



October 11, 2011

Via Electronic and First Class Mail

President Stanford Robinson
Town Commission of Mardela Springs
P. O. Box 81
Mardela Springs, MD 21837 - 0081

Robert A. Benson, Esq.
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Dear Commissioner Robinson and Mr. Benson:

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C. CHRISTOPHER BROWN
GENERAL COUNSEL

I write on behalf of the American Civil Liberties Union of Maryland and several Mardela Springs residents, concerning illegal election practices followed by the Town in the August 2011 election, including enforcement of an unconstitutional Charter provision governing candidate qualifications. As you already know from past communications about these problems, the Mardela Springs Charter requirement that candidates for the Town Commission own real property within town limits is blatantly unconstitutional. This unconstitutional requirement was employed in the August election to prevent legally qualified candidates from running for office, and it also appears to have been misinterpreted by officials and/or residents to prevent qualified Town voters from exercising their right to vote in the election. Other practices employed by the Town during the August election seemed aimed at discouraging voter participation,¹ or violated the express provisions of the Town Charter,² and were therefore problematic.

These problems must be rectified. Over four decades ago, the U.S. Supreme Court found that property ownership requirements for candidates violate the United States Constitution and general democratic principles of representative government. In view of the Town's plan to hold a special election in November to replace one Town Commissioner, we urge the Town to consider re-running the flawed election in its entirety. At minimum, the Town must immediately rescind or suspend enforcement of its unconstitutional property ownership requirement,

¹ For example, we understand that voters were denied any option of participating in the election via absentee ballot, and that Town officials disclaimed any procedure for absentee voting.

² While our central focus here is on the constitutional flaws in the Mardela Springs Charter, we also note that election officials appear to have conducted the August 2011 in violation of the Town Charter in several respects. These problems included cutting the time for the election short one hour from the time specified in the Charter, and refusing to allow witnesses during the vote count. As these practices were in contravention of express provisions of the Town Charter, they cast a further shadow over the validity of the August election. In any case, it is imperative that such violations not be repeated during the November special election.

and notify the public well in advance of the special election that that requirement will not be applied during the November election or any future elections. Other provisions of the Charter that were disregarded during the August election should be carefully adhered to during the November special election.

Candidly, it is difficult to fathom the continued application in 2011 of a property ownership requirement for Mardela Springs candidates, in light of the longstanding constitutional law prohibiting such requirements. In 1970, the United States Supreme Court found that a Georgia property ownership requirement for school board membership was unconstitutional as it violated the equal protection clause. *Turner v. Fouche*, 396 U.S. 346 (1970). Subsequent cases made clear that the principle established by *Turner* is not limited to school board candidates. See, e.g., *Williams v. Adams County Bd. of Election Comm'rs*, 608 F. Supp. 599, 600 (D. Miss. 1985) (Board of Elections); *Woodward v. Deerfield Beach*, 538 F.2d 1081, 1084 (5th Cir. 1976) (City Commission); *Duncantell v. Houston*, 333 F. Supp. 973 (D. Tex. 1971) (City Council); *Stapleton v. Clerk for Inkster*, 311 F. Supp 1187 (D. Mich. 1970) (City Council). The Supreme Court reiterated the *Turner* holding in 1989 in *Quinn v. Millsap*, finding that the equal protection clause of the U.S. Constitution guarantees the right to be considered for public service without discrimination, including discrimination based on property ownership. *Quinn v. Millsap*, 491 U.S. 95, 105 (1989). In both *Turner* and *Quinn*, the Court rejected the argument that property ownership was necessary to establish dedication to the community or to ensure “better management and governance.” *Turner*, 396 U.S. at 363-64; *Quinn*, 491 U.S. at 108-09. Moreover, nearly 40 years ago the Federal District Court for the District of Maryland struck down a Takoma Park Charter provision that was nearly identical to the Mardela Springs law. *Davis v. Miller*, 339 F. Supp. 498 (D. Md. 1972).

Exacerbating the unfairness experienced by land-less would-be Mardela candidates, the Charter provision appears to have been misinterpreted either by Town officials or by residents themselves to prohibit exercise of the right to vote in Town elections if one does not own property. A number of renters have reported to us that they did not vote in the August election because they thought they were ineligible. This plainly is not contemplated as an aspect of the candidate property qualification requirement, and it is important that Town election officials notify community residents of their eligibility both to vote and to run for office in Mardela Springs, whether or not they own real estate.

Limiting political participation to those of a certain economic station offends our most basic principles of representative democracy. Indeed, the Declaration of Independence’s promise “that all men are created equal” demands that all “members of the political community be considered political equals.” *Woodward*, 538 F.2d at 1083. Barring candidates who are financially unable to own property constructs an economic hurdle to political participation and effectively creates two unequal political classes. The Mardela Springs property ownership requirement must be abandoned in advance of any future election, and members of the community must be informed that this unconstitutional requirement will no longer be applied.

Please contact me upon your review of this matter, to advise of the Town's intentions. If I can be of any assistance in providing further information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah A. Jeon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Deborah A. Jeon
Legal Director