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MEMORANDUM

To: Rep. Krowinski, Speaker of the House
From: Rep. Webb, Chair of the House Committee on Education
Date: March 30, 2021
Subject: H.227; Winooski City Charter

The House Committee on Education heard testimony on H.227, the Winooski City Charter, on March 23, 2021 from Reps. Colston and Small; Jim DesMarais, Legislative Counsel; Tucker Anderson, Legislative Counsel; Mark Perrault, Joint Fiscal Office; Emily Simmons, General Counsel, Agency of Education; and Peter Teachout, Professor, Vermont Law School.

The H.227 would amend the Winooski City Charter to permit noncitizens to vote in City elections if they are legal residents of the City, have taken the voter's oath, and are 18 years of age or older. The Winooski Incorporated School District incorporates the Winooski City Charter voter qualifications requirements, and therefore noncitizens of this school district would also be qualified to vote in school district elections, including on the school budget.

The Committee considered two questions. First, whether permitting noncitizens to vote in Winooski Incorporated School District elections raises substantive legal issues under *Brigham v. State*, 166 Vt. 246 (1997). Second, the effect of permitting noncitizens to vote in Winooski Incorporated School District elections on the Education Fund.

Note that the Committee did not consider non-education-related constitutional or legal issues given its policy remit and its understanding that these matters were considered by the House Committee on Government Operations.

Brigham Testimony

The Vermont Supreme Court, in *Brigham*, held that the educational funding system, which it found created gross inequities in educational opportunities for students and which was based on the relative wealth of towns, violated the right to equal educational opportunities under the Education and Common Benefits clauses of the Vermont Constitution.

While the enfranchisement of noncitizens in Winooski Incorporated School District elections would expand its voter base, it is not the mere increase in qualified voters that could cause unequal educational opportunities. In order for the enfranchisement of noncitizens to raise a *Brigham*-type challenge, noncitizens would have to either vote as a group to increase school district spending or vote as a group to decrease school district spending, thereby resulting in more or less educational resources compared with other school districts that do not enfranchise noncitizens.

However, *Brigham* involved gross inequities in educational opportunities for students across the State, and that would unlikely be the case if only one or a few school districts enfranchised noncitizens. In addition, there was no evidence provided that noncitizens as a group would exercise their franchise in any particular manner. Even if there was that evidence and they did exercise their franchise in a similar manner, a court would need to weigh any negative outcomes to student equity against the governmental interest in allowing noncitizens the franchise. This government interest may, for example, be a viewpoint that all school district residents should have the right to vote based on the fact that, regardless of citizenship, they pay education property taxes, have an interest in the quality of education provided to their children, and, by enrolling their children in public schools, lower per-pupil spending and tax rates due to the calculation of average daily membership/equalized pupils.

A successful challenge under *Brigham* to enfranchising noncitizens in school district elections is unlikely without seeing outcomes that demonstrate gross inequities in educational opportunities for students. If that outcome was demonstrable, then the court would need to weigh that negative outcome against the government interest in allowing that franchise, and it would be speculative to offer a view of how a court may rule given the lack of precedent.

In summary, testimony on this question concluded that permitting noncitizens to vote in Winooski Incorporated School District elections does not raise substantive legal issues under *Brigham*.

Education Fund Testimony

With the passage of Act 60, Vermont moved to a statewide education funding system. Under this system, a spending decision made by taxpayers in an individual school district has an impact on the Education Fund and, consequently, on education property tax rates in all other school districts. However, the impact on the taxpayers approving the spending is much larger than any impact on the Education Fund, and the impact on taxpayers in other school districts is quite small.

An analysis of the impact of a single school district's spending on property taxpayers in other school districts found that:

“[I]f a town increased spending by \$500 per pupil, in most cases, the tax increase in other communities would be measured in pennies. When we calculated the average effect, a \$500 increase in per-pupil spending in one town would increase taxes by 25 cents in other communities on each \$100,000 of property value. That's a 25 cent increase in the tax *bill*, not the tax *rate*.” (Deb Brighton and Jack Hoffman, Public Assets Institute, February 2008.)

Since school districts are now larger as a result of consolidation, the impact of a spending decision made by taxpayers in individual school districts on other property taxpayers will, on average, be larger; however, the impact of spending decisions continue to fall primarily on those taxpayers who approve the spending.

Committee Opinion

Based on this testimony, the Committee is of the opinion that permitting noncitizens to vote in Winooski Incorporated School District elections does not raise substantive legal issues under *Brigham* and will not have a substantial impact on the Education Fund. The Committee straw vote in support of this opinion was 8-3-0.

We appreciate your attention to this matter and would be pleased to discuss the Committee's deliberations and opinion with you.