

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: December 17, 2020)

MARY BURKE PATTERSON, ROBERT E. :
PATTERSON, MELISSA JENKINS, :
VALERIE ANN HENRY, PAULA CHILDS, :
DAVID H. STENMARK, and CAROL M. :
STENMARK :

Plaintiffs, :

v. :

C.A. No. WC-2020-0130

THE BONNET SHORES FIRE DISTRICT :

Defendant. :

DECISION

TAFT-CARTER, J. Before this Court for decision is the Defendant Bonnet Shores Fire District’s (BSFD) Motion to Dismiss for Failure to Join Indispensable Parties and the objection by the Plaintiffs—Mary Burke Patterson, Robert E. Patterson, Melissa Jenkins, Valerie Ann Henry, Paula Childs, David H. Stenmark and Carol M. Stenmark (Plaintiffs). Jurisdiction is pursuant to Rules 12(b)(7) and 12(b)(1) of the Superior Court Rules of Civil Procedure in accordance with G.L. 1956 § 9-30-1.

I

Facts and Travel

The BSFD was incorporated in 1930 by act of the General Assembly. It is located in the northern part of the Town of Narragansett. (Compl. ¶ 8.) The Bonnet Shores Fire District Charter & Related Legislation (BSFD Charter) grants to the BSFD

“all rights and powers generally had and enjoyed by business corporations and fire districts in the state, including (but without limiting the generalities of the foregoing) the right to acquire, hold and dispose of real and personal property necessary for its corporate

purposes; the right to have and use a common seal; the right to sue or be sued; and the right to borrow money from time to time and to issue its notes, bonds or other evidences of indebtedness theretofore.” *Id.* at Ex. A, § 1(4).

In addition, the BSFD is also empowered to perform certain quasi-municipal governmental functions and to exercise general governmental powers, including the power to impose and collect taxes. *Id.* at Ex. A, § 7. Under the BSFD Charter, § 6, BSFD voters

“may elect a clerk, three assessors of taxes, a collector of taxes, a district council or not less than three and no more than seven qualified voters, one or more fire wardens, one or more police officers and such other officers and committees as said district may require for its corporate purposes.” *Id.* at Ex. A, § 6.

Voting within the BSFD is governed by the BSFD Charter, § 2, which provides that:

“Every firm, corporation, unincorporated association and every person, irrespective of sex, of the age of eighteen years, who is possessed in his or her own right of real estate in said district of the value of one Four Hundred (\$400) Dollars over and above all encumbrances, being an estate in fee simple, fee tail, for the life of any person, or an estate in reversion or remainder, the conveyance of which estate shall if by deed, have been recorded at least ninety (90) days, shall thereafter have a right to vote at all meetings of the corporation.” *Id.* at Ex. A, § 2.

As such, owners of real property located within the BSFD who have at least \$400 of equity in property are entitled to vote in the BSFD elections, regardless of whether they reside within the BSFD. (Compl. ¶ 27.) According to Plaintiffs, this results in the prohibition of non-owner residents from either voting in the BSFD elections or participating in its governance. *Id.* ¶ 29.

The BSFD Charter restricts voting to individuals who are qualified voters and hold a deeded property interest in the BSFD. *Id.* ¶ 33; *see also id.* at Ex. A, § 2. Plaintiffs are qualified voters and residents of the BSFD. (Compl. ¶¶ 1-7.) Of the seven plaintiffs, six hold a deeded property interest in the BSFD. *Id.* While these six plaintiffs are permitted to vote in the BSFD elections, Plaintiff Jenkins is not permitted to vote at the BSFD elections because she does not

hold a deeded property interest within the BSFD. *Id.* ¶¶ 32-33, 36. Accordingly, the Complaint alleges that the BSFD’s voting provision has resulted in the ability of nonresident property owners, including over 4000 owners of the Bonnet Shores Beach Club’s—a Rhode Island Condominium Association—bathhouses or cabanas, to vote. *Id.* ¶ 37.

At a BSFD Council meeting held on October 16, 2019, a council member, Anita Langer, moved to amend the current distribution of voting rights under the BSFD Charter. *Id.* at Ex. F, 2-3. In moving the council to amend the BSFD’s voting provision, Anita Langer stated that the right to vote should be in connection to residency “because the current taxpayer requirement is unconstitutional.” *Id.* at 2. The motion did not receive a second and therefore failed. *Id.* at 3.

Plaintiffs filed a Complaint on March 13, 2020, seeking declaratory relief against the BSFD with respect to the distribution of votes within the district. Plaintiffs claim dilution and disenfranchisement of their votes under the Fourteenth Amendment to the United States Constitution and article I, section 2; article II, section 1; and article III, section 1 of the Rhode Island Constitution. (Compl. 1.) As such, Plaintiffs request the following from this Court:

“A. A finding and declaration that BSFD is a quasi-municipal entity which exercises general governmental authority over its geographic area;

“B. A finding and declaration that the limitation of voting rights to property holders holding over \$400 in equity found in the BSFD Charter is unconstitutional under the Fourteenth Amendment of the United States Constitution;

“C. A finding and declaration that the limitation of voting rights to property holders holding over \$400 in equity found in the BSFD Charter is unconstitutional under Article I, § 2 of the Rhode Island Constitution;

“D. A finding and declaration that the distribution of voting rights to nonresidents of BSFD is unconstitutional under the Fourteenth Amendment of the United States Constitution;

“E. A finding and declaration that the distribution of voting rights to nonresidents of BSFD is unconstitutional under Article I, § 2 and Article II, § 1 of the Rhode Island Constitution;

“F. A finding and declaration that subsequent elections for BSFD offices must be open only to all residents of BSFD who are over eighteen years of age, consistent with Article II, § 1 of the Rhode Island Constitution;

“G. A finding and declaration that currently-elected BSFD officers must exercise their offices as trustees of BSFD, for the benefit of the residents of BSFD, until such time as the General Assembly amends the BSFD Charter in conformance with this Court’s decision or new elections consistent with this Court’s decision may be held;

“H. Judgment against BSFD for depriving Plaintiff Melissa Jenkins of her right to vote in BSFD elections pursuant to official policy;

“I. Judgment against BSFD for depriving Plaintiffs Mary Burke Patterson, Robert Patterson, Valerie Ann Henry, Paula Childs, David H. Stenmark, and Carol M. Stenmark of their constitutional right not to have their votes debased and diluted;

“J. An award of costs and attorneys’ fees pursuant to 42 U.S.C. § 1988; and

“K. Such other and further relief as this Court deems just and proper under the circumstances.” *Id.* at 14-15.

In response to Plaintiffs’ Complaint, the BSFD filed a Motion to Dismiss for Failure to Join Indispensable Parties on May 4, 2020. Plaintiffs objected on June 8, 2020, and Defendant subsequently replied on June 15, 2020. This Court heard oral arguments on September 2, 2020, and now issues a decision on the Motion.

II

Standards of Review

Rule 12(b)(7) of the Superior Court Rules of Civil Procedure provides for a motion to dismiss for failure to join an indispensable party. *See Woonsocket Historical Society v. City of Woonsocket*, 120 R.I. 259, 387 A.2d 530 (1978). “Indispensable parties are persons who have an

interest in the controversy of such a nature that a final decree cannot be made without either affecting that interest or leaving the controversy in such condition that its final termination may be wholly inconsistent with equity and good conscience[.]” Robert B. Kent, et al., *Rhode Island Civil and Appellate Procedure* § 12:11 (2019). “The complaint should not be dismissed for failure to join an indispensable party where the defect can be cured by making the person a party. If this salutary approach is taken, the action will be dismissed only if the absent party is indispensable and cannot be brought before the court.” *Id.*

Under Rule 12(b)(1) of the Superior Court Rules of Civil Procedure, “[i]f the court lacks jurisdiction over the class of cases to which the particular action belongs, it must dismiss the action.” *Id.* § 12:5. “The principle is well established that a question of jurisdiction over the subject matter may be raised at any time by either party or by the court on its own motion. The jurisdiction of the Superior Court is statutory.” *Id.*

The Uniform Declaratory Judgments Act (UDJA) vests this Court with the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Section 9-30-1. The Rhode Island Supreme Court has held that under the UDJA, “[a] court may not assume subject-matter jurisdiction over a declaratory-judgment action when a plaintiff fails to join all those necessary and indispensable parties who have an actual and essential interest that would be affected by the declaration.” *Rosano v. Mortgage Electronic Registration Systems, Inc.*, 91 A.3d 336, 340 (R.I. 2014) (internal quotation omitted); *see also Abbatematteo v. State*, 694 A.2d 738, 740 (R.I. 1997) (“[W]hen a [declaratory] judgment is not binding on all persons who have a direct interest in the dispute, the Superior Court should not assert jurisdiction.”).

Although Rule 12(b)(7) motions regarding declaratory judgment are typically reviewed under both Rule 19 of the Superior Court Rules of Civil Procedure and the UDJA, this Court will

proceed with its analysis under the UDJA. A stricter standard of review in determining whether a party is indispensable is applied under § 9-30-11 of the UDJA. *Compare Anderson v. Anderson*, 109 R.I. 204, 211, 283 A.2d 265, 269 (1971) (noting that even a finding of indispensability under Rule 19 “does not deprive the court of its power to act with respect to those before it,” but requires the court to consider new “constitutional overtones” of due process considerations) (quotation omitted) *with Rosano*, 91 A.3d at 339 (construing § 9-30-11 as mandatory, and holding that failure to join necessary parties under the statute is fatal to a claim) (quotation omitted). *See Rhode Island Public Employees’ Retiree Coalition v. Chafee*, No. PC123166, 2014 WL 3685916, at *6 (R.I. Super. July 17, 2014). As such, even if this Court were also to conduct an analysis under Rule 19, the outcome would be the same.

III

Analysis

The BSFD argues that the nonresidents who own property within the BSFD and meet the BSFD Charter voting requirements are indispensable parties who have not been joined in the lawsuit. (Def.’s Mem. Supp. Mot. to Dismiss 1-2.) These parties, according to the BSFD, would be stripped of their voting rights granted by the legislative charter. *Id.* at 2. More specifically, the BSFD notes that, under requests for relief D, E, and F of Plaintiffs’ Complaint, Plaintiffs request that this Court make a finding and declaration that the distribution of voting rights to nonresidents of the BSFD is unconstitutional, thus asking this Court to declare the rights of these nonresident property owners null and void. *Id.*

Plaintiffs acknowledge that their request would disenfranchise the nonresident voters. (Pls.’ Mem. Opp’n Mot. to Dismiss (Pls.’ Mem.) 10.) However, Plaintiffs claim that pursuant to Rule 12(b)(7), the relief sought is against the BSFD by way of a declaration that a voting provision

of the BSFD Charter is unconstitutional and, thus, no separable affirmative consequences will result if the nonresidents are not joined.¹ *Id.* at 11. Furthermore, Plaintiffs allege that the relief sought here is directed at the BSFD's authority, rather than at those nonresident voters, as Plaintiffs simply challenge the BSFD's power to limit Plaintiffs' voting rights. *Id.* at 10-11. Additionally, Plaintiffs argue that, under the UDJA, declaratory relief is not precluded when the sought-after declaration may indirectly affect another's interest or the relief sought may affect a general interest of another. *Id.* at 7.

Lastly, Plaintiffs argue that joinder of these nonresidents would contravene the main purpose of the UDJA, which is to facilitate termination of controversies. *Id.* at 9-10. To support this argument, Plaintiffs cite to cases where the Rhode Island Supreme Court and this Court have recognized that limited exceptions may exist to this joinder requirement, and they request that these be applied to this case. *Id.* at 11-13 (citing *Burns v. Moorland Farm Condominium Association*, 86 A.3d 354 (R.I. 2014); *Thompson v. Town Council of Westerly*, 487 A.2d 498 (R.I. 1985); *In re City of Warwick*, 97 R.I. 294, 197 A.2d 287 (1964); *Rhode Island Public Employees' Retiree Coalition*, 2014 WL 3685916)). Particularly, Plaintiffs claim that because this case could affect all citizens and voters of the BSFD, the practical limitations of joining every nonresident property owner would pose an unreasonable burden on Plaintiffs due to the large number of nonresidents who own property within the BSFD, as well as the logistical burdens of effecting service on these individuals. *Id.* at 14.

Because Plaintiffs' requests for declaratory relief in their Complaint can be divided into two broad challenges of the inclusion of nonresident voters and the exclusion of some residents,

¹ Although the BSFD brought this Motion pursuant to the UDJA, some of Plaintiffs' arguments are based on Rule 19; however, as stated above, this Court will proceed with its analysis under the UDJA.

these two requests will be analyzed separately. Requests for relief labeled D, E, and F in Plaintiffs' Complaint challenge the inclusion of nonresident voters, while requests labeled A, B, C, G, H, and I (remaining claims) challenge the exclusion of residents.

A

Indispensable Parties

The UDJA provides, in pertinent part, that “all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.” Section 9-30-11. This requirement furthers the purpose of the UDJA, which is “to facilitate the termination of controversies.” *Abbatematteo*, 694 A.2d at 740 (internal quotation omitted).

The Rhode Island Supreme Court has held that § 9-30-11 is a mandatory provision. *Burns*, 86 A.3d at 358 (citing *Thompson*, 487 A.2d at 499); *see also In re City of Warwick*, 97 R.I. at 296, 197 A.2d at 288. Under the UDJA, ““before any proceeding for declaratory relief is entertained, all persons who have an actual, present, adverse, and antagonistic interest in the subject matter should be before the court.”” *Town of Warren v. Bristol Warren Regional School District*, 159 A.3d 1029, 1037 (R.I. 2017) (quoting 22A Am. Jur. 2d *Declaratory Judgments* § 204 at 859 (2013)). Additionally, the Supreme Court has held that “when a [declaratory] judgment is not binding on all persons who have a *direct interest* in the dispute, the Superior Court should not assert jurisdiction.” *Abbatematteo*, 694 A.2d at 740 (emphasis added). Thus, “failure to join all persons who have an interest that would be affected by the declaration is fatal.” *Burns*, 86 A.3d at 358 (citation omitted).

In *Burns*, the Rhode Island Supreme Court found that members of a condominium association not joined in the lawsuit would be liable for payment pursuant to the declaratory

judgment and were therefore indispensable parties. *Burns*, 86 A.3d at 357-60. In that case, the plaintiffs sought relief in the form of a declaration requesting that costs and liability for condominium repairs be allocated to the absent parties who benefitted from such repairs. *Id.* at 360. The Court reasoned that “the fact that these unit owners [we]re being ordered to bear an additional burden even though they were not part of the case undermine[d] the purpose of declaratory-judgment action” *Id.* at 359.

Likewise, in *Abbatematteo*, participants in the Employees’ Retirement System of the State of Rhode Island sought a declaration that the retirement system’s payment of more generous benefits to some retirees was unconstitutional, as well as an injunction to stop those payments. *Abbatematteo*, 694 A.2d at 740. The retirees purportedly receiving more generous benefits, however, were not made parties to the case. *Id.* The Supreme Court held that the retiree parties were indispensable because they would be directly affected by a reduction or elimination of their pension benefits should there be a declaration that retiree parties were not entitled to those benefits. *Id.*

Finally, in *Flynn v. King*, 433 A.2d 172, 176 (R.I. 1981), which Plaintiffs rely on to support their constitutional challenge of the BSFD Charter’s voting provision,² the Rhode Island Supreme Court held that a fire district voting provision that only entitled property owners to vote was unconstitutional. In reaching that decision, the Court did not address the issue of whether joinder of the nonresident property owners was necessary because it was never raised and because the

² The BSFD raised an argument during the hearing on September 2, 2020 that the contention that Flynn applies in the present case is a red herring because the fire district in that case provided fire services, whereas the BSFD does not and, thus, is not a quasi-governmental entity. However, according to Plaintiffs’ Complaint citing to the BSFD Charter, there is a plausible argument that the BSFD does perform other quasi-governmental functions that impact all residents and property owners within the BSFD, such as public street parking regulations. (Compl. ¶¶ 10-22.)

plaintiffs did not request the disenfranchisement of these individuals. Rather, the plaintiffs sought a general declaration relating to the constitutionality of the ordinance for its failure to include all residents. *Id.* Furthermore, the Court determined that the residents who did not own property within the district had the same interest as the individuals who did own property within the district, whether they were residents or not. *Id.* at 175 (“[Residents] share a common interest with the property owners in the type of fire protection provided, and they are equally affected by the outcome of the elections. . . . Every person who either owns property or resides within the district is potentially affected by the type of fire protection provided.”).

i

Requests for Relief D, E, and F

Plaintiffs claim that their challenge of the voting provision is solely against the BSFD’s authority to impose restrictions based on property ownership on the right to vote within the district; however, in requests D, E, and F they also explicitly ask this Court to find that distribution of the right to vote to nonresident property owners should be deemed unconstitutional. (Pls.’ Mem. 10; Compl. 14). This request is distinguishable from the request seeking a declaration that the Charter provision is unconstitutional. *Compare Abbatematteo*, 694 A.2d 738 (where the plaintiffs specifically sought declaration that paying more generous retirement benefits to the non-parties was unconstitutional) *with Flynn*, 433 A.2d 172 (where plaintiffs merely sought to declare the charter provision unconstitutional because it only distributed voting rights to property owners, excluding residents who did not own property).

Here, Plaintiffs requested a declaration that would indeed directly affect the voting rights of the nonresident property owners by disenfranchising them. *Burns*, 86 A.3d 354; *Abbatematteo*, 694 A.2d 738. Furthermore, the interest at stake is the fundamental right to vote. *See Flynn*, 433

A.2d at 174. Similar to *Flynn*, the nonresident property owners share a common interest with the BSFD residents in governmental matters. *See id.* at 175. For instance, the nonresident property owners are taxpayers who have a financial stake in the outcome of the BSFD’s elections because taxation in the district is for many purposes, including the maintenance of streets, as well as the water supply system. Indeed, these interests potentially affect the nonresident property owners as well as residents of the BSFD. *See* Compl., Ex. A, § 7.

Accordingly, the issuance of such a declaration in requests D, E, and F by this Court would directly affect the BSFD’s nonresident voters by stripping them of their right to vote under the BSFD Charter. Therefore, the nonresident property owners are indispensable parties as to requests for relief D, E, and F pursuant to § 9-30-11, and, thus, failure to join them is fatal.

ii

Remaining Requests for Relief

The relief sought in the remaining declarations requests that the BSFD Charter’s failure to include all residents of the BSFD in the voting provision be declared unconstitutional—not that nonresident property owners be disenfranchised.³ (Compl. 14-15.)

The request in the remaining claims are different from the relief sought by the Plaintiffs in claims D, E, and F because the Court is not asked to adjudicate the rights of absent parties. *Burns*, 86 A.3d 354; *Abbatematteo*, 694 A.2d 738. Here, in Plaintiffs’ remaining declaratory requests, the nonresidents’ interest is not necessarily adverse, and the effect is merely incidental rather than direct. *See Abbatematteo*, 694 A.2d at 740 (“[W]hen a [declaratory] judgment is not binding on

³ It is worth noting that the BSFD has only referenced requests for relief D, E, and F in its memoranda to this Court and during the September 2, 2020 hearing for its motion to dismiss when challenging the Complaint based on failure to join the nonresident property owners within the BSFD.

all persons who have a *direct* interest in the dispute, the Superior Court should not assert jurisdiction.”) (emphasis added); *see also Middle Creek Farm, LLC v. Portsmouth Water & Fire District*, No. NC-2016-0231, 2018 WL 1778811, at *10 (R.I. Super. Apr. 5, 2018) (citing *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 582 (Pa. 2003) (“For example, where the interest involved is indirect or incidental, joinder may not be required.”)).

Similar to *Flynn*, the relief for the remaining claims may be granted without disenfranchising nonresident property owners who are currently entitled to vote, as these claims challenge the unconstitutionality of the BSFD Charter provision based on the exclusion of all residents. *Flynn*, 433 A.2d 172. Therefore, although the nonresident property owners may have “any interest” pursuant to § 9-30-11 in a constitutional challenge of the BSFD’s voting provision as voters within the BSFD, they do not have an “actual, present, adverse, and antagonistic interest” because such a declaration would not necessarily result in their disenfranchisement. *Town of Warren*, 159 A.3d at 1037.

“Ultimately, constitutional challenges resulting in a declaration can be said to affect every citizen of the State of Rhode Island.” *Rhode Island Public Employees’ Retiree Coalition*, 2014 WL 3685916, at *4 (citing *Norton v. Shelby County*, 118 U.S. 425, 442 (1886)). A decision by this Court in *Rhode Island Public Employees’ Retiree Coalition* is instructive. In that case, it was determined that the relief sought could be fully afforded without the non-party retirees’ joinder because the terms or consequences of the judgment sought would affect the non-party retirees regardless of their participation in this suit. *Id.* (citing *Retirement Board of Employees’ Retirement System of State of R.I. v. DiPrete*, 845 A.2d 270, 285 (R.I. 2004)). Similarly, here, in a more narrow context, the declaration of the unconstitutionality of § 2 of the BSFD Charter can be said to affect all residents and voters within the BSFD.

If courts were always required to join all potentially affected parties in a constitutional challenge, unnecessary hardship would defeat the purpose of facilitating the termination of controversies. *See Rhode Island Public Employees' Retiree Coalition*, 2014 WL 3685916, at *7 (“Joinder of Non-Party Retirees in this constitutional challenge would impose an unreasonable burden on the parties, nullifying the purpose of the UDJA to facilitate the termination of controversies.”) (quotation omitted). Therefore, joinder of all such persons that *could* be affected would not be required as they would be “merely necessary” parties, rather than “indispensable” parties. *See Middle Creek Farm, LLC*, 2018 WL 1778811, at *9 (citing *Stevens v. Loomis*, 334 F.2d 775, 777 (1st Cir. 1964) (“A party who is ‘merely necessary’ does not have an actual and essential interest in the litigation that would be affected by the declaration and thus is not ‘indispensable.’”)). In these remaining claims, relief is not sought directly against the nonresident property owners and “substantial justice can be done without joining any parties other than those who are presently participating in the litigation.” *City of Philadelphia*, 838 A.2d at 585; *see also Rhode Island Public Employees' Retiree Coalition*, 2014 WL 3685916, at *4; *see also Town of Blooming Grove v. City of Madison*, 81 N.W.2d 713, 717 (Wis. 1957) (“We do not construe the [UDJA] as requiring that where a declaratory judgment as to the validity of a statute or ordinance is sought, every person whose interests are affected by the statute or ordinance must be made a party to the action.”).

This conclusion is consistent with other United States Supreme Court and Rhode Island Supreme Court cases that held as unconstitutional voting provisions with restrictions other than ones based on residency, age, and citizenship, but joinder of indispensable parties was not raised as an issue. *See Kramer v. Union Free School District No. 15*, 395 U.S. 621, 627 (1969) (“Therefore, if a challenged state statute grants the right to vote to some bona fide residents of

requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.”); *Reynolds v. Sims*, 377 U.S. 533, 566 (1964) (“Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race.”); *Flynn*, 433 A.2d at 174 (“The United States Supreme Court has stated that in an election of general interest, restrictions on the franchise other than residence, age, or citizenship must promote a compelling state interest in order to survive constitutional attack.”).

Accordingly, the nonresident property owners are not indispensable parties as to the remaining claims because these solely challenge the constitutionality of the provision based on the failure to distribute voting rights to all residents.

B

Unreasonable Burden of Joinder

The Rhode Island Supreme Court has “assumed without deciding that [it] would, under appropriate circumstances, adopt the Connecticut rule which gives a court discretion to decide who should be joined when the identification of members of the class whose rights are so numerous, or service upon them would entail such difficulties as would impose an unreasonable burden on the moving party.” *Thompson*, 487 A.2d at 500 (citation omitted); see *In re City of Warwick*, 97 R.I. at 297, 197 A.2d at 289.

Although our Supreme Court has not formally adopted the Connecticut limiting principles, these principles have been applied by this Court in a handful of occasions. In *Rhode Island Public Employees’ Retiree Coalition*, this Court held that such a case warranted the application of reasonable limits upon the application of joinder provisions of § 9-30-11. *Rhode Island Public Employees’ Retiree Coalition*, 2014 WL 3685916, at *6. The Court reasoned that “[a]lthough not

calculated for this Court by Defendants, the estimated number of Non-Party Retirees is within the ‘many thousands.’ The identification of and service upon such a large number of individual persons constitute a ‘circumstance where it is impractical to require the joinder of all members of the class,’ because ‘the members of the class whose rights are to be affected are so numerous or service upon them would entail such difficulties as would impose an unreasonable burden.’” *Id.* (quoting *In re City of Warwick*, 97 R.I. at 297, 197 A.2d at 289; *Thompson*, 487 A.2d at 500). However, that decision also held that the non-party retirees were not indispensable and, thus, did not need to be joined because the present parties adequately represented their interest since the impact they would suffer would have been identical to that of the plaintiffs in the case. *Id.* at *4.

In *Middle Creek Farm, LLC*, a justice of this Court determined that the case also warranted application of reasonable limits upon the application of the joinder provisions. *Middle Creek Farm, LLC*, 2018 WL 1778811, at *10. The justice found that this would impose an impractical and unreasonable burden because “based upon the property record cards submitted with [defendant]’s exhibits, the number of parties subject to service of process has the potential to far exceed this number due to the fact that several of the properties include multi-family homes, condominium associations, properties owned by multiple individuals and entities, and government housing.” *Id.* However, the justice in that case also held that joinder of the non-parties was unnecessary because they were not indispensable parties. *Id.* at *9.

i

Requests for Relief D, E and F

Here, distinguished from the cases discussed *supra*, the nonresident property owners are indispensable parties as to claims D, E, and F. Although numerous, those parties are identifiable, such that this case does not warrant an application of the limiting principles. Additionally,

Plaintiffs do not adequately represent the interests of the nonresident property owners because they seek to disenfranchise these nonresident voters. *See Rhode Island Public Employees' Retiree Coalition*, 2014 WL 3685916, at *4. Therefore, this Court cannot proceed with a declaratory judgment of requests for relief D, E, and F in the absence of the nonresident property owners.

ii

Remaining Claims

The Court concludes otherwise with respect to the remaining claims. The general constitutional claims do not require joinder because the property owners are not indispensable. The limiting principles apply to these claims, similar to *Middle Creek Farm, LLC* and *Rhode Island Public Employees' Retiree Coalition*. *Middle Creek Farm, LLC*, 2018 WL 1778811, at *10; *Rhode Island Public Employees' Retiree Coalition*, 2014 WL 3685916, at *6. Although in *Burns* the Rhode Island Supreme Court interpreted the § 9-30-11 mandatory provision strictly, it nevertheless has consistently recognized that limiting principles may apply under certain circumstances, as discussed *supra*. *See Burns*, 86 A.3d 354. In fact, the *Burns* Court stated in a footnote,

“We previously have assumed without deciding that joinder might be excused if it would be impracticable because the parties to be joined were too numerous or service would be unreasonabl[y] burden[some] ... While this may prove to be true in the context of some extremely large and hypothetical condominium development, such a case is not before us.” *Burns*, 86 A.3d at 360, n.6 (internal citations omitted).

Here, the number of voters is “within the ‘many thousands’” and it would be an “unreasonable burden” to join such a large number of people who only *may* have an interest. (Pls.’ Mem. 13-14); *see Rhode Island Public Employees' Retiree Coalition*, 2014 WL 3685916, at *6. While it is true that all such parties would be affected in a general way by a declaration that the Charter provision in question is unconstitutional, requiring the joinder of all such parties to these

claims would be impractical and unnecessary. *See Middle Creek Farm, LLC*, 2018 WL 1778811, at *10 (citing *City of Philadelphia*, 838 A.2d at 582-83); *Rhode Island Public Employees' Retiree Coalition*, 2014 WL 3685916, at *4. Furthermore, as Plaintiffs argued during the September 2, 2020 hearing, all the BSFD voters have been given notice of this suit and may intervene if they so desire.

Therefore, the limiting principles apply to the remaining claims because the nonresident voters are not indispensable parties to these claims, and it would be unreasonably burdensome for Plaintiffs to join them in this action as it pertains to the remaining claims, which only *may* affect the nonresident property owners.

IV

Conclusion

Based on the foregoing analysis, the Court concludes that the BSFD's Motion to Dismiss for Failure to Join Indispensable Parties is GRANTED with respect to Plaintiffs' claims for relief in paragraphs D, E, and F of the Complaint, and DENIED as to the remaining claims. Counsel shall prepare an appropriate order for submission.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Patterson v. The Bonnet Shores Fire District**

CASE NO: **WC-2020-0130**

COURT: **Washington County Superior Court**

DATE DECISION FILED: **December 17, 2020**

JUSTICE/MAGISTRATE: **Taft-Carter, J.**

ATTORNEYS:

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