



ROCKINGHAM, SS

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

DOCKET NO:

PETITION FOR INJUNCTIVE RELIEF
WITH REQUEST FOR EXPEDITED/EMERGENCY PRELIMINARY HEARING

Alan Bailey

7 Green Street

Exeter, New Hampshire 03833

Lorraine Bailey

7 Green Street

Exeter, New Hampshire 03833

Andrea DiBurro

85 Beech Street

Exeter, New Hampshire 03833

Pat DiBurro

85 Beech Street

Exeter, New Hampshire 03833

Paula Dube

87 Beech Street

Exeter, New Hampshire 03833

David Flanders

30 Hall Place

Exeter, New Hampshire 03833

Celeste Harnum

83 Beech Street

Exeter, New Hampshire 03833

Deborah Johnson
81 Beech Street
Exeter, New Hampshire 03833

Joan Mealey
87 Beech Street
Exeter, New Hampshire 03833

George St Amour
4 Stony Brook Lane
Exeter, New Hampshire 03833

and
Jim Knight
12 Oak Street
Exeter, New Hampshire 03833

v.

Town of Exeter
10 Front Street
Exeter, New Hampshire 03833

PETITION FOR INJUNCTIVE RELIEF
WITH REQUEST FOR EXPEDITED/EMERGENCY PRELIMINARY HEARING

I. NATURE OF THE CASE

1. In this action, the petitioners, Alan Bailey, Lorraine Bailey, Andrea DiBurro, Pat DiBurro, Paula Dube, David Flanders, Celeste Harnum, Deborah Johnson, Joan Mealey, George St Amour (collectively "petitioners"), and Jim Knight (hereinafter "Knight") seek to enjoin the Town of Exeter ("Exeter") from amending a warrant article in violation of RSA 40:13, IV(c).

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter pursuant to RSA 491:7. This is an equity matter requesting injunctive relief against Exeter, and Superior Court is the court of general jurisdiction for all equity matters in the State of New Hampshire.

3. Venue is proper in this Court in that all parties are domiciled or located within Rockingham County.

III. THE PARTIES

A- PETITIONERS/PLAINTIFFS

4. The petitioners are and, at all relevant times, have been residents of Exeter and citizens of the State of New Hampshire and of the United States of America.

5. Alan Bailey is a New Hampshire resident who resides at 7 Green Street, Exeter, New Hampshire 03833.

6. Lorraine Bailey is a New Hampshire resident who resides at 7 Green Street, Exeter, New Hampshire 03833.

7. Andrea DiBurro is a New Hampshire resident who resides at 85 Beech Street, Exeter, New Hampshire 03833.

8. Pat DiBurro is a New Hampshire resident who resides at 85 Beech Street, Exeter, New Hampshire 03833.

9. Paula Dube is a New Hampshire resident who resides at 87 Beech Street, Exeter, New Hampshire 03833.
10. David Flanders is a New Hampshire resident who resides at 12 Oak Street, Exeter, New Hampshire 03833.
11. Celeste Harnum is a New Hampshire resident who resides at 83 Beech Street, Exeter, New Hampshire 03833.
12. Deborah Johnson is a New Hampshire resident who resides at 81 Beech Street, Exeter, New Hampshire 03833.
13. Joan Mealey is a New Hampshire resident who resides at 87 Beech Street, Exeter, New Hampshire 03833.
14. George St Amour is a New Hampshire resident who resides at 4 Stoney Brook Lane, Exeter, New Hampshire 03833.
15. Knight is a New Hampshire resident who resides at 12 Oak Street, Exeter, New Hampshire 03833.

B- RESPONDENTS/DEFENDANTS

16. Exeter is a body politic and a municipal corporation located in Rockingham County and within the State of New Hampshire. Exeter's Town Office is located at 10 Front Street, Exeter, New Hampshire 03833.

IV. BACKGROUND FACTS

17. Exeter is a municipal corporation operating under the Town Meeting Government System having adopted the so-called "SB-2" form of government. See RSA 40:13.

18. Consistent with RSA 39:3, the petitioners and others submitted two (2) petitioned warrant articles to place questions on the Town Meeting Warrant which read as follows:

Article 17: On petition of Maureen Barrows and others, shall the Town of Exeter establish and adopt a Budget Committee consistent with the mandates of RSA 32:14 and RSA 32:15, with the said Committee having twelve (12) at large members who shall be elected initially for a term of one year, as required by RSA 32:15 III. (Majority vote require [sic], by ballot only)

Article 18: On petition of Gerard Hamel and others, shall the following twelve (12) be nominated to serve on the Budget committee and elected immediately upon the passage of Budget Committee? Christopher Moutis, James Knight, Deborah Johnson, Jay Childs, Anne Surman, Renee O'Barton, Frank Ferraro, Gerard "Gerry" Hamel

19. The petitioned warrant articles were certified as having the sufficient number of signatures by Exeter's Town Clerk. The petitioned warrant articles were qualified to appear on the Town Meeting Warrant and did appear on the Town Meeting Warrant.

20. Consistent with the requirements of RSA 40:13(II) and RSA 40:13(IV), Exeter held its deliberative session for the Town Meeting on February 5, 2011. During the deliberative session, Exeter amended petitioners' petitioned warrant articles to read:

Article 17: To see if the Town of Exeter will **not** establish an official Budget Committee consistent with the Municipal Budget Law, RSA 32:14 and RSA 32:15. Further, shall the Town continue with Budget Recommendations Committee currently in place, created by a vote of the 1857 Town Meeting with said committee having not more than twelve (12) at large members

(emphasis added).

Article 18: Shall all members of the Municipal Budget Committee be appointed by the Moderator.

21. The popular vote on the official ballot is to take place on March 8, 2011.
22. Based upon public declaration, Exeter intends to replace the petitioned warrant articles (See paragraph 18, *supra*) with the amended warrant articles (See paragraph 20, *supra*) on the official ballot on March 8, 2011.
23. By public declaration the Exeter Town Attorney and Town Moderator have both represented that the amendments referenced herein do essentially nullify the warrant article as petitioned and that, based upon the wording of the amended warrant articles, there would be no Budget Committee, regardless of how residents voted in March.
24. Specifically regarding Article 17, the Town Moderator stated: "if the amendment passes and that's how it goes on the warrant, it's done... no matter which way you vote, there is no official Budget Committee."
25. The Town Moderator further stated: "so what had been a positive article to

propose something turns into a **nothingness** article, which is what this amendment would do, which puts in the word **not**.” (Emphasis added).

26. In effect, the officials of Exeter have admitted that, through a syntactic stratagem, Exeter has done precisely what RSA 40:13, IV(c) proscribes, namely eviscerating the subject matter of the petitioned warrant article and disenfranchising the voters of Exeter.

27. Not only does the amendment to article 17, make article 17 a “nothingness article,” but by machinating a situation where there will be no Budget Committee regardless of how the voters of Exeter vote, Exeter has eliminated the subject matter of article 18.

28. The Town Attorney directly addressed the subject matter of article 18: “the subject matter of this article is, the – how the composition of the, uh, Budget Committee, if it were to be put in place, the Municipal Budget Committee, is to be, uh, chosen in that first year.”

29. If there is absolutely no possibility of a Budget Committee being established, then the subject matter of any petitioned warrant article addressing “how the composition of the... Committee... is to be chosen” has, incontrovertibly, been eliminated.

V. CAUSE OF ACTION

30. Under New Hampshire law, the first session of the Exeter Town Meeting under RSA 40:13 is dedicated to “explanation, discussion and debate of each warrant article.” Warrant articles may be amended during the first session subject to certain limitations.

RSA 40:13(IV).

31. One such limitation is that “[n]o warrant article shall be amended to eliminate the subject matter of the Article. An amendment that changes the dollar amount of an appropriation in a warrant article shall not be deemed to violate this subparagraph.” RSA 40:13(IV)(c) (effective February 4, 2011).

32. The law requires a petitioned warrant article as amended, to appear on the ballot: “[w]arrant articles that are amended shall be placed on the official ballot for a final vote on the main motion as amended,” RSA 40:13(IV)(b); “[a]ll warrant articles shall be placed on the official ballot for final vote including warrant articles as amended by the first session...” RSA 40:13(VI).

33. In this instance, the “amendment” to alter the petitioned warrant article is a creative and surreptitious attempt at subtly “eliminating the subject matter of the article” from the official ballot. The purported “amendment” is nothing more than a semantic feint.

34. This disenfranchises the voters of Exeter, including petitioners and Knight, who have a right to rely on the law and the rules governing a “SB-2” town. The voters of Exeter, including petitioners and Knight, have a right to vote on any and all petitioned warrant articles, subject only to lawful and duly authorized amendment during the first session. Voters of Exeter, relying on the procedure established by the law, may refrain

from attending the first (deliberative) session and only appear during the elections to cast their ballots, knowing that they will have a right to vote on the subject matter of each and every warrant article which may have been proposed.

35. The actions of Exeter are illegal in that "amendments" to petitioned warrant articles 17 and 18 were no amendments at all. They simply eliminated the subject matter of the petitioned warrant articles, effectively removing the petitioned warrant articles from the ballot and disenfranchising the voters of Exeter, including petitioners and Knight. The voters of Exeter, including petitioners and Knight will not get a chance to vote on the substance or subject matter of the petitioned warrant articles. When casting their ballot, all voters will be presented with nothing more than a Hobson's Choice.

36. Regardless of what outcome any voter may want and regardless of how any given voter votes, every single vote will be counted the same. The voters in Exeter will have no choice at all.

37. Similarly, the petitioners have a statutory and constitutional right to be heard and to petition their government for redress as provided under the law. They relied on the statutory scheme and submitted a petitioned warrant article. They are entitled to have their petition, "with lawful and duly authorized amendments", presented to the voters.

38. The conduct of Exeter in depriving the voters, including petitioners and Knight, of

the opportunity to vote is against the established law of New Hampshire. Through artifice, semantic wordplay and violations of the law of this state and the constitutional rights of every citizen of Exeter, the voters in Exeter are being deprived of the opportunity to vote and the petitioners are being deprived of the opportunity to be heard and to have their petition presented to the voters.

39. Exeter's conduct is clearly illegal and violative of RSA 40:13, IV(c).

40. Additionally, the conduct of Exeter, is clearly violative of the petitioners' and Knight's right to franchise, to petition their government, to due process of the law and equal protection under the law, as guaranteed by Articles 1, 2, 7, 11, 14 and 32 of Part I of the New Hampshire Constitution.

V- PRAYER FOR RELIEF AND REDRESS

WHEREFORE, the petitioners request this honorable Court to:

- A- Hold an expedited hearing in this matter since the defendant intends to proceed with an illegal ballot on March 8, 2011 and irreparable harm will come to the voters of Exeter and the petitioners as a result of the defendant's action;
- B- Grant injunctive relief holding the conduct of Exeter, its moderator, and its Board of Selectmen illegal, unconstitutional and ordering the petitioned warrant articles to appear on the official ballot and to allow the voters to vote on the same;
- C- Award the petitioners and Knight all of their costs and attorney's fees since they

were “forced to seek judicial assistance to secure a clearly defined and established right, which should have been freely enjoyed without such intervention.” Harkeem v. Adams, 117 N.H. 687, 691 (1977).

- D- Award the petitioners and Knight all of their costs including attorney’s fees since this action will redeem a public right and afford great benefit to the taxpayers and the voters of Exeter by restoring their right to franchise, their right to free speech and their right to petition their government for redress as guaranteed by the New Hampshire Constitution;
- E- Award the petitioners and Knight all of their costs including attorney’s fees since the conduct of Exeter is so obviously violative of New Hampshire law and violative of the constitutional rights of the citizens of the Exeter as to render any defense to this action frivolous;
- F- Issue a permanent injunction enjoining the defendant from engaging in same or similar conduct in the future; and
- G- Grant such further relief as this Court may deem just and proper.

Respectfully submitted,

Alan Bailey,

Lorraine Bailey,

Andrea DiBurro

Pat DiBurro

Paula Dube

David Flanders,

Celeste Harnum

Deborah Johnson

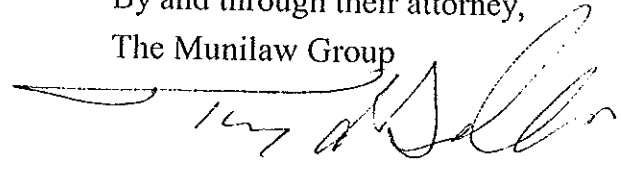
Joan Mealey

George St Amour, and

Jim Knight,

By and through their attorney,

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