

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH
Southern Judicial District

SUPERIOR COURT

Town of Hudson and
Hudson School District SAU 81

v.

Hudson Budget Committee

Docket No. _____

**PETITION FOR DECLARATORY JUDGMENT,
PRELIMINARY AND PERMANENT INUNCTION**
(Petition for Writ of Mandamus)

NOW COME the Petitioners, Town of Hudson, by and through its attorneys, Tarbell & Brodich, P.A., and Hudson School District SAU 81, by and through its attorneys, Soule, Leslie, Kidder, Sayward & Loughman, P.L.L.C. and respectfully submit the within Petition for Declaratory Judgment, Preliminary and Permanent Injunction, and in support thereof states as follows:

Parties

1. The Petitioner, Town of Hudson (“Town”), is a New Hampshire municipal corporation, with an address of 12 School Street, Hudson, New Hampshire 03051, acting by and through its Board of Selectmen.
2. The Petitioner, Hudson School District SAU 81 (“School District”), is a New Hampshire municipal corporation, with an address of 20 Library Street, Hudson, New Hampshire 03051, acting by and through its School Board.

3. The Respondent, Hudson Budget Committee (“Budget Committee”), is a statutory agency of the Town and School District, with a mailing address of 12 School Street, Hudson, New Hampshire 03051.

Jurisdiction and Venue

4. Jurisdiction is proper in the Superior Court pursuant to RSA 498:1 and RSA 491:22.

5. The Town and School District are located in the County of Hillsborough, State of New Hampshire, and venue is proper in the Superior Court for the Southern Judicial District of Hillsborough County.

Conduct Complained of and Request for Relief

6. On March 16, 2022, the elected members of the Budget Committee amended their bylaws to exclude the appointed ex officio Board of Selectmen and School Board members of the Budget Committee from voting.

7. The Town and School District are seeking a declaratory ruling and mandatory injunction from the Court which prohibits the elected members of the Budget Committee from excluding the appointed members of the Budget Committee from participating in the affairs of the Budget Committee and restores the appointed members’ voting status.

Applicable Law

8. Pursuant to RSA 32:15:

I. The budget committee shall consist of:

(a) Three to 12 members-at-large, who may be either elected or appointed by the moderator, as the town or district adopting the provisions of this subdivision shall by vote determine, who shall serve staggered terms of 3 years; and

(b) One member of the governing body of the municipality and, if the municipality is a town, one member of the school board of each school district wholly within the town and one member of each village district wholly within the town, all of whom shall be appointed by their respective boards to serve for a term

of one year and until their successors are qualified. Each such member may be represented by an alternate member designated by the respective board, who shall, when sitting, have the same authority as the regular member.

9. By statute, the Budget Committee membership consists of both elected members-at-large, and appointed members.
10. The appointed members include one (1) member of the governing body of the municipality, and if applicable, one (1) member of the school board for each school district in the town, and one (1) member for each village district in the town.
11. The appointed members are equal members of the budget committee with full voting rights.

Facts

12. In Hudson, the Budget Committee consists of nine (9) elected members-at-large, together with, one (1) appointed member of the Board of Selectmen, and one (1) appointed member of the School Board, for a total of eleven (11) members.
13. On March 16, 2022, the elected members of the Budget Committee amended its Bylaws by adding a new provision, Section VII, F (3)(c), as follows:

Any and all votes of the Hudson municipal Budget Committee will be limited to the nine (9) elected or duly appointed members at large.
14. The Bylaw was adopted with a vote of 7-1.
15. The seven (7) members who voted in favor are all elected members; the one (1) vote in opposition was the Selectmen's appointed member; the School Board's appointed member was absent from the meeting and did not vote.
16. The effect of the Bylaw is to prohibit the Town and School District's appointed members from voting on any and all matters before the Budget Committee.

17. On or about April 13, 2022, legal counsel for both the Town and School District wrote letters to the Budget Committee, advising the Budget Committee that excluding the appointed members from participating on the Budget Committee was contrary to applicable law, and requested that the Budget Committee rescind the Bylaw and restore the appointed members' voting status.

18. The Budget Committee has failed to rescind the Bylaw, and continues to maintain that the appointed members of the Budget Committee are not full members and do not enjoy voting rights.

19. The Budget Committee continues to refuse to allow the appointed members to participate in any vote of the Budget Committee.

Count I – Declaratory Judgment

20. The allegations set forth in paragraphs 1 through 19 are herein incorporated by reference.

21. An actual controversy exists regarding the Town and School District's appointed members' right to vote and participate on the Budget Committee.

22. The Budget Committee has no right to exclude the appointed members from voting or participating in matters before the Budget Committee.

23. The Petitioners request that the Court issue a declaratory ruling that the appointed members of the Budget Committee are full voting members of the Budget Committee.

24. The Petitioners request that the Court issue a declaratory ruling that the Bylaw is contrary to applicable law, *ultra virus*, and therefore void.

25. The Petitioners request that the Court issue a declaratory ruling which restores the appointed members' voting status.

Count II – Preliminary and Permanent Injunction

26. The allegations set forth in paragraphs 1 through 25 are herein incorporated by reference.
27. The actions of the Budget Committee, by adopting the Bylaw and excluding the appointed members from voting, are ongoing and continuous.
28. The Budget Committee's denial of the appointed members' right to vote is real and not speculative.
29. The Budget Committee's denial of the appointed members' right to vote constitutes an immediate and irreparable harm for which there is no adequate alternative remedy at law.
30. The Petitioners request that the Court issue an injunction which enjoins the Budget Committee from excluding the appointed members from voting or otherwise participating in matters before the Budget Committee.

Count III – Expedited Merits Hearing

31. The allegations set forth in paragraphs 1 through 30 are herein incorporated by reference.
32. The issue presented to the Court is a question of law.
33. There are no disputed substantive or material issues of fact.
34. An early decision is necessary to restore the appointed members' voting rights such that they may participate on the Budget Committee throughout the upcoming year.
35. The Petitioners request that the Court consolidate the final hearing on the merits with the hearing on the requested preliminary injunction.

WHEREFORE, Petitioners Town of Hudson and Hudson School District SAU 81 respectfully request that this Honorable Court:

- A. Issue a Summons for service on the Budget Committee;

- B. Rule that the appointed ex-officio members are full members of the Budget Committee with full voting rights;
- C. Issue a declaratory ruling and injunction which restores the appointed ex-officio members' full voting rights;
- D. Declare that the Budget Committee's Bylaw that excludes appointed members from voting is *ultra virus*, contrary to applicable law, and void;
- E. Permanently enjoin the Budget Committee from excluding the appointed members from voting or otherwise participating in matters before the Budget Committee; and
- F. Grant such other and further relief as may be just and proper.

Respectfully submitted,
Town of Hudson,
By and through its Attorneys,
TARBELL & BRODICH, P.A.

Dated: May 24, 2022

/s/ David E. LeFevre
By: David E. LeFevre, Esq. BNH #13811
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Respectfully submitted ,
Hudson School District SAU 81,
By and through its Attorneys,
SOULE, LESLIE, KIDDER,
SAYWARD & LOUGHMAN, P.L.L.C

Dated: May 24, 2022

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