

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Rep. Robert “Renny” Cushing, individually *
and in his capacity as Minority Leader *
of the NH House of Representatives *
Rep. David Cote *
Rep. Kendall Snow *
Rep. Katherine Rogers *
Rep. Paul Berch *
Rep. Diane Langley *
Rep. Charlotte DiLorenzo *
New Hampshire Democratic Party *

Plaintiffs, *

v. *

Case No. 1:21-cv-00147

Rep Sherman Packard *
Speaker of the NH House of Representatives *
(in his official capacity only) *

Defendant. *

**DECLARATION OF HOUSE CHIEF OF STAFF AARON GOULETTE
IN SUPPORT OF THE DEFENDANT’S OBJECTION TO EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

1. I am the Chief of Staff of the Office of the Speaker of the New Hampshire House of Representatives. I have served in this capacity since Speaker Hinch was elected Speaker on December 2, 2020.

2. Prior to becoming Chief of Staff, I served as Senior Legislative Assistant, from 2011 through 2020.

3. The Speaker of the House has the overall responsibility for House administration and, in conjunction with the Senate President, joint legislative

administration. The Speaker makes committee appointments and hires House staff. During House sessions, the Speaker presides over debate and rules on parliamentary questions.

4. As Chief of Staff, I report directly to the Speaker and coordinate all personnel employed under the auspices of the Speaker.

5. Unfortunately, the prior Chief of Staff did not provide me with much information, or make herself available for transition meetings at the time I assumed my Chief of Staff responsibilities.

6. I am nevertheless familiar with her administration's activities in investigating how sessions of the House might be conducted safely in light of the present pandemic through my role as Senior Legislative Assistant, as well as through discussions with the individuals who coordinated with her on that work, including: Terry Pfaff, Chief Operating Officer at UNH, Paul Smith, Clerk of the House, and Dr. Jonathan Ballard, Chief Medical Officer with the Department of Health and Human Services.

7. Since assuming the role of Chief of Staff I have been actively involved in the continuation of the prior administration's investigation into and development of risk-mitigation procedures to allow the House to operate safely.

8. Due to that work, I am also familiar with the specific requests of the Plaintiffs in this case for a mechanism whereby they could attend meetings of the House remotely.

9. As stated in the Complaint, in the previous biennium, under Speaker Shurtleff, the House met in session at the Whittemore Center at UNH on June 11, 2020,

June 30, 2020 and September 17, 2020. Rep.s Cushing, Rogers, Berch, Langley and DiLorenzo all attended these meetings. Only Rep.s Cote and Snow declined to attend.

10. It is accurate that since December, the Legislature has developed and deployed a method of safely doing committee work, by utilizing a combination of large rooms with special air filtration, limiting in-person attendance to accommodate the required social distancing, strictly enforcing distancing and mask wearing, and permitting remote access via Zoom Webinar and YouTube.

11. This system took at least 2 months to develop and implement and required extensive training for staff and those committee members charged with conducting such meetings.

12. For attendance purposes, and when committee votes are taken, the committee chair visually confirms through the videoconferencing technology being used that each remote committee member is the individual present and/or voting and how they are voting.

13. Conducting these meetings has also required substantial dedication of IT and other staff to keep things functioning and to navigate the inevitable technical difficulties that arise. Many staff members have taken on responsibilities of supporting committee technology in addition to and sometimes pulling them away from their regular responsibilities.

14. To do their work in this remote fashion, committees are now meeting for much longer each day, and are meeting five days a week rather than the usual three.

15. The prior administration investigated whether these or other procedures could be utilized or adapted for conducting meetings of the full House.

16. Speaker Shurtleff's administration had not arrived at a workable proposal for doing so as of the beginning of the new Biennium and change of administration.

17. Apart from logistical challenges, one of the reasons the prior administration did not attempt to implement remote or hybrid meetings for the full House was a concern regarding the constitutionality of such meetings.

18. Shortly after the general election in November, the Supreme Court opined, as stated in the Complaint, that the New Hampshire Constitution did not prohibit the House from meeting remotely, in whole or in part.

19. The incoming administration has therefore continued to explore the possibility of conducting remote sessions for meetings of the full House and continues to do so to this day.

20. Meanwhile, it has still been necessary to keep the business of the Legislature moving forward.

21. At Organization Day, December 2, 2020, the House session was initially planned to take place inside the Whittemore Center, but the location was changed two days before the meeting and the meeting was instead conducted outdoors at Memorial Field. This meeting employed even greater risk-mitigation measures than during the previous three meetings. At this meeting, Members were seated in a socially distanced manner, there was an "unmasked" section for those who chose to attend in that fashion, there were extensive screening and cleaning precautions employed, and ingress and egress were carefully planned in staggered fashion.

22. The planning details for this meeting can be seen in the House Calendar dated November 24, 2020, attached as **Exhibit 1**.

23. The House Journal, containing the record of the matters which occurred on Organization Day are attached as **Exhibit 2**.

24. As can be seen, after swearing in the Members, election of the Speaker and other Officers, appointment of the party leaders, and conducting of the Joint Convention to elect the Secretary of State and State Treasurer, the next matter of business for the House was the preliminary adoption of Rules for the session. By a vote of 183 to 60, the House first voted to adopt the rules from two sessions ago, rather than the rules of the prior biennium in order to roll back all but one of the rule changes made in the prior biennium (Ex. 2, p. 9)

25. The House next voted 182 to 56, *not* to further amend Rule 65 to permit any member to choose to participate in committee meetings and House sessions remotely. (Ex. 2, p. 10)

26. In speaking against the proposed amendment, Representative Packard (who was not then Speaker) requested the amendment be rejected in order to permit the new administration to first work with staff to determine how such remote participation might be implemented, before it was authorized. (Ex. 2, p. 9).

27. Speaker Hinch died on December 9, 2020 and Rep. Packard then became Acting Speaker.

28. On or about December 15, 2020 the Speaker's office received the "Proposal for Hybrid Legislative session of the NH House during COVID Pandemic" that is attached to the Complaint as Appendix C.

29. The proposal, which indicates it is based on “preliminary research” simply proposes to expand the committee procedures discussed above to the meetings of the full House, and to use ElectionBuddy for use in voting.

30. My office and others have investigated the feasibility of implementing these measures as well as others, and have not yet found a workable solution for conducting meetings of the full House remotely.

31. Regarding the conduct of meetings, a Zoom Webinar may have up to 10,000 participants, but is limited to 100 panelists (persons who are entitled to speak rather than just listen).

32. The House has 400 members.

33. Assuming this could be worked around, there would then be a need for hardware sufficient to display viewable images of the 400 members simultaneously.

34. These viewable images would be necessary in order to authenticate each Member’s initial and continued participation in the session.

35. Then there are the logistics of the basic conduct of the business of the House to consider--the Speaker has a need to recognize members for purposes of speaking, making motions, raising points of order and so on. This has been significantly challenging even in partially remote committee meetings. It is difficult to imagine how basic parliamentary procedure could be applied in a timely fashion in the conduct of a Zoom Webinar of 400 members.

36. And then procedures would need to be developed for capturing the votes of the remote members in some way the Clerk.

37. It is my understanding that the current voting mechanism in the house requires votes to be entered mechanically during a thirty second window.

38. Regarding voting, ElectionBuddy is not a workable platform. First, it is limited to 250 users. Second it is not a real-time solution. It is designed primarily for use by schools, associations, and municipal and local governments, to manage elections. It requires the opening of a voting window, announcements to voters that a proposition is available to be voted on, delivery of voting keys to those voters, and then closing of the voting window, followed by tabulation of results. It is not suitable for handling matters raised in real time during a meeting, such as, for example, motions and floor amendments.

39. We are aware that the prior administration had explored with our current vendor, International Role Call (or IRC) the possibility of expanding the system we currently use for voting to permit remote participation. IRC provides a hardware solution in the form of voting machines located at members' seats that could theoretically be adapted for remote use. This would require both additional devices and custom software adaptations, at a cost of hundreds of thousands of dollars, with a time frame for implementation of 3-4 months. Neither the previous administration nor this one, based on consultation with staff familiar with the proposal, felt that solution was feasible.

40. We have also reviewed and considered the various guidance from the National Conference of State Legislatures which is attached to the Complaint and have reached out to other States to see how they are implementing their solutions.

41. In that regard, we have learned that Massachusetts, which has 130 Members, is using a combination of MS Teams and teleconferencing, where members are authenticated according to their dial-in telephone number and vote by voice.

42. We have discussed and are continuing to discuss with our IT staff and the House Clerk how we might implement an MS Teams-based procedure, but the development of procedures for using that platform have not been considered to date because the roll-out of the platform, and the cost to the State associated with the roll-out also appear cost prohibitive at this time.

43. In visiting with Vermont very recently, we have learned that their solution has been to use an app called EverBridge for voting. EverBridge's account manager has yet to return my call, but Vermont's IT staff indicates that this tool is a secure messaging app developed primarily for emergency alerts that is working for securely collecting votes from approximately eighty percent of their 150 members. The remaining members in Vermont are submitting their votes by e-mail or by telephone. Staff is then working to tabulate and report voting results from all three sources. This presents an interesting possibility which we are continuing to explore.

44. However, both the Massachusetts and the Vermont options are a reminder that the problem of providing staff to support a remote solution is a significant one for New Hampshire. Massachusetts reports that their IT staff has twenty members. By contrast the NH House shares an IT staff of six members with the Senate. Massachusetts reports that it takes half of their IT staff to keep their House Meetings running and handle voting. Based upon Massachusetts' numbers and our experience with our committees, any remote solution is going to require additional hiring and staffing to implement it.

45. With any remote system for voting, questions arise, such as, how long do you leave the voting window open? How do you determine when all members wishing to vote have done so? How do you verify that the member is actually the individual using the voting device?

46. Even with Vermont's secure app, voting is authenticated through use of a four digit PIN. The Deputy Speaker asked Vermont's IT staff what would prevent a member from providing their PIN to someone else in order to step out of the room and not miss a vote? Vermont's answer was that nothing would prevent that, even under their secure system.

47. Following Organization Day, the House Rules Committee met on December 16, 2020, remotely by Zoom.

48. Unofficial, draft minutes of the House Rules Committee meeting are attached as **Exhibit 3**.

49. At that meeting the Rules committee voted *against* a proposed amendment to Rule 110 to promote remote meetings as an option. (Ex. 3, p. 4)

50. The House then met on January 6, 2021, at which time Members attended by arriving and remaining in their cars.

51. The House Journal, containing a record of the proceedings of the January 6, 2021 meeting is attached as **Exhibit 4**.

52. During the January 6, 2021 meeting, a proposal to permit virtual meetings of the full House was made to the full body. It was defeated by a vote of 187 to 149. (Ex. 4, p. 8)

53. The Speaker and his office have been transparent with the Plaintiffs regarding their concerns, sharing them with the minority leadership in a Zoom meeting on January 30, 2021 and providing updates on options being considered through the House Calendar.

54. The ADA accommodation requests made by the Plaintiffs and others in this case have been met by the Speaker with offers to discuss reasonable accommodation for health conditions *other than* meeting remotely, but those offers have been ignored.

55. In preparation for the upcoming House meeting on February 24, 2021, all possible precautionary measures are being considered. At over 50,000 square feet of floor space, we will have more than double the usable area of the Whittemore Center Arena to spread out and socially distance. We are working with the Department of Health and Human Services, the State Fire Marshal, Bedford Fire and Police, and the State Police to ensure a risk-mitigated and secure environment for all members and staff in attendance. Health and safety precautions will be published for members' review prior to the House session, and mirror processes laid out for prior indoor and outdoor meetings of the legislature.

56. As recently as last week, the Speaker again considered the possibility of conducting a remote session on his own initiative. He enquired of the House Clerk, and was provided with the attached Memorandum on February 14, 2021. See, **Exhibit 5**.

57. The risks associated with attempting to implement a last-minute remote attendance option for February 24, 2021 are significant.

58. It is highly likely that an attempt to do so would significantly impede the ability of the House to conduct business on the 24th.

59. The deadlines for the session are set forth in Exhibit 4, at page 4.

60. The February 24, 2021 meeting represents the last opportunity to refer bills to a second committee.

61. The last day to report on bills is March 25, 2021.

62. Bills must “cross-over” by April 1, 2021 for bills without fiscal impact, and by April 8, 2021 for bills impacting the budget.

63. All of these deadlines could be placed in jeopardy by a failed meeting on February 24, 2021.

64. Ultimately, my office, as well as all of the others working to develop the risk-mitigation measures employed and to be employed in meetings of the House have endeavored at all times to identify and implement an appropriate level of safety precautions, taking reasonable measures, but not unreasonable ones, in order to permit the House to move forward with the business of the people expressed through their representatives on the other.

65. Finally, it is disappointing to hear the Plaintiffs suggest that Speaker Hinch contracted COVID-19 at the Organization Day meeting.

66. As the Members are aware, Speaker Hinch was masked that day, sat in the masked section, and observed appropriate social distancing, outdoors in the open air.

67. Speaker Hinch began to experience symptoms the very next day, September 7, 2021.

68. All of the available information of which I am aware suggests that the Speaker would therefore have had to be exposed before the meeting.

69. If I had any concern at all regarding whether the Speaker became sick on Organization Day or that the measures being implemented for the February 24, 2021 meeting were not sufficient to protect the health and safety of the Members, I would be expressing them.

70. I have no such concerns.

71. I respectfully request that the Court permit the meeting to go forward as planned.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2021 at Concord, New Hampshire.

/s/ Aaron Goulette
Aaron Goulette
Chief of Staff
Office of the Speaker
The New Hampshire House of Representatives

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2021, I electronically filed the foregoing with the United States District Court for the District of New Hampshire by using the CM/ECF system. I certify that counsel for Plaintiffs are registered as ECF users and that they will be served via the CM/ECF system. Attorney Paul Twomey is, however, temporarily unable to access the ECF system and will be served by email to his regular email address, paultwomey@comcast.net.

/s/ Anthony J. Galdieri
Anthony J. Galdieri

