

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. _____

DOUGLAS WESTON,
Winooski, Vermont 05404,

MICHAEL MYERS,
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 WINOOSKI, VERMONT,
27 West Allen Street,
Winooski, Vermont 05404.

Defendant.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, who include Vermont voters residing in the City of Winooski and other interested election participants, file this Complaint for declaratory and injunctive relief against the City of Winooski. Plaintiffs seek a declaration that authorization of noncitizen voting on matters involving the City of Winooski's school board and education budget is unconstitutional and void. That authorization, set forth in a new charter statute for the City of Winooski, permits "any person, including persons who are non-U.S. citizens," to vote on referendums regarding the City's annual education budget if they are a resident of the City and over 18 years of age. 24 App. V.S.A. § 19.202(b).

Critically, the City's annual education budget is paid for from the State Education Fund. See 16 V.S.A. Chapter 133. The new charter statute also allows noncitizens to vote for school board members, who are responsible for creating the City's State-funded annual education budget.

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 Winooski. 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 Winooski.

PARTIES

3. Plaintiff Douglas Weston is a United States Citizen and a registered voter in Winooski. Weston regularly participates in City elections, including elections concerning education matters. Weston intends to participate in future elections, including those involving education matters.

4. Plaintiff Michael Myers is a United States Citizen and a registered voter in Winooski. Myers regularly participates in City elections, including elections concerning education matters. Myers intends to participate in future elections, including those involving education matters.

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

6. 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, and coordinates fundraising and election strategy.

7. Defendant is the City of Winooski, 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 referenda regarding education matters.

FACTUAL ALLEGATIONS

A. Constitutional and Statutory Background.

8. 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.

9. 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.

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

11. 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).

12. 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 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”).

13. 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.

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

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

14. 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).

15. The citizenship requirement remains today.

16. 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. . . .”

17. 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.

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

B. Winooski and Montpelier Amend Their Charters to Allow Noncitizen Voting.

19. In 2020, the Winooski Charter Commission placed a proposed amendment on the ballot to allow certain noncitizens to vote in local elections. The Commission approved the ballot measure despite the City Manager’s warning that such “all-resident voting” (*i.e.*, noncitizen voting) “has had limited testing in the court system” and that affected citizens “could take legal action against the City on constitutional grounds.”

20. Despite these concerns, voters approved the proposal on November 4, 2020.

21. The City of Montpelier had previously approved a measure to amend its charter to allow noncitizens to vote in municipal elections in November 2018, but that measure was not considered by the General Assembly until May 2021.

22. On May 21, 2021, the General Assembly voted to approve the amendments to Montpelier and Winooski's charters. 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 now permitted to vote for school board members and on education budgets.

23. 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.

24. As amended, the Winooski charter statute now states: "Notwithstanding 17 V.S.A. § 2121(a)(1), any person, including persons who are non-U.S. citizens, may register to vote in any City meeting or municipal election who, on election day: (1) is a legal resident of the City; (2) has taken the Voter's Oath; and (3) is 18 years of age or older." 24 App. V.S.A. § 19.202(b). The statute defines "legal resident of the City" as "any person who is a resident of the City and is a United States citizen or resides in the United States on a permanent or indefinite basis in compliance with federal immigration laws." *Id.*, § 19.202(c). And it instructs the City Clerk to maintain a noncitizen voter checklist separate from the checklist maintained for State and federal elections. *Id.*, § 19.202(d).

25. The Winooski Incorporated School District links its voter qualifications to the city charter, so the amendment resulted in permitting noncitizens to vote in school district elections, including those related to the school budget. 16 App. V.S.A. § 23.11 (school district voters "shall be the same as the qualifications of a voter in the City of Winooski"). Noncitizens are now also able to vote for the School District's governing at large "Board of five Trustees." 16 App. V.S.A. § 23.2. These

elected Trustees present the school “budget for the following fiscal year” at the annual District meeting, followed by a vote of the qualified voters on adoption of the budget. *Id.*, § 23.3.

26. 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 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.

27. Defendant has now expanded the electorate that determines educational issues to include noncitizens, despite the fact that 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.

28. On September 27, 2021, a group of plaintiffs challenged Montpelier 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.

29. 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.

30. 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.

31. 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.

32. 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. *See Ferry v. City of Montpelier*, -- A.3d --, 2023 WL 1461835 (Vt. Jan. 20, 2023).

33. The Supreme Court affirmed that 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.

34. 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.

35. 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*.

36. This complaint is an as-applied claim challenging the application of Winooski’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 the Defendant.

37. 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.” *Id.* ¶ 21. Both individual Plaintiffs are registered voters who have voted and intend to continue voting in Winooski City elections. Those votes will be diluted by noncitizen votes made possible by Winooski’s charter change.

38. The purpose of the RNC and VTGOP is to promote republican values, assist Republican candidates for public office, and coordinate fundraising and election strategy. Its members have voted and intend to continue voting in Winooski. These members, like the named plaintiffs, will have their votes diluted by the noncitizen votes made possible by Winooski’s charter change. The RNC and VTGOP also anticipate having to expend additional resources on “get out the vote” and other election efforts and for recruiting and supporting candidates who will have to contend with an expanded voter pool that includes unconstitutional noncitizen votes in elections for the school board and with respect to the education budget.

COUNT ONE

Violation of VERMONT CONST. § 42

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

40. 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. . . .”

41. Section 42 requires voters to be U.S. citizens to vote in elections that implicate freeman issues, even if those elections are nominally municipal in nature. *Ferry*, 2023 WL 1461835, ¶¶ 48-50.

42. In direct contravention to the Vermont Constitution, 24 App. V.S.A. § 19.202 permits “noncitizens” to vote in city meetings and municipal elections that determine the City of Winooski’s annual school budget. Winooski’s education budgets are created by locally-elected school board officials and ratified through City-wide elections. After a budget is ratified by Winooski voters, it is funded through the state education fund. 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.

43. 24 App. V.S.A. §19.202’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 Winooski.

PRAYER FOR RELIEF

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

a. Declaring that 24 App. V.S.A. § 19.202’s application to any election that determines school board members or education funding for the City of Winooski violates section 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. § 19.202’s application to any election that determines school board members or education funding for the City of Winooski, including enrollment of any noncitizen voters or allowance of noncitizen voting in such elections in the future;

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 9th day of March 2023.

Respectfully submitted,

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*Pro Hac Vice applications forthcoming.