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Winooski Charter

Authorization of noncitizens to vote in City elections

Analysis under *Brigham*

Jim Des Marais; testimony to the House Committee on Education

The City of Winooski has proposed amending its charter to authorize noncitizens to vote in City elections. I understand that this provision would, by way of cross-reference, also authorize noncitizens to vote in Winooski school district elections, which would include the ability to vote on the school budget. Note that 16 V.S.A. § 553 states that “[a] person is qualified to vote at a school district meeting if by meeting day he or she would be eligible to vote at a town meeting held on that day.”

I understand that during House floor discussion on this proposed charter provision a question was raised as to whether the enfranchisement of noncitizens in school district elections would result in a violation of the Vermont Constitution as interpreted in *Brigham*.

A. Constitutional Law--The *Brigham* Decision

The Vermont Constitution requires that:

(1) “a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions to the convenient instruction of youth”¹ (Education Clause); and

(2) “government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community...”² (Common Benefits Clause).

¹ Vt. Const. Ch. II, § 68

² Vt. Const. Ch. I, Art.7

The Vermont Supreme Court, in *Brigham*,³ held that the then-current education financing system was unconstitutional. The Court determined that education in Vermont is “a constitutionally mandated right.”⁴ It stated that to “keep a democracy competitive and thriving, students must be afforded equal access to all that our educational system has to offer.”⁵ Therefore, in order to “fulfill its constitutional obligation the [S]tate must ensure substantial equality of educational opportunity throughout Vermont.”⁶

The Court was also careful to note that “substantially equal” does not mean perfectly equal, but it does not allow a system in which educational opportunity is necessarily a function of district wealth.⁷

While some of the language in *Brigham* is broad in scope (“students must be afforded equal access to all that our educational system has to offer”), its specific holding was more narrowly tailored. It 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.

The Vermont Supreme Court has not analyzed, in a substantive manner, the Common Benefits Clause in connection with the “constitutionally mandated right” to education since it issued the *Brigham* decision.

B. Application to Enfranchisement of Noncitizens in School District Elections

The *Brigham* case involved two levels of inequity—taxpayer inequity leading to unequal educational opportunities for students. Therefore, this testimony explores two questions:

- (1) First, how would the enfranchisement of noncitizens in school district elections result in taxpayer inequity?
- (2) Second, how would the enfranchisement of noncitizens in school district elections result in unequal educational opportunities for students?

³ *Brigham v. State*, 166 Vt. 246 (1997)

⁴ *Id.* at 267.

⁵ *Id.*

⁶ *Id.* at 268 (emphasis in original).

⁷ *Id.*

The enfranchisement of noncitizens in school district elections would expand the voter base for these school districts. That would also be true when citizens move into a school district and is true with the Dresden and Rivendell school districts that enfranchise New Hampshire voters under an interstate compact. Therefore, for the enfranchisement of noncitizens to result in taxpayer inequity or unequal educational opportunities for students, it is not the mere increase in qualified voters that would cause this result, but the manner in which they might exercise their right to vote.

Let's assume that half of Vermont school districts enfranchise noncitizens and half do not. I posit this because *Brigham* involved gross inequities in educational opportunities for students across the State, and that would unlikely be the case if only a few school districts enfranchised noncitizens.

In order for the enfranchisement of noncitizens to raise a *Brigham*-type challenge, I believe that one must assume that noncitizens would have a tendency to vote as a group to either increase school district spending or to vote as a group to decrease school district spending.

An increase in school district spending would generally result in higher education tax rates and to more resources for students. In comparison, a school district that does not enfranchise noncitizens may incur relatively lower tax rates and provide less resources for students, which may result in inequities. Likewise, a decrease in school district spending would generally lead to lower education tax rates and to less resources for students, and, compared to a school district that does not enfranchise noncitizens, may result in inequities.

But these outcomes are highly theoretical. It would be speculative to say that the scenario I posit would violate *Brigham* given that there is no evidence (that I am aware of) 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 taxpayer and 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.

C. Conclusion

My view is that a successful challenge under *Brigham* to enfranchising noncitizens in school district elections is unlikely without seeing outcomes that demonstrate gross inequities in taxpayer equity and educational opportunities for students. If those outcomes were demonstrable, then the court would need to weigh those negative outcomes against the government interest in allowing that franchise, and given the absence of precedent, I do not express a view on how a court may rule.