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October 13, 2015

The Hon. Joseph Polisena
Mayor
Johnston Town Hall
1385 Hartford Avenue
Johnston, RI 02919

BY FAX AND MAIL

Dear Mayor Polisena:

I am writing in response to proposed Ordinance 2015-10, dealing with the homestead exemption and school residency, that the Town Council will be considering at your behest at tonight's Town Council meeting. We have had our first chance to review it only today, but we wanted to share with you our initial thoughts about it.

Let me begin by noting that the ACLU fully appreciates the motivation behind the proposal and your interest in cracking down on families who knowingly and falsely claim to live in Johnston solely to allow their children to attend the town's schools. However, we have serious concerns that, as written, both the proposed ordinance and the "affidavit affirming residency" that every family will be required to submit could impose unwarranted, and potentially unlawful, hardship and penalties on individuals who have not engaged in fraudulent activity.

The key portion of the proposed ordinance seeks to punish, through various financial penalties, any "homeowner who knowingly signs a false affidavit affirming the residency of a child for the purpose of aiding that child in attending the Johnston Public Schools, upon a determination of the Rhode Island Commissioner of Education that the child is not a resident of Johnston."

We concur with the ordinance's standard that penalties are warranted only if the person "knowingly sign[ed] a false affidavit." However, the ordinance suggests that a Commissioner of Education ruling that the child does not reside in Johnston is equivalent to a determination that a false affidavit was knowingly signed. But that, of course, is not the case. There are many situations where the Commissioner might conclude a student is not a Johnston resident for school purposes without believing, much less finding, that the family acted fraudulently. Complicated issues of law can arise in determining residency, and it can lead to legitimately contested disputes without either side having knowingly engaged in fraud. Having been on the losing end of a residency decision before the Commissioner of Education only two years ago, surely Johnston town officials can appreciate that fact.

Yet the ordinance does not set up any process for making a factual determination that an affidavit was knowingly filed falsely. I'm sure you can appreciate that, as a matter of basic due process, the use of some meaningful fact-finding procedure is a necessity.

In a similar vein, requiring a family to be liable for the cost of educating the child while he or she was "wrongly enrolled," as opposed to "fraudulently enrolled," is also problematic. It is worth noting that a person who legitimately contests a school district decision about non-residency and exercises his or her lawful right to appeal is entitled by statute to remain in the school district until a final ruling is rendered by RIDE. A family that, without fraudulent intent, loses an appeal, should not be forced to pay thousands of dollars merely for exercising their right to appeal a school district decision.

The required "Affidavit Affirming Residency" also raises concerns. First, it requires the form to be completed only by a "parent/guardian" who lives in Johnston. But as the Department of Education has noted in its recent memo to school districts about school residency determinations, state law provides that "a child can establish residency for school purposes even if he lives separate and apart from his parents and *even if he lives with a relative or a person who is not his legal guardian.*" (emphasis added) The Affidavit's suggestion to the contrary is in direct conflict with state law.

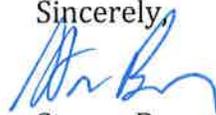
In order to prove residency, the Affidavit further requires tenants to rely on the good graces of their landlord to confirm that status. Obviously, neither the family nor the school district have the authority to require a landlord to fill out any such form, and for any number of reasons, a conscientious homeowner might refuse to do so. In signing the form, the landlord must certify, upon pain of criminal penalties, that the information they have provided is correct. But is very possible for a landlord not to know exactly which or how many children are actually living in a legally-rented apartment. Indeed, a landlord, to avoid any possible allegations of violating housing anti-discrimination laws, might not want to know. Nor can he or she necessarily attest with certainty that the "parent/guardian" resides "full-time" at the property.

To the extent the school district plans to refuse to enroll or re-enroll students solely because they cannot obtain a signed statement from a landlord about their residency, grave issues are raised under the state's school attendance and residency laws. The same is the case if enrollment is denied solely because a family is unable to provide all of the documentation specified in the Affidavit, which may not be immediately available to some households.

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In short, we believe that, despite your worthy intentions in proposing this ordinance, more work needs to be done to it to ensure that it complies with state law and targets only the people it is intended to target. We therefore call upon you to hold off on the Town's consideration of this proposal until it can be further studied to address these issues. Thank you in advance for considering our views.

Sincerely,



Steven Brown
Executive Director

cc: Johnston Town Council
Commissioner Ken Wagner (w/enc)
David Abbott (w/enc)
Dr. Bernard DiLullo, Jr.