

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY  
COURT

SUPERIOR

Southern Judicial District  
30 Spring Street  
Nashua NH 03060

PAULA JOHNSON, *pro se*  
Individually and as Member  
of the Board for the  
Nashua School District

*Plaintiff*

*VS.*

REGAN LAMPHIER, Clerk  
Nashua School District  
141 Ledge Street, Nashua, NH 03060

DANIEL HEALEY, City Clerk for  
the City of Nashua, NH  
229 Main Street, Nashua, NH 03061

CITY OF NASHUA, NH BOARD OF  
ALDERMEN  
229 Main Street, Nashua, NH 03061

LORI WILSHIRE  
JUNE E. CARON  
BEN CLEMONS  
ALEX COMEAU  
RICHARD A. DOWD  
ERNEST A. JETTE  
SHOSHANNA KELLY  
PATRICIA KLEE  
THOMAS LOPEZ  
MELBOURNE MORAN, JR.  
MICHAEL O'BRIEN, SR.  
JOHN SULLIVAN  
DEREK THIBEAULT  
GLORIA TIMMONS

*Defendants*

CIVIL ACTION NO.

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COMPLAINT AND PRAYER FOR  
DECLARATORY AND  
PRELIMINARY INJUNCTIVE  
RELIEF

Plaintiff Paula Johnson, *pro se*, “Plaintiff”, individually and as a Member of the Board for the Nashua School District, residing at 15 Westborn Drive, Nashua, NH 03062, an inhabitant and resident of Nashua, New Hampshire, files this challenge and complaint against the above-named Defendants.

### **NATURE OF THE ACTION**

1. Plaintiff challenges the above-named Defendants in their administrative process and approvals of the city of Nashua’s 2023 electoral process, and in particular the recount of the city-wide Nashua Board of Education “BOE” elections, held on Saturday, November 18, 2023, at Nashua city hall.
2. The Plaintiff was a re-election candidate for the Nashua School District “NSD”; had successfully come in fifth place of eight NSD candidates; where only the first 5 of the 8 candidates would be eligible to succeed as a member of the Board for the NSD. The Plaintiff won the final fifth place position by 6 votes and was challenged for a recount by the sixth-place finisher.
3. The challenger was deemed the winner after the recount by 7 votes. The Plaintiff asserts that the re-count election held unlawful, and during this unlawful recount election, the Nashua city clerk and the Board of Alderman violated state election laws and state election regulations.
4. Plaintiff alleges that several state statutory requirements regarding the NSD elections “recount”, and in particular the unlawful process and methods used before and during the NSD elections “recount”, were violated.
5. Plaintiff alleges that these violations, individually and combined, directly caused her to lose her seat as a board member of the NSD.

6. However, independent of these above-alleged statutory violations, Plaintiff contends that the NSD “recount” elections were conducted unlawfully by the Nashua Board of Alderman “BOA” as outlined in RSA 671:26-a —*Coordinating Certain Town and School District Election*, based upon RSA 671:32—*Recount; Tie Vote*, of the state law governing the “School District Elections” provisions.<sup>1</sup>
7. Accordingly, “recount” elections are statutorily required to be conducted by the NSD pursuant to an “exceptions clause”, and not the Nashua Board of Alderman “BOA”.

*Tie votes and **recounts in school district elections** shall be handled in the same manner as in town elections<sup>2</sup> as provided in RSA 40:4-c and 40:4-d and in RSA 669:30-669:36, **except as specified herein**:*

- I. The school district clerk shall have all the duties and powers of the town clerk;*
- II. The board of **recount** shall be composed of the school district clerk, the school district moderator, and the members of the school board. The school district moderator shall be the chairperson of the **board of recount**; and*
- III. The fee for the recount shall be paid to the school district clerk for conducting the recount. 671:32—above—Emphasis supplied*

8. Plaintiff asserts that the city of Nashua’s statutory authority for Town Elections in RSA 669:30 and RSA 669:36 do not include “recount” elections, where such “recounts” are conducted under RSA 671:32 under Title LXIII, of the General Provisions of the NSD “recount” Elections statute.
9. Accordingly, RSA 669:30 and RSA 669:36 both clearly show as providing a road-map for the NSD to conduct “recount” elections in the event that a “recount” is required.

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<sup>1</sup> Plaintiff is not contending that the general NSD general election held jointly by the city of Nashua was held unlawfully, but only the “recount” election was held unlawfully, where a specific “School District” NH RSA statute is provided separately for “recounts”.

<sup>2</sup> These state statutes are provided for the purpose of describing how town elections are handled for the purpose of illustrating the process and procedure for handling a NSD “recount” elections.

10. Plaintiff is seeking for the court to declare the Saturday, November 18<sup>th</sup>, 2023, NSD “recount” elections to be null-and-void.
11. In addition, Plaintiff seeks to have the election results before the recount, reinstated, with the Plaintiff reinstated as the winner of the city-wide NSD election.
12. Finally, Plaintiff is seeking additional declarations from the court to address the violations of a number of state election statutes described in this complaint.
13. The state elections statutory violations as alleged directly are appealed to the Superior court under New Hampshire, RSA 669:35—Appeal from recounts; pursuant to violations of 671:32—*Recount; Tie Vote*; RSA 669:25—*Conduct*; RSA 654:17 and 34—Absentee voting.
14. Bill of Rights of New Hampshire’s equal protection under Const. N.H. Part I, art. 11, and the due-process and equal protection clauses of the 14th Amendment to the Federal Constitution.
15. As a result of the Defendants unlawful behavior in this State’s NSD elections “recount” as described *above*, the Plaintiff is seeking relief from these violations under color of state law, while seeking to enjoin the Defendants from otherwise certifying the alleged winner of the NSD recount.

### **PARTIES**

16. The Plaintiff, PAULA JOHNSON, *pro se*, is the Plaintiff in the above-named and numbered action, and hereby brings suit as an individual and a four-year elected member of the Board of Education for the Nashua School District. Plaintiff was a candidate for the  
  
Nashua School Board in the November 7, 2023, election.

17. Plaintiff is an inhabitant in the city of Nashua, NH, and resides at 15 Westborn Drive, Nashua, NH 03062.
18. REGAN LAMPHIER, Clerk for the Nashua School District, with a principal business address of 141 Ledge Street, Nashua, NH 03060, and is sued in her official capacity.
19. Daniel Healey, City Clerk for the City of Nashua, NH, having a principal business address of 229 Main Street, Nashua, NH 03061, is sued in his official capacity, pursuant to his statutory authority as the chief election's official for the city of Nashua, NH.
20. City of Nashua, NH Board of Alderman, with a business address of 229 Main Street, Nashua, NH 03061. Members of the Nashua Board of Alderman, LORI WILSHIRE, JUNE E. CARON, BEN CLEMONS, ALEX COMEAU, RICHARD A. DOWD, ERNEST A. JETTE, SHOSHANNA KELLY, PATRICIA KLEE, THOMAS LOPEZ, MELBOURNE MORAN, JR., MICHAEL O'BRIEN, SR., JOHN SULLIVAN, DEREK THIBEAULT, GLORIA TIMMONS, are sued individually and collectively in their official capacity.

### **JURISDICTION AND VENUE**

21. This court exercises subject matter jurisdiction under RSA 491:7 *Jurisdiction*, and Plaintiff's action is filed pursuant to Superior Court Rule 8 *Complaint*.
22. Additionally, the court has authority to hear this action under Superior Court Rule 55, *Appeal from Municipal Actions*.
23. This Court has authority to grant Plaintiff's Petition for Declaratory Relief under RSA 491:22 *Declaratory Judgements*.
24. The Court also has authority to grant Plaintiff's 'Motion for Expedited Injunctive Relief' under Superior Court Rule 48(a)(1) and (2) *Injunctions*.

25. Venue: The offenses described in this complaint took place in the City of Nashua, 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.

## **PLAINTIFF'S CLAIMS**

### **COUNT I**

Violation of RSA 671:32–Recount; Tie Vote  
Under Color of State law  
Substantive and Procedural Due-Process  
NH Const. Article 11, Part 1, Bill of Rights

26. Plaintiff repeats and re-alleges the allegations above, as if fully set forth herein.
27. The Nashua Board of Education, in reality is the Nashua School District “NSD”, a separate and autonomous political sub-division of the city, and **not** members of a city Board controlled by the municipality.
28. Under § 74. *Board of education; duties* - within the city of Nashua Charter:
- “The City of Nashua shall continue to constitute one school district, and the school Under the Nashua Charter, committee of said City shall be **styled** <sup>3</sup>the Board of Education.”*
29. The city clerk “Defendant Healey” for the city of Nashua initially conducted the election as duly outlined within RSA 671:26-a —*Coordinating Certain Town and School District Election*. This joint election was apparently authorized as a joint town election with the Nashua School District “NSD” for the election of their Board members conducted jointly with the Nashua Town elections.
30. At the conclusion of this joint election, a conflict arose as described *above* between the Plaintiff and a candidate placing behind her, becoming ineligible as a member of the NSD Board. This candidate placing behind, or 6<sup>th</sup> place, requested a “recount”.

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<sup>3</sup> You will notice that the Nashua City Charter asserts that the Nashua School District is “styled” as a Board of Education. This is simply a name-change without changing its’ independence from its’ autonomous and sub-division status.

31. The controversy started, when Defendant Healey, individually or collectively with other Defendants, ignored a separate state statute governing NSD “recounts”, and instead continued to use RSA 671:26-a, *above*, which was only designed to hold joint elections, and not written to coordinate a “recount” effort, where such a “recount” effort would require oversight by the NSD Board, and not the city’s legislative Board.
32. In addition, RSA 671:15 *Checklist* was not provided to the Plaintiff during the NSD recount, where:

*“An updated checklist shall be used at all school district elections and meetings for the same purposes as checklists are used by towns as provided in RSA 669:5. The supervisors of the town checklist, acting as supervisors of the school district checklist, shall correct, certify, and post the checklist for the district as provided in RSA 654:25-654:31.”*

NOTE: More on the critical importance of the “checklists” in paragraphs 59-60 *below*.

33. Plaintiff contends that the Defendants did not simply “coordinate” the NSD elections as required by statute, but the city had taken over the entire school district elections, where Defendant Lamphier, clerk for the NSD, should have been present during the NSD election recount.
34. Plaintiff contends that the Defendants ignored several School District statutes to conduct the elections “recount”, causing confusion and an unlawful elections “recount” that resulted in harm to the Plaintiff when she lost her seat and position on the Board of Education for the Nashua School District.

## **COUNT II**

Violation of RSA 652:22 Re: Election procedure manual  
Violation of RSA 659:98 - Delivery of Ballots to Town Clerk  
Violation of RSA 33-A:3-a Disposition and Retention Schedule  
Under Color of State Law  
Equal Protection & Due Process  
NH Const. Article 11, Part 1, Bill of Rights

35. Plaintiff repeats and re-alleges the allegations above, as if fully set forth herein.
36. Upon entering the Nashua city hall auditorium, the Plaintiff observed the arrival of the ballot boxes, some of which were observed taped differently than other ballot boxes. In other words, the securing of the sealed ballot boxes was not consistent.
37. As a check-list item at the beginning of the NSD recount, Plaintiff had requested a copy of the “Chain of Custody & Storage Log”, as a document permitted and encouraged within the NH Elections Procedure Manual (pgs. 397-399), entitled; Ballot Boxes Chain of Custody Log”.
38. This was an extremely valuable document for the Plaintiff, where the NH ‘Elections Procedures Manual’ cites RSA 659:98 and RSA 33-A:A:3 as the authority for its’ importance. The log also indicates on its’ face: *“The log must be available as a public record in the clerk’s office. The log is a public document subject to disclosure under the Right to Know laws.”*
39. However, upon the Plaintiff making this request, City Attorney Steve Bolton, yelled and screamed at the Plaintiff, declaring “you’re not getting it!”, or words to this affect, denying the Plaintiff access to this important election log. NOTE: The video of this encounter is available at city hall, and a voice recording of this encounter was made by the Plaintiff using her cell phone.

40. This refusal to inspect the ‘chain of custody’ log inferred a type of cover-up by Nashua city hall, with sealed boxes which the Plaintiff believes should have been in the custody of the NSD. Notwithstanding, the Plaintiff subjected to such a verbal assault was an awful visual for those witnessing this city attorney’s behavior.
41. A chain of custody document was never produced as required at the time the boxes of ballots were received—within the counting area of the third floor Nashua city Hall auditorium.
42. The combination of the above-mentioned activities did cause an unlawful “recount” election that resulted in harm to the Plaintiff when she lost her seat and position that, even with these described deficiencies, she had initially won re-election as a Nashua School District Board member.

### **COUNT III**

Violation of RSA 666:5-a Challengers; Where Positioned

Violation of RSA 652:22 Re: Election procedure manual

Violation of RSA 666:3 Provisions for Purity of Elections; Official Misconduct; Consequences

Under Color of State Law

Equal Protection & Due Process

NH Const. Article 11, Part 1, Bill of Rights

43. Plaintiff repeats and re-alleges the allegations above, as if fully set forth herein.
44. The Equal Protection Clause prohibits the use of differential standards in the treatment and tabulation of ballots within a State.
45. In this non-partisan election, the Plaintiff and her supporters were effectively "denied" the opportunity for adequate cross-checking and observation during the recount process. Upon arrival at Nashua City Hall, third floor, it was observed that dozens of pre-printed stick-on name tags, bearing the names of members and activists from the Democrat party

(including those designated as ballot counters, readers, and tabulation sheet markers), were systematically arranged in alphabetical order on a table in the city hall auditorium, the site of the ballot examination.

46. However, the Plaintiff, representing a non-partisan stance, was not afforded any opportunity to have her representatives participate in roles such as ballot counting or marking of tabulation sheets, highlighting a significant imbalance and lack of equitable representation in the recount process.
47. During the recount tabulation process, on a several occasions, when the Plaintiffs support members challenged a ballot, the Plaintiff's supporter was threatened with yelling and accusations of not having a right to challenge absentee ballots.
48. On several occasions, the democrat party attorney would intercede and offer direction to the apparent protective class of ballot counters and readers and observers. The Plaintiff did not have the time or opportunity to be represented by counsel.
49. Ballots that were challenged by the Plaintiff's supporters were not kept with their Ward, but rather separated from their originating Ward.
50. Upon the start of the Nashua Board of Alderman examining each challenged ballot, Plaintiff's representative—while calmly and respectfully challenging the absentee ballots—was interrupted by city attorney Bolton, where Mr. Bolton began yelling and threatening this Plaintiff's representative for making such a challenge to the absentee ballots.
51. Despite the initial election results indicating only 2 over-votes, the recount process concluded with a significantly higher total of 20 over-votes, suggesting procedural inconsistencies.

52. According to RSA 656:42 Rules XI The electronic ballot counting device shall be programmed to require that a ballot which contains more than the allowable number of votes for an office or ballot question on the ballot, known as an "over voted ballot", be returned to the election day voter by the device. The voter shall be instructed to place the ballot in an auxiliary compartment to be hand counted by election officials after the polls close. Over voted ballots of absentee voters shall be placed in the auxiliary compartment by the moderator or his or her appointee to be counted after the polls close.
53. An over vote occurs in a situation where a voter selects more candidates than allowed. For example, if a ballot presents 8 candidates but the voter is permitted to choose only 5, selecting 6 candidates results in an over vote. In this scenario, the extra vote, beyond the permissible limit, is termed as an over vote and those votes cast are not counted whereas voter intent is in question.
54. However, the description of over-votes occurring during a recount introduces a different scenario. It suggests that over-votes are generated not by voter action, but rather through errors or deliberate manipulation by election officials. Here, the over-vote arises when an election official, while transcribing votes from the ballot to a tabulation sheet, inadvertently or intentionally adds an extra mark, thus creating an over-vote where none originally existed.
55. As a result of several improper activities, the "recount" election was completed with 20 over-votes.
56. An over-vote can be described, when there are 8 candidates on the ballot. A voter can only chose 5 of the 8. Should a voter choose 6 candidates, which is one over the limited votes, that one vote constitutes one over-vote on a ballot.

57. The best way to achieve an over-vote, is during a “recount”, when an election official receives a ballot with a full five votes. Next, when the election official is transferring these votes to the tabulation sheet to indicate the 5 votes, an extra mark for another candidate is made by mistake and/or otherwise confused with the legitimate 5 marks. There are also times an extra mark is accomplished using a quick slight-of-hand while making the legitimate 5 marks, turning the five marks into six marks.
58. An over-vote indicates that an extra vote was made on a ballot. The problem with over-votes, who received the extra vote which was counted during the recount?
59. In extremely close elections, caution is required and an equal “recount” setting must be maintained for all candidates. This equal protection was not afforded to the Plaintiff. In fact, moves were made by all Defendants to deny equal protection to the Plaintiff during the “recount”.
60. Despite repeated requests, Plaintiff has been unable to obtain several crucial documents related to the recent November 7<sup>th</sup> election, which are essential for a comprehensive review of the electoral process during the elections recount and its integrity.
61. Specifically, Plaintiff has not received a copy of the moderator's “worksheet” from each ward, an essential document that details the official actions and decisions made by the ward moderators.
62. Additionally, the moderator's “certificate” from each ward, provides the number of ballots that were received prior to Election Day.
63. Furthermore, the Election Day “checklist”, a key record that helps verify the accuracy and legitimacy of the voting procedure, has yet to be provided. See paragraphs 32-33 *above*.

64. This lack of access to these three vital election documents (worksheet, certificate and checklist)<sup>4</sup> not only impedes Plaintiff's ability to fully understand and assess the election results but also raises concerns about the transparency and accountability of the entire electoral process.
65. The combination of the above-mentioned activities did cause an unlawful "recount" election that resulted in harm to the Plaintiff when she lost her seat and position that, even with these described deficiencies, she had initially won re-election as a Nashua School District Board member.

#### **COUNT IV**

Violation of NH RSA 659:50 Announcement by Moderator  
Violation of NH RSA 659:53 Forms Not in Order  
Under Color of State Law  
Equal Protection & Due Process  
NH Const. Article 11, Part 1, Bill of Rights

66. Plaintiff repeats and re-alleges the allegations above, as if fully set forth herein.
67. During the Nashua election on November 7, 2023, a significant procedural error occurred in the handling of absentee ballots that has now interfered with the NSD recount. Specifically, the moderator failed to verify whether the affidavits accompanying these ballots were properly executed. This oversight is a direct violation of the stipulations outlined in NH RSA 659:50, which mandates a thorough review of each absentee ballot affidavit to ensure its proper execution before the ballot is deemed valid for counting.
68. Because of this procedural error during the general election, there is now no avenue to submit a challenge to these absentee ballots during the NSD recount.

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<sup>4</sup> These vital documents are shown within the 2021-2023 Election Procedure Manual, and are required within 48-hours of the closing of the polls, RSA 659:73. It is the moderator's job to ensure that votes are accurately counted—RSA 659:60.

69. It is for this reason the Plaintiff challenged all absentee ballots.
70. A number of challenges have been made during this and recent elections regarding the use of the electronic counting of the ‘affidavit’ ballots and the ‘absentee’ ballots, and the interfering of the validation process required by New Hampshire state law as here described. <sup>5</sup>
71. The Plaintiff will have sworn affidavits in her motion for expedited injunctive relief regarding this issue.
72. During the Nashua election on November 7, 2023, absentee ballot affidavits were not properly executed by voters, constituting a violation of New Hampshire Revised Statutes Annotated (NH RSA 659:53, concerning 'Forms not in order').
73. According to NH RSA 659:53, *“If the moderator finds that the absentee voter is not entitled to vote, the moderator shall not open the envelope and shall mark across the face of the envelope”* with *“affidavit improperly executed.”*
74. However, in this instance, the moderator or assistant moderator failed to verify the proper execution (certification) of these affidavits. Instead, they erroneously removed the ballots from the uncertified affidavit envelopes and processed them through the voting machine, counting them as valid votes.
75. During the NSD recount process, there was no way for recount-officials to validate the ballot with the signed affidavit. In other words; how does the recount official determine which ballot to remove, post-election, if or when an affidavit is challenged?
76. The combination of the above-mentioned activities did cause an unlawful “recount” election that resulted in harm to the Plaintiff when she lost her seat and position that,

even with these described deficiencies, she had initially won re-election as a Nashua School District Board member.

### **CONCLUSION**

77. The Nashua Board of Education was simply “styled” from the Nashua School District “NSD”, where the School District maintained its’ separate and autonomous political sub-division status of the city, and **not** answering to members of a city Board controlled by the municipality. Pursuant to being their own body politic, the Nashua School District can only certify members of their own board.
78. Allowing these described unlawful and unconstitutional violations of New Hampshire’s election laws to continue without resolving this controversy and permit the Defendants to proceed without correcting the harm done to Nashua’s election process, will irreparably harm the Plaintiff and those who have dedicated their time and efforts into public service, creating a continuing question in the integrity of Nashua city elections and especially the upcoming Presidential primary and election.
79. This is a real potential of denying representation in our city by permanently sowing distrust in Nashua’s elections. The New Hampshire Supreme Court has found such threats to constitute irreparable harm on numerous occasions.
80. As a result of the Defendants unlawful behavior in our city’s election recounts, the Plaintiff is seeking relief from these violations, while seeking to enjoin the Defendants until the court has made its’ declarations.

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<sup>5</sup> This issue of the electronic tabulation and their interference in NH state and NH federal elections is currently before the NH State Supreme court, in the case of Richard v. Sununu, case no. 2023-

### **PRAYER FOR RELIEF AND DECLARATORY JUDGEMENTS SOUGHT**

The unconstitutional changes described in this action have opened the door to election irregularities in various forms. The Plaintiff alleges that each of the Defendants openly participated in the violation of New Hampshire's regulatory, statutory constitutional rules governing Nashua, New Hampshire elections. In doing so, seeds of deep distrust have been sown in the city of Nashua by its public officials and by the Nashua School District's sanctioning of these *above-described* violations. The Plaintiff is seeking this Court's attention where it is profoundly needed to declare what the law is and to restore public trust in this election and election recount.

### **RELIEF SOUGHT**

- A. Grant the Plaintiff's Motion for Expedited Injunctive Relief pursuant to Superior court rule 48 *Injunctions*, where the Plaintiff has shown in her sworn affidavit and said Motion; that specific facts reveal immediate and irreparable injury, loss, and damage to the Plaintiff's elected position, public official status, and personal life, where Defendants intend to certify or have already certified the unlawful Nashua School District recount.
- B. Pending the disposition of this complaint, "Enjoin" the Defendants, and each of them, pursuant to Superior Court Rule 55, *Appeal from Municipal Actions*, from certifying or the certified November 18<sup>th</sup>, 2023 Nashua School

District recount, until the court has had time to review the Plaintiff's claims and relief sought.

- C. ORDER the Defendants to provide the Plaintiff with: the November 7<sup>th</sup>, 2023 Moderator's certificate from each Ward, the Moderator's worksheet from each Ward, and the Election Day Checklist.
- D. Declare that certain or all allegations made by the Plaintiff have been found to be sufficient to "revoke" or otherwise "invalidate" the November 18<sup>th</sup>, 2023 Nashua School District recount.
- E. In the alternative, adopt the Plaintiffs proposed preliminary relief as submitted within the Plaintiffs Motion for Expedited Injunctive Relief.
- F. Award any costs to the Plaintiffs.
- G. Grant such other relief as the Court deems just and proper.

SWORN TO AND SUBSCRIBED THIS 24<sup>th</sup> DAY OF NOVEMBER,  
UNDER PAINS & PENALTIES OF PERJURY.

/S/Paula Johnson  
Paula Johnson  
15 Westborn Drive  
Nashua, New Hampshire 03062  
pij53@aol.com  
(603) 966-6794

## **CERTIFICATE OF SERVICE**

I, Paula Johnson, *pro se*, have caused to deliver the Plaintiff's COMPLAINT, and served upon the following Defendants, in accordance with Superior court rule 2 regarding the computation of time:

REGAN LAMPHIER, Clerk  
Nashua School District  
141 Ledge Street, Nashua, NH 03060

DANIEL HEALEY, City Clerk for  
the City of Nashua, NH  
229 Main Street, Nashua, NH 03061

CITY OF NASHUA, NH BOARD OF  
ALDERMEN  
229 Main Street, Nashua, NH 03061

Service has been made by hand or by the county Sheriff's department.

SWORN TO UNDER PAINS AND PENALTIES OF PERJURY this 27<sup>th</sup> day of November, 2023

/S/Paula Johnson  
Paula Johnson  
15 Westborn Drive  
Nashua, New Hampshire 03062  
pij53@aol.com  
(603) 966-6794