

HEARING DATE: Feb. 14, 2024

STATE OF RHODE ISLAND

SUPERIOR COURT
WASHINGTON COUNTY

No. WC-2024-0027

LLOYD ALBERT, ET AL,
PETITIONERS,

Vs.

THE BONNET SHORES FIRE DISTRICT, ET AL,
RESPONDENTS

OBJECTION TO MOTION FOR MANDAMUS
AND INCORPORATED MEMORANDUM

The Respondents object to the issuance of a writ of mandamus in this case.

Respondents submit that the matter addressed in the petition is discretionary, and therefore inappropriate for consideration on mandamus. *See Nye v. City of Warwick*, 736 A.2d 82, 83 (R.I. 1999) (mandamus does not lie for actions that involve exercise of discretion). A review of the factual background will be of assistance in considering this matter.

Factual History. This Court is not unfamiliar with the background facts. In 2020 certain plaintiffs¹ filed a lawsuit against the Bonnet Shores Fire District (BSFD) alleging that the voting rights set forth in BSFD's legislative charter

¹ Some, but not all, of the Petitioners here were plaintiffs in the 2020 litigation.

deprived non property-owning residents in the District of the right to vote at BSFD's annual meeting². The lawsuit essentially sought two remedies: voting rights for all residents of BSFD and disenfranchisement of all property-owner voters who were *not* residents. BSFD moved to dismiss the complaint for failure to join as indispensable parties all those voters whom the plaintiffs sought to disenfranchise. This Court granted BSFD's motion in part, dismissing those prayers for relief that would have disenfranchised any persons not made parties to the case. The plaintiffs neither sought a 54(b) declaration on that decision, nor did the petition the Supreme Court for certiorari to review it.

That litigation proceeded to discovery and then a plaintiffs' motion for summary judgment. On that motion, this Court determined that persons within BSFD who were legal residents were entitled to vote at the annual meeting. Nothing in that decision provided for disenfranchisement of any of the non-resident property owning voters.

Thereafter the parties engaged in discussions in an effort to resolve the case. In the fullness of time they reached an agreement that ripened into a Consent

² The Charter, which was enacted originally by the General Assembly in 1932, extends voting rights in the District to owners of property valued at \$400 or more. Charter, Sec. 2.

Judgment³. On May 26, 2022, this Court entered that Consent Judgment, which provided as remedies in pertinent part:

1. At any future annual or special meeting of BSFD, any person who had resided in BSFD and been registered at least 30 days preceding the voting would be entitled to vote on any and all questions submitted to electors.

2. The count seeking disenfranchisement of nonresident taxpayers was dismissed.

3. The BSFD Council was to appoint a Charter Revision Committee for purposes of addressing the issues raised in the complaint and proposing amendments to the BSFD Charter first to the General Assembly, and then to the voters at an annual or special meeting.

Notably, the plaintiffs in the 2020 litigation agreed to the Consent Judgment, including its remedial provisions that *nowhere* provided for disenfranchisement of any voters. Instead, it left that issue to a process for revising the BSFD Charter via a Charter Revision Committee, presentment of proposed changes to the General Assembly, and, if approved there, consideration by those authorized to vote under the existing Charter, with the addition of residents added by the Consent Judgment.

³ Copy appended.

No Annual or Special Meeting since 2021. For a few reasons, there has been no annual or special meeting since the May 2022 entry of the Consent Judgment.⁴ First, the Consent Judgment entered at the end of May 2022. BSFD's annual meeting is, under its bylaws, to take place on the last Thursday in June⁵. By that time it would not have been possible to prepare the 30-day voter list contemplated in the Consent Judgment. Nor could the Charter Revision Committee meet, draft legislation, and present it to the General Assembly prior to the end of its 2022 session.

Consistent with the Consent Judgment, the BSFD Council did, in fact, appoint a Charter Revision Committee, and that body deliberated through the end of 2022. The Committee produced companion bills for introduction in the House and Senate for the General Assembly's 2023 session. That legislation contained proposed charter revisions that were similar to the first portion of the Consent Judgment – adding non property-owning residents. It also proposed amending the Charter to disenfranchise nonresident property owners. Had the legislation only

⁴ There having been no election of officers since 2021, and consistent with the language of R.I. Const., Art. XV, sec. 3 (office holders continue to serve until successors elected and qualified), those elected at the 2021 Annual Meeting have remained in office.

⁵ Bylaws, Sec. 1. It appears that the date was fixed in late June owing to the nature of Bonnet Shores as a summer community. By late June property owners who enjoy Bonnet Shores in the summer would be present and able to participate in making decisions about their community.

gone that far it might well have progressed in the General Assembly, but it went much farther. Although it provided for consideration of the amendments by BSFD voters after enactment by the General Assembly, the proposed legislation defined those eligible to vote on the proposed amendment as residents *only*. The bill would have excluded nonresident property owners from voting on the proposed amendments. Without going through the process set out in the legislative charter and contrary to the Consent Judgment, the proposed bill put the cart before the horse, so to speak, effectively amending the Charter in advance by eliminating the nonresident property owners from the very process of amendment.

Both the Senate and House versions of the bill were heard in their respective Judiciary Committees on separate dates in May of 2023. Both were held for further study once committee members heard that they were being asked to disenfranchise voters without going through the charter amendment process. Neither bill was passed by either committee. Neither bill reached the floor of either chamber. Both effectively died when the House and Senate recessed their 2023 sessions.

As can be seen, the pendency of these bills through May 2023 left up in the air the makeup of the electorate for the June 2023 Annual Meeting. It was again impractical to schedule that meeting, as it would not have been possible to generate

the 30 day list contemplated in the Consent Judgment in the short time between late May 2023 and the third week of June.

There will be a 2024 Annual Meeting in accordance with the Charter and the Consent Judgment. It is now February 2024. To the Respondents' knowledge, the Charter Revision Committee has not corrected the flaws that doomed the 2023 charter amendment legislation. Respondents are unaware of legislation before the General Assembly in the 2024 session that would address the issues from the 2020 litigation. The Consent Judgment in that case established an orderly democratic process for addressing who should ultimately be entitled to vote in Bonnet Shores. Instead of working through that orderly democratic process Petitioners here (some of whom were plaintiffs in the 2020 litigation) seek to compel a special meeting for election of officers.

Respondents recognize that in 2024 it will be necessary to conduct an Annual Meeting under the Charter on the third Thursday in June. At that time, consistent with the Consent Judgment, all persons who have resided in and been registered in BSFD will be added to the voting rolls, along with anyone who has voting rights derive from the existing charter. It would be impractical to conduct a Special Meeting any time before June and there is no need to do so.

Mandamus is inappropriate. A writ of mandamus is for the purpose of compelling a public official to perform a non-discretionary ministerial act. As the

Supreme Court has made clear, mandamus is not available when the act to be performed is discretionary. *See Nye v. City of Warwick*, 736 A.2d 82, 83 (R.I. 1999) (mandamus does not lie for actions that involve exercise of discretion). Here, by the very language of the BSFD bylaws, the Council has the discretion to schedule a Special Meeting “to be held an any time and at any place within the town of Narragansett.” Bylaws, sec. 2. The same section does provide that a meeting *shall* be called when requested in writing by 50 qualified voters. But that language only requires that the meeting be called, it does not deprive the Council of the discretion as to its time or location. Nor does it permit the 50 petitioners to dictate the agenda for the special meeting.

This discretion retained by the BSFD Council under the bylaws is such that mandamus is not an appropriate remedy. Nevertheless, Respondents acknowledge that there must be an Annual Meeting in 2024, and that meeting could at the same time constitute the special meeting that the Petitioners are seeking.

Scope of any order. Should this Court determine that mandamus – or some other remedy – is appropriate under these circumstances, Respondents request that any such order make it clear that, until the Charter is revised via the process set forth in the Consent Judgment – approval first by the General Assembly and then by the BSFD voters – at any future BSFD annual or special meeting, the electors shall include non-resident property owners who have always been eligible under

BSFD Charter, together with any person who is made eligible via paragraph 1 of the Consent Judgment. Such a clear statement would be of assistance to BSFD in moving matters forward to ultimate resolution of these issues.

No right to attorney fees. Petitioners in their petition seek attorney fees in connection with this action. They cite no statute or other authority that would entitle them to fees. Absent such a basis, their request for attorney fees should be rejected.

Conclusion. For the foregoing reasons the writ prayed for should be denied. Should the Court entertain any order requiring scheduling of a meeting, the Order should make clear that the make up of the electorate at that meeting would include non-resident property owners who have always been eligible under BSFD Charter, together with any person who is made eligible via paragraph 1 of the Consent Judgment.

RESPECTFULLY SUBMITTED,
RESPONDENTS,
By their Attorney:

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CERTIFICATION

I hereby certify that a copy of this document was served upon all parties entitled thereto via this Court's E-file & Serve system.

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