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**Analysis of the General Assembly’s Authority to Control the Qualifications to  
Vote and Hold Office in Local Elections**

*I. Introduction*

**Question presented:** Whether [Vt. Const. Ch. II, § 42](#) (voter’s qualification and oath) and [Vt. Const. Ch. I, Art. 8](#) (right of voters in elections) provide the qualifications to vote and hold office in all elections in the State, or whether the General Assembly’s authority set forth in [Vt. Const. Ch. II, §§ 6 and 69](#) to constitute towns and control municipal charters, respectively, allows the General Assembly to provide different qualifications to vote and hold office in local elections.<sup>1,2</sup>

**Short answer:** The Office of Legislative Council cannot say with absolute certainty that the General Assembly may provide qualifications to vote and hold office in local elections that are different from those constitutionally required for our general elections because there does not appear to be caselaw adjudicating this question under existing constitutional voting qualification standards, due to changes in voting rights.

Currently, voting qualifications in Vermont are the same in general and local elections. However, this was not always the case. It was a statutory change by the General Assembly that brought local election voting qualifications in line with the constitutional voting qualifications for our general elections, and there is no known caselaw to suggest that the requirement that these voting qualifications be the same has now become constitutionally solidified.

Instead, the Supreme Court of Vermont (SCOV) has stated on at least several occasions in older caselaw—when voting qualifications differed in general and local elections—that the qualifications to vote and hold office in local elections are an issue within legislative, not constitutional, control. These cases still appear to be good law.

To assist the Legislative Branch in examining this question, the analysis set forth in this document summarizes changes in voting qualifications on the State and local level; provides an overview of the constitutional scope of legislative power and of canons of constitutional construction; and sets forth a timeline of applicable constitutional provisions and caselaw.

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<sup>1</sup> As used in this analysis, “local election” is as defined in [17 V.S.A. § 2103\(18\)](#): An election that deals with the selection of persons to fill public office or the settling of public questions solely within a single municipality, or the election to settle a public question in several municipalities in which the municipalities must unanimously concur if the question is to be approved.

<sup>2</sup> This question relates to the proposal to allow non-citizens to vote in City elections in the City of Montpelier as set forth in [H.207](#), the proposal to allow 16- and 17-year-olds to vote in all local elections as set forth in [H.418](#), and any similar legislation.

## II. Summary

Federal law does not appear to control this question, since the Supreme Court of the United States has held that non-discriminatory voting qualifications in state and local elections are within the discretion of the states.<sup>3</sup> Therefore, the only question that remains is whether it is constitutionally permissible for the General Assembly to establish voter qualifications in local elections that differ from our general elections, because the only thing that controls the General Assembly is a constitutional provision.<sup>4</sup>

[Vt. Const. Ch. II, § 42](#) currently provides that every person who has taken the voter's oath and who is at least 18 years of age, a U.S. citizen, and a Vermont resident "shall be entitled to all the privileges of a voter of this state[.]" The voter's oath requires such a person to swear or affirm that when giving "vote or suffrage, touching any matter that concerns the State of Vermont," that the person will do so by judging what will result in the "best good" of the State, and without fear or favor of any person. This section also allows 17-year-olds who otherwise meet the voter qualifications to vote in the primary if they will be 18 years of age by the general election.

Relatedly, [Vt. Const. Ch. I, Art. 8](#) provides that "all elections ought to be free and without corruption, and that all voters, having a sufficient, evident, and common interest with, and attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in this constitution."

Read together, Vt. Const. Ch. I, Art. 8 and Ch. II, § 42 provide that a person who meets the qualifications of a "voter" has a right to vote and to be elected into office. The question is whether these voting qualifications do apply to "all elections," or whether the General Assembly has the authority to provide different qualifications in local elections as part of its authority to control municipal government as set forth in Vt. Const. Ch. II, §§ 6 and 69.

While Vt. Const. Ch. I, Art. 8 and Ch. II, § 42 now use the general terms "voter" and "voters," those terms were substitutes for the prior terms "freeman" and "freemen" pursuant to the SCOV's 1994 gender inclusive revision authority, which, via [Vt. Const. Ch. II, § 76](#), was required to "not alter the sense, meaning or effect of the sections of the Constitution." The SCOV made this substitution throughout the Vt. Const., except for the subject title preceding Vt. Const. Ch. II, § 42. There, the SCOV retained "QUALIFICATIONS OF FREEMEN" and added thereafter "AND FREEWOMEN".

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<sup>3</sup> See [Shelby County, Ala. v. Holder](#), 570 U.S. 529, 543 (2013) ("Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives . . . And '[e]ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen.'" (other citation omitted)) and [Arizona State Legislature v. Arizona Independent Redistricting Com'n](#), 135 S. Ct. 2652 at 2673 ("Deference to state lawmaking 'allows local policies 'more sensitive to the diverse needs of a heterogeneous society,' permits 'innovation and experimentation,' enables greater citizen 'involvement in democratic processes,' and makes government 'more responsive by putting the States in competition for a mobile citizenry.'" (citations omitted) and FN 25 ("A State may choose to regulate state and national elections differently, which is its prerogative under the [Elections] Clause.")) (2015).

<sup>4</sup> See Secs. III (Constitutional Legislative Authority) and IV (Constitutional Construction) of this analysis, *infra*.

“Freemen” was one term used in the original [1777 Vt. Const.](#), but “inhabitants” and “denizen” were also referenced. “Freemen” had voting rights the inhabitants did not. “Freemen” were defined in [1777 Vt. Const. Ch. II, § VI](#) as men who were at least 21 years of age, who lived in the State for at least a year, and who took the voter’s oath; there was no requirement for a “freeman” to be a U.S. citizen.<sup>5</sup> “Freemen” could vote for the State and county offices described in the Vermont Constitution. The original Vt. Const. did not provide for the election of any local offices.<sup>6</sup>

“Freemen” voted in “freemen’s meetings,” which our SCOV later discussed means what we now know as general elections.<sup>7</sup> While statute used to provide different qualifications to vote and hold office in local elections than what the Vt. Const. required for freemen’s/general elections, statute was later amended so that voters in local elections had to meet the same qualifications as “freemen” as set forth in Vt. Const. Ch. II, § 42, and those qualifications are now repeated in [17 V.S.A. § 2121](#).<sup>8</sup>

However, during the time that statutory qualifications to vote and hold office in local elections differed from the constitutional qualifications in freemen’s/general elections, the SCOV stated on at least several occasions that the Legislative Branch controls qualifications to vote and hold office in local elections, since the General Assembly has control over municipalities.

Specifically, while the Vt. Const. was amended in 1828 so that a “freeman” was required to be a natural born citizen of the United States or naturalized by Congress, the SCOV in the 1863 case [Woodcock v. Bolster](#)<sup>9</sup> distinguished constitutional “freemen” from statutory voters in local elections when it upheld the statutory qualification for a person to vote and hold office in local elections if he was a taxpaying male of at least 21 years of age, regardless of citizenship.<sup>10</sup>

Similarly, in 1886, the SCOV held that the Vt. Const. requirement for officers to take oaths does not apply to municipal offices. The Court stated that Vt. Const., Ch. II’s plan or frame of government “*has no reference to the plan or frame of town governments, nor to the election and qualification of the officers thereof.* Towns are not creations of the constitution; they exist either by virtue of charters granted by the sovereign before the adoption of the

<sup>5</sup> Vermont did not join the Union until 1791.

<sup>6</sup> Our current justices of the peace are a local office under [Vt. Const. Ch. II, § 52](#), but [1777 Vt. Const., Ch. II, § XXVII](#) originally created them as a county office.

<sup>7</sup> [Martin v. Fullam](#), 90 Vt. 163, 97 A. 442, 445 (1916) (“The term ‘general election’ is defined by section 5 of the Public Statutes to mean ‘any election of state and county officers, representatives to Congress or electors.’ By No. 1, § 1, Laws of 1915, it is made to include United States Senators. And throughout the Public Statutes (Revision of 1906) the term ‘general election’ is uniformly used to designate what before had commonly been known as ‘freemen’s meeting.’”).

<sup>8</sup> 1973, No. 172 (Adj. Sess.) was the act that set forth voting qualifications for all elections in one statute. However, at this time we can only say with certainty that voting qualifications became the same—although perhaps in different statutes—during the period between 1924 (when women became “freemen”) and that 1973 (Adj. Sess.) act.

<sup>9</sup> [Woodcock v. Bolster](#), 35 Vt. 632 (1863).

<sup>10</sup> [Id.](#) at 639 (“[W]e fail to see how it would follow that a change of the constitution in relation to the qualifications of freemen should work a corresponding change in the statutes regulating voting in town and school meetings . . . It has not been questioned but that it is actually within the power of the legislature to regulate the right of voting in such meetings, and the right of holding office, according to their pleasure, and that there is nothing in the constitution restraining its exercise.”).

constitution, or by acts of the legislature since its adoption, and derive their powers, not from constitutional provisions, but from legislative enactments [emphasis added].”<sup>11</sup>

Finally, prior to 1924 when women gained the right to be “freemen” under the Vermont Constitution, the 1915 SCOV case State v. Foley<sup>12</sup> cited legislative acts as early as 1870 that permitted women to hold school district offices,<sup>13</sup> and in that case the SCOV upheld the election of a woman to a school district office.<sup>14</sup>

The Legislative Branch controls by statute what a constitutional provision does not. At this time, there is no known caselaw that would constitutionally require Vermont to have the same voting qualifications in both State and local elections. If none exists, then SCOV caselaw indicates that the General Assembly has the constitutional discretion to enact H.207, H.418, or similar legislation, and that this is a policy question, not a constitutional one.

### *III. Constitutional Legislative Authority*

#### A. The Vermont Constitutional Controls

“The Vermont Constitution is the fundamental charter of our state and is preeminent in our governmental scheme . . . As such, the constitution stands above legislative and judge-made law, and the rights contained therein speak ‘for the entire people as their supreme law.’”<sup>15</sup>

#### B. Legislative Power

##### 1. Supreme Legislative Power, Restricted Only by the Constitution

As the General Assembly, the Senate and House hold the “Supreme Legislative power,”<sup>16</sup> which includes the power to “prepare bills and enact them into laws.”<sup>17</sup> The Vermont Supreme Court describes the General Assembly as “the lawmaking branch of government.”<sup>18</sup> However, the General Assembly “shall have no power to add to, alter, abolish, or infringe any part of this Constitution.”<sup>19</sup> In other words, the only thing that limits the General Assembly’s lawmaking authority is the Constitution. “The Constitution is not a grant of power to the Legislature, but it

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<sup>11</sup> Rowell v. Horton, 58 Vt. 1, 3 A. 906, 907 (1886).

<sup>12</sup> State v. Foley, 89 Vt. 193, 94 A. 841 (1915).

<sup>13</sup> For reference, one can see in the 1880 Revised Laws, in § 524, that “[w]omen shall have the same right to vote as men have in all school district meetings, and in the election of school commissioners in towns and cities, and the same right to hold offices relating to school affairs.”

<sup>14</sup> Id. at 845.

<sup>15</sup> In re Town Highway No. 20, 191 Vt. 231, 248 (2012) (other citations omitted).

<sup>16</sup> Vt. Const. Ch. II, § 2.

<sup>17</sup> Vt. Const. Ch. II, § 6.

<sup>18</sup> Hartness v. Black, 95 Vt. 190, 114 A. 44, 47 (1921).

<sup>19</sup> Vt. Const. Ch. II, § 6.

is a limitation of its general powers. The Legislature’s power is practically absolute, except for constitutional limitations.”<sup>20</sup>

## 2. Supreme Legislative Power Establishes Policy through Police Power

The scope of the General Assembly’s legislative power is demonstrated in the Vermont Constitution’s provision of police power: “That the people of this state by their legal representatives, have the sole, inherent, and exclusive right of governing and regulating the internal police of the same.”<sup>21</sup>

Again, in its exercise of police power, the only thing that limits the General Assembly’s lawmaking discretion is a constitutional provision. “Subject to constitutional limitations, a state Legislature is authorized to pass measures for the general welfare of the people of the state in the exercise of the police power, and is itself the judge of the necessity or expediency of the means adopted.”<sup>22</sup> In regard to the police power, “the constitution clearly empowered the legislature to pass such laws as, in its discretion, it might judge would be for the common benefit of the people of the state.”<sup>23</sup> This includes legislating to provide for the public’s health, safety, convenience, and morals.<sup>24</sup>

## 3. Police Power Defines Vermont as a Sovereign Entity

The police power manifested in our enacted laws is also how we as Vermonters define ourselves as a sovereign entity. The Tenth Amendment to the U.S. Constitution provides that all powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states or to the people. “The dynamics of state government in the federal system are to allow the formation of consensus respecting the way members of a discrete community treat each other in their daily contact and constant interaction with each other.”<sup>25</sup>

## 4. The Legislative Branch Controls Municipalities

Vt. Const. Ch. II, § 6 provides the General Assembly with the power to “constitute towns, boroughs, cities and counties” and Ch. II, § 69 provides that municipal charters “are to be and remain under the patronage and control of the State[.]” The SCOV stated that “the power exercised by the Legislature is the people’s power, delegated to it by the people in the Constitution of the state, which expressly commits to the Legislature the power to ‘constitute towns, boroughs, cities, and counties.’ This power is essentially a trust, and requires the exercise

<sup>20</sup> Rufus v. Daley, 103 Vt. 426, 154 A. 695, 697 (1931). See also City of Burlington v. Central Vermont RY Co., 82 Vt. 5, 71 A. 826, 827 (1909) (“[F]or the law is, by all the cases, that, except where there are constitutional limits upon the Legislature, it is practically absolute.”) and Dresden School District v. Norwich Town School District, 124 Vt. 227, 231 (1964) (“Our constitution is, in powers not surrendered to the Federal government, the single great restraint on the autonomy of the Legislature as the repository of the law-making power of the people.”).

<sup>21</sup> Vt. Const. Ch. I, Art. 5.

<sup>22</sup> Sowma v. Parker, 112 Vt. 241, 22 A.2d 513, 517 (1941) (quoting In re Guerra, 94 Vt. 1, 110 A. 224, 227 (1920)).

<sup>23</sup> State v. Theriault, 70 Vt. 617, 41 A. 1030, 1034 (1898). See also State v. Curley-Egan, 180 Vt. 305, 309 (2006) (“The police power has long been understood to encompass ‘the general power of the legislative branch to enact laws for the common good of all the people.’”) (other citations omitted).

<sup>24</sup> Sabre v. Rutland R. Co., 86 Vt. 347, 85 A. 693, 700 (1913) (“Power to provide for the public safety and convenience stands upon the same ground as the power to protect the public health and public morals.”).

<sup>25</sup> U.S. v. Windsor, 570 U.S. 744, 769 (2013). See also FN3 of this analysis.

of judgment and discretion in its execution, and no authority is given to delegate it. The Legislature must, therefore, exercise its own judgment and discretion in its execution as far as necessary to discharge the personal trust committed to it.”<sup>26</sup>

#### IV. Constitutional Construction

- i. *Generally.* “We have a number of tools construing our constitution, including our own decisions, the wording of the text, historical analysis, construction of similar provisions in other state constitutions[,] and sociological materials.”<sup>27</sup>
- ii. *Plain language controls.* Public officers’ understanding and administration of constitutional provisions “may be resorted to in aid of interpretation in case of doubtful meaning. But, when the language is unambiguous, its meaning cannot be modified or controlled by practice, however long continued. In ascertaining the import and true interpretation of a written instrument, resort is first had to the obvious meaning of the language adopted, and, if this is explicit and unequivocal, all inference by way of construction is excluded. Should any part of the Constitution furnish answers in terms to the questions for decision, it would be not only unnecessary, but improper, to resort to extraneous aids to interpretation.”<sup>28</sup>
- iii. *Expressio unius est exclusion alterius.*
  - “If the constitution declares that a thing shall be done in a particular manner or way, it is implied necessarily that it shall not be done in any other [way].”<sup>29</sup>
  - ““For purposes of constitutional interpretation, the express mention of one thing implies the exclusion of another which might logically have been considered at the same time’ . . . ‘It is a universally recognized rule of the construction that, where a constitution or statute specifies certain things, the designation of such things excludes all others, a maximum commonly known as *expressio unius est exclusio alterius*.””<sup>30</sup>
- iv. *Context.* “In construing the constitution, the court reads words and phrases in context according to the rules of grammar and common usage.”<sup>31</sup>
- v. *Specific over general.* ““It is an established axiom of the constitutional law that where there are both general and specific constitutional provisions relating to the same subject, the specific provision will control.””<sup>32</sup>

<sup>26</sup> *In re Municipal Charters*, 86 Vt. 562, 86 A. 307, 308 (1913).

<sup>27</sup> *Benning v. State*, 161 Vt. 472, 476 (1994).

<sup>28</sup> *Hartness v. Black*, 95 Vt. 190, 114 A. 44, 47 (1921).

<sup>29</sup> [Opinion of the Judges of the Supreme Court on the Constitutionality of “An Act Providing for Soldiers Voting”](#), 37 Vt. 665, 672 (1865).

<sup>30</sup> *Noble v. Secretary of State*, 2010 WL 4567689 (Vt. Super., Civ. Div.) at pgs. 10-11.

<sup>31</sup> *Id.* at pg. 12 [citing out-of-state caselaw].

<sup>32</sup> *Id.* at pg. 15 [citing out-of-state caselaw].

- vi. *Legislature fills in details.* “The standards for interpreting constitutional language and meaning, though related, are not the same as for ordinary statutes. Canons of construction, if applied, must be used more cautiously and sometimes differently. This is so because a constitutional provision, unlike a statute, usually operates to limit or direct legislative action . . . *It is of great importance to remember that, since the purpose of any constitutional enactment is to delineate the framework of government, the working details are frequently left, as here, for legislative definition.* Interpretation must, therefore, not be so narrow as to present an obstacle to that function. More than one pattern of working details may well be possible and constitutional [emphasis added].”<sup>33</sup>
- vii. *Spirit, essence, and core values.* “The Vermont Constitution was adopted with little recorded debate and has undergone remarkably little revision in its 200-year history. Recapturing the meaning of a particular word or phrase as understood by a generation more than two centuries removed from our own requires, in some respects, an immersion in the culture and materials of the past more suited to the work of professional historians than courts and lawyers . . .
- “The responsibility of the Court, however, is distinct from that of the historian, whose interpretation of past thought and actions necessarily informs our analysis of current issues but cannot alone resolve them . . .
- “As we observed in *State v. Kirchoff* [citation omitted], ‘our duty is to discover . . . the *core value* that gave life to [constitutional provisions] . . .
- “Out of the shifting and complicated kaleidoscope of events, social forces, and ideas that culminated in the Vermont Constitution of 1777, **our task is to distill the essence, the motivating ideal** of the framers.
- “**The challenge is to remain faithful to that historical ideal, while addressing contemporary issues that the framers undoubtedly could never have imagined.**
- “**We first focus on the words** of the Constitution themselves, for, as Chief Justice Marshall observed, ‘although the spirit of an instrument, especially a constitution, is to be respected not less than its letter, yet **the spirit is to be collected chiefly from its words.**’”<sup>34</sup>
- viii. *SCOV power.* Under the separation of powers, “it is the province of the court to decide whether Vermont’s laws comply with the State Constitution”<sup>35</sup>; “[i]t is the function of the courts to maintain constitutional government”<sup>36</sup>; and the Supreme Court of Vermont is the “final interpreter of the Vermont Constitution.”<sup>37</sup>

<sup>33</sup> *Peck v. Douglas*, 148 Vt. 128, 132 (1987).

<sup>34</sup> *Baker v. State*, 170 Vt. 194, 207 (1999).

<sup>35</sup> *Brigham v. State*, 179 Vt. 525, 528 (2005).

<sup>36</sup> *C.O. Granai v. Witters, Longmoore, Akley & Brown*, 123 Vt. 468, 470 (1963).

<sup>37</sup> *State v. Read*, 165 Vt. 141, 153 (1996).

V. *Timeline of Applicable Constitutional Provisions, Caselaw, and Opinions*

1777 Vt. Const.; Summary:

- “Freemen” have a right to elect and be elected into office. Men, at least 21 years of age, who reside in the State for at least one year, and take the oath, are entitled to the privileges of a “freeman” of this State.
- “Freemen” choose “The House of Representatives of the Freemen of this State” (and other constitutional offices) and a “foreigner” can’t be elected Representative until residing at least one year in the town immediately before the election.
- Representatives have the power to constitute towns.
- A “foreigner” “who comes to settle in this State,” and takes an oath to the State, can acquire real estate and after one years’ residence, “shall be deemed a free denizen thereof” and be entitled to all the rights of a “natural born subject of this State,” except that he cannot be elected a Representative until after two years’ residence.
- Ch. II, § XXXI mentioned the local office of town clerk, but did not reference any election for that office.
- Ch. II, § XXVII provided that freemen elect justices of the peace as a *county* office.

1777 Vt. Const., Ch. I, Art. VIII:

“That **all elections** ought to free; and that all **freemen**, having a sufficient evident common interest with, and attachment to, the community, have a right to elect officers, or be elected into office.”

1777 Vt. Const., Ch. II, § VI:

“Every **man of the full age of twenty-one years**, having resided in this State for the space of one whole year, next before the election of representatives, and who is of a quiet and peaceable behavior, and will take the following oath (or affirmation), shall be entitled to all the privileges of a **freeman** of this State.

"I \_\_\_\_\_ solemnly swear, by the ever living God (or affirm in the presence of Almighty God that whenever I am called to give my vote or suffrage, touching any matter that concerns the State of Vermont, I will do it so, as in my conscience, I shall judge will most conduce to the best good of the same, as established by the constitution, without fear or favor of any man.""

1777 Vt. Const. Ch. II, § VII:

“The House of Representatives of the Freeman of this State, shall consist of persons most noted for wisdom and virtue, to be chosen by the **freemen** of every town in this State, respectively. **And no foreigner shall be chosen, unless he has resided in the town for which he shall be elected, one year immediately before said election.**”



1777 Vt. Const. Ch. II, § VIII:

“The members of the House of Representatives shall be chosen annually, by ballot, **by the freemen** of this State, on the first Tuesday of September, forever (except this present year) and shall meet on the second Thursday of the succeeding October, and shall be stiled, The General Assembly of the State of Vermont; and shall have power to choose their Speaker, Secretary of the State, their Clerk, and other necessary officers of the House—sit on their own adjournments—prepare bills and enact them into laws—judge of the elections and qualifications of their own members—they may expel a member, but not a second time for the same cause—They may administer oaths (or affirmations) on examination of witnesses—redress grievances—impeach State criminals—grant charters of incorporation—**constitute towns, boroughs, cities, and counties**, and shall have all other powers necessary for the Legislature of a free State, but they shall have no power to add to, alter, abolish, or infringe any part of this constitution. And for this present year the members of the General Assembly shall be chosen on the first Tuesday of March next, and shall meet at the meeting-house, in Windsor, on the second Thursday of March next.”

1777 Vt. Const. Ch. II, § XXIX:

“**All elections**, whether by the people or in General Assembly, shall be by ballot, free and voluntary: and any elector who shall receive any gift or reward for his vote, in meat, drink, monies or otherwise, shall forfeit his right to elect at that time, and suffer such other penalty as future laws shall direct. And any person who shall, directly or indirectly, give, promise or bestow any such rewards to be elected, shall, thereby, be rendered incapable to serve for the ensuing year.”

1777 Vt. Const. Ch. II, § XXXVIII:

“Every **foreigner** of good character, who comes to settle in this State, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer, land, or other real estate; **and after one years residence, shall be deemed a free denizen thereof and be entitled to all the rights of a natural born subject of this State**; except that he shall not be capable of being elected a representative, until after two years residence.”

1786 Vt. Const.: No voting qualification-related changes from 1777 Vt. Const. Removed the only two references to “foreigners” in Ch. II, §§ VIII and XXXVI, and like other officers, justices of the peace were elected by the House of Representatives.

1789: State v. Marsh, 1789 WL 103 (Vt.), N.Chip. 28 (1789):

SCOV stated that in 1786 Vt. Const., Ch. II, § XXXI's provision that "All elections, whether by the people or in the General Assembly, shall be by ballot, free and voluntary[,] "all elections" was referring to *freemen's* meetings, and "the people" meant *the freemen*. *Id.* at 30. "The framers of the constitution were forming a plan for the general government of State. They do not appear to have had an eye to the internal regulation of lesser corporations." *Id.* at 29. The SCOV stated that this section "does not extend to the choice of town officers," in holding that town meeting elections did not need to be held by ballot. *Id.* at 31.

1791: Vermont is first state to join the Union; is 14<sup>th</sup> state.

1793 Vt. Const.: No voting qualification-related changes from 1786 Vt. Const.

1828: Vt. Const. 1<sup>st</sup> Article of Amendment, adopted by convention:

"No person, who is not already a freeman of this state, shall be entitled to exercise the privileges of a freeman, unless he be a natural born citizen of this, or some one of the United States or until he shall have been naturalized agreeably to the acts of Congress."

1863: Woodcock V. Bolster, 35 Vt. 632 (1863):

SCOV held that while the Vt. Const. has been amended to require "freemen" to be U.S. citizens, "this requirement was by no means synonymous with that of a voter in town or school meeting . . . we fail to see how it would follow that a change of the constitution in relation to the qualifications of freemen should work a corresponding change in the statutes regulating voting in town and school meetings . . . It has not been questioned but that it is actually within the power of the legislature to regulate the right of voting in such meetings, and the right of holding office, according to their pleasure, and that there is nothing in the constitution restraining this exercise." *Id.* at 639.

1868: Ratification of 14<sup>th</sup> Amendment to U.S. Const.:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

1870: Ratification of 15<sup>th</sup> Amendment to U.S. Const.:

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of **race, color, or previous condition of servitude.**”

1886: Rowell v. Horton, 58 Vt. 1, 3 A. 906 (1886):

SCOV holding that the Vt. Const. requirement for officers to take oaths does not apply to municipal offices. **Vt. Const. Ch. II’s plan or frame of government “has no reference to the plan or frame of town governments, nor to the election and qualification of the officers thereof.** Towns are not creations of the constitution; they exist either by virtue of charters granted by the sovereign before the adoption of the constitution, or by acts of the legislature since its adoption, and derive their powers, not from constitutional provisions, but from legislative enactments.” Id. at 907.

1915: State v. Foley, 89 Vt. 193, 94 A. 841 (1915):

SCOV held that when the General Assembly changed local school district office qualifications from “male citizens” to “citizens,” it was intended to allow for female school district officers, Id. at 844, **and upheld the election of a woman to a school district office.** Id. at 845.

1916: Martin v. Fullam, 90 Vt. 163, 97 A. 442 (1916):

SCOV distinguished between local and general elections, stating that “**the term ‘general election’ is uniformly used to designate what before had commonly been known as ‘freemen’s meeting.’**” Id. at 445.

1920: Ratification of 19<sup>th</sup> Amendment to U.S. Const.:

“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of **sex.**”

1924: Ratification of 40<sup>th</sup> Article of Amendment to Vt. Const. ([1921, Prop 1](#)) [*women granted right to be “freemen”*]:

“Every **person** of the full age of twenty-one years, who is a natural born citizen of this or some one of the United States or has been naturalized agreeably to the Acts of Congress, having resided in this state for the space of one whole year next before the election of Representatives, and who is of a quiet and peaceable behavior, and will take the

following oath or affirmation, shall be entitled to all the privileges of a freeman of this state:

‘You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any man.’”

1943: Ag. Op. 43-129:

AG opines that “it is not possible for the Legislature to grant any relief toward making it possible for youth between the years of eighteen and twenty-one to vote in any Vermont election.” Opinion did not acknowledge any distinction between State and local elections.

1964: Ratification of 24<sup>th</sup> Amendment to U.S. Const.:

“The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.”

1966: Harper v. VA State Bd. of Elections, 383 U.S. 663 (1966):

“For it is enough to say that once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment. That is to say, the right of suffrage ‘is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed.’ [citation omitted] . . . We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax [noting at FN4 that only a handful of states still require a poll tax, specifically stating, “Vermont has recently eliminated the requirement that poll taxes be paid in order to vote. Act of Feb. 23, 1966, amending [24 V.S.A. § 701].”].

1970: Kohn v. Davis, 320 F. Supp. 246 (1970):

Vt. Dist. Ct. held that our previous State constitutional provision requiring a one-year residency requirement before a person could vote was an unconstitutional limit on the U.S. Const.’s right to vote and travel interstate. (Judgment affirmed by SCOTUS in Davis v. Kohn, 405 U.S. 1034 (1972).)

1971: Ratification of 26<sup>th</sup> Amendment to U.S. Const.:

“The right of citizens of the United States, **who are eighteen years of age or older**, to vote shall not be denied or abridged by the United States or by any State on account of age.”

1974: Ratification of 47<sup>th</sup> Article of Amendment to Vt. Const. ([1971, Prop VII](#)) [*“freemen” may vote at the age of 18; eliminated one-year residency requirement*]:

“Every person of the full age of **eighteen years** who is a natural born citizen of this or some one of the United States, or who has been naturalized agreeably to the Acts of Congress, having resided in this State **for the period established by the General Assembly** and who is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a freeman of this state:

‘You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person.’”

1984: AG Op. 84-12 (1984):

**A proposed charter amendment that would have imposed term limits for town and town school district officers is opined to be “an unconstitutional limitation on the right of freemen of this state to be elected into office.”** 1984 WL 63421, pg. 1.

1994: Ratification of 52<sup>nd</sup> Article of Amendment to Vt. Const. ([1991, Prop. 11](#)):

SCOV uses its [Vt. Const. Ch. II, § 76](#) gender inclusive revision authority to change all references to “freeman” and “freemen” to “voter” and “voters,” **except** for the subject title preceding Vt. Const. Ch. II, § 42, to which it added “AND FREEWOMEN” following “FREEMEN”.

As provided in Ch. II, § 76, the Justices’ gender inclusive revision authority “shall not alter the sense, meaning or effect of the sections of the Constitution.”

2010: Ratification of 54<sup>th</sup> Article of Amendment to Vt. Const. ([2008, Prop 5](#)) [*allowing 17-year-olds to vote in the primary if they will be 18 by the general election*]:

“Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who

is of a quiet and peaceable behavior, and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this state:

‘You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person.’

“Every person who will attain the full age of eighteen years by the date of the general election who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the oath or affirmation set forth in this section, shall be entitled to vote in the primary election.”

#### VI. Election Notes Regarding H.207

- *City officers.*
  - Because H.207 would allow non-citizen legal residents of the U.S. to vote in City elections under proposed § 1501 of the charter, it appears those voters would be qualified to be elected into City office under current [§ 509](#) of the charter. Section 509 provides that at its annual meeting, Montpelier voters elect “from among the City voters” a Mayor, City Clerk, City Councilors, other elective City officers, and members of the Board of School Directors of the Montpelier-Roxbury Unified Union School District (although it appears that proposed § 1503 of the charter would prohibit these voters from voting in—and therefore being eligible to hold office for—school district elections).
  - As indicated above in the *Woodcock v. Bolster*, *Rowell v. Horton*, and *State v. Foley* cases, the General Assembly may establish the qualifications to both vote for and be elected to local office. With the understanding that these cases are still good law and that it is therefore constitutionally permissible for legal residents to vote in local elections, the election of these voters to local office is constitutionally permissible.
- *Ballot secrecy.*
  - Proposed § 1503 of the charter would provide that in any election that involves both City and non-City questions or offices, such as a general election, “the City Clerk shall prepare and provide to any non-citizen a ballot that contains only the City questions and candidates.”
  - If a City election is held on the same day as a primary, general, or other election, the questions for each election may be combined on one ballot. The charter does not address whether the City would continue to use such a combined ballot, but as a practical matter, a combined ballot for all but the legal resident voters seems to have the potential to infringe upon the secrecy of their ballots.