

# *Exhibit 1*

**Bonnet Shores Fire District CHARTER**  
**and Related Legislation**

(Amendments Included As of 2012)

State of Rhode Island and Providence Plantations

January Session, A.D. 1932

**AN ACT TO INCORPORATE THE  
BONNET SHORES FIRE DISTRICT**

It is enacted by the General Assembly as follows:

SECTION 1. All that part of the town of Narragansett, county of Washington, in the State of Rhode Island, lying between the easterly line of Boston Neck Road and Narragansett Bay, comprising approximately 400 acres in area and being more particularly described as follows:

- (1) That land described in that warranty deed from Howard Johnson, et al., to Bonnet Shores, Inc., dated April 27, 1928, and recorded in book 9, pages 352 and 353 in the records of land evidence of said town of Narragansett.
- (2) That land described in that warranty deed from Robert L. Walker to Bonnet Shores, Inc., dated April 28, 1928 and recorded in book 9, pages 354, 355 and 356 in the records of land evidence of said town of Narragansett.
- (3) That land described in the warranty deed from Henry C. Weeks to Bonnet Shores, Inc., dated September 29, 1928, and recorded in book 9, pages 508, 509, 510 and 511 of the records of land evidence of said town of Narragansett.
- (4) Lots numbered 9, 10, 11, 20, 21, 22, 23, 24, 25 and 36 together with the southerly twenty-five feet of lot 19 on that plot entitled "Bonnet Point Land Co. lots at Bonnet point in the town of Narragansett, RI Scale 1 in. -100 ft. October 22, 1914, T. G. Hazard Jr., surveyor" and recorded in the records of land evidence in said town of Narragansett in book 6 between pages 314 and 315, is hereby incorporated into a district to be known as "Bonnet Shores Fire District." Said district may have and enjoy 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 therefor. Provided, however, that the debts of said district shall at no time exceed in the aggregate per centum of the valuation of the real estate within said district as hereinafter defined.

SECTION 2. Every firm, corporation, unincorporated association and<sup>1</sup> every person, irrespective of sex, of the age of eighteen<sup>2</sup> years,<sup>3</sup> who is possessed in his or her own right of real estate in said district of the value of one Four Hundred (\$400) Dollars<sup>4</sup> 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. Any such firm, corporation or unincorporated association having title to real estate as aforesaid, shall be entitled to cast one (1) vote through its duly authorized representative for such purposes. The duly authorized representative shall present to the Clerk before casting its vote and obtaining a ballot, an authorization by the firm, corporation or unincorporated association, which authorization shall be notarized and clearly identify the person authorized to vote on behalf of said firm, corporation or unincorporated association holding title to real estate.<sup>5</sup>

---

<sup>1</sup> The R.I. General Assembly expanded the pool of qualified voters of the Fire District to include firms, corporations and unincorporated associations when it amended the BSFD Charter in 1985.  
<sup>2</sup> The R.I. General Assembly lowered the minimum voting age for qualified voters of the Fire District from twenty-one (21) to eighteen (18) when it amended the BSFD Charter in 1985.  
<sup>3</sup> The R.I. General Assembly removed the requirement that a qualified voter be "a citizen of Rhode Island" when it amended the BSFD Charter in 1982.  
<sup>4</sup> The R.I. General Assembly increased the minimum property value a property owner must own in the Fire District to qualify as a voter at Fire District meetings from \$134.00 to \$400.00 when it amended the BSFD Charter in 1982.  
<sup>5</sup> The R.I. General Assembly added this language governing the voting rights of firms, corporations and unincorporated associations when it amended the BSFD Charter in 1985.

Every person or firm qualified to vote as aforesaid shall vote in person, except that a person in common ownership to real estate may vote as the proxy of the other person who has been verified as being in common ownership in said real estate, provided that such proxy shall be in writing and filed with the Clerk at the meeting at which such proxy shall be used.<sup>6</sup> The proxy shall be in a form to be furnished by the Clerk or otherwise approved by the Clerk.<sup>7</sup> All voting shall be by ballot, unless waived by unanimous consent of those present at the meeting and qualified to vote, and the action of a majority at any meeting at which a quorum is present shall bind the District.<sup>8</sup>

SECTION 3. The first meeting of the district shall be held at some convenient place within the district on the second Wednesday in May, 1932, at 7 o'clock P.M., eastern standard time (or 8 o'clock P.M. daylight saving time). The annual meeting of the district (if established) to be held in 1933 shall be held on the second Wednesday in May in that year, and thereafter the annual and special meetings of the district shall be held in said Town of Narragansett at such time as shall be specified in the by-laws of the district. Notice of the first meeting shall be given by two or more of the persons qualified to vote within the district and said notice shall state the time and place of meeting and shall be published in some newspaper

---

<sup>6</sup> The R.I. General Assembly changed the pool of eligible proxy voters at Fire District meetings from spouses (husbands or wives) to owners of common property when it amended the BSFD Charter in 1985.  
<sup>7</sup> The R.I. General Assembly added the requirement that the BSFD Clerk must approve all proxy votes when it amended the BSFD Charter in 1985.  
<sup>8</sup> The R.I. General Assembly added the requirements that voting at Fire District meetings be conducted by secret ballot and that action taken by a majority of voters at a Fire District meeting shall bind the Fire District when it amended the BSFD Charter in 1985.

published in the city of Providence, once a week for two successive weeks, the last publication to be at least five days next before the date of said first meeting. Notice of subsequent annual meetings of the district shall be given in a manner as prescribed in the by-laws of the district. A quorum at the first meeting of the district and at any subsequent meeting, whether annual or special, shall consist of at least fifty<sup>9</sup> voters qualified as aforesaid, present in person, or by proxy (as to those cases where voting by proxy is permitted in accordance with the provisions of Sec. 2 hereof). All voting shall be by ballot unless waived by unanimous consent of those present at the meeting, and qualified to vote, and the action of a majority at any meeting at which a quorum is present shall bind the district.

This act shall take effect upon its passage and all acts or parts of acts inconsistent herewith are hereby repealed.

SECTION 4. At the first meeting of the district the following proposition shall be submitted: "Shall Bonnet Shores Fire District be established according to the act of incorporation passed by the general assembly of the state?" If, (a quorum being present), the majority of ballots cast be in the affirmative said district shall be established according to the provisions of this act, otherwise this act shall become null and void.

SECTION 5. The district may adopt such rules, regulations, ordinances and by-laws as may be reasonably necessary to enable it to fulfill its corporate purposes and may provide a penalty for the breach of such rules, regulations, ordinances or

by-laws which for each offence shall be a fine not exceeding fifty<sup>10</sup> dollars, one-half of the fine imposed to be for the use of the district, or imprisonment for a term of not exceeding thirty days, which penalties may be imposed, upon complaint of the district or any of its officers, by the Fourth Division District Court at Washington County.<sup>11</sup> Rules, regulations, ordinances or by-laws may also prescribe the powers and duties of officers and committees of the district; the conduct and control of the district inhabitants and the guarding, destruction<sup>12</sup> or removal of property in times of conflagration or other casualty; the regulation, protection or maintenance of water pipes, hydrants, safety valves, electric wires, poles and similar apparatus and equipment, and the maintenance or use of drains or sewers; the suppression of nuisances; and the protection of life and property.

SECTION 6. The district 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. Such officers and committees may be elected at the first meeting of the district to hold office until the first annual meeting thereafter; and at such annual meeting and at each subsequent annual meeting of the district officers and

<sup>9</sup> The R.I. General Assembly increased the quorum requirement for Annual and Special Meetings from twenty-five (25) qualified voters to fifty (50) qualified voters when it amended the BSFD Charter in 1982.

<sup>10</sup> The R.I. General Assembly increased the maximum fine the Fire District could impose on violators from twenty dollars (\$20.00) to fifty dollars (\$50.00) when it amended the BSFD Charter in 1982.

<sup>11</sup> The R.I. General Assembly changed the court specified in Section 5 from the "district court of the second judicial district" to the "Fourth Division District Court at Washington County" when it amended the BSFD Charter in 1982.

<sup>12</sup> The R.I. General Assembly added the language "of the district inhabitants and the guarding, destruction" when it amended the BSFD Charter in 1982.

committees may be elected in such manner and for such terms of office as may be prescribed in the by-laws. If the by-laws shall so provide, the members of the district council may be divided into groups, one group to be elected annually to hold office for not more than three years. Vacancies in any office may be filled at any annual meeting of the district, or at any special meeting called for that purpose. The district council shall have general supervision and management of the business and affairs of the district and, together with other officers and committees, shall have such further powers and duties as may be created or imposed in the by-laws of the district. The fire wardens shall have such powers and duties as are generally exercised in fire districts within the state, with such additional powers and duties as may be created or imposed in the by-laws of the district.

SECTION 7. The district may raise money by taxation of real estate, and buildings or improvements upon leased real estate within the district, provided, that the tax assessed and payable in any one (1)<sup>13</sup> year under the provisions of this act shall not exceed seven (7)<sup>14</sup> mills on each dollar of valuation as hereinafter defined. Taxation may be for any or all of the following purposes:

The maintenance, upkeep and improvement of existing private streets, walks and ways; the establishment and maintenance of additional private streets, walks and ways; the regulation and policing of the same in such manner as to assure

the lawful use thereof and to maintain order and preserve peace within the district;

The establishment and/or maintenance, within the district, of a water supply system for domestic use and fire prevention; a fire, police or life saving department; a lighting system; a garbage removal system, or any similar system deemed necessary for the protection of lives and property within the district or for the general improvement; upbuilding and beautifying of district property;

The purchase and/or lease of land for the establishment and maintenance within said district of a private beach and/or bathing facilities;<sup>15</sup>

The purchase and/or construction or erection of any building for recreational purposes for the fire district; and for recreational programs and activities for the benefit of the taxpayers of the Bonnet Shores Fire District;<sup>16</sup>

The purchase and/or lease of land, waters and water rights, buildings and building materials, implements, equipment, apparatus and property of any other kind deemed necessary or desirable for corporate purposes.

SECTION 8. The valuation of taxable property within the district for debt limit purposes and for purposes of district assessment and taxation, shall be that made by the assessors of

---

<sup>13</sup> The R.I. General Assembly added the parenthetical "(1)" when it amended the BSFD Charter in 1982.

<sup>14</sup> The R.I. General Assembly added the parenthetical "(7)" when it amended the BSFD Charter in 1982.

---

<sup>15</sup> The R.I. General Assembly deleted a period (" ") and replaced it with a semicolon (";") when it amended the BSFD Charter in 1982.

<sup>16</sup> The R.I. General Assembly added this subsection, which specifically empowers the Fire District to construct buildings for the recreational benefit of its taxpayers, when it amended the BSFD Charter in 1982.

the town of Narragansett as of December 31<sup>st</sup><sup>17</sup> in each year. The district assessors shall assess taxes on all taxable inhabitants and taxable property within the district as of December 31<sup>st</sup><sup>18</sup> in each year and the same shall be payable on the first business day of the succeeding October 15<sup>th</sup><sup>19</sup> in each year. District taxes shall constitute a lien upon the property assessed and if not paid when due shall carry an interest penalty at the rate imposed from time to time by the town of Narragansett. The owner of assessable land, where on a lessee shall have erected a movable building or improvement shall be liable for the district tax assessed against such building or improvement. If any person against whom a district tax has been assessed shall establish, in manner as provided by law, that the valuation placed upon his assessable property within the district by the town tax assessors is excessive and that in consequence the town must refund or rebate a portion of its tax thereon, such person shall be entitled to receive and shall receive from the district a refund or rebate of his district tax in like proportion. In the assessment and collection of district taxes its officers shall follow generally the practice and procedure adopted by corresponding officers in the town of Narragansett. Provided, however, that the district may adopt such reasonable by-laws with respect to the assessment, collection and payment of taxes as it deems proper.

SECTION 9. This act shall take effect from and after its acceptance by ballot as aforesaid and when there shall have

been filed with the secretary of state a certificate of the clerk of the district which shall disclose such acceptance.

In the event that said district shall be established as provided in section 4 hereof, no amendment of this act shall be effective as to said district unless and until the same shall be accepted by the affirmative vote of a majority of the voters of said district present (or represented by proxy as provided in section 2 hereof) at a special or annual meeting of said district duly held within two years after the passage of such amendment, at which meeting a quorum shall be present, and in the notice of which meeting there shall be contained the statement that the acceptance or rejection of such amendment is to be voted upon, and until there shall have been filed with the secretary of state a certificate of the clerk of the district that such amendment has been accepted as aforesaid.

SECTION 10. The Bonnet Shores Fire District Council is hereby authorized and empowered to appoint a harbormaster and to ordain and establish such by-laws, rules, regulations, fees and compensation as such council may deem necessary and expedient for carrying out the provisions hereof. The jurisdiction, powers and duties of such harbormaster shall include but not be limited to the regulations of speed, management, and control of all vessels and the size, type, location and use of all anchorages and moorings within the waters immediately adjacent and contiguous to the Bonnet Shores Fire District including, without limiting the generality of the foregoing, the authority and power to regulate and control water skiing in such confines. Such harbormaster shall have such other and additional powers and jurisdiction as may be granted from time to time by the town of Narragansett. The jurisdiction boundaries of the harbormaster's authority shall be

<sup>17</sup> The R.I. General Assembly changed the tax assessment date from June 1<sup>st</sup> to December 31<sup>st</sup> when it amended the BSFD Charter in 1982.  
<sup>18</sup> The R.I. General Assembly changed the tax assessment date from June 1<sup>st</sup> to December 31<sup>st</sup> when it amended the BSFD Charter in 1982.  
<sup>19</sup> The R.I. General Assembly changed the due date for BSFD taxes from August 1<sup>st</sup> to October 15<sup>th</sup> when it amended the BSFD Charter in 1982.

from the most easterly point of land of the Bonnet Shores Fire District, a boundary line shall be drawn northerly and southerly, taking the northern most point of said District, taking a line due easterly from that point and further taking a point from the furthest southern extension of the said district drawing a line due easterly and due westerly where said lines shall intersect all areas bounded therein.<sup>20</sup>

\*\*\*\*\*

**Other Legislation Affecting the Bonnet Shores Fire District**

State of Rhode Island

In General Assembly

January Session, A.D. 1982

AN ACT

IN AMENDMENT OF CHAPTER 68 OF  
THE PUBLIC LAWS OF 1964

It is enacted by the General Assembly as follows:

SECTION 1 and 2 of chapter 68 of the public laws of 1964, entitled "An act authorizing the town of Narragansett to appropriate money for the use and benefit of the Bonnet Shores Fire District" as amended by chapter 1908 of the public laws of 1947 is hereby amended to read as follows:

SECTION 1. The town of Narragansett is hereby authorized and empowered to appropriate commencing in the year 1981 and annually thereafter a grant as it shall deem necessary to be expended for the use and benefit of the Bonnet Shores Fire District.

SECTION 2. The grant appropriated under the foregoing provisions shall be expended in said fire district for public purposes, such as water, lighting, fire protection, road maintenance, and police as the district council of said fire district shall order, provided, however, that all said expenditures as ordered by said district council shall be actually made by and under the direction of such person or persons who shall be approved by the town council.

SECTION 3. This act shall take effect upon passage.

\*\*\*\*\*

State of Rhode Island

In General Assembly

January Session, A.D. 1982

AN ACT

TO EMPOWER THE TOWN COUNCIL OF  
NARRAGANSETT TO EXEMPT FROM ASSESSMENT  
AND TAXATION SEWER INSTALLATIONS IN AND TO  
AND ADJACENT TO REAL PROPERTY OF THE BONNET  
SHORES FIRE DISTRICT WITHIN THE TOWN OF  
NARRAGANSETT

<sup>20</sup> The R.I. General Assembly added Section 10 to the BSFD Charter in 1974.

# *Exhibit 2*



STATE OF RHODE ISLAND  
WASHINGTON, SC.

SUPERIOR COURT

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

Vs. :  
THE BONNET SHORES FIRE DISTRICT :  
*Defendant.* :

C.A. No. WC-2020-

**COMPLAINT**

**Introduction**

This is an action for declaratory and injunctive relief to enjoin Defendant Bonnet Shores Fire District (“BSFD”) from conducting elections in contravention of the Fourteenth Amendment to the United States Constitution and Article I, § 2, Article II, § 1, and Article III, § 1 of the Rhode Island Constitution. Specifically, Plaintiffs Mary Burke Patterson, Robert E. Patterson, Melissa Jenkins, Valerie Ann Henry, Paula Childs, David H. Stenmark, and Carol M. Stenmark (collectively, the “Plaintiffs”) have either been disenfranchised and/or subjected to the unlawful dilution of their votes because BSFD only permits individuals to vote based on their ownership interest in property within BSFD, and not based on their legal residence and other qualifying factors. These Plaintiffs bring this Complaint to vindicate their rights to vote for the individuals who will govern an entity which exercises general governmental power in a manner which conforms to the rights guaranteed under the United States and Rhode Island Constitutions. In support of their Complaint, the Plaintiffs allege as follows:

### **Parties and Jurisdiction**

1. Mary Burke Patterson is an adult individual who owns and resides in the property located at Eight Parkman Road, Narragansett, Rhode Island, which lies within the territory covered by BSFD.

2. Robert Patterson is an adult individual who owns and resides in the property located at Eight Parkman Road, Narragansett, Rhode Island, which lies within the territory covered by BSFD.

3. Melissa Jenkins is a resident of Four Bayberry Road, Narragansett Rhode Island, which lies within the territory covered by BSFD. Melissa is not listed on the deed to the property located at Four Bayberry Road.

4. Valerie Ann Henry is an adult individual who owns and resides in the property located at 101 Camden Road, Narragansett, Rhode Island, which lies within the territory covered by BSFD.

5. Paula Childs is an adult individual who owns and resides in the property located at 55 Lake Road, Narragansett, Rhode Island, which lies within the territory covered by BSFD.

6. David H. Stenmark is an adult individual who resides in the property located at 51 Pawnee Trail, Narragansett, Rhode Island, which lies within the territory covered by BSFD. That property is owned by the Stenmark Family Revocable Trust, of which David is a Trustee.

7. Carol M. Stenmark is an adult individual who resides in the property located at 51 Pawnee Trail, Narragansett, Rhode Island, which lies within the territory covered by BSFD. That property is owned by the Stenmark Family Revocable Trust, of which Carol is a Trustee.

8. BSFD is a fire district incorporated by act of the General Assembly. Its original charter was enacted by the General Assembly on April 17, 1930. It encompasses certain territory in the northern part of the Town of Narragansett, specifically:

All that part of the town of Narragansett, county of Washington, in the State of Rhode Island, lying between the easterly line of Boston Neck Road and Narragansett Bay, comprising approximately 400 acres in area and being more particularly described as follows:

- (1) That land described in that warranty deed from Howard Johnson, et al., to Bonnet Shores, Inc., dated April 27, 1928, and recorded in book 9, pages 352 and 353 in the records of land evidence of said town of Narragansett.
- (2) That land described in that warranty deed from Robert L. Walker to Bonnet Shores, Inc., dated April 28, 1928 and recorded in book 9, pages 354, 355 and 356 in the records of land evidence of said town of Narragansett.
- (3) That land described in the warranty deed from Henry C. Weeks to Bonnet Shores, Inc., dated September 29, 1928, and recorded in book 9, pages 508, 509, 510 and 511 of the records of land evidence of said town of Narragansett.
- (4) Lots numbered 9, 10, 11, 20, 21, 22, 23, 24, 25 and 36 together with the southerly twenty-five feet of lot 19 on that plot entitled "Bonnet Point Land Co. lots at Bonnet point in the town of Narragansett, RI Scale 1 in. -100ft. October 22, 1914, T.G. Hazard Jr., surveyor" and recorded in the records of land evidence in said town of Narragansett in book 6 between pages 314 and 315,

See BSFD Charter, Section 1, at p. 1-2 (attached hereto as *Exhibit A*).<sup>1</sup>

9. This Court has jurisdiction over this action pursuant to the provisions of R.I. Gen. Laws §§ 8-2-14 and 9-30-1.

### **FACTS** **Background**

10. BSFD was first incorporated by an act of the General Assembly in 1930, and its charter has been amended by act of the General Assembly. As alleged above, the General Assembly last amended the BSFD Charter in 2000.

---

<sup>1</sup>The General Assembly last restated the BSFD Charter in 1932 and has amended it no less than nine times since. As there is no Act of the General Assembly or similar source of law which succinctly restates the text of the Charter, this Complaint relies on *Exhibit A*, a copy of the BSFD Charter and bylaws compiled by BSFD. However, the text presented in *Exhibit A* does not include certain amendments to the BSFD Charter passed in 2000. These amendments do not materially affect the claims presented herein. All page numbers provided in citations for *Exhibit A* refer to the page numbers on the pages of *Exhibit A*.

11. BSFD's charter grants to 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.

*Exh. A*, BSFD Charter Section 2, at p. 2.

12. In addition to these powers, BSFD is empowered to perform certain quasi-municipal governmental functions, and to exercise general governmental powers when doing so.

13. For example BSFD is empowered to adopt "rules, regulations, ordinances and by-laws," and may punish the violation of its adopted rules with "a fine not exceeding fifty dollars, one-half of the fine imposed to be for the use of the district, or imprisonment for a term of not exceeding thirty days." *Exh. A*, BSFD Charter, Section 5, at p. 5-6.

14. BSFD has passed several ordinances, including ordinances regulating parking on public streets within BSFD, regulating dog ownership within BSFD, regulating the rental of residential properties within BSFD, regulating trash and recycling collection within BSFD, and regulating its harbor. *See generally* BSFD Ordinances (attached hereto as *Exhibit B*).

15. BSFD is also empowered to "raise money by taxation of real estate, and buildings or improvements upon leased real estate within the district" and is authorized to charge no more than "seven (7) mills on each dollar of valuation as herein defined." *Exh. A*, BSFD Charter, Section 7, at p. 7. The General Assembly also provided that taxes assessed by BSFD "shall constitute a lien upon the property assessed and if not paid when due shall carry an interest penalty at the rate imposed from time to time by the town of Narragansett." *Id.*, Section 8, at p. 9.

16. BSFD is empowered to raise taxes "for any and all of the following purposes:"

The maintenance, upkeep and improvement of existing private streets, walks and ways; the establishment and maintenance of additional private streets, walks and ways; the regulation and policing of the same in such manner as to assure the lawful use thereof and to maintain order and preserve peace within the district;

The establishment and/or maintenance, within the district, of a water supply system for domestic use and fire prevention; a fire, police or lifesaving department; a lighting system; a garbage removal system, or any similar system deemed necessary for the protection of lives and property within the district or for the general improvement; upbuilding and beautifying of district property;

The purchase and/or lease of land for the establishment and maintenance within said district of a private beach and/or bathing facilities;

The purchase and/or construction or erection of any building for recreational purposes for the fire district; and for recreational programs and activities for the benefit of the taxpayers of the Bonnet Shores Fire District;

The purchase and/or lease of land, waters and water rights, buildings and building materials, implements, equipment, apparatus and property of any other kind deemed necessary or desirable for corporate purposes.

*Exh. A*, BSFD Charter, Section 7, at p. 7-8.

17. Several of these powers are general governmental powers. For example, maintenance, upkeep, and improvement of streets, regulation and policing of the streets, the power to establish and maintain police and fire departments, the power to maintain garbage removal and sanitation services, and the power to pass ordinances which may result in fines or imprisonment are all general governmental powers.

18. In addition, the power to impose and collect property taxes on an *ad valorem* basis is a general governmental power.

19. BSFD is also tasked by the Coastal Resources Management Council (the “CRMC”) with control and management of its harbors under its own Harbor Management Plan. BSFD employs its own harbormaster, and, as alleged above, has issued ordinances regulating its harbor. *Exh. B*, BSFD Ordinances at p. 9-14.

20. Moreover, BSFD has applied for and received a grant from the Rhode Island Department of Environmental Management (“DEM”) for dredging the Wesquage Pond, representing itself as a quasi-municipal corporation. A true and accurate copy of the agreement between DEM and BSFD is attached hereto as *Exhibit C*.

21. BSFD is also insured by the Interlocal Risk Management Trust, Inc., which was created pursuant to R.I. Gen. Laws § 45-5-20.1.

22. R.I. Gen. Laws § 45-5-20.1(b) limits the availability of insurance through the Interlocal Risk Management Trust to “eligible entities,” which are defined as “any city, town, school committee, water or fire district, or other public or quasi-municipal authority, agency or entity, or organization that is an instrumentality of such cities or towns.”

#### **Elections Within BSFD**

23. Under the BSFD Charter, 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.” *Exh. A*, BSFD Charter, Section 6, at p. 6.

24. Upon information and belief, BSFD voters actually elect a seven-member District Council, a clerk, a treasurer, a tax collector, three tax assessors, two fire wardens, a moderator, and five members of a district nominating committee, with all officers serving one-year terms, and the District Council serving three-year, staggered terms. *See* BSFD Bylaws, Art. II, § 2, Art. III, §§ 1-8 (attached hereto as *Exhibit D*).<sup>2</sup>

25. Voting within BSFD is governed by the BSFD Charter as follows:

---

<sup>2</sup> Like the Charter, the Bylaws attached hereto are from a document provided by BSFD on its website. Upon information and belief, they are up to date.

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.

*Exh. A*, BSFD Charter, Section 2, at p. 3.

26. Additionally, the BSFD Charter permits “a person in common ownership to real estate [to] vote as the proxy of [another] person who has been verified as being in common ownership in said real estate, provided that such proxy shall be in writing and filed with the Clerk at the meeting at which such proxy shall be used.” *Exh. A*, BSFD Charter, Section 2, at p. 4.

27. This means that owners of real property located within BSFD, who have at least \$400 of equity in said property, are entitled to vote in BSFD elections regardless of whether they reside within BSFD. *Id.*

28. Indeed, under the terms of the BSFD Charter, there is no requirement that the real estate interest be in residential real estate, or even in real estate capable of becoming residential real estate. *Id.* Therefore, owners of commercial and other forms of non-residential properties who do not otherwise reside in BSFD are also permitted to vote in BSFD elections.

29. This also means that adults who reside in BSFD but who are not possessed of any interest in real estate located within BSFD, including lessees, are not permitted to vote in BSFD elections, and have no say in BSFD’s governance. *Id.*

30. This distribution of voting rights in BSFD is an official policy of BSFD, and both the restrictions on voting rights and the award of voting rights are administered by BSFD through official policy.

**The Disenfranchisement and Dilution of Votes**

31. Plaintiff Melissa Jenkins is a qualified voter and resident of BSFD. She is also a registered voter, registered at Four Bayberry Road, and voted in the 2018 general election.

32. Despite the above, Plaintiff Melissa Jenkins has not been permitted to vote at BSFD elections at any time since she has resided in BSFD.

33. This is because, as stated above, the BSFD Charter restricts the BSFD franchise to individuals who are qualified voters *and hold a deeded property interest within BSFD*.

34. Melissa Jenkins has an interest in the operations and the governance of BSFD. She is a resident subject to its ordinances and laws, she is a beneficiary of its services including road maintenance, garbage collection, and sewage works.

35. Though Melissa Jenkins is not personally liable for taxes to support BSFD, her household is.

36. Additionally, the remaining six Plaintiffs are all able to vote, and have voted in, BSFD elections.

37. However, BSFD elections allow many non-residents to vote, including owners of non-residential property located in BSFD. These non-residents number in the thousands, including over 4,000 owners of beach club bathhouses or cabanas at the neighboring Bonnet Shores Beach Club, a Rhode Island Condominium Association located within BSFD.

38. The inclusion of so many non-residents of BSFD in the BSFD elections has resulted in the votes of residents, including the six resident Plaintiffs, being wrongfully debased and diluted by non-resident voters.



**The Residents' Efforts to Resolve the Problem**

39. Several of the Plaintiffs have engaged in efforts to resolve the problems identified above prior to entering the instant litigation, including by appealing for help from the Attorney General, the Secretary of State, and the Board of Elections.

40. On August 22, 2019, the Secretary of State sent a letter to BSFD's Chair, Michael Vendetti, suggesting that the current distribution of voting rights under the BSFD Charter is unconstitutional, and citing the case of *Flynn v. King*, 433 A.2d 172 (R.I. 1981). A true and accurate copy of the Secretary of State's Letter is attached hereto as *Exhibit E*.

41. On October 16, 2019, the BSFD District Council held a meeting at which District Council Member Anita Langer moved to amend the BSFD Charter to comply with *Flynn v. King*, in accord with the Secretary of State's Letter. However, her motion did not receive a second. A true and accurate copy of the minutes of the October 16, 2019 meeting is attached hereto as *Exhibit F*.

**COUNT I**  
***Declaratory Judgment – Disenfranchisement***

42. Plaintiffs hereby repeat and reallege the allegations in Paragraphs 1 through 41 as if fully set forth herein.

43. BSFD is a quasi-municipal corporation chartered by the State of Rhode Island which exercises general governmental authority, including sanitation services, the power to pass ordinances, and the power to tax properties on an *ad valorem* basis.

44. The BSFD Charter, an Act of the General Assembly, imposes a property-ownership restriction on voting in BSFD elections, over and above the age and residency qualifications for voting imposed by the Rhode Island Constitution. *Exh. A*, BSFD Charter, Section 2, at p. 3.

45. Plaintiff Melissa Jenkins is a qualified voter over the age of 18 and a resident of BSFD but is not listed on the deed of the home she resides in; therefore, she is disenfranchised by this restriction on the right to vote in BSFD elections.

46. Under the Fourteenth Amendment to the United States Constitution, restrictions on the right to vote in elections for the leadership of entities and governmental subdivisions other than residence and age are suspect classifications and thus are not entitled to the presumption of constitutionality which other statutes usually enjoy. They may only be upheld if they are necessary to promote a compelling state interest.

47. Under Article I, § 2 of the Rhode Island Constitution, restrictions on the fundamental right to vote guaranteed under Article II, § 1 of the Rhode Island Constitution likewise may only be upheld if they are necessary to promote a compelling state interest.

48. The requirement imposed by the BSFD Charter that voters in BSFD elections be “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, . . . the conveyance of which estate shall if by deed, have been recorded at least ninety (90) days,” is an unconstitutional restriction on the right to vote in BSFD under both the United States Constitution and the Constitution of the State of Rhode Island, because it is not necessary to achieve any compelling interest of the State of Rhode Island.

49. This requirement is also unconstitutional under both the United States Constitution and the Constitution of the State of Rhode Island because the interest it is promoting is not a compelling state interest.

50. Finally, this requirement is unconstitutional per the Rhode Island Supreme Court’s decision in *Flynn v. King*.

**COUNT II**  
***Unconstitutional Disenfranchisement – 42 U.S.C. § 1983***

51. Plaintiffs hereby repeat and reallege the allegations in Paragraphs 1 through 50 as if fully set forth herein.

52. BSFD is a quasi-municipal corporation chartered by the State of Rhode Island, which exercises general governmental authority.

53. Plaintiff Melissa Jenkins is a qualified voter over the age of 18 and a resident of BSFD.

54. Under the Fourteenth Amendment to the United States Constitution, restrictions on the right to vote in elections for the leadership of entities and governmental subdivisions other than residence and age are suspect classifications subject to strict scrutiny.

55. The requirement imposed by the BSFD Charter that voters in BSFD elections be “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, . . . the conveyance of which estate shall if by deed, have been recorded at least ninety (90) days,” is an official policy of the BSFD, and is administered through official policy.

56. Plaintiff Melissa Jenkins has been denied the right to vote in BSFD elections because she is not listed on the deed to her home. *Exh. A*, BSFD Charter, Section 2, at p. 3.

57. This denial had been made under color of state law, and pursuant to an official policy of BSFD.

58. On August 22, 2019 the Secretary of State notified BSFD that this restriction was unconstitutional, but nevertheless BSFD has continued to restrict the right to vote in BSFD elections to those possessed of real estate. *Exh. E*, Secretary of State’s Letter; *Exh. F*, Oct. 16, 2019 Meeting Minutes.

**COUNT III**  
***Declaratory Judgment – Dilution of Votes***

59. Plaintiffs hereby repeat and reallege the allegations in Paragraphs 1 through 58 as if fully set forth herein.

60. The BSFD Charter provides that all individuals or corporations which own real estate within BSFD and have over \$400 in equity in said real estate, are permitted to vote in BSFD elections. *Exh. A*, BSFD Charter, Section 2, at p. 3.

61. The BSFD Charter thus places no residency requirement on voters for BSFD—anyone who resides anywhere in Rhode Island, or in the world, can vote in BSFD elections if they meet the property requirement.

62. Plaintiffs Mary Burke Patterson, Robert Patterson, Valerie Ann Henry, Paula Childs, David H. Stenmark, and Carol M. Stenmark are qualified voters who reside in BSFD and who have voted in past BSFD elections.

63. Under the Fourteenth Amendment to the United States Constitution, voters have a right not to have their votes debased or diluted by malapportionment of voting rights in units of local government having general governmental powers over their geographic area.

64. Under Article II, § 1 of the Rhode Island Constitution, voters must have “resided thirty days in the town or city from which such citizen desires to vote.”

65. Moreover, under Article I, § 2 of the Rhode Island Constitution, wrongful dilution or debasement of the vote is similarly prohibited.

66. The distribution of voting rights in BSFD unconstitutionally debases and dilutes the votes of Plaintiffs Mary Burke Patterson, Robert Patterson, Valerie Ann Henry, Paula 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.

67. There is no compelling state interest for which this distribution of voting rights is necessary.

**COUNT IV**  
***Unconstitutional Dilution of Votes – 42 U.S.C. § 1983***

68. Plaintiffs hereby repeat and reallege the allegations in Paragraphs 1 through 67 as if fully set forth herein.

69. The BSFD Charter places no residency requirement on voters for BSFD, only a requirement that the voters be property owners. Therefore, anyone who resides anywhere in Rhode Island, or in the world, can vote in BSFD elections if they meet the property requirement.

70. BSFD permits numerous non-residents to vote in its elections, pursuant to its Charter.

71. This grant of voting rights is an official policy of BSFD, which is administered through official BSFD policy.

72. Plaintiffs Mary Burke Patterson, Robert Patterson, Valerie Ann Henry, Paula Childs, David H. Stenmark, and Carol M. Stenmark have a constitutional right, under the Fourteenth Amendment to the United States Constitution, to not have their votes be diluted or debased by malapportionment of voting rights in units of local government having general governmental powers over their geographic area.

73. BSFD has unconstitutionally debased and diluted the votes of Plaintiffs Mary Burke Patterson, Robert Patterson, Valerie Ann Henry, Paula 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.

74. This dilution was made under color of state law, and pursuant to an official policy of BSFD.

75. On August 22, 2019 the Secretary of State notified BSFD that dilution of voting rights was unconstitutional, but nevertheless BSFD has continued to recognize a right to vote in BSFD elections for individuals who are not residents of BSFD. *Exh. E*, Secretary of State's Letter; *Exh. F*, Oct. 16, 2019 Meeting Minutes.

WHEREFORE, Plaintiffs seek judgment against Defendant Bonnet Shores Fire District as follows:

- 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.

Plaintiffs,  
Mary Burke Patterson, Robert E. Patterson, Melissa  
Jenkins, Valerie Ann Henry, Paula Childs, David H.  
Stenmark, and Carol M. Stenmark,  
By their Attorneys,

/s/ Matthew T. Oliverio  
Matthew T. Oliverio, Esquire (#3372)  
Santiago H. Posas, Esquire (#9519)  
OLIVERIO & MARCACCIO LLP  
55 Dorrance Street, Suite 400  
Providence, RI 02903  
(401) 861-2900  
(401) 861-2922 Fax  
[mto@om-rilaw.com](mailto:mto@om-rilaw.com)  
[shp@om-rilaw.com](mailto:shp@om-rilaw.com)

Dated: March 13, 2020

**PLAINTIFFS HEREBY DEMAND TRIAL BY JURY ON ALL COUNTS SO TRIABLE.**

**NOTICE OF SERVICE TO ATTORNEY GENERAL**

I hereby certify that, pursuant to R.I. Gen. Laws § 9-30-11, a copy of this Complaint and attached exhibits has been served on the Attorney General of the State of Rhode Island.

/s/ Matthew T. Oliverio  
Matthew T. Oliverio, Esquire

# *Exhibit 3*



STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: January 27, 2022)

MARY BURKE PATTERSON, ROBERT E. :  
PATTERSON, MELISSA JENKINS, :  
VALERIE ANN HENRY, PAULA CHILDS, :  
DAVID H. STENMARK, and CAROL M. :  
STENMARK, :  
*Plaintiffs,* :  
v. :  
THE BONNET SHORES FIRE DISTRICT, :  
*Defendant.* :

C.A. No. WC-2020-0130

22 JAN 27 PM 2:54

WASHINGTON  
SUPERIOR COURT  
CLERKS OFFICE  
FILED

DECISION

TAFT-CARTER, J. Before the Court for decision are Plaintiffs’ Motion for Summary Judgment, Defendant Bonnet Shores Fire District’s (the BSFD) Objection to Plaintiffs’ Motion and Cross-Motion for Summary Judgment, and Plaintiffs’ Reply Memorandum and Objection to Defendant’s Cross-Motion. Jurisdiction is pursuant to Rule 56 of the Superior Court Rules of Civil Procedure in accordance with G.L. 1956 §§ 8-2-14 and 9-30-1 and 42 U.S.C. § 1983.

I

**Facts and Travel**

Incorporated in 1930 by an act of the General Assembly, the BSFD is located in the northern part of the Town of Narragansett. (Compl. ¶ 8.) Under the terms of the Bonnet Shores Fire District Charter & Related Legislation (BSFD Charter), the BSFD possesses

“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.” (Compl. Ex. A, § 1(4)).

The BSFD Charter also specifically authorizes the BSFD to collect taxes, at the rate of up to seven mills on each dollar of valuation, on real estate within the District.<sup>1</sup> *Id.* at Ex. A, § 7. Among other purposes, the BSFD may use the taxes raised to establish and maintain

“a water supply system for domestic use and fire prevention; a fire, police or life saving department; a lighting system; a garbage removal system, or any similar system deemed necessary for the protection of lives and property within the district or for the general improvement[,] upbuilding and beautifying of district property[.]”  
*Id.* at Ex. A, § 7.

Currently, the BSFD does not provide water, fire services, police services, road maintenance, snow removal, public schools, or parking enforcement, all of which are provided by the Town of Narragansett instead. (Def.’s Mem. Ex. 1, ¶ 3.) The BSFD does provide “[r]efuse collection” services, beach maintenance and operations, harbor operations, a summer camp for youth, and limited private security patrols. *Id.* at Ex. 1, ¶ 4.

The BSFD is also empowered to “adopt such rules, regulations, ordinances and by-laws as may be reasonably necessary to enable it to fulfill its corporate purposes and may provide a penalty for the breach” thereof in the form of “a fine not exceeding fifty dollars . . . or imprisonment for a term of not exceeding thirty days[.]” (Compl. Ex. A, § 5 (footnote omitted).) Through its ordinances, the BSFD “may also prescribe . . . the conduct and control of the district inhabitants. . . .” *Id.* Accordingly, BSFD has enacted enforceable ordinances governing conduct within its boundaries, including parking regulations, a trash removal and anti-littering ordinance, and a dog leashing ordinance. (Compl. Ex. B, 19-21.)

---

<sup>1</sup> A mill is a “monetary unit equal to one-tenth of a cent.” Black’s Law Dictionary 1190 (11th ed. 2019). In other words, the BSFD may collect \$7 in taxes for every \$1,000 in assessed value.

Under § 6 of the BSFD Charter, BSFD voters

“may elect a clerk, three assessors of taxes, a collector of taxes, a district council [of] 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.” (Compl. Ex. A, § 6.)

By the terms of the Bonnet Shores Fire District By-Laws (BSFD By-Laws), members of the district council are elected to three-year terms and officers are elected annually; both officers and council members must be qualified voters. (Compl. Ex. D, Art. II § 2, Art. III § 1.) Voter eligibility in BSFD elections is governed by § 2 of the BSFD Charter, 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 . . . 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. . . . Every person or firm qualified to vote as aforesaid shall vote in person, except that a person in common ownership to real estate may vote as the proxy of the other person who has been verified as being in common ownership in said real estate[.]” (Compl. Ex. A, § 2 (footnotes omitted).)

Owners with at least \$400 of equity in real property located in the BSFD, including commercial and nonresidential parcels, are therefore entitled to vote in BSFD elections regardless of whether they reside in the District. (Compl. ¶¶ 27-28.) Conversely, adult residents who do not possess the requisite property ownership interest are not entitled to vote in BSFD elections. *Id.* ¶ 29.

While the exact numbers of BSFD residents and qualified voters are unclear, potentially hundreds of nonresidents could be enfranchised through the BSFD Charter. Compl. ¶¶ 37, 70; Answer ¶¶ 37, 70. For example, the 2020 Tax Rolls prepared by the Narragansett Tax Assessor identify 2,029 taxable parcels within the BSFD, 930 of which appear to be nonresidential

bathhouses or cabanas located at the Bonnet Shores Beach Club (Beach Club). (Pls.' Reply Mem. 14-15 & Ex. H.) Of those 930 parcels, the 2020 Tax Rolls indicate that 827 are owned by persons with a mailing address outside the BSFD's boundaries. *Id.* at 15. In June 2021, the Beach Club sent its members an e-mail endorsing candidates for the upcoming BSFD Annual Meeting and Election and explaining how multiple owners of a single Beach Club unit could cast their votes by proxy. (Pls.' Reply Mem. Ex. I, at 2-4.) In the ensuing election, the BSFD handed out 698 ballots, up from 219 ballots in 2019 and 316 ballots in 2018. (Pls.' Reply Mem. Ex. J, at 2-4.)

Before filing suit, Plaintiffs brought their grievances with the BSFD Charter's voting provisions to the attention of Rhode Island's Attorney General, Board of Elections, and Secretary of State. (Compl. ¶ 39.) In an August 22, 2019 letter to BSFD Chairperson Michael Vendetti, Rhode Island Secretary of State Nellie M. Gorbea (Secretary Gorbea) suggested that the BSFD Charter's property-based voting restriction may be unconstitutional in light of the Rhode Island Supreme Court decision *Flynn v. King*, 433 A.2d 172 (R.I. 1981). (Compl. Ex. E, at 2.) BSFD Council member Anita Langer then moved to amend the BSFD Charter at an October 16, 2019 Council meeting, citing the "need to link the right to vote in the BSFD to residency because the current taxpayer requirement is unconstitutional." (Compl. Ex. F, at 2-3.) The motion failed for lack of a second. *Id.* at 3.

Plaintiffs filed the instant Complaint against the BSFD on March 13, 2020.<sup>2</sup> Plaintiff Melissa Jenkins (Jenkins), a resident of the BSFD and an otherwise qualified voter over the age of eighteen, is not listed on the deed of the home where she resides; she is thus unable to vote in

---

<sup>2</sup> Pursuant to G.L. 1956 § 9-30-11, because the Complaint alleges that the BSFD Charter is unconstitutional, Plaintiffs served a copy of the Complaint on the Attorney General of the State of Rhode Island. (Compl. 15.) In an April 7, 2020 filing, the Attorney General's Office acknowledged receipt of the Complaint and declined to brief the constitutional issues while reserving the right to do so at a later date or on appeal. (Notice of Att'y General 1.)

BSFD elections. (Compl. ¶¶ 3, 45.) Under Count I of the Complaint, Jenkins seeks a declaratory judgment that the BSFD Charter’s property ownership requirement is an unconstitutional restriction on her right to vote under both the Fourteenth Amendment to the United States Constitution and article 2, section 1 of the Rhode Island Constitution. *Id.* ¶¶ 46-50. Under Count II, Jenkins brings a claim against BSFD under 42 U.S.C. § 1983 for denying her the right to vote in contravention of the Fourteenth Amendment to the United States Constitution. *Id.* ¶¶ 54-57.

Plaintiffs Mary Burke Patterson, Robert E. Patterson, Valerie Ann Henry, Paula Childs, David H. Stenmark, and Carol M. Stenmark (collectively, the Voter Plaintiffs) both reside and own property within the BSFD. *Id.* ¶¶ 1-2, 4-7. As a result, they are eligible to vote in BSFD elections and have voted in previous elections. *Id.* ¶¶ 62, 72. Under Count III of the Complaint, the Voter Plaintiffs seek a declaratory judgment that the BSFD Charter unconstitutionally dilutes their votes by allowing numerous nonresident landowners to vote in BSFD elections. *Id.* ¶¶ 60-66. Under Count IV, Voter Plaintiffs bring their vote dilution claim against BSFD under 42 U.S.C. § 1983 as a violation of their Fourteenth Amendment rights. *Id.* ¶¶ 69-74.

Plaintiffs end their Complaint with the following requests for relief:

“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.

BSFD filed a Motion to Dismiss for Failure to Join Indispensable Parties on May 4, 2020. In a December 17, 2020 decision, this Court granted the Motion with respect to Plaintiffs’ claims for relief in paragraphs D, E, and F and denied the Motion as to Plaintiffs’ remaining claims. *Patterson v. The Bonnet Shores Fire District*, No. WC-2020-0130, 2020 WL 7638840, at \*8 (R.I. Super. Dec. 17, 2020). An order was entered granting BSFD’s Motion to Dismiss “as to Count III of Plaintiffs’ complaint and the relief sought thereunder in paragraphs D, E, and F of said complaint” but denying the Motion as to “all remaining claims.” (Order, Jan. 7, 2021 (Taft-Carter, J.) ¶¶ 1-2.)

On April 20, 2021, Plaintiffs filed a Motion for Summary Judgment with respect to Counts I, II, and IV of their Complaint pursuant to Rule 56 of the Superior Court Rules of Civil Procedure. The BSFD filed an Objection to Plaintiff's Motion for Summary Judgment and a Cross-Motion for Summary Judgment on June 30, 2021. On July 28, 2021, Plaintiffs filed a Reply to the BSFD's Objection and an Objection to the BSFD's Cross-Motion. The American Civil Liberties Union of Rhode Island (ACLU-RI), appearing as amicus curiae, also filed a Memorandum in Support of Plaintiffs' Motion for Summary Judgment. This Court heard oral arguments on September 21, 2021, and now issues a decision on the parties' Motions for Summary Judgment.

## II

### Standard of Review

Under Rule 56, “[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.” *Roadepot, LLC v. Home Depot, U.S.A., Inc.*, 163 A.3d 513, 519 (R.I. 2017) (quoting *5750 Post Road Medical Offices, LLC v. East Greenwich Fire District*, 138 A.3d 163, 166-67 (R.I. 2016)). “The moving party bears the initial burden of establishing the absence of a genuine issue of fact.” *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (quoting Robert B. Kent et al., *Rhode Island Civil Procedure* § 56:5, VII-28 (West 2006)) (alteration omitted). Once the moving party has satisfied its burden, “[t]he burden then shifts . . . and the nonmoving party has an affirmative duty to demonstrate . . . a genuine issue of fact.” *Id.* (quoting Kent et al., cited *supra*, at § 56:5, VII-28). To do so, the nonmoving party must point to “competent evidence” and cannot rely upon “mere allegations or denials in the pleadings, mere

conclusions or mere legal opinions.” *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013) (internal quotation and citations omitted).

### III

#### Analysis

##### A

#### Count I: Declaratory Judgment – Disenfranchisement

Under Count I, Jenkins seeks a declaration that the BSFD Charter’s property ownership voting requirements, which prevent her from voting in BSFD elections, are unconstitutional. (Compl. ¶¶ 46-50.) Jenkins’s claim rests on a line of U.S. Supreme Court cases applying the Equal Protection Clause of the Fourteenth Amendment to restrictions on the right to vote. (Pls.’ Mem. 7.) Jenkins maintains that because the BSFD is a quasi-municipal entity possessing general governmental powers, the Fourteenth Amendment applies to its voting requirements. *Id.* at 8-9. Jenkins also asserts that the BSFD’s property-based voting requirements are subject to strict scrutiny under the Fourteenth Amendment. *Id.* at 10. Finally, because she argues that the property ownership requirements are not narrowly tailored to advance a compelling state interest, Jenkins concludes that they are unconstitutional. *Id.* at 11-12.

The BSFD responds by stating that Jenkins must prove that the BSFD Charter is unconstitutional beyond a reasonable doubt. (Def.’s Mem. 5-6.) Emphasizing the narrow scope of its activities, the BSFD then argues that its voting requirements are not subject to the Fourteenth Amendment because it is not a governmental body. *Id.* at 6-10. Anticipating the counterargument that the BSFD Charter grants broader powers than the BSFD now exercises, the BSFD says that considering purely hypothetical applications of the BSFD Charter is inappropriate and would expand Jenkins’s as-applied challenge into a facial challenge. *Id.* at 11-12.



Jenkins agrees that she must prove the challenged provision unconstitutional beyond a reasonable doubt but argues in her reply that the BSFD has misconstrued the application of the burden of proof against the framework of Fourteenth Amendment scrutiny. (Pls.’ Reply Mem. 3-4.) As to whether the BSFD is a governmental body, Jenkins argues that the BSFD’s own admissions show that it currently exercises general governmental powers. *Id.* at 5-7. Jenkins also states that her attack on the BSFD’s property ownership requirement is a facial challenge in that she challenges the disenfranchisement of all non-owner residents. *Id.* at 8. Finally, Jenkins states that her argument does not rely on powers the BSFD is not using but notes that decisions on whether to exercise such latent powers are themselves exercises of governmental authority. *Id.* at 9.

**1**

**Jenkins’s Burden of Proof**

Jenkins attacks BSFD’s property ownership requirement under the Equal Protection guarantees of both the Fourteenth Amendment to the United States Constitution and article 1, section 2 of the Rhode Island Constitution. (Compl. ¶¶ 46-49.) The Rhode Island Supreme Court has held that claims advanced under “parallel” provisions of the federal and state constitutions call for “‘a hybrid analysis that nevertheless reflects the autonomous character of each constitution’s inviolable guarantees.’” *Federal Hill Capital, LLC v. City of Providence*, 227 A.3d 980, 989 (R.I. 2020) (quoting *East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1150 (R.I. 2006)). It has also held that while “the United States Supreme Court’s explication of fundamental rights . . . applies to [the Rhode Island] Constitution[,] . . . ‘[t]he equal-protection guarantees secured by the Fourteenth Amendment . . . in no way limit those protections Rhode Island citizens possess by nature of article 1, section 2.’”

*Id.* at 988 (quoting *Providence Teachers' Union Local 958, AFL-CIO, AFT v. City Council of City of Providence*, 888 A.2d 948, 956 (R.I. 2005)). Without losing sight of Jenkins's claim under the state constitution, the Court will therefore draw extensively from relevant U.S. Supreme Court cases. *Cf. Flynn*, 433 A.2d at 174 (taking same approach).

“The burden lies on the party challenging [a] statute’s constitutionality to ‘prove beyond a reasonable doubt that the act violates a specific provision’” of the federal or state constitutions. *Oden v. Schwartz*, 71 A.3d 438, 456 (R.I. 2013) (quoting *Mackie v. State*, 936 A.2d 588, 595 (R.I. 2007)); *see also Parella v. Montalbano*, 899 A.2d 1226, 1233 (R.I. 2006) (applying the “time-honored burden of proof—beyond a reasonable doubt—to the plaintiffs, who were challenging the constitutionality” of a state statute). However, if a plaintiff can successfully demonstrate that a heightened level of scrutiny is appropriate, then the government must advance a sufficient justification for the challenged law. *See Federal Hill Capital, LLC*, 227 A.3d at 985 & n.6 (“[I]n a case where strict scrutiny is the proper basis under which to examine a legislative act, the burden is no longer on the challenger to prove that it is unconstitutional beyond a reasonable doubt.”).

Under the Equal Protection Clause of the Fourteenth Amendment, “[w]hen a suspect class or a fundamental right is implicated, . . . the Court will scrutinize the legislative action strictly and the action will survive only if it is ‘suitably tailored to serve a compelling state interest.’” *Federal Hill Capital, LLC*, 227 A.3d at 985 (quoting *In re Advisory from the Governor*, 633 A.2d 664, 669 (R.I. 1993)); *see also Kramer v. Union Free School District No. 15*, 395 U.S. 621, 627-28 (1969) (“[In] reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a ‘rational basis’ for the distinctions made are not applicable.”). Once a plaintiff has established the existence of such a “presumptively invidious” classification, “it is

appropriate to enforce the mandate of equal protection by requiring the State to demonstrate that its classification has been precisely tailored to serve a compelling governmental interest.” *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982). Determining the appropriate burden of proof for Jenkins’s challenge thus requires examining the substance of her claim.

2

**Facial and As-Applied Challenges**

Before reaching that claim, the parties also dispute whether Jenkins’s assertion that the BSFD Charter’s property-based voting provision should be declared unconstitutional represents a facial challenge or an as-applied challenge. Def.’s Mem. 11-12; Pls.’ Reply Mem. 8. Although the distinction between the two types of constitutional challenges is not always clear, “the current consensus appears to be that ‘facial challenges are generally equated with claims of unconstitutionality in toto,’” and “as-applied challenges evaluate the constitutionality of a statute ‘as applied to the particular facts at issue.’” *Narragansett Indian Tribe v. State*, 110 A.3d 1160, 1163 (R.I. 2015) (first quoting Gillian E. Metzger, *Facial and As-Applied Challenges Under the Roberts Court*, 36 Fordham Urb. L.J. 773, 786 (2009), then quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010)). A “key distinction” between the two ““goes to the breadth of the remedy employed by the Court.”” *Id.* (quoting *Citizens United v. Federal Election Commission*, 558 U.S. 310, 331 (2010)).

The choice of a particular label is thus less crucial than a clear understanding of the scope of the challenge and the requested relief. The provision of the BSFD Charter at issue can be viewed as bearing two faces: one that prevents any resident without the requisite property interest from voting, and another that permits a broad class of nonresident property owners to vote. (Compl. Ex. A, § 2.) Under Count I, Jenkins challenges the exclusion of all non-owner residents from BSFD

elections and seeks a declaration that the \$400 property ownership requirement is an unconstitutional limitation on the franchise. Compl. ¶ 48; Pls.’ Reply Mem. 8. Count I could thus be understood as a facial challenge against the restrictive facet of the property-ownership voting provision, which is inherent in the text of the BSFD Charter. *See Narragansett Indian Tribe*, 110 A.3d at 1163 (quoting Marc E. Isserles, *Overcoming Overbreadth: Facial Challenges and the Valid Rule Requirement*, 48 Am. U.L. Rev. 359, 428 (1998)) (describing a “valid rule facial challenge” as “a challenge to a statute based on a constitutional infirmity evident in the written words of the statute itself”). “[A] plaintiff can only succeed in a facial challenge by ‘establish[ing] that no set of circumstances exists under which the [law] would be valid,’ *i.e.*, that the law is unconstitutional in all of its applications.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). Again, however, for Count I the universe of relevant applications are only those in which the property ownership requirement is used to restrict the right to vote in BSFD elections.

Count I could therefore also be understood as an as-applied challenge to a particular subset of the voting provision’s applications. *See Flynn*, 433 A.2d at 174 (“The defendants claim that the provisions, as applied, exclude nonproperty owners from elections and as such violate the equal protection clause of the United States Constitution.”). In *Flynn*, after concluding that the “legislative charter of the West Gloucester Fire District denie[d] equal protection to certain qualified voters and therefore [was] invalid[,]” the remedy awarded by the Supreme Court was a declaration that all “persons who reside in the district and are eligible to vote in a general or special election in the town of Gloucester, shall be permitted to vote, whether or not they own taxable property.” *Id.* at 175-76. Whichever label is used, the result is the same: under Count I, Jenkins seeks a declaration that the BSFD may not prevent residents from voting on the basis of property

ownership.<sup>3</sup> *Cf. Project Veritas Action Fund v. Rollins*, 982 F.3d 813, 826 (1st Cir. 2020) (explaining in First Amendment context “that where the challengers ‘do[ ] not seek to strike [a statute] in all its applications’ but the relief sought ‘reach[es] beyond the particular circumstances of [the] plaintiffs,’ they must ‘satisfy [the] standards for a facial challenge *to the extent of that reach*’” (quoting *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010))). Accordingly, the proper focus of the constitutional inquiry under Count I is the restrictive face of the property ownership requirement, not that requirement—or the BSFD Charter—as a whole.

3

**Jenkins’s Equal Protection Challenge**

Substantively, Jenkins alleges that the BSFD’s property-based voting restriction violates the “one-person, one-vote principle established in *Reynolds v. Sims*, 377 U.S. 533. . . .” *Ball v. James*, 451 U.S. 355, 360 (1981). “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.” *Flynn*, 433 A.2d at 174 (citing *Kramer*, 395 U.S. 621). In *Flynn*, the Rhode Island Supreme Court applied an Equal Protection challenge under the state and federal constitutions to the “enfranchisement provisions of the West Glocester Fire District’s legislative charter.” *Id.* at 172. Those provisions—much like the BSFD’s—limited the right to vote to “owner[s] of taxable property in the district[,]” thereby disenfranchising residents who did not own property. *Id.* at 173. The *Flynn* Court concluded that, “[a]lthough there may have been a ‘rational basis’ for limiting the franchise to taxable-property

---

<sup>3</sup> Conversely, under the now-dismissed Count III, Voter Plaintiffs had challenged any application of the property-ownership voting provision to allow nonresidents to vote in District elections. (Compl. ¶¶ 60-67, 75.) As 42 U.S.C. § 1983 claims for damages to compensate Plaintiffs for prior deprivations of constitutional rights, Counts II and IV are as-applied challenges aimed at the specific facts at issue. *See, e.g., Graff v. Motta*, 695 A.2d 486, 492-94 (R.I. 1997).

owners, . . . no ‘compelling state interest was promoted’ by the exclusion of otherwise qualified voters who did not own property[.]” and that exclusion was unconstitutional. *Id.* at 175.

Here, the BSFD does not dispute that Jenkins and other residents are prevented from voting in BSFD elections by the plain meaning of the property ownership requirement. (Def.’s Mem. 2-3, 6.) The BSFD also does not maintain that this requirement advances any compelling state interest. *Id.* at 6, 10-11. Instead, the BSFD attempts to distinguish the facts of this case from *Flynn* and argues that the BSFD Charter’s voting requirement passes muster because

“the strict demands of *Reynolds* . . . are not applicable to a district election when the district neither enacts laws governing the conduct of citizens nor administers the normal functions of government such as the maintenance of streets, the operation of schools, police and fire departments, hospitals and other facilities designed to improve the quality of life within the district.” *Flynn*, 433 A.2d at 174 (citing *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973)).

In *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, cited *supra*, the United States Supreme Court held that a California water storage district could limit the right to vote in its general elections to district landowners without violating the Equal Protection Clause. *Salyer Land Co.*, 410 U.S. at 725-28. The district in question had “relatively limited authority” because “[i]ts primary purpose, indeed the reason for its existence, [was] to provide for the acquisition, storage, and distribution of water for farming” in an area comprised entirely of “intensively cultivated, highly fertile farm land.” *Id.* at 723, 728. As a result, district operations had a “disproportionate effect . . . on landowners as a group[.]” and “it [was] quite understandable that the statutory framework for election of directors . . . focuse[d] on the land benefited, rather than on people as such.” *Id.* at 728-30.

Similarly, in *Ball v. James*, cited *supra*, the United States Supreme Court held that an Arizona water reclamation district could restrict the right to vote to district landowners. *Ball*, 451

U.S. at 361. The Court’s analysis focused on “whether the purpose of the District is sufficiently specialized and narrow and whether its activities bear on landowners so disproportionately as to distinguish the District from those public entities whose more general governmental functions demand application of the [one person, one vote] principle.” *Id.* at 362 (citing *Reynolds*, 377 U.S. 533). Because the water reclamation district’s primary purposes were the storage and distribution of water to landowners, the Court noted that

“the District simply does not exercise the sort of governmental powers that invoke the strict demands of *Reynolds*. The District cannot impose ad valorem property taxes or sales taxes. It cannot enact any laws governing the conduct of citizens, nor does it administer such normal functions of government as the maintenance of streets, the operation of schools, or sanitation, health, or welfare services.” *Id.* at 366.

In short, although “the state legislature [had] allowed water districts to become nominal public entities in order to obtain inexpensive bond financing, the districts remain[ed] essentially business enterprises, created by and chiefly benefiting a specific group of landowners.” *Id.* at 368.

Arguing that the same exception to the *Reynolds* principle applies here, the BSFD represents that it exercises a “narrow and confined” set of powers that are “tied directly to its existence in a beach community.” (Def.’s Mem. 7.) In a June 7, 2021 Affidavit, Janice McClanaghan, then the acting chair of the BSFD Council, stated that the BSFD does not provide police or fire services, water, sewage disposal, schools, road maintenance, snow removal, or parking enforcement. (Def.’s Mem. Ex. 1, ¶ 3.) The BSFD does provide “[r]efuse collection” services, a youth summer camp, sporadic private security patrols, and maintains and operates local beaches and a harbor. *Id.* at Ex. 1, ¶ 4. The BSFD collects property taxes based on valuations established by the Town of Narragansett but does not collect auto excise taxes. *Id.* at Ex. 1, ¶¶ 5-6. While the BSFD holds regular elections for council members and officers, the BSFD receives

no state assistance or supervision in conducting those elections and the lists of eligible voters are supplied by the Town of Narragansett. *Id.* at Ex. 1, ¶¶ 7-8.

In response, Jenkins argues that the BSFD exercises multiple governmental powers. (Pls.’ Reply Mem. 6.) Unlike the district at issue in *Ball*, the BSFD collects ad valorem property taxes and provides sanitation services by collecting garbage. *Id.* The BSFD can also enforce the taxing powers granted by the BSFD Charter through tax sales of delinquent properties. Pls.’ Mem. Ex. A, § 8; see *Finnegan v. Seaside Realty Trust*, 777 A.2d 548, 548 (R.I. 2001) (“[A] tax collector for the Bonnet Shores Fire District sold the property to [plaintiff] for non payment of taxes.”). Additionally, pursuant to the BSFD Charter, the BSFD has passed multiple ordinances enforceable by fines of up to fifty dollars. *Id.* at Ex. A, § 5. Among these ordinances are parking regulations, a trash removal and anti-littering ordinance, a dog leashing ordinance, and an ordinance prohibiting loitering, consuming alcoholic beverages, or engaging in athletic activities on beaches or other public areas without a permit. *Id.* at Ex. B, at 4, 19-21. As Jenkins points out, these ordinances are “laws governing the conduct of citizens.” (Pls.’ Reply Mem. 7) (quoting *Ball*, 451 U.S. at 366).

There is clearly no genuine issue of dispute that the BSFD actively exercises governmental powers that make BSFD elections matters of “general interest” to all residents. *Flynn*, 433 A.2d at 174. Through the ordinances, lawfully enacted in compliance with the powers delegated by the General Assembly through the BSFD Charter, the BSFD purports to regulate a broad swath of “the conduct . . . of the district[’s] inhabitants.” (Compl. Ex. A, § 5.) In so doing, the BSFD exercises “a part of the sovereign power of the state[,] . . . one of the basic elements of a municipal” or quasi-municipal corporation. *Kennelly v. Kent County Water Authority*, 79 R.I. 376, 380, 89 A.2d 188, 190 (1952); see also *State ex rel. Town of Richmond v. Roode*, 812 A.2d 810, 813 (R.I. 2002) (“It is well-established that cities and towns have limited power ‘to enact ordinances, except [by virtue



of] those powers from time to time delegated to them by the Legislature.” (quoting *Hawkins v. Town of Foster*, 708 A.2d 178, 181 (R.I. 1998))).

The BSFD also exercises a quintessential governmental power through the collection of *ad valorem* property taxes. *See, e.g., Ramsden v. Ford*, 88 R.I. 144, 146, 143 A.2d 697, 698 (1958) (“[T]he levy, assessment and collection of taxes are governmental functions.”). The United States Supreme Court has explicitly recognized that the imposition of property taxes is one of the “governmental powers that invoke the strict demands of *Reynolds*.” *Ball*, 451 U.S. at 366. As with the ability to promulgate legally enforceable ordinances, the BSFD can only collect property taxes by virtue of the General Assembly’s decision to delegate a portion of the state’s governmental powers. *See Amico’s Inc. v. Mattos*, 789 A.2d 899, 903 (R.I. 2002) (“[T]he Legislature continues to exclusively occupy the fields of education, elections, and taxation, thereby precluding any municipality’s foray into these areas, absent specific legislative approval.”); *Kennelly*, 79 R.I. at 380, 89 A.2d at 190 (distinguishing limited authority of water district from “fire districts heretofore created by the legislature which are vested with a portion of the state’s taxing power”).

Furthermore, the BSFD provides sanitation services within its boundaries by collecting and removing refuse. Def.’s Mem. Ex. 1, ¶ 4; Pls.’ Mem. Ex. B, at 20. By the terms of the BSFD Charter, the BSFD may use its tax revenues to establish and maintain “a garbage removal system, or any similar system deemed necessary for the protection of lives and property within the district. . . .” (Compl. Ex. A, § 7.) Garbage removal is a sanitation service routinely provided by municipalities, either directly or through a private contractor, as an exercise of the governmental authority to protect the public health. *See, e.g., Truck Away of Rhode Island, Inc. v. Macera Brothers of Cranston*, 643 A.2d 811, 812 (R.I. 1994) (“In March of 1992 the city of Warwick invited sanitation contractors to bid on a citywide sanitation contract. . . . as part of an effort to privatize

the removal of trash from the city.”); *see also Ball*, 451 U.S. at 366 (describing the administration of “sanitation . . . services” as one of the “normal functions of government”).

Unlike the water storage districts at issue in *Ball* and *Salyer Land Co.*, the BSFD’s functions do not disproportionately affect property owners as opposed to residents. As mentioned, many of the BSFD’s ordinances regulate the conduct of all persons within the BSFD’s boundaries. (Pls.’ Mem. Ex. B, at 4, 19-21.) Similarly, “[t]he fact that a fire district is supported by a property tax does not mean that only those subject to a direct assessment [feel] the effects of the tax burden.” *Flynn*, 433 A.2d at 175. Property taxes indirectly affect those who, like Jenkins, are not listed on the deeds of the homes where they reside. *See City of Phoenix, Arizona v. Kolodziejski*, 399 U.S. 204, 210-11 (1970) (discussing how property taxes assessed on rental or commercial properties are normally “treated as a cost of doing business” and passed on to tenants and consumers). The BSFD’s maintenance of local beaches and a harbor and the provision of sanitation services affect the quality of life of “[e]very person who either owns property or resides within the district[,]” and non-owner residents such as Jenkins undoubtedly “share a common interest with the property owners” in how their beach community operates. *Flynn*, 433 A.2d at 175; *see also Kolodziejski*, 399 U.S. at 209 (“[I]t is unquestioned that all residents of Phoenix, property owners and nonproperty owners alike, have a substantial interest in the public facilities and the services available in the city. . . .”).

Given the governmental powers that the BSFD actively exercises, the argument that *Flynn* is distinguishable because BSFD does not provide fire protection services is unavailing. (Def.’s Mem. 10-11.) The decisive factor in *Flynn* was not fire protection *per se*, but the exercise of a governmental function that “substantially affect[ed]” every resident of the West Gloucester Fire District. *Flynn*, 433 A.2d at 175. By the same token, because the West Gloucester Fire District

performed the governmental function of fire protection, the fact that it did not offer police protection or operate schools was immaterial. *Id.* at 174-75. As the Rhode Island Supreme Court recognized, a wide range of local elections must obey the “basic principle . . . that as long as the election is one of general interest, any restriction must demonstrate that it serves a compelling state interest.” *Id.* at 174 (citing United States Supreme Court cases). “While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process.”<sup>4</sup> *Hadley v. Junior College District of Metropolitan Kansas City, Mo.*, 397 U.S. 50, 55 (1970).

As a result, to survive Jenkins’s Equal Protection challenge, the BSFD’s property-based voting restriction “must be shown to be necessary to ‘promote a compelling state interest.’” *Flynn*, 433 A.2d at 175 (quoting *Kramer*, 395 U.S. at 630). Here, the BSFD does not argue that the restriction advances any compelling state interest. *See* Def.’s Mem. 6, 10-11; *cf. Flynn*, 433 A.2d at 175 (holding “that no ‘compelling state interest was promoted’ by the exclusion of otherwise qualified voters who did not own property”). The Court cannot conceive of any circumstances in which the BSFD could permissibly use the property ownership requirement to prevent otherwise qualified residents from voting in BSFD elections. Given 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.

---

<sup>4</sup> While the BSFD’s current activities suffice to make its elections of general interest to all residents, it is noteworthy that the BSFD retains legal authority under the BSFD Charter to provide fire protection, to maintain a “police or life saving department[,]” and generally to exercise broader powers than it currently does. (Compl. Ex. A, § 7.) “[A] decision not to exercise a function within the [district]’s power . . . is just as much a decision affecting all citizens of the [district] as an affirmative decision.” *Avery v. Midland County, Texas*, 390 U.S. 474, 484 (1968).

Consequently, the Court finds that the BSFD is a quasi-municipal entity that exercises general governmental powers and that the provisions of the BSFD Charter which prevent residents from voting in BSFD elections on the basis of property ownership are unconstitutional under both the Fourteenth Amendment of the United States Constitution and article 1, section 2 of the Rhode Island Constitution.

**B**

**Count II: 42 U.S.C. § 1983 – Disenfranchisement**

In addition to the request for a declaratory judgment, Jenkins seeks to recover monetary damages pursuant to 42 U.S.C. § 1983 for prior deprivations of her right to vote. (Pls.’ Mem. 12.) Jenkins argues that BSFD is a “person” to whom § 1983 applies because the BSFD is a local governmental unit created by the General Assembly. *Id.* at 13. Jenkins also argues that the BSFD has acted under color of state law in enforcing its voting restriction because the BSFD exercises governmental powers and conducts elections pursuant to the delegated powers of the BSFD Charter. *Id.* at 13-14. Finally, Jenkins reprises her argument that the voting restriction has violated her constitutional rights under the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 15. In response, the BSFD primarily relies on the arguments that its voting provisions do not violate the Fourteenth Amendment due to the BSFD’s narrow and limited functions and that Plaintiffs must prove that the BSFD Charter is unconstitutional beyond a reasonable doubt. *See* Def.’s Mem. 5-12. The BSFD also points out that the voting provisions of the BSFD Charter represent the judgment of the General Assembly. (Hr’g Tr. 8:10-14, 9:16-19, Sept. 21, 2021).

“‘The very purpose of § 1983 [is] to interpose the . . . courts between the States and the people, as guardians of the people’s federal rights—to protect the people from unconstitutional action under color of state law, whether that action be executive, legislative, or judicial.’” *Jolicoeur*

*Furniture Co. v. Baldelli*, 653 A.2d 740, 749 (R.I. 1995) (quoting *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 503 (1982)). As a federal cause of action, the “elements of, and the defenses to, [§ 1983] are defined by federal law.” *Howlett v. Rose*, 496 U.S. 356, 375 (1990). Under § 1983,

“[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]” 42 U.S.C. § 1983.

A 42 U.S.C. § 1983 claim requires the Court to examine “two immediate subjects of inquiry, namely, who and what.” *Brunelle v. Town of South Kingstown*, 700 A.2d 1075, 1081 (R.I. 1997). “First, *who* acting under color of state law has caused the plaintiff’s alleged deprivation, and second, of *what* federal right, privilege, or immunity secured by the Federal Constitution or federal statutes has the plaintiff been deprived?” *Id.* In addition, municipalities may be held liable under § 1983 “only when a deliberate choice to follow a course of action is made by the official or officials responsible for establishing final policy with respect to the subject matter in question.” *Dyson v. City of Pawtucket*, 670 A.2d 233, 238 (R.I. 1996) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483–84 (1986)).

## 1

### **Persons under § 1983**

Beginning with the first inquiry, as to whether the BSFD is a person for the purposes of § 1983, in *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), the United States Supreme Court held that “[l]ocal governing bodies” are persons that can be sued under § 1983 when “the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that

body’s officers.” *Monell*, 436 U.S. at 690; *see also Howlett*, 496 U.S. at 376 (“[M]unicipal corporations and similar governmental entities are ‘persons[.]’”); *Four Star Ranch, Inc. v. Cooper*, No. 2:08-CV-394 TS, 2010 WL 3489567, at \*8 (D. Utah Sept. 2, 2010) (holding that, as quasi-municipal corporations, local districts are “persons” under § 1983).

In *Adler v. Lincoln Housing Authority (Adler II)*, 623 A.2d 20 (R.I. 1993), a plaintiff brought a successful § 1983 claim against a local housing authority, a type of entity that the Rhode Island Supreme Court defined as “a public or quasi-municipal corporation which exercise[s] police powers in the general public interest[.]” *Adler II*, 623 A.2d at 23 (quoting *State ex rel. Costello v. Powers*, 80 R.I. 390, 394, 97 A.2d 584, 586 (1953)). As previously discussed, the BSFD also exercises governmental powers, such as taxation and regulation, that the General Assembly has delegated through the BSFD Charter. The Court finds that the BSFD is a public or “quasi-municipal corporation” that is “endowed with the right to exercise . . . a portion of the political power of the state[.]” and is therefore a person for purposes of § 1983. *Kennelly*, 79 R.I. at 380-81, 89 A.2d at 191.

## 2

### **Acting under Color of State Law**

The BSFD also acts under color of state law in enforcing the property-based voting requirement set forth in the BSFD Charter. In *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982), the United States Supreme Court addressed the close relationship between the “under color of [state] law” requirement of § 1983 and the “state action” requirement of the Fourteenth Amendment. *Lugar*, 457 U.S. at 928. The Court concluded that “[i]f the challenged conduct of [defendants] constitutes state action as delimited by our prior decisions, then that conduct was also action under color of state law and will support a suit under § 1983.” *Id.* at 935. In turn, “it is now

beyond question” that the “actions of local government are the actions of the State” for purposes of the Fourteenth Amendment. *Avery v. Midland County, Texas*, 390 U.S. 474, 480 (1968). The actions of local governing bodies like the BSFD thereby occur under color of state law. *See Polk County v. Dodson*, 454 U.S. 312, 317–18 (1981) (“[A] person acts under color of state law only when exercising power ‘possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.’” (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941))); *cf. Brunelle*, 700 A.2d at 1081 (finding “clear showing” in § 1983 claim against municipality and its officials that challenged actions occurred under color of state law).

### 3

#### **Official Policy**

The United States Supreme Court has held that local governments may only be held liable under § 1983 “when execution of [the] government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury. . . .” *Monell*, 436 U.S. at 694. In other words, there must be a “policy attributable to the municipality that violated the plaintiff’s constitutional rights.” *Dyson*, 670 A.2d at 238. “[T]he word ‘policy’ generally implies a course of action consciously chosen from among various alternatives[.]” *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823 (1985). The policy need not be an ongoing course of conduct, as “a single decision by a municipality constitutes an act of official policy possibly rendering it liable under an otherwise valid § 1983 claim.” *Adler v. Lincoln Housing Authority (Adler I)*, 544 A.2d 576, 582 (R.I. 1988) (citing *Pembaur*, 475 U.S. at 483-84).

In the narrow sense that the BSFD enforces the property-based voting restriction, that restriction represents the BSFD’s official policy as to who may vote in BSFD elections. Nevertheless, there is a genuine dispute as to whether the voting restriction is the official policy of

the BSFD in the sense that it represents a “deliberate choice to follow a course of action . . . made by the official or officials responsible for establishing final policy with respect to the subject matter in question.” *Dyson*, 670 A.2d at 238 (citing *Pembaur*, 475 U.S. at 483–84). The complicating factor here is that the voting restriction stems from the BSFD Charter, a state law enacted by the General Assembly. The Court must therefore consider the “issue of whether—and under what circumstances—a municipality can be liable for enforcing a state law. . . .” *Vives v. City of New York*, 524 F.3d 346, 351 (2d Cir. 2008).<sup>5</sup> On the one hand, this issue implicates the legitimate interests of “injured citizens, who may [only] be able to recover against a municipality” that has enforced an unconstitutional state law because states are not persons under § 1983 and municipal officials can often assert a defense of qualified immunity. *Id.* at 351. On the other hand, the issue implicates the legitimate interests of municipalities, “which may incur significant and unanticipated liability” for actions that complied with state law. *Id.*

In an effort to resolve this tension, the *Vives* court focused on “the foundational question of whether a municipal policymaker has made a meaningful and conscious choice that caused a constitutional injury.” *Id.* On the first element of that inquiry, whether the municipality has made a meaningful choice to enforce the challenged state law, the *Vives* court noted that a municipality will lack any meaningful choice where a state law explicitly mandates municipal enforcement. *See id.* at 353 (“Freedom to act is inherent in the concept of ‘choice.’”); *cf. id.* at 354 (“[The state law]

---

<sup>5</sup> As the *Vives* court recognized, the federal circuits have taken somewhat different approaches to this issue, which has not yet been addressed by the United States Supreme Court. *See Vives*, 524 F.3d at 351-53 (comparing cases from Fourth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits); *see also Bethesda Lutheran Homes & Services, Inc. v. Leean*, 154 F.3d 716, 718 (7th Cir. 1998) (acknowledging circuit split). For that reason, the Court has chosen to rely on the persuasive value of *Vives*, a fairly recent attempt to synthesize relevant cases from the federal circuits into a coherent framework. *Cf. Martin v. Evans*, 241 F. Supp. 3d 276, 284-85 (D. Mass. 2017) (Saris, C.J.) (noting that the “First Circuit has not weighed in on this question” before applying *Vives* framework to plaintiff’s § 1983 claim against municipality for enforcing state law).



itself does not constitute such a mandate because it simply defines an offense without directing municipal officials to take any steps to act when the statute is violated.”). Conversely, a meaningful choice may occur “if a municipality decides to enforce a statute that it is authorized, but not required, to enforce[.]” *Id.* at 353.

On the second element, whether a municipal policymaker has made a conscious choice to enforce the state law, “[w]hile it is not required that a municipality know that the statute it decides to enforce as a matter of municipal policy is an unconstitutional statute, . . . it is necessary, at a minimum, that a municipal policymaker have focused on the particular statute in question.” *Id.* (citing *Owen v. City of Independence, Mo.*, 445 U.S. 622, 650 (1980)). “Evidence of a conscious choice may, of course, be direct or circumstantial.” *Id.* The presence of a meaningful and conscious choice is also closely tied to the issue of causation, as “the conclusion that the action taken or directed by the municipality or its authorized decisionmaker itself violates federal law will also determine that the municipal action was the moving force behind the injury of which the plaintiff complains.” *Id.* at 357 (quoting *Board of County Commissioners of Bryan County v. Brown*, 520 U.S. 397, 405 (1997)).

Here, while the property-ownership voting restriction originates from the General Assembly’s enactment of the BSFD Charter, it may nonetheless constitute the official policy of the BSFD if the BSFD had the legal authority to either waive or amend the restriction but made a conscious decision to retain and enforce it instead. *Cf. Cooper v. Dillon*, 403 F.3d 1208, 1222 (11th Cir. 2005) (finding that “§ 1983 liability is appropriate because [the municipality] did adopt the unconstitutional proscriptions in [the state law] as its own”). The difficulty facing the Court on parties’ cross-motions for summary judgment is that neither party has directed their factual and legal submissions to the issues discussed in *Vives*. As a result, the current record lacks sufficient

evidence to determine, as a matter of law, whether the BSFD has made a meaningful and conscious decision to enforce the property-based voting restriction. *Cf. Vives*, 524 F.3d at 348, 353 (vacating summary judgment because the issue of whether municipality made a meaningful and conscious choice to enforce state law could not be resolved on record before the court).

On this record, a question exists as to whether the BSFD could have chosen not to enforce the voting restriction by amending the terms of the BSFD Charter. Section 9 of the BSFD Charter, which governs potential amendments to the Charter, states that no amendment “shall be effective as to said district unless and until” it is approved “by the affirmative vote of a majority of the voters of said district . . . at a special or annual meeting of said district duly held within two years after the passage of such amendment, at which meeting a quorum shall be present,” but does not state who may pass such an amendment in the first instance. (Compl. Ex. A, § 9.) While the text of the BSFD Charter indicates that the General Assembly has amended the Charter on multiple occasions, the only evidence that any of these amendments were approved by the BSFD’s voters relates to the creation of the Bonnet Shores Land Trust, a distinct entity. *Compare id.* Ex. A, 13 n.21 (“As required by the Fire District Charter, this legislation creating the Bonnet Shores Land Trust was approved, 47-4, by Bonnet Shores Fire District voters at a Special Meeting of the Fire District held on November 21, 1991.”), *with id.* Ex. A, § 2 n.3 (“The R.I. General Assembly removed the requirement that a qualified voter be ‘a citizen of Rhode Island’ when it amended the BSFD Charter in 1982.”). There is also no evidence as to whether the BSFD Council, as the general policymaking body of the BSFD,<sup>6</sup> has enacted any amendments to the BSFD Charter that

---

<sup>6</sup> *See* Compl. Ex. A, § 6 (“The district council shall have general supervision and management of the business and affairs of the district and, together with other officers and committees, shall have such further powers and duties as may be created or imposed in the by-laws of the district.”); Pls.’ Mem. Ex. C, Art. II § 3 (“[T]he district council . . . may exercise all such powers of the district

were then ratified through Section 9. The minutes of the BSFD Council’s October 16, 2019 meeting indicate that BSFD Council member Anita Langer moved to amend the BSFD Charter to allow all residents to vote. The record does not indicate whether the motion’s failure to receive a second was due to other members’ opposition to the change or their belief that the Council lacked the power to amend the Charter.<sup>7</sup> *See id.* Ex. F, 2-3.

“[T]he only task of a trial justice in passing on a motion for summary judgment is to determine whether there is a genuine issue concerning any material fact.” *Reniere v. Gerlach*, 752 A.2d 480, 482 (R.I. 2000) (quoting *Industrial National Bank of Rhode Island v. Peloso*, 121 R.I. 305, 307, 397 A.2d 1312, 1313 (1979)). “However, the trial justice is constrained to perform this function without passing upon the weight or credibility of the evidence.” *Id.* (citing *Industrial National Bank of Rhode Island*, 121 R.I. at 308, 397 A.2d at 1313). As a result, the Court cannot resolve the amendment issue on the limited and inconclusive evidence available.

With respect to the issue of whether the BSFD made a conscious decision to enforce the voting restriction, there is some indication that the BSFD’s “policymaker[s] have focused on the particular statute in question.” *Vives*, 524 F.3d at 353. In an August 22, 2019 letter to BSFD Council Chairperson Michael Vendetti, Secretary Gorbea suggested that the property-based voting

---

and do all such lawful acts and things as are not by law, by the charter or by these by-laws directed or required to be exercised or done by the qualified voters of said district.”).

<sup>7</sup> Also unclear on the current record is whether amendment of the BSFD Charter’s voting provisions falls within the constitutional authority of the General Assembly to regulate “the time, manner and place of conducting elections” and whether the General Assembly has delegated that authority through the BSFD Charter. R.I. Const. art. II, § 2; *see Opinion to the House of Representatives*, 80 R.I. 288, 296–97, 96 A.2d 627, 631 (1953) (stating that General Assembly may allow municipalities to deviate from statewide election laws, but in so doing “should expressly provide by special act for all necessary procedures to be followed”); *see also Amico’s Inc.*, 789 A.2d at 903 (“[T]he Legislature continues to exclusively occupy the fields of education, elections, and taxation, thereby precluding any municipality’s foray into these areas, absent specific legislative approval.”).

restriction might be unconstitutional under *Flynn v. King*, cited *supra*, and encouraged the BSFD “to review your charter and make any necessary changes. . . .” (Compl. Ex. E.) The minutes of the BSFD Council’s ensuing October 16, 2019 meeting indicate that Secretary Gorbea’s letter was a topic of discussion, as was a related “complaint made by individuals to the R.I. Attorney General’s Office.” *Id.* Ex. F, 2-3. The record is unclear as to when the BSFD may first have become aware of those complaints. While probative of the BSFD Council’s awareness of the challenged voting restriction as of October 2019, and potentially also of the Council’s tacit endorsement of the restriction as of that date, the current record does not conclusively demonstrate an instance of meaningful and “conscious decision making by the [BSFD]’s policymakers” that would support a grant of summary judgment. *Vives*, 524 F.3d at 353.

“[A] trial court may not enter a summary judgment which rests on a chain of inferences from subsidiary facts not conclusively established in the record.” *Pepper & Tanner, Inc. v. Shamrock Broadcasting, Inc.*, 563 F.2d 391, 393 (9th Cir. 1977) (citing *Fortner Enterprises, Inc. v. United States Steel*, 394 U.S. 495, 506 (1969)). Accordingly, with respect to the issue of whether the voting restriction constitutes the BSFD’s official policy, parties’ cross-motions for summary judgment are denied.

4

### **Jenkins’s Federal Right**

The question posed by Jenkins in Count II “of *what* federal right, privilege, or immunity secured by the Federal Constitution or federal statutes” has been infringed upon is substantively identical to the claim brought under Count I. *Brunelle*, 700 A.2d at 1081. As previously

established, BSFD’s enforcement of the property-based voting restriction against Jenkins violates her right to vote under the Equal Protection Clause of the Fourteenth Amendment.

Under Count II, the Court finds that the BSFD is a person acting under color of state law and that enforcement of the property-based voting restriction against Jenkins violates her right to vote under the Equal Protection Clause of the Fourteenth Amendment. However, on the current record, the Court cannot determine whether the BSFD’s enforcement of the voting restriction represented a meaningful and conscious choice sufficient to establish liability under *Vives*, cited *supra*.<sup>8</sup> Accordingly, Plaintiffs’ Motion for Summary Judgment is granted in part and denied in part, and Defendant BSFD’s Cross-Motion for Summary Judgment is denied.

## C

### **Standing of Voter Plaintiffs**

Turning to Voter Plaintiffs, as a threshold matter the BSFD argues that Voter Plaintiffs’ claims should be dismissed for lack of standing. (Def.’s Mem. 2.) The BSFD points out that the Voter Plaintiffs cannot advance the disenfranchisement claims of Counts I and II of the Complaint because they are able to vote in BSFD elections. *Id.* at 3. Next, the BSFD argues that this Court’s prior dismissal of Count III and the claims for relief in paragraphs D, E, and F of the Complaint eliminates Voter Plaintiffs’ standing for their vote dilution claims by foreclosing any remedy for the alleged dilution. *Id.* at 4. According to the BSFD, the Court cannot find that the Voter Plaintiffs have standing without holding that vote dilution occurred, thereby disenfranchising the nonresident property voters the Court previously found to be indispensable parties. *Patterson*, 2020 WL 7638840, at \*5 (finding that “nonresident property owners are indispensable parties as

---

<sup>8</sup> If Jenkins can establish the BSFD’s liability on Count II, the appropriate measure of damages will be a fact question for the jury. *See Memphis Community School District v. Stachura*, 477 U.S. 299, 307-08 (1986).

to requests for relief D, E, and F pursuant to § 9-30-11”); Hr’g Tr. 8:15-9:24, Sept. 21, 2021. The BSFD also contends that Voter Plaintiffs lack the particularized injury required to establish standing because their claims are identical to other resident voters. Def.’s Mem. 4 (citing *Burns v. Sundlun*, 617 A.2d 114 (R.I. 1992)).

In response, the Voter Plaintiffs acknowledge that they have not been disenfranchised; instead, they rely on the fact that this Court’s prior decision and order did not dismiss Count IV or the related claims for relief in paragraphs I and J of the Complaint. *See* Pls.’ Reply Mem. 12; *see also Patterson*, 2020 WL 7638840, at \*8. The Voter Plaintiffs thereby distinguish their now-dismissed request for declaratory relief from their surviving 42 U.S.C. § 1983 claim and argue that if this Court finds that BSFD has violated Voter Plaintiffs’ constitutional rights, the Court can provide a remedy under § 1983 by awarding them damages and attorneys’ fees. (Pls.’ Reply Mem. 13-14.) Substantively, Voter Plaintiffs maintain that the unconstitutional dilution of their votes under the BSFD Charter is an injury in fact sufficient to confer standing. *Id.* at 14.

To establish standing, a party “‘must allege that the challenged action has caused him injury in fact, economic or otherwise.’” *In re 38 Studios Grand Jury*, 225 A.3d 224, 232 (R.I. 2020) (quoting *Watson v. Fox*, 44 A.3d 130, 135 (R.I. 2012)). An injury in fact is “‘an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent[.]’” *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). The requirement of an injury in fact ensures that the plaintiff “‘has a stake in the outcome that distinguishes his claims from the claims of the public at large.’” *In re 38 Studios Grand Jury*, 225 A.3d at 233 (quoting *Watson*, 44 A.3d at 136).

Beginning with the nature of Voter Plaintiff’s alleged injury, “[i]t is certain that the right to vote—the wellspring of all rights in a democracy—is constitutionally protected.” *Bonas v. Town*

of *North Smithfield*, 265 F.3d 69, 74 (1st Cir. 2001). And the right to vote “can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.” *Reynolds*, 377 U.S. at 555; see also *Lyman v. Baker*, 954 F.3d 351, 361-62 (1st Cir. 2020) (distinguishing plaintiffs’ allegation of a “sufficiently concrete and particularized” vote dilution injury from the ultimate merits of their claim).

As a result, Voter Plaintiffs possess the “personal stake in the outcome” that is the “*sine qua non* of standing.” *Mruk*, 82 A.3d at 535. Voter Plaintiffs reside in the BSFD and have voted in prior BSFD elections. (Compl. ¶ 36.) Pursuant to the plain language of the BSFD Charter, which ties voting rights to property ownership rather than residency, Voter Plaintiffs have alleged—and the BSFD has admitted—that numerous nonresidents were also eligible to vote in those prior elections. Compl. ¶¶ 37, 70; Answer ¶¶ 37, 70. This allegation is supported by the Narragansett Tax Assessor’s 2020 Tax Rolls, which indicate that a significant percentage of taxable parcels in the BSFD are owned by persons with mailing addresses outside the district’s boundaries. (Pls.’ Reply Mem. 14-15.) Voter Plaintiffs have thereby advanced specific facts in support of the claim that their right to vote has been violated by the BSFD’s official policy. If successful, Voter Plaintiffs could potentially recover damages for those prior injuries pursuant to § 1983. See *Memphis Community School District v. Stachura*, 477 U.S. 299, 310-11, 311 n.14 (1986) (discussing availability of compensatory damages for deprivation of constitutional right to vote); cf. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801 (2021) (holding that award of nominal damages for constitutional violation “satisfies the redressability requirement” of standing).

The BSFD’s argument that Voter Plaintiffs lack standing because the Court cannot afford them relief without disenfranchising nonresident voters is unavailing. In ruling on the BSFD’s Motion to Dismiss for Failure to Join Indispensable Parties, this Court dismissed Voter Plaintiffs’

requests for declarations that the “distribution of voting rights to nonresidents of BSFD is unconstitutional” under the federal and state constitutions and that “subsequent elections for BSFD offices must be open only to all residents of BSFD who are over eighteen years of age” because they would necessarily require the Court to “adjudicate the rights of absent parties.” *Patterson*, 2020 WL 7638840, at \*2, \*6 (quoting Compl. 14). Pursuant to § 9-30-11, the nonresident voters were thus indispensable to Voter Plaintiffs’ requests for declaratory relief under Count III. *Id.* at \*5. Conversely, the Court found that the nonresident voters were not indispensable to the remaining claims, including Voter Plaintiffs’ claim against BSFD under Count IV, “which only *may* affect the nonresident property owners.” *Id.* at \*8; *see Middle Creek Farm, LLC v. Portsmouth Water & Fire District*, 252 A.3d 745, 755 (R.I. 2021) (holding that an “unsubstantiated or speculative risk” of an adverse outcome “is insufficient” to support a finding that an absent party is indispensable). Any imposition of liability against the BSFD on Count IV will be a “[j]udgment against BSFD for depriving [Voter Plaintiffs] of their constitutional right not to have their votes debased and diluted” on the specific facts of prior elections, not a declaratory judgment as to who may vote in future elections. (Compl. 14.)

BSFD’s argument that Voter Plaintiffs lack standing because they possess only a generalized grievance also fails. *Burns v. Sundlun*, *supra*, cited by BSFD for the proposition that a claim shared by other voters is not a particularized injury, bears little resemblance to this case. (Def.’s Mem. 4.) In *Burns*, “a registered voter and taxpayer” challenged a statutorily authorized decision by the state Department of Business Regulation “to license already existing gambling facilities to simulcast” out-of-state horse races without first holding a public referendum. *Burns*, 617 A.2d at 115. The Supreme Court held that the plaintiff failed to establish a personal stake in the controversy because the only injury asserted, ““that [plaintiff] ha[d] been denied his right to



vote on the establishment of off track betting and the extension of an existing gambling activity[.]” was “shared by each and every registered voter in the State of Rhode Island.” *Id.* at 116.

By contrast, Voter Plaintiffs’ claimed injury is specific to their personal right to vote in regularly held elections in the district where they reside. The Voter Plaintiffs have standing to pursue their remaining claim “because they [are] ‘asserting a plain, direct and adequate interest in maintaining the effectiveness of their votes,’ and not merely a generalized grievance.” *Lyman*, 954 F.3d at 362 (quoting *Baker v. Carr*, 369 U.S. 186, 208 (1962)). The United States Supreme Court has held that because “a person’s right to vote is ‘individual and personal in nature[.]’ . . . ‘voters who allege facts showing disadvantage to themselves as individuals have standing to sue’ to remedy that disadvantage.” *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (first quoting *Reynolds*, 377 U.S. at 561, then quoting *Baker*, 369 U.S. at 206) (internal citation omitted). “The voter, after all, is presumptively the best person to bring a challenge to an alleged infringement of her constitutionally protected voting rights.” *Lyman*, 954 F.3d at 362. The fact that other BSFD residents could bring similar claims does not transform Voter Plaintiffs’ alleged injuries to their individual rights into “generalized claims alleging purely public harm[.]” *Watson*, 44 A.3d at 136.

## D

### Count IV: 42 U.S.C. § 1983 – Vote Dilution

Voter Plaintiffs bring a claim under 42 U.S.C. § 1983 for monetary damages and argue that the BSFD is a person acting under color of state law. (Pls.’ Mem. 12-15.) Substantively, the Voter Plaintiffs allege that, by allowing nonresident property owners to vote, BSFD has violated their Fourteenth Amendment right not to have their votes unconstitutionally diluted. *Id.* at 15-16. Voter Plaintiffs argue that expansions of the franchise to nonresident property owners are subject to the same strict scrutiny as property-based restrictions because property ownership is a suspect

classification in the context of general-interest elections. *Id.* at 16-18. Further arguing that the inclusion of nonresident property owners in BSFD elections is not narrowly tailored to advance a compelling state interest, Voter Plaintiffs conclude that the BSFD has violated their constitutional rights. *Id.* at 19. In the alternative, the Voter Plaintiffs argue that no rational basis exists for the distribution of voting rights to owners who hold a \$400 interest in property in the BSFD. *Id.* at 19-20.

Similarly, the Memorandum submitted by amicus curiae ACLU-RI in support of Plaintiffs characterizes the BSFD's extension of voting rights to nonresident property owners as absurd and irrational given the large number of owners that are enfranchised, the fact that many of them are legal rather than natural persons, and their often attenuated connections to the BSFD. (Amicus Curiae Mem. 9-10.) Once again, the BSFD primarily relies on the arguments that its voting provisions do not violate the Fourteenth Amendment due to the BSFD's narrow and limited functions and that Plaintiffs must prove that the BSFD Charter is unconstitutional beyond a reasonable doubt. *See* Def.'s Mem. 5-12. The BSFD also points out that the BSFD Charter represents the judgment of the General Assembly and questions why the Legislature should not be allowed to enfranchise nonresident taxpayers. (Hr'g Tr. 8:10-14, 9:16-19, Sept. 21, 2021).

Because Voter Plaintiffs also allege that the BSFD "acting under color of state law has caused the . . . alleged deprivation" of their rights, a significant portion of the Court's prior examination of those issues under Count II is equally applicable here. *Brunelle*, 700 A.2d at 1081. For the reasons previously discussed, this Court finds that the BSFD, in administering the voting provisions of the BSFD Charter, is a person acting under color of state law for purposes of § 1983. Similarly, the record is not sufficient to support a grant of summary judgment on the issue of whether the challenged action of enfranchising nonresident property owners in compliance with

the BSFD Charter represents the official policy of the BSFD under the meaningful and conscious choice standard of *Vives*, cited *supra*. As the BSFD has also moved for summary judgment, the Court will move on to analyze the merits of Voter Plaintiffs’ claimed violation of a federal right, beginning with the question of what level of constitutional scrutiny is appropriate.

1

**Proper Level of Scrutiny**

Where Voter Plaintiffs’ claim diverges from Jenkins’s claim is on the question of “*what* federal right, privilege, or immunity secured by the Federal Constitution or federal statutes [have] the plaintiff[s] been deprived?” *Brunelle*, 700 A.2d at 1081. While Voter Plaintiffs also claim that the BSFD has deprived them of their right to vote under the Equal Protection Clause of the Fourteenth Amendment, their argument is that the BSFD has unconstitutionally diluted their votes by enfranchising nonresident property owners. (Compl. ¶¶ 69-75.) In contrast to the well-settled precedent that the Equal Protection clause protects against deprivations of the right to vote, Voter Plaintiffs’ claims “present the less-explored question of whether the Equal Protection Clause of the Fourteenth Amendment provides a constitutional ceiling on a political entity’s power to enfranchise voters to participate in its elections.” *Day v. Robinwood West Community Improvement District*, 693 F. Supp. 2d 996, 1004 (E.D. Mo. 2010).

Contrary to Voter Plaintiffs’ arguments, federal and state courts have typically applied rational basis review, rather than strict scrutiny, to laws allowing nonresidents to vote in local elections. *See, e.g., May v. Town of Mountain Village*, 132 F.3d 576, 580 (10th Cir. 1997) (“[W]here a law expands the right to vote causing voting dilution, the rational basis test has been applied by the vast majority of courts.”). *But see Locklear v. North Carolina State Board of Elections*, 514 F.2d 1152, 1154 (4th Cir. 1975) (applying strict scrutiny to residency-based vote

dilution claim). In practice, the question of whether allowing nonresidents to vote has a rational basis often focuses on whether the nonresidents “have a substantial interest in the operation” of the governing body at issue. *Duncan v. Coffee County, Tenn.*, 69 F.3d 88, 95 (6th Cir. 1995).

Multiple considerations support the decision to apply a rational basis or substantial interest test to nonresident vote dilution claims. First, nonresident voting cases involve extensions of the right to vote rather than restrictions. *See Brown v. Board of Commissioners of City of Chattanooga, Tenn.*, 722 F. Supp. 380, 398 (E.D. Tenn. 1989). Second, unconstitutional vote dilution is distinct from the garden-variety dilution that occurs whenever new voters are added to the rolls, and “[i]n close cases, the decisions dictate that overinclusiveness is less of a constitutional evil than underinclusiveness.” *Duncan*, 69 F.3d at 94 & n.3, 98 (quoting *Sutton v. Escambia County Board of Education*, 809 F.2d 770, 775 (11th Cir. 1987)). Third, due to “the immense pressures facing units of local government, and of the greatly varying problems with which they must deal[,]” courts are reluctant to impose the “uniform straitjacket” of strict scrutiny on elections that must be “suitable for local needs and efficient in solving local problems.” *Bjornestad v. Hulse*, 281 Cal. Rptr. 548, 562-63 (Ct. App. 1991) (quoting *Avery*, 390 U.S. at 485). Fourth, with some exceptions, nonresident vote dilution claims typically “do not deal with malapportionment of a general governmental entity resulting in lesser-weighted votes on an individual basis, or with discrete and insular groups foreclosed hopelessly from the political process, or with invidious discrimination.” *Id.* at 563. *But see Brown*, 722 F. Supp. at 389, 397-99 (overturning nonresident voting provisions of city with history of discrimination against Black voters). Finally, while less demanding than strict scrutiny, the substantial interest test is not simply a rubber stamp of approval. *See Phillips v. Andress*, 634 F.2d 947, 952 (5th Cir. 1981); *Brown*, 722 F. Supp. at 399.

Given the lack of Rhode Island Supreme Court precedent on this issue and the persuasive value of the decisions cited above, this Court finds that for Voter Plaintiffs' vote dilution challenge to succeed, they must demonstrate that the nonresidents enfranchised by the BSFD Charter do not have a substantial interest in the BSFD's operations. Voter Plaintiffs' arguments that the enfranchisement of nonresidents based on property ownership must instead advance a compelling state interest are unavailing, as they do not squarely address the issue at hand.

For example, while Voter Plaintiffs cite *Reynolds v. Sims* for the proposition that vote dilution is a violation of the Equal Protection Clause, that case dealt with the relative weight accorded to votes cast in different districts under "state legislative districting schemes which [gave] the same number of representatives to unequal numbers of constituents. . . ." *Reynolds*, 377 U.S. at 563. The United States Supreme Court later described the holding of *Reynolds* and related cases as the principle that "in situations involving elections, the States are required to insure that each person's vote counts as much, insofar as it [is] practicable, as any other person's." *Hadley*, 397 U.S. at 54. Unlike the creation of unbalanced districts in a legislative system, expanding the right to vote in one local district's elections does not create a system where "a vote is worth more in one district than in another." *Reynolds*, 377 U.S. at 563-64 (quoting *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964)); *see also May*, 132 F.3d at 582 (noting that, under town charter, "equal weight is to be given to the votes of residents and nonresidents"); *Day*, 693 F. Supp. 2d at 1005 ("[T]hose who claim their votes are being unconstitutionally diluted not through apportionment or weighting schemes, but through franchising of additional voters should bear the burden of demonstrating that the state's decision is irrational or otherwise impermissible." (quoting *Phillips v. Beasley*, 78 F.R.D. 207, 211 (D. Ala. 1978))). Nor does such an expansion effectively foreclose the possibility of obtaining legislative relief at the state level. *See Spahos v. Mayor & Councilmen of Town of*

*Savannah Beach, Tybee Island, Ga.*, 207 F. Supp. 688, 692 (S.D. Ga. 1962), *aff'd sub nom. Spahos v. Mayor & Councilmen of Town of Savannah Beach, Tybee Island, Georgia*, 371 U.S. 206 (1962).

Moreover, the cases cited by Voter Plaintiffs for the proposition that property ownership is a suspect classification addressed restrictions of the right to vote, not expansions. *See, e.g., Hill v. Stone*, 421 U.S. 289, 297 (1975) (“[A]s long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand unless the district or State can demonstrate that the classification serves a compelling state interest.”). Contrary to what Voter Plaintiffs contend, it does not necessarily follow that expansions of the right to vote based on property ownership are equally suspect. The U.S. Supreme Court has explained that the reason laws denying the franchise to “bona fide residents of requisite age and citizenship” must satisfy strict scrutiny is that they “pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives.” *Kramer*, 395 U.S. at 626-27. Conversely, it is reasonable that in some circumstances local governments could find that nonresident property owners are sufficiently affected by their operations to justify their inclusion in the electorate. *See, e.g., May*, 132 F.3d at 581.

Finally, in arguing that *Flynn v. King* provides implicit support for their position, Voter Plaintiffs read too much into the Rhode Island Supreme Court’s disposition of that case. After considering the elections held by the West Glocester Fire District, the Supreme Court held that “[i]n all such elections, those persons who reside in the district and are eligible to vote in a general or special election in the town of Glocester, shall be permitted to vote, whether or not they own taxable property.” *Flynn*, 433 A.2d at 176. While Voter Plaintiffs read that language to mean that only residents would be permitted to vote, “[t]he issue raised [was] whether the provisions of the charter which limit[ed] the right to vote and hold office in the fire district” were unconstitutional.

*Id.* at 174. As the Supreme Court did not address the issue of whether the extension of voting rights to nonresidents was also unconstitutional, its holding cannot be interpreted as having that effect. *See Pleasant Management, LLC v. Carrasco*, 960 A.2d 216, 223 (R.I. 2008) (“[T]he opinions of [the Supreme] Court speak forthrightly and not by suggestion or innuendo.” (quoting *Fracassa v. Doris*, 876 A.2d 506, 509 (R.I. 2005))). Consequently, the Court will apply rational basis scrutiny to Voter Plaintiffs’ claim by examining whether the enfranchised nonresidents possess a substantial interest in the BSFD’s elections.

2

**Specifics of Voter Plaintiffs’ Claim**

As previously mentioned, Voter Plaintiffs allege that their voting rights have been unconstitutionally diluted through the BSFD’s policy of permitting numerous nonresidents to vote. Compl. ¶¶ 69-75; Pls.’ Reply Mem. 13-14. Voter Plaintiffs argue that the BSFD’s policy is poorly tailored to the purposes of enfranchising property owners or taxpayers and point out that under the terms of the BSFD Charter, an enfranchised nonresident could pay as little as \$2.80 per year in property taxes. (Pls.’ Mem. 19 & n.6.) Noting that the BSFD Charter allows a significant number of nonresidents to obtain voting rights through “common ownership” of a single parcel, Voter Plaintiffs also allege that nearly half of all parcels and well over half the votes in BSFD elections belong to nonresidents with only seasonal ties to the BSFD, effectively erasing residents’ votes. (Pls.’ Mem. 19-20.)

In support of this allegation, Plaintiffs’ Reply Memorandum presents an Affidavit from Voter Plaintiff Mary Burke Patterson detailing her review of the attached 2020 Town of Narragansett Tax Rolls (2020 Tax Rolls). (Pls.’ Reply Mem. Ex. H, ¶¶ 2-3.) As outlined in the Affidavit, the 2020 Tax Rolls list 2,029 taxable parcels within the BSFD’s boundaries; of those

parcels, approximately 930—or 45.8% of all taxable parcels in the district—are cabanas or bathhouses located at the Beach Club. *Id.* Ex. H, ¶ 5. On the 2020 Tax Rolls, 827 of those 930 Beach Club parcels—or 40.8% of all taxable parcels in the district—list an out-of-district contact address. *Id.* Ex. H, ¶ 7. The 2020 Tax Rolls also indicate that some of the Beach Club parcels are owned by three or more individuals, but do not identify the number of residents or nonresidents eligible to vote in BSFD elections. *Id.* Ex. H, ¶ 8. The Affidavit also states that Patterson received additional tax rolls from the BSFD during discovery, but that these tax rolls did not include the owners’ contact addresses, thereby making determination of which owners were residents impossible. *Id.* Ex. H, ¶ 9. Voter Plaintiffs have also submitted a Narragansett Times article on the Beach Club’s efforts to encourage its members to vote in the June 2021 BSFD election; according to that article, in the ensuing election the BSFD handed out 698 ballots, up from 219 ballots in 2019 and 316 ballots in 2018. *Id.* Ex. J, at 2, 4.

“[A] legislature’s decision to expand the electorate is irrational and therefore unconstitutional where the enfranchised voters do not have a ‘substantial interest’ in the outcome of the election.” *Day*, 693 F. Supp. 2d at 1005 (citing *Duncan*, 69 F.3d at 94-95). In *Duncan v. Coffee County, Tenn.*, cited *supra*, the Sixth Circuit considered the substantial interest question in light of “(1) the degree to which the nonresident voters finance the relevant district; [and] (2) the voting power of non-resident voters[.]”<sup>9</sup> *Day*, 693 F. Supp. 2d at 1005 (citing *Duncan*, 69 F.3d at 96). The first factor is relevant because the provision of financing gives nonresidents a stake in how the district operates. *See May*, 132 F.3d at 582-83. The second factor is relevant because an electoral scheme affording residents “little or no chance” to control their local government raises

---

<sup>9</sup> Because *Duncan* involved school board elections, the Sixth Circuit also considered two additional factors that are not applicable to the facts of this case. *See Duncan*, 69 F.3d at 96-97; *Day*, 693 F. Supp. 2d at 1005-06 (applying only the first two *Duncan* factors).



“grave constitutional concerns, even where out-of-district voters have a substantial interest.” *Duncan*, 69 F.3d at 97. Together, the factors help illuminate where nonresidents’ interests become so minute—and the resulting pool of nonresident voters so vast—as to unfairly overwhelm residents’ rights to an “effective voice in the governmental affairs which substantially affect their lives.” *Kramer*, 395 U.S. at 626-27.

Two cases with distinct sets of facts illustrate how the substantial interest test works in practice. In *Brown v. Board of Commissioners of City of Chattanooga, Tenn.*, cited *supra*, Chattanooga’s charter allowed nonresident property owners to vote in city elections. *Brown*, 722 F. Supp. at 397-98. A total of 547 nonresidents, owning “.05% of the total assessed value of all real property in Chattanooga” and paying “a similar percentage” of its property taxes, were registered to vote. *Id.* at 398. The *Brown* court recognized that nonresident property owners had an interest in city affairs that could affect their property but noted that the charter “contain[ed] no limitation of the number of people who can ‘vote’ on a piece of property [and] no limitation as to any minimum property value required for the exercise of the franchise.” *Id.* at 399. Noting that in one instance “15 nonresidents [were] registered to vote as co-owners of one parcel of property which ha[d] an assessed value of \$100,” the court found that such persons did not possess “a substantial interest in the operation of the city” and held that enfranchising nonresidents who owned “a trivial amount of property” did “not further any rational governmental interest.” *Id.*

In *May v. Town of Mountain Village*, cited *supra*, residents of the town of Mountain Village, Colorado challenged provisions of the town charter allowing certain nonresident property owners to vote in municipal elections. *May*, 132 F.3d at 577-78. On appeal, the Tenth Circuit affirmed the federal district court’s decision to employ a rational basis standard of review and its conclusion that nonresident property owners had a substantial interest in the town’s elections. *Id.*

at 582-83. The Tenth Circuit gave great weight to the fact that Mountain Village was a “resort community” where nonresidents, many of whom owned seasonal homes in the town, paid eight times more in property taxes than residents. *Id.* at 579, 582. The *May* court also noted that “[w]ith nonresident voting power limited to those owning at least 50% of the fee title to real property, there [was] no possibility of ‘loading up’ the nonresident vote through excessive partitions of a piece of property. . . .” *Id.* at 582-83 (distinguishing case from facts of *Brown*).

Here, the BSFD Charter enfranchises nonresidents who own real estate in the BSFD worth at least \$400 “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[.]”<sup>10</sup> (Compl. Ex. A, § 2.) A qualified voter need not be a citizen of Rhode Island and may either be a natural person aged at least eighteen years or a “firm, corporation or unincorporated association[.]” *Id.* at Ex. A, § 2 & n.3. Persons in common ownership to real estate may vote by proxy. *Id.* at Ex. A, § 2. The BSFD Charter thereby allows multiple nonresidents, each of whom may possess only a relatively minor property interest, to vote in BSFD elections. While not as extreme as the charter at issue in *Brown*, which contained “no limitation as to any minimum property value,” the BSFD Charter implicates the same concerns that led the *Brown* court to hold that enfranchising nonresidents who owned “a trivial amount of property” did “not further any rational governmental interest.” *Brown*, 722 F. Supp. at 399; *cf. May*, 132 F.3d at 582-83 (“With nonresident voting power limited to those owning at least 50% of the fee title to real property, there is no possibility of ‘loading up’ the nonresident vote through excessive partitions of a piece of property. . . .”). This is particularly true given the fact that the

---

<sup>10</sup> In 1982, the General Assembly raised the minimum property value qualification from \$134.00 to \$400.00. (Compl. Ex. A, § 2 n.4.)

BSFD has not allowed residents to vote unless they possess the requisite property interest, thereby increasing the relative “voting strength” of nonresidents. *Duncan*, 69 F.3d at 97.

“It is well-settled law that the constitutionality of a statute is a question of law for the court to decide.” *Power v. City of Providence*, 582 A.2d 895, 902 (R.I. 1990). It is also true that under rational basis review, “the burden is on the party challenging the statute to convince the court of its unconstitutionality . . . beyond a reasonable doubt.” *Id.* at 903-04 (citing *Vance v. Bradley*, 440 U.S. 93, 111 (1979)). Once again, however, the problem facing the Court on parties’ cross-motions for summary judgment is the lack of evidence on multiple facts germane to the substantial interest test applied in *Duncan* and similar cases. *Cf., e.g., Sutton*, 809 F.2d at 773-74 (holding that factual findings made after trial “provide a sufficient basis for finding that [nonresidents] have an interest in the county school system’s operation to constitutionally justify their inclusion in the electorate”). Accordingly, with respect to the issue of whether the BSFD has unconstitutionally diluted Voter Plaintiffs’ votes by enfranchising nonresident property owners, parties’ cross-motions for summary judgment are denied.

For example, as to the first *Duncan* factor—the extent the district is financed by nonresident voters—the BSFD Charter indicates that nonresident voters pay property taxes at the same rate as residents, that the property taxes finance BSFD operations, and that a nonresident voter could conceivably pay as little as \$2.80 per year in property taxes. *Duncan*, 69 F.3d at 96; Compl. Ex. A, §§ 2, 7. But there is no information in the current record concerning how much property tax financing the BSFD receives in the aggregate or what proportion of the tax burden is borne by nonresident property owners. As multiple cases indicate, these relative totals are relevant to the determination of whether nonresident property owners are responsible for a sufficiently substantial amount of district financing such that the decision to enfranchise them is not arbitrary

or irrational. *See May*, 132 F.3d at 579 (“Nonresidents entitled to vote currently own over 34% of the assessed value of real property in the Town, while residents own only about 5%.”); *Duncan*, 69 F.3d at 96-97 (“Tullahoma accounts for 21% of all local funds spent by the Rural Coffee County School District.”); *Brown*, 722 F. Supp. at 398 & n.23 (distinguishing case from facts of *Glisson v. Mayor and Councilmen of Savannah Beach*, 346 F.2d 135, 136 (5th Cir. 1965)) (“The nonresident voters in Savannah Beach as a group had a much greater economic interest in the municipality than do the nonresident voters of Chattanooga.”).

Moreover, “there may be grave constitutional concerns, even where out-of-district voters have a substantial interest[,]” where those voters wield such a disproportionate political influence that residents have “little or no chance to control” their local government. *Duncan*, 69 F.3d at 97; *see also Day*, 693 F. Supp. 2d at 1006 (“[I]n some circumstances enfranchising a large number of nonresident landowners might unconstitutionally disenfranchise a comparatively small number of registered voters[.]”). On this second factor—the relative voting power of nonresident voters—the missing information is even more significant: on the current record, it is simply not apparent how many persons were qualified to vote in the prior BSFD elections challenged by Voter Plaintiffs or how that electorate was split between residents and nonresidents. In addition to the weight accorded the voting strength of nonresidents in *Duncan* and other cases this Court has cited as persuasive authority, common sense would seem to dictate that the ratio of resident to nonresident voters is crucial to the question of vote dilution. *See Duncan*, 69 F.3d at 97-98 (finding that nonresidents’ “most minuscule mathematical chance to control the Coffee County School Board. . . . is, in the final analysis, completely dependent on the votes of . . . residents”); *cf. Reynolds*, 377 U.S. at 577-78 (explaining that applications of constitutional rule that legislative

apportionment must be “based substantially on population” will turn “on the particular circumstances of the case”).

Without this information, the Court has an inadequate factual basis on which to enter summary judgment. For example, Voter Plaintiffs present their analysis of the Beach Club parcels listed in the 2020 Tax Rolls as an illustration of the extent of nonresident voter dilution in the BSFD’s elections. (Pls.’ Reply Mem. 14.) But as Voter Plaintiffs acknowledge, any attempt to use the 2020 Tax Rolls to determine the number of resident and nonresident voters runs up against multiple limitations. *Id.* at 15. The 2020 Tax Rolls do not indicate which BSFD parcels are owned by multiple owners, or how many persons, residents or otherwise, meet the specific property ownership requirements of the BSFD Charter. Provision of an out-of-district contact address is also not conclusive proof that the owner or owners of the parcel do not reside in the BSFD. While a factfinder could potentially rely on “legitimate inferences” from Voter Plaintiffs’ Affidavit, it would be inappropriate for this Court to do so on a motion for summary judgment where “all justifiable inferences are to be drawn in [nonmovant’s] favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). By “drawing inferences based upon the evidence presented,” this Court would impermissibly “decide[] the factual issues in the case.” *Almada v. Santos*, 755 A.2d 836, 837 (R.I. 2000). “[A] trial court may not enter a summary judgment which rests on a chain of inferences from subsidiary facts not conclusively established in the record[,] . . . weigh the evidence, pass upon credibility, or ‘speculate as to ultimate findings of fact.’” *Pepper & Tanner, Inc.*, 563 F.2d at 393 (quoting *Fortner Enterprises, Inc.*, 394 U.S. at 506).

The Court also cannot conclude on the current record that the facts are “so one-sided” as to entitle the BSFD to summary judgment on Count IV. *Anderson*, 477 U.S. at 252. “It is a fundamental principle that ‘[s]ummary judgment is a drastic remedy, and a motion for summary

judgment should be dealt with cautiously.” *Takian v. Rafaelian*, 53 A.3d 964, 970 (R.I. 2012) (quoting *Employers Mutual Casualty Co. v. Arbella Protection Insurance Co.*, 24 A.3d 544, 553 (R.I. 2011)). “[O]nly if [a] case is legally dead on arrival should the court take the drastic step of administering last rites by granting summary judgment.” *Mitchell v. Mitchell*, 756 A.2d 179, 185 (R.I. 2000).

Here, the terms of the BSFD Charter enfranchise nonresidents who may possess only a fairly insignificant property interest, and the Affidavit submitted by Voter Plaintiff Patterson substantiates the claim that a sizable number of small parcels in the BSFD are owned by nonresidents. Compl. Ex. A, § 2; Pls.’ Reply Mem. Ex. H. Voter Plaintiffs have made “a showing sufficient to establish the existence of an element essential to [their] case, and on which [they] . . . bear the burden of proof. . . .” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also Anderson*, 477 U.S. at 255 (“Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial.”).

Under Count IV, the Court finds that the BSFD is a person acting under color of state law. However, on the current record, the Court cannot determine whether BSFD’s enforcement of the nonresident enfranchisement provision represented a meaningful and conscious choice sufficient to establish liability under *Vives*, cited *supra*, or whether the challenged provision enfranchised nonresidents who did not possess a substantial interest in BSFD elections under the standard discussed in *Duncan*, cited *supra*. Accordingly, Plaintiffs’ Motion for Summary Judgment is granted in part and denied in part, and Defendant BSFD’s Cross-Motion for Summary Judgment is denied.

## IV

### **Conclusion**

For the foregoing reasons, on Count I, Plaintiffs' Motion for Summary Judgment is granted, and Defendant BSFD's Cross-Motion for Summary Judgment is denied. On Count II, Plaintiffs' Motion for Summary Judgment is granted in part and denied in part, and Defendant BSFD's Cross-Motion for Summary Judgment is denied. On Count IV, Plaintiffs' Motion for Summary Judgment is granted in part and denied in part, and Defendant BSFD's Cross-Motion for Summary Judgment is denied. Counsel shall prepare the appropriate order for entry.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

---

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

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

**COURT:** **Washington County Superior Court**

**DATE DECISION FILED:** **January 27, 2022**

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

**ATTORNEYS:**

**For Plaintiff:** **Matthew T. Oliverio, Esq.**

**For Defendant:** **Thomas M. Dickinson, Esq.**

**For Interested Party:** **Lynette J. Labinger, Esq.  
James G. Rhodes, Esq.**

22 JAN 27 PM 2:54

WASHINGTON  
SUPERIOR COURT  
CLERKS OFFICE  
FILED



# *Exhibit 4*

STATE OF RHODE ISLAND  
WASHINGTON, SC.

SUPERIOR COURT

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

Vs. :  
THE BONNET SHORES FIRE DISTRICT :  
*Defendant.* :

C.A. No. WC-2020-0130

**CONSENT JUDGMENT**

It is agreed by and between the Plaintiffs and Defendant, that the terms of the following Consent Judgment may enter as a Final Judgment with no right of appeal by any party.

1. The Court having granted summary judgment in favor of the Plaintiffs on Count I of the Complaint, judgment shall enter in favor of Plaintiff Melissa Jenkins. In furtherance thereof, beginning with any Bonnet Shores Fire District Annual Meeting or Special Meeting (each, a "Meeting") held after the date hereof, every citizen of the United 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.

2. On Count II of the Complaint, judgment shall enter in favor of Plaintiff Melissa Jenkins.

3. The Court having previously granted Defendant's Motion to Dismiss Count III of the Complaint, said Count is dismissed.

4. 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.

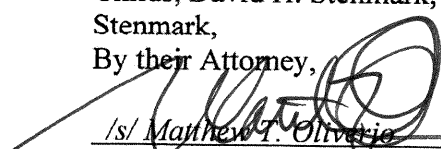
5. Promptly upon the entry of this Consent Judgment, the Bonnet Shores Fire District Council shall appoint a Charter Revision Committee, consisting of five persons, at least one of whom shall be one of the Plaintiffs, to address the issues raised in the Plaintiffs' Complaint and to propose amendments 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 having reached an agreement with regard to the Plaintiffs' claim for attorneys' fees, the claim for attorneys' fees is dismissed.

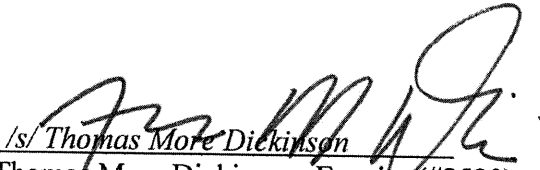
7. The Court declines to award monetary damages.

8. All parties waive their rights of appeal.

Plaintiffs,  
Mary Burke Patterson, Robert E. Patterson,  
Melissa Jenkins, Valerie Ann Henry, Paula  
Childs, David H. Stenmark, and Carol M.  
Stenmark,  
By their Attorney,

  
/s/ Matthew T. Oliverio  
Matthew T. Oliverio, Esquire (#3372)  
OLIVERIO & MARCACCIO LLP  
30 Romano Vineyard Way, Suite 109  
North Kingstown, RI 02852  
(401) 861-2900  
[mto@om-ri-law.com](mailto:mto@om-ri-law.com)

Defendant,  
Bonnet Shores Fire District,  
By its Attorney,

  
/s/ Thomas More Dickinson  
Thomas More Dickinson, Esquire (#2520)  
Law Office of Thomas M. Dickinson  
1312 Atwood Avenue  
Johnston, RI 02919  
(401) 490-8083  
[tmd@appealRI.com](mailto:tmd@appealRI.com)

Entered as an Order of this Court this 26th day of May 2022.

ENTER:

/s/ Sarah Taft-Carter

\_\_\_\_\_  
Sarah Taft-Carter  
Associate Trial Justice

PER ORDER:

/s/ Christine Feeny  
\_\_\_\_\_  
Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of May 2022, I filed and served this document through the electronic filing system on the following:

Thomas More Dickinson, Esquire  
Law Office of Thomas M. Dickinson  
1312 Atwood Avenue  
Johnston, RI 02919  
[tmd@appealRI.com](mailto:tmd@appealRI.com)

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

/s/ Nadine Hendrickson, Legal Assistant

# *Exhibit 5*

## **Bonnet Shores Fire District**

*Monthly Meeting: Meeting Minutes  
May 18, 2022  
7:30 PM*

*Bonnet Shores Community Center: 130 Bonnet Shores Road Narragansett, RI 02882*

### **Call To Order**

Chair Carol O'Donnell called the meeting to order at 7:30pm. Council members in attendance included: Chair O'Donnell, Vice Chair Marleen Bellini, Carolyn DiLeo, Steve Danuszar, Bill DelGizzo, and Anthony DeAngelis. Additional present were Treasurer Laurie McCarthy, Tax Collector Michelle Travis, and Harbor Master Joe Bleczinski, and Clerk Stephanie Caldwell joined after the executive session.

### **Pledge of Allegiance/ Moment of silence**

The Assembly recited the Pledge.

### **Urgent Business**

None.

### **Motion to go into Executive Session**

Special meeting with legal counsel to discuss litigation matters. This meeting may be closed pursuant to R.I. Gen. L. sec. 42-46-5(a)(2) (sessions pertaining to litigation.)

All non council member were asked to leave the building at this time.

### **Announcements: Procedure of Meeting**

Chair O'Donnell outlined the meeting procedure.

During the executive session the council voted to approve settlement terms, they are waiting for the courts approval, and that may impact the annual meeting.

### **Approval of Minutes:**

Chair O'Donnell reported the April minutes had not been submitted.

### **Treasurer: Updated Financial Report**

Laurie McCarthy Reports: The 2021-2022 fiscal year has been closed out, the 3<sup>rd</sup> & 4<sup>th</sup> quarters to be posted on website; announcements for working session of budget coming up; budget review date to be determined, once balance sheet in finalized; upcoming budget is a work in progress.

Nancy Cordy raises a hand in zoom to let the council know there is no video or audio working, Carol repeated all business conducted up to this point.

### **Land Trust – George Monahan shared the report**

### **Tax Collector: Update - Collections**

Michelle Travis reports: Collections have slowed significantly; delinquent list has been submitted to the council. BSFD should not incur any costs associated with a tax sale. She is currently waiting for council's recommendation for list to submit to the attorney for tax sale.

Bill DelGizzo asks when the council needs to make a decision on the tax sale list, A DeAngelis says it needs to be tonight to be in line with the town. He clarifies there are two properties from 2019 on the list, and discusses prior recent tax sales. Carolyn DiLeo makes a motion to have the tax sale, Bill DelGizzo seconds, motion masses unanimously.

Joe Thomas – 39 What Cheer Rd – Who bears the cost of tax sale mailings – it's answered that the owner does.

## Harbor Master

Joe Blecziński shared his report. Topics included:

- a. A boat sank in the harbor during the recent stormy weather.
- b. Recent bad weather has delayed mooring inspections. There are about 12 remaining. The inspector's boat has recently sunk and is delayed.
- c. Plumbing at Kelly Beach foot wash has been replaced.
- d. Carol mentions loose handrails that need to be addressed.

Bob Patterson – Wonders why the boat in the harbor sank, Joe explains it was from the sustained gale force winds over the course of 6 days, it was unusual for this time of year.

Joe Thomas – Concerned boaters submitted a list to the council, regarding new regulations and disagreements, and asks if the council has had time to review said list. He discussed his grievances with the mooring inspection requirements. There is a discussion about the requirements about June 1<sup>st</sup> deadlines, and key usage. Joe explains that most requirements are remaining from previous harbor master. Carol suggests using an electronic keypad, Bill comments on how the district's regulations follow the towns. Carolyn references the harbor management plan, and how these new changes align with that. Carol identifies that the issues with the ordinances and regulations seem not to be with the rules themselves, but rather the new enforcement of them under the new harbor master. Lenny Mercier suggests the formation of a harbor committee again.

## New Business

A. Community Center and district upgrades FD in the process of filing for a \$2000 grant, thanks to Rep. Carol McEntee Volunteers; this will enable us to use the funds for materials. Volunteers are needed, this will help to reduce overall costs.

B. St Veronica's parking lot expansion-council position- BSFD council went to the planning board, moved on to the zoning board; the surrounding neighbors are unhappy about tree removal and concerned about water runoff. Carol said she voiced the neighborhood concerns to the board. Church wants 157 additional parking spots – essentially doubling parking area. Neil has a petition for Carol to submit to the planning board. Bill adds the planning board is not wholly in favor of the expansion. Carol asks for council support to speak to the zoning board on behalf of the neighborhood.

Bob Patterson – asks for clarification if the council is the right group to submit an opinion to the boards, rather than a professional opinion. Carol replies that no, she cannot give a professional opinion like an engineer could.

Wendy Peters – 39 Joy Lane – says there is no chain on the parking lot exit through St. Veronica's at this time, and there has not been one for a long time. She is concerned that the church is not addressing this issue for cut through traffic, and also that the water runoff problem is already a significant issue and is worried about it getting worse. There is a discussion between Marleen and Neil about ethical building issues, private property building rights and developing as good neighbors.

Bill makes a motion for the council to follow through with supporting the neighborhoods concerns to the town, Carolyn seconds, motion passes unanimously.

Karen – 10 Old Town Trail – Discusses concerns about ethical development practices.

C. Concerns with Pond level will be handled by Land Trust-Comments

D. Sign up for camp is now open- Director has been hired- Carolyn, Jackie Cannelli Harris (sp?), school teacher w/ background in special ed. Great response for camp interest.

Karen asks about the vetting process and if there is one – yes there is.

Lenny Mercier 158 Bonnet Shores Rd – questions about pond level

Bob Patterson – asks about possible pond level monitoring, Joe B mentions a tide monitoring device

E. Beautification -participation -volunteers needed – Marleen discusses who is doing what around the district, barrel planters, there is a discussion about who will maintain them, and the idea to eblast a list of planters that need volunteers.

F. Social Committee-participation needed – cocktails on the beach will happen, possibly moving indoors in September, October & November. Discussed activities for kids, but there are not enough full time kids in the neighborhood. Community clean up, community yard sale will happen followed by large item pick up; block

Party Idea – food truck idea died b/c of financial commitment for them to come. Looking for more ideas for community activities and more involvement.

Nancy Cordy asks what the date for the community yard sale is, Marleen says her notes say the 3<sup>rd</sup> week of July. Nancy clarifies that would be the 16<sup>th</sup>, Marleen just needs to verify the trash pickup will follow. Nancy also asks about benches, and says that her and her family, along with others would like to replace several. Carol discusses the bench in the basement that she would like to supply to a member of the community, who would like to buy and install it; she asks Nancy to call her to discuss the bench list. Bill discusses need for organization of bench maintenance.

Elaine – 8 Merryweather – would like to get involved with volunteering for the playground projects. Steve says to email Carol.

G. Pickle Ball – permission to paint/play on basketball court – Carol says there is no discussion needed, everyone is in agreement for pickleball to take place on the basketball court.

H. Security is in place – Bill asks about security for camp, Carolyn discusses what is in place for camp procedures. Marleen says there is security in place for checking beach tags on Kelly Beach, and neighborhood drive throughs twice a week will resume for the summer season.

Dave Kauffman – asks if it is going to be the same security person, there is a discussion about the value of the security provided.

Joe B. – asks if there is any security around the harbor on the 4<sup>th</sup> of July because there have been issues with people setting off fireworks in the past.

I. Bus is in the process – Bill asks about the hours of the bus, and if it could run later than 4pm. There is an agreement that 6pm may be better.

J. Manger position-possible search committee or council direction – Carol reports that they need to build a job description for the District Manager and get community input.

Nancy Cordy – interested in pickle ball, glad it has been approved.

Joe B. – asks if there is a current job description, there is a discussion about how to proceed with drafting a new District Manager job description.

There is a discussion about collecting input and the process of drafting a new job description.

**Public Comment**

*Identify yourself with address, each person will have three minutes to speak, one time.*

Faith LaSalle – 98 Col John – Asks about recent Land Trust minutes.

**Adjournment**

The meeting is adjourned at 10:35pm

Respectfully Submitted,

Stephanie Caldwell  
Bonnet Shores Fire District Clerk



# *Exhibit 6*

# BONNET SHORES FIRE DISTRICT

## NARRAGANSETT, RHODE ISLAND

☎ 401-789-4540

✉ BSFDmanager@gmail.com

📍 130 Bonnet Point Road,  
Narragansett RI 02882

🌐 www.bonnetshores.org

### Council

*Carol O'Donnell*  
Chair

*Marlene Bellini*  
Vice-Chair

*Steve Danuszar*

*Anthony DeAngelis*

*Bill Delgizzo*

*Carolyn DiLeo*

At a SPECIAL MEETING of the Bonnet Shores Fire District Council, Town of Narragansett, State of Rhode Island, held at the Community Center, 130 Bonnet Shores Road on the 4<sup>th</sup> day of April 2023 at 5:30 PM.

PRESENT: Carol O'Donnell, Chair  
Marlen Bellini, Vice Chair  
Steven Danuszar  
Anthony DeAngelis  
William Delgizzo

**MAJORITY VOTED: in opposition/nonsupport of S-891.** An act Authorizing BONNET SHORES FIRE DISTRICT To Hold a SPECIAL ELECTION, and **H-6288** AN ACT AUTHORIZING BONNET SHORES FIRE DISTRICT TO HOLD A SPECIAL ELECTION (Amends the Act to Incorporate the Bonnet Shores Fire District to determine the electorate for the corporation.)

This Charter proposal eliminates long standing voters and those who have substantial interest in our community, is **NOT** in conjunction with Judge Taft-Carters ruling. The majority of the Council is in favor of an Alternate Proposal, all inclusive, similar to the Alternate Proposal, on our website since November 2022, from Faith Lasalle who is also a member of the Charter Commission.

Of those present at the above meeting, William Delgizzo was the only descending vote.

Should you need additional information, please contact me directly.

*Carol O'Donnell*  
Carol O'Donnell, Chair  
401-339-4903

**A message from the Bonnet Shores Fire District**

**Special Meeting : Bonnet Shores Fire District Council**  
**Place: 130 Bonnet Shores Rd, Narragansett and Zoom-**  
**Date: Tuesday April 4, 2023**  
**Time: 5:30 pm**

**Call to Order at**  
**Pledge of Allegiance/ Moment of Silence**  
**Urgent Business- None**  
**Motion to go into Executive Sessions:**  
**Everyone must leave the room**  
**Appoint Clerk-Motion-Vote**

Special meeting to discuss BSBC litigation matters  
This meeting may be closed pursuant to R.I. Gen. L. sec. 42-46-5(a)(2) (sessions pertaining to litigation.) Motion -Vote **\*\*\*Possible Vote to Settle\*\*\***

Executive Session Comments

**Announcements Clarification:**

***The Bonnet Shores Fire District (BSFD) does not currently subscribe to any social media accounts, unofficial websites, and unofficial subscription email blast services. Any social media and subscription service accounts referencing the BSFD and neighborhood, are unofficial, privately held, and regulated accounts.***

***All BSFD official district information is available on the [bonnetshores.org](https://www.bonnetshores.org) website and through our email subscription service only.***

---

***The fire district council and manager continuously receive messages of concern following opinions that are posted on social media sites and email subscriptions that are unaffiliated with the fire district in any way.***

There were two requests under APRA,

One requesting executive meeting minutes-Denied

One requesting a copy of our trash contract-Approved & sent

### **New Business**

- A.** Letter/clarification from FD Attorney Thomas Dickinson & Secretary of State Amore, concerning Chair & Vice Chair positions.  
Motion -discussion-Vote
- B.** Motion on position of Council on Charter Commissions Proposed Voting Amendments -Discussion-Vote
- C.** Motion on position of Council on a proposed alternate Charter proposal, Informational Correspondence from BSBC  
Amendments-Motion -Discussion-Vote
- D.** Land Trust: Motion to Appoint Steve Danuszar liaison to the Council-  
Discussion-Vote
- E.** Harbor proposal-Motion-Discussion-Vote

**Public Comment** Come up to mic, *identify yourself- address, 3 minutes to speak*,  
If you are on zoom you must out your video on so you can be identified

BSFD is inviting you to a scheduled Zoom meeting.

Topic: Council Meeting

Time: Apr 4, 2023 05:30 PM Eastern Time (US and Canada)

---

Join Zoom Meeting

<https://us02web.zoom.us/j/85004063220?pwd=bDFTdmxSQmhPbk40Wik1dmE3MU1LUT09>

Meeting ID: 850 0406 3220

Passcode: 479306

One tap mobile

+13017158592,,85004063220#,,,,\*479306# US (Washington DC)

+13052241968,,85004063220#,,,,\*479306# US

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 646 876 9923 US (New York)

+1 646 931 3860 US

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 360 209 5623 US

+1 386 347 5053 US

+1 408 638 0968 US (San Jose)

+1 507 473 4847 US

+1 564 217 2000 US

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 689 278 1000 US

+1 719 359 4580 US

---

Meeting ID: 850 0406 3220

Passcode: 479306

---

# *Exhibit 7*

**SPECIAL MEETING: BONNET SHORES FIRE DISTRICT COUNCIL**  
**130 BONNET SHORES RD**  
**OCTOBER 31, 2023 – 7:30 AM**  
**MINUTES**

- Call to order: 7:31 AM
- Quorum Present: Carol O'Donnell, Chair, Marlene Bellini, Vice Chair, Anthony DeAngelis, William DelGizzo, Stephen Danuszar. Absent: Carolyn Dileo
- Motion by Marlene to appoint Stephen as clerk, seconded by Carol. Passes Unanimously
- A: Read in full by the Chair. Bill voiced that the two bills (H6288 & S0891) died in the Senate & House, June 2023. Carol confirmed, Anthony asked for clarification. Carol explained this vote is due to Carolyn Dileo filing a complaint with the AG, stating there was not enough information at the prior meeting April 4, 2023, for the Council to vote. AG requested a re-vote, even though it's moot, no later than October 31, 2023. Marlene voiced it is "just a formality." Bill stated it will probably be the same vote. A motion made by Bill to support the previous Charter proposal, no second. Marlene made a motion of non-support of previous Charter proposal, Carol 2<sup>nd</sup>. Motion passed 4-1 Bill descending vote
- B: Chair read in full, discussed a possible vote for a joint meeting with the Charter Commission, to consider possible alternate proposals, including prior alternative proposal by Attorney Faith LaSalle. If we support, the council will request to meet with the Charter Commission at a public meeting. Per the Chair, the judge stated the Charter Commission was proposing the changes. Bill mentioned the judge gave Charter Commission responsibility to interpret the judge's ruling. Carol corrects Bill by stating it is to follow, not interpret what the judge said. Carol stated the proposals did not follow the law, hence they died in committee. Carol voiced, if we vote yes, a public joint meeting would be requested with the Charter Commission examine all alternate proposals. Steve mentioned it is a good idea and thought it would have already happened. Bill voiced he has attended all Charter Commission meetings, except one. input could have been given at that time. Anthony voiced the Charter Commission went into "grey" areas. Carol makes a motion to meet with Charter Commission to discuss and if public comment should be at the meeting. Steve voiced the meeting should have public comment, hear all potential proposals. Carol made a motion to request a joint meeting, Marlene 2<sup>nd</sup>. Motion passed unanimously.
- Motion to adjourn: Bill, Marlene 2<sup>nd</sup> at 7:44 AM. Motion passed unanimously

Respectfully Submitted,  
Stephen Danuszar



# *Exhibit 8*

JUDGE  
WOONSOCKET  
PROBATE COURT  
2005-2013

**THOMAS MORE DICKINSON**

**ATTORNEY AT LAW**

**P.O. Box 9184**

**PROVIDENCE, RI 02940-9184**

**TEL. 401-490-8083**

**appealRI@yahoo.com**

ADMITTED IN  
RHODE ISLAND  
MASSACHUSETTS  
& U.S. SUPREME  
COURT

DATE: 24 April 2024

TO: Carol O'Donnell, Chair  
Bonnet Shores Fire District Council

RE: Status of voting eligibility

You have requested my opinion on the current status of voting eligibility in the Bonnet Shores Fire District as a result of the recent Superior Court hearing before Justice Taft-Carter.

The question is whether, at least until amendments are approved by the General Assembly and ratified at an Annual or Special Meeting, property owners who are not legal residents within BSFD are eligible to vote. My conclusion is the same as it was immediately after entry of the Consent Judgment, and Judge Taft-Carter's comments at the hearing have reinforced it.

Currently eligible to vote are anyone who has been eligible to vote under the existing charter (including non-resident property owners), with the addition of persons who have resided within BSFD, and have been registered there, for the thirty days before the Annual or Special Meeting. This later group of non-property-owner residents were added in the Consent Judgment approved by Judge Taft-Carter. At the hearing on April

12, Justice Taft-Carter made clear that as of now non-resident property owners are qualified to vote. The Judge specifically said:

The Bonnet Shores Fire District Council represents all qualified voters,  
*including the nonresident property owners.*

Hearing transcript at 7. So it is clear that, unless and until the Charter is amended by the General Assembly, and the amendments ratified at an Annual or Special Meeting, anyone eligible to vote under the existing Charter remains qualified, along with those residents added by the Consent Judgment.

With regard to eligibility to run for office, Article II of the By-Laws uses the same term that Judge Taft-Carter used -- “qualified voters” – in referring to eligibility to serve on the District Council or Nominating Committee. Art. II, sec. 1 & 2. I therefore conclude that the Nominating Committee must interview any potential candidate who is a qualified voter as that term is defined in the Consent Judgment and Judge Taft-Carter’s explanation above.

I hope this memorandum provides the guidance you were looking for.

# *Exhibit 9*



# BONNET SHORES FIRE DISTRICT

Narragansett, Rhode Island 02882

*Established 1932*

July 18, 2024

Dear Property Owner and Registered Voter:

Our Annual Meeting will be held Monday, August 26, 2024, 7:30 PM, at Bonnet Shores Beach Club, 175 Bonnet Point Rd., Narragansett RI 02882, free of charge.

Registration will begin at 5:30 PM

The bar will not sell liquor during our meeting.

Please read over the following documents, there are some procedural changes only, all taxpayers and residents can vote, proxies are allowed, no one has been disenfranchised.

Stay tuned for more details and information.

130 Bonnet Shores Road, Narragansett, RI 02882

 [www.bonnetshores.org](http://www.bonnetshores.org)  (401) 895-0099



# BONNET SHORES FIRE DISTRICT

Narragansett, Rhode Island 02882

*Established 1932*

July 17, 2024

Dear Property Owner and Registered Voter:

Those eligible to vote include:

- 1) Each person registered to vote with the Narragansett Canvassers Board from a registered address within the District;
- 2) Each individual person named on a recorded deed for property in the District (e.g. nonresident spouses/family members owning property who are each named on the deed would each be entitled to a vote);
- 3) Each corporation, partnerships, limited liability companies, unincorporated associations, owning property, provided that entity would be entitled to only a single vote. That entity must submit a notarized affidavit (copy attached), indicating who is to cast the vote for that entity; and
- 4) If you are a resident of the District and have not registered to vote with the Narragansett Canvassers Board, we urge you to so register. In the alternative, you will need to deliver a certification (copy attached), by July 27, 2024, that the District is your full-time residence, to a locked drop box at the District Community Center, to ensure you are eligible to vote at the Annual Meeting.
- 5) If you are a partnership, corporation, firm, LLC, or unincorporated association, and intend to vote at this year's Annual Meeting, you must deliver the affidavit (copy attached) for the authorized representative to vote for the entity, by August 17, 2024, to a locked drop box at the District Community Center.
- 6) Each eligible voter is entitled to a single vote. If you own multiple properties, you are entitled to only one vote.

If you have not already done so, please provide us with an email address so that we may better communicate with you on a timely basis. We do not disseminate your address to any other person or entity. Should you need further information, please visit the District

website: [bonnetshores.org](http://bonnetshores.org)

Sincerely,

Bonnet Shores Fire District Council

130 Bonnet Shores Road, Narragansett, RI 02882

 [www.bonnetshores.org](http://www.bonnetshores.org)  (401) 895-0099



# BONNET SHORES FIRE DISTRICT

Narragansett, Rhode Island 02882

*Established 1932*

July 17, 2024

Dear residents in the District:

Please see the enclosed District letter outlining who is eligible to vote at the upcoming Annual Meeting, scheduled for August 26, 2024.

Please note the following paragraph in that letter:

“4) if you are a resident of the District and have not registered to vote with the Narragansett Canvassers Board, we urge you to register. In the alternative, you will need to deliver a certification, by July 27, 2024, that the District is your domicile, to a locked drop box at the District Community Center, to ensure you are eligible to vote at the Annual Meeting.”

If you have not already done so, and have one, please provide us with an email address so that we may better communicate with you on a timely basis.

Sincerely,

Bonnet Shores Fire District Council

130 Bonnet Shores Road, Narragansett, RI 02882

 [www.bonnetshores.org](http://www.bonnetshores.org)  (401) 895-0099

**CERTIFICATION FOR RESIDENTS WHO ARE ELIGIBLE TO VOTE IN  
NARRAGANSETT AND WHO ARE NOT REGISTERED WITH THE  
NARRAGANSETT CANVASSERS BOARD**

(This form is for residents who do not own real property in the District, and who are eligible to vote in Narragansett, but who are not registered with the Narragansett Canvassers Board. The certification must be delivered to a drop box located at the District Office at 130 Bonnet Shores Road by July 27, 2024 to vote in the August 26, 2024 election.)

I have had “a home and residence” at the address below for more than thirty days before the upcoming District meeting.

I understand that “home and residence” is not the mere residence or actual place of abode, but voting domicile in the legal meaning of that term as defined by Rhode Island law. *In re Opinion of the Justices, 16 A.2d 331 (1940)*.

I certify that I am a U.S. citizen and over the age of 18.

I understand that a person can have only one domicile for purposes of voting. *In re Opinion of the Justices, 16 A.2d 331 (1940)*.

Attached is a copy of my current Rhode Island license or Rhode Island Identification card showing my Bonnet Shores Fire District address.

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

NOTARY PUBLIC: \_\_\_\_\_

Commission No. \_\_\_\_\_

Expiration Date: \_\_\_\_\_



**AFFIDAVIT**

**DESIGNATING PERSON AUTHORIZED TO VOTE ON BEHALF OF A FIRM,  
CORPORATION OR UNINCORPORATED ASSOCIATION (PARTNERSHIPS)**

(The Affidavit must be delivered by August 17, 2024, to a drop lock box at the District's Office  
at 130 Bonnet Shores Road, Narragansett, Rhode Island.)

For the real property located at \_\_\_\_\_  
(Address of the Property, include all real property owned in the District)

Name of Entity owning said property: \_\_\_\_\_

I, \_\_\_\_\_, having a residential address of  
(Name of Authorized Representative)

\_\_\_\_\_  
(Address of Voter (including City/Town, State and Zip))

Upon oath, I do hereby make an affidavit and swear that I am duly authorized to vote on behalf  
of said ownership. This Affidavit is made under the penalty of perjury

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please write or type name clearly)

\_\_\_\_\_  
(Email Address)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Names

Commission No. \_\_\_\_\_

Expiration Date: \_\_\_\_\_