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Commonwealth of Massachusetts  
THE TRIAL COURT

MIDDLESEX, SS.

SUPERIOR COURT DEPT.  
C.A. No. 2581-cv- 1175

Ryan O'Malley, as President of the  
Malden City Council

Plaintiff

v.

Trustees of Malden Public Library,  
Dora St. Martin, et al.

Defendants

**Motion for Temporary  
Restraining Order and  
Preliminary Injunction**

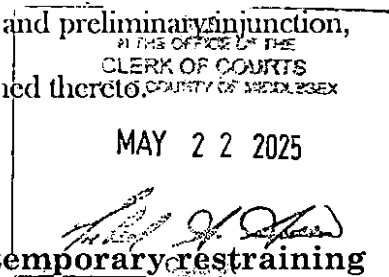
The plaintiff Ryan O'Malley requests that the court issue a temporary restraining order and preliminary injunction compelling all the defendants to recognize and afford him the same rights and privileges as a Malden Public Library trustee as any other trustee. The defendants have taken the position that the plaintiff, as an ex officio member of the library trustees, can neither vote, review the books and records, nor participate in the governance of the Library like every other trustee. The defendant's position has no support, and if allowed to persist will irreparably harm the plaintiff by depriving him of the right to meaningfully serve as a Library trustee during his term as council president.

In support of this motion for temporary restraining order and preliminary injunction, the plaintiff relies on his verified complaint and exhibits attached thereto.

**Argument**

**I. Standard for a preliminary injunction or temporary restraining order.**

An injunction may issue "only if the judge concludes that the risk of irreparable harm to a plaintiff, in light of his chances of success on his claim, outweigh[s] the defendant's probable harm and likelihood of prevailing on the merits of the case." *John T. Callahan & Sons, Inc. v. City of Malden*, 430 Mass. 124, 131 (1999) (internal quotes and cites omitted). The plaintiff generally must show that "without the relief he would suffer irreparable harm,



not capable of remediation by final judgment in law or equity.” *Id.* at 130-31 (cleaned up). In a dispute involving only public parties, a judge “is required to determine that the requested order promotes the public interest, or alternatively, that the equitable relief will not adversely affect the public.” *Ibid.* (cleaned up). If a motion “seeks to enjoin governmental action, the judge must find that the requested order promotes public interest, or alternatively, that the equitable relief will not adversely affect the public.” *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 89 (1984).

As will be demonstrated below, the plaintiff has a strong likelihood of success on the merits. There is no dispute that the plaintiff is the duly elected president of the Malden City Council and that chapter 146 of the acts of 1885 of the Commonwealth makes him an ex officio trustee of the Malden Public Library. The plaintiff’s term as city council president, however, is expected to end in December 2025. Thus, if the defendants are not ordered to recognize his rights and privileges as a Library trustee before the end of his term, he will be irreparably harmed because the chance for him to meaningfully serve as a Library trustee will terminate with his term as council president.

## **II. The plaintiff is likely to succeed on the merits because ex officio members are entitled to the same rights and privileges as any other member of the Library trustees.**

Chapter 146 of the Acts of 1885 established the Malden Public Library as a corporation governed by a board of trustees. The Act states: “the corporation shall consist of the mayor, the chairman of the board of aldermen, and the president of the common council of the city of Malden, for the time being, who shall be members *ex officiis*, and nine other citizens of Malden, who shall constitute a board of trustees....” Acts 1885, ch. 146, §2. (The board of aldermen and common council were abolished and replaced by the Malden City Council by the Legislature in 1955. Acts 1955, ch. 550.) Nowhere is it stated in the act creating the Malden Public Library that ex officio trustees cannot vote or that their roles are

any differently than non-ex officio trustees. Black's Law dictionary gives the following definition of "ex officio":

ex officio ..., adv. & adj. [Latin] By virtue or because of an office; by virtue of the authority implied by office. • The term is often misused as a synonym for "nonvoting." Some meetings mistakenly label their regularly invited guests as "ex officio members" when in fact they are not members at all; others mistakenly refer to the nonvoting members as "ex officio members" even though some nonvoting members are present only in an individual capacity and not by virtue of office, or even though some voting members also serve ex officio. *But an ex officio member is a voting member unless the applicable governing the document provides otherwise.* [emphasis added]

*Black's Law Dictionary*, 616 (8th ed. 2004). Thus, the preeminent law dictionary in the United States explicitly defines an ex officio member as a voting member, unless the governing document states otherwise.

*Black's Law Dictionary* also relies on *Robert's Rules of Order*, which was originally published in 1876. According to the 10th ed. of *Robert's Rules*:

Frequently boards include ex officio members – that is, persons who are members of the board by virtue of an office or committee chairmanship held in the society, or in the parent state or national society or federation or some allied group; or – sometimes in boards outside of organized societies – by virtue of a public office. In the executive board of the society, if the ex officio member of the board is under the authority of the society (that is, if he is a member, officer or employee of the society), there is no distinction between him and the other board members. If the ex officio member is not under the authority of the society, he has all the privileges of board membership, including the right to make motions and to vote, but none of the obligations – just as in the case, for example, where the governor of a State is ex officio a trustee of a private academy.

Henry M. Robert, *Robert's Rules of Order Newly Revised*, §49 at 466 (10th ed. 2000).

The 1970 edition of *Robert's Rules Revised* also stated that ex officio members have "all the privileges of board membership, including the right to make motions and to vote, but none of the obligations." Henry M. Robert, *Robert's Rules of Order Newly Revised*, §48 at 402 (1970). The 1907 edition of *Robert's Rules*, although worded differently, gave in substance the same definition and description of the role of ex officio members:

“An ex officio member of a committee or board is one who is a member by virtue of holding some particular office. If the office is under the control of the society, then there is no distinction between the ex officio member and the other members. But if the ex officio member is not under the authority of the society, he has all the privileges but none of the obligations of membership: as where the governor of the state is ex officio a manager or a trustee of a private academy.”

Henry M. Robert, *Robert's Rules of Order*, 79-80 footnote (1907). Thus, for more than 100 years, the premier authority and manual for parliamentary law and procedure in the United States has explicitly declared that ex officio members of a board have all the privileges and rights of any other member.

The defendants can cite no authority showing that ex officio members of a body are not entitled to the same rights and privileges as other members. In particular, with respect to the Library board of trustees themselves, they have nothing to support their position besides their own self-serving say-so and purported historical practice, which is contrary to recognized authority. The defendants cannot cite any statute, court decision, or other authority supporting their position that the ex officio Library trustees may not exercise the rights of any other library trustees, including the right to make motions, vote, serve on committees, and participate in all activities in which the trustees are authorized. The fact that the library trustees may have been wrong for 50 years or more about the status of ex officio members is no reason to continue and perpetuate their errors.

**III. Although irreparable harm may not be necessary for the plaintiff to obtain an injunction, the plaintiff will be irreparably harmed if a preliminary injunction is not issued because his term as president will end in December 2025.**

First, it is worth considering whether irreparable harm, which is normally needed before a private party is entitled to an injunction, is necessary on the facts of this case. “When, however, a suit is brought either by the government or a citizen acting as a private attorney general to enforce a statute or a declared policy of the Legislature irreparable harm is not required.” *LeClair v. Town of Norwell*, 430 Mass. 328, 331 (1999). In this case, the

plaintiff does not seek relief in his personal capacity. Rather, he is seeking relief only in his capacity as president of the Malden City Council, and also seeks relief for the benefit of any ex officio member of the Malden Library Board of Trustees. Therefore, it is doubtful that he needs to establish irreparable harm to be entitled to injunctive relief. “Moreover, where a statutory violation is alleged, the judge should specifically consider how the statutory violation affects the public interest.” *Id.* at 332. Nevertheless, to the extent that irreparable harm is needed, he can prove it.

The plaintiff has already been harmed by the defendant’s refusal to recognize his status and role as an ex officio member of the library trustees. Every meeting and vote the plaintiff is prevented from fully participating in constitutes separate irreparable harms. Additionally, the plaintiff’s ex officio status by virtue of his being elected Malden City Council president is expected to terminate at the end of 2025. Therefore, unless a temporary restraining order and preliminary injunction is immediately granted, he will be irreparably harmed by being prevented from ever having been able to exercise his role as a Library trustee by the time this case may be concluded.

By contrast, any harm to the defendants from granting the injunction is academic at best. In fact, it would be a mischaracterization to describe as “harm” the consequences of ordering the defendants to follow the law. At worst, an injunction would occasion only inconvenience for the defendants. Such inconvenience, however, is a product of the defendants’ own willful malfeasance and neglect in complying with the law and the legislative act which created the Malden Public Library.

Finally, there is no conceivable reason why the public interest would be harmed by granting the injunction. Rather, the public interest will be advanced by ordering the defendants to follow the law.


## Conclusion

WHEREFORE, for all the foregoing reasons, the plaintiff requests that the court issue a Temporary Restraining Order and preliminary injunction that:

- a. Prohibits defendants from interfering with the plaintiff's right to speak, make motions, and vote at Library trustee board meetings;
- b. Prohibits the defendants from denying the plaintiff reasonable access to any and all books and records of the Malden Public Library and its trustees.
- c. Orders the defendants to recognize the plaintiff's ex officio status as a Library trustee equal to and with the same rights and privileges as every other library trustee.

RYAN O'MALLEY, Plaintiff

By his Attorney

  
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