

Clay Johnson, *in his capacity as Council* :  
*Appointee to the Chariho Regional* :  
*School Committee and the Town of* :  
*Richmond, as Appointing Authority* :  
 :  
*v.* : P.B. 23-  
 :  
 Chariho Regional School Committee :

**EMERGENCY QUO WARRANTO PETITION  
CLAIMING RIGHT AND TITLE TO PUBLIC OFFICE**

Petitioner Clay Johnson brings this emergency petition quo warranto to confirm his rightful title as a member of the Chariho School Committee, as a result of his appointment by Plaintiff Richmond Town Council made on January 19, 2023 to fill a vacancy on the School Committee.<sup>1</sup> The law passed by the General Assembly to govern vacancies on this School Committee (Section 10.(1).(c.)) contained in the “Chariho Act,” attached as *Exhibit A*) – which is not a law of statewide application – gives the Richmond Town Council (as well as Council’s from Charlestown and Hopkinton) full discretion to fill a vacancy with any Town resident. The General Assembly, in its limited ratification of the later Richmond

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<sup>1</sup> Mr. Johnson was sworn in the next day. He filled the position of another Richmond resident who submitted a letter of resignation from the School Committee. He has not been seated on the School Committee, and counsel for the Committee has advised that he should not be seated until this Court rules.

Town Charter, did not explicitly ratify its inconsistent provision (Article 2, Section 5(B) attached as *Exhibit B*) that mandates *one* particular person receive the appointment (the losing candidate from the prior election).<sup>2</sup> As such, the specific, limited ratification of the Richmond Town Charter did not repeal the Act's vacancy filling provision applicable to three municipalities.

Since the Charter's elimination of the Council's discretion for filling vacancies on the regional school committee does not supercede or repeal the state law Act's total discretion, Petitioner Clay Johnson is a lawful member of the Chariho School Committee and must be seated forthwith. The School Committee must refrain from voting until it allows Mr. Johnson to assume his rightful place on the Committee.

## LEGAL ANALYSIS

### *Quo Warranto Original Jurisdiction Lies in this Court*

This matter is properly before this Court in equity as part of its original jurisdiction. The Court has recognized that:

“an action to test one's title to office is an action in quo warranto,” whereby one may bring a petition in equity in the nature of quo

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<sup>2</sup> That candidate is Jessica Marie Purcell, who came in third place, behind the two Richmond elected candidates. As this Emergency Petition was being finalized, candidate Purcell filed her own quo warranto petition seeking the office. Petitioner Johnson suggests both petitions be consolidated, and that a duty judge meet with counsel and set oral argument, if deemed necessary, on the dueling petitions as soon as practicable.

warranto, asserting his or her right to the office at issue. *McKenna v. Williams*, 874 A.2d 217, 228, 229 (R.I. 2005). *See also Fagnoli v. Cianci*, 121 R.I. 153, 161, 397 A.2d 68, 72 (1979) (“A quo warranto writ, or an information in the nature of quo warranto, is a common law remedy or proceeding whereby the state directs an individual to show by what warrant he holds public office and to oust him from its enjoyment if the claim is not well founded.”). “A successful petitioner obtains a decree which not only ousts the respondent from office but also declares that the petitioner is the rightful holder of the office in dispute.” *Fagnoli*, 121 R.I. at 162, 397 A.2d at 73. To prevail, the petitioning party must rely on the strength of his or her own title and “bears the burden of establishing that he or she was illegally removed.”<sup>3</sup> *Seemann v. Kinch*, 606 A.2d 1308, 1310 (R.I. 1992).

Jurisdiction over an equitable quo warranto claim, when brought by a private citizen **rather than the Attorney General** on behalf of the state, is vested exclusively in the Supreme Court. *McKenna*, 874 A.2d at 229. *See also* G.L. 1956 § 10-14-1 (“The title to any office, to determine which the writ of quo warranto lies at the common law, may be brought in question by petition to the [S]upreme [C]ourt.”). Because Felkner claims right and title to the office of member of the Chariho Regional School Committee, pursuant to § 10-14-1 the action properly is before us, and this Court has original jurisdiction over the petition.

*Felkner v. Chariho Reg'l Sch. Comm.*, 968 A.2d 865, 869 (R.I. 2009).

Likewise, because Johnson claims right and title to the office of member of the Chariho Regional School Committee, pursuant to R.I. Gen. Laws § 10-14-1 and precedent, this Court possesses original jurisdiction over this Petition and Petitioner

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<sup>3</sup> As explained below, there was no illegal removal here. Rather, there is a contest between two competing parties – both submitting petitions – claiming a lawful right to be seated on the Committee. Under these circumstances, the burden of proof is on neither side. The Court will simply decide which party is the rightful office holder, akin to an election dispute.

respectfully requests that it act with all due haste.<sup>4</sup>

***The General Assembly did not Repeal the Full Discretion of the Richmond Town Council to Fill Vacancies it Granted in the Act***

“Under the state’s constitution, the General Assembly has a responsibility to ‘promote public schools \* \* \* and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education \* \* \*.’ R.I. Const. art. 12, sec. 1. *Town of Johnston v. Santilli*, 892 A.2d 123, 128 (R.I. 2006). Pursuant to this authority, control of all aspects of public education is a quintessential matter of statewide, not local concern, within the sovereign authority of the General Assembly. *See also Amico's Inc. v. Mattos*, 789 A.2d 899, 903 (R.I. 2002) (“As has long been the case, the Legislature continues to exclusively occupy the fields of education, elections, and taxation, thereby precluding any municipality's foray into these areas, absent specific legislative approval.”).

**In order to repeal or supercede the express the vacancy filling provision of the of the Chariho Act;** namely Section 10.(1).(c.), two key conditions are required: one, **the Act must be “a general law of statewide application”** *Foster Gloucester Reg'l Sch. Bldg. Comm. v. Sette*, 996 A.2d 1120, 1125 (R.I. 2010) and;

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<sup>4</sup> The 12 member Committee is closely divided and presently in the middle of budget deliberations. Until this Court rules, the Committee cannot be allowed to take substantive action on matters and vote, while unlawfully denying Mr. Johnson his rightful seat. Petitioner requests that the Court act on this Petition on an emergency basis and enjoin any action by the School Committee until it does so – unless the Committee does so itself.

two, the “charter *provision* [ ] [must be] ratified by an *explicit* legislative act.” *Id.* (emphasis added); *see also Town of Johnston v. Santilli*, 892 A.2d 123, 128 (R.I. 2006); *Royal v. Barry*, 160 A.2d 572, 575 (1960) (“[N]o *provision* affecting education contained within a home rule charter, so called, can effectively regulate the conduct of school committees as agents of the state unless *expressly* validated by an act of the general assembly.”) (emphasis added) (cited and quoted in *Sette*, 996 A.2d at 1125).

If one of these conditions is lacking, the Chariho Act’s vacancy filling provision remains controlling in Richmond, just as it does in Charlestown and Hopkinton. Here, *neither* of the requirements for the local Charter to trump the Chariho Act are met. As such, the Act, not the inconsistent Charter provision, controls the filling of the vacancy – and Petitioner Clay’s right to office must be recognized.

As shown below, as an initial matter, the Charter’s vacancy filling provision is four square contrary to that of the Act – *thus creating the conflict*. The Act allows total Council discretion to fill the vacancy, while the Charter allows none.

*The Charter’s Vacancy Filling Provision is Inconsistent with the Act*

Section 10(1).(c.) of the Chariho Act, the statute enacted by the General Assembly in 1958 that established the Chariho Regional School District, provides:

In the event of any vacancy by death, resignation or incapacity to serve of any term of any member of said regional school district committee,

the town council of the member town in which such vacancy occurs shall fill such vacancy by election by a majority vote of the town council of said town for the unexpired term of the member whose office is thus vacated.

Conversely, Article 2, Section 5(B) of the Richmond Home Rule Charter, passed in 2008, requires that:

If a Town Council seat or a school committee seat becomes vacant, the Town Council shall appoint the unelected candidate who received the greatest number of votes for that office in the most recent general or special election.

Henry Ford once said about the Model T, that a customer could have it “painted any color he wants, as long as it is black.” The Act's restriction of the Council's ability to fill a vacancy to a single person, is akin Ford’s restriction of “any color” to just one. In both cases, the promised choice is purely illusory. Here, the Act specifically empowers the Town Council to choose *any* person from thousands of residents who can obtain a “majority vote of the town council.” The Charter, conversely, mandates that the Council appoint *one* specific person, regardless of whether the majority wishes to appoint a different resident. The Act affords the Council total discretion, while the Charter requires the Council to perform a mere ministerial act.

As such, the two provisions each result in vastly different Council rights. **The question then becomes whether the General Assembly, in its public law ratifying the Richmond Charter, expressly repealed Section 10(1).( c.) of the Chariho Act and whether the Act itself is a law of statewide application. For the reasons below, it**

most assuredly did not repeal the Act, which itself is not a law of statewide application.

*The Act is not General State Law and the General Assembly did not Expressly Ratify Article 2, Section 5(B) of the Charter as it Pertains to Chariho School Committee Vacancy Appointments*

a. The Act is not a “general law of statewide application”

In *Sette*, this Court held that “provisions of this legislatively ratified charter take precedence over inconsistent provisions of general state law. *See Santilli*, 892 A.2d at 129 (stating that, when there has been legislative ratification of the charter provision that conflicts with a general law of statewide application, “we view the conflicting charter provision as ‘a special act [that] takes precedence over any inconsistent provisions of the general laws’”). *Sette*, 996 A.2d at 1125-26.

Importantly, the Court then held “the act is not a provision of general state law. The act is limited to regional school issues in the Towns of Foster and Glocester, and it cannot be fairly characterized as a general state law. Therefore, in the event of a conflict, we do not consider the Glocester Town Charter's provisions to take precedence over a more specific provision of the act.” *Sette*, 996 A.2d 1120, 1125-26 (R.I. 2010).

Just as this Court has held that the Foster Glocester Act is not a general law of statewide application, neither is the Chariho Act. In the former, the regional act covered two municipalities. The Act here covers three. Both cover “regional

school issues;” and under *Sette*, neither are acts of statewide application. As such, “in the event of a conflict,” such as the one here, this Court “should not consider the [Richmond] Town Charter’s provisions to take precedent over a more specific provision of the act.”

- b. Article 2, Section 5(B) of the Richmond Home Rule Charter was not ratified by “a specific” or “express” legislative act

In 2009, the General Assembly passed a specific, limited ratification the Richmond home rule charter by enacting R.L Pub Law 2009, ch. 12. The ratification in its entirety states:

Section 1. In all respects in which the Home Rule Charter adopted by the electors of the Town of Richmond on November 4, 2008 may require ratification, confirmation, validation or enactment by the General Assembly, but in no other respects, the provisions of the Home Rule charter of the Town of Richmond are hereby ratified, confirmed, validated and enacted. It is the express intent of the General Assembly by the passage of this Act to give effect and to ratify, confirm, validate and enact those provisions of the said Home Rule Charter of the Town of Richmond that require ratification, confirmation, validation or enactment, and by the passage of this Act, the General Assembly docs hereby ratify, confirm, validate and enact said Home Rule Charter, but nothing in this Act shall be construed to abrogate or impair the powers now or hereafter granted to the towns by Article XIII of the Constitution of the State of Rhode Island or those rights retained by said Town of Richmond.

Section 2. All *special acts or portions of special acts* of the General Assembly enacted *solely for the benefit of the Town of Richmond* that are inconsistent with the provisions of the Home Rule Charter adopted by the electors of the Town of Richmond on November 4, 2008 are hereby repealed, including but not limited to Chapter 1674 of the Public Laws of 1930 (*election of town officers*), Chapter 3705 of the Public Laws of 1956(*election of town officers*), Chapter 264 of the

Public Laws of 1968 (tax assessor and board of review), Chapter 106 of the Public Laws of 1969 (tax assessor and board of review), Chapter 362 of the Public Laws of 1978 (fees collected by public officials), Chapter 35 of the Public Laws of 1988 (tax bills), Chapter 79 of the Public Laws of 2002 (Planning Board alternates), Chapter 124 of the Public Laws of 1986 (street acceptance), Chapter 39 of the Public Laws of 1967 (budget committee), Chapter 17 of the Public Laws of 1990 (budget committee), Chapter 52 of the Public Laws of 1990 (financial town meeting), Chapter I 7 of the Public Laws of 1993 (financial town meeting); and Chapter 51 of the Public Laws of 1990 (board of finance).

(emphasis added).

The ratification language is noteworthy both for what it includes and does not include. **The ratification is missing the required “express” or “explicit” ratification of Article 2, Section 5(B) of the Richmond Home Rule Charter.**

Instead, Section 1 is simply general boilerplate ratification language; while Section 2 indicates the detailed extent of the ratification. In neither section is there any indication that the General Assembly intended to repeal the Chariho Act’s vacancy filling provision applicable to three municipalities.

But there is more. Section 2 expressly provides that the ratification is intended to repeal only “special acts or portions of special acts of the General Assembly enacted solely for the benefit of the Town of Richmond.” **No other law is repealed by the express terms of the ratification.** The Chariho Act and Section Section 10(1.)(c.) are *not* “special acts or portions of [a] special act[] of the General Assembly enacted solely for the benefit of the Town of Richmond.” Rather, the Chariho Act, including its vacancy provision, was enacted to promote educational

opportunities for students in Richmond, Charlestown and Hopkinton under what this Court has recognized as the General Assembly’s plenary authority over all matters involving education.

Moreover, the General Assembly in Section 2 did expressly repeal a plethora of special laws, including two public laws “relating to the election of town officers,” but declined to repeal any portion of the Chariho Act.

In contrast to the limited ratification here, the General Assembly can and has expressly ratified municipal charters by expressly indicating that a specific charter provision supercedes and repeals an inconsistent state law. In *Local No. 799, Int'l Ass'n of Firefighters v. Napolitano*, 516 A.2d 1347, 1349 (R.I. 1986) this Court held that:

Public Laws 1981, chapter 37, specifically provides that § 1210 of the home rule charter is “hereby ratified, confirmed, validated and enacted.” The clear and unambiguous language of this enactment indicates that the Legislature intended to validate § 1210 of the home rule charter. Section 3 of P.L. 1981, ch. 37, further provides that “all acts and parts of acts inconsistent herewith are hereby repealed.” *Id.* § 1210 of the home rule charter as a special act takes precedence over any inconsistent provisions of the general laws to the extent that they apply to Providence.

Because the General Assembly expressly ratified a particular provision of the Providence Home Rule charter and further provided that “all acts and parts of acts inconsistent herewith are hereby repealed,” the residency provision at issue trumped a inconsistent state law. Here, there is neither General Assembly approval of Article 2, Section 5(B) of the Richmond Home Rule Charter, nor any language to

the effect that all acts inconsistent with the Charter are repealed. Instead, there is a carefully crafted, ratification of the Richmond Town Charter with repeal only of previously enacted “special acts or portions of special acts of the General Assembly enacted solely for the benefit of the Town of Richmond.”

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In sum, the vacancy filling provision of the Chariho Act was not repealed by the Charter because the Act is not “a general law of statewide application” *Foster Gloucester Reg'l Sch. Bldg. Comm. v. Sette*, 996 A.2d 1120, 1125 (R.I. 2010) and the “charter provision” at issue here was never “ratified by an explicit legislative act.” *Id.*; see also *Town of Johnston v. Santilli*, 892 A.2d 123, 128 (R.I. 2006); *Royal v. Barry*, 160 A.2d 572, 575 (1960) (“[N]o provision affecting education contained within a home rule charter, so called, can effectively regulate the conduct of school committees as agents of the state unless expressly validated by an act of the general assembly.”) (emphasis added) (cited and quoted in *Sette*, 996 A.2d at 1125).

## CONCLUSION

In light of the above, Petitioner was properly appointed by the Richmond Town Council to the Chariho School Committee under the Chariho Act and therefor possesses a clear legal right to the office, which should be recognized by this court post haste.

WHEREFORE, Petitioner Johnson respectfully requests that this Honorable

Court:

1. Set an emergency conference with the duty judge to expedite consideration of this matter, including oral argument if deemed necessary.
2. Consolidate this quo warranto petition with the filed petition of Jessica Maria Purcell for the same office.
3. Decree that Petitioner Clay Johnson was validly appointed by the Richmond Town Council to the Chariho School Committee and is the rightful holder of that office.

Respectfully Submitted,

CLAY JOHNSON,

By and through his attorney

*Joseph S. Larisa, Jr.*

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Joseph S. Larisa, Jr. (#4113)  
LARISA LAW  
50 South Main Street, Suite 311  
Providence, RI 02903  
(401) 743-4700  
(401) 633-6296 (fax)  
[joe@larisalaw.com](mailto:joe@larisalaw.com)

DATED: January 24, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of January 2023, I caused the above Quo Warranto Petition to be served by email to the following:

Jeffrey L. Levy  
Counsel for Counter-Petitioner Jessica Marie Purcell  
LEVY & BLACKMAN LLP  
469 Angell Street, Suite 2  
Providence, RI 02906  
[jlevy@levyblackman.com](mailto:jlevy@levyblackman.com)

Karen R. Ellsworth, Esq.  
Richmond Town Solicitor  
180 Matunuck School House Road  
Wakefield, RI 02879  
[kellsworth6@verizon.net](mailto:kellsworth6@verizon.net)

Jon Anderson, Esq.  
Counsel to the Chariho Regional School Committee  
Brennan, Recupero, Cascione, Scungio & McAllister, LLP  
362 Broadway  
Providence, RI 02909  
[janderson@brasm.com](mailto:janderson@brasm.com)

*Joseph S. Larisa, Jr.*

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