

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.

**MOTION FOR PRELIMINARY  
INJUNCTION WITH INCORPORATED  
MEMORANDUM OF LAW**

**MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to the provisions of Rule 65 of the Maine Rules of Civil Procedure, Plaintiff Regional School Unit 21 (“RSU 21”) moves this Honorable Court for an immediate preliminary injunction against Defendant, the Town of Kennebunk, restraining and enjoining Defendant and those acting under its direction from ordering a recall election and/or further proceeding with any of the recall procedures enumerated in the Town of Kennebunk Charter (“Kennebunk Charter”) in response to two recall petitions delivered to the Kennebunk town office on December 31, 2021 purporting to trigger the recall process of two directors of the RSU 21 School Board.

One of the two subject recall petitions has been certified by Kennebunk as sufficient to proceed with recall procedures, with potentially a recall election as early as a special meeting of the town in March of 2022. Currently, Kennebunk has publicly noticed the date of January 10, 2022 as the deadline for legal challenges to the signatures of the one petition in issue, reflecting an intent to proceed under Article VII of the Charter with the recall procedures, legal challenges thereto, and potentially a recall election at a special town meeting in March of 2022.

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). Complaint ¶ 50. In this case, Count II of the Complaint sets forth Plaintiff RSU 21’s application for a preliminary injunction, together with this Motion. M.R. Civ. P. 65(b)(1).

### **INCORPORATED MEMORANDUM OF LAW**

In addition to the grounds set forth in the Complaint, this submission provides additional legal argument in support of the application for an immediate injunction, to preserve the “status quo” and cease any town proceedings towards a “recall” election in March, until this case can be decided with the full and careful deliberations and adjudication of this Court. The matter presents an issue of great weight and significance to the governance of Regional School Unit 21, now and in the near future. The issues presented impacts the composition and efficient functioning of RSU 21: the RSU 21 School Board cannot function efficiently if its directors must serve under circumstances when virtually at all times a director is subject to “recall” procedures that can even be frivolously initiated by a fractional minority of voters in just one town – as we have witnessed here, with the facially baseless “recall” initiative in issue. The issues presented also thereby potentially weigh on decisions of future citizens on whether to even

seek office to serve on the RSU 21 School Board. This Board, and future boards, should not be subject to ongoing, meritless town “recall” initiatives, under “recall” provisions that do not apply to the directors’ performance of their duties and responsibilities to the regional school unit board, as those duties and responsibilities are derived from the comprehensive statutory scheme in Title 20-A.

**INTRODUCTION**

This motion is thus supported by the Complaint’s averments, and by the correct interpretation of the Title 20-A framework governing the establishment and organization of regional school units as separate bodies politic and corporate. 20-A M.R.S. § 1461 & 1461(7). Each regional school unit, such as RSU 21, is approved upon submission of a plan for reorganization, with certifications of organization issued by the State, and the legislative framework of school boards as the governing body of the regional school unit. 20-A M.R.S. §§ 1451-1512.

As described in greater detail below and in the Complaint, the RSU 21 School Board directors are not subject to the recall provisions of Article VII of Kennebunk’s individual municipal charter, by which the subject petition signatories pursued the attempted recall. The RSU 21 directors are elected directors of the separate body politic and corporate, Regional School Unit 21, with its own comprehensive statutory scheme, 20-A M.R.S. §§ 1451, et seq., which contains no director recall provision. As a result, Defendant Town of Kennebunk should be enjoined from carrying out the recall procedures set forth in the Kennebunk Charter in response to receipt of the subject petition.

Preliminary injunctive relief is warranted to prevent the Town of Kennebunk from holding a recall election under the terms of the Kennebunk Charter, and to allow the duly elected

members of the RSU 21 School Board to peaceably conduct their business without the unnecessary and harmful disruption and expense of a recall election under a municipal charter provision that does not apply to them.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff Regional School Unit 21 (“RSU 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). Defendant, the Town of Kennebunk, together with Parties-in-Interest, the Town of Arundel and the Town of Kennebunkport, initiated the organization of RSU 21 in 2008, by submission of a reorganizational plan (“Plan”) for establishing a regional school unit pursuant to the provisions of 20-A M.R.S. §§ 1451-1512.

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).

Plaintiff here will not repeat the Complaint allegations, but incorporates them by reference. Complaint ¶¶ 1-59. Of significance to the present application for preliminary injunction, however, is that of the two recall petitions submitted to the town office of Kennebunk on December 31, 2021, one has been “certified” as “sufficient” by Kennebunk to continue with “recall” procedures under Article VII of the Charter, as to one currently serving director of the school board of RSU 21. Kennebunk public notice indicates that Kennebunk intends to continue with the recall procedures, including notice for “legal challenges,” leading potentially to a special town “recall” election as soon as March of 2022. Complaint ¶¶ 34-37.

By all objective appearances, the original 30-person affidavit which initiated the “recall” process under Article VII of the Charter (see sections 7.01 to 7.02) for the one “certified” petition in issue, contained some material falsely sworn facts. Both affidavits forming the basis of both petitions had set forth no grounds upon which one could reasonably or objectively conclude that there could be basis to lose confidence in either directors’ “judgment or ability to perform the duties and responsibilities of the office” under the terms of the Kennebunk Charter, Article VII, § 7.01. (One of the directors – the director subject to the petition that was *not* certified as sufficient – had been unanimously elected Chair, under 20-A M.R.S. § 1471(6), in 2021.) The recall petitions returned to the town office on December 31, 2021, were based upon the facially false or objectively baseless affidavits.<sup>1</sup>

### **LEGAL ARGUMENT**

It bears repeating that Title 20-A, §§ 1451-1512, of the Maine Revised Statutes is the comprehensive legislative scheme authorizing school organization into “regional school units.” Formation of a regional school unit is governed by 20-A M.R.S. §§ 1461-1468, which include detailed provisions involving submission of a plan for reorganization into an RSU 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). When formed, the regional school unit is “a body politic

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<sup>1</sup> The petition that failed certification apparently fell at least one signature short of the town’s requisite number of signatures of “at least 10% of the number of votes cast in the Town for Governor in the last gubernatorial election, . . .” See Kennebunk Charter, Article VII, § 7.02. The petition that was certified as sufficient exceeded the required number by only three signatures (668 of the required 665 – there having been reported 6650 votes cast in the municipality in the 2018 gubernatorial election). Thus the total number of petition signatures here is a very small fraction of all registered voters in Kennebunk – statistically less than 10%, given that less than 100% of all registered voters in Kennebunk cast votes in the 2018 gubernatorial election. See <https://www.kennebunkmaine.us/DocumentCenter/View/10116/Election-Results-2018-11-06> (last visited January 8, 2022).

and corporate.” 20-A M.R.S. § 1461(1). In this case, with proposed operational date of July 1, 2009, the reorganizational plan (“Plan”) for establishing RSU 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). In accordance with State authorizing statutes, the Plan was received by the Commissioner of Education, and a State certificate issued, with date of organization of July 1, 2009.

Also in 2009, the Kennebunk Charter Commission recommended amendments to the Charter, clearly reflecting the intention that the Charter’s Article VII recall provisions would not and could not 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 school board directors then-existing within the Charter, in recognition that school board directors 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).

No provision of the Charter expresses any power of the Select Board to govern the 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.

The School Board Directors of RSU 21 are elected directors of Regional School Unit 21, with election procedures, terms, and vacancies determined by the specific and comprehensive statutory scheme of 20-A M.R.S. §§ 1451, et seq. The provisions of Title 20-A governing vacancies in regional school unit boards do not include “recall” as a basis for the creation of a vacancy. 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).

Thus, the provisions of Title 20-A governing vacancies in regional school unit boards do not include municipal “recall” as a basis for the creation of a vacancy.

Finally, even the oath of office of a school board director is specifically defined under the terms of Title 20-A. 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). Complaint ¶ 17. 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 of office in relation to the regional school unit board, not the form of oath which might be contained in a specific town charter. Complaint ¶ 18.

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(1). They are not elected officials of a body corporate municipality. Complaint ¶ 19.

Plaintiff Regional School Unit 21 has filed a Complaint for Declaratory Judgment, applying also for preliminary and permanent injunction, asking this Honorable Court to declare that RSU 21 School Board Directors are not legally subject to recall procedures delineated in the Kennebunk Charter, or to idiosyncratic “recall” procedures of any other municipal town charter. The instant Motion for Preliminary Injunction seeks to enjoin Defendant Kennebunk from conducting a recall election while this case proceeds towards final disposition, and from ceasing all further procedure relating to any recall initiatives, whether pending or in the future, until this matter reaches final adjudication.

### **STANDARD OF REVIEW**

A preliminary injunction is warranted when the moving party can establish the following four criteria: “(1) that plaintiff will suffer irreparable injury if the injunction is not granted, (2)

that such injury outweighs any harm which granting the injunctive relief would inflict on the defendant, (3) that plaintiff has exhibited a likelihood of success on the merits (at most, a probability; at least, a substantial possibility), (4) that the public interest will not be adversely affected by granting the injunction.” *Dep’t of Env’t Prot. v. Emerson*, 563 A.2d 762, 768 (Me. 1989). These elements are not considered in isolation, but rather weighed “together in determining whether injunctive relief is proper in the specific circumstances of the case.” *Windham Land Trust v. Jeffords*, 2009 ME 29, ¶ 41, 967 A.2d 690. In particular, the factors are to be evaluated on a sliding scale whereby, for example, “[c]lear evidence of irreparable injury should result in a less stringent requirement of certainty of victory; greater certainty of victory should result in a less stringent requirement of proof of irreparable injury.” *Dep’t of Env’tl. Prot. v. Emerson*, 563 A.2d 762, 768 (Me. 1989) (quotation marks omitted).

## **DISCUSSION**

### **I. Application of Preliminary Injunction Elements.**

#### **a. Likelihood of Success.**

##### **i. The Regional School Unit Comprehensive Legislative Scheme**

As noted above, Title 20-A, sections 1451 to 1512, is the comprehensive legislative scheme authorizing school organization into “regional school units.” This is the legislative scheme that the three municipalities here (Kennebunk, Kennebunkport, and Arundel) affirmatively joined and invoked, including express references to Title 20-A’s several statutory provisions in their submitted and approved Plan. The structure and governance of an RSU 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].”).

Subchapter 3 (sections 1471-79) are the statutory provisions on governance of the RSU. 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). And 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). Note that even the oath of office is specifically defined under the terms of the statute. 20-A M.R.S. § 1471(5). The elected director takes this oath, in relation to the regional school unit board, not the form of oath which might be contained in a specific town charter.

Following special provisions involving the transition and election of an initial board, including significantly the plan submission of opting for one of at least four methods of director voting representation apportionment (the towns here chose Method B, weighted votes), the resulting elections result in a school board for governance of the RSU. Significantly, the election provision of Title 20-A, section 1473, for the purposes of accommodating nominations for initial directors, specifically references Title 30-A (Maine’s general statutory scheme pertaining to municipal governance) to define directors “for the purposes of nominations,” as “municipal officials.” This indicates that the school board directors are not, across the canvas on all issues, “municipal officials” under Title 30-A: it takes a specific legislative reference for a specific legislative purpose to include them as 30-A “municipal officials.”

Also significant within section 1473 is that, when this Plan adopts Method B under the statute, “a reduction in the number of directors, the addition of directors and the terms of office of additional directors **must be in accordance with this chapter.**” 20-A M.R.S. § 1473(2)(B) (bold emphasis added).

Then, most significantly for the purposes of this analysis, “vacancies” in a regional school unit board are statutorily defined 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 paragraph 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).<sup>2</sup>

The significance of section 1474, quoted above, is that it does not include “recall” as a basis for the creation of a vacancy on the board. As an omitted term, within an enumerated section, the proper statutory construction is to read the enumeration to mean that a recall is *not* a basis to create a vacancy on an RSU board.

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<sup>2</sup> This section goes on to govern when notices of vacancy are communicated to participating municipalities, and how those municipal officers of the municipality fill a vacancy. 20-A M.R.S. § 1474(2)-(3).

If there is any doubt on this point, one can contrast the *general* statutory scheme governing vacancies on other municipal offices or boards. 30-A M.R.S. § 2602. Section 2602 lists eight circumstances for when a vacancy occurs, with “recall pursuant to section 2505 [of Title 30-A]” as the last condition that could create a vacancy. Further, one should not presume that “recall” was intentionally omitted in Title 20-A because the Legislature assumed “recall” would be silently transported into Title 20-A from this general Title 30-A provision. The Title 30-A provision includes some of the identical conditions for vacancy listed in 20-A – for example, resignation, death, removal of residency from the municipality. If the logic were that vacancy grounds that are listed in Title 30-A are automatically transported into Title 20-A, why relist some of them but not all of them in Title 20-A? There would be no need to re-list anything in Title 20-A if it were the case that 20-A takes on everything from 30-A. Further, certainly if the Legislature intended all of the vacancy-provisions of Title 30-A to apply under the vacancy-provisions of Title 20-A, then Title 30-A could have simply been incorporated by reference, which is the most common method of statutory drafting and construction. (Just as, for example, this very statutory scheme, with occasional incorporation of specific provisions of Title 30-A for different purposes – see 20-A M.R.S. § 1473, incorporating by reference Title 30-A, chapter 121; or see 20-A M.R.S. 20-A M.R.S. §§ 1004, incorporating by reference Title 30-A, section 2605, on conflicts of interest relating to school board contracts).

All canons of statutory construction lead to the conclusion that the omission of “recall” as a basis for creating a vacancy in regional school unit boards in Title 20-A, means that municipal recall is not a basis for creating a vacancy. This conclusion is reasonable, because once the school board of directors is elected, each director is elected to serve on the board of RSU 21, as a separate “body politic and corporate,” not the specific municipality. 20-A M.R.S. § 1461(1).

Further no provision in the Plan submitted by the participating municipalities in this case provided for one municipality's exercise of "recall" to create a vacancy in the RSU 21 board. Where the Plan in issue here, throughout its provisions, specifically referenced the governing provisions of Title 20-A, it cannot be lightly assumed that the certificate of organization would have issued by the State, had there been idiosyncratic municipal recall provisions impacting the terms of each director, or the overall board composition and voting apportionment. Indeed, the Plan notably concludes, in the discussion of the RSU School 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 specifically references 20-A M.R.S. § 1473 as the governing structure for elections in terms of the regional school unit board, even in so far as it recognizes that the election must be conducted in accordance with Title 30-A provisions "as amended by section 1473(2) of Chapter 103-A of Title 20-A." Plan at 37. This is again an acknowledgment that the specific provisions governing vacancies of directors from Title 20-A control, not other general provisions of Title 30-A.

This analysis is also in keeping with the overarching principle of statutory construction that specific statutes prevail over general ones when the two are inconsistent. Here, Title 20-A is a specific statutory framework governing the terms and vacancies of regional school unit board directors. Any inconsistent provisions from the general "elected officials" statute (i.e., a Title 30-A provision that elected municipal officials are subject to municipal recall) must give way to the specific statute (i.e. the Title 20-A provision that RSU directors are not subject to municipal recall). *Houlton Water Company v. Public Utilities Commission*, 2016 Me 168, ¶ 21, 150 A.3d 1284; *South Portland Civil Service Commission v. City of South Portland*, 667 A. Two 599 (Me.

1995) (applying principle between general and specific provisions of city charter). *See Central Maine Power v. Devereux Marine, Inc.* 2013 ME 37, ¶ 22, 68 A.3d 1262 (it is a “fundamental rule of statutory construction that we favor the application of a specific statutory provision over the application of a more general provision when there is any inconsistency”).

An additional significant aspect of the analysis is that, in any event, standing alone, the “recall” provision incorporated by reference in Title 30-A allows for recall of an elected official “only if the official is convicted of a crime, the conduct of which occurred during the official’s term of office and the victim of which is the municipality.” 30-A M.R.S. § 2505(9). Clearly, that is not the case here, so on its face section 2505 of Title 30-A would not apply in any event.

Section 2505 also provides that recall of an elected official “of a municipality” may be otherwise provided by the municipality’s ordinances or charter. However, to read this provision in harmony with Title 20-A, in the context of the present issue, at the very least what this provision would mandate is that *the relevant charter provision* in issue *expressly* and specifically state that it applies to an RSU director, not just to an “elected official of the municipality” in general.

## ii. Charters/Ordinances

a. Kennebunk. Here, Kennebunk’s charter does not expressly state that its general recall provisions apply to RSU School Board directors. This is necessary in order to capture any arguable authority conferred by 30-A M.R.S. § 2505 to apply local recall provisions to RSU directors. The only elected officials referenced in the charter are the Board of Selectmen – the other officials being appointed. See Kennebunk Charter, Sec.. 3.11. Article VII of the Kennebunk Charter governing the recall of elected officials, does not specifically include RSU Board of Directors officials as “elected officials” subject to recall under Article VII. Again, the

RSU school board directors are not presumptively elected officials “of Kennebunk,” they are elected directors of the body politic and corporate RSU 21 established under Title 20-A. If there is an intention to include them as “a municipal officers” subject to the recall provisions of Title 30-A (thereby, in turn, subjecting them to additional recall provisions of the municipal charter) the municipal charter must at least say so.

b. Kennebunkport. Kennebunkport’s Administrative Code exemplifies the importance of this issue a step further, by expressly stating that its removal provisions (section 5-3 of Article I of the Administrative Code) apply to “any elected official of the Town of Kennebunkport” – the provision immediately follows the descriptions of the Town Meeting Moderator (section 5-1) and Selectmen (section 5-2) as the elected officials of the town, to whom section 5-3 would then logically apply. Again, there is no clear distinction that elected directors of RSU 21 – its own body politic – are subject to the removal provisions of section 5-3 of Kennebunkport’s Administrative Code. Section 5-3 does not mention RSU school board directors. The RSU 21 directors are elected directors of RSU 21, its own body politic and corporate, not “of the Town of Kennebunkport.” *See* Complaint ¶ 48.

c. Arundel. Arundel’s municipal charter, providently, may be proof in the pudding of these points regarding charter-based recall: First, Arundel amended its old section 5.0 governing its previous school board, by stating those old provisions only apply as necessary. Significantly, those provisions had included a supplement to the “vacancy” provisions of Title 20-A M.R.S. § 2305, *which had governed vacancies in its school committee before RSU formation.* Arundel Charter, Section 5.5. This is a tacit recognition that Title 20-A governs, including “vacancy” in office provisions, unless supplemented by a specific charter provision. Second, Arundel’s specific “Recall of Elected Officials” provisions, section 14.3, states: “any

elected official of the Town, *with the exception of School Board members as noted in [30-A M.R.S. § 2602]*, may be recalled and removed from elective office by the registered voters of the Town as here provided.” Arundel Charter 14.3 at p. 28 (italics emphasis added). Reasonably construed, the reference to Title 30-A, section 2602 would be in order to incorporate by reference *that* section’s inclusion of recall under section 2505 as a basis for creating a vacancy in office: in other words, under Arundel’s charter, an RSU 21 director with residency in Arundel might be subject to recall for conviction of a crime while in office pursuant to section 2505, but for no other basis. But further without question, in keeping with the principles outlined here, the “recall of elected officials” charter provisions do not otherwise apply to school board directors, as Arundel’s charter makes clear by its own terms.

As demonstrated by the extensive analysis above, RSU 21 easily satisfies the “likelihood of success” factor in the preliminary injunctive relief analysis. *See* Complaint ¶¶ 1-37.

**b. Irreparable Injury.**

An “irreparable injury” is one “for which there is no adequate remedy at law.” *Bangor Historic Track, Inc. v. Dept. of Agriculture*, 2003 ME 140, ¶ 10, 837 A.2d 129. If Defendant Town of Kennebunk is allowed to proceed with a recall election pursuant to the Kennebunk Charter’s recall provisions, Article VII, §§ 7.01-7.07, the targeted director of the RSU 21 School Board will be required to engage in the lengthy, potentially time-consuming and disruptive process of contending with recall procedures, legal challenges, and a recall election relating to a seat rightfully and presently held. The ramifications of irreparable injury to the rest of the Board are similarly egregious and irreparable, as the present statutory composition of the Board is compromised, and further each director faces the uncertainties of whether idiosyncratic “recall” provisions of a municipal charter, containing ill-defined standards for imposing recall process,

will apply at critical points in a 3-year term, and potentially be triggered by a fractional and divisive minority of voters in just one municipality.

In summary, invalid recall proceedings and the prospect of a recall election, held by special town meeting during a 3-year term, irreversibly disrupts the RSU 21 School Board's terms and regularly conducted business. The RSU 21 School Board's operations, and the performance of its duties and responsibilities for the benefit of the students, teachers, and all employees of RSU 21, will be irreparably disrupted. 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. *See* Complaint ¶ 52.

**c. Balancing of the Harms.**

Should an injunction issue, the Town of Kennebunk will not only suffer no legitimate harm, but will be able to avoid the significant time, staff resources, and taxpayer expense that would be required to conduct a town-wide recall election outside of its regular annual meeting – under circumstances where there is at least a substantial possibility that that very election could ultimately be held legally invalid. By contrast, the harm to RSU 21 – and, by extension, to the communities and public school students that the School Board serves in Arundel, Kennebunk, and Kennebunkport – is significant, when it is considered that public service work is disrupted by a small and divisive faction of petitioners in only one of the three represented municipalities. The balance of the harms element of the preliminary injunctive analysis weighs heavily in Plaintiff's favor. *See* Complaint ¶ 53. 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. *See* Complaint ¶ 55.

**d. Public Interest.**

Traditionally in Maine, public education had been a matter of State rather than local concern. *School Committee of Town of Winslow v. Inhabitants of Town of Winslow*, 404 A. 2d 1988, 991-92 (Me. 1979). While the breadth of this proposition has been undoubtedly narrowed in scope by later specific Legislative grants of home rule authority to municipalities for governance of local school committees or school boards, the policy underlying State interest in public education remains the same.

With the regional school unit statutory scheme of Title 20-A, this State preeminence recurs again, precisely because it is in both the State's and the participating municipalities' best interests to advance a comprehensive statutory scheme of cooperative resource allocation and other efficiencies relating to public education, which may be obtained by advancing regional efficiencies. Simply put, allowing one town's general and undefined municipal "recall" charter provisions to disrupt the terms, composition, vacancies, and terms of service of school board directors – each of whom has sworn an oath of office in relation to the regional school unit (20-A M.R.S. § 1471(5)) – would disrupt these beneficial policies, including to the detriment of the State and of the other participating municipalities.

Furthermore, 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). It is *the State* that certifies the organization of RSU 21, not any one municipality. 20-A M.R.S. § 1461(7). See Complaint ¶ 54. The Select Board of Kennebunk does not have supervisory power over the RSU 21 School Board, which is the governing body of RSU 21. 20-A M.R.S. § 1471. There is therefore no public interest in the Select Board proceeding to hold a municipal recall election that threatens to remove a school board director based on the director's legitimate performance of duties in office.

Whatever public interest Kennebunk has in proceeding with municipal "recall" election procedures and holding a special "recall" election, must be recognized in the context of this case – i.e., it 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 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 petitioners who barely account for a mere 10% of Kennebunk's votes cast at the last gubernatorial election, and account for less than 10% of the overall registered voters. 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 this further represents an extreme minority of all

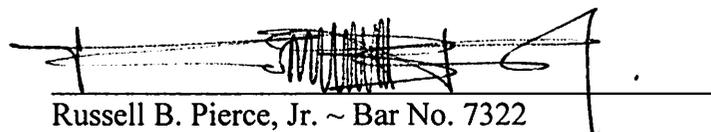
registered voters in Kennebunk, because there was less than 100% turnout of all registered voters in the 2018 gubernatorial election. To the extent this extremely small minority of interests may even be considered a “public interest” for purposes of a preliminary injunction under M.R. Civ. P. 65, it 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, serving the best interests all of the students and employees of RSU 21 regionally. *See* Complaint ¶ 58.

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. *See* Complaint ¶ 59.

**CONCLUSION**

For the foregoing reasons, preliminary injunctive relief is appropriate to enjoin Defendant, the Town of Kennebunk, from conducting a recall election targeting a current director of the RSU 21 School Board, or from continuing municipal recall procedures against RSU 21 School Board Directors. The form of requested relief is set forth in the proposed order, attached hereto, and submitted pursuant to Rule 7(b)(3) of the Maine Rules of Civil Procedure.

Dated: January 10, 2022

  
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**NOTICE**

**AN OPPOSITION TO THIS MOTION MUST BE FILED NOT LATER THAN 21 DAYS AFTER THE FILING OF THE MOTION UNLESS ANOTHER TIME IS PROVIDED BY THE RULES OR SET BY THE COURT. FAILURE TO FILE TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THE MOTION, WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OF HEARING.**