

STATE OF MAINE  
YORK, SS.

SUPERIOR COURT  
CIVIL ACTION  
Docket No. CV-

REGIONAL SCHOOL UNIT 21,

Plaintiff,

v.

TOWN OF KENNEBUNK,

Defendant,

and

TOWN OF ARUNDEL and TOWN OF  
KENNEBUNKPORT,

Parties-in-Interest.

**COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

NOW COMES the Plaintiff, Regional School Unit 21 (“RSU 21”), and pursuant to Maine’s Declaratory Judgments Act, 14 M.R.S. § 5951, et. seq., and Rule 65 of the Maine Rules of Civil Procedure, hereby complains against Defendant, the Town of Kennebunk, as follows:

**INTRODUCTION**

1. Regional School Unit 21 (“RSU 21”) – the regional school unit organized by the municipalities of Kennebunk, Kennebunkport, and Arundel, and certified by the State as a “body politic and corporate” on July 1, 2009 – seeks a declaration by this Honorable Court that the elected official “recall” provisions of the Kennebunk municipal charter

(Article VII therein) do not apply to the Regional School Unit 21 school board directors. Each director is elected to serve the regional school unit under Title 20-A of the Maine Revised Statutes, and is not thereby subject to general town charter provisions addressing “recall” of town elected officials.

2. RSU 21 hereby also seeks a decree from this Honorable Court that the Town of Kennebunk’s current recall procedure is invalid and inapplicable to school board directors, including the two directors who were or are the subject of the Article VII recall initiatives commenced on or about November 29, 2021. In keeping with this decree, RSU 21 requests that this Court enjoin the Town of Kennebunk from proceeding with the Article VII charter recall procedure involving regional school unit school board directors, and enjoin the Town of Kennebunk from holding a recall election in March relating to one of the currently serving directors.

### **PARTIES and STANDING**

3. Plaintiff Regional School Unit 21 is a body politic and corporate, organized under the provisions of Title 20-A M.R.S. §§ 1451-1512. *See* 20-A M.R.S. § 1461 & 1461(7).
4. Defendant, the Town of Kennebunk, is a municipality and body corporate existing under the laws of the State of Maine and located within the County of York, State of Maine. *See* 30-A M.R.S. §§ 2001(8), 2002.
5. Parties-in-Interest, the Town of Arundel and the Town of Kennebunkport, are municipalities and each a body corporate existing under the laws of the State of Maine and located within the County of York, State of Maine. *See* 30-A M.R.S. §§ 2001(8), 2002.

### **JURISDICTION and VENUE**

6. This Court has jurisdiction over this matter pursuant to the Declaratory Judgments Act, 14 M.R.S. § 5951, et. seq. 14 M.R.S. § 5953; 4 M.R.S. § 105.
7. Venue is conferred on this Court under 14 M.R.S. § 505.

### **STATEMENT OF THE CLAIM**

8. Title 20-A, §§ 1451-1512, of the Maine Revised Statutes is the comprehensive legislative scheme authorizing school organization into a “regional school unit” as a separate body politic and corporate, with each regional school unit governed by a school board of directors organized and regulated under Title 20-A.
9. 20-A M.R.S. §§ 1461-1468, includes detailed provisions involving submission of a plan for reorganization of a school administrative unit into a regional school unit, and the requirement of State approval. Once approved, the State Board of Education issues a certificate of organization. 20-A M.R.S. § 1461(7).
10. When formed, the regional school unit is “a body politic and corporate.” 20-A M.R.S. § 1461.
11. In 2008, with a proposed operational date of July 1, 2009, the reorganizational plan (“Plan”) for establishing Regional School Unit 21 was submitted by the appropriate representatives of the municipalities of Arundel (which was its own municipal school unit at the time) and the municipalities of Kennebunk and Kennebunkport (MSAD 71 at the time).

12. In accordance with State authorizing statutes, the Plan was received by the Commissioner of Education, and the State certificate of organization for RSU 21 was issued, with date of organization of July 1, 2009. 20-A M.R.S. § 1461(7).
13. The structure and governance of regional school units must always be in keeping with the declared policy of the State supporting the reorganization into these “regional, **state-approved** units of school administration.” 20-A M.R.S. § 1451 (listing several policies, including in subsection 1 “equitable educational opportunity for all students”) (bold emphasis added). See also 20-A M.R.S. § 1(24-B) (“ ‘Regional school unit’ means the state-approved unit of school administration as established pursuant to chapter 103-A [of Title 20-A].”).
14. The school board is the governing body of the regional school unit. 20-A M.R.S. § 1471. The plan of reorganization which leads to State certification of organization of the regional school unit under 20-A M.R.S. § 1461(7), must include, inter alia, “[t]he size, composition and apportionment of the governing body” and “[t]he method of voting of the governing body.” 20-A M.R.S. § 1461(3)(A)(2)-(3).
15. The election procedures, terms, and vacancies specific to school board directors are determined by the specific and comprehensive statutory scheme of 20-A M.R.S. §§ 1451, et seq. Subchapter 3 of Chapter 103-A of Title 20-A (20-A M.R.S. §§ 1471-79) are the statutory provisions on governance of the regional school unit. A regional school unit board is established, with composition, size, voting apportionment, etc. designed in accordance with the submitted plan and the provisions of this subchapter 3. The regional school unit board itself “shall elect a chair and vice-chair and other officers as may be necessary.” 20-A M.R.S. § 1471(6).

16. Significantly, a statutory term of office is set: “in municipalities with annual elections, **directors serve three-year terms. . . . A director serves until a successor** is elected and qualified.” 20-A M.R.S. § 1471(2) (bold emphasis added).
17. Even the oath of office of a school board director is specifically defined under the terms of statute: 20-A M.R.S. § 1471(5). The oath or affirmation is to serve the regional school unit, i.e., to “discharge to the best of my abilities the duties incumbent on me as a regional school unit board director of (name of regional school unit) according to the Constitution of Maine and laws of this State,” 20-A M.R.S. § 1471(5).
18. The school board directors do not take an oath of office to serve a specific municipality within a regional school unit; and they do not swear to support the provisions of a specific municipal charter. 20-A M.R.S. § 1471(5); compare the oath of section 1471(5) with, e.g., Kennebunk Charter, Article VIII § 8.05 (providing that “all elected and appointed officials” shall “swear or affirm that they will support the . . . provisions of this Charter and the Ordinances of the Town”). Elected directors of the school board – the governing body of the regional school unit as a body politic and corporate – take their *statutory* oath, in relation to the regional school unit board, not the form of oath which might be contained in a specific town charter.
19. Thus, the School Board Directors of RSU 21 are elected directors of Regional School Unit 21, a separate body politic and corporate. 20-A M.R.S. § 1461. They are not elected officials of a body corporate municipality.
20. 20-A M.R.S. § 1474(1) defines “vacancies” in a regional school unit board as follows:
1. **Definition of vacancy.** A vacancy on a regional school unit board occurs:
    - A. When the term of office of a regional school unit board director expires;

- B. When a regional school unit board director changes residency from the municipality or subdistrict from which elected. Evidence that an individual is registered to vote in a municipality is prima facie evidence of that individual's residency;
- C. On the death of a regional school unit board director; or
- D. When a regional school unit board director resigns.

In addition to paragraphs A, B, C and D, except in municipalities having a municipal charter, when a director is absent without excuse from 3 consecutive regular board meetings, the regional school unit board may declare that a vacancy exists.

20-A M.R.S. § 1474(1).

21. This provision of Title 20-A governing vacancies in regional school unit boards does not include municipal “recall” as a basis for the creation of a vacancy.

22. Regional school unit boards create their own governing bylaws or policies “for the regulation of the affairs of the regional school unit board and the conduct of its business.” 20-A M.R.S. § 1476(5). There is no RSU 21 regulation or policy providing for the “recall” of school board directors, nor a regulation or policy incorporating by reference either the standards or procedures of any provisions of a municipal charter for the recall of a school board director.

23. Prohibited employment or conflicts of interest of a school board are governed by Title 20-A, specifically 20-A M.R.S. §§ 1002, 1004.

24. Further, no such regulation or policy governing recall was submitted as part of the plan of reorganization submitted to the State and certified as of July 1, 2009 under 20-A M.R.S. § 1461(7). Indeed, the Plan notably concludes, in the discussion of the RSU Board of Directors terms and elections, that “**Thereafter, all terms will be for a three-year duration,**” and emphasizing that “**No one election year will see more than four of the**

**twelve seats open.**” Plan at 38, Note #2 (bold emphasis added). The Plan expressly references the provisions of 20-A M.R.S. § 1473 to govern elections of school board directors, and by implication does not allow a special municipal election to intervene to substitute, at any time, for the election of a school board director.

25. Vacancies in a regional school unit board are not filled by a special municipal election or by votes at special town meetings. Indeed, a vacancy on the school board can only be filled under the provisions of 20-A M.R.S. § 1474(3) (“A vacancy on a regional school unit board must be filled according to this subsection”). Section 1474(3) allows vacancies to be filled *only* by “municipal officers of the municipality in which the director resided” selecting “an interim director for the municipality or subdistrict to serve until **the next annual municipal election.**” 20-A M.R.S. § 1474(3)(A) (bold emphasis added).
26. On November 29, 2021, two affidavits, each purportedly signed by 30 individual “Kennebunk voters,” were delivered to the Kennebunk Select Board. The target of the affidavits were two elected directors of the RSU 21 School Board, one of whom had recently been unanimously elected Board Chair.
27. The affidavits purported to invoke the Town of Kennebunk Charter (the “Kennebunk Charter”) for the recall of two RSU 21 School Board directors, citing a provision found in Article VII, § 7.01 of the Kennebunk Charter that provides for the recall of “[a]ny elected official” based upon the subjective standard that there exists “a loss of confidence in that official’s ability to perform the duties and responsibilities of the office.”
28. Neither affidavit contained objective verifiable basis to recall either director. The affidavit regarding one of the directors contained provably false facts, despite that it was

sworn under oath under pains and penalties of perjury. Subsequent public statements of one of the persons organizing this “recall” initiative stated or implied that the directors had been targeted, not because of any wrongful conduct on their part, but because they supported RSU 21’s most recently hired Superintendent. This public statement therefore contradicts the sworn assertion that there was a “loss of confidence” in the director’s own “ability to perform the duties and responsibilities of the office.” One of the rudimentary powers and duties of the RSU 21 School Board – the Board *as a whole* – is to select, employ and supervise a superintendent, 20-A M.R.S. §§ 1001(3), 1051, 1452. This power and responsibility is shared by the board as a governing body, and no one director can be legally held subject to “recall” as an individual director for participating in the exercise of this shared power and responsibility – or, for that matter, in the performance of *any* of the collective duties and responsibilities of the board.

29. The Board of Selectmen of Kennebunk does not have any enumerated power, express or by implication in the Charter, to supervise the school board, intervene in, or hold “recall” elections against individual school board directors, as a consequence of those directors performing their duties and responsibilities under Tile 20-A, including but not limited to the school board’s duties and responsibilities to select and employ a superintendent, and any individual director’s performance of the duties and responsibilities of office in that regard.

30. Thus, the affidavits in issue, submitted under oath, contain reasons for recall that include provably false facts, objectively; unsupported subjective characterizations that should not form the basis of any “recall” under the law; and/or statements or events not causally related to the individual service of a director (and therefore not causally related to a valid

recall basis). The affidavits therefore set forth legally invalid grounds to “recall” a director.

31. The only elected officials referenced in the Kennebunk Charter are the Board of Selectmen. *See* Kennebunk Charter, § 3.11. Article VII of the Kennebunk Charter, governing the recall of elected officials, does not expressly include RSU 21 School Board Directors as “elected officials” subject to municipal recall under Article VII.
32. The Kennebunk Charter Commission in 2009 did not intend Article VII municipal recall provisions to apply to the school board directors of the then newly-formed Regional School Unit. Indeed, the Charter Commission, including on the advice of counsel, eliminated all substantive past references to the school board then-existing within the Charter, in recognition that the school board directors of RSU 21 would not be subject to the Charter revisions. Those deletions are reflected in the current Charter, for example in the Enumeration of Powers section 3.06, Article III, and all of Article III governing, *inter alia*, the general and enumerated powers, duties, and procedures of the Board of Selectmen. There is no mention of schools, or school board directors, in these provisions. Indeed, the only mention of school board directors remaining in the Kennebunk Charter is the specification of the starting date of the term of a school board director (July 1) elected in accordance with 20-A M.R.S. §§ 1003(2) and 1474(3)(A) at the town’s regular June *annual meeting*. Kennebunk Charter, Article II, § 2.02(1); 20-A M.R.S. § 1003(2).
33. No provision of the Charter expresses any power of the Select Board to govern Regional School Unit 21, or to hold a “recall” election in relation to any of RSU 21’s school board directors. The Select Board’s only current power – to appoint interim directors for

vacancies and to hold regular annual term-elections for those vacancies – is derived from 20-A M.R.S. § 1473(3)(A)-(B), not from any provision of the Charter.

34. On December 31, 2021, two recall petitions were returned to the Kennebunk town office.

35. One of those petitions as to one school board director has been certified as sufficient to proceed under the Charter’s recall procedure in Article VII, section 7.03; and Kennebunk has posted notice for legal challenges to the signatures of the one petition, reflecting an intent to proceed under Article VII of the Charter with the recall procedures and potentially a recall election (if no legal challenges are filed or legal challenges do not prevail).

36. Kennebunk has indicated that Monday, January 10, 2022, would be the deadline under the Charter for filing legal challenges to the signatures of the one certified petition in issue.

37. Under the time limitations of the Charter, Article VII, section 7.03, unless enjoined by this Honorable Court pursuant to the requested relief herein, a recall election could be as imminent as a special town meeting of Kennebunk held in March of 2022.

### **COUNT I - DECLARATORY JUDGMENT**

38. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 - 37 of this Complaint, with the same force and effect as if set forth fully herein.

39. This action is brought pursuant to Maine’s Declaratory Judgments Act, 14 M.R.S. § 5951, *et. seq.*

40. The RSU 21 School Board directors are not “elected officials” of the body corporate municipality of Kennebunk.

41. Article VII of the Kennebunk Charter does not apply to the RSU 21 School Board directors.
42. RSU 21 School Board directors are not “elected officials” within the meaning of the Kennebunk Charter, or specifically within the meaning of Article VII therein.
43. The RSU 21 School Board directors are elected directors of the separate body politic and corporate of RSU 21, established under the comprehensive statutory scheme of Title 20-A, with certificate or organization issued by the State.
44. The RSU 21 School Board is the governing body of RSU 21, with its own policies and regulations, and all duties and responsibilities derived from the comprehensive statutory scheme governing regional school units in Title 20-A, as alleged herein.
45. The statutory provisions of Title 20-A, and in particular 20-A M.R.S. § 1474 governing the creation of “vacancies” on a regional school unit board, do not include “recall” as a basis for the creation of a vacancy, and operate to foreclose local municipal recall provisions from interfering with the duly elected directors’ performance and duties of office of the RSU 21 School Board, serving the interests of the entire regional school unit.
46. Furthermore, the Kennebunk Charter provides that “[i]f the [recall] petition shall be certified to be sufficient by the Town Clerk and the registrar of voters, the Town Clerk shall allow 5 days for the filing of legal challenges to the signatures on the petition” (Charter, Article VII , § 7.03). Under the circumstances of this case, to the extent necessary, this Court should declare that this civil action qualifies as a “legal challenge” by which to enjoin further “recall” procedure within the Town of Kennebunk until final adjudication of this action.

47. The Parties-in-interest municipalities of Kennebunkport and Arundel have charter or town codes that contain recall provisions governing their respective elected town officials.
48. These code/charter recall provisions of Parties-in-Interest, in current form, equally do not apply to school board directors of the RSU 21 School Board. The Town of Arundel municipal recall provision expressly does not apply to school board directors. Arundel Charter 14.3 at p.28. The Town of Kennebunkport Administrative Code (Chapter 5, Article I, §§ 5-1 to 5-3), reasonably construed, does not include regional school unit school board directors in its “removal from elected office” provision of section 5-3. That Article I, section 5-3 applies only to an “elected official of the Town of Kennebunkport,” namely the referenced Selectmen (section 5-2) and the referenced Town Meeting Moderator (section 5-1). School board directors of RSU 21 are not identified in the Kennebunkport Code, Article I, as elected officials subject to the removal provision of section 5-3 therein.

## **COUNT II – INJUNCTIVE RELIEF**

49. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 - 48 of this Complaint, with the same force and effect as if set forth fully herein.
50. Pursuant to Rule 65 of the Maine Rules of Civil Procedure, “[an] application for preliminary injunction may be included in the complaint or may be made by motion.” M.R. Civ. P. 65(b)(1).
51. As alleged herein, Plaintiff is likely to succeed on the merits.

52. As alleged herein, Plaintiff will suffer irreparable injury if Kennebunk is not enjoined from proceeding with a special “recall” election in March of 2022, before this matter is heard. A wrongfully held recall election irreversibly disrupts the RSU 21 School Board’s regularly conducted business, operations, and the performance of its duties and responsibilities for the benefit of the students, teachers, and all employees of RSU 21. The municipal recall election procedures are also an unnecessary distraction and a drain on resources of the RSU 21 School Board and RSU 21 as a whole.

53. Such injury to RSU 21 outweighs any harm which granting the injunctive relief would inflict on Kennebunk. There would be no harm in Kennebunk refraining from holding a divisive recall town election by March of 2022, and instead awaiting the carefully deliberated outcome of the present action. This is true especially under circumstances where the power to hold a municipal “recall” election does not present a pressing legal issue given the deficiencies of the falsely sworn and legally groundless affidavits that triggered the town recall process in issue in the first instance. The certified petition is based upon these legally deficient affidavits. The affidavits did not contain any verifiable, accurate facts as to why or how anyone would have legitimately lost confidence in the subject director’s “judgment or ability to perform the duties and responsibilities of the office.” Kennebunk Charter, Art. VII, § 7.01. There is no exigency to Kennebunk’s town recall election, so any injury to Kennebunk in awaiting a just adjudication of its municipal corporate powers in this regard is outweighed by the irreversibly injury and disruption to the statutorily prescribed composition of the RSU 21 School Board, and its pressing business on behalf of students and employees of the regional school unit.

54. Further, the interests of the students, teachers, and employees of RSU 21 expand beyond just those who are residents of Kennebunk. RSU 21's irreparable injury constitutes an irreparable injury to all of RSU 21's constituents, even those residing outside the municipality of Kennebunk. RSU 21's interests also embody the interests of the State of Maine, including the State's preeminence in matters of public education and the State's policy and constitutional requirements of public education. *See* Maine Const. Art. VIII (constitutional provision imposing State legislative duty to require municipalities to make suitable provisions for the support and maintenance of public schools).
55. Irreparable injuries suffered by RSU 21 by the interference of these interests through an inapplicable and/or baseless special municipal "recall" election outweigh any public interest of Kennebunk in proceeding with a municipal election that may ultimately be invalid.
56. As alleged herein, the public interest will not be adversely affected by granting the injunction.
57. Whatever public interest Kennebunk has in proceeding with the municipal "recall" election procedures and holding a special municipal "recall" election, is a public interest based upon false affidavits and/or affidavits that are groundless as a basis for "recall" by failing to set forth objective accurate facts which would reasonably meet the "recall" standard in the Kennebunk Charter at Article VII, section 7.01. On the other hand, the countervailing public interests in preserving the integrity of the regional school unit organization and governance under Title 20-A, 20-A M.R.S. §§ §§ 1451-1512, outweighs whatever public interests there exist among these few affiants in Kennebunk. And the State's preeminent constitutional interest in providing functioning bodies politic for the

furtherance of public education, including the authorization and certification of regional school units, outweighs the personal, idiosyncratic, agendas – whatever those personal agendas might be – of what amounts to a little over two dozen affiants in Kennebunk, and the petition signatories who barely account for a mere 10% of Kennebunk’s votes cast at the last gubernatorial election. See Kennebunk Charter, Article VII, § 7.02 (the petition in issue, absent successful legal challenges, contains 3 more than the town’s required number of signatures of “at least 10% of the number of votes cast in the Town for Governor in the last gubernatorial election, . . .”). It is emphasized that the number of petition signatures further represents an extreme minority of all registered voters in Kennebunk, because there was less than 100% turnout of all registered voters in the 2018 gubernatorial election.

58. To the extent this extremely small minority of interests may even be considered a “public interest” for purposes of a preliminary injunction under M.R. Civ. P. 65, it is wholly outweighed by the greater public’s interest in the undistracted, efficient, working RSU 21 School Board, with its statutory size and composition of 3-year term directors.

59. This greater public interest is of statewide significance under the Maine constitution and statute (Title 20-A); and it is a regional public interest even within RSU 21, which includes Arundel and Kennebunkport – a public interest thereby expanding well beyond what is already an extreme, fraction of a minority of all registered voters in Kennebunk.

### **DEMAND FOR RELIEF**

WHEREFORE, Plaintiff Regional School Unit 21 seeks the following relief:

- a) That this Court enter judgment in Plaintiff's favor by declaring that RSU 21 School Board Directors are not legally subject to the town's recall procedures in the Kennebunk Charter, Article VII;
- b) That this Court declare that Defendant Town of Kennebunk has no authority and is under no obligation to comply with the recall provisions of Article VII of the Kennebunk Charter with respect to the recall petition in issue targeting elected Directors of the RSU 21 School Board; and declare that neither would such authority or obligation exist in any further or future recall initiative against RSU 21 school board directors purportedly commenced under said Article VII of the Kennebunk Charter;
- c) That this Court declare the same rights of Plaintiff RSU 21 exist as to the charter or code provisions, as currently constituted, of Parties-in-Interest Arundel and Kennebunkport;
- d) That this Court preliminarily ENJOIN the Defendant Town of Kennebunk from continuing to proceed with the current "recall" procedures under Article VII of the Kennebunk Charter;
- e) Consistent with the declaration herein, including subsections (a) and (b), that this Court PERMANENTLY ENJOIN the Defendant Town Kennebunk from continuing to proceed with the current "recall" procedures under Article VII of the Kennebunk Charter, and any further or future recall initiative which may be purportedly commenced against an RSU 21 school board director under said Article VII of the Kennebunk Charter;
- f) That this Court award Plaintiff RSU 21 such further relief as may be just, equitable, and proper, including allowable costs and expenses of court. Plaintiff RSU 21 does not claim a judgment of damages nor seek any penalties or compensatory awards against the Defendant or any Party-in-Interest by this action.

Dated at Portland, Maine, this 10<sup>th</sup> day of January, 2022.

NORMAN, HANSON & DeTROY, LLC

A handwritten signature in black ink, appearing to be "Russell B. Pierce, Jr.", written over a horizontal line.

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