

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

IN RE: PETITION OF HAROLD BRAGG, TOWN MODERATOR  
TOWN OF KENSINGTON, NEW HAMPSHIRE

Docket No. \_\_\_\_\_

**EMERGENCY VERIFIED PETITION PURSUANT TO RSA 669:63 FOR  
APPOINTMENT OF SELECTMEN TO FILL VACANCIES**

NOW COMES the Petitioner, Harold Bragg, the Town Moderator and a Citizen of the Town of Kensington, with an address of 154 Amesbury Road, Kensington, New Hampshire, by and through his attorneys, Donahue, Tucker & Ciandella, PLLC, and petitions this Honorable Court pursuant to RSA 669:63 to appoint two individuals to fill the vacancies occurring on September 10, 2018 on the Board of Selectmen for the Town of Kensington, New Hampshire. In support of this Petition, Harold Bragg (the "Petitioner") states as follows:

1. The Town of Kensington has a three person Board of Selectmen. On September 11, 2018, Selectmen Norman DeBoisbriand, Robert Wadleigh, and Linda Blood resigned *en masse*, each submitting their resignation as selectmen for the Town of Kensington, effective immediately. Selectmen Wadleigh and Blood submitted their resignations in writing (copies attached hereto as Exhibit A) and Selectman DeBoisbriand submitted his verbally at the Selectmen's meeting the night before. This resulted in the immediate vacancies of all three positions on the Kensington Board of Selectmen.

2. RSA 669:63 provides, in full, the following:

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; provided, however, that if the town has adopted the provisions of RSA 669:61,

IV, and a petition thereunder is submitted before the submission of a petition under this section, the provisions of RSA 669:61, IV shall apply.

3. RSA 652:12 provides, in relevant part, the following:

A "vacancy" shall occur in a public office if, subsequent to his or her election and prior to the completion of his or her term, the person elected to that office:  
I. Either dies, resigns [Emphasis added], or ceases to have domicile in the state or the district from which he or she was elected;

4. The Petitioner seeks to have the Court appoint two individuals as Selectmen, on an interim basis, in order to provide the minimum number required to transact any Town business.

5. This of immediate importance, as among other matters that may no longer be addressed by the Town absent any selectmen, the Town must authorize payroll by the end of this week in order to pay its employees. Upon learning of the resignations, the Town, by way of its attorney, contacted Bruce Kneuer, Supervisor of Municipalities, of N.H. Department of Revenue regarding the ability to issue payroll checks to Town employees, which are due on the next payday, September 14, 2018. Bruce Kneuer informed the Town's attorney that the Town Treasurer is without authority to approve the Town's manifest necessary for payment of payroll to Town employees. The manifest must be approved by the Board of Selectmen in accordance with RSA 32. With the current vacancies of all the Town's Selectmen, there is no authorized individual under State law to approve the Town manifest to pay Town employees on its next payday scheduled for September 14, 2018. If the Town fails to pay its employees on this date, it will be in violation of RSA 275:43, which mandates the timely payment of wages to employees on the employer's designated payday.

6. Harold Bragg is a citizen of the Town of Kensington and serves as the Town's Moderator. Mr. Bragg petitions this court pursuant to RSA 669:63 and requests that the Court

appoint the following individuals on an interim basis until the next annual Town Meeting in March 2019. By the time this Petition is filed with the Court, the Town Administrative Assistant shall have posted a notice of this Petition at the Town office and on the Town's website of Town affairs.

7. The individuals recommended to this Court by Petitioner for such appointment under RSA 669:63, and subject to each individual, upon appointment by this court, taking the oath of office required under RSA 669:9, are as follows:

- a. Michael Schwotzer who is domiciled in the Town of Kensington (as required under RSA 669:6), residing at 49 Cottage Road, Kensington, NH 03833. Mr. Schwotzer is a United States' Citizen as required by RSA 91:2; and is of good moral character and standing in the community. Mr. Schwotzer previously served as a Selectman in the Town of Kensington for the periods March, 1999 to March, 2000, and March, 2001 to March, 2004. In addition, Mr Schwotzer recently served as the Town's treasurer.
- b. Benjamin Cole who is domiciled in the Town of Kensington (as required under RSA 669:6), residing at 242 North Haverhill Road, Kensington, NH 03833. Mr. Cole is a United States' Citizen as required by RSA 91:2; and is of good moral character and standing in the community. Mr. Cole has served on the Kensington School Board and is a life-long resident of the Town of Kensington.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court:

A. Grant the Petition and appoint the above named individuals pursuant the Court's authority under RSA 669:63 to serve as interim Selectmen for the period of this appointment until the Town's annual Town Meeting in March, 2019; and,


B. Grant such other relief as is just and proper.

Respectfully submitted,  
HAROLD BRAGG  
By his attorneys,

DONAHUE, TUCKER & CIANDELLA, PLLC

September 12, 2018

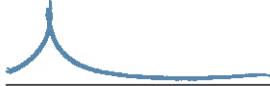
Date

By:   
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Exeter, NH 03833  
(603) 778-0686  
[dmansfield@dtclawyers.com](mailto:dmansfield@dtclawyers.com)

Verification

I, Harold Bragg, hereby state that the statements of fact contained in this Petition are true and accurate to the best of my knowledge, information and/or belief, and that any and all accompanying attached documentation are true and accurate copies of what they purport to be.

Dated: September 12, 2018

  
Harold Bragg

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this 12<sup>th</sup> day of September, 2018, before me, the undersigned, personally appeared the above-named Harold Bragg, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that the statements contained herein are true to the best of his knowledge, information and belief.

  
Notary Public *Justice of the Peace*  
My Commission Expires: 10/29/19

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## **EXHIBIT A**

Rec 9/11/18



State of New Hampshire  
Town of Kensington

95 Amesbury Road  
Kensington, NH 03833

Sept. 11, 2018

To Chief Scott Sanders:

This letter is to inform you that I am resigning from the Board of Selectman in the town of Kensington, as of this date: September 11, 2018.

It is my understanding that you are in charge in an emergency situation when the Board of Selectmen no longer is functioning.

Robert Wadleigh

Rec 9/11/18



State of New Hampshire  
Town of Kensington

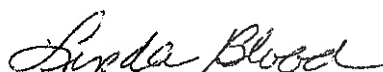
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Linda Blood