

MEMORANDUM

TO: Representative Carol Hagan McEntee

FROM: William J. Conley, Jr., Esq., Legal Counsel for The Bonnet Shore Fire District

SUBJECT: Effects of Decision and Consent Judgment in *Patterson v. The Bonnet Shores Fire District*, C.A. No. WC-2020-0130

DATE: February 6, 2023

This office has been retained by the Bonnet Shores Fire District's ("BSFD") Charter Committee (the "Committee") to advise the Committee regarding intended changes to the BSFD Charter in the wake of the litigation known as *Patterson v. The Bonnet Shores Fire District*, C.A. No. WC-2020-0130. That Committee has put forward a proposed bill, with two sections: Section 1 restates the BSFD Charter in its entirety, incorporating the Committee's amendments in the restated text. Section 2 provides for the adoption of the proposed Charter amendments through a referendum, and sets forth the franchise for that election.

I. Background and the *Patterson* Litigation

Prior to the *Patterson* suit, the BSFD Charter extended the franchise to all owners of real estate located within BSFD whose interests have a minimum value of \$400 in equity over and above all liens on that real estate. *See* Charter, § 2. These provisions do not include any minimum value the real estate needs to be worth, any limit on subdivision or co-ownership of the real estate, or any requirements that the real estate be residential. *Id.* They also do not extend the franchise to adult residents of BSFD whose names may not be on the deeds to their homes—adult children, parents, or other relatives of owners, as well as long-term renters. *Id.*

The *Patterson* plaintiffs alleged that this distribution of the franchise was unconstitutional, and that because BSFD is endowed with and exercises general governmental powers, its elections have to meet the requirements imposed by the United States Constitution. *See generally* Complaint, ¶¶ 42-75. This theory follows a number of U.S. Supreme Court cases which have held that, under the U.S. Constitution, restrictions on the franchise for the leadership of any entity that exercises general governmental powers, except for restrictions on the basis of

age, citizenship, and residence within the area governed by the entity in question—must pass strict scrutiny. *See Hill v. Stone*, 421 U.S. 289, 295 (1975); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 630-33 (1969); *Avery v. Midland Cnty., Tex.*, 390 U.S. 474, 485 (1968). Their complaint sought declaratory relief under the Rhode Island Uniform Declaratory Judgments Act, R.I. Gen. Laws § 9-30-1 *et seq.* and damages under 42 U.S.C. § 1983, on behalf of adult citizen residents who reside in BSFD but do not own property, and on behalf of all resident voters whose votes were diluted by the votes of non-resident property owners.

After the plaintiffs filed their Complaint, BSFD filed a motion to dismiss. This motion succeeded in dismissing only one count of the Complaint, Count III, which sought declaratory relief of the vote dilution claims of all resident voters. *See generally* Dismissal. In essence, the *Patterson* Court ruled that the plaintiffs could only proceed with that claim if they named not just BSFD itself, but also *all* of BSFD’s voters. *See id.* at p. 10-11. This was because, under R.I. Gen. Laws § 9-30-11, in order for the plaintiffs to obtain a declaration which would affect *all* BSFD voters, they would have to *name* all BSFD voters as defendants. *See id.* at p. 8-11. However, this dismissal was not a statement regarding the *merits* of the claim. It was *only* a statement that the plaintiffs did not meet the procedural hurdles necessary to seek a declaration which would *take away* the voting rights of existing voters. *See id.* at p. 8-17.

Following abbreviated discovery, the parties filed cross-motions for summary judgment. The *Patterson* Court ruled on the cross-motions in a Decision filed on January 27, 2022. This Decision ruled for the plaintiffs outright on their request for declaratory relief on behalf of adult citizen resident voters. *See* Decision, p. 13-20. This also necessarily included a finding that BSFD does in fact exercise general governmental powers, and thus its elections are subject to the requirements of the Fourteenth Amendment. *See id.* at p. 20. However, the Court reserved on the remaining counts—seeking § 1983 relief on behalf of residents not allowed to vote and on behalf of resident voters whose votes were diluted—because the parties did not frame the questions to the Court correctly. *See generally id.* at p. 29-46. In doing so, the Court acknowledged that the voter dilution claim under § 1983 remained alive, and set forth a framework for its resolution. *See id.* at p. 29-33, 35-39.

This resolution followed a line of cases which specifically deal with the question of extending the franchise to non-residents. *See id.* These cases have almost universally held that while the Constitution creates a hard *floor* for voting rights—requiring that governmental entities *at minimum* extend the vote to adult citizen residents—that floor does not necessarily represent the *ceiling* of whom a governmental entity may enfranchise. *See id.* at p. 35-36. Instead, these courts have focused on whether the class of enfranchised voters have a “substantial interest” in the governance of that entity. *See id.* at p. 40-42. In turn, the “substantial interest” test relies on two questions:

1. The degree to which the non-resident voters finance the governmental entity, and;
2. The voting power of the non-resident voters, relative to the power of the residents.

See id.; *see also* *May v. Town of Mountain Village*, 132 F.3d 576, 580 (10th Cir. 1997); *Duncan v. Coffee Cnty., Tenn.*, 69 F.3d 88, 95 (6th Cir. 1995); *Day v. Robinwood W. Cmty. Improvement Dist.*, 693 F. Supp. 2d 996, 1004 (E.D. Mo. 2010); *Brown v. Bd. of Comm'rs of City of Chattanooga, Tenn.*, 722 F. Supp. 380, 398 (E.D. Tenn. 1989). In this case, because the parties’ briefs did not use the framework from those cases, the record was inconclusive as to whether non-resident owners did in fact hold a “substantial interest” in BSFD elections. *See* Decision at p. 42-46.

At this point, faced with the prospect of a trial or of more fact-intensive litigation, the parties entered into negotiations which resulted in their agreeing to the Consent Judgment. The Consent Judgment in this case contains eight paragraphs. To summarize each as briefly as possible:

1. The parties agreed that BSFD had lost Count I, and agreed that, beginning with the next Annual or Special Meeting of BSFD, all adult citizens who had resided within BSFD during the 30 days immediately prior to that Meeting would be permitted to vote at that meeting.
2. The parties agreed that judgment for the plaintiffs should enter on Count II.
3. The parties agreed that Count III remained dismissed.
4. The parties agreed that judgment for the plaintiffs should enter on Count IV.

5. BSFD agreed to appoint a Charter Revision Committee, which would be made up of five members, at least one of whom would be one of the plaintiffs, “to address the issues raised in the Plaintiffs’ Complaint and to propose amendments to the Fire District Charter, such proposed Charter amendments to be presented for approval first to the Rhode Island General Assembly, and then to the voters at an Annual or Special Meeting.”
6. The parties disclosed that they had reached a private settlement regarding the claims under Counts II and IV for attorneys’ fees.
7. The parties agreed that the court would not award damages under Counts II and IV.
8. All parties agreed not to seek appeals regarding any of the issues remaining in the case.

See generally Consent Judgment. In other words, judgment has entered for the *Patterson* plaintiffs on their § 1983 voter dilution claim, as well as on their disenfranchisement claims.

II. The Effect of the *Patterson* Litigation on the BSFD Electorate

In short, the *Patterson* litigation resulted in two court decisions and one consent judgment, all of which resolve to the following three conclusions:

1. The Court held that BSFD is an entity exercising general governmental powers, and thus its elections must conform to the constitutional requirements for elections.
2. The BSFD electorate as set forth in the Charter unconstitutionally excludes adult citizen residents who are otherwise qualified to vote.
3. The BSFD electorate has been acknowledged by the parties as also unconstitutional, including persons who lack a substantial interest in BSFD’s elections.

The Consent Judgment also required BSFD to convene its Charter Committee, which has produced the proposed Charter amendments.

It is true that the third of the above conclusions is not a specific finding from the Superior Court. However, at this point it is a certainty that the current electorate contains persons who do not hold a substantial interest in BSFD’s elections. This is presumably why BSFD agreed to entry of judgment on the § 1983 claim. Additionally, the Court’s Decision in the *Patterson*

litigation provided a blueprint for how another plaintiff could reach that decision, and it is the Committee's conclusion, based on the information it has about BSFD's tax base and electorate, that the electorate it proposed for the referendum is squarely within constitutional limits. The same cannot be said for the existing electorate, even if one also includes all adults otherwise qualified to vote.

At this juncture, to hold an election which includes the entire current electorate would be to hold an election including persons without a substantial interest in the results of that election, contrary to the United States Constitution. The precise extent of the violation may yet be left for a court to decide, but the existence of a violation is not.

Allowing all of the current BSFD electorate to vote on BSFD's elections would be inviting a second suit, to challenge the legality of that proposed electorate. This litigation would potentially prolong a process that has already taken several years to resolve, and would likely render much of the work all of the parties have done into a waste and strain BSFD's finances.

In summary, consistent with the Consent Judgment agreed to by the parties in the litigation and entered by the Court, the Bonnet Shores Fire District Charter Committee held meetings and approved the proposed Charter Amendments to be submitted to the Bonnet Shores Fire District referendum election. Based on the Court's decision and the action of the Charter Committee in furtherance of the Consent Judgment, it is the request of the Bonnet Shores Fire District Charter Committee that the General Assembly pass enabling legislation so that the referendum election can take place. That way, it will be the voters of the Bonnet Shores Fire District that decide whether the Charter Amendments go into effect. Ultimately, if there is a challenge to the eligible voters for the referendum election, it will be an issue for a Court to determine.