

In the Supreme Court of The State of Vermont
Docket No. 25-AP-072

MICHELE MORIN,
KAREN ROWELL,

Plaintiffs-Appellants,

v.

THE CITY OF BURLINGTON, VERMONT,

Defendant-Appellee.

Appeal From
Superior Court, Chittenden Unit
Docket No. 24-CV-02403

BRIEF OF APPELLANT

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ISSUE PRESENTED

The City of Burlington amended its charter to allow noncitizens to vote in locally administered elections, including referendums on local school budgets and elections of the school board commissioners who create them. Under Vermont law, school budgets are determined locally but funded by the State, such that “local town votes ... have some statewide impact on the level of funding for public education.” *Stowe Citizens for Responsible Gov’t v. State*, 169 Vt. 559, 730 A.2d 573, 576 (Vt. 1999).

Does Burlington’s charter amendment violate Section 42 of the Vermont Constitution when applied to education elections, because such elections are “municipal in name, but traditionally the province of ‘freemen’ in substance”? *Ferry v. City of Montpelier*, 2023 VT 4, ¶50, 217 Vt. 450, 296 A.3d 749.

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INTRODUCTION

Section 42 of the Vermont Constitution prohibits noncitizens from voting on “any matter that concerns the State of Vermont.” In 2023, the City of Burlington extended noncitizen voting to a wide range of elections, including school board and school budget elections. Those school elections dictate statewide appropriations. “[B]ecause the State now funds the entirety of school district budgets,” voters in school elections impose tax obligations on Vermonters everywhere. *Boyd v. State*, 2022 VT 12, ¶32, 216 Vt. 272, 275 A.3d 155. These elections thus “concer[n] the State of Vermont” and may not include noncitizens.

In *Ferry v. City of Montpelier*, this Court held that Section 42 does not apply to “‘local’ elections,” or elections concerning “‘municipal affairs,” but it emphasized that a “‘vote municipal in name, but traditionally the province of ‘freemen’ in substance, could not avoid the requirements of § 42.” 2023 VT 4, ¶50, 217 Vt. 450, 275 A.3d 155. “Because plaintiffs [brought] a facial challenge” in *Ferry*, the Court declined to “define the line between ‘local’ or ‘municipal’ and ‘statewide’ issues in [its] opinion.” *Id.* Plaintiffs’ claim here is far narrower: that the Burlington noncitizen voting law’s application to school board and school budget elections is unconstitutional under Section 42. Resolving Plaintiffs’ claim thus requires this Court to delineate between statewide and local issues for purposes of Section 42.

Whatever standard this Court adopts, matters of education funding cross the threshold from local to statewide. This Court long ago recognized that “local town votes” on education budgets have “some statewide impact on the level of funding for public education.” *Stowe Citizens for Responsible Gov’t v. State*, 169 Vt. 559, 730 A.2d 573, 576 (1999). Whether and how towns “control their overall spending” when setting “school district budgets” directly influences the solvency of the State Education Fund and, in turn, the tax burdens on other localities. *Id.* at 575-76. Since that time, the impact of those local votes has grown significantly. In short, education funding is the definition of a statewide concern, even though district budgets are ratified locally.

The superior court’s only response to all this—and the City’s and State’s only response as well—is to reiterate this Court’s holding in *Ferry* that distinctions between state and local elections are “categorical” and insist that all elections that carry the “local” label are therefore exempt from Section 42’s requirements. *E.g.*, AI21-23; AI135-37. That cannot be right, as it fails to

address the relevant issue in this case: how is an election categorized as local or statewide in the first place? If this Court in *Ferry* had, in fact, held that any election affixed with a “municipal” label is outside the reach of Section 42, then it would not have distinguished the facial challenge in that case from as-applied challenges. *See Ferry*, 2023 VT 4, ¶50. Indeed, were this Court’s holding as formulaic as the City and State suggest, then there would have been no “line” to “draw”—that an election was organized municipally would have been sufficient on its own. *Id.* This Court long ago rejected that premise in *Martin v. Fullam*, 90 Vt. 163 (1916).

Because education elections carry statewide implications, Section 42’s citizenship requirement applies. The superior court erred in holding otherwise, and this Court should reverse.

STATEMENT OF THE CASE

I. Section 42 of the Vermont Constitution forbids noncitizen voting on statewide matters.

“Section 42 is as old as Vermont.” *Ferry*, 2023 VT 4, ¶28. Since 1777, the Vermont Constitution has set qualifications for voting in Vermont. 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,” including voting privileges. Vt. Const. of 1777, ch. II, §6. The 1793 constitution contained the same qualifications provision. *See* Vt. Const. of 1793, ch. II, §21.

Soon, Vermonters added the explicit citizenship requirement that remains the law today. In 1827, the Vermont Council of Censors 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). The committee report recommended that the State amend the qualifications provision—then Section 21, now Section 42—because the existing text left unresolved whether noncitizens could vote. *See* *Journal* at 21. On the one hand, a “literal construction” would “extend the right of suffrage indiscriminately to all who, under any circumstances, should

have resided in the state one full year,” even if they were noncitizens. *Id.* at 21-22. On the other hand, a “different and more liberal mode of construction,” would “exclude all who do not, in the strictest sense, owe allegiance to the general government of our country.” *Id.* The latter interpretation that excluded noncitizens was “more correct,” but the committee recommended an amendment to eliminate any doubt. *Id.* Any possibility of noncitizen voting, the committee said, would be a “danger,” a “manifest impropriety,” and “repugnan[t] to the provisions of the constitution of the United States.” *Id.* The committee recognized “the gross impropriety of admitting those to participate in the elective franchise, who owe no allegiance to the country.” *Id.* at 46.

Vermonters agreed. At the Constitutional Convention of 1828, Vermont amended its constitution to specify that eligible voters must be 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). The term “freeman” in this context meant “voter” and was used in place of “voter” until recently. *See Ferry*, 2023 VT 4, ¶32 (“‘voter’ in §42 is synonymous with ‘freeman’”).

Vermonters have kept this citizenship requirement in force to the present day. 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.

Vt. Const. ch. II, §42. This 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. Since 1869, Vermont has also prescribed the same citizenship qualifications by statute as are set forth in the Constitution. *See* 17 V.S.A. §2103(14).

II. This Court recently confirmed that noncitizens cannot vote in municipal elections that concern statewide matters in substance.

In June 2021, the cities of Montpelier and Winooski amended their charters to legalize noncitizen voting. *See* 24 App. V.S.A. §5.1501(a); 24 App. V.S.A. §19.202(b). Montpelier’s law limited noncitizen voting to only certain city offices, while Winooski’s allowed noncitizens to also vote in school board and school budget elections.

In September 2021, Vermont voters challenged the Montpelier and Winooski noncitizen voting laws. Those voters brought exclusively *facial* challenges. They argued that Section 42 foreclosed all noncitizen voting in Vermont, no matter the election or office. In both cases, the superior court held that the voter plaintiffs had standing, but it dismissed their facial challenges. *See Ferry v. Montpelier*, 2022 WL 1242688 (Vt. Super. April 1, 2022); *Weston v. Winooski*, No. 21-CV-02965, Decision on Mot. to Dismiss (Vt. Super. Sept. 1, 2022). The superior courts held that Section 42 does not facially restrict municipal voting to U.S. citizens. *Id.*

The Montpelier voters appealed to this Court,¹ which held that the voters had standing and affirmed on the merits because the voters’ claims were facial rather than as-applied. *See Ferry*, 2023 VT 4, ¶43 (“The scope of plaintiffs’ challenge to the statute is important here.”). The Court emphasized that “[i]n a facial challenge, a litigant argues that no set of circumstances exists under which a statute or regulation could be valid” *Id.* It then held that Section 42 does not categorically bar noncitizens from voting in purely municipal elections because some municipal elections do not involve statewide matters. *See id.*, ¶49 (“[W]e do not agree with plaintiffs that *all* municipal affairs today are essentially ‘freemen’s’ affairs.” (emphasis added)). Thus, the plaintiffs’ facial challenge alleging that noncitizen voting was unconstitutional in *all circumstances* could not succeed. *See id.* (“We are simply not convinced that

¹ The plaintiffs in *Weston v. Winooski* also appealed the superior court’s dismissal of their facial claim but voluntarily dismissed their appeal after this Court’s decision in *Ferry*. *See* IA133.

there are no more ‘local’ elections as contemplated in the Vermont Constitution when §42 was first drafted.”).

The Court reached its conclusion after a thorough review of its precedents in *Woodcock v. Bolster*, 35 Vt. 632 (1863), and subsequent cases like *Martin v. Fullam*, 90 Vt. 163 (1916). It distinguished *Woodcock*, where an election for a town office did not implicate Section 42, from *Martin*, where a local vote concerning the implementation date of a new state law was effectively a statewide election because the outcome of the referendum was determined by aggregating the tallies from each town. *Ferry*, 2023 VT 4, ¶¶44–49. The Court acknowledged that “some of the distinctions between statewide and local elections that were present” when *Woodcock* was decided “no longer exist,” but it held that the constitutional principle espoused in that case was not obsolete. *Id.*, ¶47 (“this does not undermine the conclusion that the Constitution treats voter qualifications for statewide elections differently from municipal elections under § 42”). In so holding, the Court stated that “[t]he distinction drawn” between municipal and statewide elections in *Woodcock* and its progeny “is categorical” and does not exist on a “sliding scale” such that “any given election” could shift from the former category to the latter category any given year. *Id.*, ¶36.

The Court in *Ferry* did not hold, however, that any election that is “local” in form—i.e., conducted by local authorities and decided only by residents of a specific locality—is automatically outside the scope of Section 42. The Court stated that “whether a specific vote is properly municipal or statewide” was “a different legal question” that was “not presented in [the] case” due to the facial nature of plaintiffs’ claims. *Id.*, ¶50. It emphasized, “[b]ecause plaintiffs bring a facial challenge, we need not define the line between ‘local’ or ‘municipal’ and ‘statewide’ issues in this opinion.” *Id.* Most importantly, the Court stressed that its opinion 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.* (emphasis added). In other words, an as-applied challenge to a municipal election would succeed if that election was substantively the province of freemen, or a statewide matter. *Id.*

III. Burlington allows noncitizen voting in municipal elections, including school board and school budget elections.

In March 2023, the City approved an amendment to its charter that gives voting privileges to those who are “not ... citizen[s] of the United

States.” The privilege applies to elections for the “City of Burlington or Burlington School District,” including school board and school budget elections. In May, the amendment was approved by the General Assembly. 24 App. V.S.A. ch. 3, §8a. Governor Scott vetoed the amendment. The veto was overridden on June 20, 2023.

The City’s charter statute now includes the following language giving voting rights to noncitizens:

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 (emphases added). The law defines a “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). It directs the Chief Administrative Officer to “identif[y] on the voter checklist those legal resident voters who are not citizens.” *Id.* §8a(e).

The City’s noncitizen voting law requires noncitizens to take the “Voter’s oath” to qualify to vote in City elections. *Id.* §8a; *see also id.* §7 (City voters required to take “the Freeman’s (Voter’s) oath”). The Voter’s oath, as defined by Vermont law, “means the oath prescribed in Chapter II, §42 of the Constitution of Vermont.” 17 V.S.A. §2103(14). It requires voters to pledge to vote in the best interest of “the State of Vermont.” But the City has altered the oath for noncitizens to instead require that they pledge to vote in the *City’s* best interests rather than those of Vermont:

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.

City of Burlington All Legal Resident Voter Registration Form, perma.cc/PB6K-F4Y9 (emphasis added).

This law gives noncitizens the privilege of voting on all matters on the municipal ballot, including statewide matters. As relevant here, the law gives noncitizens the privilege of voting for school board members and on school budgets. *See* 24 App. V.S.A. ch. 3, §8a. School board members are “responsible for the preparation and adoption of” the City’s annual education budget, which is then approved by a vote among the City’s voters. 24 App. V.S.A. ch. 3, §§4, 164, 168.

IV. Municipal school board and school budget elections are statewide in substance because they directly affect the pocketbooks of residents throughout the state.

Voting on municipal school budgets—indirectly through school board elections and directly in the approval of the boards’ budgets—concerns the entire State of Vermont. For its first hundred years, Vermont schools were locally funded, meaning each municipality was responsible for funding its own schools, without imposing legal obligations on the rest of the State. *See* Sautter, *Equity and History; Vermont’s Education Revolution of the Early 1890s*, Vermont History 3 (Vol. 76, No. 1, 2008), bit.ly/3K17nme. After a brief experiment in partial statewide funding from 1890 to 1931, educational costs “revert[ed] to municipal property taxes.” *Id.* at 2.

But in 1997, the Vermont Supreme Court’s decision in *Brigham v. State* again made school budgets a statewide matter. *See Brigham v. State*, 166 Vt. 246, 692 A.2d 384 (1997). In response to *Brigham*, the General Assembly created a new system that redistributed responsibility for education funding to *all* Vermonters through a statewide Education Fund and other statewide sources of revenue. *See* 16 V.S.A. Chapter 133. School budgets are now voted on locally but paid for out of statewide property taxes and other statewide tax revenues. *See* Perrault, *Introduction to Vermont’s Education Finance System*, Vermont Legislative Joint Fiscal Office, at 8 (Jan. 2019), bit.ly/3HS2sBW. Therefore, while localities like the City decide their own education budgets in their municipal elections, those elections determine obligations for the entire State. *Id.* at 5, 11.

The modern school funding system spreads burdens of local budget elections to taxpayers throughout the State. Perrault, *supra*, at 5, 11. The locally approved budgets are fed into a software system to set the homestead and non-homestead tax rates for Vermonters. Using the locally approved budgets, “the Legislature sets a homestead education property yield and a non-homestead tax rate to fully fund all the locally voted school budgets across the

state.” *Property Valuation and Review*, 2024 Annual Report, at 28 (Jan. 16, 2024), perma.cc/9JFT-G9XF; *see also* 16 V.S.A. §4001(6). Therefore, a local budget vote imposes tax obligations on homestead and non-homestead taxpayers throughout Vermont.

After local voters approve school budgets, those budgets are used to set the statewide “education yields.” Education yields are the amount of per weighted pupil spending that the statewide Education Fund can support with a uniform tax rate on homestead value and income. Richter, *Education Finance in Vermont*, Vermont Legislative Joint Fiscal Office, at 18, 20 (Jan. 11, 2023), perma.cc/J5J3-58RV. In fiscal year 2022, the “property yield” was \$11,317 per weighted pupil and the “income yield” was \$13,770. *Id.* at 13-22. If a locality votes to spend more, it will result in an increase from the default tax rates of 1% on homestead value and 2% on income. *Id.*

The yield amounts are important because any school district spending more than these amounts must pay proportionately more in taxes. The yields themselves, however, are a product of all the approved school budgets subtracted from revenue sources. Therefore, a lower yield caused by increased education spending means higher property taxes in the whole State. In other words, changes in approved school budgets result in changes in the education yields, which directly impact homestead property taxes for all Vermonters. Non-homestead taxpayers are also directly impacted by approved school budgets because every year “[t]he percent change in the *average* tax bill on nonresidential [non-homestead] and homestead taxpayers is the same.” Perrault, *supra*, at 7 (emphasis added); Bolio, *FY2025 Education Tax Rate Letter*, Vt. Dep’t of Taxes, at 1 (Nov. 30, 2024), perma.cc/6P2V-89F3 (citing 32 V.S.A. §5402b). So, if the average tax rate of homestead taxpayers goes up ten percent (based on approved budgets), then the non-homestead tax rate will also rise ten percent.

The State also pays for locally-voted school budgets out of other sources. Richter, *Education Finance in Vermont*, Vermont Legislative Joint Fiscal Office, at 11 (Jan. 11, 2023), perma.cc/J5J3-58RV. The funding system defrays increasing local education costs by using large amounts of State funding. Homestead taxes pay for about 25% of school budgets, but non-homestead property taxes pay for about 40%, and non-property-tax sources account for about 35%. *Id.* Those sources also go into the formula that determines the education yield.

The City's recent budgets underscore the statewide implications of school elections. In 2023, the City voted for a school budget that forced Vermont taxpayers to pay the City about \$94.4 million *more* than the State collected from the City's homestead property taxes. *See 2023 Annual Report, supra*, at 14, 16. In fact, the City's school budget for 2023 increased per equalized student spending by 13%, but *decreased* taxes on local voters by 7% or 8%, depending on taxpayer. *See FY2023 Budget Development Update, supra*, at 9, 11. As the City's School Board explained, this increase in spending was absorbed by the State: "The Education Fund has a large surplus, which means that more Education Spending per Equalized Pupil can be supported before tax rates need to increase." *Id.* at 13.

Several other aspects of the modern system illustrate how local school elections have become intertwined with statewide matters. Local school budget votes approve the receipt of hundreds of millions of dollars in "categorical aid," which is then paid for by the State. Categorical aid is designed to lessen the impact of school budget increases within the municipality, further offloading the burden to the rest of the State. "State categorical aid increases statewide education spending," but "lowers homestead property tax rates in school districts that receive the aid." Richter, *Introduction into Categorical Aid and Taking Money off the Top of the Education Fund*, Vermont Legislative Joint Fiscal Office, at 13 (March 29, 2022), perma.cc/64AH-C5C8. Categorical aid comes "off the top of the Education Fund," which means its cost "is spread out across all property taxpayers in the State." *Id.*

The State also offsets local spending with property tax credits and other subsidies designed to spread the burdens from local school budget votes statewide. About "70% of homeowners are eligible for an income-based adjustment to the homestead property tax rate." Perrault, *supra*, at 13, 15; 32 V.S.A. §6066. The State provides "additional property tax relief for households with incomes below \$47,000," which protects them from increased taxes due to "additional school district spending." Burlington School District, *FY2023 Budget Development Update*, at 9 (Jan. 18, 2022), perma.cc/QQ9L-MMFG. In 2023, the State gave City residents \$8.1 million in education property tax credits out of state funds. *See 2023-2024 Total Property Tax Credits*, Vt. Dep't of Taxes, at 11 (Dec. 2023), perma.cc/NG4S-SWMJ. Statewide, education property tax credits totaled \$154 million that year. *Property Valuation and Review, 2024 supra*, at 27. Likewise, the State gives low-

income renters annual credits of up to \$2,500 to reimburse them for the estimated increase in rent caused by the State’s education tax. 32 V.S.A. §6066(b). In 2022, renter credits to the City exceeded \$1 million and statewide credits totaled \$6.3 million. *See* 2022 Renter Credits, Vt. Dep’t of Taxes, at 6, 9 (Dec. 2023), perma.cc/5TU5-M4GN.

And local school budget elections affect the State’s pension expenditures. City voters dictate their teachers’ pensions, but all Vermonters pay. In approving budgets, City voters set teacher salaries for their school districts. These votes dictate the State’s post-retirement pension obligations to those teachers, because pensions are based on the average salary of a teacher’s three highest consecutive fiscal years. 16 V.S.A. §§1931(4)(A), 1937(b)(1). The State pays those pension obligations—in the hundreds of millions of dollars—out of the General Fund and the Education Fund. *See* Vt. Leg. Joint Fiscal Office, *Preliminary Education Fund Outlook for FY2022*, Line 1, bit.ly/32X4CRU; 16 V.S.A. §§1944(b), (c), (d). In 2022, the State paid \$187 million from the General Fund and \$37 million from the Education Fund to teacher pensions. *See id.*; Retired Teachers’ Health Care and Medical Benefit Fund, H-0439, at 64-65, bit.ly/3eWu9wZ.

Future elections will have even stronger statewide implications. After “several years” of lobbying, the City’s school board convinced the legislature to pass a law that disproportionately benefits it at the expense of statewide taxpayers. *See* 2023 *Annual Report*, *supra*, at 14. “In 2022, the Vermont legislature passed Act 127 to change how schools are funded, which will allow [Burlington School District] to offer more services to our students while protecting [Burlington] taxpayers from unsustainable cost increases.” *Id.* The new system, like its predecessor, allows for different pupil weighting depending on the perceived difficulty in educating children from different backgrounds. “Pupil weights are relevant to all school districts and homestead property taxpayers because they directly influence a school district’s locally adjusted homestead property tax rate.” *Vermont Legislative Joint Fiscal Office, FAQs of Pupil Weights in Vermont’s Education Funding Formula and Act 127*, at 1 (Nov. 16, 2023), perma.cc/BS8C-QD7N. The new system will result in a roughly tenfold increase in “phantom” students—pupils included in the per-pupil spending calculation who do not actually exist—for the City. *See School District Spending Per Pupil – FY2023*, Vt. Agency of Ed., (Oct. 31, 2023), perma.cc/DP66-DZZC. An increased pupil count means lower per pupil spending and lower homestead taxes. Under this new system, the City was

expected to add 3,360 phantom students (up from 383) to its 3,438 actual students, which will result in a 9 percent increase in tax capacity for the same tax rate. *See School Finance FY24 to FY25 District Ratio to Statewide Pupils*, Vt. Agency of Ed., at 1, perma.cc/UTC3-XADT; *Vermont Average Daily Membership (ADM) Report for 2023-2024 (ADM-25) by Resident District*, line 37 (May 1, 2024), perma.cc/M2ZH-9GMS.

That new extra spending “capacity” is also paid for by the rest of the State. For fiscal year 2025, the Burlington School Board estimated that under the new system, “the increased support from the state saved [Burlington taxpayers] between \$7-8 million.” *2023 Annual Report*, *supra*, at 14. This increased support was vital to Burlington and the Board conceded that the new law “played a major role” in its budget development process, allowing City voters to approve more spending in their school elections going forward. *Burlington Voters Approve FY '25 Budget*, Burlington School District, (March 5, 2024), perma.cc/S3MU-U7NS. As the Burlington School Board Chair explained, without the increased obligations on the rest of the State, “there is no way Burlington could have afforded next year’s budget.” *Id.*

In sum, any increase in local education spending is not borne exclusively, or even primarily, by local residents—a significant portion of that burden is offloaded to residents throughout the State.

V. Proceedings below.

On June 18, 2024, Plaintiffs, two United States citizens who reside in Burlington, filed this lawsuit to challenge the application of the City’s law authorizing noncitizens to vote in school board and school budget elections. *See* AI144-55. Plaintiffs’ complaint alleged that school board and school budget decisions are statewide matters because they decide statewide appropriations, which are paid for by all Vermonters. Unlike the plaintiffs in *Ferry*, Plaintiffs here did not bring a facial challenge to the noncitizen voting law. That is, Plaintiffs did not argue that there are no circumstances under which noncitizens can validly cast ballots in Burlington elections. AI154-55; *cf.* *Ferry*, 2023 VT 4, ¶43 (“The scope of plaintiffs’ challenge is important here.”). Rather, Plaintiffs argued that education matters are unique among locally-administered elections in Vermont in that ballots cast locally have a substantial

and direct impact on taxes imposed on other towns across the State and on the State's education expenditures as a whole. AI154, ¶¶40-41.

The City moved to dismiss. It acknowledged that in “voting on a local school budget,” noncitizen voters in Burlington are “setting a maximum amount of educational funding that they may receive from the state,” which is a matter that is not “local in nature.” AI139. Even so, the City argued that noncitizen school voting does not violate Section 42's ban on noncitizens voting in statewide matters because “the distinction between state and local elections for purposes of Section 42 is categorical.” AI131, 136-37. It also argued that applying Section 42 would violate the Equal Protection Clause of the federal constitution. AI139-42. And the City also asked for “deference” to its inferior charter amendment over the text of Section 42. AI134.

The State intervened to defend the charter amendment and made similar arguments. It said that “Section 42 applies to all statewide elections; it does not apply to all issues of statewide concern.” AI42. In fact, the State proposed that for any election that was “municipal,” no matter what issues it involved, “§42 does not apply.” AI43. *But see Ferry*, 2023 VT 4, ¶50 (“[a] vote municipal in name, but traditionally the province of ‘freemen’ in substance, could not avoid the requirements of §42”). It distinguished *Martin* on the grounds that there, “the Secretary of State administered the vote” and “the voters in every town and city in Vermont voted on the measure.” AI43.

The superior court granted the City's motion to dismiss without oral argument. The court acknowledged that school elections determine budgets that are funded by “property taxes, aggregated and distributed by the State.” AI19. It agreed that “the State is deeply involved in how the operations of school districts are funded” and “at least to some extent, what happens with the budget in one district has some impact on resource availability and usage everywhere.” AI19 n.2 It deemed it “unnecessary to detail and deconstruct the entire funding system,” including the categorical aid and teacher pensions provisions detailed above. *Id.* That was because, in its opinion, notwithstanding the many statewide impacts, “[t]he fundamental distinction of consequence here is between local and statewide elections, not issues.” AI21. It essentially adopted the formalistic argument advanced by the City and the State, with no effort to reconcile that formalism with this Court's holding that whether Section 42 applies depends *not* on whether the election is “‘municipal’ in name,” but on “the line between ‘local’ or ‘municipal’ and ‘statewide’ *issues*.” *Ferry*, 2023 VT 4, ¶50 (emphasis added). It did not deny that voters may

determine extra-municipal matters in school elections, but dismissed that based on its conclusion that such voters' power over those statewide matters is "indirect," AI23, a distinction that even if it had factual support, finds no basis in this Court's opinion in *Ferry*. It further noted that school elections include local matters too, like the "distinctly local priorities" that the (admittedly statewide) money will be spent on. AI23. But it made no effort to explain why that conclusion should affect the analysis.

Plaintiffs timely appealed. AI15.

SUMMARY OF THE ARGUMENT

This Court made clear in *Ferry* that certain elections are considered "statewide" for purposes of Section 42, even though they are conducted through local jurisdictions. That is the case here. This Court has already recognized that "local town votes" have a "statewide impact" on Vermont's education budget. *Stowe*, 730 A.2d at 576. Locally approved education budgets are paid for with state appropriations, dictate state taxpayer burdens, and are systematically intertwined with the state government. Although *Ferry* did not announce a test "to determine whether a specific vote is properly municipal or statewide," it is hard to conceive of a municipal vote that could ever be "the province of 'freemen' in substance" if the hundreds of millions of dollars in statewide appropriations implicated here do not trigger Section 42. *Ferry*, 2023 VT 4, ¶50.

The superior court attempted to reformulate *Ferry* to mean that an election eludes the Constitution just because it is administered by a municipal government. *See* IA21; *see also* IA55-56 (City advancing identical position); IA42 (State brief advancing same). But that revisionist effort is incompatible with a straightforward reading of this Court's opinion. True, the Court held in *Ferry* that "§42 does not apply to municipal elections," and that the distinction between municipal elections and statewide elections is "categorical" and not determined on a "sliding scale." 2023 VT 4, ¶36. If that were all the Court said on the matter, then the State's position might hold water. But the Court's explanation did not end there, and the place-setting language quoted by the City and State cannot be read in isolation. The rest of the Court's opinion clarifies that, although Section 42 applies only to statewide elections and not to municipal elections, a particular election does not belong to the latter "category" based on geographic scope alone. To the contrary, the Court pointedly noted that elections that are "municipal in name, but traditionally

the province of ‘freemen’ in substance” cannot “avoid the requirements of § 42.” *Ferry*, 2023 VT 4, ¶50. That is exactly what Plaintiffs claim here.

Properly understood, the Court’s decision in *Ferry* merely held that the Constitution recognizes two “categories” of elections: statewide and municipal. Each question put to the voters is either one or the other. But it did not state that any election held by a municipality is “categorically” beyond the reach of Section 42, or that elections affixed with the “municipal” label are exempt from constitutional scrutiny. Rather, it held that the distinction between the two “categories” of elections is one of substance and not form. That holding is consistent with the Court’s previous opinions in *Martin* and *Slayton v. Town of Randolph*, 108 Vt. 288, 187 A. 383 (1936). The Court found it unnecessary “to define the line between ‘local’ or ‘municipal’ and ‘statewide’ issues” in *Ferry*, because that case involved a facial challenge, *Ferry*, 2023 VT 4, ¶50, but its opinions in *Martin* and *Slayton* point the way here. Just as the town vote in *Martin* was a freemen issue because the “result[s]” from each town were aggregated statewide, *see Slayton*, 108 Vt. at 290, local education votes are freemen issues because the budgets approved by voters—the “results” of each election—are aggregated into statewide appropriations. Stated another way, Plaintiffs do not claim that courts must evaluate each election on a case-by-case basis to determine a preponderant “municipal” or “statewide” character, but instead that matters of education funding have been “categorically” statewide since the legislative reforms enacted in the aftermath of *Brigham*.

This Court should reverse the superior court’s order dismissing Plaintiffs’ complaint and vacate Burlington’s charter amendment as it applies to local education elections.

STANDARD OF REVIEW

This Court reviews superior court rulings on motions to dismiss de novo. *Baldauf v. Vermont State Treasurer*, 2021 VT 29, ¶ 8 (2021). “A motion for failure to state a claim” under Vermont Rule of Civil Procedure 12(b)(6) “may not be granted unless it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” *Kaplan v. Morgan Stanley & Co.*, 2009 VT 78, ¶ 7 (cleaned up). In applying this standard, courts “assume that all factual allegations pleaded in the complaint are true, accept as true all reasonable inferences that may be derived from plaintiffs’ pleadings,

and assume that all contravening assertions in defendant’s pleadings are false.” *Mahoney v. Tara LLC*, 2011 VT 3, ¶7 (cleaned up).

ARGUMENT

I. Section 42 applies to municipal elections that concern statewide policy.

Section 42 conditions voting privileges on United States citizenship. Section 42 lists several qualifications an individual must satisfy to be entitled to voting privileges. Vt. Const. ch. II, §42. To be entitled to “the privileges of a voter of this state,” an applicant must be 18, have lived in the state for a statutory period, be of peaceable behavior, and be a “citizen of the United States.” *Id.* Section 42 applies to “any matter that concerns the State of Vermont.” *Id.* Therefore, under Section 42, an election on any matter that concerns the State of Vermont must be limited to “citizen[s].” *Id.*

Text and precedent establish that municipal elections like the City’s are subject to Section 42—and therefore may not include noncitizens—when they concern statewide matters. First, the plain meaning of the text of Section 42 indicates the Constitution’s requirements apply to nominally municipal elections that nevertheless concern statewide matters. To begin, Section 42 applies to elections about “*any* matter that *concerns* the State of Vermont.” Vt. Const. ch. II, §42 (emphasis added). “When read together with the qualifications for ‘freeman,’ ‘touching any matter that concerns the State of Vermont’ refers to matters concerning state government.” *Ferry*, 2023 VT 4, ¶41. The requirement applies to “any” such matter, not just those decided at the statewide level. *See United States v. Gonzales*, 520 U.S. 1, 5 (1997) (“Read naturally, the word ‘any’ has an expansive meaning.”). It also applies to any election “concerning state government,” not just elections for state office. *Ferry*, 2023 VT 4, ¶41. This Court’s decision in *Martin* is definitive on this point. There, the election in question did not decide a statewide office and was organized and overseen by local authorities, but it was still a freemen’s affair because town voters were deciding the effective date of a state law, which was a matter concerning state government. *See Slayton*, 108 Vt. at 290-91 (summarizing holding in *Martin*); *cf. Ferry*, 2023 VT 4, ¶50.

An election “concerns” “state government” in Vermont if it “affect[s] the interest of” that government. *Concern*, Webster’s Dictionary (1913); *see State v. Pellerin*, 2010 VT 26, ¶7, 187 Vt. 482, 996 A.2d 204 (“Whether looking at a constitutional or a statutory provision, our interpretation begins with the plain

language of that provision.”). Put simply, by its text, Section 42 forbids noncitizens from voting in any election that affects statewide governance, no matter what level of government organizes it. This straightforward interpretation is reinforced by the fact that Section 42 applies to everyone seeking to exercise “the privileges of a voter of this state.” Vt. Const. ch. II, §42. Naturally, a voter deciding a statewide issue in Vermont is acting as a “voter of this state.”

Second, this Court’s precedent likewise confirms that Section 42 applies to municipal elections that concern statewide matters. As discussed above, this Court rejected a *facial* challenge to a municipal noncitizen voting law in *Ferry* because the constitutionality of such a law turns on the nature of the individual election. The Court “[d]id not agree with plaintiffs that *all* municipal affairs today are essentially ‘freemen’s’ affairs.” *Ferry*, 2023 VT 4, ¶49 (emphasis added). But it emphasized that “[a] vote municipal in name, but traditionally the province of ‘freemen’ in substance, could not avoid the requirements of §42.” *Id.*, ¶50. In short, whether a nominally “local” election is subject to “the requirements of § 42” depends on whether the election determines a matter that crosses “the line between ‘local’ or ‘municipal’ and ‘statewide’ issues.” *Id.*

The City and State try to recast *Ferry* as holding that elections are outside the purview of the Constitution whenever they are held by municipal governments. IA135-37. But those revisionist efforts are incompatible with a straightforward reading of the language quoted above. The superior court accurately recognized that *Ferry* “did not attempt to craft a legal test for future as-applied challenges.” IA20. Still, the superior court adopted the rigid interpretation of *Ferry* advanced by the City and the State, without meaningfully grappling with the circular reasoning and inconsistencies of that position. Like the City and State, the superior court leaned heavily on the fact that, “[a]s *Ferry* explains, the expression ‘privileges of a voter of this state’ relates back to those privileges exercised by freemen, and case law establishes that freemen exercised the privilege to vote in statewide elections.” IA21.

As with the City and State, the superior court never seriously analyzed the logical follow-up question on which this case turns: when is an election properly considered a “freemen” or “statewide” election for purposes of Section 42? Instead, the superior court embraced a circular definition of sorts, stating that the “fundamental distinction of consequence here is between local and statewide elections, not issues.” IA21; *see also id.* (“There is still a

difference between municipal government and state government.”). But all parties agree that statewide and local elections are different, and that Section 42 applies to the former but not the latter. *See, e.g.*, IA33 (“two types of elections: statewide and municipal”).

At bottom, the effect of the superior court’s holding is that whether an election is municipal or statewide depends on how it is labeled. It did not attempt to reconcile that holding with this Court’s discussion of elections that are “municipal in name” only. *Ferry*, 2023 VT 4, ¶50. Nor did it explain how that approach could be consistent with *Martin*, which, as even the City acknowledges, involved a vote that was local in appearance but statewide in substance. *See* IA61.

In *Martin*, this Court held that a municipality could not modify the requirements of Section 42 (and its statutory parallels) for a municipal election because the vote concerned a “question[] of general interest.” 90 Vt. 163, 97 A. 442, 444 (1916).² The election at issue concerned the effective date of two statewide laws, so the municipality needed to abide by Section 42 even though the vote was taken by municipalities. *Id.* The Town of Brookfield’s attempt to modify Section 42’s requirements “raise[d] the grave question” of whether it could do so constitutionally. *Id.* As the Court explained in a follow-on case, “the vote [in *Martin*], though taken by towns, was in essence and effect a vote by the freemen of the state.” *Slayton v. Town of Randolph*, 108 Vt. 288 (1936); *see also Ferry*, 2023 VT 4, ¶36 (explaining that “to exercise the ‘privileges of a freeman in this State’ is to vote in statewide elections”). It was irrelevant that the election was conducted at the local level because it was “in essence and effect” not local. *Slayton*, 187 A. at 384.

The Court in *Slayton* made clear that *Martin* forbade municipalities from changing the constitutional requirements for any elections that were in “effect” statewide. 187 A. at 383. The Court held that a municipality could avoid those requirements for a municipal election only because “no general state policy is involved.” *Id.* at 384. The election decided only whether certain liquor rules would apply *within* the town. The vote would not change the legal obligations of Vermonters anywhere else, so “[t]he questions voted on are of local importance only.” *Id.* “The result in one town has no effect at all on any other town or the state at large.” *Id.* The municipality could set its own

² At the time, Section 42 was codified at Section 21. *See id.*

requirements for that individual election because it concerned “purely local policy.” *Id.*

Martin and *Slayton*, which both involved as-applied challenges, set forth the test for when a “municipal” election crosses the line into a statewide election. Although the City suggests that *Ferry* displaced this test, it did not. *Ferry* confirms the same general proposition that truly local elections are distinguishable from nominally municipal elections with “statewide” impact. *See Ferry*, 2023 VT 4, ¶50. That is why *Ferry* explained that something more than a “tenuous” extra-municipal impact is required to constitute a “statewide issue.” *Id.*, ¶49. That a “tenuous” connection is insufficient does not mean, as the City implies, that local affairs are immune from Section 42 and any connection to state affairs is irrelevant. In fact, the City conceded that elections can be local in form but statewide in substance, “acknowledg[ing] that such a category of elections exists.” *See* IA61 (describing municipal vote taken in *Martin* as a freemen issue because election involved a matter of statewide concern and results were aggregated statewide).

Even if the City’s primary position that Section 42 applies “on a categorical basis only to state elections” can survive the concession above, it would necessarily foreclose *all* as-applied challenges to municipal elections under Section 42. *See* IA55-60. But *Ferry* held otherwise. “A vote municipal in name, but traditionally the province of ‘freemen’ in substance, could not avoid the requirements of §42.” *Ferry*, 2023 VT 4, ¶50. The voters here satisfy that test because they allege that the City’s law, as applied to school elections, authorizes noncitizen voting in elections that are municipal in name but decide statewide appropriations and therefore are “the province of ‘freemen’ in substance.” *Id.*

II. The challenged school elections concern statewide policy because they decide statewide appropriations.

Modern school board and school budget elections decide statewide appropriations, impose statewide tax obligations, and are systematically intertwined with the state government. They therefore concern statewide matters and are subject to Section 42.

The statewide nature of modern school board and school budget elections manifests in many ways. School elections used to decide only municipal tax burdens. *Sautter*, *supra*. But *Brigham* and the legislature made school budgets a statewide matter. *See* 166 Vt. 246, 692 A.2d 384 (1997). Now,

school budgets are voted on locally, but they are paid for out of statewide property taxes and other statewide tax revenues. *See* 16 V.S.A. Chapter 133; Perrault, *supra*, at 8. Thus, when localities like Burlington decide their own education budgets in their own elections, they directly affect the financial obligations of the entire State. *Id.* at 5, 11; *Property Valuation and Review*, *supra*, at 28; *see also* 16 V.S.A. §4001(6).

The financial implications of the local education budgets established each year are far-reaching and substantial. The locally-approved budgets are used to “se[t] a homestead education property yield and a non-homestead tax rate to fully fund all the locally voted school budgets across the state.” *Property Valuation and Review*, *supra*; *see also* 16 V.S.A. §4001(6). After local voters approve school budgets, they are used to set the statewide education yields. Richter, *supra*, at 18. These approved budgets in turn increase or decrease both homestead and non-homestead taxes. *Id.*; Perrault, *supra*, at 7 (citing 32 V.S.A. §5402b). And they draw on other statewide sources of funding, including non-property-tax sources. Richter, *supra*, at 11. As a result, when the City votes, the State pays. In 2023, the City voted for a school budget that forced Vermont taxpayers to pay the City about \$94.4 million *more* than the State collected from the City’s internal homestead property taxes. *See 2023 Annual Report*, *supra*, at 14, 16. The City’s school budget for 2023 increased per equalized student spending by 13%, but *decreased* taxes on local voters by 7% or 8%, depending on taxpayer. *See FY2023 Budget Development Update*, *supra*, at 9, 11.

Local school budget votes also impact the state education system in other ways. Those votes approve the receipt of “categorical aid,” which “increases statewide education spending,” but “lowers homestead property tax rates in school districts that receive the aid.” Richter, *supra*, at 13. Every year Vermont gives the City millions of dollars in categorical aid and hundreds of millions statewide. Vt. Leg. Joint Fiscal Office, *Preliminary Education Fund Outlook for FY2024*, at lines 11 to 18, bit.ly/3Modjry (statewide categorical aide to school districts totaled over \$330 million in FY2023. And the cost of that aid “is spread out across all property taxpayers in the State.” Richter, *supra*, at 13.

The State also defrays the burdens of local school spending with millions of dollars given annually to City and State residents in homestead property tax credits and other subsidies—including an income-based adjustment to the homestead property rate for 70% of homeowners, additional property tax relief for households below \$47,000, and renter credits

of up to \$2,500—all designed to externalize the cost of increasing local school budgets. *See* Perrault, *supra*, at 13, 15 (Jan. 2019); 32 V.S.A. §6066; FY2023 *Budget Development Update*, *supra*, at 9; 2023-2024 *Total Property Tax Credits*, *supra*, at 11; 32 V.S.A. §6066(b).

Additionally, when Burlington voters approve budgets, they approve teacher salaries, which dictate the State’s pension expenditures. 16 V.S.A. §§1931(4)(A), 1937(b)(1) (pensions based on salary). Statewide, those obligations total in the hundreds of millions of dollars and are paid for by all Vermonters out of the Education Fund and the General Fund. *See* Vt. Leg. Joint Fiscal Office, Preliminary Education Fund Outlook for FY2022, Line 1, bit.ly/32X4CRU; 16 V.S.A. §§1944(b), (c), (d).

Going forward, the impositions on the State will grow. The new method of calculating pupil weighting will give the City a ten times higher “phantom” pupil count, entitling it to 9 percent extra spending “capacity” paid for by the rest of the State. *School District Spending Per Pupil – FY2023*, *supra*; *School Finance FY24 to FY25 District Ratio to Statewide Pupils*, *supra*, at 1. For fiscal year 2025, “the increased support from the state saved [Burlington taxpayers] between \$7-8 million.” *Burlington School District, 2023 Annual Report*, *supra*, at 14. As the City’s School Board Chair explained, without the increased obligations on the rest of the State, “there is no way Burlington could have afforded next year’s budget.” *Burlington Voters Approve FY ’25 Budget*, *supra*.

The City contests none of this. In fact, the City concedes that “education taxes are aggregated at the state level and redistributed by the General Assembly to local school districts.” IA135. “Redistributed taxes” is another way of saying “redistributed burdens.” And it is the General Assembly’s redistribution of these education burdens that “ensure[s] substantial equality of educational opportunity throughout Vermont,” regardless of how rich or poor a town is. *Brigham*, 166 Vt. at 268.

Instead, the City argues that school elections were not “traditionally” statewide matters because they used to dictate only municipal taxes. IA139. But the City’s argument rests on an improper reading of *Ferry*. *Ferry* says that matters “traditionally the province of ‘freemen’ in substance, could not avoid the requirements of §42,” in the context of citation to *Slayton* and *Martin* at the end of that sentence. *Ferry*, 2023 VT 4, ¶50 (citing *Slayton*, 108 Vt. at 290-91, and *Martin*, 90 Vt. at 170). Of course, *Slayton* and *Martin* drew the line between statewide and local issues based on whether the election was “in essence and

effect a vote by the freemen of the state.” *Id.* (cleaned up). Statewide appropriations that impact statewide tax burdens *are* traditionally statewide matters, and school elections now decide statewide appropriations. Whether or not school elections were statewide matters when they were limited to dictating municipal taxes, they became statewide matters when they began to dictate statewide tax burdens. *See Brigham*, 166 Vt. at 264. And the City has not identified any statewide expenditure votes in Vermont history that were exempt from Section 42. Because post-*Brigham* school elections are “in substance” statewide expenditure votes—they dictate statewide budget allocations out of statewide funds—they fall within that traditional category and can “not avoid the requirements of §42.” *Ferry*, 2023 VT 4, ¶50.

The City argues that *Brigham* supports the idea that education funding is “traditionally” a local issue. IA139. The superior court accepted this assertion and repeated it uncritically. *See* IA23 (“School districts have always been considered municipal, rather than statewide, in nature. *Brigham* did not change that. It expressly distinguished between those education matters properly left to local control and how schools are funded.”). *Brigham*, however, made no such finding. In fact, it explicitly rejected the State’s claim that “the primary constitutional responsibility for education rests with the towns of Vermont.” *Brigham*, 166 Vt. at 264. *Brigham* held that this argument “fundamentally misunderstands the state’s constitutional responsibility ... for public education” and that it could not “abdicate the basic responsibility for education by passing it on to local governments, which are themselves creations of the state.” *Id.*

This Court recently reiterated that holding in *Athens Sch. Dist. v. Vt. State Bd. of Educ.*, when it rejected a school district’s argument that the legislature had no authority to close town schools without the district’s consent. 2020 VT 52, ¶51, 212 Vt. 455, 237 A.3d 671. It held that the district’s claim of primary authority “ignore[d] the ‘long and settled’ principle in Vermont that education is ‘a fundamental obligation of state government.’” *Id.*, ¶51 (summarizing *Brigham* as “rejecting contention ‘that the primary constitutional authority for education rests with the towns of Vermont” (emphasis original)). Simply put, *Brigham* confirms that education funding issues have been “traditionally the province of ‘freemen’” since the founding of Vermont. But even if it were true that education was once subject only to local control, that is simply no longer the case, and the “fundamental

distinction” is whether education elections are properly considered local or statewide in the post-*Brigham* era. IA21.

The City also claims that the results of “school board and school budget elections ... are not aggregated on a statewide basis like in *Martin*.” IA136. But that claim is false because the results of those budget votes (which are constructed and proposed by school boards) are aggregated into a single invoice that by law must be paid by the State. To the extent that the legislature has delegated education related votes—a state constitutional responsibility—to municipalities, it has also made those freemen votes by placing the responsibility to pay for the results of those votes at the state level.

Finally, the City argues (and the superior court agreed) that school board elections do not concern statewide matters because the school board does *some* local things. IA138; IA23. But setting the school budget is by far the most important task of the school board, and the board dictates state expenditures in the process. Those school board created budgets are rarely denied by voters and ultimately always approved. In 2024, City voters approved the School Board’s proposed \$120 million budget “[f]or the tenth straight year ... with more than 71 percent of all votes cast in favor.” *Burlington Voters Approve FY ’25 Budget*, *supra*. In addition, other school board tasks also concern statewide matters, like setting teacher compensation and lobbying the legislature for a new student weighting formula for state taxes. *See 2023 Annual Report*, *supra*, at 14, perma.cc/YDY8-8M5M. For those board tasks that are truly local, the City is free under *Ferry* to set up a separate board or vote for which non-citizens may be eligible to cast their votes.

School board and school budget elections therefore concern statewide matters. Indeed, the connection to state-level issues here is even stronger than the connection in *Martin*, which involved only a referendum on the effective date of two statutes. *Martin*, 90 Vt. at 168. The results of school-budget votes are totaled (like in *Martin*) and create a legal obligation for the State to pay for those budgets using State revenue. Therefore, City voters do decide State taxpayer expenditures, which are quintessentially state policy. Just as the town electors opining on statewide questions in *Martin* *involved* a statewide issue, so too is it a statewide issue when Burlington’s local electors select an education budget that will have a direct impact on financial matters that affect every Vermonter. Modern school elections “concer[n] the State of Vermont,” Vt. Const. ch. II, §42, involve “voter[s] of this state,” *id.*, and are paradigmatically “municipal in name, but traditionally the province of ‘freemen’ in substance.”

Ferry, 2023 VT 4, ¶50. Accordingly, these elections can “not avoid the requirements of §42,” including the citizenship requirement.

CONCLUSION

This Court should reverse the superior court’s order dismissing Plaintiffs’ complaint and remand with instructions to enter judgment for Plaintiffs.

DATED this 28th day of April 2025.

Respectfully submitted,

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**Pro Hac Vice*

Rule 32(c) Certification

I certify under Vermont Rules of Appellate Procedure 32(a)(1)(D) and 32(a)(4)(A)(i) that this brief was prepared using Microsoft Word, is proportionately spaced, has a typeface of 13 points, and contains 8,979 words, excluding those parts that can be excluded.

/s/ Brady C. Toensing