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Carolyn DiLeo
Bonnet Shores Fire District Charter Commission
130 Bonnet Shores Road
Narragansett, RI 02882

VIA EMAIL

Dear Ms. DiLeo:

On behalf of the ACLU of Rhode Island, I am writing to offer our observations on the proposed revisions to the Bonnet Shores Fire District charter that have been drafted and submitted for public comment in response to the court's decision in the *Patterson* case.

At the moment, we have no position on what role, if any, non-residents of the Bonnet Shores Fire District should be authorized to play in District elections. However, we do have a number of concerns, questions and remarks about the draft amendments to the charter. Our comments are briefly noted below:

1. Paragraph 2 of Section 2:

- a. This paragraph requires residents to have “had residence and home in the Bonnet Shores Fire District for thirty days next preceding the time of voting” *and* to have “resided thirty days in the Bonnet Shores Fire District.” We are unclear as to the difference between these two requirements.
- b. Residents are required to have been registered at least thirty days before the election, but it is unclear whether any type of special voter registration procedure is involved, or whether the District relies on a resident's registration in the state voting system.
- c. The provision authorizing certain non-residents to vote, unlike that for residents, contains neither an age nor a citizenship requirement.
- d. The qualification for non-residents to vote no longer requires even a \$400 property real estate value threshold that the current charter requires; this may be a factor in the legal analysis required to determine the impact and “substantial interest” of non-residents in being allowed to vote.
- e. To the extent that the 90-day residency requirement for non-residents is designed to allow summer residents to vote, we note that its availability will depend almost exclusively on the date that district elections are set, something that does not appear to be established by the charter.
- f. Unlike the provision for residents, this section does not spell out a timeframe for when a non-resident must register before an election in order to vote.

- g. In authorizing a Clerk of the Election to determine a seasonal resident's qualifications to vote, the charter provision provides no guidance as to how they will make that determination, nor does it specify how non-residents are supposed to prove when their 90-day residency started, or that it was continuous.
- h. Without some research by the District as to (1) the number of non-residents who would be eligible to vote under the proposed 90-day residency provision and (2) the nature of their "substantial interest" in the District as explained in Judge Taft-Carter's decision and Mr. Conley's thorough memo, the inclusion of this voting opportunity for non-residents remains subject to a constitutional challenge. We would argue that, under the legal test that has been articulated in the judge's decision, the revised non-residency voting standard might be *per se* unconstitutional by purporting to extend the right to vote to temporary/seasonal residents of any age, including non-citizens, who own any residential property, of any value, within the Fire District.

2. Paragraph 3 of Section 2:

- a. A 90-day period to resolve a challenge to the voting qualifications of a non-resident strikes us as unduly long, especially since it means that every vote subject to a successful challenge will still be counted, even though these are votes that – unlike those of residents – will be cast essentially as a matter of privilege, not of right.
- b. The District Council is authorized to "summarily dismiss challenges which it finds to be repetitive of challenges previously heard by the council regarding the same qualifications for the same persons." However, we find it difficult to imagine circumstances where a challenge would be repetitive since the key question will almost always be whether the non-resident meets the 90-day residency requirement, a fact-based inquiry that will need to be faced anew every election.

3. Section 11:

- a. In having the amendments take effect "after their acceptance by ballot by the residents and qualified voters of the Bonnet Shores Fire District," it is important to note that a determination will need to be made that those non-resident "qualified voters" are constitutionally authorized to vote. While Mr. Conley's memo indicates it will be a decision for the General Assembly to make, that decision will need to be subject to the "substantial interest" standard noted above.

While some of these concerns may seem overly specific, we believe – particularly in light of the litigation this charter issue has thus far spawned – that as many questions as possible about the process should be addressed up-front in the charter to avoid any further confusion or disputes.

Thank you in advance for considering our comments and questions.

Sincerely,



Steven Brown
Executive Director