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***TOWN OF RICHMOND***  
***MEMORANDUM***

TO: Members of the Town Council  
FROM: Karen R. Ellsworth, Town Solicitor  
DATE: 10 January 2023  
RE: Appointment of Chariho Regional School Committee members

As you may know, a member of the Chariho Regional School Committee who represents Richmond has submitted a letter of resignation. If the Town Council votes to accept that resignation at the January 17 meeting, there will be a vacant seat on the school committee.

Article 2, Section 5(B) of the Richmond Home Rule Charter states:

“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.”

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

“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.”

Town Council President Trimmer and Town Council member Sheehan have requested a legal opinion as to which of these conflicting provisions supercedes the other.

Article 13 of the Rhode Island Constitution, “Home Rule for Cities and Towns,” grants communities with home rule charters “the right of self-government in all local matters.” *Westerly Residents for Thoughtful Development, Inc. v. Brancato*, 565 A.2d 1262, 1263-64 (R.I. 1989).

In 2008, the voters approved the first Richmond Home Rule Charter. The General Assembly ratified the Richmond home rule charter by enacting R.I. Pub Law 2009, ch. 12.

The R.I. Supreme Court recognizes “the long-standing principle that cities and towns that have adopted home rule charters are free to exercise authority over purely local concerns.” However, the Court has also held that municipalities may not legislate on matters of statewide concern because the power of the General Assembly remains exclusive in those areas. *North End Realty, LLC v. Mattos*, 25 A.3d 527, 535 (R.I. 2011). The authority of a municipality to engage in

self-government does not extend to enacting local laws that are inconsistent with general laws enacted in conformity with the Legislature's reserved powers. When local laws conflict with general laws of statewide application, the local laws must defer to the general laws. *Town of East Greenwich v. O'Neil*, 617 A.2d 104, 111 (R.I. 1992), *O'Neill v. City of East Providence*, 480 A.2d 1375, 1379 (R.I.1984).

Although the General Assembly retains sovereign power to govern the state's cities and towns in matters of statewide importance, the Supreme Court has recognized that the General Assembly has the authority to validate any provision of a home rule charter that is inconsistent with state law by enacting appropriate legislation. *Local No. 799, Intern. Ass'n of Firefighters AFL-CIO v. Napolitano*, 516 A.2d 1347, 1349 (R.I. 1986).

In the *Napolitano* decision, for example, the Supreme Court held that a provision in Providence's home rule charter requiring firefighters to be city residents superceded a state law that prohibited such residency requirements. The Court found that R.I. Public Laws 1981, ch. 37, the act that ratified Providence's home rule charter, provided that "all acts and parts of acts inconsistent herewith are hereby repealed." 516 A.2d at 1349.

*Munroe v. Town of East Greenwich*, 733 A.2d 703 (R.I. 1999), involved a conflict between East Greenwich's home rule charter, which gave the town council rather than the planning board the authority to approve subdivisions, and a state law requiring planning board approval of subdivisions. The Supreme Court found that land use planning was an area of statewide concern controlled by the legislature, and that when the General Assembly ratified East Greenwich's home rule charter, it did not intend for the charter to supercede the state subdivision statute.

In *Foster Gloucester Regional School Bldg. Committee v. Sette*, 996 A.2d 1120 (R.I. 2010), the issue was whether the Gloucester Town Council had the authority to remove a member of the Foster Gloucester Regional School District Building Committee who had been appointed by the council. The Court found that the Gloucester home rule charter provision addressing the term of office of all offices, members of boards, commissions, or committees appointed with the approval of the town council did not apply to the regional school building committee.

In the *Sette* decision, the Court said that under the state constitution, it is the responsibility of the General Assembly "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 . . .". The Court said that a municipality may adopt charter provisions that affect education as long as such charter provisions are ratified by an explicit legislative act.

The *Sette* decision says that when the General Assembly ratifies a charter provision that conflicts with a general law of statewide application, the Court treats the conflicting ratified charter provision as a special legislative act that takes precedence over any inconsistent general state law. However, the Court said, the legislation that created the Foster Gloucester Regional School District was not a general state law—it was a specific act that applied to school issues in Foster and Gloucester only. Because the state legislation did not explicitly give the council the authority to remove a school building committee member, and because the charter did not

supercede the state legislation, the Court found that the Council had no authority to remove the committee member.

R.I. Public Laws 2009, ch. 12, the act that ratified Richmond's home rule charter, states, in its entirety:

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 does 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 17 of the Public Laws of 1993 (financial town meeting); and Chapter 51 of the Public Laws of 1990 (board of finance).

The issue now is whether the statute that ratified Richmond's home rule charter was intended to make the charter provision on filling vacant school committee seats supercede all inconsistent state laws.

In the *Napolitano* case, the Court found that the Providence home rule charter superceded the state law on residency of municipal employees because the act that ratified the Providence home rule charter specifically said that "all acts and parts of acts inconsistent herewith are hereby repealed."

The act that ratified the Richmond charter did not use the same language. The only state laws

it specifically repealed were those “*enacted solely for the benefit of the Town of Richmond.*” The Chariho Act was not enacted solely for the benefit of Richmond. It was enacted to promote educational opportunities for students in Charlestown, Richmond, and Hopkinton under the General Assembly’s exclusive authority over educational matters.

For that reason, I believe that if a court were asked to decide this issue, the court would find that when the General Assembly ratified the Richmond Home Rule Charter in 2009, the General Assembly did not intend any provision in the Charter to supercede the Chariho Act.

Therefore, my opinion is that the provision for filling vacant school committee seats in the Chariho Act supercedes the provision for filling vacant school committee seats in the Richmond Home Rule Charter, and that when the Town Council appoints a new school committee member to fill the vacant seat for the remainder of the unexpired term, the Town Council is not required to appoint the unelected candidate who received the greatest number of votes for that office in the November 8, 2022 election.

B. No more than one candidate's name shall appear in each horizontal line.

C. The Board of Canvassers shall determine the arrangement of ballots except as provided in this Charter and except as otherwise provided by the laws of the State of Rhode Island.

#### **Section 5 – Vacancy in elective office.**

A. The Town Council shall declare that a vacancy exists in any elective Town office if the incumbent dies, submits a written resignation to the Office of the Town Clerk, ceases to be qualified as an elector, or is convicted of a felony or a crime involving moral turpitude.

B. 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. If that person is unavailable, the Town Council shall appoint in sequence the unelected candidates who received the next greatest number of votes. Write-in candidates shall not be considered eligible for appointment as unelected candidates. If no appointee is available from among any of the candidates for that office in the most recent general or special election, the Town Council shall appoint a qualified elector to serve the remainder of the term.

#### **Section 6 – Oath of office.**

The term of each elected official shall begin at the first Town Council meeting following certification of the election by the Board of Canvassers. Before entering upon the duties of his or her office, each official shall make the following oath or affirmation, to be administered by a person lawfully qualified to administer oaths:

*I do solemnly swear (or affirm) that I will support and obey the Constitution and laws of the United States of America and the Constitution and laws of the State of Rhode Island, that I will observe the Charter and the ordinances of the Town of Richmond, and that I will faithfully discharge the duties of my office.*

#### **Section 7 – Recall of elected officials.**

A. Any elected Town official may be recalled from office by the qualified electors of the Town at a special election called for that purpose.

B. A recall election shall be initiated by submitting to the Board of Canvassers a petition containing the name of the official whose recall is sought and a number of signatures of qualified electors equal to twenty-five percent of the number of votes cast in the most recent general election. Each signature shall be accompanied by an address. Each person who obtains signatures on a petition shall swear or affirm under oath that the persons who signed the petition did so in the presence of the person who obtained the signatures.

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**Board of Canvassers**

November 29, 2022

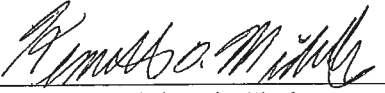
On November 8th, 2022, the Town of Richmond held its annual Election. The offices elected were Town Council and School Committee. In addition, there were eleven local questions. Below are the certified results from said Election:

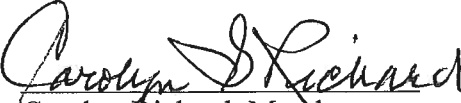
**Chariho School Committee Richmond -Four Year Term- Vote for 2**

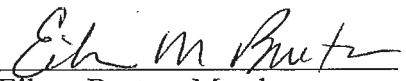
Candidate	Total votes	Pct
REP Patricia A. Pouliot (REP)	1549	24.0%
REP Kathryn E. Colasante (REP)	1496	23.1%
DEM Jessica Marie Purcell (DEM)	1469	22.7%
Ind Ryan P. Callahan (Ind)	1033	16.0%
Ind William G. Day (Ind)	904	14.0%
Write-in	12	0.2%

We, the undersigned, Members of the Richmond Canvassing Authority, do hereby certify that the results are a true and accurate account of the Town Election conducted in Richmond on Tuesday, November 8th, 2022, and that all counts were zero (0) when the polls opened, and that the Election was held in accordance with laws of the State of Rhode Island and the Town Charter.


**Richmond Board of Canvassers and Registration**

  
Kenneth Michaud, Chair.

  
Carolyn Richard, Member

  
Eileen Burton, Member

Attest:

  
Erin F. Liese, CMC  
Town Clerk