

STATE OF RHODE ISLAND  
WASHINGTON, SC.

SUPERIOR COURT

TOWN OF SOUTH KINGSTOWN by :  
and through the SOUTH KINGSTOWN :  
TOWN COUNCIL and the SOUTH :  
KINGSTOWN SCHOOL COMMITTEE, :  
Petitioners :  
:

V. :

C.A. No.: WC-2021-\_\_\_\_\_

BRAD DUFAULT, :  
Respondent :

**VERIFIED COMPLAINT AND MISCELLANEOUS PETITION TO ENFORCE A  
SUBPOENA ISSUED BY THE SOUTH KINGSTOWN TOWN COUNCIL**

Overview

The South Kingstown Town Council, pursuant to its authority under G.L. 1956 § 45-5-14 and the South Kingstown Town Charter, issued the subpoena attached as Exhibit A. The subpoena was issued to Brad Dufault of Checkmate Consulting, LLC (Checkmate) as part of a joint investigation being conducted by the Council and the School Committee. Checkmate was engaged by the Rhode Island AFL-CIO (AFL-CIO) to design a mailer (Mailer) in support of a South Kingstown school bond referendum. The subpoena at issue required Mr. Dufault to appear before the Council on May 24, 2021, and testify regarding the release of the names and addresses of minor students in the South Kingstown School Department in connection with the Mailer.

The names and addresses of the students were used in the Mailer created by Mr. Dufault and circulated via the U.S. Postal Service in the Town of South Kingstown on behalf of the AFL-CIO. To date, Mr. Dufault has refused to appear before the Council or

testify in compliance with the subpoena. Accordingly, the Petitioners are filing this action seeking relief from this Honorable Court to enforce the subpoena.

#### Parties

1. The Town of South Kingstown is a municipal corporation of the State of Rhode Island.
2. The South Kingstown Town Council is the governing body and the legislative & policy making body for the Town of South Kingstown.
3. The South Kingstown School Committee is an elected body that, pursuant state statute and Town Charter, has care, custody and control of the South Kingstown public school system.
4. Brad Dufault is a partner in Checkmate Consulting, LLC, which was responsible for circulating the Mailer, which was addressed to individual minor students, by name and their home address, in the South Kingstown School Department.

#### Jurisdiction and Venue

5. This Court has jurisdiction over this action pursuant to its equity power as set forth in G.L. 1956 § 8-2-13; and pursuant to the Uniform Declaratory Judgments Act, G.L. 1956 § 9-30-1 *et. seq.*
6. Venue is proper in this Court pursuant to G.L. 1956 § 9-4-4.

#### Facts and Travel

7. On or about April 25 & 26, 2021, the Mailer circulated in the Town of South Kingstown publicizing that the AFL-CIO was in support of an upcoming vote to approve a school infrastructure bond referendum.

8. The Mailer was addressed to students in the South Kingstown schools, identifying the individual name and home address of the minor students.
9. Numerous parents that received the mailer became understandably upset that the names and addresses of their minor children (the "Student Information") had been released for use in circulating the Mailer.
10. Upon learning of the issue, the Town Council and the School Department by and through the School Committee began a cooperative investigation into this matter.
11. The overriding purpose of this cooperative investigation is to discover how the Student Information came to be released, so that the Town can take measures to better protect student privacy in the future.
12. As part of this cooperative investigation between the School Committee and the Town Council, legal counsel to the School Department inquired of the Department superintendent and staff to ascertain if the Student Information may have been released by the School Department.
13. Even after this inquiry from its legal counsel, the School Department was unable to discover how the Student Information came to be made public.
14. The School Department also conducted a search for records dating back to 2019 and could find no record of the AFL-CIO making a request for the student names and addresses used in the Mailer.
15. Sec. 3131 of the Town Charter provides, "The town council shall have the power to inquire into the conduct of any office, department, or agency of the town, and to make any investigation relating to town affairs and for such purposes may subpoena

witnesses, administer oaths or affirmations, and compel the production of books, records, papers, and other evidence.”

16. As an initial step prior to using the subpoena power granted in Sec. 3131 of the Charter, the Council directed the Town Solicitor to send a letter of inquiry to the AFL-CIO, which is attached hereto as **Exhibit B**.
17. Additionally, the Council directed the Solicitor to send a similar letter of inquiry, attached as **Exhibit C**, to Brad Dufault.
18. On May 7, 2021, George Nee of the AFL-CIO responded to the inquiry by letter, attached hereto as **Exhibit D**.
19. In his response letter, Mr. Nee avers that he was contacted by Mr. Dufault of Checkmate, who asked him if the AFL-CIO would be interested in circulating a mailer in support of the school bond referendum.
20. Mr. Nee further avers in his response letter that, after the AFL-CIO approved a draft of the Mailer, Mr. Dufault was responsible for the logistics for having the Mailer circulated and did not share the list of recipients with Mr. Nee or the AFL-CIO.
21. Mr. Dufault responded to the letter of inquiry by email, attached as **Exhibit E**, stating that he had retained legal counsel in this matter and that all further correspondence should be directed to his legal counsel.
22. The Town Solicitor and Mr. Dufault’s legal counsel conferred on this issue, whereby counsel for Mr. Dufault indicated that Mr. Dufault would not respond to the Council’s letter of inquiry.
23. Subsequently, the subpoena attached as **Exhibit A** was issued to Mr. Dufault on May 13, 2021, pursuant to the Council’s authority under Sec. 3131 of the Town

Charter and G.L. 1956 § 45-5-14, requiring Mr. Dufault to appear individually before the Council on May 24, 2021, to testify under oath regarding his knowledge of the release of the Student Information and its use for the Mailer.

24. On May 17, 2021, Mr. Dufault's legal counsel waived personal service on his client and waived the witness fee, and instead accepted service of the subpoena on behalf of his client by email only. See 5/17/21 email attached hereto as **Exhibit F**.
25. On May 20, 2021, Mr. Dufault's legal counsel informed the Town Solicitor that Mr. Dufault would not attend the May 24, 2021, Council meeting or otherwise testify in compliance with the subpoena.
26. On May 24, 2021, the Council convened the meeting referenced in the subpoena and Mr. Dufault, in fact, did not attend the meeting and did not comply with the subpoena.
27. The Town, the School Committee, and the Council have filed this action seeking an order from this Honorable Court directing Mr. Dufault to comply with the subpoena.

**WHEREFORE**, The Town of South Kingstown, the South Kingstown School Committee, and the South Kingstown Town Council respectfully request that this Honorable Court grant the following relief:

1. Declare that Mr. Dufault is required to comply with the subpoena issued in this matter;

2. Issue temporary, preliminary, and permanent injunctive relief requiring Mr. Dufault to appear before the South Kingstown Town Council forthwith and requiring him to testify under oath regarding the matters referenced in the subpoena.

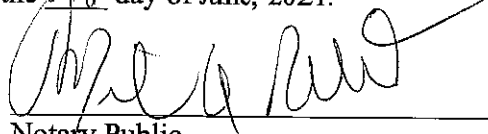
**VERIFICATION**

I, Abel G. Collins, President of the South Kingstown Town Council, hereby under oath state that I have read the foregoing Verified Complaint and verify that the facts set forth therein are true and accurate to the best of my knowledge, information and belief, except those statements made upon information and belief, and as to such statements I believe them to be true.



Abel G. Collins  
Town Council President  
Town of South Kingstown

Subscribed and sworn before me on the 3<sup>rd</sup> day of June, 2021.



Notary Public

My Commission Expires: 6/25/21

MICHAEL A. URSILLO  
NOTARY PUBLIC  
STATE OF RHODE ISLAND  
ID #27425  
MY COMMISSION EXPIRES 06-25-2021

Town of South Kingstown  
and South Kingstown Town Council,  
By and through their attorneys,

/s/ Michael Ursillo

**URSILLO, TEITZ & RITCH, LTD.**

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South Kingstown School Committee,  
By and through its attorney

/s/ Andrew Henneous

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Dated: June 3, 2021

*S:\South Kingstown\School Committee\FERPA issue - release of student information\Complaint to enforce subpoena\Verified complaint  
Default subpoena enforcement d3 clean.docx*