

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

No. 217-2025-CV-480

Andrew Foley, et al.

v.

State of New Hampshire, et al.

OBJECTION TO MOTION FOR TEMPORARY RESTRAINING ORDER

The State of New Hampshire, Governor Kelly Ayotte, and Attorney General John Formella, by and through counsel, submit this objection to the plaintiffs' motion for a temporary restraining order. As set forth below, the plaintiffs' motion for a temporary restraining order should be denied.

1. On June 27, 2025, plaintiffs moved for and were denied a temporary restraining order in this matter, claiming essentially the same harm and seeking essentially the same relief. Plaintiffs' claims were subsequently more fully briefed and litigated at the preliminary injunction stage. As the Court is aware, after two hearings, the matter was submitted, and the parties are merely awaiting a ruling on plaintiffs' request for a preliminary injunction. Moreover, at the last hearing, the Court was made aware of the deadlines referenced in plaintiffs' requests.

2. To the extent plaintiffs seek to revive their prior, denied motion for a temporary restraining order, they have not identified any reason for this Court to reach a different decision. Indeed, it is far from clear that a request for a "temporary restraining order" is even proper under Superior Court Civil Rule 48(a) now that defendants have appeared in the case, moved to dismiss the complaint, and briefed and argued the motion for a preliminary injunction.

3. To the extent plaintiffs instead seek to prompt this Court to make its decision on their motion for a preliminary injunction faster, they offer no new evidence to justify the request. Indeed, if anything, plaintiffs' offered exigency has lessened since the August 27 hearing, given that the Attorney General has communicated to counsel that he intends to accept the award with a September 2, 2025 deadline.

4. Even if plaintiffs had offered such evidence, however, their motion should be denied. Defendants have explained in detail why plaintiffs are not entitled to a preliminary injunction. For these same reasons, plaintiffs are not entitled to a temporary restraining order that is essentially just a repackaged version of the preliminary injunction request.

5. It bears emphasizing, too, that defendants are not ambivalent about a temporary restraining order entering in this case. In defendants' view, there is no mechanism for this Court to intervene in the manner plaintiffs' request without necessarily concluding that plaintiffs' have satisfied the preliminary injunction factors, including likelihood of success on the merits. Plaintiffs have not demonstrated any likelihood of success on the merits or satisfied any of the other preliminary injunction factors. Absent such a showing, plaintiffs cannot obtain the relief they seek.

6. At the end of the day, plaintiffs are attempting to manufacture a need for the court to act expeditiously while simultaneously submitting extra briefing to support their request for relief. As there is no basis for the former, and the latter is improper, this Court should deny plaintiffs' request for a temporary restraining order.

WHEREFORE, the defendants respectfully request that this Honorable Court:

- A. Deny the plaintiffs' motion for a temporary restraining order; and
- B. Grant such other and further relief as justice may require.

Respectfully submitted,

Governor Kelly Ayotte; Attorney General John
Formella; State of New Hampshire

By their attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: September 2, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing objection was sent via the Court's electronic filing system to all parties of record.

Date: September 2, 2025

/s/ Samuel Garland
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