Town of Portsmouth

2200 East Main Road
Portsmouth, Rhode Island 02871

Canvassing Authority

(401) 683-3157

TO: MEMBERS OF THE PORTSMOUTH CANVASSING AUTHORITY

FROM: Jacqueline S. Schulz, Registrar

Please be advised that there will be a meeting of the
PORTSMOUTH CANVASSING AUTHORITY:

DATE: Tuesday, January 11, 2022

TIME: 3:00 PM

PLACE: PORTSMOUTH TOWN HALL—Planning Board Room
2200 EAST MAIN ROAD
PORTSMOUTH, RI 02871

AGENDA:

1. Discuss BOE ruling on N. Grieb appeal and lessons learned from 2021
2. Redistricting
    - Review/discuss proposed timeline & RIGA House & Senate plans A, B & C. (Info available at https:\\www.riredistricting.org/)
    - Review/approve Draft RFP for contract to re-precinct Portsmouth
3. Review FY2023 Canvassing Draft Budget
4. Registrar Report
    - NCOA update
    - EAC appointment to Local Leadership Council
    - Risk Limiting Audit for the November 3, 2021, Portsmouth Special Referendum to test new algorithm developed by George Washington University graduate student. Tentative date Friday, February 11, 2022, at RI State Board of Elections Office, 2000 Plainfield Pike, Cranston.
5. Review upcoming events and establish a 2022 BOC meeting schedule
6. Adjourn

The public is welcome to any meeting of the Town's boards or its committees. If communication assistance (readers/interpreters/captions) is needed or any other accommodation to ensure equal participation, please contact the Registrar of Voters at 683-3157 at least three (3) business days prior to the meeting.

STATE OF RHODE ISLAND
BOARD OF ELECTIONS
2000 Plainfield Pike, Suite A, Cranston, RI 02921
phone: 401-222-2345 | fax: 401-222-3135 | web: www.elections.ri.gov

Date agenda posted: December 17, 2021

AGENDA

THE BOARD OF ELECTIONS WILL CONVENE ITS MEETING IN PERSON IN THEIR OFFICES, 2000 PLAINFIELD PIKE, CRANSTON, RHODE ISLAND. PUBLIC IS INVITED TO ATTEND OR

PUBLIC ACCESS TO THIS MEETING IS ALSO AVAILABLE BY USING ZOOM TELECONFERENCING BY CALLING 1-312-626-6799 OR 1-929-436-2866 THEN ENTER MEETING IDENTIFICATION· 843 8063 6025. PROCEDURES FOR PARTICIPATION USING ZOOM VIDEOCONFERENCING FOR THIS MEETING BY THE PUBLIC ARE POSTED ON THE BOARD WEBSITE.

Tuesday, December 21, 2021 at 3:00 P.M.

1. The Board may discuss and vote to approve the minutes of the meeting held on Thursday, December 16, 2021.

2. The Board may hear and rule upon the Town of Portsmouth Board of Canvassers motion to dismiss an appeal filed by Nancy Grieb regarding her challenge to a ballot question that was submitted to the Portsmouth voters on November 2, 2021.

3. The Board may discuss and vote on a report from Executive Director, Robert Rapoza on the current status of the AutoMARK ballot marking devices which have been in use since 2006.

4. The Board may discuss and vote to commence the process of promulgating a regulation for the electronic transmission of ballots from voters covered under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

5. The Board may discuss and vote on a request from Executive Director, Robert Rapoza to unseal and open ballot containers from a special election conducted in 2021 in order to perform a new risk limiting audit.

6. The Board may vote to meet in executive session pursuant to R.I. Gen. Laws §§ 42-46-5(a)(4) and 17-25-5(a)(7)(i) to discuss and/or vote on possible violations of campaign finance laws in one (1) matter.

All meetings of the Board are open meetings and all interested parties are invited to attend. Any questions concerning the agenda should be directed to Robert Rapoza, Executive Director, at 401-222-2345. Anyone wishing to attend this meeting who may have special

needs for access or services such as hearing assistance or interpreter services please contact the Board at least 48 hours in advance of the meetings.

STATE BOARD OF ELECTIONS

RBRapoza

Robert B. Rapoza
Executive Director

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, 2021meeting 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. Pierce, Vice Chairman

2022 Redistricting Timeline--Proposed

12-24-2021 Target date for Re-apportionment Commission to complete their work
1-11-2022 BOC meeting, agenda to include approval of RFP specs
1-12-2022 RFP posted
1-31-2022 Target date for legislation to be introduced in the General Assembly for approval of the new congressional, senatorial, and representative district lines
2-12-2022 Proposed due date for re-precincting bids
02-XX-2022 BOC meeting; agenda to include vote on bid
03-XX-2022 BOC meeting (anticipate new senate/rep lines available)
03-07-2022 Anticipated date for vendor to begin work on precinct lines
04-04-2022 Public meeting to provide update on proposed precinct lines and polls; 6PM in Town Council Chambers.
4-15-2022 Updated files due to Department of State
5-XX-2022 BOC meeting/vote on recommended precinct lines & polls
6-XX-2022 BOC meeting
JUNE Begin sending voter notifications
6-27-2022 First day of filing candidate declarations
6-29-2022 Final day of filing candidate declarations

PROPOSED

Portsmouth Canvassing Authority

Preliminary

FY 2023 Budget Request

Reviewed by the Board of Canvassers on January 11, 2022

Submitted by: Jacqueline S. Schulz, Registrar

Board Members Approved

☐ as submitted ☐ with changes

Nancy Zitka

Signature Date

Ellen Vadney

Signature Date

Mark Kanter

Signature Date

Budget Explanations—Board of Canvassers January 2022

In July 2020 the Town of Portsmouth instated a new accounting system. The packet presented reflects the new accounts. This worksheet will be completed and presented to the Town Administrator and Finance Director upon BOC review and approval.

Fiscal years do not correspond to election years. The FY 2023 budget will have two scheduled statewide elections:

- State-wide primaries: Tuesday, September 13, 2022 and
- Mid-term General Election: Tuesday, November 8, 2022

Redistricting begins in February 2022 and needs to be completed by mid-April to ensure that candidates can file declarations in June. Information from the 2020 Census has been evaluated and new precinct lines will be drawn by the RI General Assembly. This was last done in 2012 and will require an RFP for new district maps and voter notifications prior to the 2022 election cycle. The number and locations of precincts may change with population shifts and will affect operational costs.

Salaries and benefits are subject to contractual agreements and are determined by the Finance & Human Resources (HR) departments. A worksheet for additional staffing levels and overtime has been presented to Finance and is included in this packet.

Operation cost line item explanations are provided in this packet.

Budgeted Account	Description	Budget 20-21	Audited Final 2021	Budget 21-22	YTD through October 2021	% through October 2022	Request 22-23	NOTES
10050400533100100	Non-employee Personnel (1099)	$ -	$ 24,256.36	$ -	$ -		$ -	Election workers listed under Election Expense
10050400533200100	Temp Assistance Agency	$ 400.00	$ 250.00	$ -	$ -		$ 25,440.00	No longer use agencies--may be included in salaries
10050400533600100	Boards & Committees & Members	$ 1,500.00	$ 1,250.00	$ 1,500.00	$ -		$ 1,500.00	
10050400544650100	Office Furniture & Equipment	$ -	$ -	$ -	$ -		$ 1,000.00	require new file cabinet
10050400545700100	Copier Maintance & Repair	$ 1,000.00	$ 897.95	$ 1,000.00	$ 756.00		$ 1,000.00	contractual
10050400553400100	Professional Contract Service	$ 28,560.00	$ 2,697.58	$ -	$ -		$ -	
10050400554300100	Professional Development	$ -	$ -	$ 950.00	$ -		$ 950.00	meetings & seminars
10050400554350100	ADA Compliance	$ -	$ 220.00	$ -	$ -		$ 500.00	modify polls to meet specifications
10050400554400100	Membership Dues & Subscriptions	$ 400.00	$ 350.00	$ 100.00	$ -		$ 350.00	RITCCA & Election Center
10050400554420100	Travel - Mileage & Airfair	$ 1,000.00	$ 233.51	$ 500.00	$ -		$ 500.00	
10050400554430100	Travel - Lodging	$ -	$ -	$ -	$ -		$ -	
10050400555500100	Office Supply - Small Equip	$ 1,800.00	$ 1,536.52	$ 1,800.00	$ 357.61		$ 1,800.00	
10050400555590100	Supply - Events--Elections	$ -	$ 1,305.94	$ 26,665.00	$ 8,867.06		$ 35,290.00	worksheet provided
10050400555600100	Printing	$ 3,000.00	$ 786.86	$ 1,000.00	$ 385.00		$ 3,000.00	
10050400555900100	Mailing / Postage	$ 2,500.00	$ 2,080.22	$ 8,527.00	$ 6,778.03		$ 6,500.00	will depend upon BOC decision to mail MB applications for Nov. election
10050400555910100	Advertising	$ 5,500.00	$ 4,369.50	$ 2,000.00	$ -		$ 5,700.00	worksheet provided
10050400555950100	Miscellaneous Expense	$ -	$ -	$ 20,000.00	$ -		$ -	funds for redistricting costs
10050400565720100	Rent	$ 1,000.00	$ 275.00	$ -	$ -		$ 500.00	
		$ 46,660.00	**$ 40,509.44**	**$ 64,042.00**	**$ 17,143.70**	26.77%	**$ 84,030.00**	

NOTES:

1. Operational accounts cover costs for two scheduled elections:
September 13, State-wide Primaries
November 8, Mid-term General Election

2. Need to clarify these accounts with Finance due to overlaps:

10050400533100100	Non-employee Personnel (1099)
10050400553400100	Professional Contract Service
10050400555590100	Supply - Events--Elections

Temporary Assistance

Week Ending	Hours	Rate $24.00	Cost	Explanations
Office Support				**Not through agency**
FY2022				
10-Jun	30	$720.00		
17-Jun	30	$720.00		Declaration of Candidates--processing
24-Jun	30	$720.00		nomination papers & certifying signatures
1-Jul	30	$720.00		Processing mail ballot applications
FY2023				
8-Jul	30	$720.00		Candidates & completing redistricting
15-Jul	30	$720.00		
22-Jul	30	$720.00		
29-Jul	30	$720.00		
5-Aug	30	$720.00		
12-Aug	30	$720.00		
19-Aug	30	$720.00		
26-Aug	30	$720.00		Emergency Voting Begins
2-Sep	30	$720.00		
9-Sep	30	$720.00		
16-Sep	40	$960.00		Election Day (9/13) 7AM to 9PM
23-Sep	30	$720.00		Processing election results & preparations
30-Sep	30	$720.00		for General Election
7-Oct	30	$720.00		
14-Oct	30	$720.00		
21-Oct	30	$720.00		Evening Poll Worker Training--BOE
28-Oct	30	$720.00		Emergency Voting Begins
4-Nov	30	$720.00		
11-Nov	40	$960.00		Election Day (11/8) 7AM to 9PM
18-Nov	30	$720.00		Processing election results & party affiliation
25-Nov	20	$480.00		changes
2-Dec	20	$480.00		Removals of all inactive voters 2 Fed elections
9-Dec	20	$480.00		
16-Dec	20	$480.00		
23-Dec	20	$480.00		
30-Dec	20	$480.00		
	SubTotal	**$20,640.00**		
Emergency Voting Support				2 workers @ 20hr/week
Primary Election		$15/Hour		
26-Aug	40	$600.00		Emergency Voting Begins
2-Sep	40	$600.00		
9-Sep	40	$600.00		
16-Sep	40	$600.00		Election Day (9/13) 7AM to 9PM
General Election				

Election Expense

Request FY2023

	Sept	Nov	Explanation
Primary Election			
Election Day Staffing/meals	**$14,675.00**		Determined by BOE projected voter turnout
General Election			
Election Day Staffing/meals		$20,615	
ADA Compliance Requirements	$500.00	$500.00	All polling sites inspected at each election
Signs	$500.00	$500.00	Maintenance/repair/new required
Voter Outreach/Education	$250.00	$500.00	
Precinct Supplies	$250.00	$300.00	items not supplied by BOE
Subtotals	$16,175.00	$22,415.00	
TOTALS		**$38,590.00**	

Election Expenses

Poll Workers

State-wide Primary--September 13, 2022

Precincts Open	Moderator/ Clerks	Rate $250.00	Supervisors & Greeter	Rate $200.00	Cost	Explanations
2701	2	$500.00	2	$400.00	$900.00	Number of poll workers based
2702	2	$500.00	3	$600.00	$1,100.00	upon potential number of
2703	2	$500.00	5	$1,000.00	$1,500.00	voters and determined by the
2704	2	$500.00	5	$1,000.00	$1,500.00	State Board of Elections
2705	2	$500.00	3	$600.00	$1,100.00	
2706	2	$500.00	3	$600.00	$1,100.00	
2707	2	$500.00	5	$1,000.00	$1,500.00	
2708	2	$500.00	5	$1,000.00	$1,500.00	
2709	2	$500.00	5	$1,000.00	$1,500.00	If redistricting reqiures
Alt	2	$50.00	4	$100.00	$150.00	Paid training
BOC	5	$175.00			$875.00	
	25		40			
	Meals	$30.00	65		$1,950.00	
				Subtotal	**$14,675.00**	

General Election--November 8, 2022

Precincts Open	Moderator/ Clerks	Rate $250.00	Supervisors &Greeter	Rate $200.00	Cost	Explanations
2701	2	$500.00	4	$800.00	$1,300.00	Number of poll workers based
2702	2	$500.00	6	$1,200.00	$1,700.00	upon potential number of
2703	2	$500.00	8	$1,600.00	$2,100.00	voters and determined by the
2704	2	$500.00	8	$1,600.00	$2,100.00	State Board of Elections
2705	2	$500.00	6	$1,200.00	$1,700.00	
2706	2	$500.00	6	$1,200.00	$1,700.00	
2707	2	$500.00	8	$1,600.00	$2,100.00	
2708	2	$500.00	8	$1,600.00	$2,100.00	
2709	2	$500.00	8	$1,600.00	$2,100.00	If redistricting requires
Alt	4	$100.00	4	$100.00	$200.00	Paid training
BOC	5	$175.00			$875.00	
	22		66			
	Meals	$30.00	88		$2,640.00	
				Subtotal	**$20,615.00**	
					$35,290.00	**For Both Elections**

Advertising

Defined in State Law	Sept	Nov	Explanations*
Notice of Election	$380.00	$380.00	Newport Daily News &
Save the Dates/Deadlines	$500.00	$500.00	Portsmouth Times @ rates
Final Day to Register	$210.00	$210.00	for Legal Notices
Mail Ballots Available	$210.00	$210.00	Larger notices are printed for
Notice of Preliminary Canvass	$210.00	$210.00	General Election
Notice of Meeting for Final Canvass	$210.00	$210.00	
Polling Site Locations	$380.00	$380.00	
Not Required but Essential to Voters			
Ballot Content with Local Questions		$1,200.00	General Election--full page
Online postings	$100.00	$200.00	$50.00 per week East Bay
	$2,200.00	$3,500.00	
	Totals	**$5,700.00**	

*Rates from East Bay Media Kit 2022