

STATE OF NEW HAMPSHIRE

MERRIMACK, ss.

SUPERIOR COURT

Docket No.: 217-2021-CV-00055

IN RE: TOWN OF BRADFORD

134 East Main Street
Bradford, NH 03221

PETITION TO APPOINT SELECTMAN PURSUANT TO RSA 669:63

NOW COMES Marlene Freyler, a resident, voter and Selectman of the Town of Bradford (the “Town”), by and through the Town’s attorneys, Drummond Woodsum & MacMahon, and hereby petitions the Court to appoint a Selectman to the Bradford Board of Selectmen pursuant to RSA 669:63. In support of the Petition, she says as follows:

1. The undersigned Selectman Freyler is requesting **expedited** consideration of this Petition because of the urgency of the situation. The simultaneous resignation of two selectmen from the Town’s three-member Board of Selectmen leaves the Town without a “majority of the selectmen” required to manage the Town’s affairs under RSA 41:8. The Town needs the Court to appoint one selectman pursuant to RSA 669:63 so that the Board will have two selectmen (a “majority”) which can in turn act to appoint a third selectman to reconstitute a full Board.

Relevant Facts

2. The Town of Bradford is a New Hampshire municipal corporation in Merrimack County.

3. The Town has a three-member Board of Selectmen. Pursuant to RSA 41:8, one selectman is elected at each year’s annual town meeting for a three-year term. The selectmen are charged with managing the prudential affairs of the Town and performing various other duties as

prescribed by law. A majority vote of the three selectmen is required for the Board to act on behalf of the Town.

4. As of January 25, 2021, the Town's three selectmen were Michael James (term expires 2021), Jason Allen (term expires 2022), and Marlene Freyler (term expires 2023).

5. At a public meeting of the Board of Selectmen on the evening of January 25, 2021, Selectmen James and Allen each submitted letters of resignation. It does not appear that their simultaneous resignations were coordinated.

6. As a result of the resignations of Selectmen James and Allen, Marlene Freyler is the only remaining selectman.

7. Selectman Freyler is unable to carry out the duties of the Board of Selectmen or act to manage the prudential affairs of the Town because she alone is not "a majority of the selectmen" required for action under RSA 41:8. One immediate consequence is that no one can authorize payment of invoices or payroll on behalf of the Town, or execute a warrant for the upcoming annual meeting of the Town's legislative body. There are many other functions of the Town that cannot be conducted without a constituted Board of Selectmen.

8. Selectman Freyler, as a resident, voter, and the only remaining selectman of the Town, files this petition to ask the Court to appoint Town resident Christopher Frey to fill Selectman James's seat. As set forth in the accompanying affidavit of Ms. Freyler, Mr. Frey has volunteered to assist the Town in this emergency situation and fill Selectman James's seat until the term ends at the 2021 annual town meeting and the Town is able to elect a new selectman for a new three-year term. Mr. Frey has a long history of service to the Town, including as a selectman and more recently as a long-time member of the Town's budget committee. *See* the accompanying Affidavit of Marlene Freyler.

9. Once Mr. Frey is appointed as a selectman, he and Selectman Freyler will be able to act together as a majority of the Board and carry out the Board's basic functions until the 2021 annual town meeting.

10. It is Selectman Freyler's intention that she and Mr. Frey will not act to appoint a third selectman to fill Selectman Allen's seat, and complete his term expiring in 2022, until *after* the election at the 2021 annual town meeting. In so doing, the voters of Bradford will have an indirect voice in the appointment of their third selectman through the election of the second selectman who will participate in the appointment of the third.¹

11. Public notice of Selectman Freyler's intent to file this Petition has already been posted on the Town's website. A copy of this Petition and supporting documents will be posted at the Town Office, the local post office, and on the Town's website on the same day that this Petition is filed with the Court. These are the customary methods of providing public notice of events relating to Town government.

The Law

12. RSA 669:63 provides in relevant part:

Vacancies in the board of selectmen shall be filled by appointment made by the remaining selectmen. Whenever the selectmen fail to make such appointment, the superior court or any justice thereof, on petition of any citizen of the town, and after such notice as the court shall deem reasonable, may appoint a suitable person to fill the vacancy....

13. This statute appears to refer to circumstances when a majority of a board of selectmen (*e.g.*, the plural "remaining selectmen") is capable of acting to appoint. However, it is unclear whether a single selectman, who is not a majority on a three-person board, can act to

¹ Selectman Allen's seat, with a term expiring in 2022, cannot be filled by election at the 2021 annual town meeting because RSA 669:61, III provides that "[a]ny vacancy which occurs between the beginning of the [nomination] filing period and the town election shall not be filled by official ballot until the annual town election the following year. Per RSA 669:19, the nomination filing period for town officials began this year on January 20, the seventh Wednesday prior to the second Tuesday in March.

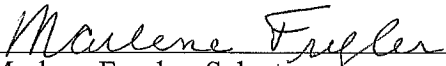
appoint under this statute. Due to this uncertainty, and the risk that an illegal appointment could negate a reconstituted Board's authority to act, Selectman Freyler is petitioning the Court to make one appointment. Once the Court has made one appointment, Selectman Freyler and the second selectman can act together as the "remaining selectmen" to appoint a third selectman.

WHEREFORE, the Petitioner, Marlene Freyler, respectfully requests that the Court:

- A. Take action on this Petition in an expedited manner;
- B. Deem that posting of the Petition at two conspicuous public places in the Town as well as on the front page of the Town's website constitutes reasonable notice of the Petition;
- C. If the Court determines that a hearing is necessary, schedule a hearing as soon as possible and order that 24 hours' advance notice to the public of such hearing, posted at two conspicuous locations in the Town and on the front page of the Town website, shall be sufficient notice of such hearing;
- D. Appoint Christopher Frey to fill Selectman James's seat as selectman for the Town of Bradford until the end of the three-year term at the 2021 annual town meeting; and
- E. Grant such other and further relief as is just and equitable.

Dated this 27th day of January, 2021.

Respectfully Submitted,



Marlene Freyler, Selectman
TOWN OF BRADFORD

By the Town's attorneys,

/s/ Matthew C. Decker

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