

STATE OF NEW HAMPSHIRE

CHESHIRE, SS  
DOCKET NO:

SUPERIOR COURT

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

Conan Salada  
132 Kennedy Drive  
Keene, New Hampshire 03431

Darryl W. Perry  
75 Leverett Street  
Keene, New Hampshire 03431

David Crawford  
36 Marlboro Street #7  
Keene, New Hampshire 03431

Eric LaRoche  
15 West Surry Road  
Keene, New Hampshire 03431

V.

Keene School District  
10 Front Street  
Keene, New Hampshire 03431

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

I. NATURE OF THE CASE

1. In this action, the petitioners, Darryl W. Perry, Conan Salada, (collectively “petitioners”) seek to enjoin the Keene School District (“School District”) 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 the School District, 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 Cheshire County.

III. THE PARTIES

A PETITIONERS/PLAINTIFFS

4. The petitioners are and, at all relevant times, have been registered voters of Keene.

5. Conan Salada is a New Hampshire registered voter who is domiciled at 132 Kennedy Drive, Keene, New Hampshire 03431.
6. Darryl W. Perry is a New Hampshire registered voter who is domiciled at 75 Leverett Street, Keene, New Hampshire 03431.
7. David Crawford is a New Hampshire registered voter who is domiciled at 36 Marlboro Street #7, Keene, New Hampshire 03431.
8. Eric LaRoche is a New Hampshire registered voter who is domiciled at 15 West Surry Road, Keene, New Hampshire 03431.

#### B RESPONDENTS/DEFENDANTS

9. The School District is a body politic and a municipal corporation located in Cheshire County and within the State of New Hampshire. Keene's School District Office is located at 10 Front Street, Keene, New Hampshire 03 833.

#### IV. BACKGROUND FACTS

10. The School District is a municipal corporation operating under the so-called "SB-2" form of government. See RSA 40:13.
11. Consistent with RSA 39:3, the petitioners and others submitted seven (7) petitioned warrant-articles to place questions on the School District Meeting Warrant which read as follows:

**Article 2:** *(Submitted by Petition)* Shall the District raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant, or as amended by vote of the first session, for the purposes therein, totaling \$62,333,572, which is equal to the previous year's 2013/2014 school budget. If this article passes, it shall overrule any previous warrant article relating to the next operating budget.

**Article 3:** *(Submitted by Petition)* Shall the District raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant, or as amended by vote of the first session, for the purposes therein, totaling \$61,710,236, which is a reduction of 1% from the previous year's 2013/2014 school budget. If this article is approved by the District, the District shall only be allowed to make cuts to non-Instructional programs. If this article passes, it shall overrule any previous warrant article relating to the next operating budget.

**Article 4:** *(Submitted by Petition)* Shall the District raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant, or as amended by vote of the first session, for the purposes therein, totaling \$59,216,893, which is a reduction of 5% from the previous year's 2013/2014 school budget. If this

article is approved by the District, the District shall only be allowed to make cuts to non-Instructional programs. If this article passes, it shall overrule any previous warrant article relating to the next operating budget.

**Article 10:** *(Submitted by Petition)* Shall the District remove the authority from the school board to appoint new members to fill empty seats. All new members to the board shall only be appointed through the official electoral process.

**Article 11:** *(Submitted by Petition)* Shall the District remove the authority from the School board to suggest "yes" or "no" on added warrants; meaning the school board must remain completely unbiased on all ballots, and documents. The right of individual school board members to voice personal opinion shall not be infringed upon.

**Article 12:** *(Submitted by Petition)* Shall the District refund all year-end unassigned general funds (surplus) to the taxpayers as a deduction from the next property tax bill and not be carried forward to the upcoming year's school budget.

**Article 13:** *(Submitted by Petition)* Shall the District repeal the Board of Education's authority in accordance to RSA 198:4-b that allows the Board to retain year-end unassigned general funds in an amount not to exceed 2.5% of the current year's net assessment.

12. The petitioned warrant articles were certified as having the sufficient number of signatures by Keene's School District Clerk. The petitioned Warrant articles were qualified to appear on the School District Meeting Warrant and did appear on the School District Meeting Warrant.

13. Consistent with the requirements of RSA 40:13(II) and RSA 40:13(IV), the School District held its deliberative session for the Meeting on February 8, 2014. During the deliberative session, voters amended petitioners' petitioned warrant articles to read:

**Article 2:** *(Submitted by Petition, as amended at the First Session)* Shall the district recommend, on strictly an advisory basis, that the Board of Education expend \$62,333,572 for items encompassed in the operating budget, regardless of the amount of the operating budget which is authorized by the District under Question 5?

**Article 3:** *(Submitted by Petition, as amended at the First Session)* Shall the district recommend, on strictly an advisory basis, that the Board of Education expend \$61,710,236 for items encompassed in the operating budget, regardless of the amount of the operating budget which is authorized by the District under Question 5?

**Article 4:** *(Submitted by Petition, as amended at the First Session)* Shall the district recommend, on strictly an advisory basis, that the Board of Education expend \$59,216,893 for items encompassed in the operating budget, regardless of the amount of the operating budget which is authorized by the District under Question 5?

**Article 10:** *(Submitted by Petition, as amended at the First Session)* Shall

the District ratify the authority of the Board of Education to appoint new members to fill empty seats until the next District election?

**Article 11:** *(Submitted by Petition, as amended at the First Session)* Shall the District ratify the authority set forth in RSA 32:5 to recommend a yes or no vote on all “special” warrant articles involving an appropriation?

**Article 12:** *(Submitted by Petition, as amended at the First Session)* Shall the District ratify all current statutory and other authority with respect to surplus funds at the end of the fiscal year?

**Article 13:** *(Submitted by Petition, as amended at the First Session)* Shall the District ratify the Board of Education’s authority in accordance with RSA 198:4–b, which permits the Board of Education to retain year-end unassigned general funds up to a specified amount for purposes of emergency or to reduce the tax rate.

14. The popular vote of the official ballot is to take place March 11, 2014.
15. Based upon public declaration, the School District intends to replace the petitioned warrant articles (See paragraph 11, *supra*) with the amended Warrant articles (See paragraph 13, *supra*) on the official ballot on March 11, 2014.
16. By public declaration the Keene School District Attorney and Moderator have both represented that the amendments referenced herein do essentially nullify the warrant article as petitioned.
17. In effect, the officials of the School District have admitted that, through a syntactic stratagem, the School District has done precisely what RSA 40:13(IV)(c) prescribes, namely eviscerating the subject matter of the petitioned warrant article and disenfranchising the Voters of Keene.
18. All petitioned articles were amended so that on March 11, if passed, none of the warrant-articles will cause any action.
19. The School District Attorney and School District Moderator over-ruled objections that the proposed modifications were illegal.
20. On May 27, 2011, the Rockingham Superior Court ruled in the case of *Bailey v. Town of Exeter*, “the Court finds and rules the only way the phrase 'no warrant article shall be amended to eliminate the subject matter of the article' can logically be read is to conclude that any amendment that made the subject matter of the article a nullity was forbidden.”
21. While *Bailey* is binding only upon the parties in that case, it has implications for all SB 2 jurisdictions , and the opinion may be used by this court as persuasive.

## V. CAUSE OF ACTION

22. Under New Hampshire law, the first session of the Keene School District 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).
23. 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).

24. 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 ballot for a 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).

25. 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. Again, the Court in *Bailey* ruled that “[m]erely because the majority of the voters were more clever in the way the amendment was worded to create the nullity does not mean their action was not a violation of the statute.”

26. This disenfranchises the voters of Keene, including petitioners. The voters of Keene, including petitioners, 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 Keene, 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.

27. The actions of the School District are illegal in that “amendments” to petitioned warrant articles 2, 3, 4, 10, 11, 12 and 13 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 Keene, including petitioners. The Voters of Keene, including petitioners 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.

28. 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 Keene will have no choice at all.

29. 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 upon 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.

30. The conduct of the School District in depriving the voters, including petitioners, 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 Keene, the voters in Keene are being deprived of the opportunity to vote and the petitioners are being deprived of the opportunity to be heard and have their petition presented to the voters.

31. The School District’s conduct is clearly illegal and violative of RSA 40:13(IV)(c).

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

## VI. 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 11, 2014 and irreparable harm will come to the voters of Keene and the petitioners as a result of the defendant's action;

B: Grant injunctive relief holding the conduct of the Keene School District, its moderator, and its School Board 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 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 NH, 687, 691 (1977);

D: Award petitioners 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 Keene by restoring their right to franchise, their right to free speech and their right to petition their government for a redress as guaranteed by the New Hampshire Constitution;

E: Award petitioners all of their costs including attorney's fees since the conduct by the Keene School District is so obviously violative of New Hampshire law and violative of the constitutional rights of the citizens of Keene 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,  
Conan Salada  
Darryl W. Perry  
David Crawford  
Eric LaRoche

By and through their Attorney-in-Fact,  
Darryl W. Perry