The State of New Hampshire

MERRIMACK COUNTY **SUPERIOR COURT**

DAVID BATES AND KELLY WIESER

v.

DAVID M. SCANLAN, IN HIS OFFICIAL CAPACITY AS
NEW HAMPSHIRE SECRETARY OF STATE

No. 217-2026-CV-00671

ORDER ON MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

In this case, Plaintiffs challenge the constitutionality of a ballot question codified in RSA 32:5-i (the "Ballot Question"), contending that the Ballot Question violates Plaintiffs' "fundamental right to vote . . . by presenting a confusing and misleading question that contains fewer choices than the legislature intended." See Doc. 1 (Complaint) at 1 (citing Part I, Article 11 of the New Hampshire Constitution). Plaintiffs now move for emergency preliminary injunctive relief to preclude the Ballot Question from "appear[ing] on or alongside the November 2026 state general election ballot." See Doc. 2 at 1. Defendant David M. Scanlan, acting in his official capacity as New Hampshire Secretary of State (the "Secretary"), objects. See Doc. 7. The Court held a hearing on the matter on September 11, 2026. For the reasons that follow, Plaintiffs' request for emergency preliminary injunctive relief is **DENIED**.

Background

This case centers on recent amendments to RSA 32:5-i. See Doc. 1. Governor Ayotte signed the legislation underlying those amendments, House Bill 1300, into law on July 15, 2026. See Pls.' Ex. C. The amended statute, now entitled "School District

Local Tax Cap and School Administrative Fixed Cap on Central Office Administrative Budgets," provides, in pertinent part:

> I. During the November 2026 and November 2028 state general elections, every town and ward in a city shall conduct a vote on a local tax cap question for their school district and a fixed cap on the school administrative unit ["SAU"] central office administrative budget . . . .
>
> II. The question required under paragraph I shall be printed on the state general election ballot . . . .
>
> III. Nothing in this section shall prohibit a municipality, school board, or [SAU] board from holding a public hearing on the question for the local tax cap and for the school administrative fixed cap on central office administrative budgets . . . .
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> V. The school district local tax cap and [SAU] fixed cap question on the ballot for towns and wards with an annual school district meeting shall read:
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> "Shall the [name of municipality] limit property tax growth for [name(s) of school district(s)] under RSA 32:5-i? If adopted for a two-year period: (1) the local property tax levy may not grow beyond the prior year's amount, adjusted for inflation and new construction; (2) SAU central office spending may not exceed 6 percent of total school district appropriations; and (3) bonded capital costs are excluded from both limits. These caps apply only to administrative operations of the SAU central office and do not affect classroom instruction, school-based services, or other municipal expenditures. These limits may be overridden as provided in RSA 32:5-i. Adoption requires a three-fifths (3/5) majority vote."
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> Towns and wards serving more than one school district shall include the names of all such school districts in the question.
>
> VI. (a) . . . If a 3/5 majority of the voters voting in the municipalities and wards served by the school district approve the question, then the maximum allowable levy per the local tax cap for the district under paragraph VIII shall be binding.
>
> (b) . . . If a 3/5 majority of the voters voting in the municipalities and wards served by the [SAU] approve the question, then the SAU fixed cap for the SAU central office administrative budget under paragraph IX shall be binding . . . .

RSA 32:5-i (2026). The amended statute presumably discusses school districts and SAUs separately because, while some SAUs include a single school district, others are multi-district. See Pls.' Ex. A (Aff. Nathan Greenberg) ¶ 9 (describing types of SAUs).

Plaintiffs, who are each New Hampshire taxpayers, see Pls.' Exs. 5 (Aff. David Bates) and 6 (Aff. Kelly Wieser), contend that allowing the Ballot Question to appear on the November 2026 general election ballot would violate their right to vote, as guaranteed by Part I, Article 11. Doc. 2 ¶ 3; cf. N.H. CONST. pt. I, art. 11 ("All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election. . . ."). Plaintiffs thus seek emergency preliminary injunctive relief "requiring the Secretary to take all necessary actions to ensure that the challenged [B]allot [Q]uestion is not presented to New Hampshire voters at the November 2026 state general election." Doc. 2 at 2.

Analysis

The standard for granting a preliminary injunction is well established:

> The issuance of injunctions . . . has long been considered an extraordinary remedy. A preliminary injunction is a provisional remedy that preserves the status quo pending a final determination of the case on the merits. An injunction should not issue unless there is an immediate danger of irreparable harm to the party seeking injunctive relief, and there is no adequate remedy at law. Also, a party seeking an injunction must show that it would likely succeed on the merits.

N.H. Dept. Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007) (citations and quotations omitted). The granting of an injunction "is a matter within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity." UniFirst Corp. v. City of Nashua, 130

N.H. 11, 14 (1987) (quotations, citation, and brackets omitted) (recognizing courts may consider public interest in evaluating requests for injunctive relief).

In objecting to Plaintiffs' request for preliminary injunctive relief, the Secretary argues that Plaintiffs have not shown a likelihood of success on the merits of their constitutional challenge to the Ballot Question, and that they have likewise failed to establish an immediate danger of irreparable harm or the absence of an adequate remedy at law. See Doc. 7 at 2. In addition, the Secretary argues that the balance of the equities and the public interest weigh in favor of allowing the Ballot Question to appear on the November 2026 ballot. Id. The Secretary further questions whether Plaintiffs have standing to challenge the Ballot Question. See id. The Court will first address the parties' arguments concerning Plaintiffs' likelihood of success on the merits.

I. Likelihood of Success on the Merits

In an effort to establish a sufficient likelihood of success, Plaintiffs contend that the Ballot Question runs afoul of Part I, Article 11 in three ways. See Doc. 1. First, Plaintiffs contend that the language and structure of the Ballot Question will result in voter confusion. See id. ¶¶ 87–98. Second, Plaintiffs argue that the Ballot Question is misleading. See id. ¶¶ 99–115. Lastly, Plaintiffs argue that the Ballot Question improperly constrains voter choice. See id. ¶¶ 116–128.

Plaintiffs' argument concerning the allegedly confusing nature of the Ballot Question stems from the New Hampshire Supreme Court's decision in Fischer v. Governor, 145 N.H. 28 (2000). See Doc. 3 at 13 (citing Fischer). In that case, the New Hampshire Supreme Court reiterated its earlier holding, as set forth in Concrete, Inc. v. Rheaume Builders, 101 N.H. 59 (1957), that a "'question submitted to the electorate need not inform it of the details nor full import of the proposed amendment'" but "must give 'the ordinary person a clear idea of what he [or she] is voting for or against.'" Fischer, 145 N.H. at 37 (quoting Concrete, 101 N.H. 59, 61 (1957)). Importantly, the Concrete court explained that the clarity of a ballot question "must be interpreted in . . . light of the circumstances surrounding it," including any voter guides, publications, "extracts from radio addresses and similar evidence . . . tending to explain the purpose and effect of the proposed amendment" to the voters. 101 N.H. at 60.

In support of their claim that the Ballot Question does not "give 'the ordinary person a clear idea of what he [or she] is voting for or against,'" see Doc. 3 at 13; Fischer, 145 N.H. at 37, Plaintiffs offer an expert analysis of the accessibility and clarity of the language used in and overall structure of the Ballot Question, see Pls.' Ex. D (Report of Deborah S. Bosley, Ph.D.); see also Pls.' Ex. I (Bosley Resume), as well as statements from both Plaintiffs indicating they find the language confusing, see Pls.' Exs. E and F. Notably, however, none of this evidence takes into account the circumstances surrounding the presentation of the Ballot Question to the voters. See Concrete, 101 N.H. at 60. For example, neither Dr. Bosley nor either Plaintiff considered statements made during any public hearings that might be held by "a municipality, school board, or [SAU] board . . . on the question for the local tax cap and for the school administrative fixed cap on central office administrative budgets," as contemplated in RSA 32:5-i, III. The reason for this is simple: given the nature of those "circumstances" the New Hampshire Supreme Court has deemed relevant in this context, see Concrete, 101 N.H. at 60, such an analysis cannot reasonably be performed on a prospective basis. Rather, neither the witnesses nor the Court can apply the above-described standard until after the relevant "surrounding circumstances" have been established. See id. For this reason, Plaintiffs cannot establish a sufficient likelihood of success on the merits at this stage of the proceedings, and the Court therefore cannot grant Plaintiffs' request for preliminary injunctive relief on this basis. See Mottolo, 155 N.H. at 63.

Plaintiffs' next argument in support of their likelihood of success on the merits centers on their belief that the Ballot Question is misleading. See Doc. 1 ¶¶ 99–115. In this vein, Plaintiffs argue that although the Ballot Question claims that the caps contemplated therein will "not affect classroom instruction, school-based services, or other municipal expenditures," see RSA 32:5-i, V, such affects are, in Plaintiffs' view, inevitable. See id. ¶¶ 99–115. In support of this argument, Plaintiffs offer affidavits from two individuals who have significant experience with the school budgeting process. See Pls.' Ex. A; Pls.' Ex. B (Aff. Daniel Rossner); see also Pls.' Ex. H (Greenberg Resume). Plaintiffs also submit a memorandum authored by Nate Byrne, the Superintendent of Schools in Northwood, outlining his view as to the ramifications of the tax cap contemplated in RSA 32:5-i. See Pls.' Ex. G.

During the hearing, Plaintiffs' counsel made offers of proof concerning this evidence. Those offers of proof repeatedly discussed events or impacts that "could" occur as a result of the relevant caps but did not indicate that those events or impacts inevitably would occur. The Court's review of the underlying exhibits aligns with the theoretical nature of the language used in the offers of proof. For example, Mr. Greenberg's affidavit acknowledges that the "availability of [school] funding sources other than property taxes is uncertain." Pls.' Ex. A ¶ 17. Mr. Greenberg further notes that those "other" sources make up approximately "one third of a school district's revenue[.]" Id. ¶ 39. While Mr. Greenberg opines that "many districts" would necessarily implement cuts which would impact "classroom learning" in response to either or both of the caps contemplated by RSA 32:5-i, see id. ¶¶ 40–51, his acknowledgment of the "uncertain" levels of a school district's other funding sources undermines his professed level of certainty as to the impact of the two caps. For his part, Mr. Rossner echoes "Mr. Greenberg's description of the budgeting process and how the caps in [RSA 32:5-i] might impact the budget[.]" Pls.' Ex. B ¶ 14. As a result, Mr. Rossner's opinions are subject to the same critique with respect to the impact of other funding sources.[1]

Given the speculative and uncertain nature of the evidence in the record, the Court concludes that Plaintiffs have not established a sufficient likelihood of success on the merits in connection with their second challenge to the Ballot Question. Accordingly, the Court cannot grant Plaintiffs' request for preliminary injunctive relief on this basis. See Mottolo, 155 N.H. at 63.

Plaintiffs' final argument in support of their likelihood of success on the merits centers on their belief that RSA 32:5-i is internally inconsistent because the codified Ballot Question only contemplates a single vote for or against both caps, whereas subsequent language within the statute suggests that a particular voting district might only adopt one of the caps. See Doc. 1 ¶¶ 116–128. In order to analyze Plaintiffs'

[1] Dr. Byrne's memorandum indicates that "any necessary offset under a rigid tax cap will require structural changes to district personnel and educational programming," but does not further define or specify these changes. See Pls.' Ex. G at 1; see also id. at 2 (opining that the property tax cap would "mandate reductions in overall staffing levels and alterations to existing student programs," again without further specifity). Absent additional clarity, the Court cannot conclude that this unsworn memorandum lends meaningful support to Plaintiffs' likelihood of success on the merits.

likelihood of success on the merits of this argument, the Court must engage in statutory interpretation.

"Statutory interpretation is a question of law[.]" McCarthy v. Manchester Police Dep't, 168 N.H. 202, 207 (2015) (quotations and citation omitted). When interpreting a statute, the Court first looks to the language of the statute itself, and, if possible, construes that language "according to its plain and ordinary meaning." Id. (quotations and citation omitted). The Court construes "all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." Id. (quotations and citation omitted). Importantly, the New Hampshire Supreme Court has explained that in the context of a constitutional challenge to a statute, courts must "presume a statute to be constitutional and will not declare it invalid except upon inescapable grounds." New Hampshire Democratic Party v. Sec'y of State, 174 N.H. 312, 321 (2021) (citing Guare v. State, 167 N.H. 658, 661 (2015)).

In this case, the early paragraphs of the statute plainly contemplate a single Ballot Question concerning both caps. See, e.g., RSA 32:5-i, II (discussing "[t]he question required under paragraph I"); RSA 32:5-i, V (discussing "[t]he school district local tax cap and [SAU] fixed cap question on the ballot"). Plaintiffs argue, however, that later portions of the statute demonstrate a legislative intention that voters be afforded the opportunity to vote on each cap, independently. See Doc. 3 at 24–26 (emphasizing, among other things, that "paragraph XII expressly recognizes three possible outcomes if voters vote in favor of the measure").

In the Court's view, Plaintiffs have not demonstrated that this alleged inconsistency constitutes an "inescapable" interpretation of the statute. See New

Hampshire Democratic Party, 174 N.H. at 321. Indeed, Plaintiffs' own evidence demonstrates that although some SAUs represent a single school district, others represent multiple school districts. See Pls.' Ex. A ¶ 9. In the latter scenario, there will necessarily be more voters weighing in on the SAU cap that would apply to every member school district, collectively, as compared to the number of voters weighing in on the school district cap that would apply to each member school district, individually.

In a hypothetical scenario where a particular SAU represents School Districts A and B, the voters in both school districts would decide whether to adopt the SAU cap. If enough voters in School District A vote "yes" on the Ballot Question, then School District A will adopt the school district cap. It is possible, however, that the voters in School District B could prevent the adoption of the SAU cap for this multi-district SAU by voting "no" on the Ballot Question. In that event, School District B would not adopt either cap, and School District A would adopt only the school district cap. On the other hand, if enough voters in School District A vote "yes" on the Ballot Question, those votes could result in adoption of the SAU cap even if most voters in School District B vote "no." Under this scenario School District A would adopt both caps but School District B would only be subject to the SAU cap.

The foregoing hypothetical demonstrates that despite the single question codified in RSA 32:5-i, votes on the Ballot Question could result in three possible outcomes: the adoption of neither cap, the adoption of only one cap, or the adoption of both caps. For that reason, Plaintiffs have not demonstrated a likelihood of success in connection with the merits of their claim that there is an inescapable inconsistency in the statutory language. See New Hampshire Democratic Party, 174 N.H. at 321. Accordingly, the

Court cannot grant Plaintiffs' request for preliminary injunctive relief on this basis. See Mottolo, 155 N.H. at 63.

II. Immediate Danger of Irreparable Harm and Absence of an Adequate Remedy at Law

As previously noted, "a party seeking an injunction must show that it would likely succeed on the merits." Id. For the reasons outlined above, the Court concludes that Plaintiffs have not made such a showing. Nevertheless, the Court will briefly analyze another facet of the standard for granting injunctive relief: whether "there is an immediate danger of irreparable harm to the party seeking injunctive relief, and . . . no adequate remedy at law." Id. In doing so, the Court will again address each of the three issues identified in Plaintiffs' Complaint, in turn.

The first issue identified in Plaintiffs' Complaint concerns the allegedly confusing nature of the Ballot Question. See Doc. 1 ¶¶ 87–98. As noted, under the standard of review outlined in Concrete, the clarity of a ballot question "must be interpreted in . . . light of the circumstances surrounding it," including any voter guides, publications, "extracts from radio addresses and similar evidence . . . tending to explain the purpose and effect of the proposed amendment" to the voters. 101 N.H. at 60. Further, RSA RSA 32:5-i, III, clarifies that the statute does not "prohibit a municipality, school board, or [SAU] board from holding a public hearing on the" Ballot Question. As any lack of clarity in the Ballot Question can be addressed via appropriate publications, radio addresses, and public hearing commentary, the Court cannot conclude that Plaintiffs have established "an immediate danger of irreparable harm" and the absence of an "adequate remedy at law" in connection with this issue. See Mottolo, 155 N.H. at 63.

The Court reaches a similar conclusion with respect to Plaintiffs' second challenge to the Ballot Question: i.e., that the language of the Ballot Question is misleading as it relates to the impact of the caps. See Doc. 1 ¶¶ 99–115. In the Court's view, Plaintiffs and others can also address this alleged issue via appropriate publications, radio addresses, and public hearing commentary. See Concrete, 101 N.H. at 60; RSA 32:5-i, III. Moreover, the statute provides a mechanism for overriding any caps adopted pursuant to the Ballot Question. See RSA 32:5-i, X ("The legislative body may vote to exceed the school district local tax cap or the [SAU] fixed cap using the override procedures provided in these subparagraphs."). For these reasons, Plaintiffs have not established "an immediate danger of irreparable harm" and the absence of an "adequate remedy at law" with respect to this issue. See Mottolo, 155 N.H. at 63.

Turning to Plaintiffs' final challenge to the Ballot Question—that it improperly forces voters to lodge a single vote for or against both caps, see Doc. 1 ¶¶ 116–128—for the reasons outlined above, the Court does not agree with Plaintiffs' construction of the statute or their resulting conclusion as to legislative intent. Regardless, if the Legislature did intend for voters to address each cap independently, the Legislature can amend the statute prior to the 2028 general election. See RSA 32:5-i, I (providing for a vote on the Ballot Question "[d]uring the November 2026 and November 2028 state general elections"). Further, unless the local legislative body has adopted a charter which establishes a different super majority requirement, the override provision of the statute establishes the same voting threshold as is required to adopt each cap in the first instance. Compare RSA 32:5-i, VI(a)–(b) (establishing a three-fifths majority vote requirement for the adoption of the school district local tax cap and the SAU fixed cap, respectively) with RSA 32:5-i, X (providing that in the absence of a different super majority requirement, the voting threshold for overriding either cap is a three-fifths majority). In light of the foregoing, the Court concludes that Plaintiffs have not demonstrated “an immediate danger of irreparable harm” and the absence of an “adequate remedy at law” as to this aspect of their claim. See Mottolo, 155 N.H. at 63.

For the reasons set forth above, the Court concludes that Plaintiffs have not shown that they are likely to succeed on the merits of their claim, or that there is an immediate danger of irreparable harm for which Plaintiffs lack an adequate remedy at law. See Mottolo, 155 N.H. at 63. In light of these conclusions, Plaintiffs’ request for preliminary injunctive relief must be **DENIED**. See id. Accordingly, the Court declines to address the parties’ arguments concerning the balance of the equities. See id.; cf. Canty v. Hopkins, 146 N.H. 151, 156 (2001) (declining to reach arguments that would not alter court’s conclusion). For similar reasons, the Court will assume, without deciding, that Plaintiffs have standing to challenge the Ballot Question, despite the Secretary’s argument to the contrary. See Canty, 146 N.H. at 156.

Conclusion

For the reasons outlined above, Plaintiffs’ request for preliminary injunctive relief is **DENIED**. See Doc. 2.

SO ORDERED.

September 16, 2026

Hon. Daniel I. St. Hilaire
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 09/16/2026