

UNITED STATES DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Jay E. Denault / James L. Jewett)
 Plaintiffs)
)
 v.)
)
 State of Vermont)
 Defendant)

Case No.:

CRIMINAL COMPLAINT

We the complainants in this case, state the following is true to the best of our knowledge and belief. Under the color of law the Vermont Legislature engaged in activities which led to the passing of State Act 46 without giving due consideration to the language of the said legislation being in violation of current Federal Law. We interpret the application of the Federal laws as listed, relevant to include all voted ballot measures presented to the legally registered voters of Vermont for their consideration. That such voting rights are protected by law to be free from threats, coercion, bribery, and intimidation which interfere with the ability of a voter to cast their vote as he or she sees fit.

Code Section	Offense Description
18 U.S. Code 594	Unlawful Intimidation of Voters
U.S. Code 52(b)	Unlawful Prohibited Acts
The Voting Rights Act of 1965 as amended section 11(b)	Unlawful Intimidation, Threatening, Coercion of Voters under the color of law

This criminal complaint is based on these facts:
 See Attached Affidavit continued on the attached document.

complainant's signature

complainant's signature

Sworn to before me and signed in my presence.

Date: _____

City and State: _____

Signature: _____ Title: _____

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

We Jay E. Denault, and James L. Jewett, being duly sworn, deposed, and state as follows;

I. INTRODUCTION AND SUMMARY OF PROBABLE CAUSE

1. We make this affidavit in support of a criminal complaint charging the State of Vermont with violating 18 U.S. Code #594 “Intimidation of Voters”, U.S. Code 52(b) “Prohibited Acts”, and the Voting Rights Act of 1965 as amended section 11(b). As set fourth in greater detail below, our joint investigation has revealed probable cause that on February 2, 2015 Vermont H.361/Act 46 was introduced for first reading. Subsequently, Governor Peter Shumlin signed Act 46 into law June 2, 2015. To wit, said legislation contains descriptions of coercion, and multiple, significant financial rewards, being provided in exchange for an “affirmative vote by the electorate” to implement the requirements of Act 46. Further, this legislation contains specific language which details threats, and intimidation of the electorate for failing to comply with the requirements of Act 46. Such threats include, but are not limited to the authority provided by Act 46 to the Vermont State Department of Education to force compliance with the requirements of Act 46 against the will of the people. The authority provided by Act 46 for the Vermont Secretary of Education to threaten the voters of a school district by the imposition of a five percent property tax rate increase for all nonresidential, and homestead property for failing to comply with the requirements of Act 46. Act 46 coerces voters of Vermont Towns to affirm by vote a process which has been perpetrated to cause the surrender of all educational resources including but not limited to school buildings, and the

property upon which it is located for the sum of \$1.00. Current small Town school governance structures will be replaced, causing a dramatic reduction in representation, due to required “proportional representation”, negatively impacting the citizens ability to protect the best interests of their students, and the voting taxpayers who reside in those so affected Towns. Multiple current annual school budgets will be commingled into one budget to be voted by “Australian Ballot”. Thus, Act 46 provides larger more populated school districts with the ability to hold the voters of less populated areas hostage to increased tax rates caused by expenses not of their making. High academically, and financially efficient schools will be forced to consolidate/merge with failing schools in “Required Corrective Action” ranging in some cases for the last eight to eleven years.

II. PERSONAL BACKGROUND

2. Both myself and Mr. Jewett are long term residents in the so affected Town/School District located in Franklin Vermont. Both of us have been active members within our community having served on several municipal committees. Both Mr. Jewett and I are retired School Board Directors, myself being elected as “Chairman” of both the Franklin Northwest Supervisory Union Board of Directors, and the Missisquoi Valley Union High School District #7 Board of Directors. As School Board Directors our duties included oversight of two fiscal budgets in excess of \$15 million, negotiating union collective bargaining contracts, the hiring and dismissal of personnel, and the maintenance of two sprawling school campuses, accommodating approximately one thousand students. Mr. Jewett, and I have received thorough training in the proper execution of the responsibilities of a School Board Director as delegated by State statute, and have been involved in all aspects of maintaining the efficient operation of two Vermont schools in one of the largest Supervisory Unions in the State.

3. This affidavit is based on our personal knowledge, our review of records and other materials obtained during the course of this investigation, including interview reports as well as information provided to us by other government personnel with knowledge related to this investigation. We believe the information received from others to be truthful and reliable to the best of our knowledge. Because this affidavit is being submitted for the purpose of establishing probable cause we have included all the facts known to us to the best of our ability concerning this investigation. We have set forth those facts which we believe are sufficient to establish the necessary foundation for this complaint.

III. VIOLATIONS

4. 18 U.S. Code 594 “Intimidation of Voters” makes it unlawful for “anyone to intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote, or to vote as he may choose”.

5. U.S. Code 52(b) “Prohibited Acts” makes it unlawful for “anyone under the color of law or otherwise to intimidate, threaten, or coerce any person for voting, or attempting to vote or intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such person to vote or to vote as he may choose”.

6. The Voting Rights Act of 1965 as amended section 11(b) makes it unlawful for “any person under the color of law or otherwise to intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce any person for voting or attempt to vote, or intimidate, threaten or coerce or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote”.

Specific violations as follows; (see attached Act 46)

7. Act 46 requires the member districts of a supervisory union to implement the directives “pursuant to the processes and requirements of 16 V.S.A. chapter 11, sub-chapter 4 Sec. 706(b)” (see attached) “(a) Study Committee; when a study committee is appointed the members shall elect a chair who shall notify the Secretary of Education of the appointment. The Secretary shall cooperate with the study committee and may make Agency staff available to assist in the study of the proposed union school district. The committee is a “public body” pursuant to 1 V.S.A. 310(3) The committee shall cease to exist when the clerk of each district voting on a proposal to establish a union school district has certified the results of the vote to the Secretary pursuant to Sec. 706(g) of this chapter. (b) “Decision and Report.” The study committee may determine that it is inadvisable to form a union school district or it may prepare a report in the form of an agreement between member districts for the government of the proposed union school district. In making its determination, the committee may contact additional school districts it believes may be advisable to include within a new union school district. If the committee decides to recommend formation of a union school district its report shall (among other directives) specify: (11) the date on which the union school district proposal will be submitted to the voters. (12) The date on which the union school district will begin operating schools and providing educational services.” This section of Act 46 refers to the preexisting State statute found in 16 V.S.A. Chapter 11 which is being used to create a new “study committee/public body” for the purpose of crafting a consolidation/merger proposal to be presented to the electorate.

8. Act 46 Sec. 6, “ACCELERATED ACTIVITY” “(a) A newly formed school district

shall receive the incentives set fourth in subsection (b) of this section if it; (1) is formed by merging the governance structures of all member districts of a supervisory union into one unified union school district pursuant to the processes and requirements of 16 V.S.A. chapter 11, and also could include merger with a neighboring supervisory district. (2) obtains an affirmative vote of all “necessary” districts on or after July 1, 2015 prior to July 1, 2016. (8) becomes operational on or before July 1, 2017. (9)(b) A newly formed school district that meets

the criteria set forth in subsection (a) of this section shall receive the following: (A) Subject to the provisions of this subdivision (1) and notwithstanding any other provision of law, the new district’s equalized homestead property tax rate shall be: (I) decreased by \$0.10 in the first fiscal year of operation: (II) decreased by \$0.08 in the second fiscal year of operation: (III) decreased by \$0.06 in the third fiscal year of operation: (IV) decreased by \$0.04 in the fourth fiscal year of operation: and (V) decreased by \$0.02 in the fifth fiscal year of operation. (B) the household income percentage shall be calculated accordingly. (low income voters)” These tax incentives are being used to financially coerce the electorate, deliberately influencing the ability of a voter to vote as he or she sees fit without interference. This section of Act 46 is in direct violation of 18 U.S. Code 594 “Intimidation of Voters, 18 U.S. Code 52(b) “Prohibited Acts”, and the Voting Rights Act of 1965 as amended section 11(b).

9. Act 46 Sec 7. “SCHOOL DISTRICTS CREATED AFTER DEADLINE FOR ACCELERATED ACTIVITY” “(a) A newly formed school district shall receive the incentives set fourth in subsection (b) of this section if it: (2) obtains a favorable vote of all “necessary” districts which do not need to be contiguous or within the same supervisory union, on or after July 1, 2015: and (4) becomes operational after July 1, 2017, and on or before July 1,

2019. (b) A newly formed school district that meets the criteria set forth in subsection (a) of this

section shall receive the following: (A) Subject to the provisions of this subdivision (1) and notwithstanding any other provision of law, the new district's equalized homestead property tax rate shall be: (I) decreased by \$0.08 the first fiscal year of operation: (II) decreased by \$0.06 the second fiscal year of operation: (III) decreased by \$0.04 the third fiscal year of operation: and (IV) decreased by \$0.02 the fourth fiscal year of operation. (B) the household income percentage shall be calculated accordingly. (low income voters)" These tax incentives are being used to financially coerce the electorate, deliberately influencing the ability of a voter to vote as he or she sees fit without interference. This section of Act 46 is in direct violation of 18 U.S. Code 594 "Intimidation of Voters", 18 U.S. Code 52(b) "Prohibited Acts", and the Voting Rights Act of 1965 as amended section 11(b).

10. Act 46 Sec. 10 "TRANSITION TO SUSTAINABLE GOVERNANCE STRUCTURES; PROPOSAL; FINAL PLAN" "(a) Secretary of Education's proposal; In order to provide educational opportunities through sustainable governance structures designed to meet the goals set forth in Sec. 2 of this act pursuant to one of the models described in Sec. 5 the Secretary shall: (2) On or before June 1, 2018 shall develop, publish on the Agency of Education's website, and present to the State Board of Education a proposed plan that, to the extent necessary to promote the purpose stated at the beginning of this section (a), would move districts into the more sustainable, preferred model of governance set forth in Sec. 5(b) of this act (Education District) (b) State Board's plan. On or before November 30, 2018 the State Board shall review and analyze the Secretary's proposal under provisions in subsection (a) of this section, may take testimony or ask for additional information from districts and

supervisory unions, shall approve the proposal either in its original form or in an amended form that adheres to the provisions of subsection (a) of this section, and shall publish on the Agency's website its order merging and realigning districts and supervisory unions where necessary." This section of Act 46 serves to threaten voters with the authority being granted to the Vermont State Board of Education to force upon the voters the requirements contained in the Act. (note this Sec. 10 enhances the effect of the following Act 46 Sec. 13. That a district can be forced to comply with the requirements of the Act while remaining silent to the refunding of State construction aid.) This Section of Act 46 is in direct violation of 18 U.S. Code 594 "Intimidation of Voters", 18 U.S. Code 52(b) "Prohibited Acts" and the Voting Rights Act of 1965 as amended section 11(b).

11. Act 46 Sec 13 "REFUND UPON SALE OF SCHOOL BUILDINGS REQUIREMENT; NEW SCHOOL DISTRICTS; JOINT CONTRACT SCHOOLS" "(A) Notwithstanding 16 V.S.A. 3448(b) the refund upon sale requirement shall not apply to: (1) a union school district created under 16 V.S.A. chapter 11 that becomes operational on or after July 1, 2015; and (2) two or more districts that, on or after July 1, 2015 enter into a contract pursuant to 16 V.S.A. chapter 11, sub-chapter 1 to operate a school jointly. (c) This section is repealed on July 1, 2017." One of the goals of Act 46 is to consolidate/merge, and eliminate the smaller schools found throughout Vermont. If voters fail to comply with the requirements set forth within Act 46 before July 1, 2017 they will be financially punished by the reinstatement of the requirement to refund State school construction aid, and an unspecified percentage of the selling price should their school close as described in Act 46 Sec.14. This section of Act 46 along with the above referenced section 10 are designed to compound the

threat to voters with severe financial penalties for failing to comply with the requirements of Act 46 by July 1, 2017, thus interfering with a voters attempt to exercise their right to vote as he or she sees fit. These sections of Act 46 are in direct violation of 18 U.S. Code 594 “Intimidation of Voters”, 18 U.S. Code 52(b) “Prohibited Acts”, and the Voting Rights Act of 1965 as amended section 11(b).

12. Act 46 Sec 14 “REVIEW OF THE REFUND UPON SALE REQUIREMENT”

“(a) The Secretary of Education shall review school districts subject to the provisions of 16 V.S.A. 3448(b). The review shall include; (3) the percentage of the sale price that each school district would be required to refund to the State upon the sale of a school building.” This section of Act 46 is being used to further enhance the financial threat to voters in the above referenced Act 46 sections 10, and 13 to include the refund of an unspecified percentage of the selling price of a school building in the event it is closed. These sections of Act 46 are in direct violation of 18 U.S. Code 594 “Intimidation of Voters”, 18 U.S. Code 52(b) “Prohibited Acts”, and the Voting Rights Act of 1965 as amended section 11(b).

13. Act 46 Sec 16, “2010 Acts and Resolves No. 153 Sec. 2(a) as amended by 2012 Acts and Resolves No. 156 Sec 1 is further amended to read: (1) If the merging districts of a RED (Regional Education District) included at least one “Eligible” school district as defined in 16 V.S.A. 4015 that had received a small school support grant under section 4015 in the fiscal year two years prior to the first fiscal year of a merger then the RED shall receive a merger support grant annually in the amount equal to the small school support grant received by the eligible school district in the fiscal year two years prior to the first fiscal year of merger. (a) Program created. There is created a school district merger incentive program under which the incentives outlined in Sec. 4 of this Act shall be available to each new unified union school

district created pursuant to Sec. 3 of this Act, and to each new district created under Sec. 3 of this Act by the merger of districts that provide education by paying tuition; and to the Vermont members of any new interstate school district if the Vermont members jointly satisfy the size criterion of Sec. 3(a)(1) of this Act and the new merged district meets all requirements of Sec. 3 of this Act. Incentives shall be available, however only if the merger receives final approval of the electorate prior to July 1, 2017.” This Section of Act 46 is being used to financially coerce the electorate, deliberately influencing the ability of a voter to vote as he or she sees fit without interference. This section of Act 46 is in direct violation of 18 U.S. Code 594 “Intimidation of Voters”, 18 U.S. Code 52(b), and the Voting Rights Act of 1965 as amended section 11(b).

14. Act 46 Sec. 18 “CURRENT INCENTIVES FOR JOINT ACTIVITY; LIMITATIONS ON APPLICABILITY” “(a) Notwithstanding the provisions of the following sections of law, the grants and reimbursements authorized by those sections shall be available only as provided in subsection (b) of this section: (1) 2012 Acts and Resolves No. 156 Sec. 6 (transition facilitation grant of \$150,000.00 for the successful merger of two or more supervisory unions). (2) 2012 Acts and Resolves No. 156 Sec. 11 (transition facilitation grant of the lesser of \$150,000.00 or five percent of the base education amount multiplied by the combined enrollment for the successful merger of two or more districts other than a RED (Regional Education District).” This section of Act 46 is being used to financially coerce the electorate, deliberately influencing the ability of a voter to vote as he or she sees fit without interference. This section of Act 46 is in direct violation of 18 U.S. Code “Intimidation of Voters”, 18 U.S. Code 52(b) “Prohibited Acts”, and the Voting Rights Act of 1965 as amended section 11(b).

15. Act 46 Sec. 19 “AUTHORIZATION; FINANCIAL INCENTIVES” “Prior to any reversions, of the amount appropriated in fiscal year 2015 pursuant to 2014 Acts and resolves No. 179 Sec B505, the sum of \$620,000.00 may be expended by the Agency of Education in fiscal year 2016 for the reimbursement of costs and payment of other financial incentives available pursuant to 2012 Acts and Resolves No. 156 to two or more school districts or two or more supervisory unions that are exploring or implementing joint activity, including merger into a regional education district or one of its variations.” This section of Act 46 is being used to coerce publicly elected school board directors by providing State funding to create 16 V.S.A. chapter 11 sec. 706(b) study committees who are exploring or jointly implementing activities which leads to the development of a merger/consolidation ballot proposal to be voted upon by the electorate. This section of Act 46 is in violation of 18 U.S. Code 594 “Intimidation of Voters”, 18 U.S. Code 52(b) “Prohibited Acts”, and the Voting Rights Act of 1965 as amended section 11(b).

16. Act 46 Sec. 39 “16 V.S.A. 261(a)(c) is added to read: (c) After notice to the boards of a supervisory union and it’s member districts, the opportunity for a period of remediation, and the opportunity for a hearing, if the Secretary determines that a supervisory union or any of its member districts is failing to comply with any provision of subsection (a) of this section, then the Secretary shall notify the board of the supervisory union and the board of each of its member districts that the education property tax rates for nonresidential and homestead property shall be increased by five percent in each district within the supervisory union and the household income percentage (low income voters) shall be adjusted accordingly in the next fiscal year for which tax rates will be calculated. The districts actual tax rates shall be increased by five percent and the household income percentage adjusted in each subsequent fiscal year

until the fiscal year following the one in which the Secretary determines that the supervisory union and its districts are in compliance. If the Secretary determines that the failure to comply with the provisions of subsection (a) of this section is solely the result of the actions of the board of one member district, then the tax increase in this subsection (c) shall apply only to the tax rates for that district.” This section of Act 46 is being used to financially threaten the electorate, deliberately influencing the ability of a voter to vote as he or she sees fit without interference. This section of Act 46 is in direct violation of 18 U.S. Code 594 “Intimidation of Voters”, 18 U.S. Code 52(b) “Prohibited Acts”, and the Voting Rights Act of 1965 as amended section 11(b).

IV. FACTS ESTABLISHING PROBABLE CAUSE

17. In 2010 the Vermont Legislature in an attempt to reduce escalating education costs passed into law Act 153 which provided among other things “voluntary” school district mergers. The intent of this Legislation was to encourage cost savings by the consolidation and closing of Vermont’s smallest schools. The Legislature became disappointed due to the lack of participating school districts, with Act 153 failing to provide any meaningful financial relief to the Vermont education budget. As a result, the Vermont Senate, and House Education committees began crafting the much more aggressive legislation H.361/Act 46 which included extensive language describing the use of threats, intimidation and coercion in order to force compliance upon voters. Five years later then Governor Peter Shumlin signed Act 46 into law on June 2, 2015, which ignores violations of the above referenced Federal laws.

18. As stated above, Act 46 sections 10, 13, and 14 deliberately threatens, and intimidates voters with the requirements of having to refund any and all State construction aid

Vermont Towns received to build their local schools, and an unspecified percentage of the selling price of the school building in the event it is closed and sold, the latter being delayed by amendment for a period of five years. Act 46 section 13(a) “Notwithstanding, 16 V.S.A. 3448b the refund upon sale requirement shall not apply to; 1) A newly created consolidated union school district under 16 V.S.A. chapter 11 that becomes operational on or after July 1, 2015. 2) Two or more districts that on or after July 1, 2015 who enter into a contract pursuant to 16 V.S.A. Chapter 11 sub chapter 1, to operate a newly created consolidated district jointly. Act 46 section 13 is repealed in it’s entirety effective July 1, 2017. Consequently every legal voting taxpayer will be made aware that if they choose to vote “no” regarding any Act 46 proposal in an effort to protect the local school from closure, they and their fellow citizens will suffer a crippling financial penalty. The only option to avoid the threat of such a severe financial penalty is to vote in favor of an Act 46 consolidation/merger ballot measure before the repeal date of July 1, 2017, with the latter being extended by proposed amendment S.122 to December 30, 2017.

19. Act 46 section 10 empowers the Vermont Secretary of Education to mandate the merger of a school district, ignoring those voters who choose to vote “no” to protect their school from certain closure by November 30, 2018. Act 46 section 10 remains silent to the requirement of refunding Vermont State construction aid, and a percentage of the selling price of a school building in the event it is closed and sold. Therefore, the threat and intimidation found in the above referenced section 13, is enhanced by punishing the voters of Vermont who choose to vote “no” by forcing compliance with Act 46 while keeping the requirement to refund State construction aid, and an unspecified percentage of the selling price of the school

intact.

20. Act 46 sections 6, 7, 10, 13, 16, 18, 19, and 39 describes financial bribes, threats, and intimidation intended to coerce the electorate to vote in favor of a consolidation/merger proposal in Vermont school districts as required by the Act. The language found in these sections clearly describe the connection of receiving significant financial rewards in exchange for an affirmative vote by the electorate to consolidate/merge as required by Act 46. This coercion includes property tax rate reductions of .10, .08, .06, .04, and .02 cents over the next five years, a \$150,000.00 “Merger Facilitation Grant”, and relief from the repeal of 16 V.S.A. 4010(f) “Declining Enrollment; Hold Harmless Provision” by July 1, 2020, which provides State funding used to lower a school’s equalized per pupil cost.

21. Act 46 section 39 “Failure to Comply” threatens, and intimidates the voters of Vermont by empowering the Secretary of Education to notify any Town school district which is failing to comply with the vague standards, unquantifiable, and subjective educational requirements of Act 46, with a financially punishing 5% increase to that Town’s property tax rate for all nonresidential, and homestead properties. The Town’s school district’s actual tax rate shall be increased by 5%, and the household income sensitivity percentage for all low income voters will be reduced in each subsequent year until such time as the voters of the Town vote to comply with the requirements of Act 46. In addition, this provision of Act 46 is unenforceable under Vermont law because by operation it denies Towns equal access to education funds, and subjects to vague, and unenforceable standards of law.

V. CONCLUSION

22. Based upon the above facts and information, Mr. Jewett, and I submit that there is

probable cause to believe that the State of Vermont has violated 18 U.S. Code 594“Intimidation of Voters”, U.S. Code 52(b) “Prohibited Acts”, and The Voting Rights Act of 1965 as amended section 11(b) by unlawfully intimidating, threatening, and coercing voters for the purpose of interfering with the right of a U.S. citizen to vote on a ballot measure as he or she may choose.

Accordingly, we respectfully request that a criminal complaint be issued.

Jay E. Denault

James L. Jewett

Subscribed and sworn to before me on _____ 2017

