

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY  
NORTHERN DISTRICT

SUPERIOR COURT

Docket No.: 216-2020-CV-00342

Representative Mary Jane Wallner, Senator Lou D'Allesandro,  
Speaker of the House of Representatives Stephen Shurtleff, and Senate President Donna Soucy

v.

Christopher T. Sununu, Governor of the State of New Hampshire

**EMERGENCY MOTION TO**  
**CONTINUE HEARING SCHEDULED FOR APRIL 17, 2020 UNTIL**  
**ANY DAY THE WEEK OF APRIL 20, 2020**

NOW COMES the defendant, Christopher T. Sununu, Governor of the State of New Hampshire ("Governor"), by and through his counsel, and respectfully submits this emergency motion to continue the hearing scheduled for this Friday, April 17, 2020, until Monday April 20, 2020 or Tuesday, April 21, 2020. In support of this emergency motion, the Governor states as follows:

1. Four members of the New Hampshire Legislature have commenced this suit against the Governor concerning the expenditure of federal funds granted to the State of New Hampshire through the federal CARES Act, for purposes of meeting emergency needs that have arisen due to the COVID-19 pandemic. The complaint seeks declaratory, injunctive and other relief, and simultaneously the plaintiffs filed a motion, and supporting memorandum of law, for a preliminary injunction. This Court scheduled a hearing on that motion to occur on Friday, April 17 at 1:30 p.m.

2. This lawsuit was commenced in the midst of a global pandemic as a result of the outbreak of the Novel Coronavirus 2019 (“COVID-19”). The Governor declared a State of Emergency on March 13, 2020. Since then, state officials have been working around the clock to protect the health and safety of the people of New Hampshire. The relief the plaintiffs request threatens to significantly disrupt those efforts. In light of the gravity of the issues involved in this lawsuit, along with the reality that Executive Branch officials necessary to prepare the defense of this case are addressing the urgent needs of the people of New Hampshire, a brief continuance is required.

3. The complaint asserts five counts: mandamus, prohibition, declaratory judgment (two separate counts), and expedited preliminary injunctive relief. The complaint raises issues of executive power during a state of emergency and calls itself a dispute between the legislature and the Governor. Complaint, ¶ 8. The claims raise complex issues, and, as the Governor’s responsive pleadings will illustrate, the injunctive relief requested could have a significant impact on the ongoing efforts in New Hampshire’s fight against the COVID-19 pandemic.

4. The complaint and expedited preliminary injunction pleadings were provided on Monday, April 13. Counsel has been and is working diligently to prepare a response to the preliminary injunction motion, which, as mentioned, raises very significant legal issues. Counsel is also identifying and interviewing witnesses who have factual knowledge directly relevant to this action, at least one of whom has worked 31 consecutive days at the Emergency Operations Center on critical issues relating to the pandemic, including sourcing and procuring scarce medical and other supplies and equipment for use in New Hampshire hospitals and elsewhere, working to keep supply chains for critical items such as groceries open and connected to end user consumers, and similar activities.

5. The complexity of the legal issues coupled with the demands on those working to combat the pandemic make preparing a fulsome response and conducting a hearing with just four days' notice unworkable.

6. It is also unnecessary. The plaintiffs have articulated no immediacy that requires a hearing this Friday as opposed to Monday or Tuesday. To that end, counsel met and conferred over the course of April 14 and 15 on the scheduling of the hearing. Plaintiffs' counsel stated that Monday would not work, without any explanation of why. As of the filing of this motion, plaintiffs' counsel has not yet responded as to whether Tuesday might work, but has stated that he will oppose any motion to continue the hearing, again, without explanation as to why. This is not intended to denigrate plaintiffs' counsel, but only to emphasize the point that, so far, nothing has been articulated that demonstrates why the hearing must occur Friday rather than Monday or Tuesday (or any other day next week).

7. In this action, this Court will analyze and decide numerous legal issues that all bear on the weighty question of how federal funds can be spent in this state of emergency, to meet the immediate and constantly evolving challenges of a global pandemic unlike anything experienced in modern times. In that context, allowing a weekend for the parties and this Court to better prepare to the end of a more robust hearing will cause no prejudice, and will best ensure the consideration these issues require.

8. For all of these reasons the Governor respectfully requests a short continuance of the hearing scheduled for this Friday to a day – Monday or Tuesday or any day – next week.

9. **Statement of Assent:** In correspondence with the clerk of this Court on April 15, plaintiffs' counsel stated that he would not assent to a motion to continue.

10. Given that the hearing is currently scheduled for Friday, undersigned requests a telephonic hearing for Thursday, April 16.

WHEREFORE, the Governor respectfully requests that this Court:

- A. Continue the hearing scheduled for Friday, April 17 until Monday April 20 or any day next week; and
- B. Grant such further and other relief as this Court deems just, equitable and proper.

Respectfully submitted,

CHRISTOPHER T. SUNUNU, GOVERNOR OF  
THE STATE OF NEW HAMPSHIRE

By his attorney,

GORDON J. MACDONALD  
ATTORNEY GENERAL

Date: April 15, 2020

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent on April 15, 2020, to all counsel of record via the court's electronic-filing system.

/s/ Daniel E. Will  
Daniel E. Will