

STATE OF RHODE ISLAND  
PROVIDENCE, Sc.

SUPERIOR COURT

JOHN J. CULLEN and  
EDWARD J. SLATTERY,

Plaintiffs,

vs.

TOWN OF LINCOLN, RHODE ISLAND;  
SUE SHEPPARD, TOWN ADMINISTRATOR;  
DENNIS M. AUCLAIR, RICHARD K. FOSTER,  
DEAN L. LEES, JR., PATRICIA M. MELUCCI,  
ELIZABETH ROBINSON, LINCOLN TOWN  
COUNCIL; LINDA J. FELBER, CHARLES N.  
TURNER, LINDA S. RESNEVIC, LINCOLN BOARD:  
OF CANVASSERS; KAREN D. ALLEN, LINCOLN  
TOWN CLERK; MATT BROWN, RHODE ISLAND  
SECRETARY OF STATE; *and* ROGER N. BEGIN,  
CHAIRMAN, STATE OF RHODE ISLAND BOARD  
OF ELECTIONS, ALL In Their Official Capacities,  
Defendants.

M.P. 04-

COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The Town of Lincoln, Rhode Island, adopted a Charter in 1958 pursuant to Article XIII, section 2, of the Rhode Island Constitution, establishing Home Rule and providing, among other matters, for creation of a School Committee.
2. Amendments to the Charter were adopted by the Lincoln electorate in the general election of 2002 which provided for two members of the School Committee to be elected “at-large,” “at the town election of November, 2004,” and specified, “all elections to be non-partisan.” Amended Charter, Art. XII, § 12-1 [Ps’ Exh. #1].

3. The Town of Lincoln has now announced that the field of candidates for these two at-large, non-partisan positions will be winnowed from five to four in a Democratic primary election to be held Tuesday, September 14, 2004.
4. Two different sample ballots have been prepared and distributed for this primary election, both titled, "OFFICIAL PRIMARY BALLOT": one is labeled, "DEMOCRAT & NON-PARTISAN," the other, "NON-PARTISAN." [Ps' Exh's ##2 & 3.]
5. A newspaper article quotes Lincoln Town Clerk Karen D. Allen as acknowledging, "There's a lot of confusion out there . . . . People associate a primary with partisan races, because that's the way it's always been." Elizabeth Gudrais, "Nonpartisan school board race on primary ballots," The Providence Journal (Mon., Aug. 30, 2004).
6. Voters on both ballots are directed to vote for only two of the five candidates listed [Exh's ##2 & 3]; the election in November will present only the four candidates receiving the most votes in the "primary."
7. Authority for offering candidates for election in September rather than November, as the Charter provides, and for limiting the September voters to two choices in order to narrow the field, is said to derive from a resolution introduced to the Town Council by the Town Administrator, Sue Sheppard, on March 23, 2004, and passed by the Council as an "Ordinance" on May 18, 2004. ["An Ordinance of the Town of Lincoln," Ps' Exh. #4.]
8. Plaintiff John Cullen complained to the Rhode Island Board of Elections on August 25, 2004, that the decision to offer candidates for election in September not only violates the 2002 Charter but will "disenfranchise many Lincoln voters since most voters do not vote in a primary election." Memorandum [Ps' Exh. #5]. There has been no response.

## PARTIES

9. Plaintiff John J. Cullen is a resident and registered voter in the Town of Lincoln. He was Vice Chair of the 2002 Charter Review Commission that prepared and presented amendments adopted by the Lincoln electorate in the general election of November 2002.

10. Plaintiff Edward J. Slattery is a resident and registered voter in Lincoln.

11. Defendant Sue Sheppard, Town Administrator, filed and introduced the ordinance voted on by the Town Council that purported to amend the Charter.

12. Defendants Dennis M. Auclair, Richard K. Foster, Dean L. Lees, Jr., Patricia M. Melucci, and Elizabeth Robinson are all members of the Lincoln Town Council.

13. Defendants Linda J. Felber, Charles N. Turner, and Linda S. Resnevic are members of the Lincoln Board of Canvassers which, pursuant to R.I. GEN. LAWS § 17-8-5(2), is given “all of the functions, powers, and duties of the town council concerning nominations, elections, registration of voters and canvassing rights, the preparing of voting lists, and other matters relating thereto[.]”

14. Defendant Karen D. Allen, Lincoln Town Clerk, serves as clerk of the Board of Canvassers and records all proceedings of the Town Council. Charter, Art. VI, § 6-7(2).

15. Defendant Matt Brown, Secretary of State, is charged under R.I. GEN. LAWS § 17-6-1(b), with receiving and filing certificates of election results.

16. Defendant Roger N. Begin is Chairman of the State Board of Elections, which, under R.I. GEN. LAWS § 17-17-5(1), is required to “[e]xercise general supervision of the administration of the election law by local boards[.]”

COUNT ONE  
VIOLATION OF STATE CONSTITUTION

17. Sections 6 and 7 of Article XIII of the Rhode Island Constitution set forth the manner in which a city or town may adopt a charter. Section 8 of that Article provides that amendments to a charter “shall be submitted for approval in the same manner as provided for in this article for the adoption of a charter . . .”: that is, by publication and submission “to the electors of a city or town . . . at the general election next succeeding thirty days from the date of the submission of the charter by the charter commission.” Art. XIII, § 8.

18. The 2002 amendments to the Lincoln Town Charter were duly submitted to the electors at the general election in November of that year, and were approved. They became effective in January 2003, and provided for election of two at-large members of the School Committee “at the town election of November, 2004,” in “non-partisan” election. Amended Charter, Art. XII, § 12-1 [Ps’ Exh. #1].

19. The decision to provide instead for a “preliminary” election in September 2004, which would eliminate one of the five candidates, constituted a change in the Charter, without approval by the electors in either a general or special election, in violation of the Rhode Island Constitution.

COUNT TWO  
VIOLATION OF STATE ELECTION LAW

20. Section 17-15-6 of the Rhode Island General Laws provides that “Primaries shall be held only by political parties.”

21. Section 17-15-7(b) of the General Laws further indicates that at primary elections, only “the members of ward, town, and district committees *of the respective political*

*parties* shall be elected.” [Emphasis added.]

22. The Lincoln Town Charter specifically requires that the two at-large members of the School Committee be elected in a “non-partisan” election.

23. The primary election to be held in the Town of Lincoln on Tuesday, September 14, 2004, is a Democratic primary, hence, the presentation of non-partisan candidates for election constitutes a violation of state law.

COUNT THREE  
VIOLATION OF TOWN CHARTER

24. The Amended Charter adding two at-large members to the School Committee specifically provided for their selection by the electorate “at the town election of November, 2004.” It provided for no preliminary winnowing of the list of candidates. It specified no maximum number of candidates from which the two were to be selected.

25. The Lincoln Town Council exceeded its authority in passing an “ordinance” that purported to amend these provisions of the Charter. The ordinance therefore violates the Charter and amounts to a legal nullity.

COUNT FOUR  
DENIAL OF CONSTITUTIONAL GUARANTEES OF SUFFRAGE, DUE PROCESS,  
EQUAL PROTECTION, AND FREE SPEECH

26. The Rhode Island Constitution guarantees the right of every citizen of the United States qualified by age, residence, and registration, and not otherwise disqualified, “to vote for all offices to be elected and on all questions submitted to the electors . . . .” R.I. CONST. Art. II, § 1.

27. The Rhode Island Constitution also guarantees the right of every person to due process of law, and to equal protection of the laws. R.I. CONST. Art. I, § 2.

28. The Rhode Island Constitution also provides that “No law abridging the freedom of speech shall be enacted.” R.I. CONST. Art. I, § 21.

29. The holding of a “preliminary” vote for non-partisan candidates for the Lincoln Town School Committee, within a primary election reserved for the Democratic Party, using two different ballots, so confuses the actual choice mandated by the Town Charter as to have the purpose and effect of denying and abridging plaintiffs’ right to vote under Article I, §§ 2 & 21; Article II, § 1; and Article XIII, §§ 2, 3, and 8 of the Rhode Island Constitution.

30. Moreover, the effect of the Town Council’s decision to restrict voters in a “preliminary” election to voting for only two of the five candidates, with the purpose of reducing the number of available choices in the November election mandated by Charter, is not only to contravene the intent of the Charter Review Commission in adding the two at-large members, but to deny equal protection of the right of all of those candidates to be presented for election in November.

#### PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, through their attorney, respectfully request as follows:

- (1) that the Court declare the results of any election of at-large candidates in the September 14 Democratic primary in the Town of Lincoln to be null and void;
- (2) that the Court temporarily enjoin, pending hearing, the certification of the results of the election of at-large candidates in the September 14 Democratic primary election in the Town of Lincoln, and permanently enjoin certification thereafter;
- (3) that the Court affirm the right of all five candidates for the two at-large positions

on the School Committee to be presented on the ballot for election in November,  
consistent with the Lincoln Town Charter; and  
(4) that the Court grant such other and further relief as to the Court may seem  
equitable and just.

Respectfully submitted,

PLAINTIFFS,  
By Their Attorney,

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