. 19:5-2, as well as the reasoning in Deamer.

For these reasons, the three names submitted by Zipprich to the Council were invalid, and the Council’s ensuing action appointing Mirandi as one of the three names must be rejected.

**2. The Council’s Appointment of Mirandi Must be Set Aside and the Seat Left Vacant.**

This action places under review the Council’s appointment of Mirandi, who was one of three individuals purportedly named by the RBDMC. Because the process prescribed by Title 40A was not followed, Plaintiffs can demonstrate a likelihood of prevailing on the issue of invalidating this action.

Under N.J.S.A. 40A:16-11,

If the incumbent whose office has become vacant was elected to office as the nominee of a political party, the municipal committee of the political party of which the incumbent was the nominee shall, no later than 15 days after the occurrence of the vacancy, present to the governing body the names of three nominees for the selection of a successor to fill the vacancy. The governing body shall, within 30 days after the occurrence of the vacancy, appoint one of the nominees as the successor to fill the vacancy.

In this case, the RBDMC purportedly submitted three names to the governing body, in the form of a letter from Zipprich to Mayor Pat Menna. However, the letter could not have been validly sent on behalf of the RBDMC, considering some of its members were never even

contacted about the vacancy. Thus, the “municipal committee of the political party” failed to properly “present to the governing body the names of three nominees for the selection of a successor.” As such, the governing body was never “appoint[ing] one of the nominees” as prescribed by the statute, because none of the three individuals named were ever properly nominated. Accordingly, this Court must enter a preliminary injunction removing Mirandi from office, because the subject action was not consistent with N.J.S.A. 40A:16-11.

The ensuing question is the potential remedy. The law demonstrates that the timeframes in N.J.S.A. 40A:16-11 are strict, and that remedial action under the statute after a violation is not permissible.

In Carley v. Borough of North Plainfield, 380 N.J. Super. 240 (Law Div. 2005), two members of the North Plainfield Borough Council filed a prerogative writ action challenging their governing body’s temporary appointment pursuant to N.J.S.A. 40A:16-11 as violating the Open Public Meetings Act (“OPMA”), N.J.S.A. 10:4-6 et seq. The court invalidated the appointment because there was an OPMA violation – just like this court must invalidate the action because the RBDMC committed a statutory violation. This leads to the threshold question of whether “the failure to fill [the] seat within the time frame of the statutory scheme of N.J.S.A. 40A:16-11 . . . can be remedied.” Id. at 243. The Carley court held that remedial action was not permissible, stating: “To allow remedial action in this context would trump the statutory prerogative and render the deadlines and time frames of the statute a nullity.” Id. at 247. It therefore “denie[d] the defendants’ application for authorization for the Council to take corrective or remedial action to cure the defect in the appointment.” Id. at 248.

In Zimmer v. Castellano, 432 N.J. Super. 412, 415 (App. Div. 2013) the Court granted an emergency application for a stay and restrained an inappropriately appointed Councilmember

from taking office, and further held that the statutory N.J.S.A. 40A:16-11 30-day deadline could not be extended.

In this case, Yngstrom resigned on January 19, 2022. The Council had until February 18, 2022 to act upon the vacancy. The time period afforded under N.J.S.A. 40A:16-11 has now expired.

N.J.S.A. 40A:16-13 provides that when that time period has expired and a municipal governing body vacancy has not been lawfully filled by the 30-day deadline set forth in N.J.S.A. 40A:16-11, then “the office shall remain vacant for the remainder of the term or until the election and qualification of a successor”.

To the extent Mirandi is enjoined from holding office, this Court is not authorized to enter any further equitable relief that would authorize the Council extra time to act upon the vacancy. The proper course, as required by N.J.S.A. 40A:16-13, is for the vacancy to remain open and be filled by voters – in a matter of months – at this year’s general election. This is particularly the case considering the Council’s filling of the vacancy is entirely discretionary, and not mandatory, as discussed *infra*.

**B: Plaintiffs’ Claims Are Based on a Settled Legal Right**

Plaintiffs have a clear legal right to be present and to participate in the affairs of the RBDMC. Horgan is an elected statutory member of the body. Okeson is its appointed secretary. They were required to be given the opportunity to participate in any decision making concerning the Yngstrom vacancy.

Zipprich did not have the authority to exclude Horgan, Okeson, Triggiano, and any other political adversaries from such deliberations. Their exclusion deprived Red Bank Democrats of

their elected leaders providing input into the three names to represent the Democratic party in the vacancy that was before the governing body.

**C: Irreparable Harm and Balancing of Hardships**

The Borough of Red Bank – and its residents – will not be irreparably harmed if Mirandi is removed and the Yngstrom vacancy is left open until filled by the voters of Red Bank.

The Council has the power to temporarily fill the Yngstrom vacancy, but it does not have the obligation to do so. In a recent Appellate Division decision, the panel interpreted the Municipal Vacancies Law to provide that a governing body has “discretion in filling any interim vacancy.” Linden Democratic Comm v. City of Linden, 469 N.J. Super. 149 (App. Div. 2021). This holding is consistent with past legislative intent providing “that the appointment of a successor shall be in all cases *optional* to the municipal governing body.” Ibid. (citation omitted) (emphasis added). The panel also explicitly rejected the plaintiff’s contention that “the governing body lacks discretion not to appoint an interim successor once the political committee acts by forwarding three nominees to fill the vacancy.” Id. at 167.

In this case, Plaintiffs’ verified complaint establishes that the RBDMC – through its Chairman Ed Zipprich – engaged in a flawed process that acted to the exclusion of some of its elected members. To the extent this Court is tasked with removing Mirandi, who was appointed under this flawed process, her removal does not present irreparable harm to the Borough or its residents because her temporary appointment was optional and discretionary in the first place. In other words, the Council was never obligated to appoint anyone to the Yngstrom vacancy. The Council could have chosen to leave the seat open until it can be filled by voters at the next General Election (and it should have done so, given the flawed process that occurred).

Balancing the hardships, the people of Red Bank stand to suffer if Mirandi is allowed to continue serving. The flawed process surrounding her appointment has become newsworthy and has eroded the public's confidence in its municipal government. To the extent this litigation is ongoing and preliminary injunctive relief is not entered, Red Bank's municipal government will be functioning with a member whose votes and actions may prove pivotal today but be invalidated at a later date. This serves to undermine any official actions, including but not limited to enactment of bond ordinances and adoption of the municipal budget. Given that a temporary appointment is discretionary, the interests of justice require Mirandi to be removed and that the Yngstrom vacancy be filled by the people of Red Bank in a matter of months, in accord with N.J.S.A. 40A:16-13, which provides that when the time period has expired and a municipal governing body vacancy has not been lawfully filled by the 30-day deadline of N.J.S.A. 40A:16-11, then "the office shall remain vacant for the remainder of the term or until the election and qualification of a successor".

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully submit that this Court should enter a preliminary injunction removing Mirandi from office, and enjoining the Borough of Red Bank from taking any actions in furtherance of same, pending the filling of said office at the next general election.

MACIAG LAW, LLC

/s/ Thaddeus R. Maciag  
Thaddeus R. Maciag, Esq.  
Attorney for Plaintiffs

Date: February 22, 2022

# Civil Case Information Statement

## Case Details: MONMOUTH | Civil Part Docket# L-000542-22

**Case Caption:** HORGAN KATHLEEN VS BOROUGH OF RED BANK

**Case Initiation Date:** 02/23/2022

**Attorney Name:** THADDEUS R MACIAG

**Firm Name:** MACIAG LAW, LLC

**Address:** 475 WALL ST

PRINCETON NJ 08540

**Phone:** 9087048800

**Name of Party:** PLAINTIFF : Horgan, Kathleen

**Name of Defendant's Primary Insurance Company**  
(if known): None

**Case Type:** OTHER Complaint for Emergent Injunctive Relief

**Document Type:** Verified Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by: Kathleen Horgan?** NO

**Are sexual abuse claims alleged by: Kathryn Okeson?** NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

Complaint for Emergent Injunctive Relief, seeking Court removal of an unlawfully appointed member of a Municipal Governing Body

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category:** Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

02/23/2022

Dated

/s/ THADDEUS R MACIAG

Signed

