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Sent: Monday, January 31, 2022 12:04 PM
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Subject: [External] Testimony on H.491

[External]

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Members of the Committee, January 31st, 2022

I write to you today to urge delay, or, failing that, at least circumspection with regard to the passage of the charter for an independent Essex Junction.

My name is Joshua Knox and I am both a resident of the so-called Town-Outside-the-Village (TOV) portion of Essex and a member of a municipal board. In the latter case, I want to make it very clear that I am speaking solely as a concerned citizen and resident and not in any official capacity; but I still thought it important to disclose this association.

With all that said, my aim is not to relitigate the result of the November election in which Essex Junction expressed their preference to separate. I think it's been obvious for some time that the Town-Inside-the-Village (TIV) was willing to separate. No, I rather want to address what I think can be fairly called a "legitimacy gap" that has existed in Essex as a whole for some time and has only been exacerbated by the pandemic of the last two years.

By "legitimacy," I mean that: (a) votes, once taken, are seen as fair indications of popular will and followed by government action to put that will into effect; and (b) actions taken by municipal government - when acting within its purview - are seen as inherently legitimate and able to stand on their own authority.

A quick review of the (recent) historical record shows how Essex has struggled with the legitimacy of the ballot-box. In 1999, the town as a whole passed a merger charter overwhelmingly, but a positive vote earlier in the year for Village separation meant there was no clear direction. Likewise, a positive vote for merger in 2006 was nullified by a subsequent revote in 2007. In this instance, it's significant that the *positive* vote came from over 8,500 ballots cast, and the *nullifying* vote came from just under 5,600 ballots cast, or fewer than two-thirds the original vote. As you no doubt know, this led to the legislature amending **17 V.S.A. § 2661** to create a statutory floor of at least two-thirds the original vote total to overturn such an action duly passed.

Which brings us to 2021. In March, the entire town narrowly defeated the proposed merger charter, but no sooner had *that* result been certified than a petition to revote had circulated and signed by the necessary number of voters. The subsequent vote in April was nearly identical to the first, which you again know, but my point is that, similar to 2006/7, a suitably large portion of the electorate did not believe an initial town-wide vote was a conclusive enough say in the matter. If you've lost count, that's *six* votes over the course of a

generation that led to no change in governance, despite the fact that at least half of those votes were (at the time) affirmative votes in favor of some such change.

This creates the second gap in legitimacy I mentioned above: a belief that the municipal government lacks legitimacy. Let me say first that I am not ignorant of Dillon's Rule; I know that municipalities are, legally speaking, creatures of the governments of the state in which they exist. Municipalities cannot enact whatever regulations or policies they want irrespective of their (state) constitutional limits. Of course. But, by the same token, the Vermont legislature has generally heeded the expressed will of a municipality. Indeed, that latter reason is why you are taking up the question of Junction independence in the first place.

Yet, owing to the inconclusiveness of the votes above, a certain confusion crept into popular discourse in Essex, and the common refrain "Well, we don't know what the Legislature will do" was heard and read repeatedly over the past year. A cursory look at postings on *Front Porch Forum* or even the minutes of municipal boards will show that this ambiguity over what could happen after a vote was everywhere. While technically true - the Legislature is indeed the final say in matters pertaining to charters - it damages the popular confidence in municipal governments as having their own legitimacy. This was especially the case in the discourse in the TOV: in some quarters proposed actions of the townwide municipal government were seen as inherently *illegitimate* (or, to tone down the language a bit, at least highly *suspect*) owing to the composition of the board(s) or the lack of dedicated representation to sub-regions of town. Again, the lack of shared agreement on legitimacy was disastrous for our town's public discourse on this matter, and led to further confusion on what a Village vote for separation would mean and whether the town as a whole would need to be consulted.

All of this was greatly exacerbated by the difficulty presented by the ongoing Covid-19 pandemic and its effect on public discourse. Not only the fact that boards could not meet in their customary fashion, but also the change in work habits wrought by the various lockdowns and cancellations over the past two years have meant that much of public discourse has shifted online to social media. Simultaneously, the *Essex Reporter* - our town's paper of record - halted production of physical copies of the paper in March 2020 (for pandemic-related reasons), further driving discourse online.

I don't need to tell you that all of the problems of legitimacy as outlined above were made far worse when forced into the realm of a social media site. It is now a truism that you should never "read the comments" on any website if you wish to retain a positive view of people, yet during the height of the 2021 political season, these comments were the means by which issues were debated. This gives disproportionate power to those who would moderate a debate on social media - raising questions of what constitutes "legitimate" moderation of public speech - as well as gives disproportionate voice to those who have the time and wherewithal during the day to frequent a site ostensibly dedicated to community-wide input.

Further, I don't think it's putting too fine a point on it to note that those with the *least* time and ability to keep up with the debate were those who struggled to hold down a job or look after children in a Covid-19 world, and that, by any metric, working families are the future of a community. When debate is in-person at town meeting, as was the case prior to Covid, residents with young children in Essex could avail themselves of care at the meeting; when not-in-person debate was otherwise restricted to a local paper of record, one parent or relative could watch the children while the other drafted a carefully-worded letter to the editor; in a world where debate was online and unrelenting, with comments piling up in the hundreds per day, many people simply couldn't keep up (on a personal note, my five-year-old son and my one-year-old son both interrupted me as I wrote this letter).

In such a scenario, there was little recourse for the vast majority of voters to get truly informed if all they saw were the same 50-100 people sparring back and forth online and they had no means to determine which claims were accurate and which were not, or even which assertions were matters of opinion and which were questions of fact. "He-said-She-said" is a poor way to run public debate, and this problem was only compounded when all debate on the matter was functionally banned from the main community social media page and shunted to a side page.

One of the enduring challenges of a democratic form of government is creating an informed electorate whose will can be easily discerned and then put into effect. In the case of Essex, this challenge has been particularly acute, and has led to fractures in public discourse that prevent the smooth functioning of democratic legitimacy. While it is not the case that these cracks are along traditional partisan lines as we have seen at the federal level, the appearance is quite similar, and has kept many from seeking public office (as I write this, there is only one candidate on the ballot for a one-year seat on the Board of Selectmen. In a town of over 20,000 with a history of hot-button issues, that should tell us something).

So I ask you to consider this charter in that broader context. Does approval of this process lead to a greater culture of informed, democratic participation and therefore legitimacy for the entirety of Essex? Or does it further sanction the exact sort of polarized debate-by-social-media and lack of agreed-upon sources of information - to say nothing of the functional exclusion of a large cohort of the population - that has threatened our country as a whole?

Thank you for taking the time to read this, and thank you for taking the time to deliberate on this vitally important matter.

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- Joshua Knox
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Essex (TOV)

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