

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. _____

Michele Morin,
Burlington, Vermont,

Karen Rowell,
Burlington, Vermont,

Plaintiffs,

v.

The City of Burlington, Vermont,
149 Church Street,
Burlington, Vermont 05401.

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, who include Vermont voters residing in the City of Burlington, file this Complaint for declaratory and injunctive relief against the City of Burlington. Plaintiffs seek a declaration that authorization of noncitizen voting on matters involving the City of Burlington’s school board and education budget is unconstitutional and void. That authorization, set forth in a new charter provision for the City of Burlington, permits adult, noncitizen residents to vote in “City of Burlington or Burlington School District election[s],” including the City’s annual education budget. 24 App. V.S.A. ch. 3, § 8a. Although approved by local voters, the City’s annual education budget, like all school budgets, is paid for by all Vermonters from the State Education Fund. See 16 V.S.A. Chapter 133. The new charter statute also allows noncitizens to vote for members of the Board of School Commissioners, who are responsible for creating the City’s State-funded annual education budget. 24 App. V.S.A. ch. 3, § 168.

Permitting noncitizens to vote on these issues violates the Vermont Constitution. Chapter II, Section 42 of the Vermont Constitution establishes United States citizenship as a requirement for voting on “freemen” issues, which include “any matter that concerns the State of Vermont.” Plaintiffs seek an injunction compelling Defendant to refrain from implementing the invalid voting scheme, including refraining from registering noncitizen voters to participate in education-related elections and referendums in the City of Burlington. In support of their Complaint against Defendant, Plaintiffs hereby allege as follows:

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over Plaintiffs’ claims under 4 V.S.A. § 31, because it is an original civil action. Plaintiffs seek remedies pursuant to, *inter alia*, 12 V.S.A. § 4711.

2. Venue is proper in this Court under 12 V.S.A. § 402(a) because Defendant is located in Burlington, Vermont.

PARTIES

3. Plaintiff Michele Morin is a United States Citizen and a registered voter in Burlington. She regularly participates in City elections, including elections concerning education matters. Ms. Morin intends to participate in future elections, including those involving education matters.

4. Plaintiff Karen Rowell is a United States Citizen and a registered voter in Burlington. She regularly participates in City elections, including elections concerning education matters. Ms. Rowell intends to participate in future elections, including those involving education matters.

5. Defendant is the City of Burlington, a municipal entity formed and operating under the laws of Vermont. Defendant administers and enforces the charter amendment allowing noncitizens to vote. It also administers elections and referendums regarding education matters.

FACTUAL ALLEGATIONS

A. Constitutional and statutory background.

6. Since 1777, the Vermont Constitution has prescribed different qualifications for voting in Vermont. For example, Vermont's first Constitution entitled "[e]very man of the full age of twenty-one years, having resided in this State for the space of one whole year, next before the election of representatives, and who is of a quiet and peaceable behaviour, and will take the [voter's] oath (or affirmation) ... to all the privileges of a freeman of this State." Vermont Constitution of 1777, § VI.

7. A constitutional convention convened again in 1793, shortly after Vermont's admission to the union. The new constitution contained the same qualifications provision. Vermont Constitution of 1793, § 21.

8. Those qualifications changed in the early 19th century when citizenship was added to the qualifications clause.

9. In 1827, the Vermont Council of Censors¹ convened a committee "to inquire whether the right of suffrage can legally be exercised in this state by persons not owing allegiance to the government of the United States, and whether it be expedient to recommend any alteration of the constitution or existing statute on that subject." *Journal of the Council of Censors, at their Sessions at Montpelier and Burlington in June, October, and November 1827* ("Journal"), 5-6 (1828).

10. The committee report recommended that the State amend the qualifications provision (what was then Section 21 of the State constitution and now Section 42), because the plain text of the section was "objectionable, inasmuch as it admits two different and opposite constructions" about whether noncitizens were eligible to vote. *Journal* at 21.

A literal construction of the clause would certainly extend the right of suffrage indiscriminately to all who, under any circumstances, should have resided in the state one full year. *The manifest impropriety and danger of such a rule*, as well as its repugnancy to

¹ The Vermont Council of Censors was an elected body, which existed until 1870 to recommend constitutional changes and amendments.

the provisions of the constitution of the United States, *seems to require that, if the clause in question be susceptible to such a construction, it should be altered or explained.* At the same time a different and more liberal mode of construction might be adopted, and one in the opinion of your committee more correct, which, depending not so much on the precise import of particular phraseology as upon general political principles and a reference to the nature and object of the provision in question, *would exclude all who do not, in the strictest sense, owe allegiance to the general government of our country.*

Id. at 21-22 (emphasis added); *see also id.* at 46 (discussing “the gross impropriety of admitting those to participate in the elective franchise, who owe no allegiance to the country”).

11. The committee acknowledged “different practices ha[d] prevailed in different parts of the state” about whether noncitizens were eligible to vote under the existing constitutional language. Accordingly, it recommended the addition of an “explanatory phrase” to Section 21 to clarify that:

no person not a native born citizen of this or some one of the United States, shall be entitled to exercise the right of suffrage, unless naturalized agreeably to the acts of Congress.

Id. This citizenship amendment recommended by the committee was approved for a public referendum on November 27, 1827.

12. At the Constitutional Convention of 1828, Vermont amended its constitution to specify that eligible voters must be freemen or natural-born citizens. The amendment read, “No person, who is not already a freeman of this State, shall be entitled to exercise the privilege of a freeman, unless he be a natural-born citizen of this or some one of the United States, or until he shall have been naturalized agreeably to the acts of Congress.” *See* Amend. 1, Articles of Amendment to the Vermont Constitution (1828).

13. The citizenship requirement remains today.

14. Vermont’s “voter’s qualifications” are now set forth in Chapter II, Section 42 of the Vermont Constitution. The relevant portion, including the Freeman’s (or Voter’s) oath, provides:

Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this State:

You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person.

15. The qualifications provision was last amended in 2010 to allow otherwise eligible voters who would be 18 by the date of the general election to vote in primary elections.

16. Since 1869, Vermont has also prescribed the same citizenship qualifications by statute as are set forth in the Constitution.

B. Montpelier, Winooski, and Burlington amend their charters to allow noncitizen voting.

17. The City of Montpelier approved a measure to amend its charter to allow noncitizens to vote only in municipal elections in November 2018. Two years later, in November 2020, City of Winooski voters approved a charter change to allow noncitizens to vote in all city elections. Both provisions only allowed voting by legal residents of the United States.

18. Montpelier’s charter amendment limits noncitizen voting to certain municipal elections. The Winooski charter amendment authorizes noncitizens to vote in “*any* City meeting or municipal election.” This means that in Winooski—unlike Montpelier—noncitizens are permitted to vote for school board members and on education budgets.

19. On May 21, 2021, the General Assembly voted to approve the amendments to Montpelier’s and Winooski’s charters. The General Assembly’s authorizations were vetoed by the Governor on June 1, 2021, but the General Assembly overrode those vetoes on June 24, 2021.

20. In March 2023, Burlington approved an amendment to its city charter to allow noncitizens who are legal residents in the United States to register and vote in *all* local elections, just like Winooski. The General Assembly approved that amendment on May 12, 2023, but the Governor vetoed that approval. On June 20, 2023, the veto was overridden and the charter change allowing noncitizen voting in Burlington became law.

21. As amended, the Burlington charter statute now states: “Notwithstanding sections 7 and 8 of this charter and 17 V.S.A. chapter 43, a legal resident who is not a citizen of the United States shall be a legal voter at a local City of Burlington or Burlington School District election if the individual meets the following qualifications: (1) is a legal resident of the United States; (2) is not less than 18 years of age; (3) has taken the Voter’s Oath; (4) resides in the City of Burlington as residency is defined in 17 V.S.A. § 2122; and (5) has registered to vote with the Board of Registration of Voters not later than the deadline established by Vermont law for that election or meeting.” 24 App. V.S.A. ch. 3, § 8a. The statute defines “legal resident of the United States” as “any noncitizen who resides on a permanent or indefinite basis in compliance with federal immigration laws.” *Id.*, § 8a(b). And it instructs the Chief Administrative Officer to be able to “identify[] on the voter checklist those legal resident voters who are not citizens.” *Id.*, § 8a(e)

22. The charter amendment permits noncitizens to vote in Burlington School District elections, which includes votes on the annual education budget as well as for members of a Board of School Commissioners, which is “responsible for the preparation and adoption of” the City’s annual education budget. 24 App. V.S.A. ch. 3, §§ 4, 164, 168.

23. Burlington’s noncitizen charter change requires noncitizens to take the “Voter’s oath” to qualify to vote in City elections. *Id.* at § 8a; see also *Id.* at § 7 (Burlington voters required to take “the Freeman’s (Voter’s) oath”). The Voter’s oath, in its original, legally-required form, requires voters to pledge to vote in the best interests of the “State of Vermont.” 17 V.S.A. § 2103 (14) (“Voter’s oath” means the oath prescribed in Chapter II, § 42 of the Constitution of Vermont.”). Burlington, however, has altered the oath for noncitizens to instead require they pledge to vote in the City’s best interests rather than those of the State as a whole:

You solemnly swear or affirm that whenever you give your vote or suffrage, touching any matter that concerns the *City of Burlington*, you will do it so as in your conscience you shall judge will most conduce to the best good of the same without fear or favor of any person.

The City of Burlington, Voter Registration Info, *All Legal Resident Voter Registration Form*, [WWW.BURLINGTONVT.GOV, https://www.burlingtonvt.gov/CT/Voter-Registration-Info](https://www.burlingtonvt.gov/CT/Voter-Registration-Info) (last visited June 18, 2024) (emphasis added).

24. School budgets and school funding in Vermont are statewide, freeman issues. Since the landmark decision in *Brigham v. State*, 166 Vt. 246 at 249 (1997), Vermont has equalized school funding across the State through a statewide funding system. See 16 V.S.A. Chapter 133. As a result, votes regarding local school budgets directly impact the State budget and thus the financial interests of Vermonters statewide. Once a school budget is approved by local voters, paying for it becomes the responsibility of the State through the State Education Fund. *Id.*

25. Defendant has now expanded the electorate that determines educational issues to include noncitizens, even though those votes have substantial extra-municipal and statewide implications and thus directly implicate Section 42's limitation of the franchise to United States citizens.

C. Previous litigation.

26. On September 27, 2021, a group of plaintiffs challenged Montpelier's and Winooski's charter amendments as facially unconstitutional under Section 42. They filed complaints for injunctive and declaratory relief in the Washington Superior Court and this Court, respectively.

27. Both cities moved to dismiss the respective complaints, arguing that plaintiffs lacked standing and that the facial challenge was foreclosed by Vermont Supreme Court precedent.

28. On April 1, 2022, the Washington Superior Court granted Montpelier's motion to dismiss. The court held that plaintiffs had standing because they had properly alleged that inflating the city's voter rolls with ineligible voters would injure them by diluting the weight of their votes. However, the court held that plaintiffs' facial challenge was foreclosed by the Vermont Supreme

Court's decision in *Woodcock v. Bolster*, 35 Vt. 632 (1863). Plaintiffs timely appealed to the Vermont Supreme Court.

29. On September 20, 2022, this Court granted Winooski's motion to dismiss. This Court adopted the reasoning of the Washington Superior Court, holding that although plaintiffs had standing, the merits of their facial challenge were controlled by *Woodcock*. Plaintiffs timely appealed that ruling to the Vermont Supreme Court, as well.

30. On January 20, 2023, while plaintiffs' appeal of this Court's ruling was still pending, the Vermont Supreme Court issued a decision on plaintiffs' appeal of the Washington Superior Court ruling. *Ferry v. City of Montpelier*, 2023 VT 4.

31. The Supreme Court affirmed plaintiffs had standing, but nevertheless held that Section 42 does not *categorically* bar noncitizens from voting in municipal elections. *Id.* ¶¶ 21, 50-52. Because the court found that there are at least some instances in which noncitizens may participate in municipal elections under Section 42, it affirmed the Washington Superior Court's dismissal of plaintiffs' complaint. *Id.* ¶¶ 48-52.

32. Importantly, the Supreme Court emphasized that, “[b]ecause plaintiffs bring a facial challenge, we need not define the line between ‘local’ or ‘municipal’ and ‘statewide’ issues in this opinion.” *Id.* ¶ 50. The Supreme Court further emphasized that its holding did not “preclude[] judicial review of municipal elections” and that “[a] vote municipal in name, but traditionally the province of ‘freemen’ in substance, could not avoid the requirements of § 42.” *Id.* (citing *Slayton v. Town of Randolph*, 108 Vt. 288, 290-91 (1936) and *Martin v. Fullam*, 90 Vt. 163, 170 (1916)). Put another way, while the Supreme Court rejected the argument that *all* municipal elections are now subject to Section 42, it held that specific municipal votes would require United States citizenship if those votes were of statewide concern.

33. Because the appeal of this Court’s dismissal of plaintiffs’ initial challenge to Winooski’s charter amendment also involved a facial claim under Section 42, plaintiffs consented to have the appeal dismissed as mooted by the Supreme Court’s decision in *Ferry*.

34. In March 2023, an as-applied claim was brought against Winooski, but this Court dismissed that claim on November 6, 2023 based on *res judicata*. *Weston et al. v. City of Winooski*, No. 23-CV-00998, 2023 WL 8718882 (Vt. Super., Nov. 6, 2023). No appeal was filed.

35. This complaint is an as-applied claim challenging the application of Burlington’s charter amendment to school board and school budget elections of the sort left open in *Ferry*. The charter amendment authorizes noncitizen voting in these elections, even though school budget issues clearly have statewide implications and are thus reserved for United States citizens alone.

D. Plaintiffs have suffered redressable harm caused by Defendant.

36. The charter change permitting noncitizen voting has changed the qualifications for voters as defined in § 42 and the individual Plaintiffs are voters “within the voter pool for which those qualifications have been changed.” *Ferry*, 2023 VT 4, ¶ 21. Both individual Plaintiffs are registered voters who have voted and intend to continue voting in Burlington elections. Those votes will be diluted by noncitizen votes made possible by Burlington’s charter change.

COUNT ONE

Violation of VERMONT CONST. § 42

37. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

38. Chapter II, Section 42 of Vermont’s Constitution prescribes “voter’s qualifications” in Vermont. It states in relevant part, “Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take [the voter’s] oath or affirmation, shall be entitled to all the privileges of a voter of this state. . . .”

39. Section 42 requires voters to be United States Citizens to vote in elections that implicate freeman issues, even if those elections are held by a municipality. *Ferry*, 2023 VT 4, ¶¶ 48-50.

40. In direct contravention to the Vermont Constitution, 24 App. V.S.A. ch. 3, § 8a permits “noncitizens” to vote in city meetings and municipal elections that determine the City of Burlington’s annual school budget. Burlington’s education budgets are created by locally-elected school board officials (the Board of School Commissioners) and ratified through City-wide elections. After a budget is ratified by Burlington voters, it is funded through the State Education Fund. 16 V.S.A. Chapter 133. Because elections that determine the allocation of State funds necessarily involve statewide, or “freemen,” issues, they are governed by Section 42 and are reserved for Vermont residents who are United States citizens.

41. 24 App. V.S.A. ch. 3, § 8a’s authorization of noncitizen voting is thus unconstitutional, void, and invalid as applied to any future election that chooses school board members or determines education funding for the City of Burlington.

PRAYER FOR RELIEF

42. WHEREFORE, Plaintiffs pray for an order and judgment:

a. Declaring that 24 App. V.S.A. ch. 3, § 8a’s application to any election that determines school board members or education funding for the City of Burlington violates Chapter II, § 42 of the Vermont Constitution and is thus devoid of any legal force or effect;

b. Enjoining Defendant and its employees and agents from enforcing 24 App. V.S.A. ch. 3, § 8a’s application to any election that determines school board members or education funding for the City of Burlington, including enrollment of any noncitizen voters or allowance of noncitizen voting in such elections in the future;

c. Awarding Plaintiffs reasonable costs and attorneys' fees incurred in bringing this action; and

d. Granting such other and further relief as this Court deems just and proper.

Dated this 18th day of June 2024.

Respectfully submitted,

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*Pro Hac Vice applications forthcoming.