

Girard Bouchard, in his capacity as  
President of the Board of Directors  
of the Central Coventry Fire District  
Plaintiff

K.R. No. 12-1150

vs.  
Central Coventry Fire District  
Defendant

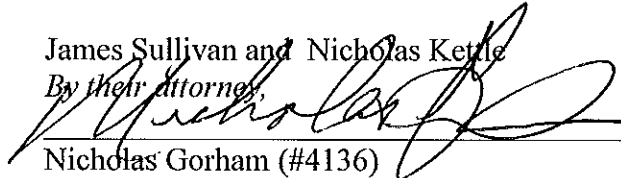
**OBJECTION OF JAMES SULLIVAN and NICHOLAS KETTLE to the  
Central Coventry Firefighters' Verified Motion For Temporary Restraining Order, Pre-Judgment  
Attachment And Order Directing Issuance Of Fourth Quarter Tax Bills**

Now come James M. Sullivan and represents that:

1. He is a resident, elector and taxpayer of the Central Coventry Fire District, residing for more than 19 years at 51 John Franklin Road in the Town of Coventry. .
2. He objects to the petitions and motions of the Central Coventry Firefighters' Verified Motion For Temporary Restraining Order, Pre-Judgment Attachment and their request for an Order Directing Issuance Of Fourth Quarter Tax Bills because the request is: a violation of Article V of the RI Constitution ("Of The Distribution Of Powers"); is beyond the jurisdiction of this Court as a matter of law and/or equity; wholly distinguishable from Exeter-W. Greenwich Reg'l Sch. Dist. v. Exeter-W. Greenwich Teachers' Ass'n, 489 A.2d 1010 (R.I. 1985) and W. Warwick Sch. Comm. v. Souliere, 626 A.2d 1280 (R.I. 1993) (school committees are agencies of the state and serve to carry out General Assembly's constitutional obligation under Article XII section 1 of the RI Constitution—and fire district committees are not); and wholly distinguishable from Cole v. E. Greenwich Fire Engine Co., 12 R.I. 202, 205 (1878) (corporation has the power to satisfy outstanding judgment by ordering its members to levy a tax).

The reasons for his objection are more fully set forth in the attached Memorandum in Support.

James Sullivan and Nicholas Kettle  
By their attorney,

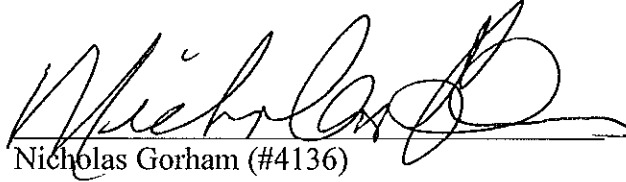


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April 4, 2013

Certification

I certify that I served the within by email on April 4, 2013 to the following:

'Stern, Brian' <bstern@courts.ri.gov>; 'jsmallridge@itwlaw.com'; 'nickgorham@gorhamlaw.com'; 'mgursky@rilaborlaw.com'; 'sen-raptakis@rilin.state.ri.us'; 'nkettle10@gmail.com'; 'rep-chippendale@rilin.state.ri.us'; 'rep-tomasso@rilin.state.ri.us'; 'rep-nunes@rilin.state.ri.us'; 'rep-morgan@rilin.state.ri.us'; 'rep-guthrie@rilin.state.ri.us'; Richard J. Land <rland@crflp.com>; Andre Digou <adigou@crflp.com>



Nicholas Gorham (#4136)

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Plaintiff

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Pre-Judgment Attachment And Order Directing Issuance Of Fourth Quarter Tax Bills**

The Central Coventry Firefighters' Verified Motion For Temporary Restraining Order, Pre-Judgment Attachment and their request for an Order Directing Issuance Of Fourth Quarter Tax Bills should be denied in its entirety because the relief sought would require this Court to assume a role in, and thus assert jurisdiction over, a subject matter that is quintessentially and distinctly reserved to the legislative and executive branches of our state government under Article V of the RI Constitution ("Of The Distribution Of Powers") and, by reference, Articles XI ("Of the Legislative Power") and Article IX ("Of the Executive Power"). It is thus a role that is beyond the jurisdiction of this Court as defined under Article X of our constitution, which limits the Supreme Courts' role to "*all questions of law and equity.*" The cases and jurisprudence surrounding the relief sought by the Union serve only to strengthen this notion.

Each request for relief in the Motions will be addressed below, separately.

**A. The Motion for TRO.**

Were the Central Coventry Firefighters' (hereinafter CCFE) Verified Motion for a TRO to begin and end at a request to recognize the CCFE as the exclusive bargaining unit of the entity and body politic known as the Central Coventry Fire District, this Motion would be properly before the Court. But it does not. The Motion, read carefully and fairly, asks this Court to declare that the CCFE is the

exclusive firefighting entity of the geographic area subsumed by the Central Coventry Fire District. This is a profoundly different request. The CCFF's request focuses on bills pending before the General Assembly (CCFF Motion ¶ 12) and the effect that neighboring fire districts' plans will have on the overall public safety (¶ 8, 10, 11) of the same geographic area. The request goes beyond the CCFF's contractual rights (*vis-a-vis* "Fire Fighters Arbitration Act." R.I. Gen. Laws Ann. § 28-9.1-1) and marches deep into the arena of public policy. Indeed, the CCFF even notes that there are Bills "scheduled for hearing before House Finance" which have "widespread support. Other legislation which would affect the outcome of this litigation is also pending." Motion ¶12.

The Union's 'argument' for relief from this Court is more than just inapposite. It is recognition of the forum in which the relief requested by CCFF belongs: the General Assembly. But this is not the only usurpation of legislative power the Union requests this Court undertake. There is more, much more.

**B. The Motion to Have the Court Order Tax Bills Be Sent Out**

The power to impose a tax upon the people of Rhode Island, or any one or group of them, is the exclusive province of the General Assembly.

"The imposition or levy of a tax is an exercise of the legislative power of the state and, in the absence of express constitutional restriction or limitation, the taxing power may be exercised in its entirety by the legislature."

Opinion to the Governor, 93 R.I. 28, 31, 170 A.2d 908, 909 (1961)

The Courts' proper role is to *protect* the people from the imposition of unfair or illegal taxes.

The power to tax:

"is not absolute \* \* \* and authority to tax is granted only by unequivocal instructions found in the Rhode Island Constitution and statutes enacted by the Rhode Island legislature. Rhode Island courts must assiduously protect the people from abuse of the government's taxing authority by requiring strict adherence to these unequivocal instructions, and expeditious measures not in conformance with these limitations, no matter how well intentioned, cannot be substituted for compliance." [emphasis added]

DeBlois v. Clark, 764 A.2d 727, 737 (R.I. 2001) quoting Cabana v. Littler, 612 A.2d 678, 684 (R.I.1992).

The CCFF attempts to turn the Courts' role as protector of the people on its head, suggesting this Court, rather than *protect* people from unjust or unfair taxation, anoint itself the taxing *authority* in place of the General Assembly. This the Court should not do.

The CCFF's reliance on the 1878 case of Cole v. E. Greenwich Fire Engine Co., 12 R.I. 202, 204 (1878) is misplaced. In Cole the Court was faced with a legislatively chartered fire district that claimed it had not the ability to raise the funds necessary to pay a judgment against it. The Supreme Court ordered the fire district to raise the money to pay the judgment by assessing and taxing.<sup>1</sup> The CCFF argues that Cole creates authoritative precedent that this Court can enforce the obligations of the CCFD created by the CBA with the CCFF "by a Writ of Mandamus to levy a tax." CCFF Motion ¶5.

This is a misreading of Cole. In Cole, the appropriating authority, as noted by the Court, was not the taxpayers of the Fire District. Rather, it was the "members" of the Fire District who were, pursuant to their charter from the General Assembly, in 1797:

"invested with an important public franchise, namely, the right to assess and levy taxes not only on themselves, but also "on the whole of the inhabitants of the compact part of the town of East Greenwich, including Peirce Street."

Cole v. E. Greenwich Fire Engine Co., 12 R.I. 202, 204 (1878)

A copy of the 1797 charter is attached, and indeed, it specifically provides that "William Greene, Jonathan Salsbury, Thomas Arnold..." and a handful of other individuals<sup>2</sup> were made "members" of the

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<sup>1</sup> "...the corporation could become liable to the judgment, and we think the power to tax, though permissive in form, creates, under the circumstances, a duty which can be enforced."

Cole v. E. Greenwich Fire Engine Co., 12 R.I. 202, 205 (1878)

<sup>2</sup> Including "all others who by them shall be admitted as Members of their Company, be, and they are hereby constituted, elected and made a Body politic and corporate." Schedule, Session General Assembly, February, 1797, p. 31. (copy attached, obtained from RI Statehouse Law Library)

Fire District by the General Assembly. The Charter gives this exclusive group of Members the power to levy “upon the whole of the Inhabitants” of East Greenwich, as noted *supra*. In Cole, the Court ordered the Members to raise the money to pay the judgment through taxes. This is very different from the case at bar.

Unlike the charter in Cole, the 2006 charter of the CCFD makes the “electors” of Central Coventry—that is the “inhabitants” of the district who are registered to vote—the sole and exclusive appropriating authority. If the electors fail to appropriate, the Court cannot make the “Members” of the fire district assess and collect taxes as was the case in Cole, because there aren’t “Members” in Central Coventry, there are only electors. Thus in order to satisfy the CCFF’s request for relief, this Court would need to Order the electors to meet and appropriate the money needed to fulfill the remedy sought by the Union. The Court has already refused to do this in its well-reasoned decision on March 29, 2013. There is no reason to diverge from that reasoning now.

Thus if Cole and the 1797 enabling Act which upon which it is based are not wholly antiquated, the Court’s 1878 decision is still, at the very least, inapposite to the case at bar. Here, in our modern post-1843 society, the General Assembly in June 2006 clearly and unequivocally made the people of Central Coventry the appropriating authority.

Here again there is irony. The CCFF has implored *this Court* to impose a tax on the people of Central Coventry, in almost the same fashion as was done some 215 years ago on the “inhabitants” of East Greenwich. While the tax urged by the CCFF may be expedient to its members, who will keep their jobs, and perhaps even to some people in Central Coventry, who want the same fire and rescue services heretofore known to them, it will be contrary to and without the consent of the electors and “inhabitants” of Central Coventry. The people of Central Coventry could not have made their wishes

any clearer than they did on March 26, 2013. In these circumstances, there is simply no need nor any authority for this Court to impose a tax on them. The Court should so rule.

### C. Pre-Judgment Attachment

The CCFE argument for Pre-Judgment Attachment is premised almost entirely upon its strained and misdirected reading of Exeter-W. Greenwich Reg'l Sch. Dist. v. Exeter-W. Greenwich Teachers' Ass'n, 489 A.2d 1010 (R.I. 1985) and W. Warwick Sch. Comm. v. Souliere, 626 A.2d 1280 (R.I. 1993).

In each case the Supreme Court recognized, first and foremost, that school committees are agencies of the state and serve to carry out General Assembly's constitutional obligation under Article XII section 1 of the RI Constitution<sup>3</sup>—a recognition that neither the General Assembly or the Supreme Court has ever made any fire district. *Id.* at 1013, 1281.

Secondly, the Court in Exeter-W. Greenwich Reg'l Sch. Dist., noted that although the General Assembly had, at one time, limited the obligation of a city or town appropriating authority to fund teacher contracts, the law had changed. The Court noted the key change, which had the effect of making teacher contracts enforceable notwithstanding the failure of the appropriating authority to appropriate:

However, in 1981 the General Assembly amended § 16–3–11(n) in P.L.1981, ch. 397, § 1, by adding the following sentence:

“Nothing contained herein shall be construed so as to prohibit a school committee from negotiating and contracting with school employees and teachers for services to be rendered in the ensuing fiscal years pursuant to chapters 28–9.3 and 28–9.4.”

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<sup>3</sup> “The diffusion of knowledge, as well as of virtue, among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education.” RI Const. Art XII section 1.

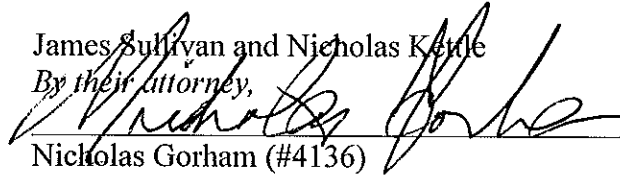
*As cited in* Exeter-W. Greenwich Reg'l Sch. Dist. v. Exeter-W. Greenwich Teachers' Ass'n, 489 A.2d 1010, 1016 (R.I. 1985)

There is no such provision in the Central Coventry Fire District Charter, or the Fireman's Arbitration Act, or any other statute pertinent to this matter. This can mean only one thing in the case at bar: the voters have the final say and here, their refusal to fund or pass the CCFD budget *three times* was the people's absolute and unfettered right. In short, the CCFF has *three times* received its judgment from the people and, though they may not like it, it is final. No remedy in this or any Court inures, derives or arises out of the peoples' decision. The CCFF's one and *only* remedy was with the voters; and now is with the General Assembly. The Court should so hold.

Conclusion

All relief sought in the CCFF petition should be denied.

James Sullivan and Nicholas Kettle  
By their attorney,

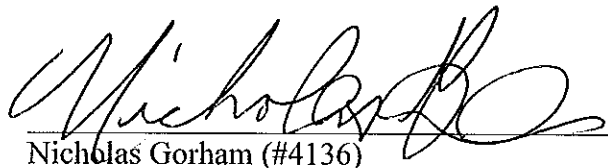


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Certification

I certify that I served the within by email on April 4, 2013 to the following:

'Stern, Brian' <bstern@courts.ri.gov>; 'jsmallridge@itwlaw.com'; 'nickgorham@gorhamlaw.com'; 'mgursky@rilaborlaw.com'; 'sen-raptakis@rilin.state.ri.us'; 'nkettle10@gmail.com'; 'rep-chippendale@rilin.state.ri.us'; 'rep-tomasso@rilin.state.ri.us'; 'rep-nunes@rilin.state.ri.us'; 'rep-morgan@rilin.state.ri.us'; 'rep-guthrie@rilin.state.ri.us'; Richard J. Land <rland@crflp.com>; Andre Digou <adigou@crflp.com>



Nicholas Gorham (#4136)



FEBRUARY, 1797.

I

At the General Assembly of the Governor and Company of the State of *Rhode-Island*, and *Providence-Plantations*, begun and holden, by Adjournment, at *East-Greenwich*, within and for the State aforesaid, on the last *Monday* in *February*, in the Year of our Lord One Thousand Seven Hundred and Ninety-seven, and in the Twenty-first Year of Independence.

P R E S E N T,

HIS EXCELLENCY

ARTHUR FENNER, ESQUIRE,  
GOVERNOR.

THE HONORABLE

SAMUEL J. POTTER, *Esq.* Deputy-Governor.

THOMAS G. HAZARD, *Esq.*  
NOAH MATHEWSON, *Esq.*  
JONATHAN COMSTOCK, *Esq.*  
JOHN COOKE, *Esq.*  
JAMES CONGDON, *Esq.*  
THOMAS HOXSIE, *Esq.*  
PELEG CLARKE, *Esq.*  
JOB WATSON, *Esq.*  
JOHN HARRIS, *Esq.*

ASSISTANTS.

THE SECRETARY.

DEPUTIES

limiting, appointing and defining their Trust and Authority; and for admitting of new Members; and to do all Things concerning the Government, Estate, Goods, Revenue, and all other the Business and Affairs of the said Company: All which Laws, Statutes and Orders so to be made as aforesaid, shall be binding on every Member; and be from Time to Time inviolably observed according to the Tenor and Effect of them: Provided they be not repugnant to the Laws of the State.

AND for the easier and better Government of the said Company, *It is further Enacted by the Authority aforesaid*, That the said Company, at their said Meeting on the First Saturday in April, shall annually choose Three Directors, a Treasurer and Librarian for the said Company.

WHEREAS a Number of the Inhabitants of the compact Part of the Town of *East-Greenwich*, including *Peirce-Street*, preferred a Petition and represented unto this Assembly, that there is no Fire-Engine in the said Town; and that, being greatly impressed with the Danger of a Fire's breaking out in the said compact Part of the said Town, they have formed themselves into a Society to procure a Fire-Engine, with Intent to make such Regulations, and adopt such Measures, as will have a Tendency to prevent the Calamities consequent upon the breaking out of Fire in the said Town; and thereupon prayed this Assembly that a Charter of Incorporation, may be granted them by the Name of *The Fire Engine-Company*, with the Powers necessary to enable them to effect, as far as possible, the Purposes for which they have entered into the Society:

Charter to the Fire Engine Company in East-Greenwich.

Which being duly considered,

*BE it Enacted by this General Assembly, and by the Authority thereof it is hereby Enacted*, That *William Greene, Jonathan Salisbury, Thomas Arnold, Andrew Boyd, David Pinnegar, Caleb Coggeshall, Clarke Brown, William Sweet, Edward Spencer, John Sprague, Benjamin Howland, John Casey, Othniel Wightman, Daniel Peirce, Dan Taylor, Gideon Mumford, Caleb Greene, Philip Peirce, William Arnold, Richard Mathewson, Ezra Simmons, Micah Whitmarsh, Oliver Wickes, Peleg Olin, Peter Turner, James Miller, Henry Niles, James Peirce, Samuel Tripp, Benjamin Winslow, John Glazier, Nicholas R. Gardner, Jonathan Niles, James Greene, and Caleb Weedon*, being the aforesaid Petitioners, and all others who shall by them be admitted as Members of their Company, be, and they are hereby constituted, erected and made a Body politic and corporate, to subsist at all Times forever hereafter in Deed and Name, by the Name of *The Fire Engine-Company*; and by that Name shall and may have perpetual Succession; and forever hereafter shall be a Company, or Persons, able, capable, and liable to sue and be sued, to plead and be impleaded, to answer and be answered unto, to defend and be defended against, in all or any of the Courts of Law, or otherwise,

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therwise, before any of the Judges, Justices, or other Persons whomsoever, in all Manner of Actions or Pleas whatsoever; and may hold Property by Gift, Grant, or otherwise, in the Name of their Treasurer.

AND for the well governing and ordering the Affairs of the said Company, *It is further Enacted by the Authority aforesaid*, That it shall and may be lawful for the said Company, and their Successors, to assemble and meet together on the First Monday in June, every Year, in order to choose a Treasurer, and such other Officers as they shall think necessary or expedient, and also proper Persons to work the said Engine, and to transact the Business of the Company.

*It is further Enacted by the Authority aforesaid*, That all Monies ordered to be raised by the said Company, for the Purchase and Support of the said Engine, shall be voted by a Majority of the said Company, and be assessed and levied upon the whole of the Inhabitants of the compact Part of the said Town of *East-Greenwich*, including *Peirce-Street*, in Proportion to the Valuation of the Estate of each and every Person, in Assessment in State and Town Taxes: And that all other Persons being Inhabitants of the Town of *Warwick*, who shall join the said Company, shall at all Times be assessed in Proportion to the Sum total of their Estates as given in at the Time of their subscribing, so long as they shall retain Property equal thereto.

*It is further Enacted by the Authority aforesaid*, That, in all Cases of Neglect or Refusal to pay the Taxes which shall be so assessed, Application shall be made to a Justice of the Peace in the said Town of *East-Greenwich*, who shall issue his Warrant, authorizing any proper Officer, in the County of *Kent*, to distrain so much of the personal Property of the Person so neglecting or refusing as will satisfy and pay such Tax and Cost, and to sell the same within Three Days after Distrainment made, at public Auction, unless the same shall be previously redeemed by the Delinquent: And that if any overplus Sum shall remain upon the Sale of such Property, after deducting the Sum due for the said Tax, together with all Costs, it shall be returned to the Delinquent.

*And it is further Enacted by the Authority aforesaid*, That for the well governing of the said Company, they be, and hereby are authorized, when legally assembled, to make such By-Laws as to them shall appear necessary for the Regulation and Government of the said Company; provided such By-Laws be not repugnant to the Laws of the State.

88 D. 46 C.  
allowed H.  
Ward.

*It is Voted and Resolved*, That Eighty-eight Dollars and Forty-six Cents be allowed and paid to *Henry Ward*, Esq. out of the General-Treasury, in Specie, or in the Bills of Credit emitted by this State, at the established Rate of Exchange; it being the Amount of his Account for Services, as Secretary, since the Session in *October*.

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