

**STATE OF RHODE ISLAND
BOARD OF ELECTIONS**

**IN RE: APPEAL BY NANCY GRIEB FROM PORTSMOUTH BOARD OF
CANVASSERS OCTOBER 25, 2021 VOTE**

DECISION AND FINAL ORDER

This matter was heard before the Board of Elections on December 21, 2021 and arises from an appeal filed by Nancy Grieb (“Grieb”) from an October 25, 2021 vote taken by the Portsmouth Board of Canvassers (“BOC”). Grieb complains that the BOC failed to comply with R.I. Gen. Laws § 17-8-10(a) by erroneously publishing a draft version of Ballot Question No. 2 (“Question 2”) in the Explanation that was distributed to Portsmouth voters, prior to the election held on November 2, 2021 (the “Election”). The BOC filed a Motion to Dismiss the appeal, arguing *inter alia* that Grieb lacks standing and that the Board of Elections (“Board”) does not have jurisdiction to hear the appeal. As discussed below, the Board grants the motion to dismiss for reasons other than those asserted by the BOC.

Procedural History and Summary of Facts

The procedural history and relevant facts, set forth below, are not in dispute.

The original Explanation of Question 2 included the following text:

**2. APPROVAL OF PROPERTY TRANSFER PURSUANT TO SECTION 912 OF
THE PORTSMOUTH TOWN CHARTER**

(Resolution of the Town Council adopted August 10, 2021)

Shall a transfer of a property interest in the so-called Anne Hutchison School property at 110 Bristol Ferry Road, for the purposes of developing elderly affordable housing and a new home for the Portsmouth Senior Center, be approved?

This text was included in a mailer sent to all voters and was published in a newspaper ad, the Town website and on social media. However, the actual language of the ballot question, as approved by the Town Council stated:

2. APPROVAL OF PROPERTY TRANSFER PURSUANT TO SECTION 912 OF THE PORTSMOUTH TOWN CHARTER

(Resolution of the Town Council adopted August 10, 2021)

Shall a transfer of a property interest in the so-called Anne Hutchison School property at 110 Bristol Ferry Road, for the purposes of developing elderly affordable housing, a new Senior Center facility, and the possible redevelopment of the original Anne Hutchison School building, be approved?

Grieb first complained of the discrepancy in the ballot language at the BOC meeting held on October 12, 2021. In response to the complaint, the BOC recognized the error and remedied the matter by publishing a correction of the ballot question language on the Town website, the Portsmouth Board's social media, and by issuing a press release.

Unsatisfied with the relief prescribed, Grieb filed an "official complaint" with the BOC on October 14, 2021. Grieb requested that any correction of the ballot language, contained in the Explanation, be published to the same extent, and to the same citizens, as the original explanation. Namely, the corrected language should be mailed to all voters, consistent with the mailer sent with the original Explanation – rather than merely informing the public through a press release and on the town website. The BOC considered Grieb's complaint at its October 25, 2021 meeting and voted to provide no further relief. Grieb then appealed the BOC decision to this Board on November 15, 2021.

Discussion

At the outset, the Board addresses the BOC's challenges based upon legal standing and jurisdiction.

Standing is a threshold requirement which must be satisfied before one may bring any claim for relief. *Blackstone Valley Chamber of Commerce v. Pub. Util. Comm'n*, 452 A.2d 931, 932-33 (R.I. 1982). The key requirement for standing is that the plaintiff must have an "injury in fact, economic or otherwise" resulting from the action or proposed action of another which one

seeks to enjoin, or from a statute or ordinance one seeks to overturn. *R.I. Ophthalmological Soc’y v. Cannon*, 317 A.2d 124, 129 (R.I. 1974). This injury must be “(a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical.” *Warfel v. Town of New Shoreham*, 178 A.3d 988, 991 (R.I. 2018) (internal citation omitted).

Our Supreme Court has recognized an exception to the standing doctrine in cases that raise questions of public interest, especially in election matters. *See, e.g., Gelch v. State Bd. of Elections*, 482 A.2d 1204, 1207 (R.I. 1984) (allowing exception to standing for suits to determine candidate’s eligibility to run for mayor and validity of qualification for office). This Board follows the Court’s liberal granting of legal standing on matters involving elections and finds that Grieb has standing to bring her appeal. Moreover, the Board observes that the BOC itself recognized Grieb’s standing since the BOC originally heard her claim and provided her with favorable relief at its October 12 meeting.

The BOC also challenges the jurisdiction of this Board to hear the appeal. The BOC contends that since it took no formal action at its October 25 meeting, Grieb cannot appeal that vote. This argument is rejected: The Board has “jurisdiction over all election matters on appeal from any local board and over any other matters pertinent and necessary to the proper supervision of the election laws.” R.I. Gen. Laws § 17-7-5(d). Grieb’s appeal seeks a determination of what a local board should do to correct such an error and, in particular, whether the correction must match the initial publication given by a local board. It is within the Board’s broad powers under R.I. Gen. Laws § 17-7-5(d) to oversee the BOC’s conduct and determine whether or not it was appropriate. Moreover, this Board’s regulations define a “petitioner” as a party “who brings an appeal from a decision, order or *final action* taken by a local board of canvassers.” 410 RICR § 20-00-22.3(D) (emphasis provided). It is evident that the BOC

intended that its October 25 vote would terminate all further relief sought by Grieb and put the matter to rest. Such a “final” act is the appropriate subject of an appeal under the Board’s regulations.

Turning to the merits of the appeal itself, the Board first observes that the ballots presented to the voters on November 2 contained the correct and complete text for Ballot Question 2. Ms. Grieb testified that she has no challenge to the text of the ballot question as it appeared on the actual ballot, and she does not claim that the text is either incomplete or misleading to the voters. Second, both Grieb and the BOC acknowledge that the ballot question was certified by the Secretary of State and then approved by a majority of the voters on November 2, 2021. Thus, the only question is whether the publication of an erroneous version of the text of the ballot in the Explanation issued by the BOC has any legal consequence for the results of the November 2, 2021 election.

The Board’s analysis begins with its review of the governing statute, R.I. Gen. Laws § 17-8-10. The statute requires local boards to prominently post “the full text of each legislative act to be acted upon and the election date,” in at least three (3) public places and in a newspaper advertisement on at least (1) one occasion. Alternatively, the local board is allowed to provide the voter with a brief explanation of the ballot question, rather than the complete text. R.I. Gen. Laws § 17-8-10(a). Thus, the law requires *either* the text of the ballot question *or* an explanation thereof. The fact that the BOC chose to do *both*, and committed an error in one, does not change the fact that the BOC legally complied with the requirements of the governing statute.

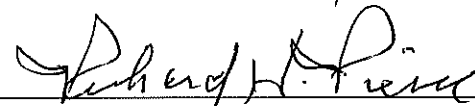
Grieb claims that the omission caused voter confusion, but she provides no evidence of voter confusion caused by this error in the Explanation. The merits of her claim are weakened significantly by the fact that the actual text of Ballot Question 2 was accurately presented to the

voters on the November 2, 2021 ballot. And, nowhere in her papers or testimony does Grieb explain the significance of the BOC's omission, beyond the mere fact of the technical fault itself. The Board must conclude that that the text of the question was correctly presented on the ballot, was not misleading and was approved by the voters. Any confusion that arises from the original Explanation must yield to the accurate text that appeared on the ballot.

Conclusion

For the reasons set forth herein, the Board hereby denies and dismisses the appeal.

So ORDERED, this 23rd day of December 2021:


Richard H. Pierge, Vice Chairman