

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Case No. 215-2022-cv-00167

Steven Rand, et al.
Plaintiffs

v.

The State of New Hampshire
Defendant

**Reply in Support of
Motion to Quash Plaintiffs' Subpoena to Lisa Witte**

In support of its Motion to Quash Plaintiffs' Subpoena to Lisa Witte,¹ Grantham School District submits this Reply to briefly address additional issues raised in Plaintiffs' Objection.

1. Ms. Witte asked the Grantham School District's attorneys² to file the instant motion to quash because testifying would constitute a significant imposition on her and her employers – past and present. Ex. 1, Walker (Witte) Aff., at ¶¶ 3-4.

2. First, testifying in compliance with the subpoena would require Ms. Witte to violate one of her employers' policies for taking time off and to either complete her work for the Grantham School District outside of regular business hours or fall short of her contractual obligations to the district. *Id.* at ¶ 10.

¹ Lisa Witte is now known as Lisa Walker. However, given that the subpoena was addressed to Lisa Witte, this reply will refer to her by her prior name to avoid confusion.

² Grantham School District is her current employer and also a plaintiff in the *ConVal* matter. Both the Monadnock and Grantham districts are represented by undersigned counsel in the *ConVal* matter.

3. The only substantive response that Plaintiffs offer regarding the burden they intend to impose upon Ms. Witte is that “Grantham cannot dictate how Plaintiffs should try their case.” Obj., at ¶ 7. This is true, of course. However, Plaintiffs’ right to subpoena witnesses is “not unlimited.” *Fenlon v. Thayer*, 127 N.H. 702, 705 (1986); see also N.H. Super. Ct. R. 29 (“Upon motion . . . by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from . . . undue burden or expense . . .”).

4. This is not a situation in which appearing to testify at trial is a mere inconvenience. In addition to the significant imposition on Ms. Witte and her present employers, the subpoena at issue also raises thorny issues of attorney-client privilege, trial preparation privilege, and the pending appeal in the *ConVal* matter.

5. As set forth more fully in the *ConVal* plaintiffs’ Objection to the *Rand* plaintiffs’ motion for protective order,³ differentiated aid and its relationship to both base adequacy and constitutionally adequate education are squarely at issue in the *ConVal* appeal. Obj. to Mot. for Protective Order, at ¶¶ 4-8. To testify in the *Rand* trial, Ms. Witte will have to be prepared extensively to ensure that the attorney-client privilege held by her former employer, Monadnock School District, is not inadvertently waived. Ex. 1, at ¶ 11.

6. These burdens are disproportionate to the *Rand* Plaintiffs’ needs. If, indeed, they simply seek factual information and lay opinion testimony based thereon from Ms. Witte, there are other, less burdensome sources of that evidence available. In fact, Ms.

³ Incorporated in full here by reference.

Witte is no longer the best source of that evidence as it pertains to the Monadnock School District, as she no longer works there.

7. Finally, failure to serve Ms. Witte in compliance with RSA 516:5 is, contrary to Plaintiffs' assertions, a basis to quash the subpoena. *See, e.g., Petition of New Hampshire Div. of State Police*, 174 N.H. 176, 181 (2021) ("The party must provide notice to the deponent, either by reading the subpoena to him or her or by serving the deponent in-hand with an attested copy. RSA 516:5 (2007). The party must also provide the deponent with travel and attendance fees. *Id.*")

WHEREFORE, Grantham School District prays that this Court:

1. Quash Plaintiffs' subpoena as to Ms. Witte; and
2. Grant such further relief as is just and equitable.

Respectfully submitted,
Grantham School District

By its attorneys,
Wadleigh, Starr & Peters, PLLC

August 12, 2024

By: /s/ Elizabeth E. Ewing
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CERTIFICATION OF SERVICE

I hereby certify that a copy of this filing has this day been served via email on all parties via the Court's electronic case filing system.

/s/ Elizabeth E. Ewing

Exhibit 1

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

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Steven Rand, et al.

Plaintiffs

v.

The State of New Hampshire

Defendant

Affidavit of Lisa Walker (formerly Witte)

Lisa Walker, being first duly sworn, hereby depose and say as follows:

1. My name is Lisa Walker. I recently changed my name, and I was formerly known as Lisa Witte.

2. I received a subpoena commanding me to appear and testify in the above-captioned matter.

3. Testifying would constitute a significant imposition on me, personally, as well as my current and former employers.

4. I have asked the Districts' attorneys to file a Motion to Quash the subpoena.

5. I believe that I have been subpoenaed in this case because, in my role as the superintendent of the Monadnock School District, I testified in the *ConVal* trial.

6. I retired from my position as the superintendent of the Monadnock School District on January 1, 2024.

7. I was retired for four months before I began working as a part-time superintendent at the Grantham School District. I also work as a part-time EMT for Peterborough, New Hampshire. I also own and operate a small business in Peterborough, New Hampshire.

8. As an EMT, I work two eight-hour shifts per week, from 8 am to 4 pm. I work an additional 24 hours per week at the Grantham School District.

9. My EMT schedule is set a month in advance, and I am required to request any time off before the schedule is set. To take time off in September, I would have had to request time off before August 1st.

10. I am currently scheduled to work a shift for Peterborough on September 30th. I am also obligated to work at Grantham School District that week for 24 hours. To appear and testify, I would have to violate Peterborough's policy and work the 24 hours at Grantham outside of regular business hours or to fall short of my contract with that district.

11. In addition to scheduling work in Grantham and Peterborough during normal business hours, the business I own and operate requires me to be on-site frequently and immediately after I end my work day with Grantham and/or Peterborough.

12. I am no longer employed by the Monadnock School District. I would need to consult with Monadnock's counsel at length before meeting with Plaintiffs' counsel or testifying to ensure that I do not waive the district's attorney-client privilege. Differentiated aid was the subject of many privileged conversations prior to, during, and after the ConVal trial.

13. For these reasons, testifying would be a significant burden.

14. I am no longer the best source of factual information about the Monadnock School District, as I no longer work there.

Date: August 12, 2024



Lisa Walker

STATE OF NEW HAMPSHIRE

COUNTY OF Hillsborough

Subscribed and sworn to, before me, this 12th day of August, 2024, by Lisa Walker.



Notary Public

My commission expires: April 10, 2029

EDMUND M WALKER
Justice of the Peace, State of New Hampshire
My Commission Expires April 10, 2029