

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Docket No. 218-2026-CV-00085

Al Salvatore Brandano and Joseph Cacciatore

V.

East Kingston School Board, et al.

**DEFENDANTS' OBJECTION TO
PLAINTIFFS' MOTION TO AMEND COMPLAINT**

Defendants Kensington School Board, Stefanie Schmidt, Wendy Larson, Cheryl McDonough, East Kingston School Board, Kristen Soroko, James Brown, Paul Doyle, Christopher Andriski, and School Administrative Unit 16 ("SAU 16") [collectively, "Defendants" or the "Districts"], by and through their attorneys, object to Plaintiffs Al Salvatore Brandano and Joseph Cacciatore's (collectively, "Plaintiffs") "Motion to Amend Complaint" (the "Motion"), stating in support as follows:

INTRODUCTION

1. This case arises from the untimely submission of petitioned articles for inclusion on a school district's warrant. RSA 40:13 requires that petitioned articles be submitted by the second Tuesday in January – this year, January 13; however, the statute does not expressly state a time certain by which petitioned articles must be submitted on that day.

2. On January 13, 2026, at 10:31 p.m. and 10:41 p.m., Plaintiffs electronically submitted a petition warrant article (the "Article") to the Superintendent of SAU 16 for inclusion on the warrant for each District meeting pursuant to RSA 197:6. The original petitions and signatures were not delivered to the SAU until January 14, 2026. SAU 16/the Districts rejected each Article in part because they were both received well after 5:00 p.m. on January 13 and were

therefore untimely. This action followed.

3. On January 23, 2026, Plaintiffs filed their Complaint seeking a declaration that the Article was timely submitted such that Defendants violated RSA 197:6 by refusing to include the Article on their warrants (Count I) and preliminary injunctive relief enjoining Defendants from posting their warrants or holding their deliberative sessions without the Article (Count II). The Court scheduled a hearing on Plaintiffs' request for preliminary relief for February 6, 2026.

4. Defendants objected to Plaintiffs' request for preliminary injunctive relief on February 5, 2026 and at the February 6, 2026 preliminary hearing. Following the hearing, on February 24, 2026, the Court issued its "Order on Plaintiffs' Motion for Preliminary Injunction" (the "Order") and denied Plaintiff's motion for preliminary injunction. In so ruling, the Court concluded "that absent clear rules allowing for submission of proposed warrant articles electronically after the close of business, the plain language of RSA 40:13, II-a(b) requires submission before the close of business." Order, p. 4.¹

5. Plaintiffs now seek leave to amend their Complaint to eliminate Plaintiffs' prior claims for declaratory judgment and injunctive relief and instead assert new claims for "Violation of RSA 197:6 and RSA 40:13" (Count I), "Violation of Due Process and Fair Notice" (Count II), "Violation of Voter Rights and Participation" (Count III), "Breach of Fiduciary Duty and Circumvention of Voter Will" (Count IV), and "Ongoing Violations of RSA 32:10, I(e)" (Count V).

6. Plaintiffs' proposed amendment is an exercise in futility as it fails to state plausible claims for relief. Accordingly, Plaintiffs' Motion must be denied.

¹ On April 10, 2026, the Court denied Plaintiffs' Motion for Reconsideration of the Court's Order.

FACTS²

7. On January 13, 2026, at 10:31 pm and 10:41 pm, Petitioners emailed a petition warrant article (the “Article”) to SAU 16’s Superintendent. Amended Complaint, ¶ 14.

8. The Article proposed a “study pursuant to RSA 195:18 to evaluate the consolidation of Kensington and East Kingston elementary schools and related funding issues.”

Id.

9. The Districts rejected the Article as untimely “because it was received after 5:00 p.m. on the cutoff date.” Id., ¶ 16.

10. The Districts have both adopted official ballot voting for all issues before voters in accordance with RSA 40:13, II-a. See id., ¶ 12.

11. The warrant for East Kingston School District’s Annual Meeting, without the Article, was posted on or before January 26, 2026. The first session of East Kingston School District’s Annual Meeting was held on Saturday, January 31, 2026.

12. The warrant for Kensington School District’s Annual Meeting, without the Article, was posted on or before January 26, 2026. The first session of Kensington School District’s Annual Meeting was held on Tuesday February 3, 2026.

13. On January 23, 2026, Plaintiffs filed their Complaint in this case.

14. Given that Plaintiffs’ Complaint sought preliminary injunctive relief, the Court scheduled a hearing for February 6, 2026.

15. Following the preliminary hearing, on February 24, 2026, the Court issued its

² The below facts are drawn from Plaintiffs’ Amended Complaint, or from “documents the authenticity of which are not disputed by the parties, official public records, or documents sufficiently referred to in the [Amended Petition],” all of which are appropriate for consideration at this procedural posture. See Grand Summit Hotel Condominium Unit Owners’ Association v. L.B.O. Holdings, Inc., 171 N.H. 343, 345 (2018). Defendants accept the facts within the Amended Complaint only for the purposes of the instant objection. Defendants expressly reserve the right to contest Plaintiffs’ factual assertions if Plaintiffs’ Motion is granted.

Order denying Plaintiffs' request for preliminary injunctive relief, finding *inter alia* that Plaintiffs failed to demonstrate a likelihood of success on the merits of their claim that the Districts' rejection of the Article as untimely was unlawful.

16. On March 29, 2026, Plaintiffs' moved to amend their Complaint to eliminate Plaintiffs' prior claims (for declaratory judgment and injunctive relief) and instead assert new claims for "Violation of RSA 197:6 and RSA 40:13" (Count I), "Violation of Due Process and Fair Notice" (Count II), "Violation of Voter Rights and Participation" (Count III), "Breach of Fiduciary Duty and Circumvention of Voter Will" (Count IV), and "Ongoing Violations of RSA 32:10, I(e)" (Count V).³

17. Defendants object.

ARGUMENT

A. Standard for Amendment of Pleadings

18. Generally, New Hampshire courts permit "liberal amendment of pleadings." New London Hospital Association, Inc. v. Town of Newport, 174 N.H. 68, 76 (2021). However, this liberality is not without limit. An amendment may be denied "if it fails to state a claim for which relief may be granted." Beaudry v. RS Audley, Inc., 2016 WL 11538041 at *1 (N.H. Super. Jul. 25, 2016) (Anderson, J.) (citing Tessier v. Rockefeller, 162 N.H. 324, 340 (2011)). "[T]he doctrine of futility dictates that amendment should not be permitted when the proposed amendment is not reasonably susceptible of a construction that would permit recovery." Id. Accordingly, in considering whether an amendment is futile, courts apply the familiar motion to dismiss standard to determine whether the amendment "on its face . . . asserts a cause of action."

³ An assented to motion to extend the deadline for objecting to the Motion was granted on April 6.

Kennedy v. Titcomb, 131 N.H. 399, 401 (1989). In so ruling, the Court need not accept as true assertions in the amendment that constitute legal conclusions. Id.

19. Here, Plaintiffs’ proposed Amended Complaint does not withstand this scrutiny and, therefore, denial of Plaintiff’s Motion is warranted.

B. Count I Fails to Allege a Violation of RSA 197:6 or RSA 40:13

20. Count I of Plaintiffs’ Amended Complaint appears to be a refashioned request for declaratory relief – specifically, for a declaration that the Districts’ rejection of the Article as untimely ran afoul of RSA 197:6 and RSA 40:13. In denying Plaintiffs’ request for preliminary injunctive relief, the Court already concluded that Plaintiffs are not entitled to any such declaration. See Order, p. 4 (“ . . . absent clear rules allowing for submission of proposed warrant articles electronically after the close of business, the plain language of RSA 40:13, II-a(b) requires submission before the close of business.”). The Court also denied Plaintiffs’ subsequent motion for reconsideration which raised the same arguments.

21. Accordingly, Count I of the Amended Complaint, which attempts to raise these claims for the third time, fails to state a cognizable claim for relief.

C. Counts II and III Fail to State Viable Constitutional Claims

22. Count II alleges that “Defendants’ enforcement of an unannounced ‘close of business’ requirement deprives citizens of fair notice and due process.” Amended Complaint, ¶ 24. Count III claims that “[b]y denying a timely and properly presented petition on the basis of a non-statutory administrative deadline, Defendants substantially burdened the fundamental rights of voters” Amended Complaint, ¶ 26. However, as a matter of law, Defendants were not deprived their constitutional rights.

23. With regard to Count II, alleging a deprivation of fair notice and due process, “[t]he ultimate standard for judging a due process claim is the notion of fundamental fairness.” Saviano v. Director, N.H. Div. of Motor Vehicles, 151 N.H. 315, 320 (2004). “Fundamental fairness requires that government conduct conform to the community’s sense of justice, decency, and fair play.” *Id.*

24. Here, the Court has already concluded that “the plain language of RSA 40:13, II-a(b) requires submission [of petition warrant articles] before the close of business.” Order, p. 4. In reaching this conclusion, the Court cited with favor the New Hampshire Supreme Court’s decision in Cardinal Dev. Corp. v. Town of Winchester Zoning Board, 157 N.H. 710 (2008), which found that a close of business deadline for submissions to a governmental entity “is a matter of common sense.” Cardinal Dev. Corp., 157 N.H. at 714.

25. Based on these holdings, Plaintiffs cannot demonstrate that Defendants’ enforcement of a close of business submission deadline was fundamentally unfair. To the contrary, Defendants’ actions were consistent with the “plain language” of the applicable statute, “common sense” and the statutory definition of “end of day” set forth in the RSA 652:20 governing state and municipal elections which requires filing “... before 5 o’clock in the afternoon of the stipulated day...”. Accordingly, Plaintiffs’ due process and/or fair notice claim fails to state a claim for which relief may be granted.

26. This logic applies with equal force to Plaintiffs’ voting rights claim. As our courts have recognized, “[t]he right to associate for political purposes . . . is not absolute.” Opinion of the Justices, 158 N.H. 661, 667 (2009). “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election – and campaign-related

disorder.” Id. In fact, “Article I, Section 4, Clause 1 of the Federal Constitution grants States broad power to regulate the time, place, and manner of state and federal elections.” Id.

27. Defendants’ observance of a submission deadline for petition warrant articles that is consistent with the “plain language” of RSA 40:13, “common sense,” and RSA 652:20, see supra, is a manifestly reasonable election regulation. Plaintiffs’ suggestion otherwise cannot be credited. As a result, Count III fails to state a claim.

D. Plaintiffs’ Fail to State a Claim for Breach of Fiduciary Duty

28. Count VI asserts that “[b]y denying the citizen-petitioned warrant article on a non-statutory ground, Defendants prevented voters from addressing escalating costs at Kensington and East Kingston Elementary School through the official democratic process.” Amended Complaint, ¶ 30. Plaintiffs go on to suggest that “Defendants’ actions have forced the District to operate under the default budget,” and that “[t]hese actions constitute a breach of fiduciary duty.” Id., ¶¶ 32-33. These allegations fail to state a claim.

29. A breach of fiduciary duty claim requires (1) existence of a fiduciary relationship and (2) a breach of that relationship. See generally Schneider v. Plymouth State College, 144 N.H. 458 (1999). A fiduciary relationship “exists whenever special confidence has been placed in another.” Id. at 464. A breach occurs “whenever influence has been acquired and abused or confidence has been reposed and betrayed.” Id.

30. Here, even if a fiduciary relationship is assumed to exist between the Districts and Plaintiffs, as voters and taxpayers, see Amended Complaint, ¶ 29, there has plainly been no breach of the Districts’ duties. As cataloged above, the Districts’ rejection of the Article as untimely was entirely lawful. Any “response” by voters, see id., ¶ 31, is not an action attributable to the Districts.

31. For these reasons, Count VI is not cognizable.

E. Count V Fails to Allege an Active Controversy

32. Finally, Plaintiffs' Count V seeks a declaration that the Districts must comply with RSA 32:10, I(e). On its face, this is an inappropriate request for declaratory relief. Plaintiff fails to allege that Plaintiff has engaged in any violation of RSA 32:10, I(e). Rather, Plaintiffs request that the Court remind the Districts of their obligation to follow the law. This is not a viable claim for relief under New Hampshire law. See Wuelper v. University of New Hampshire, 112 N.H. 471, 474 (1972) (holding that a declaratory judgment claim "must not constitute a demand for advice as to future cases.").

Conclusion

For all the reasons stated above, Plaintiffs' Amended Complaint fails to state viable claims for relief. Accordingly, Plaintiffs' requested amendment is futile and Plaintiffs' Motion must be denied.

WHEREFORE, the Districts respectfully requests that this Honorable Court:

- A. Deny Plaintiffs' Motion; and
- B. Grant such other and further relief as this Court deems just.

Respectfully submitted,

SAU 16

By its attorneys,

SOULE, LESLIE, KIDDER, SAYWARD
& LOUGMAN, P.L.L.C.

Dated: April 16, 2026

/s/ Gordon B. Graham
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CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing to be sent on this day through the Court's e-filing system to all parties and counsel of record.

Dated: April 16, 2026

/s/ Gordon B. Graham
Gordon B. Graham, Esq.