

HEARING DATE: APRIL 12, 2024

STATE OF RHODE ISLAND
WASHINGTON, SC.

SUPERIOR COURT

LLOYD ALBERT, JEAN ALBERT, :
DALE CORDY, NANCY CORDY, :
RAYMOND PARISEAULT, :
ROSEMARY PARISEAULT, :
GORDON WRIN, KATARINA WRIN, :
ROBERT PATTERSON, and :
MARY BURKE PATTERSON, :
Petitioners, :

vs. :

C.A. No. WC-2024-0027

THE BONNET SHORES FIRE DISTRICT, :
by and through its Chairperson, :
CAROL O'DONNELL, :
its Vice Chairperson, MARLENE BELLINI, and :
its Council Members, ANTHONY DEANGELIS, :
BILL DELGIZZO, CAROLYN DILEO, and :
STEVE DANUSZAR :
Respondents. :

**PETITIONERS' REPLY MEMORANDUM IN RESPONSE TO RESPONDENTS'
OBJECTION TO MOTION FOR ISSUANCE OF A WRIT OF MANDAMUS**

Petitioners file their Reply Memorandum in response to Respondents' Objection to Motion for Issuance of a Writ of Mandamus ("Motion"). In their Objection, Respondents contend that mandamus is inappropriate because "the matter addressed in the petition is discretionary." (Objection at 1). There is no legal basis for this contention, as the clear and unambiguous language of Article I, Section 2 of the By-Laws for the Bonnet Shores Fire District ("BSFD") provides that a special meeting *shall be called by the chairman whenever requested in writing by fifty (50) qualified voters of the district.* (Motion at Exhibit 2) (Emphasis added.) It is undisputed that more than 50 qualified voters issued a written demand to Chairperson O'Donnell on November 14, 2023. (Motion at Exhibit 5). The calling of a special meeting, once demanded

by the qualified voters, is a non-discretionary and ministerial task which the Chairperson has knowingly and continually ignored since the demand was made nearly 4 months ago.

Respondents' conduct has prevented qualified BSFD voters from exercising their constitutional right to vote since June 2021, and Respondents continue to deprive these voters of their rights by ignoring the written demand for a special meeting. To allow BSFD to engage in further delay would be violative of Petitioners' established constitutional rights.

Accordingly, Petitioners reaffirm their request that this Court grant the Motion for the Issuance of a Writ of Mandamus and immediately order Chairperson O'Donnell to call the special meeting duly demanded by the qualified voters.

I. The Effect of the Consent Judgment

While this Court is familiar with the background facts of *Patterson v. Bonnet Shores Fire District*, C.A. No. WC-2020-0130 (the "Patterson Litigation"), it is important to highlight some of the key determinations that the parties thereto agreed to in the Consent Judgment—entered by this Court on May 26, 2022—but that were conveniently ignored by Respondents' Objection. (Motion at Exhibit 1). Most notably, Respondents relied upon ¶¶ 1-3 of the Consent Judgment, and deliberately failed to address ¶ 4 which provides as follows: "On Count IV of the Complaint, judgment shall enter in favor of Plaintiffs Mary Burke Patterson, Robert E. Patterson, Valerie Ann Henry, Paula Childs, David H. Stenmark and Carol M. Stenmark." (Motion at Exhibit 1, ¶ 4). Count IV of the Complaint in the Patterson Litigation was a claim for unconstitutional dilution of votes pursuant to 42 U.S.C. § 1983. Therein, in ¶ 73, Plaintiffs alleged that "BSFD has unconstitutionally debased and diluted the votes of Plaintiffs Mary Burke Patterson, Robert E. Patterson, Valerie Ann Henry, Paul Childs, David H. Stenmark, and Carol M. Stenmark, as their votes and those of other residents of BSFD are diluted by the votes of numerous

nonresident landowners.” (See Complaint filed in C.A. No. WC-2020-0130). Through the Consent Judgment, which is a valid and enforceable judgment entered by this Court, BSFD admitted and conceded that they have unconstitutionally debased and diluted the votes of residents in the BSFD by allowing nonresidents landowners the right to vote. Thus, Respondents are estopped from now arguing that a determination has not been made as to that constitutional claim, and that the same electorate would be permitted to vote in a future election.

In their Objection, Respondents intentionally cited to ¶ 3 of the Consent Judgment, which provides “The Court having previously granted Defendant’s Motion to Dismiss Count III of the Complaint, said Count is dismissed.” (Motion at Exhibit 1, ¶ 3).¹ That Count specifically sought declaratory relief, which the Court refused to issue based upon the statutory requirement, in the Uniform Declaratory Judgments Act, to join indispensable parties. Nowhere in its Decision, however, did the Court preclude BSFD from subsequently conceding in ¶ 4 of the Consent Judgment that it had “unconstitutionally debased and diluted votes of Plaintiffs . . . as their votes and those of other residents of BSFD are diluted by the votes of numerous nonresident landowners.” (Motion at Exhibit 1, ¶ 4). Further, BSFD paid \$40,000 toward the plaintiffs’ attorney’s fees in the Patterson Litigation in connection with the constitutional claim.

Candidly, Respondents’ Objection cherry-picks the portions of the Consent Judgment that they prefer; however, they are prevented from doing so as they are bound by their judicial admissions set forth in ¶ 4 of the Consent Judgment, that the voting rights of residents of BSFD

¹ The Court’s dismissal of Count III, addressed the Patterson plaintiffs’ claim for a “Declaratory Judgment—Dilution of Votes.” This Court in a written decision, dated December 17, 2020, dismissed Count III because the uniform declaratory judgments act, under which Count III was brought, mandates pursuant to R.I. Gen. Laws § 9-30-11, that all indispensable parties, such as the nonresident property owners, must be joined as parties to the lawsuit. The Court did not address the merits of that claim. Ironically, the Bonnet Shores Beach Club Condominium Association never pursued a right to intervene in the *Patterson Litigation*, but in this matter they have a pending Motion to Intervene claiming their interests will not be protected if the Writ of Mandamus issues and the Court orders the Chairperson to call a special meeting for the purpose of holding an election.

have been debased and diluted by BSFD by its allowance of nonresident landowners the right to vote. It is well-established in this jurisdiction that facts admitted in pleadings are held as true against the pleader. *Salisbury v. Stone*, 518 A.2d 1355, 1358 (R.I. 1986) (citing *L.T. Huddon, Inc. v. Swarovski America, Ltd.*, 510 A.2d 158, 159 (R.I. 1986); *State of Rhode Island v. Piedmont Funding Corp.*, 119 R.I. 695, 699, 382 A.2d 819, 822 (1978)). Our Supreme Court more recently recognized that “[a] judicial admission is a deliberate, clear, unequivocal statement of a party about a concrete fact within that party’s knowledge[,]” which is “considered conclusive and binding as to the party making [it].” *State v. Rice*, 986 A.2d 247, 249 (R.I. 2010) (citing 29A Am.Jur.2d *Evidence* § 783 at 48, 49 (2008)); *see also* Black’s Law Dictionary at 54 (9th Ed. 2009) (noting that a judicial admission “relieves an opposing party from having to prove the admitted fact and bars the party who made the admission from disputing it”). In other words, “[a] judicially admitted fact is conclusively established.” *Id.*

Accordingly, Respondents must be prohibited from obtaining the relief requested in their Objection, that:

[s]hould the Court entertain any order requiring scheduling of a meeting, the Order should make clear that the make up [sic] 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,

(Objection at 8)² as such a request is violative of the Consent Judgment wherein BSFD admitted that allowing nonresident landowners to vote was unconstitutional. To now allow Respondents’

² Paragraph 1 of the Consent Judgment provides, in pertinent part, that “beginning with any Bonnet Shores Fire District Annual Meeting or Special Meeting (each, a “Meeting”) held after the date hereof, every citizen of the Unites States of the age eighteen years or over who has had residence and home in the Bonnet Shores Fire District for thirty days next preceding the time of voting, who has resided thirty days in the Bonnet Shores Fire District, and whose name shall be registered at least thirty days next preceding the time of voting as provided by the Bonnet Shores Fire District Charter, shall have the right to vote for all offices to be elected and on all questions submitted to the electors.” (Motion at Exhibit 1, ¶ 1).

requested relief, would undermine the purpose of ¶ 4 of the Consent Judgment, which is a valid and binding judgment.³

II. The By-Laws Mandate that BSFD Shall Call a Special Meeting Once Demanded by the Qualified Voters.

BSFD, and namely its Chairperson, Carol O’Donnell, have been entirely dismissive of the qualified voters’ written demand for a special meeting, made pursuant to Article I, Section 2 of the By-Laws. The By-Laws are clear and unambiguous that a special meeting *shall be called by the chairman whenever requested in writing by fifty (50) qualified voters of the district.*

(Motion at Exhibit 2) (Emphasis added.) It is undisputed that a written demand was made on November 14, 2023, and that for nearly 4 months said demand has been ignored. In their Objection, Respondents contend that they have the discretion to convene a meeting at their pleasure regardless of whether a demand is made by the qualified voters, and thus the issuance of a writ of mandamus is inappropriate. Respondents are wrong. The By-Law language, relied upon by Petitioners, explicitly requires that the Chairperson perform a mandatory and ministerial task, which she has consistently failed to perform, thus warranting this Court’s granting of Petitioners’ Motion.

Respondents admit that a special meeting has not been called, but they cavalierly argued to this Court during oral arguments on February 16, 2024 that it is really “not a big deal” because

³ It is also important to note that Respondents are well aware of this fact because on the BSFD website (bonnetshores.org/legal) BSFD has made public written memorandum from legal counsel, William J. Conley, Jr. Esq., who was engaged by the District to advise the Charter Revision Committee through their process of drafting proposed amendments to the BSFD Charter. (Motion at Exhibit 1, ¶ 5). In that memorandum, dating back to September 23, 2022, Attorney Conley advised against ratification of proposed Charter Amendments that would allow the same electorate to vote in any upcoming BSFD elections. (Attached hereto as *Reply Exhibit 1*). Attorney Conley reiterated this advice to the sponsor of the proposed legislation—Representative Carol McEntee—in a memorandum dated February 6, 2023, stating: “[A]t 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 that violation may yet be left for a court to decide, but the existence of a violation is not.” (Attached hereto as *Reply Exhibit 2* at 5).

BSFD intends to hold an Annual Meeting in June 2024. Frankly, Petitioners lack any confidence in BSFD's assertions that suddenly the Chairperson and council members will abide by their obligations under the By-Laws. Furthermore, there is no legal basis for further depriving Petitioners of their right to vote. Remarkably, Respondents simply want Petitioners and this Court to accept their excuses for not having convened an Annual Meeting since June 2021; namely that the Consent Judgment entered in May 2022, so it would not have been possible to convene a June 2022 meeting, and then in 2023 the proposed charter amendments were pending at the General Assembly and by the time the session ended (and the proposed legislation was left in committee) again there was no time to convene a June 2023 meeting. (Objection at 4-6). These excuses are meritless and continue to ignore the clear and unambiguous language of Article I, Section 2 of the By-Laws which provides that *special meetings of the district may be held at any time and at any place within the town of Narragansett whenever and wherever called by the chairman or any three members of the district council*. (Motion at Exhibit 2). Therefore, while the By-Laws mandate that *the Annual Meeting shall be held on the last Thursday of June in each year* (a mandate which has been ignored since June 2021), there is no reason that for two years the Chairperson or any three council members have not convened a Special Meeting for the purpose of holding an election. (Motion at Exhibit 2). Moreover, Respondents proffer no guarantee that they will not raise these same excuses as the basis for not convening an Annual Meeting in June 2024.

For almost three years, Respondents intentionally ignored their obligations to hold an election—whether through an annual or special meeting—thereby impeding the voting rights of the qualified voters and unilaterally extending certain council members' terms of office in violation of the plain language of BSFD's Charter and By-Laws, which only authorize members

of the district council to hold office *for not more than three years*. (Petition at ¶¶ 18-19; Motion at Exhibit 2) (Emphasis added.) See *Foster Glocester Reg'l Sch. Bldg. Comm. v. Sette*, 996 A.2d 1120, 1126 (R.I. 2010) (“[W]hen the language of the [charter] is clear and unambiguous, the court must interpret it literally, giving the words of the [charter] their plain and ordinary meanings.”) In their Objection, Respondents argue “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.” (Objection at 4, FN 4). Respondents cannot refuse to convene an Annual Meeting, and then argue that since an Annual Meeting has not taken place, they are permitted to unilaterally extend their terms of office. Respondents have intentionally impeded the election process to their advantage and acted in violation of both BSFD’s Charter and By-Laws.

Moreover, Respondents’ reliance on the Rhode Island Constitution is intentionally misplaced and self-serving.⁴ To accept their argument, this Court would need to ignore the fact that by act of the General Assembly, BSFD was incorporated as a fire district, with an original charter enacted on April 17, 1930. (Petition ¶ 13). Section 6 of the BSFD Charter states that

⁴ Once again, Respondents are selective in the citations relied upon in their Objection. If the Court looks to the Rhode Island Constitution at Article XV, *General Transition*, and Section 1 thereof entitled, *Rights and duties of public bodies unaffected – Continuation of laws, ordinances, regulations and rules*, it will see that the express language provides:

[T]he rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

Therefore, the language in Section 3, providing a transition for the newly adopted 1986 amendments to the Constitution, does not overrule the three-year term of office language contained in BSFD’s Charter. (Petition at ¶¶ 13, 18-19).

“[i]f the by-laws shall so provide, the member of the district council may be divided into groups, one group to be elected annually to hold office *for not more than three years.*” (Petition ¶ 18) (Emphasis added.)⁵ There is no provision in BSFD’s Charter for the district council members to continue to serve until successors are elected and qualified. Accordingly, Petitioners are extremely concerned with the legality of any votes taken by members of the council whose terms have unquestionably expired under BSFD’s Charter and By-Laws. Accordingly, there is no legal authority upon which Respondents may unilaterally extend their terms of office.⁶

The By-Laws do, however, provide a critical distinction between terms of office for council members (*e.g.* Respondents) and officers of the district. Article III, Section 1 of the By-Laws states that “officers of the district shall be a moderator, clerk, treasurer, three assessors of taxes, collector of taxes and one or more fire wardens, which officers shall be elected annually.” (Motion at Exhibit 2). Article III, Section 2, *Officers and Committees*, provides, in pertinent part, as follows:

[a]t the annual meeting and at each subsequent annual meeting of the district, officers to be elected shall be elected by a majority vote of the qualified voters of the district present at such meeting. *Each officer shall be elected to serve until his successor is elected and shall qualify.* (Emphasis added.)

The language of the By-Laws clearly distinguishes between (1) terms of service for an officer, who may serve until his successor is elected and shall qualify, and (2) terms of service for district council members, which shall be for a term of three (3) years. Thus, Respondents—as district council members—have no legal authority to continue to serve until a successor is elected and qualified. Both the BSFD Charter and By-Laws clearly provide that council members shall serve

⁵ Likewise, Article II, Section II of the By-Laws provides that “successors to the members of the council whose term shall expire in the year fixed for the annual shall be elected to hold office for a term of three (3) years.” (Petition ¶ 19); (Motion at Exhibit 2).

⁶ In their *Response to Petition for Writ of Mandamus*, Respondents answer as to ¶¶ 18 and 19 of the Petition that “the language of the BSFD Charter and Bylaws speak for themselves.” (Response to Petition for Writ of Mandamus at ¶¶ 18-19).

for no more than three years, which is the reason that Article I, Sections 1 and 2 mandate that an Annual Meeting *shall be held on the last Thursday of June*, or that a Special Meeting *may be held at any time and at any place within the town of Narragansett whenever and wherever called by the chairman or any three members of the district council*. (Motion at Exhibit 2). These sections provide the council members with ample opportunities to hold an election in order to abide by their prescribed terms of office. Instead, Respondents unilaterally determined that they are empowered to treat the mandates set forth in both Charter and the By-Laws as discretionary, thus extending their terms of office without any legal authority for doing so. Accordingly, Petitioners are entitled to the relief sought through their Motion.

III. Respondents have Intentionally Undermined the Work of the Charter Revision Committee.

The seriousness of Respondents' actions, or lack thereof, have deprived Petitioners of their constitutional rights to vote since June 2021. Respondents attempt to justify their actions by solely focusing on the interests of an unknown group of nonresident landowners all while refusing to recognize the constitutional interests of the known and qualified resident voters.⁷

Unabashedly, the Chairperson demonstrated her intent to sabotage the work of the Charter Revision Committee—convened pursuant to ¶ 5 of the Consent Judgment—when she wrote and passed a resolution, at a special meeting of the Council on April 4, 2023, to oppose and not support the proposed amendments prepared by Charter Revision Committee and sponsored in the General Assembly as Senate Bill S-891 and House Bill H-6288. (Attached hereto as Reply Exhibit 3).⁸ Therefore, it is completely disingenuous for Respondents to argue

⁷ In this Court's January 27, 2022 Decision in the *Patterson Litigation*, on cross-motions for summary judgment, it held that "[g]iven the undisputed facts of this case, the unavoidable conclusion is that the BSFD Charter's denial of district residents' right to vote on the basis of property ownership is unconstitutional." (Decision at 19).

⁸ This Resolution was heard during a meeting which was later deemed by the Office of Attorney General to have violated the Rhode Island Open Meetings Act.

in their Objection that the legislation did not progress through the General Assembly in 2023 because “it 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.” (Objection at 4-5). Respondents also speculate that the Senate and House bills were “held for further study once committee members heard that they were being asked to disenfranchise voters without going through the charter amendment process.” *Id.* Further, Respondents argue that to their knowledge, “the Charter Revision Committee has not corrected the flaws that doomed the 2023 charter amendment legislation.” *Id.* at 6. One would think that rather than obstruct the process, the council members would stay informed as to the work of Charter Revision Committee, seek to comply with the Consent Judgment and therefore encourage passage of legislation at the General Assembly to amend the BSFD Charter, which this Court already deemed unconstitutional.⁹

Instead, BSFD has worked to deprive Petitioners and other qualified voters of their constitutional right to vote by purposefully evading the election process, and by impeding the progress of the Charter Revision Committee and passage of the proposed amendments through the General Assembly. Petitioners have no confidence in Respondents’ sudden assertions that “[t]here will be a 2024 Annual Meeting in accordance with the Charter and the Consent Judgment.” (Objection at 6). Respondents have illegally ignored the written demands of the qualified voters and neglected their non-discretionary obligations under BSFD’s By-Laws. Accordingly, Petitioners have a clear legal right to relief and no adequate remedy at law, thus

⁹ On or about January 16, 2024, Charter Revision Committee sent Representative Carol Hagan McEntee a copy of its revised Charter amendments, requesting her sponsorship for the legislation during the 2024 General Assembly session; however, the Committee has yet to receive confirmation of any such sponsorship. (Attached hereto as Reply Exhibit 4).

justifying this Court's issuance of a Writ of Mandamus. *See Muschiano v. Travers*, 973 A.2d 515, 520 (R.I. 2009).

For the foregoing reasons, Petitioners respectfully request that this Court grant their Motion and issue a Writ of Mandamus ordering Chairperson O'Donnell to immediately call the special meeting duly demanded by the qualified voters.

Petitioners,
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Gordon Wrin, Katarina Wrin, Robert Patterson and
Mary Burke Patterson,
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CERTIFICATION

I hereby certify that on the 7th day of March 2024, I filed and served this document through the electronic filing system on the following:

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The document is available for viewing and/or downloading from the Rhode Island Judiciary Electronic Filing System.

/s/ Gina Renzulli Lemay