IN THE SUPREME COURT

FOR THE

STATE OF VERMONT

ATHENS SCHOOL DISTRICT ET AL.

VS.

VERMONT STATE BOARD OF EDUCATION ET AL.

Supreme Court Docket Nos. 2019-185 and 2019-241

Athens School District, et. al., Appellant

Appeal from
Vermont Superior Court, Franklin Unit
Docket No. 33-1-19 Frcv

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Forcing school districts to merge undermines the primary goal of Act 46: "to encourage and support *local decisions and actions*." 2015 Vt. Laws No. 46, § 2 (emphasis added). This primary goal modifies the Act's other goals: good academic outcomes, affordability, equity, transparency, and accountability. *Id.* Forced merger undermines this goal by taking away local decision-making. It also undercuts other parts of the Act, like Section 9, which sets out a collaborative, locally driven analysis of whether merger is necessary.

The State's response brief never attempts to explain how forced merger squares with Section 9 and the Act's "local decisions" mandate. Its only assertion to this point—that allowing an initial voluntary merger phase served to "encourage and support local decisions and actions"—rings hollow considering subsequent forced merger. Because voluntarily merged districts would have been forced to merge anyway, "local decisions" is illusory. The Board even ignored unanimous votes from those with the most at stake—those who send *their own community's children* to the affected schools.

The State concedes that neither the Agency nor the Board analyzed whether it was "necessary" to forcibly merge school districts. Instead, Defendants asked only whether it was "possible" and "practicable." Many things are "possible" and "practicable," but that does not make them "necessary." This failure was reversible error.

The Board also ignored existing statutory provisions that mandate local votes on mergers and on incurring debt. This too was reversible error.

Forced merger also violates the constitutional separation of powers. This Court held as much in *Municipal Charters*. The State's unsupported claim that "school districts are different" is simply incorrect. While forced merger also violates the Education Clause and the Common

Benefits Clause, the State's response brief misinterprets Appellants' arguments and fails to address these constitutional infirmities.

The Board failed to follow the plain mandate of Act 46, ran afoul of existing statutory provisions, and offended the Constitution—all without determining whether this would serve the Act 46 goals or the interests of students and communities. In the headlong rush to merge, the Board failed to consider that many districts can meet Act 46 goals without merging, even where merger is possible and practicable. The State does not refute that the forcibly merged school districts include ones with "demonstrated academic outcomes substantially higher than State averages at costs substantially below State averages." Appellant Br. 11 n.9. For these districts, forced merger may do more harm than good.

STANDARD OF REVIEW

Applying the factors set out in *Appeal of Stratton Corporation*, 157 Vt. 436, 443 (1991)—which the State cites but does not apply—the process here was quasi-adjudicative. The Legislature required the Board to consider, hear testimony on, allow each district to supplement, and exercise discretion regarding whether to approve the Section 9 proposals submitted by each district that had not yet merged. 2017 Vt. Laws No. 49, § 8 (amending Act 46 to add § 10(c)). Each Section 9 proposal included "comprehensive data" on past performance of the proposing district or group of districts regarding academic outcomes, fiscal efficiency, and student/teacher ratios. *See* 2015 Vt. Laws No. 46, § 9(a)(3). Far from a "prospective," "policy-type question" consistent with a quasi-legislative task, the Board's review required a "specific, individualized focus" and an exercise of discretion on each Section 9 proposal. *Stratton*, 157 Vt. at 443.

Even the State's earlier filings suggest that this was a quasi-judicial proceeding, asserting that the Final Report and Order made "factual findings" based on "substantial evidence." *Athens*

v. State Board of Ed., 33-1-19 Frcv, Memorandum in Support of Motion to Dismiss, 1/30/19, at 37-38 & n.16; *see* 3 V.S.A. § 809 (contested cases involve taking *evidence*); 3 V.S.A. § 812 (quasi-adjudicative decisions *must include findings of fact*).

The Board's decisions regarding merger are outside its area of expertise and not entitled to deference. Deference to an administrative agency is predicated largely on the presumption that the agency has special expertise in the matter at issue. *In re Verizon New England, Inc.*, 173 Vt. 327, 334 (2002). The Board's area of expertise lies in education policy. 16 V.S.A. § 164. The composition of the Board—which is unelected and includes two high-school students—is tailored to deal with policy issues. 16 V.S.A. § 161. The Agency and Board have no experience forcing municipal mergers or dissolving municipal entities. Nor do they have expertise in the effects of these actions, including: shifting and reconfiguring debt among towns, altering taxation structures, authorizing boards controlled by one or more municipalities to spend taxpayer dollars raised for another municipality, installing and removing elected officials, and creating new processes for warning and conducting elections.

Where a Vermont administrative agency exercises adjudicative functions, as the Board did here, this Court will be "especially vigilant" on appeal, and an agency's legal conclusions are not protected by any deference. *In re Agency of Administration*, 141 Vt. 68, 75 (1982).

ARGUMENTS

I. The Agency and Board ignored the express legislative purpose of Section 9 and the plain meaning of the word "necessary" in Section 10 of Act 46.

Merger is a means, not an end. Where Act 46 looks to merging districts, it does so only after considering whether merger will achieve Act 46's goals. The goals are set forth in Section 2: to "encourage and support local decisions and actions that" support good academic outcomes, affordability, equity, transparency, and accountability. 2015 Vt. Laws No. 46, § 2. The goal was

not to merge wherever "possible and practicable." After dozens of communities spent thousands of hours compiling comprehensive data to demonstrate, pursuant to Section 9, that they were indeed already meeting the goals, it was incumbent on the Board to ask, pursuant to Section 10, whether it was "necessary" to merge them.

The State asserts that "as the trial court explained, the use of the word necessary in Section 10(a)(2) 'reflects a recognition that the Board will have to take certain actions to achieve mergers, which in turn, will meet the Legislature's stated Goals.'" State Br. 17. This is circular. It also undermines Section 9: why develop a proposal showing that merger is not necessary to meet Act 46's goals (and turn down millions of dollars in tax incentives for voluntary mergers) if the Board simply merges wherever possible and practicable?

The State's assertion also ignores this Court's long-standing principle that, when construing statutes, the primary objective is to give effect to the intent of the Legislature. *In re A.C*, 144 Vt. 37, 42 (1984).[1] The Legislators who crafted the law were clear as to their intent when they presented Act 46 to the full Senate for a vote:

- Senator Ann Cummings, Senate Education Committee Chair and Reporter of the Bill for Act 46, speaking to the Senate floor at the time it passed:

> *If you can demonstrate that you are providing a high-quality education at an affordable price, you're home free.* If you can't, then we're going to require that you work on that, that you talk to your neighbors. *We're not going to tell you what you have to come out with* except that it has to be efficient and it has to provide high quality education.

Recording, Senate Proceedings, 5/7/2015, Disc 2, Track 1, at 3:51–4:41 (emphasis added).

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[1] The State seeks legislative intent in subsequent legislative failures. State Br. 21. As this Court has cautioned, however, "a statute stands on its own terms; whatever action a legislature may subsequently take offers limited insight into an earlier intention." *Ins. Co. of Pa. v. Johnson*, 2009 VT 92, ¶ 23, 186 Vt. 435. Further, the State ignores the Legislature's broad pronouncement in Act 49 that the Board, in evaluating alternative governance structures, "shall not by rule or otherwise impose more stringent requirements than those in this act." 2017 Vt. Laws No. 49, § 20.

- Senator David Zuckerman, then-member of the Senate Education Committee, at the time of passage:

> Our bill says if your small school does it well, financially and with outcomes, *you don't have to change a thing.*

Recording, Senate Proceedings, 5/7/2015, Disc 3, Track 5, 3:47-3:56 (emphasis added).

- Senator Joseph Benning from Caledonia County at the time of passage:

> And I come back to congratulating the Education Committee for working very hard *to make sure* that if you are indeed a small school and you are indeed operating in an efficient way and you're feeling that your children are in fact getting a proper education, *then this bill seeks to leave you alone.*

Recording, Senate Proceedings, 5/7/2015, Disc 3, Track 8, 1:29-2:08 (emphasis added).

An agency "has only such powers as are expressly conferred upon it by the Legislature, together with such incidental powers expressly granted or necessarily implied." *Trybulski v. Bellows Falls Hydro-Elec. Corp.*, 112 Vt. 1, 7 (1941). Section 10(b) confers the power to call for forced merger, expressly limited by the phrase "where necessary." The State Board ignored this limitation, and now concedes that the Secretary and the State Board never determined that a single merger was necessary. State Br. 17. They instead merged districts wherever possible and practicable without providing the "adequate explanation" this Court requires to uphold agency action. *In re MVP Health Ins. Co.*, 2016 VT 111, ¶ 26, 203 Vt. 274.

At least one Board member, William Mathis, understood that the Secretary and Board had failed to connect merger to Act 46's goals, noting that "the secretary presented no compelling evidence that her preference is the 'best.' And neither did the board." PC 63, 83. The Board's failure to develop standards for meeting Act 46's goals, such as those related to financial efficiency, further shows that it was never focused on those goals.

By merging wherever possible and practicable the Board failed to analyze whether mergers were necessary, and never even analyzed what would be the best governance structure for each district to meet Act 46's goals. This is reversible error.

II. Neither the Agency nor the Board had the authority to suspend statutorily created voting rights.

The Legislature directed the Vermont School Boards Association ("VSBA") and the Vermont Superintendents Association ("VSA"), in consultation with the Agency of Education, to develop proposed legislation delineating which of the default Articles of Agreement issued by the Board would need to be approved by the electorate. 2017 Vt. Laws No. 49, § 8 (amending 2015 Vt. Laws No. 46, § 10(d)(3)). The VSBA and VSA consulted with the Agency and responded: "Based on a review of Chapter 11 of Title 16, we are recommending *no additional statutory changes*." Exhibit i, Attachment B, Appellants' Complaint (emphasis added). The letter then explains that the electorate retains certain voting rights:

> Current law gives the *electorate* specific powers and authority to approve and modify certain provisions of the Articles of Agreement (See 16 V.S.A. 706f and 16 V.S.A. 706n). *The electorate has the authority to determine . . . how the assumption of debt and ownership of property will be handled . . . .*

Id. (emphasis added).

In response, the Legislature made no additional statutory changes. The Legislature clearly understood that the statutory voting provisions set forth in Chapter 11 of Title 16, such as 16 V.S.A. §§ 706d (merger votes), 706f (assumption of debt and transfer of property), 706n (amendment of Articles of Agreement), and 721 (annexation of one district by other districts), would stay in place with Act 46, and would apply to any union districts created through the Act. Act 46 was reviewed by seven separate legislative committees and was the subject of eight roll call votes. *See* Legislative History on 2015 H. 361 (Act 46), *available at*

legislature.vermont.gov/bill/status/2016/H.361. Nevertheless, without explicit authority from the General Assembly, the Board's Default Articles of Agreement (which were never promulgated through administrative rulemaking) purport to abolish the electorates' right to vote not only on the assumption of millions of dollars of debt, but on the transfer of millions of dollars of property as well. *See* PC 113 (Article A(i)(c) and (d)).

Citing *State v. Lynch,* 137 Vt. 607 (1979), Defendants assert that "where two statutes addressing the same subject are 'in irreconcilable conflict' the more recent statute controls." State Br. 13. The Court in *Lynch* relied on the concept that "[t]he phrase '(n)otwithstanding any other provision of law' clearly indicates the legislative intent that [a later law] take precedence over any other enactment dealing with the same subject matter." 137 Vt. at 611. Notably, the Legislature used "notwithstanding" twenty-seven times in Acts 46 and 49, but *not* with respect to Sections 706d, 706f, 706n, or 721.

The State asserts that Act 46 implicitly overrides these voting rights. State Br. 13–15. Implicit repeal is "disfavored" by courts, and "will be found only where (a) the acts are so far repugnant that they cannot stand together, or (b) are not so repugnant, but the later act covers the whole subject of the former and *plainly shows it was intended as a substitute therefor[].*" *State v. Rooney*, 2011 VT 14, ¶ 19 n.4, 189 Vt. 306 (quotation omitted). Implicit repeal is not warranted here.

First, contrary to the State's assertion, Act 46 need not conflict with these background statutes. While the State suggests such a conflict, it does not identify what the conflict is. State Br. 13. Any presumption of a "conflict" relies on the faulty premise that Act 46 allows the Board to force mergers without a vote by the electorate, and that therefore these background voting statutes must be set aside.

Second, this Court has been particularly skeptical of implicit repeal of a local electorate's voting rights. In *Downtown Rutland Special Tax Challengers v. City of Rutland*, cited in Appellants' principal brief, the Court rejected an argument similar to the State's contention here regarding a conflict of statutes. 159 Vt. 218, 220-21 (1992). *Downtown Rutland* held that where a new statute empowers an administrative body to do something that is subject to a vote of the electorate under an existing statute, the new statute should not be read to conflict with, or implicitly repeal, the existing voting-rights statute. *Id.* The State's response ignores this case.

Third, the Board over-reached its delegated authority when it presumed to override Title 16 voting rights. This Court addressed a similar situation in *Thompson v. Smith*, where a statute allowed a selectboard to adopt an ordinance but required a vote by the electorate before the ordinance could go into effect. 119 Vt. 488, 500 (1957). The selectboard adopted an ordinance under the statute, but determined it would go into effect on approval by the Attorney General, instead of the electorate. *Id.* This Court struck down this approval mechanism, observing that it "redelegate[s] power entrusted to the voters of the municipality to a third person who was a stranger to the town" and thus "transcends the expressed limits of the power delegated from the State." *Id.* at 501 (citing *In re Municipal Charters*, 86 Vt. 562, 86 A. 307 (1913)).

The State also misleadingly asserts that the State Board "harmonized" Act 46 and 16 V.S.A. § 721. State Br. 15. For two districts to merge under Section 721, voters in *both* districts must vote in favor of merger. But the Board conceded that it used "one half of the Section 721 process" and eliminated the vote of the smaller district. *Athens Sch. Dist. v. State Bd. Ed.*, Dckt. No. 33-1-19 Frcv, Defendants' Memorandum of Law in Support of Motion to Dismiss, dated 1/30/19, at 34. This does what *Downtown Rutland* and *Thompson* forbid: allowing a state agency to revoke statutory voting rights based on the premise that there is a statutory conflict or implicit

repeal.

The Legislature could have amended those statutes that require a vote before merger, or added a twenty-eighth use of the phrase "notwithstanding" to explicitly supersede those statutes. It did neither.

III. The Board's Final Order violated the Vermont Constitution.

A. The Board's Final Order violated the separation of powers.

Under the State's misreading of Act 46, the Board has sole, unilateral discretion to create and dissolve municipal entities wherever possible and practicable. There is no check on this alleged power because it is not subject to approval by the Legislature or a vote of the local electorate, and the Board has no accountability to the public because it is not an elected body. Contrary to the State's assertions, such a sweeping delegation of authority is not consistent with Vermont's Constitution or laws of other states.

Municipal Charters is the only decision on point interpreting Chapter II, Section 6 of the Vermont Constitution. The State's citationless argument that *Municipal Charters* is inapposite because villages and school districts "have never been treated the same way in Vermont," State Br. 23, is incorrect. Villages are not one of the enumerated municipalities in Chapter II, Section 6, *see* Vt. Const. Ch. II, § 6, but the *Municipal Charters* Court interpreted this provision to apply to villages nonetheless. 86 Vt. 562, 86 A. 307, 308 (1913). Like villages, school districts are not enumerated in Chapter II, Section 6, but have always been treated on par with towns and other municipalities by the Legislature. *See* 1 V.S.A. § 126 (defining "municipality" to include, among other things, "town," "town school district," and "incorporated village"); 1 V.S.A. § 139 ("[T]he laws applicable to the inhabitants and officers of towns shall be applicable to the inhabitants and similar officers of all municipal corporations."); 16 V.S.A. § 421 ("A town shall constitute a school

district . . . ."). This Court has done the same. *See Baird v. Town of Berlin*, 126 Vt. 348, 352 (1967) ("The School district is a municipality, 1 V.S.A. § 126, and is a separate corporate entity from the town."); *N. Troy Graded Sch. Dist. v. Town of Troy*, 80 Vt. 16, 66 A. 1033, 1039 (1907) (same); *Tileston v. Newman*, 23 Vt. 421, 425 (1851) (same); *see also Holmberg v. Brent*, 161 Vt. 153, 155 (1993) (holding that an incorporated village qualifies as a municipal corporation).

The State's suggestion that this Court would be in good company by affirming the Board's Final Order is also unsupported. Few if any of the state decisions cited in the treatises proffered by the State, State Br. 22-23, involve such a sweeping delegation of authority as the Board claims here. Instead, many of these cases involve statutes that delegate some shared authority to an administrative body but also require a local decision or action to initiate or approve dissolution, merger, or creation of a school district. *See, e.g.*, *Wash. Township Independent Sch. Dist. v. State Bd. of Ed.*, 153 A.3d 1177 (Pa. Commw. Ct. 2017); *In re Lewis & Clark Pub. Sch. Dist.*, 876 N.W.2d 40 (N.D. 2016); *In re Petition to Transfer Territory*, 364 P.3d 1222 (Mont. 2015); *East Cent. Cmty. Sch. Dist. v. Miss. Bend Area Educ. Agency*, 813 N.W.2d 741 (Iowa 2012); *In re Petition For Authorization To Conduct A Referendum*, 854 A.2d 327 (N.J. 2004); *Dunker v. Brown Cty. Bd. of Ed.*, 121 N.W.2d 10 (S.D. 1963); *Common Sch. Dist. v. Stuttgart Special Sch. Dist.*, 58 S.W.2d 680 (Ark. 1933); *Bd. of Ed. v. Hudson*, 138 S.E. 792 (Ga. 1927); *Valley Ctr. Sch. Dist. v. Hansberger*, 237 P. 957 (Ariz. 1925); *Kramer v. Renville* 175 N.W. 101 (Minn. 1919). These laws are consistent with the local voting statutes that the Vermont Legislature left fully intact when it passed Act 46, *see, e.g.*, 16 V.S.A. §§ 706d, 721, and are consistent both with the plain reading of the Act and with separation-of-powers principles.

Appellants do not contest that the Legislature can delegate some authority relating to its power to create and dissolve school districts. But there is a constitutional limit to that delegation

as recognized in *Municipal Charters*. That limit was exceeded here. And Vermont is not alone. The principle established in *Municipal Charters* prevails across the country. As the North Carolina Supreme Court explains, "[i]t is generally held that [a state] legislature, in enacting general statutes governing the incorporation of municipal corporations," may delegate to "a court or other agency" the ministerial authority to check if statutory requirements "have been complied with" for "the creation of the municipal corporation." *Carolina-Virginia Coastal Hwy. v. Coastal Tpk. Auth.*, 74 S.E.2d 310, 317 (N.C. 1953).

> However, by the decided weight of authority, the rule is that "if the statute requires or authorizes the court or other agency to pass upon questions of public policy involved, or to exercise any discretion as to whether the municipal corporation should be created, or to render any other assistance than the determination of facts, there is an attempted delegation of legislative power and the statute is invalid."

Id. (quoting 37 Am. Jur., Municipal Corporations, Sec. 8) (citing McQuillin, Municipal Corporations, 3rd Ed., Vol. 1, Sec. 3.05).

Here, the State claims that the Board, pursuant to authority delegated under Act 46, passed upon "prospective," "policy-type question[s]" to determine whether to dissolve, create, and alter municipalities across the state. State Br. 5. This cannot be reconciled with well-established limits on the separation of powers.

B. The Board's Final Order violated the Education Clause, Vt. Const. Ch. II, § 68.

Appellants' Education Clause argument is not hypothetical: forced merger of districts violates the Education Clause because it deprives a town of the exclusive authority to control the closure of its school.

The Constitution requires that "a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth." Vt. Const. Ch. II, § 68. This language was added in 1964. PC 65. At that time it was

understood that our Constitution required each town to maintain a school, but the Legislature could "permit" a town to close a school. *Id.* (*Burlington Free Press* article explaining that the amended language "allows towns to send their youngsters to schools in other communities," while Section 68 formerly required each town to operate a school).

While the Legislature can permit a town to close its school, the Constitution does not allow the Legislature to sweep in and close all schools in a town without local consent. Acts of the Legislature merging school districts before that time recognized this constitutional limitation and dealt only with merging districts *within* towns. *See Town of Barre v. Sch. Dist. No. 13 in Barre*, 67 Vt. 108, 30 A. 807, 807 (1894) ("The acts of 1892 . . . constitute each town into a single district, for school purposes.").

Despite this constitutional limitation, the State Board attempts to delegate the power to close all schools within a town, without local consent, to neighboring towns. It does this through the default Articles of Agreement, which allow a town's schools to be closed through a majority vote by neighboring towns.

The General Assembly does not have this power and therefore cannot delegate it. More to the point, the State Board cannot delegate a power it does not have. And Act 46 did not delegate that power.

Empowering one town to close another's schools not only violates the Education Clause, but the language of Act 46 as well, because the Legislature expressly intended not to close small schools. 2015 Vt. Laws No. 46, § 3.

C. The Board's Final Order violated the Common Benefits Clause, Vt. Const. Ch. I, § 7.

The State incorrectly claims that Appellants are challenging "Act 46's temporary tax incentives." State Br. 28. But Appellants "are not challenging" the 150 voluntary mergers "or the

tens of millions in taxpayer funds that Act 46 used to encourage those mergers." Appellant Br. 2.

As this Court has correctly held, the Vermont Constitution does not allow educational resources to be distributed based on "the mere *fortuity* of a child's residence." *Brigham v. State*, 166 Vt. 246, 268 (1997). But that is what the voluntary/involuntary merger distinction does. A tax incentive of $.10 or $.08 for a voluntarily merged district translates to hundreds of thousands of dollars in additional annual spending on programs and services for schoolchildren without increasing property taxes. Districts that are forcibly merged into identical structures cannot afford to provide these same programs and services to their schoolchildren.

To justify disparate treatment of educational spending, the State must show a "necessity" for the distinction. *Baker v. State*, 170 Vt. 194, 203 (1999). There is no such necessity here. There is not even a rational basis. Even if merger is the ultimate goal (which it is not), the State concedes that districts that could merge (because it is possible and practicable) would be forced to merge nonetheless if they did not do so voluntarily. Pursuant to this logic all districts are merged where possible and practicable, whether they "volunteer" or not. The voluntary/involuntary distinction is illusory. If all districts that can merge will be merged one way or another, there is no legally rational reason to incentivize some mergers and not others.

The small-school-grant system puts schools into separate buckets based on the same illusory difference, with voluntarily merged schools in one bucket, and force-merged districts (and those unable to merge) in the other. Schools are immediately treated differently based on the bucket they fall into. Voluntarily merged schools are guaranteed small schools grants (now called merger support grants) regardless of fiscal responsibility or academic outcomes. Force-merged and unmerged schools must annually jump through a series of hoops to obtain the same type of funding, or risk losing that funding. The risk of losing funding is real. For example, one metric

for small school grants is test scores. With small numbers of students, a few tests can result in wide fluctuations of overall results and put funding at risk. As with Peacham earlier this year, a small school grant may also be put in jeopardy by a change as small as accepting a special needs student, along with a para-educator, on behalf of a neighboring school. *See Athens v. State Bd. Ed.*, No. 33-1-19 Fncv, Intervenor-Appellant/Plaintiff's Response, 3/23/19.

The changes in tax incentives and small school grants awarded to voluntarily merged districts are based on an illusory distinction, have no necessary purpose or rational basis, and thus offend the Common Benefits clause.

The Board's failure to comply with the Common Benefits clause was reversible error. At a minimum, if forced merger is allowed—and it should not be—the State must provide forcibly merged districts with the same tax incentives and small schools grants provided to voluntary mergers.

CONCLUSION

This Court should vacate the Board's Final Order. Only the Legislature can forcibly merge school districts and redistribute debt. Even if the Board could forcibly merge, it could do so only "where necessary." The Board exceeded its authority when it ignored this limitation. If, however, the Court finds that the Board can force merger, the Final Order should be valid only if the electorate of each forcibly merged district in a proposed merger votes in favor of it. *See* 16 V.S.A. §§ 706d, 706f, 706n, 721. Forcing something on others never works well in Vermont. The voters should be allowed to vote.

Dated this 17th day of October, 2019, at Montpelier, Vermont.

APPELLANTS

By:
David F. Kelley

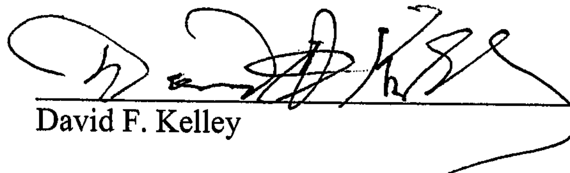
CERTIFICATE OF COMPLIANCE

Counsel for Appellant hereby certifies the following pursuant to V.R.A.P. Rule 32(a)(7)(A):

The principal brief I have filed on behalf of my client is in compliance with V.R.A.P. 32(a)(7)(A). My brief uses 12-point font, and contains no more than 4,500 words. Specifically, as determined by Microsoft Word the brief contains 4,499 words exclusive of the Statement of Issues, Table of Contents, Table of Authorities, and signature blocks.

Dated at Montpelier, Vermont, this 17th day of October, 2019.

TARRANT, GILLIES & RICHARDSON

By: 
David F. Kelley