

NO: HHD CV19-6112462S : SUPERIOR COURT  
MICHAEL CAMILLO, ET AL : JUDICIAL DISTRICT  
OF HARTFORD  
v. : AT HARTFORD, CONNECTICUT  
TOWN OF NEWINGTON, ET AL : AUGUST 5, 2019

BEFORE THE HONORABLE A. SUSAN PECK, JUDGE

A P P E A R A N C E S :

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1 THE COURT: Good morning, everyone. All right.  
2 Please be seated. Just give me a moment to get the  
3 computer squared away here.

4 I'm sorry, I'm having a little issue here.

5 Okay. All right. If I could just have counsel  
6 identify themselves, please, for the record.

7 ATTY. HERMAN: Good morning, Your Honor. Marc  
8 Herman of Cohen and Wolf, and with me is my colleague  
9 Tim Herbst, and we appear on behalf of the  
10 plaintiffs.

11 THE COURT: Thank you. Yes, sir.

12 ATTY. DAS: Proloy Das and Kevin Munn of the law  
13 firm of Murtha Cullina on behalf of the defendants,  
14 Your Honor.

15 THE COURT: Okay. All right. So we have a  
16 motion to dismiss, and let me just take a quick look  
17 at it. So there's a motion to dismiss and then there  
18 was an amended complaint. So let me see. Is this  
19 true?

20 ATTY. DAS: Yes, Your Honor, and I could note  
21 with our --

22 THE COURT: I'm sorry?

23 ATTY. DAS: Yes, Your Honor. There's a motion  
24 to dismiss and an amended complaint, and in our reply  
25 memorandum we fully incorporated the motion to  
26 dismiss, as the arguments are applicable to both the  
27 original complaint and the amended --

1 THE COURT: I'm sorry, but the -- there was a  
2 motion to dismiss and that was filed on July 8<sup>th</sup>, and  
3 thereafter there was an amended complaint. Does  
4 anybody have any issue with that? Was the motion to  
5 dismiss -- I'm sorry, Attorney Das, what did you tell  
6 me?

7 ATTY. DAS: So, Your Honor, there was a motion  
8 to dismiss filed, there was an amended complaint  
9 filed. In our reply memorandum we noted that the  
10 amended complaint doesn't -- didn't affect the  
11 jurisdictional issues that were raised in our motion  
12 to dismiss, so we fully incorporated. We note  
13 that -- I think there's a little bit -- the motion --  
14 so the amended complaint was filed, presumably, as of  
15 right, within the 30 days after the return date.

16 THE COURT: Right.

17 ATTY. DAS: It's a little unusual because it's a  
18 temporary injunction, so technically the return date  
19 runs from when the case was filed versus when you  
20 have an actual return date. But rather than getting  
21 into that issue, we said, look, the arguments are all  
22 going to be the same. Rather than having them  
23 refile, we'll simply address --

24 THE COURT: Okay.

25 ATTY. DAS: -- the amended complaint.

26 THE COURT: All right.

27 ATTY. HERMAN: Yes, Judge.

1           THE COURT: All right. As long as we're -- we  
2 understand the sequence of events here.

3           So let me go back to that motion and actually  
4 look at it. Okay. And the -- let me just pull up  
5 the amended complaint. All right. I'm just going to  
6 print out the first few pages of the complaint.

7           All right. Attorney Das, so it's your motion.

8           ATTY. DAS: Thank you, Your Honor. May I please  
9 the Court, just as an initial matter, and you'll note  
10 from the record, I don't think either of us provided  
11 the Court with a complete copy of the charter, which  
12 is the issue.

13          THE COURT: Yes. That would be helpful.

14          ATTY. DAS: So I'd like to present to the Court  
15 a copy of the charter to help with the arguments.

16          THE COURT: Okay. Thank you.

17          ATTY. DAS: I also have a copy for brother  
18 counsel.

19          ATTY. HERMAN: Thank you.

20          ATTY. DAS: Thank you, Your Honor. So may I  
21 please the Court, this case -- the motion to dismiss  
22 is premised on two bases, standing and mootness. The  
23 standing argument is simply that, particular  
24 plaintiffs in this case, who are residents of the  
25 town do not have standing to attack the budget that  
26 the town council has approved. The second issue is  
27 mootness, which is effectively that there would be no

1 practical relief available on the claims that have  
2 been presented both in the principal complaint and in  
3 the amended complaint.

4 Let me start by giving the Court a little bit of  
5 background on where we are and how we got here  
6 because I think it frames both the standing and  
7 mootness arguments.

8 THE COURT: I'm sorry, if you could just bear  
9 with me.

10 ATTY. DAS: Sure.

11 THE COURT: For some reason, the printer is like  
12 printing out two pages at a time, so it's taking --  
13 it just kind of adds to the background noise, so just  
14 give it moment. We're almost there. We've got six  
15 pages.

16 All right. So why don't you tell me about the  
17 background then.

18 ATTY. DAS: Thank you, Your Honor. So back in  
19 August of 2017, the town council passed a resolution  
20 in which it determined that it was going to seek  
21 funds for a renovation of the town hall and the cost  
22 of the renovation was going to be approximately 28  
23 million dollars. The town council decided that it  
24 was going to fund this renovation both by a special  
25 appropriation and by the issuance of bonds in order  
26 to cover that cost.

27 If you look at the charter that I provided to

1 the Court on page 14 you'll see the authority for  
2 that; it's C408.

3 THE COURT: I'm sorry, what page?

4 ATTY. DAS: C408 on page 14.

5 So under that provision, if the town is going to  
6 issue bonds in excess of \$375,000 and if it's going  
7 to issue a special appropriation in excess of  
8 \$975,000, then the Court -- then the town has to hold  
9 a referendum and the voters get to decide whether or  
10 not that expenditure is going to occur. If the  
11 appropriation is between 375 and 975, they can do it  
12 by ordinance, but it also gives the electors the  
13 right to petition for a referendum. So if you're  
14 dealing with a special appropriation, over 975 --

15 THE COURT: Right.

16 ATTY. DAS: -- or bonding over 375, you need a  
17 referendum to --

18 THE COURT: Right.

19 ATTY. DAS: -- approve that expenditure. That's  
20 what's at issue here.

21 So in November of 2017, the town issued a  
22 referendum, and if you look at page 2 of our brief  
23 you'll see the referendum question.

24 THE COURT: Okay. Just give me one second.

25 ATTY. DAS: No problem. That -- that --

26 THE COURT: So November 2017 there was a  
27 referendum.

1           ATTY. DAS: Correct. And if Your Honor goes to  
2 item 110 on the docket.

3           THE COURT: Yeah, just give me one second here  
4 because my previous attempt to save this document was  
5 not successful, so just give me a second.

6           ATTY. DAS: Actually, it may be easier just,  
7 Your Honor, to go to the last document, which is the  
8 town manager's affidavit, 123. So I think that'll be  
9 more relevant to each of the points.

10          THE COURT: Okay.

11          ATTY. DAS: So item 110 -- 123 on the docket.

12          THE COURT: Whoops, wrong document. Hold on. I  
13 see. And -- the affidavit?

14          ATTY. DAS: Correct. And the bottom of page 1  
15 beginning of page 2, you'll see the referendum  
16 question.

17                 And effectively what it did was it presented a  
18 question to the town residents about whether or not  
19 they would approve of the authorization of 28 million  
20 dollars by special appropriation and whether those  
21 funds can be raised through bonding as required by  
22 the town charter. The result of that was  
23 affirmative. The electorate voted to go forward with  
24 that funding and the issuance of those bonds.

25          THE COURT: Okay.

26          ATTY. DAS: So in early 2019, earlier this year,  
27 at a public meeting in February, the general

1 contractor came back and said the cost of the total  
2 renovation project, hard costs plus soft costs, would  
3 be about 31 million dollars. So there's and 8  
4 million -- a 3 million dollar difference between the  
5 initial funding through bonding, which came through  
6 the referendum and 3 million dollars for the  
7 completion of the project, which includes hard and  
8 soft costs.

9 THE COURT: Yup.

10 ATTY. DAS: So in February 2019 the town council  
11 debated how they would fund that additional 3 million  
12 dollars, and the charter --

13 THE COURT: I'm sorry, the additional --

14 ATTY. DAS: 3 million. So between the 28  
15 million that was approved by the referendum --

16 THE COURT: Oh, right.

17 ATTY. DAS: -- for bonding --

18 THE COURT: Right. Right. I'm sorry, I had the  
19 number wrong in my head, so..

20 ATTY. DAS: And the total cost being 31 --

21 THE COURT: All right.

22 ATTY. DAS: -- town council said, well, how are  
23 we going to fund this additional 31 million -- or 3  
24 million dollars?

25 THE COURT: Okay. Got it.

26 ATTY. DAS: And the charter gave them five  
27 options. And if you look at pages 5 or 6 of our

1           brief, if I could trouble you to pull that up, it is  
2           the item No. 110 on the docket.

3           THE COURT:    Yup.

4           ATTY. DAS:    And if you turn to pages 5 and 6.

5           THE COURT:    Yeah, unfortunately, I don't have a  
6           split screen so it takes me a little bit longer, so  
7           just bear with me.  I'm sorry, and what page did you  
8           say?

9           ATTY. DAS:    Page -- starting on page 5.

10          Your Honor, I could provide a hard copy to the  
11          Court of the motion.

12          THE COURT:    That would be very helpful.  Thank  
13          you.

14          ATTY. DAS:    Thank you.

15          THE COURT:    I'm sorry.  I -- it's not that easy  
16          to jog around between three or four or five  
17          documents.

18          ATTY. DAS:    Understood, Your Honor.

19          THE COURT:    Okay.

20          ATTY. DAS:    Okay.  So starting on page 5 you'll  
21          see -- we set forth that there are five ways under  
22          the charter that the town council could have decided  
23          to fund the additional 3 million dollars.  The first  
24          way is through the annual budget process, and the  
25          annual budget process is set forth on C805 of the  
26          charter.  And if you want to also, while you have  
27          both documents in front of you --

1 THE COURT: Yeah.

2 ATTY. DAS: -- that's page 36 of the charter.

3 THE COURT: Okay. I'm sorry, you said --

4 ATTY. DAS: Page 36.

5 THE COURT: Page 36, but what was the number?

6 ATTY. DAS: Of the charter. Sorry, 805. C805.

7 THE COURT: 805. Okay.

8 ATTY. DAS: And that's the adoption of the  
9 budget. Now, in Newington the annual budget is  
10 approved through a process where the town council  
11 approves the budget, not the voters, but it has to be  
12 subject to two public hearings.

13 THE COURT: Okay.

14 ATTY. DAS: So that's a process. So that's one  
15 way that they could've raised the 3 million dollars.

16 Another way they could've raised the 3 million  
17 dollars would've been a transfer by the town manager  
18 of an unencumbered appropriation, 808. C808, that  
19 didn't happen, but that was an option.

20 The third way is, again, after the budget has  
21 been passed, the town council could transfer from one  
22 capital project to another. That's also under C808.

23 The fourth way is by special appropriation, and  
24 this is appropriations that are not done by the  
25 budget process. There's special appropriations, and  
26 that's set forth in C807.

27 THE COURT: Hold on for a second.

1           ATTY. DAS:  And if you --

2           THE COURT:  C807.  Okay.

3           ATTY. DAS:  C807.

4           THE COURT:  Okay.

5           ATTY. DAS:  And if the special appropriation's  
6 not done through the budget process and it's done  
7 through a special appropriation, if it's over  
8 \$975,000 it requires a referendum.  If it's between  
9 375 --

10          THE COURT:  You mean a second referendum.

11          ATTY. DAS:  975 -- correct.

12          THE COURT:  Right.  Okay.

13          ATTY. DAS:  A three -- well, a referendum with  
14 the allocation.  A 375 to 975, you could petition  
15 for -- an electorate could petition for a referendum,  
16 but that's if it's done through a special  
17 appropriation.

18                 And, finally, the fifth way in which money can  
19 be raised is with the issuance of bonds and notes,  
20 and that's C407.

21          THE COURT:  Okay.

22          ATTY. DAS:  And if the bonding is over 375,000,  
23 it requires a referendum.

24          THE COURT:  If the bonding is over --

25          ATTY. DAS:  375,000.

26                 Now, Your Honor, if you look at the town  
27 council's authority to act under C402, that's the

1 general powers of the town council.

2 THE COURT: Okay.

3 ATTY. DAS: The town council has the authority  
4 under the charter to decide which method to use, and  
5 it has to follow all the requirements for each of  
6 those methods. Here, the town council said we're  
7 going to fund the 3 million dollars through the  
8 annual budget process, which meant it had to be  
9 subject to two public hearings before approval.

10 The dispute between the parties is that the  
11 plaintiffs wanted the town council to choose option  
12 four or option five because they want a referendum.  
13 Option four is, of course, the special appropriation  
14 and option five is the bonding. And if the town  
15 council had elected four or five, there would be a  
16 referendum. The dispute here is that the plaintiffs  
17 wanted a referendum, so they wanted the town council  
18 to choose four or five.

19 THE COURT: Okay.

20 ATTY. DAS: Town council chose one.

21 THE COURT: Okay.

22 ATTY. DAS: So when the town council chose one,  
23 their required responsibility then was to follow the  
24 annual budget process, and that is precisely what  
25 happened here.

26 THE COURT: I'm sorry, one more time with that.

27 ATTY. DAS: That's precisely what happened here,

1 the town council followed the budgetary process.

2 THE COURT: Okay.

3 ATTY. DAS: And, Your Honor, for ease of  
4 reference, it's a lengthy document so I won't have  
5 you pull it up, but if you look at A42 of the  
6 exhibits we filed on entry 111. Entry 111 is the --  
7 are the exhibits.

8 THE COURT: Right.

9 ATTY. DAS: If you look at page A42 there's a  
10 clear synopsis of the calendar that has to happen for  
11 the approval of the budget process.

12 THE COURT: I'm sorry, you said A42?

13 ATTY. DAS: That's correct.

14 THE COURT: Okay. You know, I have to find the  
15 page on the PDF just so you know. So it's 42, would  
16 be about 53, so just give me a second, see if my math  
17 works here. Okay.

18 ATTY. DAS: Your Honor, we have a hard copy of  
19 the appendix.

20 THE COURT: Okay. I'll take it.

21 ATTY. DAS: It would be easier.

22 THE COURT: Thank you. Because this is -- the  
23 orientation is --

24 ATTY. DAS: So page A42 --

25 THE COURT: It's landscape and not portrait, so  
26 that requires another move that is not so simple to  
27 do.

1           ATTY. DAS: So page A42 sets forth the calendar  
2 events that have to occur for approval of the budget.

3           THE COURT: The pages --

4           ATTY. DAS: A42 should be on the bottom. They  
5 should be all Bates stamped.

6           THE COURT: I don't see any Bates stamped number  
7 on the bottoms of the pages. Oh, it's on the left-  
8 hand side. Sorry. An unusual spot. A42?

9           ATTY. DAS: Correct.

10          THE COURT: It's starts with A43. But I'm at  
11 A42 at the moment.

12          ATTY. DAS: It's at the one on the back because  
13 it's copied front and back. Do you see the calendar?

14          THE COURT: This is what my A -- I have it right  
15 up on my screen, so --

16          ATTY. DAS: The page before that before -- what  
17 Your Honor has on the screen.

18          THE COURT: Okay. So that would be -- I could  
19 just -- if the pages, I'm sorry to tell you, are --  
20 it's -- A42 proceeds the document that you gave me.

21          ATTY. DAS: Correct.

22          THE COURT: So what do I need?

23          ATTY. DAS: No, I gave you --

24          THE COURT: Because I have it on my screen, I  
25 can just print out that page.

26          ATTY. DAS: Okay. The town manager's summary of  
27 the calendar. You'll see a calendar.

1 THE COURT: I see the schedule -- the budget  
2 review schedule.

3 ATTY. DAS: Yes, Your Honor.

4 THE COURT: Is that the document you mean?

5 ATTY. DAS: That's it. That's it.

6 THE COURT: Okay. So let me just print out that  
7 page. That's easy enough to do. Got it. All right.

8 ATTY. DAS: So the town followed that procedure,  
9 and the relevant dates are that town manager issued a  
10 proposal on March 4<sup>th</sup>. There was notice of that on  
11 March 8<sup>th</sup>. There was a public hearing on March 12<sup>th</sup>.

12 I'd note that none of plaintiffs in this case  
13 testified at the hearing. On March 13<sup>th</sup> the contract  
14 with Downes was signed to go forward with the  
15 project, or to accept some of the adjustments that  
16 were made to the price with respect to the project.

17 On April 2<sup>nd</sup> there was the second public hearing  
18 on the budget, and on April 16<sup>th</sup> the budget was  
19 adopted. And in that budget there was an  
20 appropriation pursuant to the budget of 1.5 million  
21 dollars. Two months later --

22 THE COURT: I'm sorry, what was the amount?

23 ATTY. DAS: 1.5 million. And, Your Honor --

24 THE COURT: I'm sorry, you said it was a special  
25 appropriation?

26 ATTY. DAS: No, Your Honor. That's part of the  
27 budget.

1 THE COURT: It was part of the budget?

2 ATTY. DAS: Part of the budget. And if Your  
3 Honor, for frame of reference, you have that last  
4 Exhibit 123, which is the town manager's affidavit.

5 THE COURT: Let me just --

6 ATTY. DAS: Your Honor, we --

7 THE COURT: Do you have a hardcopy? It's six  
8 pages.

9 ATTY. DAS: Yes, I could provide you a hardcopy  
10 of the affidavit as well.

11 THE COURT: Okay.

12 ATTY. DAS: So that's the -- so the last two  
13 paragraphs of that affidavit you'll note that those  
14 are the numbers that ended up getting reflected  
15 within the annual budget.

16 Now, Your Honor, you'll note that this was not  
17 a, by any stretch, a rubberstamp; it was a five-four  
18 vote to approve it as the minutes will reflect. So  
19 there was significant discussion about what should be  
20 approved in the budget and what should not.

21 But what that brings us to is both the standing  
22 and mootness arguments. With respect to standing, as  
23 the Court is aware, the party has to have actual  
24 aggrievement, and this is the only allegation of  
25 standing that's been made is voter standing. And  
26 Your Honor has addressed one of the few voter  
27 standing cases that we have, *Concerned Taxpayer of*

1           *Thompsonville*, which Your Honor might recall. And in  
2 that case --

3           THE COURT: Yeah.

4           ATTY. DAS: -- is, if you don't have a right to  
5 vote in the first place on the issue in which you're  
6 attacking, in this case the budget --

7           THE COURT: Right.

8           ATTY. DAS: -- then you don't have voter  
9 standing.

10          THE COURT: Right.

11          ATTY. DAS: And we're precisely in that  
12 situation. Because the town council, under the  
13 charter, is authorized to choose how to fund the 3  
14 million dollars.

15          THE COURT: Right.

16          ATTY. DAS: And if it goes through the budget  
17 and the public's ability to object to that came from  
18 the public hearings, and once the town council  
19 approved the budget, there's no right to vote on that  
20 budget. Some towns have a referendum for vote --  
21 approving budget; Newington does not. It's -- they  
22 entrust that to the town council, and that precisely  
23 was followed here.

24          And to be very clear in their papers, the  
25 plaintiffs have conceded that they're not attacking  
26 the adoption of the budget. So this is clearly a  
27 case of once the budget was passed, there's not

1 challenging it, which they couldn't, they're simply  
2 no right to vote on the budget for the plaintiffs and  
3 therefore there's no voter standing.

4 And, Your Honor, to be clear, I just want to  
5 identify --

6 THE COURT: My case -- the name of my case,  
7 please.

8 ATTY. DAS: Yes. It's --

9 THE COURT: I know -- I --

10 ATTY. DAS: *Concerned Taxpayer of Thompsonville.*

11 THE COURT: Yeah.

12 ATTY. DAS: And I do have the full cite, it's a  
13 2013 case, *Concerned Taxpayer of Thompsonville Fire*  
14 *District* --

15 THE COURT: Right.

16 ATTY. DAS: -- *versus Board of Fire*  
17 *Commissioners.*

18 THE COURT: Yup.

19 ATTY. DAS: The Westlaw cite is 2013 --

20 THE COURT: I don't need the Westlaw cite, I  
21 just want the date of the decision, please.

22 ATTY. DAS: October 3, 2013.

23 THE COURT: Okay. Thank you.

24 ATTY. DAS: So under the charter, the town  
25 council, under C402, has the exclusive authority over  
26 the town budget. They follow the town procedures.  
27 There's a specific concession in the plaintiffs'

1           brief, it's on page 7. To be clear, plaintiffs do  
2           not challenge the town's annual budget, it's already  
3           in the budget. So the 3 million dollars that's being  
4           funded is already been gone -- gone through the  
5           normal process and it can't be challenged, and the  
6           electors don't have standing to object to that  
7           appropriation.

8           THE COURT: Okay.

9           ATTY. DAS: Now, the second argument is  
10          mootness.

11          THE COURT: Yup.

12          ATTY. DAS: And the reason we have a mootness  
13          problem here is that even if there had been -- even  
14          if there had been a new referendum -- even if the  
15          Court -- if they got -- the plaintiffs got what they  
16          are asking for, which is a new referendum, because  
17          the approval went -- because there's no question that  
18          the 28 million dollars for bonding was approved, and  
19          there's no challenge to that, and because the  
20          additional appropriations are made through the budget  
21          process, the issue would be moot under *We the People*  
22          *versus Malloy*, and that's a case out of the  
23          Connecticut Appellate Court.

24          THE COURT: I'm sorry, what's the name of that  
25          case, please?

26          ATTY. DAS: *We the People versus Malloy*.

27          And what happened there, Your Honor, is that

1           there was an executive order addressing union rights  
2           of homecare workers. It was challenged about whether  
3           or not the governor had that authority, but the  
4           legislature subsequently acted and effectively  
5           provided the same rule. And what the Appellate Court  
6           said is, well, it doesn't matter whether the first  
7           action was improper if there's a subsequent legal  
8           action that put us in the same position, and that's  
9           precisely why once it's approved by the budget  
10          there's a mootness problem.

11           THE COURT: All right. Would you kindly give me  
12          the cite for that case -- the Appellate court cite?

13           ATTY. DAS: Sure. So, Your Honor, it is cited  
14          on page 11 of our memorandum in support of the motion  
15          to dismiss, and the cite of the case is 150 Conn.App.  
16          576. 150 Conn.App. 576, and that's a 2014 case.

17           THE COURT: Okay. What happened -- we still  
18          have like a short -- you know, the math is not adding  
19          up to 31 million dollars. I'm just curious -- it was  
20          28 million plus 1.5.

21           ATTY. DAS: Correct. The additional 1.5 would  
22          go through the next annual budget process.

23           THE COURT: I see. Okay. That was -- that was  
24          the plan?

25           ATTY. DAS: That's correct. And if you look at  
26          the resolutions that -- it's a lengthy document, I  
27          understand, in the exhibits, but a resolution that

1 was passed by the town council noted that the  
2 appropriations, with respect to the capital  
3 improvements that are projected for future budgets,  
4 are not binding, but that is something that was  
5 forecasted.

6 THE COURT: Okay.

7 ATTY. DAS: And the other mootness issue, Your  
8 Honor, is that on March 13<sup>th</sup> the contract with the  
9 general contractor was executed, and this lawsuit  
10 wasn't brought till June 4<sup>th</sup>. And if you look at the  
11 notations of pages 14 and 15 of our memorandum to  
12 dismiss, 14 and 15, we set forth the analysis of when  
13 you're dealing with an executed contract, it's too  
14 late to be able to bring any challenge to it because  
15 it would be unconstitutional to void that contract  
16 under the federal constitution.

17 And there's a case that's -- that's on all fours  
18 with that out of Ohio, it's on page 15 of our  
19 memorandum in support of our motion to dismiss, and  
20 that is the *Arceci* case from Ohio. And there what  
21 happens --

22 THE COURT: What's the name of it?

23 ATTY. DAS: *Arceci*, A-r-c-e-c-i. *State versus*  
24 *Arceci*. It's on page 15.

25 THE COURT: Okay.

26 ATTY. DAS: And there what happened was, same  
27 challenge was brought -- a similar challenge, some

1 residents opposed the development of a golf course.  
2 The Court determined that the issue was moot because  
3 even though the residents wanted the referendum on  
4 whether the town should enter into this --  
5 arrangement to have a golf course, the mayor had  
6 already signed the contract with the developer so the  
7 issue was moot.

8 The arguments that are made in contradiction of  
9 the mootness issue are only collateral consequences  
10 and capable of repetition yet are evading review, and  
11 neither of those exceptions apply in this context.  
12 As Your Honor knows, collateral consequences are  
13 situations like someone had a criminal conviction and  
14 it's going to affect their immigration status, or  
15 someone's been on the parental registry for purposes  
16 of adoption but then the adoption goes forward. It's  
17 the collateral consequences of that particular  
18 action, that particular person. There's simply no  
19 collateral consequences here with respect to any of  
20 these individual plaintiffs, and so for that reason  
21 the issue is moot.

22 And the second exception that they bring in is  
23 capable of repetition yet evading review, and this is  
24 simply not, again, an exception that applies in this  
25 case. There is no -- number one, there was no  
26 durational prevention from bringing an action. If  
27 there was an allegation that a contract shouldn't've

1           been signed, the announcing of the signed contract  
2           occurred back in March, March 12<sup>th</sup>. It was -- pardon  
3           me, back in February, it was proposed in the budget  
4           on March 4<sup>th</sup>, so it wasn't until March 13<sup>th</sup> that it  
5           was actually signed, and we have not seen this  
6           lawsuit filed until June. So it's just well past the  
7           time of when the contract was executed and the  
8           project was in full force.

9           So it simply is a classic mootness problem, and  
10          it's not an issue of capable repetition yet evading  
11          review because this isn't the scenario that will  
12          necessarily prevent any kind of future challenge in  
13          an appropriate procedure if there is one, which it  
14          sounds like they're arguing a completely different  
15          context.

16          THE COURT: I'm sorry, what were those dates  
17          again?

18          ATTY. DAS: Yes. So the first contract was  
19          proposed in -- in -- I think February 17<sup>th</sup>. The  
20          budget was proposed by the town manager on March 4<sup>th</sup>  
21          and the hearing was on March 12<sup>th</sup>, public hearing. I  
22          should back up and you'll hear that with respect to a  
23          rescission. Back in February of 2017, the town  
24          manager sought authorization to execute the contract.

25          That contract was contingent on the budget being  
26          approved.

27          THE COURT: Okay.

1           ATTY. DAS: The developer did not want that  
2 contingency in place. So at the March 12<sup>th</sup> hearing  
3 they -- the -- they revised the authorization without  
4 the contingency on the budget approval. And so on  
5 March 13<sup>th</sup> it was signed. So at least since February  
6 17<sup>th</sup> the plaintiffs had notice. They had notice  
7 again on March 12<sup>th</sup>, and this lawsuit wasn't filed  
8 until June of 2019.

9           And I should note, Your Honor, just another  
10 point of clarity on that, the GMP getting signed --  
11 the contract getting signed with the developer deals  
12 with the hard costs for purpose of construction,  
13 which is the 28 million, which is why that contract  
14 is still below the 28. The additional 3 million  
15 dollars comes in soft costs, which are --

16           THE COURT: Okay.

17           ATTY. DAS: -- like computers and insurance and  
18 the like. So that's all built into the budget.

19           THE COURT: Okay.

20           ATTY. DAS: And that's why that's part of the  
21 budget allocations.

22           THE COURT: Okay.

23           ATTY. DAS: I just finally note, Your Honor,  
24 that the addition of the declaratory judgment counts,  
25 which is what the amended complaint does, had no  
26 impact on the justiciability of this case. And the  
27 reason for that is you cannot bring a standalone

1 declaratory judgment action without a justiciable  
2 controversy, and that's the Connecticut Supreme Court  
3 decision in *Milford Power*.

4 THE COURT: All right. Slow down. I'm sorry.  
5 You said that the -- the -- the standalone  
6 declaratory judgment action cannot -- the *New Milford*  
7 *Power* case, what was --

8 ATTY. DAS: Correct.

9 THE COURT: What is that?

10 ATTY. DAS: *Milford Power* --

11 THE COURT: I mean, what does that -- what  
12 proposition does that stand for?

13 ATTY. DAS: Oh, it stands for the proposition  
14 that a declaratory judgment action cannot be brought  
15 in the absence of a justiciable controversy. So 52-  
16 29 doesn't create an independent statutory cause of  
17 action, you still have to have an underlying  
18 justiciability -- you still have to have an  
19 underlying justiciable controversy.

20 THE COURT: So tell me what the cite is --

21 ATTY. DAS: Yes.

22 THE COURT: -- for the *Milford Power* case.

23 ATTY. DAS: Yup. 263 Conn. 616, the pinpoint is  
24 625, and that's a 2013 case.

25 THE COURT: Okay.

26 ATTY. DAS: And the language is: A declaratory  
27 judgment action is not a procedural panacea for use

1 on all occasions, but rather is limited to solving  
2 justiciable controversies. Invoking 52-299 does not  
3 create jurisdiction where it would not otherwise  
4 exist.

5 So in sum, Your Honor, we would just note that  
6 the budget approval process was -- that the town  
7 council elected to go with to fund any additional  
8 overages, they're not using bonding, it's not subject  
9 to a referendum, and for that reason it was perfectly  
10 legal and there's no standing on the part of the  
11 plaintiffs to claim otherwise.

12 THE COURT: Okay.

13 ATTY. DAS: Thank you, Your Honor.

14 THE COURT: Thank you.

15 All right. Yes, sir.

16 ATTY. HERMAN: Thank you. Good morning, once  
17 again, Your Honor. One thing I can promise is that I  
18 will not bombard you with any more pieces of paper  
19 because I'm sure Your Honor is overwhelmed with that.

20 THE COURT: Oh, no, that's okay. You know, I  
21 mean, we often end up printing out just about  
22 everything anyway, so, I mean, it does -- we're still  
23 killing trees even though we have electronic filing,  
24 unfortunately. Yes.

25 ATTY. HERMAN: Judge, plaintiffs would ask that  
26 this Court deny defendant's motion to dismiss in its  
27 entirety for the simple reason that defendant's

1 entire motion is predicated on the merits, and at  
2 this procedural juncture, where defendants have moved  
3 to dismiss the complaint, the merits are simply  
4 inconsequential. And to that end, I think it would  
5 be remiss if I didn't remind the Court that on a  
6 motion to dismiss, the Court must construe the  
7 complaint in the light most favorable to the  
8 plaintiff and that all --

9 THE COURT: Right.

10 ATTY. HERMAN: -- well pled facts are construed  
11 to be true.

12 And, Judge, I think it might be worthwhile for  
13 plaintiffs' counsel to perhaps give its recitation of  
14 the facts, bearing in mind that it takes -- it  
15 contests the merits here presented to Your Honor by  
16 the defendants.

17 THE COURT: So, I'm sorry, the -- you know,  
18 typically, on a motion to dismiss if what you said is  
19 true, but if there are documents that -- I mean,  
20 there are facts that go beyond the complaint that are  
21 undisputed, the Court can consider those facts. And  
22 to the extent that facts are disputed that go to the  
23 issue of jurisdiction, the Court would be required to  
24 have a hearing and determine those facts.

25 ATTY. HERMAN: Your Honor is absolutely correct,  
26 yup. Absolutely.

27 THE COURT: So I guess that's my question: Are

1           there facts that are disputed -- in dispute based on  
2           what the -- was represented by defendant's counsel?

3           ATTY. HERMAN: Plaintiffs would not --  
4           plaintiffs do not accept the narrative provided by  
5           defendants. So to the extent that there are facts in  
6           dispute, I think that those disputed fact would be  
7           apparent if I were able to perhaps give a very brief  
8           recitation of what exactly happened. So in short,  
9           Judge, I think that there are disputes as to material  
10          facts in this case.

11          THE COURT: Okay.

12          ATTY. HERMAN: So, Judge, as my learned friend  
13          very accurately summarized, they -- this lawsuit  
14          commenced in or around -- the facts proceeding this  
15          lawsuit commenced in or around August of 2017, at  
16          which point the town council decided to adopt a  
17          resolution to have the voters approve bond financing  
18          in the amount, and my learned friend calls it  
19          approximately 28 million, it was \$28,818,358, and  
20          that's a significant number, Judge. To the extent  
21          that in the referendum ballot, the town council very  
22          specifically noted for the voters that the 28-million  
23          figure that I just recited is the guaranteed maximum  
24          price of the project.

25          So when voters went to the booth to either  
26          approve or disapprove of that bond financing, they  
27          were under a very clear understanding that the very

1 maximum amount of that project wasn't going to be  
2 approximately 28 million and change, they were given  
3 the very specific amount of \$28,818,358. And based  
4 on that very specific and clear representation,  
5 Judge, the voters overwhelming approved the bond  
6 financing of the project.

7 In February of 2017 amidst unrest among voters  
8 and the town council as to whether the town council  
9 could lawfully appropriate additional funds, the town  
10 council went to the town attorney, Mr. Ancona, and  
11 asked Mr. Ancona whether the town legally, under the  
12 town charter, must provide voters with another  
13 referendum on the additional 2.8 million dollars, and  
14 Mr. Ancona advised the town that it would violate the  
15 charter and would be illegal if the town didn't allow  
16 votes to have a referendum on the second  
17 appropriation of 2.8 million.

18 Yet, that advice did not sit well with the town  
19 council. And, in particular, Ms. Tanya Lane didn't  
20 like that advice. So exceeding her powers under the  
21 charter, Ms. Lane went to buy another opinion from  
22 the law firm of Halloran & Sage, wherein Attorney  
23 Richard Roberts disagreed with Mr. Ancona and said,  
24 no. The town of Newington, go ahead, you don't need  
25 to hold a second referendum. What Mr. Roberts also  
26 acknowledges in his opinion is that he doesn't look  
27 at the ballot, he takes Mr. Ancona's word regarding

1 the specific text of the ballot. So there's  
2 obviously an inherent limitation to the power of  
3 Attorney Roberts' opinion there.

4 And then within 14 days of Mr. Roberts' legal  
5 opinion, the town goes ahead, upends the democratic  
6 process, and decides to appropriation the additional  
7 2.8 million dollars by a budget appropriation.

8 And that, Judge, is a more accurate  
9 representation of the facts preceding this lawsuit.

10 THE COURT: Well, isn't there a dispute about  
11 those facts? I mean, I -- do I have those facts  
12 anywhere in the record or are these facts that you're  
13 telling me? Because, you know, they would have to be  
14 a record for the Court to consider those facts on  
15 this motion. We'd have to create an evidentiary  
16 record.

17 ATTY. HERMAN: Of course, Judge. Oh, I'm sorry.

18 THE COURT: Yeah, no, that's my only point.

19 ATTY. DAS: Your Honor, I can respond.

20 Obviously a little -- the characterizations we  
21 wouldn't agree with necessarily, but there's no  
22 dispute about the fact that there was a town opinion  
23 letter from Attorney Ancona and a town opinion letter  
24 from Halloran & Sage and they gave conflicting  
25 advice.

26 THE COURT: Okay.

27 ATTY. HERMAN: And then to respond to Your

1 Honor's question, those facts are in the record,  
2 Judge, to the extent that plaintiffs' complaint and  
3 verified complaint contend that those are the facts.

4 And Mr. Ancona's legal opinion is an exhibit to  
5 plaintiffs' complaint to --

6 THE COURT: Are they -- are the opinion letters  
7 in the record? No?

8 ATTY. HERMAN: Yes, Judge.

9 THE COURT: They are. Okay. Thank you.

10 ATTY. HERMAN: Of course.

11 So, Judge, at this juncture, I think defendant's  
12 motives are very clear. With an election looming in  
13 November, I think an encumbered administration is  
14 panicking on the prospect of this very politically  
15 toxic issue reaching voters. And looking to sweep to  
16 a clean and quick victory, defendants are moving to  
17 dismiss on the merits. In other words, they're  
18 looking to fast forward this dispute and go past the  
19 dispositive motion stage, step over discovery and  
20 have this Court adjudicate this dispute on the  
21 merits. And, quite frankly, Judge, we're not there  
22 yet.

23 Right now this Court's primary concern is  
24 whether there is a justiciable issue and I would  
25 respectively submitted on behalf of plaintiffs that  
26 there is a justiciable issue. And that justiciable  
27 issue compromises the fact that in plaintiffs'

1 position, defendants failed to provide a vote that  
2 those voters were entitled to under the referendum.

3 My learned friend refers to a notion as voter  
4 standing --

5 THE COURT: When you say that, you mean by a  
6 second referendum. Correct?

7 ATTY. HERMAN: I'm sorry, Your Honor?

8 THE COURT: When you say that they failed to  
9 provide a vote by way of referendum, you mean a  
10 second referendum.

11 ATTY. HERMAN: I do. That is correct.

12 THE COURT: Okay.

13 ATTY. HERMAN: Yes. And perhaps to orient Your  
14 Honor with the concept of voter standing and what is  
15 exactly required, voter standing is a settled notion  
16 that comprises two pillars. On the first pillar, the  
17 Supreme Court has announced that a plaintiff merely  
18 needs to point to an established voting right. A  
19 voting right, a qualified and memorialized voting  
20 right.

21 The second pillar, which is often times  
22 misconstrued by defendants, and is misconstrued by  
23 defendants in this case, is that plaintiffs need to  
24 point to municipal conduct that conceivably pertains  
25 to an infringement of that established voting right.

26 In other words, the plaintiffs' burden isn't to  
27 prove in an absolute sense that there was a violation

1 of an established voting right, but merely to  
2 convince the Court that there's municipal conduct  
3 that conceivably pertains. And that language, Your  
4 Honor, comes from a trial court case known as *Leahy*,  
5 and it is cited in my brief --

6 THE COURT: I'm sorry, the name of it?

7 ATTY. HERMAN: *Leahy*. I will give you both  
8 parties' names. It is cited in plaintiffs' brief.  
9 It's *Leahy*, L-e-a-h-y, *versus Town of Columbia*, and  
10 the cite to that is 2000 Westlaw 1658323.

11 THE COURT: And the judge on that case?

12 ATTY. HERMAN: And that is Judge Sferrazza.

13 THE COURT: And the date --

14 ATTY. HERMAN: That is --

15 THE COURT: -- of the decision?

16 ATTY. HERMAN: September 2000, Judge.

17 THE COURT: I'm sorry, September?

18 ATTY. HERMAN: September 29, 2000. The year  
19 2000.

20 THE COURT: Oh, September 29<sup>th</sup>. Okay. Thank  
21 you.

22 ATTY. HERMAN: Sure. And that, very briefly,  
23 the plaintiffs in that case claimed that the town had  
24 exceeded a mandate within which the plaintiffs -- the  
25 voters had voted and the defendants had moved to  
26 dismiss arguing, very similar to my learned friend  
27 here, that the voters simply don't have standing.

1           They cannot prove that they have a qualified  
2           memorialized right to vote. And the Court in that  
3           case held, if Your Honor would allow me to quote from  
4           the Court's decision, whether the plaintiff can prove  
5           these allegations is immaterial, and the Court is  
6           referring to it being immaterial at the motion to  
7           dismiss stage, and there -- subsequently denied the  
8           defendant's motion to dismiss because the Court  
9           correctly recognized that it would be improper for  
10          the Court to adjudicate the merits at this point  
11          before discovery, before depositions,  
12          interrogatories, et cetera, to really kind of probe  
13          exactly what happened.

14                 THE COURT: So the merits of this case are  
15                 whether or not the -- you tell me. Put it in your  
16                 words.

17                 ATTY. HERMAN: Your Honor, the merits of this  
18                 case are whether the plaintiffs did or did not have a  
19                 right to vote on the subsequent appropriation of 2.8  
20                 million dollars. That is the -- that's the crux of  
21                 the issue that is before Your Honor. And what  
22                 plaintiffs are arguing, Judge --

23                 THE COURT: On the 1.5 million.

24                 ATTY. HERMAN: On -- well, on the 2.8 million  
25                 that will subsequently be appropriated next year. So  
26                 anything in excess of 28,818,358.

27                 THE COURT: Okay.

1           ATTY. HERMAN: And what the plaintiffs are  
2           contending, Judge, is that in addition to winning on  
3           the merits at this procedural posture, all the  
4           plaintiffs need to overcome is to convince this Court  
5           that there is an established voting right --

6           THE COURT: Well, I mean, does it go to  
7           standing? They had no right to vote -- I mean, how  
8           do they have standing?

9           ATTY. HERMAN: So, Judge, plaintiffs would  
10          contend that they have standing because there is an  
11          established right to vote in the charter under 408.  
12          And then the second pillar of the test, which  
13          requires municipal conduct --

14          THE COURT: I'm sorry, and what provision, 408?  
15          Is that what you said?

16          ATTY. HERMAN: 408 of the charter, Judge, yes.  
17          That is the --

18          THE COURT: Just give me a moment.

19          ATTY. HERMAN: Of course, yup.

20          THE COURT: I just want to take a --

21          Okay. So tell me how you -- your interpretation  
22          is of the application of this provision, how this  
23          supports your view.

24          ATTY. HERMAN: Of course. Judge, plaintiffs  
25          would submit that C408 of the charter establishes a  
26          voting right; a voting right, albeit untethered to  
27          anything right now, but a voting right that exists.

1 And then with respect to the second pillar, of  
2 course, plaintiffs need to allege that there is  
3 municipal conduct that conceivably pertains to  
4 that -- an infringement of that established voting  
5 right.

6 And plaintiffs' contention is that by failing  
7 to -- well, by, first of all, representing to the  
8 voters that the very maximum price of this project is  
9 going to be the 28 and change figure that I had cited  
10 to the Court earlier, and then going behind the  
11 plaintiffs' back and actually appropriating that  
12 money through some other mechanism. That in and of  
13 itself, not -- at the very least conceivably pertains  
14 to an infringement of it.

15 THE COURT: Well, let me ask you something:  
16 Does -- in the ordinary course, would the town  
17 council in the budgetary process have the ability to  
18 include 1.5 million dollars for a capital  
19 improvements?

20 ATTY. HERMAN: If -- if what Your Honor is  
21 asking is in -- in a vacuum, away from the facts of  
22 this case, if a town -- if the town wished to  
23 appropriate 1.5 million through the budget process,  
24 the answer to that would be yes. But I think here,  
25 in light of the fact that Attorney Ancona, who is the  
26 town attorney, construed the charter in a similar way  
27 to the way I'm construing it, and that is that the

1 plaintiffs do have a right to vote in a second  
2 referendum.

3 The point is whether the plaintiffs are correct  
4 or not, and plaintiffs will contend that they are  
5 correct isn't dispositive at this procedural  
6 juncture. It would be submitted that at the very  
7 least plaintiffs have the opportunity to bear out  
8 their contentions through discovery to find out what  
9 the town's past practice was with respect to these  
10 types of appropriations.

11 THE COURT: To find out what the what?

12 ATTY. HERMAN: To find out what the town's past  
13 practices have been, for example, with respect to  
14 holding second referendums, to find out what types of  
15 internal communications were taking place at the town  
16 council with respect to whether or not Mr. Ancona's  
17 legal opinion is binding on them and whether they  
18 should indeed follow Mr. Ancona's legal opinion.

19 THE COURT: You mean whether they have ever not  
20 followed the advice of the town attorney? Is that  
21 what you're saying?

22 ATTY. HERMAN: Not quite, Judge. I think what  
23 I'm saying here is that we have an opinion of the  
24 town attorney, and then -- coupled with the fact that  
25 Ms. Lane exceeded her authority under the charter and  
26 retained outside counsel to provide her an opinion  
27 that was more favorable to the town council, I think

1           that given those two facts, I think, that in this  
2           situation it's quite egregious that they didn't  
3           follow Attorney Ancona's opinion.  But, again,  
4           whether or not they were right to follow -- not to  
5           follow Mr. Ancona's opinion or not, I think that goes  
6           to the merits, which again wouldn't be appropriate at  
7           this procedural juncture.

8           THE COURT:  I'm sorry, it does go to the merits?  
9           Is that what you said?

10          ATTY. HERMAN:  I think that that too would go to  
11          the merits, yes, because I think it ties in with  
12          whether the charter was violated and whether it  
13          impinged upon plaintiffs' right to vote.

14          THE COURT:  Well, wouldn't it have to be in the  
15          charter if they were absolutely required to follow  
16          the advice of the town council?

17          ATTY. HERMAN:  So, but -- but -- Your Honor is  
18          correct, but there is some --

19          THE COURT:  Yeah, I mean, I don't know what it  
20          says in this charter --

21          ATTY. HERMAN:  Sure.

22          THE COURT:  -- or if it says anything at all  
23          about town council other than maybe addressing the  
24          process by which town council may be -- I don't know.

25          I don't know, I have, you know, to take a look at  
26          the time --

27          ATTY. HERMAN:  Sure.  I'd be happy to orient

1 Your Honor with a certain provision of the town  
2 charter, which might help Your Honor analyze this  
3 issue, and that is in C303 of the charter under  
4 appointments and -- I'm sorry, C303, which is page 8.

5 THE COURT: No, I guess my question was really  
6 whether or not the town can accept or reject, in  
7 whole or in part, the advice of the town attorney.  
8 Is that within the power and authority of the town  
9 council?

10 ATTY. HERMAN: But, Judge, I think that is an  
11 issue. I think Your Honor is correct that that is an  
12 issue, but I think there is a more salient issue.  
13 And that -- which is related to the fact that the  
14 town rejected Attorney Ancona's opinion, and that  
15 again lies in C303. And what C303 provides is that  
16 Ms. Lane doesn't have authority to retain outside  
17 counsel in those situations where there is an  
18 internal conflict between the office of town council  
19 and the town council. In those situations, the town  
20 attorney represents the town council. And because  
21 Ms. Lane exceeded her powers under the charter and  
22 essentially purchased an opinion from an outside law  
23 firm, that act, in and of itself, exceeding her  
24 powers, violates the charter.

25 THE COURT: So where does it -- where are we  
26 looking at the power -- those powers? Where's that?

27 ATTY. HERMAN: Ms. Lane's powers --

1 THE COURT: In her -- she's the mayor?

2 ATTY. HERMAN: No. Ms. Lane is not the mayor.  
3 She's the town manager.

4 THE COURT: Okay.

5 ATTY. HERMAN: But it's by negative implication  
6 that she --

7 THE COURT: I'm sorry, is this -- I'm not  
8 familiar with the form of government. Is it a weak  
9 mayor's town manager model, the town government in  
10 Newington, or is --

11 ATTY. HERMAN: Yes.

12 THE COURT: -- it a strong mayor?

13 ATTY. HERMAN: Yes, Judge. There is a town  
14 mayor and then beneath the office of the town mayor  
15 is the office of the town clerk, and --

16 THE COURT: So it's a strong mayor or --

17 ATTY. HERMAN: I'm sorry, Judge. Maybe perhaps  
18 my --

19 THE COURT: Typically, you know, there are --  
20 there are different forms of --

21 ATTY. DAS: Your Honor, if I can just clarify, I  
22 don't think counsel will disagree with the  
23 representation, under the town charter, the town  
24 major appoints the town attorney.

25 THE COURT: I see.

26 ATTY. DAS: The town council appoints the town  
27 manager and the town mayor appoints the town clerk.

1 THE COURT: Okay. So the -- I'm sorry -- the  
2 town -- the mayor appoints town attorney and the town  
3 council appoints --

4 ATTY. DAS: Town manager, Your Honor.

5 ATTY. HERMAN: And the town mayor, Judge, also  
6 appoints substitute counsel to the extent that there  
7 is a conflict between the town council and the town  
8 manager, which in this case there was a conflict.

9 THE COURT: I'm sorry, one more time.

10 ATTY. HERMAN: Oh, of course. The mayor  
11 appoints substitute counsel. So to the extent that  
12 there is an internal conflict between the office of  
13 the town council and the town council, it would be  
14 the mayor's duty to appoint substitute counsel to  
15 represent those interests that wouldn't be  
16 represented by Mr. Ancona.

17 And it would be plaintiffs' position, Judge,  
18 that Ms. Lane exceeded her powers that are provided  
19 to her in the charter by retaining outside counsel.  
20 And that fact, in and of itself, we would represent  
21 conceivably pertains to the violation of that  
22 established voting right that we talked about a  
23 moment ago.

24 THE COURT: Okay.

25 ATTY. HERMAN: Because the reason that the town  
26 council didn't provide the second referendum is  
27 because Attorney Roberts informed them that they

1 didn't have to. So, again, we have that logical  
2 nexus --

3 THE COURT: So it's still ultimately -- even if  
4 you have conflicting opinions of counsel, it's still  
5 ultimately up to the town council to make -- to make  
6 a decision. Is that fair to say, or...

7 ATTY. HERMAN: I think that would be fair to  
8 say.

9 THE COURT: You're not bound by either counsel.

10 ATTY. HERMAN: I think that's right, Judge.  
11 But, I think, here, given that the town council based  
12 its decision on, an attorney that was retained --  
13 that the act of retaining violated the charter, in  
14 and of itself, I think that that would provide an  
15 independent basis, standing if that's clear to Your  
16 Honor.

17 THE COURT: Okay.

18 ATTY. HERMAN: But that really is a secondary  
19 point. I think the most salient point here is that  
20 the plaintiffs are pointing to an established voting  
21 right, which as Your Honor can see is in 408, and, of  
22 course, it would behoove of defendants to agree with  
23 that proposition based on the fact that they provided  
24 the first referendum under C408.

25 THE COURT: So you're saying, if I understand  
26 you correctly, that because the amounts in the  
27 second -- the second go around, when the amount fell

1 short, of the -- did it say, by the way -- what did  
2 it say on the ballot --

3 ATTY. HERMAN: On the ballet --

4 THE COURT: -- with regard to the referendum?  
5 What did it say?

6 ATTY. HERMAN: Judge --

7 THE COURT: Is that language somewhere in here?

8 ATTY. HERMAN: Yes. It is -- well, we have two  
9 sources for that text. We have the explanatory text  
10 that was actually on the ballot, and that is  
11 contained in Attorney Ancona's legal opinion; he  
12 copies and pastes the explanatory text, which is an  
13 exhibit to plaintiffs' complaint.

14 But what is also an exhibit to the plaintiffs'  
15 complaint is at Exhibit B is almost -- notification  
16 to the -- to the voters that there is going to be  
17 referendum that takes place on November 7<sup>th</sup> of 2017,  
18 and, again, I'm quoting from Exhibit B, if Your Honor  
19 would allow me to quote for that, it provides: The  
20 referendum ballot question is as follows --

21 THE COURT: I'm sorry, let me just --

22 ATTY. HERMAN: Sure.

23 THE COURT: -- go to that document.

24 So I assume all of your exhibits are part of the  
25 amended complaint. Correct?

26 ATTY. HERMAN: That is correct, Judge. Yes.

27 THE COURT: And let's see where we get to

1 Exhibit B. Okay. Exhibit B. Are you sure it's  
2 Exhibit B? I'm looking at Exhibit B and it looks  
3 like it is a Newington -- it says Newington Town  
4 Hall, a Community Center.

5 ATTY. HERMAN: Yes, Judge, that is --

6 THE COURT: Is that it?

7 ATTY. HERMAN: Yeah, the front page of that  
8 leaflet would be the --

9 THE COURT: Hold on.

10 ATTY. HERMAN: -- ballot question.

11 THE COURT: Okay. Hold on. So that's --  
12 whoops, I'm sorry, I didn't do this right.

13 Okay. So I see there's an asterisk, that's  
14 to -- but this is the explanation that went out in --  
15 this was mailed to all the taxpayers in the town, or  
16 what was this --

17 ATTY. HERMAN: That is my understanding, Judge,  
18 but that is not the -- that's not the universe of the  
19 explanatory text that the town provided by statute.

20 THE COURT: Okay. So what is?

21 ATTY. HERMAN: That is actually --

22 THE COURT: What is the rest of the universe?  
23 What else is in there?

24 ATTY. HERMAN: Of course. And so if Your Honor  
25 would be inclined to turn to Exhibit F, F, Freddie,  
26 of the plaintiffs' complaint, that would be Mr.  
27 Ancona's legal opinion within which he copies and

1 pastes the explanatory language from the referendum  
2 ballot.

3 THE COURT: That's his legal opinion to the town  
4 council?

5 ATTY. HERMAN: His opinion to the town council's  
6 questions as to whether they could legally  
7 appropriate an additional 2.8 million without calling  
8 a --

9 THE COURT: Well, did that appear somewhere  
10 else? I mean, did that appear -- what did the -- I  
11 want to know what the ballot looked like and what  
12 the -- because you've made a statement here that the  
13 passage of the referendum -- in this document, by the  
14 way, that I'm looking at, Exhibit B to the complaint,  
15 and that's at pages -- that the passage of the  
16 referendum authorizes the town to spend no more than  
17 \$28,818,358 for the project. So where does that come  
18 from? Where does that statement come from?

19 ATTY. HERMAN: That statement, Judge, would come  
20 from Mr. Ancona's legal opinion, which is Exhibit F,  
21 for Freddie, of that plaintiffs' complaint.

22 THE COURT: And what did the -- was there a  
23 resolution passed by the town council that --  
24 concerning the referendum and what the referendum  
25 question would be, or did they just pick up -- I'm  
26 sorry, you said it was Exhibit F?

27 ATTY. HERMAN: Yes. And in answer to Your

1 Honor's question, yes, there was a resolution adopted  
2 which specifically highlighted that 28 million  
3 number.

4 THE COURT: So where is that resolution? Is  
5 that in the record somewhere?

6 ATTY. HERMAN: If Your Honor would just provide  
7 me a moment, please.

8 THE COURT: Sure.

9 ATTY. HERMAN: Thank you.

10 ATTY. DAS: Your Honor, I might be able to help  
11 simplify, if I could.

12 THE COURT: Okay.

13 ATTY. DAS: And counsel can otherwise object if  
14 they disagree with this characterization. The  
15 resolution that was initially put forward by the town  
16 council says that we would be seeking 28 million  
17 dollars in special appropriation for the contract and  
18 for bonding. You'll find that in the affidavit of  
19 Tanya Lane and also in the minutes.

20 What ends up happening is, because under the  
21 statute you have to have explanatory text, the  
22 explanatory text is drafted by the town clerk and  
23 reviewed by the town attorney. In that explanatory  
24 text, the contract proposal from Downes was presented  
25 and the phrase "GMP" was used, and that's what's  
26 reproduced in the town attorney's letter.

27 So if you look at the town attorney's opinion

1 letter, which is Exhibit F to their amended  
2 complaint, that specifically says that while the  
3 explanatory text used a term "GMP", I understand that  
4 to mean guaranteed maximum price. And so the dispute  
5 that ends up happening is whether -- how does that  
6 effect, I suppose, what was voted on? The clear  
7 language, which is what controls, is from the  
8 referendum that does not mention any kind of ceiling  
9 in any way; it was simply, do we have approval for  
10 the 28 million dollars and can we do it through  
11 bonding? But the explanatory --

12 THE COURT: You know what, I did something, I  
13 must've done something here that I did not intend to  
14 do. So I'm sorry to interrupt you, but I'm -- like  
15 to just take a ten-minute recess --

16 ATTY. DAS: Sure, Your Honor.

17 THE COURT: -- because I don't know what's going  
18 to -- this is going to keep printing. I didn't  
19 intend to print anything more than Exhibit F, but --

20 ATTY. DAS: Your Honor --

21 THE COURT: -- I thought I did it correctly  
22 and --

23 ATTY. DAS: We have a copy of the amended  
24 complaint, if you'd like it. It may be helpful to  
25 just review.

26 THE COURT: I don't have a -- I mean, I'll --  
27 I've already copied the amended complaint, but I

1 don't have all the exhibits.

2 ATTY. DAS: With the complete exhibits, it might  
3 be easier to refer.

4 THE COURT: Oh, no, this stopped. It stopped.

5 ATTY. DAS: Okay.

6 THE COURT: Okay, so we're okay. I must've hit  
7 something incorrectly here.

8 ATTY. DAS: So I didn't mean to interrupt  
9 counsel's argument, but that might've just  
10 clarified --

11 THE COURT: I don't know why it did what it did.  
12 It's backwards and -- so it was just a little  
13 strange what the computer just did, but be that as it  
14 may.

15 I'm sorry, as you were saying. I was  
16 distracted.

17 ATTY. DAS: Yes, I didn't mean to --

18 THE COURT: So if you wouldn't might repeating  
19 what you were saying.

20 ATTY. DAS: So there's a resolutions that was  
21 passed by the town council that then goes to a  
22 referendum.

23 THE COURT: And that's in the minutes someplace.

24 ATTY. DAS: That's in the minutes. It's also  
25 appended in -- it should be in the exhibits to the  
26 amended complaint as well.

27 THE COURT: Okay. If you have the whole

1 package, I'll take it, if you have an extra copy. I  
2 can just take the exhibits actually because I do have  
3 a copy of the complaint itself. But if you want to  
4 just give me the whole thing, I'll sort it out.

5 ATTY. DAS: So Exhibit A to their -- is going to  
6 be the referendum question and then what you'll see  
7 is under the statutes where -- as Your Honor noticed,  
8 there's a need for an explanatory text and the  
9 explanatory text is what was reviewed by Attorney  
10 Ancona in his opinion letter that says, well, because  
11 there was a GMP, my view is that you should have to  
12 send this out for a referendum for anything above 28  
13 million. I will reserve argument on that, I just  
14 didn't --

15 THE COURT: So there's a difference of opinion  
16 as to what the council actually approved and how it  
17 was interpreted by town council? Is that what you're  
18 saying?

19 ATTY. DAS: There's a difference of opinion,  
20 yes, I suppose of the town attorneys' positions.  
21 There's three opinions that were issued. Initially  
22 what happened was bond counsel, Updike Kelly &  
23 Spellacy determined that 28 million dollar question  
24 only applies to bonding, and so there's no problem  
25 funding beyond that.

26 The town attorney, Attorney Ancona, opined, no,  
27 because the explanatory text said GMP, guaranteed

1 maximum price with Downes, you can't provide any  
2 additional funding beyond the 28 million dollars  
3 without another referendum.

4 THE COURT: Okay.

5 ATTY. DAS: So a third opinion letter was issued  
6 by Halloran & Sage that agreed with the Updike Kelly  
7 opinion that said, no, these aren't exclusive to one  
8 another. If you want to raise the 3 million dollars,  
9 you have -- you can do so by following one of the  
10 five procedures. If you -- it's a standalone issue  
11 about whether you have to send it to a referendum.

12 THE COURT: So where is it -- on one of these  
13 exhibits is the resolution -- going back to my  
14 original question, which was, is the resolution in  
15 here?

16 ATTY. DAS: It's in the exhibits marked Exhibit  
17 A and towards the back of that --

18 THE COURT: Exhibit A.

19 ATTY. DAS: -- document.

20 THE COURT: Okay. So let me -- okay. So I'm  
21 looking at page 4 of the Exhibit A.

22 ATTY. HERMAN: I think it would be towards the  
23 back, Judge, page 8. That would be the most  
24 recent --

25 THE COURT: I'm sorry, say that again.

26 ATTY. HERMAN: Page 8 of that exhibit.

27 THE COURT: Page 8. Okay. But it starts on 4.

1           ATTY. HERMAN: That is correct.

2           THE COURT: And it goes to page 8. There's a  
3 discussion in between or amendments in between or  
4 what?

5           ATTY. HERMAN: There is a discussion in between,  
6 and my understanding is that the resolution adopted  
7 on page 8 would be the most recent resolution that  
8 was adopted by the council.

9           THE COURT: Is that agreed that that is the --

10          ATTY. DAS: Yes, Your Honor.

11          THE COURT: Okay. So why don't I just take a  
12 quick look. And then the ballot -- did this -- this  
13 language actually appear on the ballot, shall the  
14 town of Newington -- the language that follows the  
15 resolution, shall the town appropriate 28,818,358 for  
16 the town hall and community center project and  
17 authorize the issuance of general obligation bonds  
18 and notes in the same amount to finance said  
19 appropriation?

20          ATTY. HERMAN: Yes, Judge.

21          THE COURT: Yes or no.

22          ATTY. HERMAN: That is the text that appeared.

23          THE COURT: So -- okay. Thank you.

24          ATTY. HERMAN: Of course. Judge, we were  
25 briefly talking about the explanatory text and Your  
26 Honor asked me to point her in the direction of that  
27 explanatory text, and that would be, again, contained

1 in the legal opinion which is an exhibit to the  
2 plaintiffs' complaint at Exhibit F, for Freddie.

3 THE COURT: Okay.

4 ATTY. HERMAN: And Your Honor will see that Mr.  
5 Ancona logically bases his opinion -- his legal  
6 opinion that not holding the second referendum would  
7 be illegal based upon the fact that the explanatory  
8 text, which is copied on the next page of his  
9 opinion, provided that the guaranteed maximum price  
10 would be \$28,818,358.

11 And I'd also like to point out that Attorney  
12 Roberts concedes in his legal opinion that he did not  
13 look at the explanatory text when rendering his  
14 advice to the town.

15 THE COURT: I'm sorry, one more time.

16 ATTY. HERMAN: Attorney Roberts, who was the  
17 attorney at Halloran & Sage.

18 THE COURT: Of Halloran & Sage, yup.

19 ATTY. HERMAN: He concedes in his legal opinion  
20 that he does not look at the explanatory text in  
21 rendering his legal opinion.

22 THE COURT: So where was that language, now that  
23 I actually have Attorney Ancona's, I believe I do,  
24 opinion, which is Exhibit -- it's Exhibit D to  
25 something -- or rather it's Exhibit --

26 ATTY. HERMAN: Oh, Judge, it actually appears a  
27 couple of times in the --

1 THE COURT: Yeah.

2 ATTY. HERMAN: -- in the exhibits.

3 THE COURT: Well, I'm looking --

4 ATTY. HERMAN: I think --

5 THE COURT: So where -- you know, it doesn't  
6 matter which one I look at, I guess.

7 ATTY. HERMAN: Of course. And if Your Honor --

8 THE COURT: So where is the language? Just tell  
9 me. It's a two-page letter and tell me where the  
10 language is.

11 ATTY. HERMAN: Yup. The language is on the  
12 second page of the letter at the top, assuming that  
13 the version that Your Honor is looking at is the same  
14 font-wise.

15 THE COURT: I'm looking at a version that is in  
16 the form of a memo dated February 18, 2019, and to  
17 Tanya Lane -- you know, I believe it lists all the  
18 members of the town council. I don't know who these  
19 people are.

20 ATTY. HERMAN: Mm-hmm.

21 THE COURT: But it starts out Tanya Lane, CC  
22 Janet Murphy, subject: Town hall project funding.  
23 You asked for my opinion.

24 ATTY. HERMAN: I think we're looking at the same  
25 document.

26 THE COURT: Okay.

27 ATTY. HERMAN: And it's -- it's a grid that

1 appears within the opinion itself.

2 THE COURT: So, I see. It says that, it is my  
3 opinion that pursuant to C408 they did not vote to  
4 exceed the stated sum. As you'll note, the  
5 explanatory text, which was provided to the electors  
6 by the town of Newington, included the language total  
7 project cost that articulated a very specific sum.  
8 Please note that acronym GMP was used to indicate  
9 guaranteed maximum price. As such, I believe it  
10 would be illegal to circumvent the obligations of our  
11 charter and the intent of the electors by applying  
12 taxpayer funds from other accounts to exceed 28.8  
13 million without the prior -- per the consent of the  
14 electors. Okay.

15 ATTY. HERMAN: And, Judge, plaintiffs would  
16 agree with Mr. Ancona, of course. And taking this  
17 point back to our standing argument, at a minimum, if  
18 there is municipal conduct that conceivably pertains,  
19 that is possibly pertains to an infringement of an  
20 established right, then the plaintiffs have voter  
21 standing. I think plaintiffs go far beyond that  
22 burden, Judge. I think the plaintiffs certainly  
23 allege sufficient facts to convince this Court that  
24 there was municipal conduct that again conceivably  
25 pertains -- I don't mean to beat a dead horse, but  
26 I'd like to --

27 THE COURT: Yeah, no, no, that's fine.

1           ATTY. HERMAN: Mm-hmm. So that is the crux of  
2 plaintiffs' position; that at this procedural  
3 posture, this Court should deny defendant's motion to  
4 dismiss and allow plaintiffs --

5           THE COURT: So where is that language in the  
6 complaint?

7           ATTY. HERMAN: If Your Honor would give me a  
8 moment.

9           THE COURT: Sure. Paragraph -- starting around  
10 paragraph 11 -- 10, 11?

11          ATTY. HERMAN: I believe it's paragraph 23 of  
12 the --

13          THE COURT: What about paragraph 11?

14          ATTY. HERMAN: Oh, of the complaint?

15          THE COURT: Of the complaint. That's what you  
16 were just referring to. Correct?

17          ATTY. HERMAN: Paragraph 11 beginning with prior  
18 to the referendum vote. Yes.

19          THE COURT: Let me just see how 23 may differ.

20          ATTY. HERMAN: That's referring to the pamphlet,  
21 Judge.

22          THE COURT: Who is Krupienski?

23          ATTY. HERMAN: I'm sorry, Judge, one more time.

24          THE COURT: Who is Krupienski? Krupiensky.  
25 Krupienski.

26          ATTY. HERMAN: That would be the town clerk.

27          THE COURT: Town clerk?

1           ATTY. HERMAN: Yes, Judge.

2           THE COURT: Okay.

3           ATTY. HERMAN: And that's referred to in  
4 paragraph 5 of the complaint, Mr. Krupiensky.

5           THE COURT: I'm sorry, you said 23?

6           ATTY. HERMAN: Yes. Paragraph 23 refers to Mr.  
7 Ancona's legal opinion.

8           THE COURT: Right. Oh, I see. Okay. All  
9 right. Anything further?

10          ATTY. HERMAN: Yes, Judge. I'd like to -- you  
11 know, in addition to obviously underscoring Attorney  
12 Ancona's opinion and why we believe that that  
13 overcomes the very minimal threshold of establishing  
14 voter standing, I'd also like to orient Your Honor  
15 with another trial court case, if I may. And that  
16 case is *Slane versus the Town of Fairfield*, which in  
17 Fairfield County, was a fairly prominent case. And  
18 the cite of that case 2013 Westlaw --

19          THE COURT: Yeah, I just need the date and the  
20 judge.

21          ATTY. HERMAN: July 19, 2013

22          THE COURT: That'll be easier for me to find it.

23          ATTY. HERMAN: Sure. July 19, 2013.

24          THE COURT: July 19<sup>th</sup>?

25          ATTY. HERMAN: Yes.

26          THE COURT: Yup.

27          ATTY. HERMAN: And it's Judge Sommer.

1 THE COURT: Okay. Thank you. Yup.

2 ATTY. HERMAN: And Judge Sommer takes the same  
3 approach as the judge in *Leahy* that I referred Your  
4 Honor to before earlier. The voters in this case had  
5 approved a -- the funding of a building project and  
6 then they had buyer's remorse; they decided that they  
7 wanted to petition the town for a second referendum  
8 and the town ignored it and said no. And in this  
9 case, Judge, the Court held that it -- it's enough  
10 that the plaintiffs have alleged a reasonable  
11 redressable injury to a legally protected right. The  
12 Court wasn't convinced -- it didn't concern itself  
13 with the merits of the actual underlying case, which  
14 it would obviously go on to adjudicate at a later  
15 time. The Court understood the procedural posture  
16 and it -- at this procedural posture plaintiffs have  
17 a minimum burden of establishing municipal conduct  
18 that can conceivably pertain to an established  
19 right.

20 THE COURT: Your Honor, it does often happen on  
21 motions to dismiss, it's not unusual for the  
22 essential jurisdictional facts to bleed into the  
23 merits of the case. So --

24 ATTY. HERMAN: Understood, Judge.

25 THE COURT: It's a fine line, often a gray line  
26 that distinguishes the jurisdictional considerations  
27 from the merits.

1           ATTY. HERMAN: Understood, Judge. And even if  
2 this Court is so inclined as to adjudicate on the  
3 merits, again, for the arguments that I previously  
4 mentioned, I think plaintiffs still win. Number one,  
5 we have Mr. Ancona's opinion, which plaintiffs would  
6 agree with that failing to provide a second  
7 referendum, ipso facto, violated the town charter.

8           And, you know, I think it's --

9           THE COURT: Well, that's a legal opinion, you  
10 know, that --

11          ATTY. HERMAN: Mm-hmm.

12          THE COURT: It's a legal opinion. There's,  
13 apparently, two other legal opinions that --

14          ATTY. HERMAN: Correct. I --

15          THE COURT: -- conflict with it. So...

16          ATTY. HERMAN: I think Mr. Ancona has the -- has  
17 the correct interpretation. And, again, if Your  
18 Honor would be inclined to refer to the minutes of  
19 the town council where they specifically refer to  
20 this 28 million dollar number -- and, you know,  
21 litigating this case, I've tried to put myself in the  
22 shoes of the plaintiffs who reside in a town and they  
23 are notified that there's going to be a guaranteed  
24 maximum price of X and they don't get X, they get  
25 something else. And I don't live in the town of  
26 Newington, but I can certainly empathize with the  
27 hostility that this issue has generated.

1           And I think compounding that fact with the local  
2           election that's coming -- that's going to be taking  
3           place in November, I think that it's more important  
4           than ever that an independent branch of government is  
5           going to be able to adjudicate this dispute and not  
6           allow, at least in plaintiffs' position, a town  
7           legislature to ignore the mandate that was provided  
8           to it by voters.

9           THE COURT: You understand that the Court has  
10          120 days to issue a decision on --

11          ATTY. HERMAN: I do, Judge.

12          THE COURT: -- a motion to dismiss.

13          ATTY. HERMAN: I do, Judge.

14          THE COURT: Okay. And that it would likely be  
15          beyond the November election.

16          ATTY. HERMAN: Judge, in our -- in our --

17          THE COURT: So, I mean, that's not a factor for  
18          the Court. I mean, that is just a fact of life given  
19          the -- this is not an election case. The Court's not  
20          required to issue an expedited ruling. And the  
21          election really is, it may be a political reality,  
22          but it's not part of the Court's consideration of the  
23          issues here.

24          ATTY. HERMAN: Understood, Judge.

25          THE COURT: And, you know, the fact of the  
26          matter is that the weight of other business and --  
27          often does preclude the Court from, you know, issuing

1 decisions within 30 or 60 days. So --

2 ATTY. HERMAN: Indeed. Your Honor's point is  
3 very well taken, but plaintiffs have to at least try  
4 to vindicate their rights. And of course plaintiffs  
5 do seek an injunction in this case, too, or -- and a  
6 writ of mandamus. So to the extent that the Court  
7 could provide some temporary relief by way of a stop  
8 work order or something of the like --

9 THE COURT: So this was -- I understood this was  
10 a hearing on the motion to dismiss today and not an  
11 injunction hearing.

12 ATTY. HERMAN: Correct, Judge, yes.

13 THE COURT: Okay.

14 ATTY. HERMAN: Correct.

15 THE COURT: All right. I just want to be clear.  
16 Anything else that you would like to add?

17 ATTY. HERMAN: And if I could briefly touch upon  
18 mootness, Judge.

19 THE COURT: Of course.

20 ATTY. HERMAN: I'm sure that --

21 THE COURT: Of course.

22 ATTY. HERMAN: -- I'm outstaying my welcome, but  
23 if I could briefly touch on mootness I would very  
24 much appreciate it.

25 Judge, very simply, this case is moot because  
26 the additional 2.8 million, of which only 1.5 million  
27 has been appropriated, hasn't yet been spent. So to

1 the extent that this Court can fashion relief to  
2 prevent the town from spending that money or a penny  
3 over the 28 million dollars, that would, in and of  
4 itself, prevent the case from becoming moot.

5 My learned friend --

6 THE COURT: You mean, the outstanding 1.5  
7 million.

8 ATTY. HERMAN: The outstanding 1.5 million, or,  
9 in fact, any amount going forward over the 28  
10 million.

11 THE COURT: In excess.

12 ATTY. HERMAN: In excess of it.

13 THE COURT: You don't have to recite the exact  
14 number again.

15 ATTY. HERMAN: I started saying that number in  
16 my sleep a couple of nights ago I was reviewing it so  
17 often.

18 So for that simple point, Judge, I respectfully  
19 submit that this case is not moot and that this Court  
20 can indeed fashion relief.

21 And my learned friend refers to this notion that  
22 declaratory relief cannot be granted, in and of  
23 itself. And I took a look at the cases that my  
24 friend cites, and they are distinguishable. And  
25 they're distinguishable based upon the very simple  
26 fact that in those cases, the plaintiff was moving --  
27 the only prayer for relief that the plaintiff was

1 seeking was a declaratory judgment, where as in this  
2 case, in addition to a declaratory judgment, the  
3 plaintiff is seeking other -- other types of relief.

4 So on that basis, I would suggest that those cases  
5 cited by the defendant are in opposite here.

6 THE COURT: All righty. Thank you.

7 ATTY. HERMAN: Thank you, Judge.

8 THE COURT: All right. Attorney Das.

9 ATTY. DAS: Thank you, Your Honor. I'll be --  
10 just a couple quick points. I want to just briefly  
11 address the opinion letters of the attorneys, not  
12 because I think it's relevant, rather just to clarify  
13 the record. The allegation was made here that the  
14 town manager acted in excess of her authority; again,  
15 not relevant to this case, but I want to clarify that  
16 that's just not accurate. Factually what happened  
17 here was that bond counsel was first asked whether or  
18 not the 3 million dollars could be funded by means  
19 outside of a referendum. Their Updike Kelly &  
20 Spellacy answer was yes. Opinion --

21 THE COURT: That was the first opinion? Was  
22 that the first opinion?

23 ATTY. DAS: That's correct. That was the first  
24 opinion.

25 THE COURT: Okay.

26 ATTY. DAS: And it was because this was a bond-  
27 related issue, so the understanding was this should

1 go to bond counsel, and that was the determination.

2 There was a disagreement on -- about whether or  
3 not that was the attorney to make that decision, so  
4 the town attorney was then asked to opine. Town  
5 attorney opined that they should go to a second  
6 referendum.

7 Obviously, bond counsel is reviewing their own  
8 work with effective bond counsel. Town attorneys are  
9 just reviewing their work with respect to explanatory  
10 text. So a third opinion was required from Halloran  
11 & Sage; that's Exhibit G. And Halloran & Sage opined  
12 that it would be appropriate to use any of the legal  
13 methods under the charter

14 Again, none of this is relevant to the  
15 underlying issue here, but I just wanted to clarify  
16 that that was not improper. And, as a matter of  
17 fact, at the -- at one of the June, it'll be in the  
18 minutes -- one of the June town council meetings, the  
19 mayor made it very clear that the mayor had directed  
20 the town manager to engage Halloran & Sage, and so  
21 there was no excess of authority.

22 Why this isn't relevant is the plaintiffs aren't  
23 challenging the engagement with Halloran & Sage;  
24 that's not relevant. The only question here is  
25 whether or not the town council, under the Charter,  
26 has the authority to determine what's going to be in  
27 the budget and what isn't and what the process is.

1           With respect to that, on page 5 of our brief we  
2           quoted a case from New York that has a great quote  
3           right on point, which says this: A legal opinion by  
4           a municipal attorney is purely advisory. And right  
5           or wrong, it is the opinion of the issuing attorney.

6           The opinion of the attorney does not bind the board  
7           or take or refrain from any action. As we know, the  
8           town attorney isn't the emperor of Newington and  
9           that's why it's not a binding opinion.

10           So what we have here is the -- the opinion  
11           letters are kind of a nullity with respect to whether  
12           or not the town council can exercise its authority  
13           under the town charter to determine how the 3 million  
14           dollars is going to be raised, and they did that.

15           The right to vote, as Your Honor noted, I think  
16           the Thompson -- the *Thomaston* [sic] case is right on  
17           point because if you don't establish a right to vote,  
18           you don't have voter standing. And what we have here  
19           is a determination that this was going to be funded  
20           through the budget, and there's no right to vote on  
21           that.

22           THE COURT: But doesn't that depend on the  
23           interpretation of -- let me just get the charter. I  
24           think it's -- is it 408? C408. Doesn't that depend  
25           on the interpretation of this provision of the  
26           charter as to whether or not -- I mean, I think what  
27           the plaintiff is advocating is that any -- is that

1 every time -- if I can interpret what I think the  
2 plaintiff may have been saying, that every time the  
3 town council is seeking funds in excess -- a  
4 resolution authorizing the issuance of bonds or notes  
5 over 375,000 and -- or -- and/or a special  
6 appropriation in excess of 975, the citizens of the  
7 town of Newington are entitled to vote on it.

8 ATTY. DAS: That's absolutely --

9 THE COURT: Did I -- did I misinterpret what you  
10 said?

11 ATTY. HERMAN: Judge, I would maybe tweak --  
12 tweak what you said --

13 THE COURT: Sure.

14 ATTY. HERMAN: -- a little bit and --

15 THE COURT: Please do.

16 ATTY. HERMAN: What the plaintiffs are alleging  
17 here is that in this particular instance where the  
18 town voters were informed and justifiably relied upon  
19 the fact that they were told that there was going to  
20 be a guaranteed maximum price of 28 million number, I  
21 think that the plaintiffs here had a right to rely on  
22 that number. And there should've been an  
23 understanding by the town council, consistent with  
24 Attorney Ancona's opinion, that you can't make one  
25 representation to the voters and then depart from  
26 that representation. Simply, you either  
27 miscalculated a number or have since then decided

1           that, you know what, the 28 million isn't going to be  
2           the guaranteed maximum price. And just think of the  
3           potential collateral consequences that can stem from  
4           that.

5           THE COURT: Well, I'm a little -- you know, I'm  
6           sort of before we get to that -- before we get to the  
7           referendum -- before we get to, I suppose, the  
8           considerations, I asked, I think, a more basic  
9           question -- a more fundamental question. And that  
10          is, that the budget typically does not necessarily --  
11          doesn't take the form -- doesn't fall into the  
12          category of -- is not a -- does not concern a bond or  
13          a note. Do we agree on that?

14          ATTY. DAS: That's correct.

15          ATTY. HERMAN: Yes, Judge.

16          THE COURT: The budget. It's not -- you know,  
17          that process does not involve typically bonds or  
18          notes.

19          ATTY. HERMAN: Your Honor, are we talking about  
20          the town budget?

21          THE COURT: I'm talking about the town budget.

22          ATTY. HERMAN: The town budget, yes, we'd agree.

23          THE COURT: And that the town budget is not  
24          passed by a special -- does not require a special  
25          appropriation. Is that correct?

26          ATTY. HERMAN: It doesn't require it.

27          THE COURT: Doesn't require --

1           ATTY. HERMAN: Yes.

2           THE COURT: -- a special -- there's a process --  
3           there's a budgetary process. And so isn't the  
4           essential question whether or not the town council  
5           has the authority to authorize a capital expenditure  
6           in the amount that it did?

7           ATTY. HERMAN: Plaintiffs would disagree with  
8           that, Judge. I think --

9           THE COURT: But I want to know why you disagree  
10          with it. That's what -- because you don't really  
11          disagree with that proposition. Right? That the  
12          town can authorize 1.5 million dollars for capital  
13          expenditure if it didn't require either the issuance  
14          of bonds or notes or a special appropriation.

15          ATTY. HERMAN: Understood, Judge. And at risk  
16          of plaintiffs' position being construed as an attempt  
17          to either hijack the budget process or from, you  
18          know, moving forward being able to have a say in the  
19          budget process, that is not what the plaintiffs are  
20          alleging here. The plaintiffs are challenging, and  
21          this is important, the process. The process by which  
22          that 2.8 million dollars is going to get  
23          appropriated. Now, that 2.8 million dollars could've  
24          been appropriated by a budget, the mayor could've  
25          written a check from his personal checking account,  
26          plaintiffs would still have an issue with it based  
27          upon the fact that it didn't conform with the

1 requirements under the town charter.

2 It's not the fact that it was necessarily  
3 appropriated from the budget, it was the fact that  
4 the town voters didn't have a right to approve or  
5 disapprove it. That is the crux of what the  
6 plaintiffs are challenging here.

7 THE COURT: Okay.

8 I'm sorry, Attorney Das.

9 ATTY. DAS: Thank you, Your Honor. So with  
10 respect to voter standing, if this had been made a  
11 special appropriation, 1.5 million to the 3 million,  
12 or if it had been made pursuant to bonding --

13 THE COURT: Right.

14 ATTY. DAS: -- then there would be a right --  
15 then you would have voter standing, but this was done  
16 by the budget. And in Newington, unlike a number of  
17 towns, the process is to go through budget hearings;  
18 that's the public comment. And these plaintiffs  
19 didn't even participate in that process.

20 I'd note, Your Honor, why that's significant,  
21 we're talking about 3 million and 1.5 million, the  
22 budget is obviously a very, you know, complicated  
23 document. We submitted the full budget as Exhibit  
24 122. I'd just like to present the Court, just for  
25 simplicity, with a page of that budget. It's page 9  
26 of the budget, and I won't have you pull up the whole  
27 budget.

1 THE COURT: Okay.

2 ATTY. DAS: And what I'm presenting the Court  
3 with is the capital expenditures that were approved  
4 in that budget. Notice it's not like it says, 1.5  
5 million dollars is appropriated, each of those items  
6 are designated. And --

7 THE COURT: All right. Let me just take a  
8 gander, please.

9 ATTY. DAS: Of course.

10 THE COURT: I see. I'm sorry, so please go on.

11 ATTY. DAS: Yeah, so what you'll see is the  
12 items referred to town hall are itemized items that  
13 end up grossing 1.5 million dollars, but were not  
14 talking about 1.5 million dollars appropriation. The  
15 reason I point that out, Your Honor, is because if we  
16 were to accept the plaintiffs' argument, every single  
17 expenditure over 975,000, over 375,000, would be  
18 subject to a referendum vote; that's not how the  
19 budget process works. And we have things like --  
20 we've listed everything that created that -- exceeded  
21 this 975 threshold in our rely brief, which included  
22 police department salaries, public library salaries,  
23 retirement and health insurance benefits, academic  
24 departments, special education services, these are  
25 all part of the budget. They're not subject to a  
26 referendum on each individual item.

27 And so there's no right to vote on it once it

1           went through the process by which the public can  
2           participate in public hearings, and that's available.

3           THE COURT: I guess, you know, another way --  
4           you know, I'm just trying to think of all the --  
5           if -- what would've happened -- you know, I mean,  
6           reality is very -- you know, as those of us who live  
7           in the world of litigation know that when there is --  
8           if you've ever done a construction project on your  
9           home even, you know that the number that you start  
10          out with is not always where you end up.

11          And I guess, and please feel free to disagree  
12          with me, but the extension is of -- this thought is  
13          that, well, what happens if at the end of the day  
14          it's -- the cost of the project ends up being 31  
15          million dollars and not 28 million dollars, what are  
16          you going to do? You going to just not pay for it?  
17          I mean, what does the town do in that situation? I  
18          mean, because the town presumably could be sued for  
19          any shortfall in payment and -- I'm not sure what  
20          the -- how that -- I'm not sure how, as a practical  
21          matter -- well, I'm not sure what you're -- are you  
22          suggesting, I guess, that if there was a shortfall of  
23          anything over 28,813 or whatever it is 820, I can't  
24          remember exactly what the number is, almost 29  
25          million dollars, if there was anything over that,  
26          that that would have to -- at the end of the -- at  
27          the end of the project, if that would have to be

1 approved by a referendum.

2 ATTY. HERMAN: Thank you, Judge. And I have  
3 three brief responses to that. And first of all, my  
4 learned friend, you know, refers to these additional  
5 costs as soft costs, yet the reality is they were  
6 add-ons. They weren't soft costs absorbed in the --

7 THE COURT: Well, I mean, that's a whole other  
8 issue. I mean, that's really -- there's nothing  
9 about that in the complaint. It may be a whole other  
10 issue.

11 ATTY. HERMAN: Can I try point number two?

12 THE COURT: Okay.

13 ATTY. HERMAN: Point number two would be that,  
14 you know, I think that it's very easy to lose track  
15 of the fact that the very small universe that we're  
16 dealing with here, which is that we have a legal  
17 opinion by town council which tells the town that  
18 what it's doing is illegal and it basis that opinion  
19 on the fact that the voters were given very  
20 explanatory -- the explanatory language didn't have  
21 to say that there's guaranteed maximum price of 28.3  
22 million, it could've said a whole number of things.  
23 But the fact that it said that very clear statement  
24 would be something that the plaintiff should be able  
25 to justifiably rely upon.

26 THE COURT: The explanatory language, however,  
27 did not appear on the ballot. Is that -- we are

1           agreed on that. It did not appear on the ballot.

2           ATTY. HERMAN: I'm not sure if that is correct,  
3           Judge. I thought --

4           THE COURT: I thought -- in that -- in that  
5           resolution that was ultimately passed, it just had a  
6           simple statement -- it dictated, I thought, what the  
7           ballot -- how -- what the ballot would look like.  
8           And if that's not accurate then I would actually like  
9           to see the ballot.

10          ATTY. DAS: Your Honor, if you may, we don't  
11          have a paper copy, we have an electronic copy of the  
12          ballot from 2017. I can show it to counsel, if Your  
13          Honor could look. It's very straight forward as far  
14          as the way the presentation of questions. It's  
15          available, obviously, as a public record on the  
16          Secretary of State's website.

17          ATTY. HERMAN: So, Judge, the explanatory  
18          language, however, would've been provided, not  
19          necessarily on the ballot, but it would've been  
20          provided to voters as they went into the polling  
21          station. It would --

22          THE COURT: Well, do we know that? Is there  
23          something that -- was it posted at polling places?

24          ATTY. HERMAN: Well, Judge, it -- it's obviously  
25          alleged in the complaint and being that this is a  
26          motion to dismiss --

27          THE COURT: It was alleged in the complaint

1           what, that it was posted in polling places when the  
2           voters came to vote?

3           ATTY. HERMAN: It was alleged in the complaint,  
4           Judge, that -- Judge, in paragraph -- in paragraph  
5           23 --

6           THE COURT: In paragraph 13 you allege that --  
7           it says -- paragraph 11 says, prior to the  
8           referendum, town voters were provided with written  
9           information saying that the passage of the  
10          referendum, that we're quoting -- the -- quote, the  
11          passages of the referendum authorizes the town to  
12          spend no more than 28,818,358. Then paragraph 13  
13          says, the question that was the subject of the  
14          referendum asked, colon, quote, shall the town of  
15          Newington appropriate 28,818,358 for the town hall,  
16          the community center project and authorize the  
17          issuance of general obligation, bonds and notes, in  
18          the same amount to finance said appropriation? And  
19          it says Exhibit B, so this was attached as Exhibit B,  
20          which was not the ballot. So --

21          ATTY. HERMAN: Correct, Judge. That was not --  
22          that was not the ballot.

23          THE COURT: Okay. And, I mean, when I say this,  
24          I mean it's -- it's the -- it's number 116 on the  
25          docket, pages 23 and 24 of the PDF.

26          ATTY. DAS: Your Honor, if I may just -- if the  
27          Court can take judicial notice of what the ballot

1 looked like.

2 THE COURT: Sure. But I may actually -- I'm  
3 going to ask you to submit that --

4 ATTY. DAS: Absolutely.

5 THE COURT: -- as a supplemental exhibit with an  
6 affidavit.

7 ATTY. DAS: Will do so, Your Honor.

8 THE COURT: Okay.

9 ATTY. DAS: This is from the Secretary of  
10 State's website, which the Court can take judicial  
11 notice of, but we can do it with an affidavit as  
12 well.

13 THE COURT: So just for the record, it does  
14 say -- this is with the official ballot that I'm  
15 being shown. This is I -- presumably -- it says it's  
16 from the Secretary of State Election Services, town  
17 ballots, 2-7-2017, Newington 2017. The question:  
18 Shall the town of Newington appropriate 28,818,358  
19 for the town hall, community center project and  
20 authorize the issuance of general obligation bonds  
21 and notes in the same amount of finance said  
22 appropriation, question mark.

23 And that still doesn't tell me whether or not  
24 there was any other information posted at the polling  
25 stations.

26 ATTY. HERMAN: So, Your Honor, if I may, if I --  
27 well, first of all, if I could refer Your Honor to,

1 again, Exhibit A of the plaintiffs' complaint and it  
2 would be the resolution that was adopted. The  
3 resolution specifically refers to General Statute 9-  
4 369b, which is the statutory obligation -- of course.

5 THE COURT: Just give me one second. I'm sorry,  
6 you said 369b?

7 ATTY. HERMAN: Yes, Judge.

8 ATTY. HERBST: 9-369, Your Honor.

9 THE COURT: Okay. Is there a specific part of  
10 this statute that you want to highlight because it's  
11 lengthy?

12 ATTY. HERMAN: Well, before -- before heading to  
13 the specifics of the statute, Judge, it might be most  
14 prudent at this point if Your Honor, in fact easier,  
15 if Your Honor would refer to Exhibit A of the  
16 plaintiffs' complaint and I would, for the record,  
17 like to read into --

18 THE COURT: The minutes? Is that the minutes of  
19 the --

20 ATTY. HERMAN: That would be the minutes, yes.

21 THE COURT: Okay. Hold on. I have them  
22 somewhere.

23 Okay. I'm at the minutes.

24 ATTY. HERMAN: Page 8, Judge.

25 THE COURT: Yes.

26 ATTY. HERMAN: Towards the bottom of the pages,  
27 be it further ordered...

1 THE COURT: Be it further resolved?

2 ATTY. HERMAN: I'm sorry, yeah, it's been a long  
3 morning. Be it further resolved that the town  
4 council hereby authorizes the preparation and  
5 printing by the town clerk, subject to the approval  
6 of the town attorney, of explanatory text for the  
7 question approved hereby for submission to the voters  
8 at referendum on November 7, 2017, specifying the  
9 intent and purpose of the project in accordance with  
10 section 9-369b of the Connecticut General Statutes.

11 Subject to the approval of the town attorney,  
12 the town council further authorizes the preparation  
13 and printing of materials concerning the question  
14 approved hereby for submission to the voters at  
15 referendum, in addition to the explanatory text in  
16 accordance with section 9-369b of the Connecticut  
17 General Statutes.

18 Judge, I think it's plain to see that  
19 notwithstanding the fact that it may not be an  
20 exhibit here, but based upon the concessions made by  
21 the defendants in the town resolution --

22 THE COURT: Well, you're not going to agree --  
23 are you going to agree what was available at each  
24 polling station?

25 ATTY. HERMAN: I'll wait for my learned friend  
26 to enlighten us with --

27 THE COURT: Well, I mean, what are you saying?

1 This -- how does this differ from what we've already  
2 looked at and what -- how is it impacted --

3 ATTY. HERMAN: Because the explanatory text,  
4 Judge, would contain that guaranteed maximum price  
5 figure, the GMP, that Attorney Ancona refers to.

6 THE COURT: I'm sorry?

7 ATTY. HERMAN: It would refer to the GMP, the  
8 guaranteed maximum price, that Attorney Ancona based  
9 his legal opinion; that's what the explanatory text  
10 would've provided to the voters who were either going  
11 to approve the town council to take 28 million  
12 dollars or not.

13 THE COURT: And you're saying that the  
14 explanatory text was provided to the voters in the  
15 form of Exhibit B?

16 ATTY. HERMAN: No, Judge. We would submit that  
17 Exhibit B is different from the explanatory text.

18 THE COURT: Well, where is the explanatory text  
19 that was given to the voters? I'm asking for that,  
20 whether -- you know, I don't -- that's one question,  
21 and I suppose it's a different question as to what  
22 was available at the polling stations.

23 ATTY. HERMAN: Yes, Judge. I'm not able to  
24 provide that at this moment in time, but perhaps  
25 if -- if Your Honor would be inclined to grant a  
26 short recess maybe I could get hold of that  
27 explanatory text.

1           ATTY. DAS: Your Honor, jump --

2           THE COURT: Okay.

3           ATTY. DAS: So here's the issue, the explanatory  
4 text, we agree, was -- use that term that Attorney  
5 Ancona put in place. Our point is it's not relevant  
6 at all because here's the thing: This referendum  
7 went forward, there was no challenge to it. The only  
8 question is the 3 million dollars, how -- did the  
9 town council have the right to fund it or not? And  
10 there were three different opinion letters; two that  
11 agreed, one that did; again, not relevant because the  
12 only question is, does the town council, under the  
13 charter, have the right to fund 3 million dollars  
14 through the budget process? And the answer to that  
15 question is, yes. There is a process by which the  
16 public can participate in it, and that's through the  
17 public hearings. But if you don't have a right to  
18 vote on the 3 million dollars and if the town council  
19 had said we're going to bond for this 3 million  
20 dollars, that's what the town council said and went  
21 forward, absolutely, right to vote, standing.

22           If the town council had said, we're going to  
23 issue a special appropriation outside the scope of  
24 the budget, no question, and we're not going to go  
25 ahead and send it to referendum, there'd be voter  
26 standing because they have a right under the charter  
27 to a referendum on that. But here they went through

1 the budget, and in Newington there's no right. So  
2 that's why there's no voter standing.

3 And the discussions about whether the town  
4 attorney has agreed or disagreed, really is  
5 irrelevant to that fundamental question; is, do you  
6 have a right to vote, which can't be created by the  
7 town attorney? Do you have a right to vote based on  
8 the charter on the budget and the answer to that is  
9 no, hence there's no voter standing.

10 ATTY. HERMAN: Judge, to the extent that  
11 something --

12 THE COURT: Yeah.

13 ATTY. HERMAN: -- was represented to the voters  
14 by way of explanatory text, notifying them that this  
15 is the guaranteed price, I would submit that that, of  
16 course, is relevant. Otherwise, what my friend is  
17 suggesting is that legislature can make whatever  
18 representations it likes to a voter, get around a  
19 little table behind closed doors, and decide, well,  
20 you know, we said that but we've changed our minds.  
21 Judge, that's not what democracy is about. Democracy  
22 is about being able to rely upon the representations  
23 made by your legislature.

24 THE COURT: Well, you know, I mean -- in --  
25 in -- sometimes in -- I mean, I'm not sure what the  
26 import of the explanatory text would be, other than  
27 to analogize it to commentary on -- on -- the

1 question is what is -- what is a voter voting on?  
2 Are they voting on explanatory text or are they  
3 voting on a referendum -- a specifically worded  
4 referendum that appears on that ballot? And --

5 ATTY. HERMAN: Well, Judge, if I may jump in  
6 here, the voters were voting on the specific question  
7 that was presented to them. But to the extent that  
8 the town provided additional information to help the  
9 voter make his or her mind up, I'm struggling to  
10 think of situation wherein that text wouldn't be  
11 relevant. Otherwise, the town would be free to make  
12 any kind of misrepresentation.

13 ATTY. DAS: Your Honor, I think attorney --  
14 Halloran & Sage's opinion letter addressed this very  
15 question. This is a political question. People are  
16 disagreeing about what the meaning of the question  
17 were; all political questions, as far as what you say  
18 to the electorate versus what you don't, as far as  
19 the results.

20 The town council decided by a vote of five to  
21 four that they were going to do this through the  
22 budget. The issue was debated within the town  
23 council; that's exclusively the right of the town  
24 council under the charter to make that determination.

25 There simply isn't a standalone voting right.

26 If the town council had said, hey, we're going  
27 to go forward by a -- by a special appropriation or

1 additional bond and didn't put that out to vote,  
2 there's a voting right; voter standing. They decided  
3 to go by the budget -- go through the budget process,  
4 they vetted the issue, it was five-four, that's what  
5 the town council is entitled to do. And if folks in  
6 the electorate, the plaintiffs disagreed with it,  
7 they can vote against the town councilmembers, but  
8 that doesn't affect the legality and authorization of  
9 the town council to go forward. And more  
10 importantly, the remedy isn't in the courts.

11 THE COURT: See, the -- yeah. The difficulty  
12 that I'm having is that it seems like everything  
13 about this budget process was legal. That the  
14 process was -- the process that was employed was  
15 within the power of the town council to pass the  
16 budget and that this type of appropriation can be  
17 made during -- in the course of their process. And  
18 the town council is required to hold two public  
19 hearings on the budget, it held two public hearings  
20 on the budget, and I'm not hearing that there was  
21 anything about that process of adopting the budget  
22 that was not legal.

23 And -- so, I mean, this would be the time to  
24 tell me that there was something that was not legal  
25 about that process if there was something that was  
26 not.

27 ATTY. HERMAN: Well, Judge, I'd like to briefly

1           respond. First of all, I understand that it's very  
2           easy to lose track of the procedural posture hearing  
3           and to Your Honor's point often times the merits do  
4           bleed into the facts. And, you know, while my  
5           friend's interpretation of the law may have  
6           superficial appeal, it's, quite frankly, incorrect  
7           and obviously nonbinding.

8           What is more important for Your Honor's purposes  
9           is jurisprudence that's been handed down by the  
10          Connecticut Supreme Courts, guidance provided by Your  
11          Honor's colleagues in other trial courts that provide  
12          that when a voter wishes to bring a lawsuit, all that  
13          he or she needs to allege is that there is an  
14          established voting right, and I would submit that  
15          plaintiffs do have an established voting right; it's  
16          in 408. I mean, I'm confident that my friend would  
17          agree with me on that.

18          THE COURT: I know, but you've gone well beyond  
19          the -- you both have gone well beyond the allegations  
20          of the complaint. I would agree with you, the Court  
21          cannot -- if I didn't have -- it's incumbent upon me,  
22          at this point, to consider all the information that  
23          has been filed in connection with this motion, and I  
24          can't just look at the allegations of the complaint.  
25          I'm not required to look at the allegations of the  
26          complaint. I would be remiss if that's all I looked  
27          at at this point was the allegations of the

1 complaint. So I will look at everything. I will  
2 look -- notwithstanding anything that I might have  
3 said this morning, I will read those cases, which I  
4 obviously have not read, I will read those cases, I  
5 read your papers, and I will give this further  
6 thought.

7 So if there's anything else that you wish to  
8 add -- I would like to get an affidavit with that --  
9 or just get me, I suppose -- I'd just like to have a  
10 copy of the ballot in the records. So if you would  
11 submit it --

12 ATTY. DAS: Yes, Your Honor.

13 THE COURT: -- with a representation that it's  
14 taken from -- it's certainly authenticated as a  
15 public record through the Secretary of State's  
16 website.

17 ATTY. HERBST: Your Honor, we'd just add to  
18 that, would you also accept an affidavit with not  
19 only the ballot but any explanatory text that  
20 would've been provided --

21 THE COURT: Well, I still am not sure. I would  
22 appreciate that.

23 ATTY. HERBST: -- to the voter?

24 THE COURT: I don't know what impact it'll have.

25 I am still not entirely clear on what explanatory  
26 text were actually provided to the public. I don't  
27 know if anything was available -- and I don't know

1           what bearing it may or -- may have on the questions  
2           that are raised in the motion to dismiss, but it's  
3           certainly something I'm curious about. I'd like to  
4           know what, if any, information was available at the  
5           various polling stations concerning this explanatory  
6           text.

7           So tell me how long you would like to take to do  
8           that.

9           ATTY. HERMAN: Judge, plaintiff would request a  
10          week to be able to provide that information to Your  
11          Honor.

12          ATTY. DAS: Your Honor, we could provide the  
13          Court maybe even this afternoon. We should be able  
14          to get an affidavit with that information.

15          THE COURT: All right. Why don't you just take  
16          a week. I mean, it's --

17          ATTY. HERMAN: Okay. By the end of this week?

18          THE COURT: By the end of this week? Whenever.

19          ATTY. DAS: I mean, I suppose, I mean they're  
20          town documents, we can put -- for everyone's  
21          convenience, we'll just file both the ballot and the  
22          explanatory text.

23          THE COURT: Yeah, just e-file whatever you're  
24          going to file and --

25          ATTY. HERMAN: Okay.

26          THE COURT: -- we'll make it part of the record.  
27          But I'll look for it in about a -- in a week from



NO: HHD CV19-6112462S : SUPERIOR COURT  
MICHAEL CAMILLO, ET AL : JUDICIAL DISTRICT  
OF HARTFORD  
v. : AT HARTFORD, CONNECTICUT  
TOWN OF NEWINGTON, ET AL : AUGUST 5, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are/the electronic version is a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Hartford, Hartford, Connecticut, before the Honorable A. Susan Peck, Judge, on the 5<sup>th</sup> day of August, 2019.

Dated this 27<sup>th</sup> day of August, 2019 in Hartford,  
Connecticut.

Amanda Kizis  
Amanda Kizis  
Court Recording Monitor