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Epping School Board Headed to New Hampshire Supreme Court - NHSBA to File Amicus Brief on its Behalf

The Epping School Board is a party to a lawsuit pending before the New Hampshire Supreme Court. Filed by Epping Residents for Principled Government, Inc., (ERPG) the suit alleges the Epping School Board 2004 Annual Report contained unwarranted and illegal statements of advocacy. The lawsuit also alleges the Epping School Board illegally used public funds to solicit a favorable response from voters on certain warrant articles.

Last March, Epping Residents for Principled Government, Inc. filed a Petition for Injunctive Relief in Rockingham County Superior Court claiming two statements contained in the School Board's 2004 Annual Report illegally advocated "a favorable response from the voters" on three warrant articles. Specifically, the statements complained of were: "We ask for your support of the three year paraprofessional contract and the warrant article general maintenance issue" and also "your affirmative vote on the school budget is vitally important." ERPG sought to prevent the Epping School Board from including similar statements in future annual reports. The citizens' group also claimed the Epping School Board illegally used public monies for a mailing that asked for the public's support on the warrant articles. ERPG claimed this amounted to an illegal use of public funds because the mailing did not allow for differing viewpoints.

In response, Epping School Board claimed that the statements were recommendations concerning public issues and that their inclusion in the Annual Report provided valuable information to the public concerning school issues and the impact of the budget on the community at large. Epping School Board also claimed that such statements are authorized by R.S.A. 198:4, and are required by law to be in the Annual Budget pursuant to R.S.A. 32:19 and Department of Education regulations.

The relief requested by ERPG was denied by the Superior Court this past June. The Superior Court ruled that "[w]hile the School Board ultimately used public funds to reproduce the proposals, the court does not find that the expenditure rose to an inappropriate or excessive level of advocacy." The Superior Court also ruled that "the government may use public funds to endorse ballot issues initiated by its own measures." Thus, the Epping School Board was not prohibited from urging support for its own proposals in the Annual Report.

Dissatisfied with the ruling, ERPG appealed its case to the New Hampshire Supreme Court. The New Hampshire Supreme Court accepted the case in October; the New Hampshire School Boards Association anticipates the case to be argued and an opinion issued in spring 2006.

The New Hampshire School Boards Association has been asked to file an amicus brief in support of the Epping School Board's position. The amicus brief will address numerous policy concerns and issues raised by this case. Because this case has the potential to affect all New Hampshire school boards, NHSBA is keenly aware of the vast impact an adverse ruling will have on our members.

Among the concerns presented if ERPG ultimately wins, the resulting impact will call for local school boards to provide less or little information to voters; the result would be a "chilling effect" in which school boards would be reluctant to express their views, yea or nay, regarding annual reports and annual budgets. This reluctance to engage in open debate and discussion would be a great disservice to New Hampshire voters.

Additionally, if the actions by the Epping School Board are determined to constitute "illegal advocacy", local school boards would not be afforded the opportunity to govern effectively. At the very least, the line between "advocacy" and fulfilling statutory duties would be blurred in such a manner that school board officials would have to risk either illegally advocating certain positions, or failing to comply with their duties as school board members. Either way, the lasting result would be troubling for school boards.

If the Supreme Court rules that school boards must offer equal time and space for opposing viewpoints in every school district publication, it is conceivable that every "citizen's rights" group would demand similar time, space and resources to have its particular viewpoint heard. The logistical complications such a ruling would create are obvious. No longer would annual reports and budgets be compiled to inform voters of a school board's policies, goals and resources. Rather, such annual reports and budgets would become advertising instruments for everyone opposed to the annual school budget. Instead of presenting pertinent fiscal information in a concise manner, annual reports and budgets would come to resemble the editorial page of a local newspaper. All this, of course, would come at the public's expense.

Another concern is that school districts would be forced to expend substantial costs to have their local legal counsel read and verify every line, page and portion of annual reports and annual budgets to ensure those publications do not contain any illegal or unwarranted "advocacy" statements. The legal costs incurred by school districts would be exorbitant if faced with this type of burden.

Because this matter is likely to have legal as well as practical implications for school boards statewide, NHSBA will keep our members informed of the lasting results and impacts this case presents.