

Federal and State Law Issues
Impacting Voting in Shelter
Harbor Fire District
Elections(SHFD)

Paul W Eldridge

What Are the Rhode Island Law Requirements To Vote In An Election?

- Article II section 1 of the Rhode Island (RI) Constitution and Title 17 of
- RI General Laws (RI Gen. laws) generally define who is eligible to vote in an election.
- RI Gen. law sections 17-1 (13) and 17-1-3 list the requirements:
- 1) be a United States citizen who is at least 18 years old;
- 2) be a resident of Rhode Island as defined in section 17-13.1 -4 ;
- 3) have registered to vote in a timely fashion;

What Are the Rhode Island Law Requirements To Vote In An Election (Cont.)

- Section 17-3.1 (b) lists thirteen types of objective prima facie evidence to establish you are a resident of Rhode Island .
- These include among others:
- 1) the address furnished to the division of motor vehicles for the voter's operator's license;
- 2) the address from which the voter's motor vehicle is registered;
- 3) the address from which the voter filed his/her last Federal and state return;
- Residence in R.I. means domicile. You can have only one.

Rhode Island Election Voting Requirements

- The U.S. Supreme Court has repeatedly ruled that states and local governments may exclude people who are not bonafide residents as eligible voters, See eg., *Kramer v Union Free School District N.O. 15*, 395 U.S. 621 (1969); *Holt Civic Club v City of Tuscaloosa* 438 U.S. 60 (1978)
- Unlike some states (like Connecticut) that allow nonresidents to vote in some local elections, Rhode Island Law does not do so except in the case of fire, water or sewer districts and only if a specific districts allows it in their Charter.

Observations On Rhode Island Election Law

- Real property located in the SHFD is also taxed by the Town of Westerly. A nonresident property owner in SHFD has no right to vote for the Westerly Town Board members, the school board members etc.
- So Rhode Island Law almost exclusively favors voting by residents and disallows voting by nonresidents in all cases unless specifically allowed by a fire, sewer or water district charter.
- I understand how the Rhode Island Legislature could have concluded that given the residential makeup of the SHFD, nonresident property owners had a sufficient stake in community affairs to be given a say in the policies that could affect their investment.

Observations on Rhode Island Election Law

- However, given the clear preference for Rhode Island residents in Rhode Island election law it is very hard to understand why the Rhode Island legislature would give nonresidents owning multiple SHFD properties more votes than Rhode Island residents without being more explicit in the SHFD Charter confirming this intention and why.
- I think we have to assume the Rhode Island Legislature was familiar with its own election law, which gives nonresidents the potential right to vote but only in a fire, sewer or water district.
- Also, RI residents who have a house in Westerly and some other RI city or town could not vote in both places either. *Witt v Ebel* 306 F. 3d 1256 (2nd Cir. 2002), Opinion of the Justices, 191 A. 3d 1245(2018)

Have Other States Passed Statutes Which Explicitly Allow Nonresidents to Vote in Local Elections If a Local Government So Chooses?

At least ten states (AZ, CO, CT,DE,IN,MT, NM, ND, TN, and WY) allow nonresidents property owners the right to vote in local elections.

Rather than directly give nonresident property owners the right to vote, these states delegate the authority to municipalities.

For example Connecticut law broadly allows nonresident property owners who pay \$1000 or more in real estate taxes to vote in local elections subject to the right of an individual town to limit that right.(C.G.A. Section 7.6)

Colorado authorizes its municipalities with populations of at least 2000 inhabitants to enact a home rule charter that extends to all local and municipal matters. This delegation includes all powers pertaining to municipal elections including the eligibility of voters

May vTown of Mountain Village, 132F.3d (10 th Cir. 1997)

- The May case is a seminal (and frequently cited) case interpreting whether and how local jurisdictions can expand voting to include nonresident voters.
- Mountain Village is a town which is adjacent to the Telluride ski resort.
- In 1995 the town incorporated and shortly afterward voted (in an election in which only residents voted) to adopt a Home Rule Charter (“Charter”) as permitted by Colorado law.
- Section 2.4 of the Charter granted the right to vote to owners of real property located within Mountain Village who were not legal residents of Colorado.

May v Mountain Village (Continued)

- The right to vote was limited to nonresidents who were “natural persons “ (not legal entities like in the SHFD charter) who had at least a 50 percent ownership interest in real property ,were at least 18 years old and had owned the property for at 180 days prior to an election .
- Section 2.4 (d) of the Charter provided that **ONLY ONE VOTE COULD BE CAST PER PERSON (REGARDLESS OF WHETHER OR NOT HE OR SHE MAY BE A QUALIFIED LEGAL RESIDENT AND/OWN ONE OR MORE PARCELS OF REAL ESTATE”**

May v Mountain Village (Continued)

- Legal residents of the Town of Mountain View sued the town claiming their equal protection rights under the 14th Amendment were violated by the provision of the Home Rule Charter allowing nonresident property owners to vote in town elections
- The 10th Circuit rejected this claim citing a twofold rationale. First, the May Court said section 2.4.(b) of the Charter was “ franchise expanding and not franchise restricting.” The Appeals court went on to say Mountain View had a reasonable justification for allowing nonresident property owners to vote since they had as sufficient interest in town affairs.

May v Mountain Village (Continued)

- The 10th Circuit relied on Reynolds v Sims, 377 U.S. 533 (1964) in reaching its conclusion. The Appeals court went on to say since the nonresident property holders receive equal but not greater voting rights based upon property ownership, there was no sustainable equal protection voter dilution argument under the Fourteenth amendment.

May v Mountain Village (Continued)

- However, as one eminent election law expert commenting on the May case put it, “ a local ordinance that grants multiple votes for individual who own multiple properties in the locality may violate the one person one vote principle of Reynolds v Sims because some people will have a greater say than others. There might also be a voter dilution concern with respect to resident owners who do not own property. “ See Douglas, The Right to Vote Under Local Law , 85 Geo. Wash. L. Rev. 1039,1067(2017)

Does Allowing Multiple Votes to Multiple Property Owners Violate the Equal Protection Clause?

- The right to vote is a fundamental right under our Constitution. “ Because it is preservative of all other rights.” See eg., *Washington v Glucksberg* 521 US 792 (1997) citing *Yik Wo v Hopkins* ,118 US 356 (1886)
- The U.S. Supreme Court has protected the right to vote from state laws designed to either directly deny or indirectly burden certain individual rights to participate in elections.
- In Constitutional Law jargon this is often referred to as either “ one person one vote “ or “ voter dilution.” Whatever you call it the starting point for analysis is *Reynolds v Sims* , 377 U S 533 (1964)

Reynolds v Sims

- Reynolds invalidated an Alabama apportionment plan in which legislative districts had widely unequal populations, which diluted the weight of votes in more populous districts
- On a total population basis the population disparities between smaller rural counties and larger urban ones ranged between 16 to 1 in the state house and 41 to 1 in the state senate.
- In holding that the Equal Protection Clause (U.S. Const.Amend XIV sec.1) required legislative districts of equal population, the Reynolds decision talked extensively about the importance of individual voting rights eg., “ legislators represent people not trees and acres.”

Avery v Midland 390 US 701(1969)

- While Reynolds concerned a statewide election, subsequent cases starting with Avery have applied its requirement of equally weighted votes to local government elections.
- The local government in Avery made a substantial number of decisions which impacted all residents of its geographic area .
- These included equalizing tax assessments and setting the tax rate, conducting elections, letting contracts issuing bonds, adopting a budget, administering peacekeeping, public welfare services, and upkeep of roads and roads and bridges.

Additional Local Government Supreme Court Cases Dealing With Equal Protection Voting Issues.

- *Cipriano v City of Houma*, 395 U.S. 701 (1969) and *City of Phoenix v Kolodziejcki*, 399 U.S. 204 (1970) were cases in which voting on approving revenue and general obligation bonds was restricted to property holders who paid real estate taxes. Despite the disparate impact on property holders and non property owners, an Equal Protection violation was found in disenfranchising non property holding residents.
- *Kramer v Union Free School District N O 15*, 395 US 621 (1969) struck down a law which limited the right to vote in school board elections to owners and renters of real property and parents of children enrolled in district schools on Equal Protection grounds.

Additional Local Government Supreme Court Cases Dealing With Equal Protection Voting Issues

- Kramer went on to say that whenever a local government decides to elect persons to perform a government function each qualified voter must be entitled to an equally weighted vote,
- In *Hadley v Junior College District of Metropolitan Kansas*, 397 US 50 (1970) the Supreme Court invalidated a voting system for electing a junior college board of trustees on equal protection grounds.
- In *Salyer Land Company v Tulare Lake Basin Water Storage District*, 410 US 719 (1973) a California water storage district's sole function was storing and distributing water for farming. Only landowners could participate in elections for its governing board.

Additional Local Government Supreme Court Cases Dealing With Equal Protection Voting Issues

- In addition the landowner votes were allocated according to their assessed valuation of their land. The Supreme Court did not apply the one person one vote case analysis to invalidate the voting scheme. The limited purpose of the district (it provided no other general governmental services, the fact there was no community (only 59 adults lived on the district's 193,000 acres) and the disproportionate effect of its activities on the landowners earned it an exception from the application of Reynolds.
- This Reynolds exemption rationale was followed by the Supreme Court in *Ball v James*, 451US 355 (1981) .

Additional Local Government Supreme Court Cases Dealing With Equal Protection Voter Issues

- In the Ball case the Supreme Court upheld what has been referred to as a “one acre one vote” system for the board of a water reclamation district. The district was originally a private association it eventually became a public entity so it could access the municipal bond market for financing.
- Even though the district was a huge operation (it was one of the largest suppliers of electricity in Arizona) the Supreme Court concluded its functions were “ narrow and a special sort.” In summing up the Supreme Court said the district was essentially a business enterprise created by and chiefly benefiting a specific group of landowners.

Is There a Potential Equal Protection Problem With the Current SHFD voting System?

- Given the governmental functions the SHFD performs, I think we resemble the Avery type local government and not Salyer or James.
- This means that Kramer and Reynolds apply and each qualified voter in SHFD is entitled to an equally weighted vote.
- Specifically ,Reynolds requires “ once the geographic unit for which a representative is to be chosen is designated, all who participate in the election have an equal vote- whatever their race, whatever their sex, whatever their occupation what ever their home may be in the geographic unit.***The concept of “we the people “under the Constitution visualizes no preferred class of voters but equally among those who meet the basic qualifications. “

Is There a Potential Equal Potential Problem With the Current SHFD Voting System?

- Phrased a little differently, the argument under Simms equally weighted vote requirement would be that although all qualified voters who are renters or own one property in SHFD are able to physically vote in a particular election, this group as a whole cannot actually influence the election's outcome because it's numbers are overwhelmed by voters who receive multiple votes because they own multiple properties.
- Bush v Gore, 531 US 98 (2000) presents another potential problem for the current SHFD voting system. After describing the problems that had emerged with the punch card voting system used in the 2000 election in Florida, the Supreme Court explained that although the US Constitution does not confer a right to vote for President, all states now appoint their electors by a popular vote.

Is There a Potential Equal Protection Problem With the Current SHFD voting System ?

- The Supreme Court went on to say once the states decided to allow its citizens to vote for President, their right was fundamental and subject to the requirements of the Equal Protection Clause. Therefore “equal weight “ should be accorded to each vote and “equal dignity “to each voter, and also, “ Having once granted the right to vote on equal terms, the state may not later by arbitrary and disparate treatment value one person’s vote over another.”
- There is no Bush v Gore problem as long as having expanded the SHFD franchise to both residents and nonresidents ,all of them are treated the same.

Is There a Potential Equal Protection Problem With the Current SHFD Voting System?

- However, that is evidently not what happened. SHFD evidently expanded its eligible voter pool to allow nonresidents people (and entities) to not only vote but tied the number of votes they get to how many properties they own. (same issue for Rhode Island Residents with multiple properties voting multiple times.) I would think expanding the SHFD voter base in this manner might violate the Equal Protection formulation of Bush as well as Simms.
- Richard Briffault in commenting on the Salyer case said:” Although property ownership as a qualification for voting has a long history in this country, votes were generally not allotted according to the amount or value of the property owned. In the municipal bond franchise cases, each property owner or taxpayer cast just one vote.

Is There a Potential Equal Protection Problem With the Current SHFD Voting System?

- Property ownership signaled that the voter had an economic stake in the community and reflected the belief that economic independence conferred by property ownership was a source of political independence .But there was no assumption that the benefits of property ownership for improved deliberation and decision making was scaled to the amount of property a person owned.” Briffault , Who Rules At Home ,60 U.Chi.L.Rev. 339,365 (1993)