

STATE OF VERMONT

**SUPERIOR COURT**  
**Washington Unit**

**CIVIL DIVISION**  
**Docket No. \_\_\_\_\_**

**CHARLES FERRY,**  
**Montpelier, Vermont 05602,**

**MAURICE MARTINEAU,**  
**Montpelier, Vermont 05602,**

**DEBORAH BILLADO,**  
**Essex Junction, Vermont 05452,**

**CHRISTOPHER BRADLEY,**  
**Northfield, Vermont 05667,**

**THERESA BURKE,**  
**Castleton, Vermont 05735,**

**SUZANNE BUTTERFIELD,**  
**Stockbridge, Vermont 05746,**

**WENDY KALANGES,**  
**Essex Junction, Vermont 05452,**

**LINDA KIRKER,**  
**Georgia, Vermont 05478,**

**JAY SHEPARD,**  
**Essex Junction, Vermont 05452,**

**DOUGLAS WESTON,**  
**Winooski, Vermont 05404,**

**THE VERMONT REPUBLICAN PARTY,**  
**115 Industrial Avenue,**  
**Berlin, Vermont 05641, *and***

**THE REPUBLICAN NATIONAL COMMITTEE,**  
**310 First Street SE**  
**Washington, DC 20003,**

***Plaintiffs,***

v.

**THE CITY OF MONTPELIER, VERMONT,  
39 Main Street,  
Montpelier, Vermont 05602, and**

**JOHN ODUM, in his Official Capacity as  
the City Clerk for the City of Montpelier, Vermont,  
39 Main Street,  
Montpelier, Vermont 05602,**

*Defendants.*

### **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, who include Vermont voters residing in the City of Montpelier and other interested election participants, file this Complaint against the above-captioned Defendants. Plaintiffs seek declaratory and injunctive relief: a declaration that the authorization of noncitizen voting in city elections in the City of Montpelier is unconstitutional and void. A new charter statute for the City of Montpelier permits “noncitizen voters” to “register to vote in Montpelier City elections.” 24 App. V.S.A. §5.1501(a). That is contrary to the Vermont Constitution. Section 42 of the Vermont Constitution requires U.S. citizenship as a qualification of voting. Plaintiffs also seek an injunction compelling Defendants to refrain from enforcing the invalid voting scheme, including refraining from registering noncitizen voters in the City of Montpelier. In support of their Complaint against Defendants, 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 Defendants are located in Montpelier.

### **PARTIES**

3. Plaintiff Charles Ferry is a citizen of the United States and a resident and citizen of the State of Vermont. He is a registered voter in the city of Montpelier, Vermont and resides in Montpelier, Vermont.

4. Plaintiff Maurice Martineau is a citizen of the United States and a resident and citizen of the State of Vermont. He is a registered voter in the city of Montpelier, Vermont and resides in Montpelier, Vermont.

5. Plaintiff Deborah Billado is a citizen of the United States and a resident and citizen of the State of Vermont. She is a registered voter in the town of Essex, Vermont and resides in Essex Junction, Vermont.

6. Plaintiff Christopher Bradley is a citizen of the United States and a resident and citizen of the State of Vermont. He is a registered voter in the town of Northfield, Vermont and resides in Northfield, Vermont.

7. Plaintiff Theresa Burke is a citizen of the United States and a resident and citizen of the State of Vermont. She is a registered voter in the town of Castleton, Vermont and resides in Castleton, Vermont.

8. Plaintiff Suzanne Butterfield is a citizen of the United States and a resident and citizen of the State of Vermont. She is a registered voter in the town of Stockbridge, Vermont and resides in Stockbridge, Vermont.

9. Plaintiff Wendy Kalanges is a citizen of the United States and a resident and citizen of the State of Vermont. She is a registered voter in the town of Essex, Vermont and resides in Essex Junction, Vermont.

10. Plaintiff Linda Kirker is a citizen of the United States and a resident and citizen of the State of Vermont. She is a registered voter in the town of Georgia, Vermont and resides in Georgia, Vermont.

11. Plaintiff Jay Shepard is a citizen of the United States and a resident and citizen of the State of Vermont. He is a registered voter in the town of Essex, Vermont and resides in Essex Junction, Vermont.

12. Plaintiff Douglas Weston is a citizen of the United States and a resident and citizen of the State of Vermont. He is a registered voter in the city of Winooski, Vermont and resides in Winooski, Vermont.

13. Plaintiff Vermont Republican Party is a major political party in the State of Vermont. It works to promote Republican values and assists Republican candidates in obtaining election to federal, state, and local office.

14. Plaintiff Republican National Committee is a national political committee, as defined by 52 U.S.C. § 30101, that manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform.

15. Defendant City of Montpelier is a municipal entity formed and operating under the laws of Vermont.

16. Defendant John Odum is the City Clerk for the City of Montpelier, and in his official capacity has responsibility for maintaining voter lists and administering City elections.

## FACTUAL ALLEGATIONS

### A. Constitutional and Statutory Background.

17. 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.

18. 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.

19. Those qualifications changed in the early 19th century when citizenship was added as a qualification for gaining the privileges of a freeman.

20. In 1827, the Vermont Council of Censors<sup>1</sup> 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).

21. 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

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<sup>1</sup> The Council of Censors was an elected body that existed until 1870 to recommend constitutional changes and amendments.

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 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”).

22. 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.

23. Then at the Constitutional Convention of 1828, Vermont amended its constitution to specify that eligible voters must already be freemen or natural-born citizens or naturalized according to federal law. The amendment read, “No person, who is not already a freeman of this State, shall be entitled to exercise the privileges 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).

24. The citizenship requirement remains today.

25. Vermont's "voter's qualifications" are now set forth in section 42 of the Vermont Constitution. 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 following oath or affirmation, shall be entitled to all the privileges of a voter of this state. . . ."

26. 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 the primary election.

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

28. Today, 17 V.S.A. §2121(a) states, "any person may register to vote in the town of his or her residence in *any election* held in a political subdivision of this State," provided that he or she "(1) is a citizen of the United States; (2) is a resident of Vermont; (3) has taken the voter's oath; and (4) is 18 years of age or more." (Emphasis added.)

29. Elsewhere, the Vermont statutes echo the citizenship requirement. For example, Vermont provides for motor-voter registration at the Department of Motor Vehicles. The registration forms must include the applicant's citizenship status as a mandatory field on the application. 17 V.S.A. §2145a(b). The same form must include an attestation that the registrant is "a U.S. citizen." *Id.*, §2145a(b)(2)(B). Likewise, forms used by voter registration agencies must include citizenship as a mandatory field. *Id.*, §2145b(e)(4). Similarly, 17 V.S.A. §2146 authorizes town clerks and boards of civil authority to reject voter registration applications on the grounds that an applicant is not a U.S. citizen. Pursuant to the same statute, town clerks and board of civil

authority members may question an applicant under oath about his or her citizenship status. *Id.*, §2146(a).

**B. Early Distinctions Between Voting as a Constitutional Right and Voting as a Property Right.**

30. Historically, local elections governed matters of strictly local concern and impact. Voting in local elections was limited to property owners who paid local property taxes to the community, while voting in other elections was available to any “freeman.” Throughout the 19th century, only property owners could participate in town meetings “to protect and manage the common assets” of the community.<sup>2</sup> During this era, these distinctions differentiated between local issues with strictly local impact and freeman issues with statewide impact. *See Woodcock v. Bolster*, 35 Vt. 632, 639 (1863) (noting differences then existing between local and freeman issues to observe constitution did not restrain legislature’s ability to regulate town or school meetings) (dicta).

31. These distinctions between local and other elections, however, no longer exist. The town meeting still exists.<sup>3</sup> But today, the qualifications for “any election,” including local elections and town meetings, are the same. 17 V.S.A. §§2121(a), 2656. Vermont has universal suffrage for citizens who are 18 years or older in all elections; property ownership and poll taxes are no longer required; and many local elections are procedurally indistinguishable from state elections. Citizens register to vote, be it for federal, state-level or local elections, by way of a single form. 17 V.S.A. §2144a; *see Vermont Application for Addition to the Checklist*, <https://bit.ly/2VvZikl>. And the

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<sup>2</sup> *See* D. Richardson, *Memorandum to Burlington City Council Democratic Caucus re: Non-Citizen Voting Right Amendment 6* (Dec. 3, 2011), <https://bit.ly/3gMGvto>.

<sup>3</sup> *See* 17 V.S.A. § 2640; *Town Meeting & Local Elections*, Vt. Secretary of State, <https://bit.ly/3yqGdPk>.



names and addresses of registered voters are kept on a single “checklist.” 17 V.S.A. §2141 *et seq.*; *id.*, §§ 2656, 2705.

**C. Failed Attempts at Noncitizen Voting in the Modern Era.**

32. Amending city charters to allow noncitizens to vote has been considered—and rejected—before, because city officials concluded that such changes would likely be unconstitutional.

33. In 2011, counsel to the Burlington City Council Democratic Caucus evaluated the issue and determined that changing the city charter to allow noncitizens to vote in local elections would likely violate the Vermont Constitution and “would be open to challenge in ... the courts,” and “the weight of [the City’s] burden” of proof when defending the proposed changes “may be unbearable.”<sup>4</sup> Counsel opined that the qualifications clause of the Vermont Constitution, “by its plain language, appears to extend voting rights as a general proposition only to United States citizens.”<sup>5</sup>

34. Burlington revisited the issue of noncitizen voting in 2014, asking the City Attorney to provide a second opinion about the constitutionality of a potential law amending the City charter to allow noncitizens to participate in local elections. The Burlington City Attorney reached the same conclusion as the 2011 Democratic Caucus memo. She advised the city council that section 42 of the Vermont Constitution “essentially foreclosed the extension of the right [to vote] to [people] who do not meet [its] requirements.”<sup>6</sup>

35. Based on the City Attorney’s opinion, Burlington did not hold a referendum to amend the city charter to authorize noncitizen voting; instead, it included an “advisory question”

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<sup>4</sup> Richardson, *supra*, at 6.

<sup>5</sup> *Id.*

<sup>6</sup> E. Blackwood & G. Bergman, *Memorandum on Noncitizen Voting*, 3-4 (Sept. 30, 2014) <https://bit.ly/3zp469B>.

on the 2015 ballot that asked voters: “Shall the Vermont Constitution be amended to give residents of Vermont who are not currently citizens of the United States of America the right to vote in municipal and school elections?”<sup>7</sup> Burlington voters rejected the proposal.<sup>8</sup>

**D. Montpelier’s Charter is Changed to Allow Noncitizen Voting.**

36. In 2018, the Montpelier City Council placed a proposed amendment on the ballot to allow noncitizens to vote in local elections. Before voting on the proposal, the City Council reviewed the 2011 Burlington memo concluding that measures allowing noncitizens to vote would be “open to challenge in ... the courts,” and that “the weight of [the City’s] burden” of proof when defending the proposed changes “may be unbearable.”<sup>9</sup> Nevertheless, the City Council voted to approve the ballot measure.

37. Despite these constitutional concerns, the proposal was approved by voters on November 6, 2018.

38. On May 21, 2021, the General Assembly voted to approve the changes and to amend Montpelier’s city charter to authorize “noncitizen[s]” to “vote in Montpelier City elections.” The General Assembly’s authorization of the changes was vetoed by the Governor on June 1, 2021, but the General Assembly overrode the veto on June 24, 2021.

39. As enacted, the Montpelier charter statute states, “Notwithstanding 17 V.S.A. § 2121(a)(1), any person may register to vote in Montpelier City elections who on election day is a citizen of the United States or a legal resident of the United States, provided that person otherwise meets the qualifications of 17 V.S.A. chapter 43.” 24 App. V.S.A. §5.1501(a). The statute defines

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<sup>7</sup> A. Burbank, *Burlington to be polled on noncitizen voting*, Burlington Free Press (Oct. 21, 2014); <https://bit.ly/3AISfon>.

<sup>8</sup> Office of the Clerk/Treasurer, City of Burlington Declaration of Election Results for Public Questions on the Ballot for March 3, 2015 Annual City Election; <https://bit.ly/2Y5klvP>

<sup>9</sup> Montpelier City Council Agenda Item #18-104, *Non-citizen voting in city elections*, March 28, 2018, <https://bit.ly/3nURKnx>

“legal resident of the United States” as “any noncitizen who resides in the United States on a permanent or indefinite basis in compliance with federal immigration laws.” *Id.*, §5.1504(1). And it instructs the City Clerk to maintain a separate “City voter checklist” separate from other voter checklists. *Id.*, §5.1502.

40. Over the years, the state has become more and more involved in what previously were strictly local matters, erasing distinctions that previously existed between local and state affairs. Despite these statewide implications, the City of Montpelier has now expanded its electorate to include noncitizens who are prohibited by the Vermont Constitution from voting on such matters.

**COUNT ONE**  
**Violation of VERMONT CONST. § 42**

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

42. 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. . . .”

43. Section 42 requires, at a minimum, that voters in the State of Vermont are United States citizens.

44. In direct contravention to the Vermont Constitution, 24 App. V.S.A. §§5.1501-1504 permits “noncitizens” to vote in “Montpelier City elections.”

45. 24 App. V.S.A. §§5.1501-1504 is unconstitutional, void, and invalid.

**PRAYER FOR RELIEF**


46. WHEREFORE, Plaintiffs pray for an order and judgment:
- a. Declaring that 24 App. V.S.A. §§5.1501-1504 violates section 42 of the Vermont Constitution and is thus devoid of any legal force or effect;
  - b. Enjoining Defendants and their employees and agents from enforcing 24 App. V.S.A. §§5.1501-1504, including the enrollment of any noncitizen voters or allowing noncitizen voting in future elections;
  - c. Awarding Plaintiff 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 27<sup>th</sup> day of September 2021.

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Respectfully submitted,

  
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