Vermont Superior Court
Filed 03/02/26
Orleans Unit

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-01279

Jay Walsh v. City of Newport, Vermont

# ENTRY REGARDING MOTION

Title: Motion for Emergency Protective Order;
Motion for Preliminary Injunction; (Motions: 1; 2)
Filer: Jay Walsh
Filed Date: February 25, 2026

## I. Procedural Posture & Background

In this matter the Plaintiff seeks a injunctive relief, stated as "narrowly tailored relief preventing certification and implementation of Ballot Measure #7 pending judicial determination of compliance with 17 V.S.A. § 2645," arguing that "[i]mmediate action is necessary to preserve the Court's ability to provide meaningful relief." See *Mot. for Preliminary Injunction* [hereinafter, *Pl.'s Mot.*], filed Feb. 25, 2025.[1]

The case and motion was filed lass than a week before Town Meeting Day, Tuesday, March 3, 2026. Ballot Measure #7 is a warned presented on the ballot to Newport City voters as follows:

> Shall the voters of the City of Newport, Vermont approve an amendment to the City's Charter, dated January 28, 2026. containing the following sections?
>
> Subchapter 1: Incorporation and Powers of the City
> Subchapter 2: Governance Structure
> Subchapter 3: City Manager
> Subchapter 4: City Clerk and Treasurer
> Subchapter 5: City Meetings
> Subchapter 6: Ordinances
> Subchapter 7: Administration
> Subchapter 8: Budget Process
> Subchapter 9: General Provisions

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[1] To the extent the Plaintiff seeks alternative relief through a "protective order" in his pleading, the court views the requested relief to be effectively the same and to be fully addressed through this order.

See *Pl.'s Ex.* F. The Plaintiff's request relief is premised upon the argument that because Ballot Measure #7 presents multiple charter amendments "as a single, 'all-or-nothing' proposition," and that this contravenes a requirement, created by 17 V.S.A/ § 2645, for "separate proposals." See *Pl.'s Mot*. at p. 1.

## II. Discussion

"'A preliminary injunction is an extraordinary remedy never awarded as of right.'" *Taylor v. Town of Cabot*, 205 Vt. 586, 596 (2017) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)); see also *Vt. Div. of State Bldgs. v. Town of Castleton Bd. of Adjustment,* 138 Vt. 250, 256 (1980) ("[a]n injunction is an extraordinary remedy and will not be granted routinely unless the right to relief is clear."). In considering the request under V.R.C.P. 65, "the court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Taylor,* 205 Vt. at 596. (quotation omitted). The moving party has the burden of establishing the relevant factors, specifically, "(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest." *Id*. (citing *In re J.G.*, 160 Vt. 250, 255 n.2 (1993)).

The balancing test articulated by the Vermont Supreme Court is designed to be "sufficiently flexible to allow for a preliminary injunction in cases in which the court cannot definitively conclude that the movant is likely to prevail on the merits, but the balance of other factors tips strongly in favor of an injunction." *Id*. at 255 n.3. The court considers each of the factors below.

*A. Likelihood of success*

A party seeking a preliminary injunction is "not required to prove his case in full," and the court's findings of fact and conclusions of law "are not binding at trial on the merits." *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981) (citations omitted); s*ee also Gardner v. Jefferys*, 178 Vt. 594, 598 (2005) (trial court's interpretation of restrictive covenant following limited hearing on motion for temporary injunction does not bind court's later interpretation when record is fully developed).

It is not obvious to the court that the Plaintiff's attempt to challenge Ballot Measure #7 will be successful. While 17 V.S.A. § 2645 does use the term "separate proposal" multiple times, it is not obvious or explicit that the word "separate" creates a requirement that ballot measures which could potentially be broken into multiple proposals *must be* so divided. For this reason, Plaintiff's reading of the statute seems implausible from a practical standpoint, in that it would invite – or even require – engaging in the intellectual exercise of breaking down every proposal to its most discrete form.

In this situation, it is arguable that the proposal's broad reach of a "strike all" of the existing charter is itself a singular proposal, and its replacement with a different delineation of governmental roles and responsibilities is, likewise, a single proposal. It is entirely unclear whether the proposed charter change could be voted on and considered "a la carte" without

creating circumstances where legacy provisions of the charter would conflict with an ad hoc adoption of amendments.

The court notes, however, that the Plaintiff's position is not entirely without statutory support. The concept of "separate proposal[s]" is first introduced in 17 V.S.A. § 2645(a)(7), just after discussing how a vote might amend different sections of a charter. A subsequent reference, in § 2645(b)(2) continues the theme that "separate proposals" are intended to reference the parts of the overall charter proposal that affect individual parts of the charter:

> The ballot shall show *each charter section* to be adopted, repealed, or amended in the amended form, with deleted matter struck through and new matter underlined, and shall permit the voter to vote on *each separate proposal contained within the charter proposal*.

17 V.S.A. § 2645(b)(2)(B)(i) (emphasis added).

This phraseology also suggests that there could be a single proposal which changes language within multiple sections of a charter. Each of these changes would be considered a "separate proposal" by the statute but would not need to come in the form of an individual proposal for each change. This conclusion is aided by the fact that subdivision (a) of 17 V.S.A. § 2645 includes six sections referencing only a singular "proposal," whereas subdivision (a)(7)(B)(i) says the separate proposals are "contained within the charter proposal."

Although Plaintiff's argument is not devoid of support, the court cannot include that Plaintiff has shown a *likelihood* of success on the merits. The Plaintiff does not cite parts of the statute, or other persuasive or controlling law, supporting the interpretation asserted as being correct.

*B. Irreparable harm*

"A preliminary injunction will usually be denied 'if it appears that the applicant has an adequate alternate remedy in the form of money damages or other relief.'" *Taylor*, 205 Vt. at 605 (quoting C. Wright & A. Miller, Federal Practice & Procedure § 2948.1 (3d ed. 2017)). Some courts have suggested that irreparable harm is the "single most important" factor when determining whether a court should grant injunctive relief. See, e.g., *Wool v. Vermont Department of Corrections*, No. 2:11-cv-188, 2011 WL 6740540, *3 (D. Vt. Nov. 15, 2011) (Conroy, Mag. J.) (citation omitted), report and recommendation adopted by 2011 WL 6748991 (D. Vt. Dec. 22, 2011).

To establish irreparable harm, a plaintiff "must show that there is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation." Further, a plaintiff must show that the harm is "actual and imminent, not remote or speculative." *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quotation omitted). When "it appears that the applicant has an adequate alternate remedy in the form of money damages or other relief" the request for a preliminary injunction will ordinarily be denied. *Taylor*, *supra* (citing C. Wright & A. Miller, *Fed. Prac. & Proc.* § 2948.1 (3d ed. 2017)). Additionally, as a predicate for injunctive relief a moving party must show "that it exhausted its administrative remedies and that it has no adequate legal remedy." *In re*

*Investigation Into Gen. Ord. No. 45*, 193 Vt. 676, 678 (2013) (citing *Smith v. Highway Bd.,* 117 Vt. 343, 349 (1952).

Here, the burden as to the latter consideration has not been satisfied by the Plaintiff. The Plaintiff alleges that a preliminary injunction is necessary because "the harm here is structural" and "the lost opportunity to vote separately cannot be recreated." See Pl.'s Mot. at p. 3. The court disagrees. [2]

First, even if the electorate of Newport City approves the ballot measure, there is no immediate impact upon the charter. Instead, approval of a new charter or amendment thereto is reserved to the Vermont legislature. 17 V.S.A. § 2645 provides:

> (c) After confirming that the clerk of the municipality has certified each of the documents listed in subdivision (b)(2) of this section, the Secretary of State shall file the certificate and deliver copies of it to the Attorney General, the Clerk of the House, the Secretary of the Senate, and the chairs of the committees concerned with municipal charters of both houses of the General Assembly.
>
> (d) The charter proposal shall become effective upon affirmative enactment of the proposal, either as proposed or as amended by the General Assembly.

Thus, a proposed amendment or new charter proposal is subject to review by multiple executive and legislative bodies, and may only be enacted upon the General Assembly's approval and the signing of the proposal into law by the Governor. The political process for a charter proposal extends well beyond the local electorate.

The court has no crystal ball to predict the outcome of voting on this proposal, however, the entirety of this proceeding may be moot if voter's decline to support the proposal. Thus, an injunction could be promptly rendered moot by the actions of the electorate, and conversely, if the proposal is approved by a majority of voters it calls into question whether severance of the proposal into separate questions would yield a different result. At this juncture, if a voter is dissatisfied with a particular provision in the proposal the personal choice may be to vote "no" and seek redress through the political process if the proposal fails and is subject to warning at a future date.

Setting aside the political process, there are statutory remedies available. Specifically, 17 V.S.A. § 2661 provides a mechanism for the reconsideration or recission of an article voted on at an annual or special meeting of the municipality. A petition seeking such may be filed with the clerk within 30-days of such meeting. See 17 V.S.A. § 2661(b).

Additionally, 17 V.S.A. § 2603 provides other, fairly robust, mechanisms to challenge the results of an election or public question. 17 V.S.A. § 2603(c) provides a deadline for filing a complaint

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[2] See also *Tough Traveler, Ltd. v. Outbound Prod.*, 60 F.3d 964, 968 (2d Cir. 1995) (quoting Citibank, N.A. v. Citytrust, 756 F.2d 273, 277 (2d Cir. 1985)) ("failure to act sooner undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury.").

in the Superior Court of 15-days following an election. 17 V.S.A. § 2603(b)(3) provides that relief may be sought, broadly, where for "any other reason, the result of the election is not valid."

*C. Potential harm to other parties / balance of equities*

The Plaintiff has not provided any specific articulation of harm to third parties beyond those articulated in support of his assertion of irreparable harm. Accordingly, the court has no further analysis on this topic, other than to note the proposal, if adopted and promulgated, would affect the voters of Newport City, Vermont, and potentially others doing business or holding property within the municipality.

*D. Public interest*

Finally, the Court must consider both the "public interest," and "the effect on each party of the granting or withholding of the requested relief." *Taylor*, *supra* (citation omitted). Here, public interest favors permitting the Defendant to follow the statutory framework that has been created by the Legislative Branch and approved by the Executive Branch. See, e.g., *Texaco, Inc. v. Hughes*, 572 F. Supp. 1, 9 (D. Md. 1982); see also Able v. United States, 44 F.3d 128, 131 (2d Cir.1995) ("[G]overnmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.")

Here, some voters have undoubtedly already cast absentee ballots and others are prepared imminently to vote by Australian ballot on Town Meeting Day. If the Court were to preemptively enjoin the certification of the result this could unduly impact voter decision making on the ballot question – prospectively signally a defect without adequate findings or legal consideration of the merits, and a perceived judicial thumb on the scale could influence voter's exercise of their personal judgment on the question. The grant of injunction at this late stage could well sow confusion among the electorate.

Given the availability of other post-election challenges and remedies available under statute, the court is not persuaded that injunctive relief is in the public interest. "Courts of equity should not enjoin elections except in the most serious situations or having a constitutional complex." *Baird v. Town of Berlin*, 126 Vt. 348, 355 (1967) (citations omitted).

**III. Order of the Court**

Based on the foregoing, Plaintiff's motions are DENIED.

So ordered.

Electronically signed on Monday, March 2, 2026 pursuant to V.R.E.F. 9(d)

Rory T. Thibault
Superior Court Judge