Montpelier Allowing Noncitizens to Vote in Local Elections Is Not Unconstitutional

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In the case of *Ferry v. City of Montpelier, 2023 VT 4(opens in a new tab)*, the Vermont Supreme Court ruled that a municipal governance charter provision allowing noncitizens to vote in local elections did not violate the Vermont Constitution.

In 2018, Montpelier voters approved, and the Vermont Legislature subsequently authorized, a governance charter provision that allowed noncitizens to vote in its local elections. Under typical Vermont State law, to vote in any local or statewide election, a person must be a citizen of the United States. Despite this, the amended Montpelier governance charter modified State law by allowing any citizen or "legal resident" of the United States to vote in its local elections. The charter defines "legal resident" as "any noncitizen who resides in the United States on a permanent or indefinite basis in compliance with federal immigration laws."

Two Montpelier residents, eight other non-Montpelier voters, the Vermont Republican Party, and the National Republican Committee ("plaintiffs") brought a lawsuit in Superior Court against the City to stop the charter provision's implementation and declare it void. The plaintiffs argued that the governance charter provision violated Chapter II, § 42 of the Vermont Constitution. Importantly, although municipal governance charters can modify State law, they cannot be in violation of the Vermont Constitution. The Superior Court found the governance charter provision did not violate the Vermont Constitution, and the plaintiffs appealed to the Vermont Supreme Court.

At the Supreme Court level, the case centered on a single Vermont Constitution provision. In relevant part, it states: "[e]very person ... who is a citizen of the United States ... shall be entitled to all the privileges of a voter of this state ... ." Vt. Const. ch. II, § 42. In their argument to the Court, plaintiffs seized on the conditional requirement that, to be a voter in "this state," a person must be a "citizen of the United States."

The Supreme Court used the plain language of the Vermont Constitution, supplemented by historical context, to decide the case. The Court cited previous

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amendments to the Constitution, several of their own cases, and other historical documents as sources to interpret Chapter II § 42 to apply only to statewide elections. Namely, the Court said that it is clear from these sources that, at the time when the language of § 42 was being crafted, the word "freeman" was understood as meaning "persons with the ability to vote in ***statewide*** elections … ." (Emphasis added). Relatedly, the Court determined that the word "freeman" was historically synonymous with the word "voter." Therefore, the Court concluded that the current Chapter II § 42 phrase "voter of this state" – which used to be "freeman of this state" – likewise means a person able to vote in ***statewide*** elections. Thus, Chapter II § 42's conditional requirement that a person must be a citizen of the United States in order to hold the "privileges of a voter of this state" applies to statewide elections only, as opposed to local elections. Consequently, Montpelier's noncitizen voter governance charter provision was upheld as not violating the Vermont Constitution and is valid.

Upshot: Based on this ruling, municipalities can use their governance charters to modify local voting rights for individuals who are not United States citizens. Additionally, municipalities may also be able to use governance charters to modify other rules and processes related to their local elections.

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