

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Case No. 217-2025-CV-00480

Andrew Foley, et al.

v.

State of New Hampshire, et al.

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR JUDICIAL DISCLOSURE**

Plaintiffs respectfully submit this reply to address mischaracterizations in Defendants' Objection and to clarify the narrow and proper basis for Plaintiffs' Motion for Judicial Disclosure.

First, contrary to Defendants' bald assertions, Plaintiffs do not allege bias, impropriety, "ill will," or "malicious motive." The Motion seeks only a single, limited disclosure to address an "appearance" that has arisen from the unusual circumstances and timing of this case. The inquiry is not accusatory. It is grounded in Canons 1.2, 2.4, and 2.11 of the Code of Judicial Conduct, which charges judges to act in a manner that promotes public confidence in the judiciary and avoid the "mere appearance" of improper influence where impartiality "might reasonably be questioned." *Achille v. Achille*, 167 N.H. 706, 710 (2015). Plaintiffs do not question the Court's independence and integrity. The Motion is intended to allow the Court to address a discrete question that has arisen due to external circumstances and the State's posture of secrecy.

Second, Plaintiffs' Motion is for disclosure, not disqualification. Defendants' Objection repeatedly treats the Motion as though it were a recusal motion and criticizes Plaintiffs for failing to carry a burden they do not bear. Plaintiffs have not asked for recusal. Rather, they have requested only that the Court provide the limited disclosure necessary to dispel the appearance that has arisen due to the Defendant-Governor's role in judicial appointments and her office's refusal to identify

sitting judges who are under consideration for appointments to the Supreme Court. Because the Motion does not seek recusal, Plaintiffs need not prove bias, and the authorities Defendants cite for rejecting speculative disqualification are inapposite. The Motion does not allege any wrongdoing by the Court, nor does it “impeach” any adverse ruling. It only requests transparency so that the Court’s impartiality cannot reasonably be questioned.

Third, the Motion is timely. The appearance of an issue did not arise in the minds of the Plaintiffs, as representatives of the proposed class, until after September 16, 2025, when they read the InDepthNH news article that made public the Governor’s refusal of a right-to-know request for the identities of sitting judges who had applied for the Supreme Court. After the Governor’s office refused the request, and thereby attracted public scrutiny from a longtime local journalist and an independent legal scholar (a well-known professor at the University of New Hampshire School of Law), the class representatives and other clients of the undersigned began to question whether the presiding judge in their case might have a conflict. An information imbalance had become apparent: Defendants, who include the Governor herself, know whether the presiding judge has applied; Plaintiffs do not.

After promptly and carefully evaluating the legal and ethical imperatives of this unusual situation, including with outside experts, Plaintiffs filed their Motion. The authorities Defendants cite involve recusal motions where the moving party long possessed the relevant facts but waited until after an adverse decision to raise them. That is not this case. The precipitating facts were uniquely within the State’s control and Plaintiffs did not appreciate that those facts were hidden from them until the article was published. It is the State’s insistence on secrecy rather than transparency that has caused the “appearance” of a potential issue.

In any event, the underlying case is far from over. While the Court has denied Plaintiffs' motion for a preliminary injunction, Plaintiffs have filed a motion for reconsideration of that decision, which does not allege bias as a ground but does alert the Court to new material facts that may alter its assessment of the motion. And regardless of the outcome of the reconsideration motion, Plaintiffs intend to pursue this case to a final judgment.

Fourth, owing to the unusual circumstances of this case and the narrow relief requested, this modest Motion does not threaten the judiciary. Plaintiffs recognize that judges conduct their own recusal reviews without prompting, and that litigants ordinarily need not—and should not—intervene in those deliberations. This case is not, however, ordinary. The Governor, who wields the nomination power for Supreme Court appointments, is a defendant and, as the record reflects, has a strong interest in the outcome of this litigation. At the same time, the Governor's office has withheld the identities of sitting lower-court applicants, preventing the public, and Plaintiffs, from knowing whether a sitting judge presiding in a case involving the Governor has applied to that Governor for promotion. That combination creates a reasonable question in the minds of the Plaintiffs and the public.

While lawyers have a more sophisticated understanding and greater trust for how judges regularly process potential conflicts of interest, the Code's concern is not the bar's confidence, but "public confidence." Canon 1.2. The circumstances of this case, combined with the State's insistence on secrecy surrounding judicial appointments, has already led to public speculation about whether the presiding judge has applied for promotion. The State's loud effort to double-down on secrecy, attacking Plaintiffs for merely asking the question, amplifies that appearance. In these circumstances, a simple disclosure from the Court would dispel public speculation and allow all parties, and the public, to proceed with full confidence in the judiciary's independence.

Indeed, granting the Motion will reinforce public confidence, not erode it. The Code charges judges to act in ways that promote public confidence in the judiciary's independence, integrity, and impartiality. A narrowly tailored disclosure that addresses a concrete, externally created information gap serves precisely that purpose. It signals that, even when the appointing authority is a litigant and has chosen secrecy with respect to judicial applicants, the court remains transparent about facts uniquely within its possession that bear on the appearance of impartiality.

Finally, Defendants' rhetoric accusing Plaintiffs of "imputing ill will" and engaging in a "campaign" is unfounded and unhelpful. Plaintiffs' Motion is respectful, limited, and grounded in the Code's core objective to avoid even the appearance of impropriety. Plaintiffs' request does not seek to revisit any ruling, nor does it implicate the Court's reasoning in any decision. It seeks only to ensure, and to be seen to ensure, that no reasonable member of the public could question the Court's impartiality given the convergence of the Governor's litigant status, the secrecy regarding judicial applicants, and both past and impending Supreme Court vacancies.

For these reasons, the Court should grant the Motion for Judicial Disclosure and answer the limited question presented. Doing so will resolve an issue created by the State's own secrecy about judicial applicants and will strengthen public confidence in the judiciary.

Dated: October 23, 2025

Respectfully submitted,

**PLAINTIFFS ANDREW FOLEY,  
RONALD "CHUCK" MILES, and  
JANE DOE #231  
(on behalf of themselves and all those  
similarly situated)**

By their attorneys,

**RILEE & ASSOCIATES, P.L.L.C.**

**NIXON PEABODY LLP**

/s/ Cyrus F. Rilee, III  
Cyrus F. Rilee, III, Esq. (Bar No. 15881)

/s/ W. Daniel Deane  
David A. Vicinanza, Esq. (Bar No. 9403)

Laurie B. Rilee, Esq. (Bar No. 15373)  
264 South River Road  
Bedford, NH 03110  
T: 603.232.8234  
[lrilee@rileelaw.com](mailto:lrilee@rileelaw.com)  
[lrilee@rileelaw.com](mailto:lrilee@rileelaw.com)

W. Daniel Deane, Esq. (Bar No. 18700)  
Mark Tyler Knights, Esq. (Bar No. 264904)  
Nathan P. Warecki, Esq. (Bar No. 20503)  
S. Amy Spencer, Esq. (Bar No. 266617)  
Briana L. Matuszko, Esq. (Bar No. 269560)  
900 Elm Street, 14th Floor  
Manchester, NH 03101  
T: 603-628-4000  
[dvicinanza@nixonpeabody.com](mailto:dvicinanza@nixonpeabody.com)  
[ddeane@nixonpeabody.com](mailto:ddeane@nixonpeabody.com)  
[mknights@nixonpeabody.com](mailto:mknights@nixonpeabody.com)  
[nwarecki@nixonpeabody.com](mailto:nwarecki@nixonpeabody.com)  
[aspencer@nixonpeabody.com](mailto:aspencer@nixonpeabody.com)  
[bmatuszko@nixonpeabody.com](mailto:bmatuszko@nixonpeabody.com)

### **CERTIFICATE OF SERVICE**

I certify that on October 23, 2025, I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case.

*/s/ W. Daniel Deane* \_\_\_\_\_  
David A. Vicinanza, Esq.