STATE OF MAINE
YORK, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-22-007

REGIONAL SCHOOL UNIT 21,

Plaintiff,

v.

TOWN OF KENNEBUNK,

Defendant,

and

TOWN OF ARUNDEL and TOWN OF KENNEBUNKPORT,

Parties-in-Interest.

**MEMORANDUM OF DECISION AND ORDER**

## I. Background

In June 2019, the voters of Kennebunk elected Tim Stentiford to serve a three-year term representing them as a director on the Regional School Unit 21 ("RSU 21") Board. His term, which began on July 1, 2019, will be completed at the end of June—less than four months from now. Several Kennebunk residents initiated a recall process to remove Mr. Stentiford from office prior to the expiration of his current term. On November 29, 2021, two affidavits bearing the signatures of approximately 30 voters were returned to the Kennebunk Select Board seeking to initiate recall procedures with respect to two RSU 21 Board Directors, one of whom is Mr. Stentiford. In accordance with the Town of Kennebunk Charter ("Charter"), the Town Clerk issued petitions. (Ex. 5 at § 7.02.)

On December 31, 2021, the petitions were returned to the Kennebunk Town Office. The Kennebunk Town Clerk certified only one of the two petitions—the petition relating to Mr. Stentiford—as sufficient under the Charter.[1] (*Id.* at § 7.03.) The Clerk determined that the second petition did not have the requisite number of signatures to proceed with the recall process. In accordance with Article VII of the Charter, the Kennebunk Select Board scheduled the recall election involving Mr. Stentiford to take place at a previously scheduled Special Town Meeting on March 29, 2022. (*Id.*)

On January 10, 2022, Plaintiff RSU 21 filed this action against the Town of Kennebunk ("Town") and Parties-in-Interest Towns of Kennebunkport and Arundel. The complaint seeks a declaratory judgment pursuant to 14 M.R.S. § 5951, *et. seq.*, that RSU 21 Board Directors elected by the citizens of Kennebunk are exempt from the recall provisions in the Town's Charter.[2] The complaint further requests preliminary and permanent injunctive relief against the Town to enjoin it from proceeding ahead with conducting the March 29th recall election as well as any future recall initiative involving an RSU 21 Board Director. Along with the complaint, Plaintiff filed a motion for preliminary injunction.

On January 28, 2022, Plaintiff's counsel requested that the motion for preliminary injunction be treated as a request for a temporary restraining order and an emergency hearing be held. A hearing was scheduled and held on February 2, 2022. Following the

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[1] Although challenges to petition signatures were filed within the five-day period prescribed by the Charter, the Town Clerk ultimately determined that there were a sufficient number of signatures to proceed with the recall process with regard to Tim Stentiford.

[2] The complaint also requests that the court "declare the same rights of Plaintiff RSU 21 exist with respect to the charter or code provisions, as currently constituted, of Parties-in-Interest Arundel and Kennebunkport." (Compl. at 16.). The court declines to entertain this request since there is no genuine, concrete controversy presented in this case involving the Arundel or Kennebunkport charters. *See, e.g. Blanchard v. Town of Bar Harbor,* 2019 ME 168, ¶¶ 14, 20, 221 A.3d 554; *Patrons Oxford Mut. Ins. Co. v. Garcia,* 1998 ME 38, ¶ 4, 707 A.2d 384.

hearing, the court issued an order denying RSU 21's request for a temporary restraining order after concluding that it had failed to demonstrate irreparable injury if the recall process were not enjoined. The parties agreed to submit the matter for final hearing on a stipulated record. Supplemental briefs and a stipulated record have been submitted. Final hearing was held on March 2, 2022.

## II. Discussion

This action does not involve Mr. Stentiford's qualifications to serve as an RSU 21 Board Director or his performance in that office.[3] Nor does Plaintiff contest the Town's handling of the recall process, including its determination that sufficient signatures were gathered to hold a recall election. Rather, this action challenges the Town's legal authority to hold a recall election of an official who was duly elected by the voters of Kennebunk as their representative on the RSU 21 Board. Plaintiff contends that the Charter does not authorize such a recall election; and, even if it does, that state law in Chapter 103-A of Title 20-A of the Maine Revised Statutes preempts the Charter. The court concludes that the Charter authorizes a recall of an RSU 21 Board Director and that provisions in Title 20-A relating to the establishment and operations of regional school units do not preempt that authority.

### A. Charter

The interpretation of a municipal charter is a question of law. *McGettigan v. Town of Freeport,* 2012 ME 28, ¶ 13, 39 A.3d 48. The court construes words in a municipal charter "based on [their] ordinary meaning unless to do so would be illogical or nonsensical."

[3] Mr. Stentiford is not a party to this action.

*Bradbury v. City of Eastport,* 2016 ME 20, ¶ 6, 132 A.2d 188. Moreover, provisions of the Charter "must be liberally construed."[4] *Id.; see also* 30-A M.R.S. § 3001(1) (Legislature's grant of authority to municipalities "shall be liberally construed").

Article VII of the Charter governs the recall process in Kennebunk. Section 7.01 provides:

> *Any elected official* may be recalled and removed from office by the qualified voters of the Town as provided herein. Recall is intended to be used when, in the opinion of the number of voters hereinafter specified, an *elected official,* acting as such, has caused a loss of confidence in that official's judgment or ability to perform the duties and responsibilities of the office.

(Ex. 5 at § 7.01) (Emphasis added.) The Charter does not define the term, "elected official." However, its "ordinary meaning" is plain and unambiguous—an official who is elected by the voters of Kennebunk. By contrast, the Charter does employ and define the term, "Town official." Section 3.09 provides that "[u]nless otherwise required by law, or the context in which the term appears compels a contrary interpretation, whenever the term 'Town official' is used in this Charter, it shall be interpreted to mean any elected or appointed Town officer, appointee or employee." (Ex. 5 at § 3.09)

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[4] Section 1.03 of the Charter provides:

> The provisions of this Charter shall be liberally construed so as to enable the Town to exercise any power or function which the Legislature of the State of Maine has power to confer upon the Town, which is not denied either expressly or by clear implication, and to exercise any power or function granted to the Town by the Constitution, the laws of the State of Maine, or this Charter.

(Ex. 5 at § 1.03.) This language is based on a legislative grant of "independent and plenary" authority to municipalities by 30-A M.R.S. § 3001 to legislate on matter beyond those that are exclusively local and is not limited by the Constitution's narrower home rule provision. *Sch. Comm. Of Town of York v. Town of York,* 626 A.2d 935, 939 (Me. 1993).

Section 7.01's use of the term "elected official" therefore, appears clear and deliberate. Nowhere else in the Charter is the term "elected official" qualified to exclude individuals who are running for election to the RSU 21 Board from Kennebunk. Rather, other Charter provisions support an interpretation of that term to include RSU 21 Board Directors. Section 2.05, for example, expressly provides for the election of "quasi-municipal and district officials." (Ex. 5 at § 2.05.) An elected board member of a school administrative district is a "quasi-municipal [or] district official" under Maine law. 30-A M.R.S. § 2604. Section 2.02(1) further establishes the date of the annual Town Meeting for purposes of voting and also specifies the commencement date for the terms of municipal officers as well as the "terms for School Board Directors, *including those elected to a Regional School Unit,* or successor organization."[5] (Ex. 5 at § 2.02.) (Emphasis added.)

The court concludes, therefore, that based on its plain language, read in conjunction with other provisions therein and in light of applicable canons of construction, the Charter authorizes the voters of Kennebunk to recall an RSU 21 Board Director whom they have previously elected.

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[5] Plaintiffs contend that the Charter Commission intended (and voted) at its July 17, 2008, meeting to delete from Section 2.02(1) prior language specifying the term of office for "School Board Directors" in light of the recent enactment of legislation establishing regional school units even though this action was "inadvertently" not reflected in Charter that was adopted. (Aff. of J. Costin ¶¶ 14- 18; Aff. of G. Dinino ¶¶ 9, 12-14.). The Charter Commission's final report in September 2008 contained a marked-up draft of the proposed changes which not only retained this prior language but modified it by adding the underscored language above expressly referring to School Board Directors who are *"elected to a Regional School Unit,"*—an explicit reference to the new administrative structure established by P.L. 2007, c. 240 (the Reorganization Law). (Exs. 3, 4.) This added language remained in the Charter amendments that were finally adopted in 2009—after the Commissioner of Education's approval in October 2008 of the Reorganization Plan submitted on behalf of Kennebunk, Kennebunkport, and Arundel. (Ex. 2.) Although the Charter has been amended no fewer than seven times since, this supposed oversight has not been corrected. (Ex. 5.). The plain language of the document controls.

## B. Preemption

Plaintiff contends that the field of public education traditionally has been a matter of state rather than local concern, citing *School Comm. of Winslow v. Town of Winslow,* 404 A.2d 988 (Me. 1979); and therefore the Legislature has "plenary authority" to "control . . . the public school system of this state." *MSAD 6 Bd. of Directors v. Town of Frye Island,* 2020 ME 45, ¶ 24, 229 A.3d 514 (*"Frye Island II"*).[6] Plaintiff thus asserts that the Legislature's enactment of P.L. 2007, c. 240, pt. XXXX—13 ("Reorganization Law" codified in Chapter 103-

[6] *Winslow, Frye Island II,* and other cases cited by Plaintiff in its memoranda to support the preemption argument as applied in this case are distinguishable or otherwise unpersuasive. For example, in the *Winslow* case, a town referendum changed the term of office of Winslow School Committee members from the three-year term required by statute to a two-year term and changed the basis for election from at-large to district-by-district. Emphasizing the Legislature's "plenary authority" in the area of public education, the Law Court held that these matters were "beyond municipal control." *Town of Winslow,* 404 A.2d at 992. *Winslow* involved specific statutory provisions that the municipality attempted to modify. Here, Title 20-A is silent on whether RSU Board directors may be recalled. Moreover, the rationale articulated in *Winslow* (and earlier precedents) that matters relating to education are not subject to local legislation was "legislatively overruled by 30-A M.R.S. § 3001 to the extent they require an express grant of authority to legislate in the field of education." *Town of York,* 626 A.2d at 940. In *Frye Island II,* the town of Frye Island attempted to withdraw from MSAD 6 several years after seceding from Standish pursuant to a Private and Special Law which specified a condition that Frye Island remain a part of the school administrative district unless permitted to withdraw "in accordance with applicable state law." *Frye Island II,* 2020 ME 45, ¶ 6. The Legislature responded to the second withdrawal attempt by enacting another Private and Special Law which required prior authorization for Frye Island to withdraw from MSAD 6. The town then enacted a charter amendment purporting to repeal the law—an action that not only directly contravened the Legislature's action but also its authority over educational policy as well as home rule authority set out in 30-A M.R.S. § 3001. Again, here, Title 20-A makes no provision with respect to the recall of directors of regional school unit boards and delegates authority to municipalities with respect to their election. In *City of Lewiston v. Lewiston Educ. Directors,* 503 A.2d 201 (Me. 1985), the city charter had a provision which purported to exercise approval over public school management and operational issues. *City of Lewiston,* 503 A.2d at 213. That case, too, is distinguishable from the instant case, which does not involve school management and operational issues reserved to state authority but rather a specific area that Chapter 103-A itself reserves to municipalities—election of board directors.

A of 20-A M.R.S. §§ 1451-1512), which authorized the creation of regional school units, established a comprehensive legislative scheme that preempts the Town's authority to conduct recall elections of directors elected to serve on the RSU 21 Board. For the following reasons, the court rejects this argument.

As a general matter, the Legislature, despite its plenary authority over public education, has not denied municipalities the authority to legislate in the area. *Sch. Comm. of Town of York v. Town of York,* 626 A.2d 935, 942 (Me. 1993); *see also Biddeford Bd. of Educ. v. Biddeford Teachers Ass'n,* 1997 ME 17, ¶ 12, 688 A.2d 922 (Following *Town of York's* holding that Title 20-A is "not an exclusive legislative scheme that implicitly preempts municipal legislation on education matters" as applied in the context of approval of teacher salaries despite contrary provision in Title 20-A); *cf. Central Maine Power Co. v. Town of Lebanon,* 571 A.2d 1189, 1193 (Me. 1990) (Municipal ordinance only preempted where Legislature intends to create a "comprehensive and exclusive regulatory scheme"). In *Town of York,* the Law Court concluded that:

> given the broad delegation of home rule authority and the standard of review of municipal legislation set out in section 3001 [of Title 30-A], . . . *Title 20-A is not an exclusive legislative scheme that implicitly preempts municipal legislation on education matters* in the absence of an express grant of authority.

*Id.* (emphasis added). In fact, quoting from a Legislative Committee Report, the Law Court noted that "municipal and state enactments may peacefully co-exist within any given subject area unless a conflict arises, in which event the state statute will control." *Id.* at 944.

Thus, the "mere fact that there is a state law, or even a multitude of state laws on the subject is by itself irrelevant; the key is whether the Legislature intended to *exclusively* occupy the field and thereby deny a municipality's home rule authority to act in the same area." *Id.* at 941. The municipal legislation at issue here—Article VII's recall provision as

applied to RSU Board Directors—will be preempted only where the Legislature has either "expressly or by clear implication" so intended; or, in other words, "has intended to exclusively occupy the field" and the application of Article VII to RSU 21 Board Directors "would frustrate the purpose of any state law." 30-A M.R.S. §§ 3001, 3001(3); *Town of York,* 626 A.2d at 939.

The Reorganization Law does not expressly or by clear implication preempt Article II's recall provision as applied to RSU 21 Board members, nor intend to exclusively occupy the field in this area. A close examination of the statute bears this out.

In the 2007 Reorganization Law, the Legislature established a process by which residents of two or more existing school administrative units could form a planning committee, develop a plan for a regional school unit, and submit the plan to the Commissioner of Education for approval pursuant to 20-A M.R.S. § 1461. Once approved, the regional school unit constitutes a "body politic and corporate" charged with overseeing and administering public schools and promoting uniform, equitable, and cost-effective educational services to meet the requirements of learning results and other policies. 20-A M.R.S. §§ 1451, 1461.

The statute establishes a board of directors to govern the RSU and oversee schools within the regional school unit. 20-A M.R.S. § 1471. The statute establishes the term of office and compensation of directors; prescribes an oath for the directors; and provides for election of board officers. *Id.* It authorizes boards to enact their own bylaws; establishes a quorum for board meetings; and defines when a vacancy in office occurs and how the vacancy is filled. 20-A M.R.S. §§ 1474, 1476, 1477.

The statute also contemplates, however, that directors of regional school unit boards are to be elected by the residents of the constituent municipalities in local elections. 20-A M.R.S. § 1473 ("For purposes of nominations, regional school unit board directors are considered municipal officials and must be nominated in accordance with Title 30-A, chapter 121, or with a municipal charter, whichever is applicable"). Section 1472 provides four alternative methods for apportionment for purposes of electing directors in municipal elections: subdistrict representation (Method A); weighted votes (Method B); at-large voting (Method C); and any other method that "meets the requirements of the one-person, one-vote principle" (Method D). 20-A M.R.S. § 1472.

Representatives from Kennebunk, Kennebunkport, and Arundel formed a committee which developed a plan ("Plan") to merge the Arundel School Department with M.S.A.D. 71 to form Regional School Unit 21. (Ex. 1 at 1.) The Plan was approved in October 2008, effective as of July 1, 2009. (Ex. 2.) The Plan adopted Method B, which apportioned the number of directors and weighted their votes based on the respective populations of the three municipalities joining the school unit, resulting in three directors for Arundel, three for Kennebunkport, and six for Kennebunk. (Ex. 1 at 3.) The Plan specified a procedure for the initial election of the board directors, which "shall be conducted in accordance with Title 30-A Chapter 121 of the Maine Revised Statutes" (which governs municipal elections); and further provided that "the clerk of each municipality within the regional school unit shall forward the name(s) and address(es) of the director(s) elected to represent that municipality . . .." (Ex. 1 at 37.)

While the statute governs the establishment and operation of regional school unit boards, it does not preemptively establish the process by which the board directors are

elected. Elections are distinct from operational governance. The Legislature clearly did not intend to "exclusively occupy the field and thereby deny a municipality's home rule authority" in the specific area of electing the RSU board directors. *See Town of York,* 626 A.2d at 935. On the contrary, the statute contemplates that board directors be elected in local, municipal elections conducted "in accordance with Title 30-A Chapter 121 or with a municipal charter, whichever is applicable." 20-A M.R.S. 1473. Moreover, by virtue of the apportionment method adopted in RSU 21—Method B under 20-A M.R.S. § 1472(2)—the RSU 21 Board Directors serve as representatives of their respective municipalities. Article VII's provisions for recall of "any elected official" is consistent with the principles of representational government that apply to all other elected officials representing the residents of the Town.

Plaintiff argues that even though the statute contemplates the election of regional school unit board directors at the municipal level, Article VII's recall authority is preempted because it is at odds with the statute and frustrates the purposes of the Reorganization Law. Plaintiff contends that the recall of Mr. Stentiford in this case contravenes the statute's provision for a three-year term of office and the requirement that "[a] director serves until a successor is elected and qualified." 20-A M.R.S. 1471(2). Neither is the case. A recall itself under Article VII, if successful, does not shorten the office's three-year term. The office's occupant is changed, not the length of the term. Moreover, Article VII also provides that the incumbent continues to serve in office during the recall process and until the elected successor is qualified. (Ex. 5 at §§ 7.03, 7.05.).

Plaintiff further contends that the vacancy provisions in 20-A M.R.S. § 1474 preempt by implication the notion that a director of a regional school unit board can be recalled.

Section 1474 defines a vacancy on such boards as occurring when a director resigns, dies, changes residency, or when his term expires.[7] Plaintiff argues that because the statute omits the circumstance where a director may be recalled, the implication is that the Legislature intended to prohibit recalls, thereby preempting, in this case, Article VII of the Kennebunk Charter. This argument is also unpersuasive. The recall of an elected official under Article VII of the Charter does not result in a vacancy because a successor director is elected simultaneously on the same ballot if the incumbent is recalled. (Ex. 5 at § 7.06.) As noted, the incumbent continues to serve during the recall process and until a successor is elected and the results certified. (*Id.* at § 7.05.)

Plaintiff also points to the differences between Title 20-A and Title 30-A with regard to provisions addressing recall elections and vacancies as support for the argument that the Legislature intended 20-A M.R.A. § 1474 to preclude recall elections. Section 2602(1) includes a "[r]ecall pursuant to section 2505" in its definition of when a vacancy exists. 30-A M.R.S. § 2602(1)(H). This subsection was added in 2011 in conjunction with the adoption of 30-A M.R.S. § 2505, which provides for recall elections of municipal officials.[8] *See* P.L.

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[7] Note that when a vacancy as defined by Section 1474(1) does occur, it is the municipal officers of municipality in which the director resided that select an interim director to serve until the next annual municipal election. 20-A M.R.S. § 1474(3)(A). This highlights further the Legislature's separation of the governance, operations, and policy-setting functions of the RSU board from the process of electing (or selecting) board directors, with the former being exclusively committed to RSU (i.e. state) authority and the latter delegated to municipal authority.

[8] Section 2505 provides: "Except as otherwise provided by the municipality's ordinances or charter, an elected official of a municipality may be recalled pursuant to this section. For purposes of this section, "official" has the same meaning as section 2604, subsection 2." 30-A M.R.S. § 2505. Section 2604(2) includes "any elected or appointed member of a municipal or county government or of a quasi-municipal corporation," which would expressly include "directors of school administrative districts. 30-A M.R.S. § 2604(2), (3). The ground for recall is limited to conviction of a crime which occurred during the official's term of office and the victim of which is the municipality. 30-A M.R.S. § 2505(9).

2011, c. 324, §§ 1-4. Plaintiff argues that Section 2505 does not apply to directors of regional school unit boards and that since Section 1474, the vacancy statute in Title 20-A, was not changed in connection with the 2011 amendments to Title 30-A, the implication is that the Legislature intended to exempt the directors from recall.

It seems clear that the Legislature was intent on providing a default provision for the recall of municipal officials in at least the limited circumstances set out in Section 2505, and this would apply to elected directors of "school administrative districts." 30-A M.R.S. §§ 2505, 2505(9), 2604(2), (3). However, Section 2505 only applies if there is no recall provision in a municipal ordinance or charter. Here, there is a recall provision in the Town's Charter; it applies, not Section 2505. The fact that the Legislature did not concurrently amend Title 20-A's vacancy provision in Section 1474 is not, in the court's view, the kind of "clear implication" required to evidence an intent "to exclusively occupy the field." By Plaintiff's logic, a board director convicted of a crime against the regional school unit or municipality during their term of office would not be subject to recall at all, either under the Charter or under 30-A M.R.S. § 2505. If the Legislature intends to exempt this entire class of elected officials from recall, it should do so expressly.

Finally, the court also rejects the argument that if the recall provision in Article VII applies to RSU 21 Board Directors it "would frustrate the purpose of the legislation as a whole" by, for example, "truncating" the statutory three-year term of a director to less than three years or altering the compositional balance on the board if some directors are subject to recall and others not.[9] As discussed above, the recall provision does not alter term length,

[9] Arundel's Municipal Charter provides: "Any elected official of the Town, *with the exception of School Board members as noted in 30-A M.R.S. Section 2602*, may be recalled and removed from elective office by the registered voters of the Town . . .." (Ex. 7 at 29.) (Emphasis added.)

nor does it affect the composition of the board because a successor is simultaneously elected. Certainly, individual directors subject to a recall election bear the burdens of that process and there may be some temporary impact on the board functioning, as several of the affidavits submitted in this case suggest. While unfortunate, this does not amount to a frustration of the statute's purposes, at least on the instant record.

### III. Conclusion and Order

For the reasons set forth above, the court concludes that the Town of Kennebunk, under its Charter and consistent with both the principles of home rule and the provisions of Titles 20-A and 30-A, has the authority under its Charter to hold recall elections for RSU 21 Board Directors. This conclusion is in no way intended to, nor does, reflect upon Mr. Stentiford's capacity or qualifications to continue serving as an RSU 21 Board Director, his performance in that office, or the merits or demerits of the recall initiative.

Accordingly, it is hereby ordered and the entry is: "Plaintiff Regional School Board 21's request for declaratory and injunctive relief is DENIED. Judgment for Defendant Town of Kennebunk on all counts of the complaint." The clerk may incorporate this Memorandum of Decision and Order on the docket by reference pursuant to M.R. Civ. P. 79(a).

SO ORDERED

Dated: March 8, 2022

Wayne R. Douglas
Justice, Superior Court

ENTERED ON THE DOCKET ON: 3/8/2022