

State of New Hampshire  
Merrimack County Superior Court

ATV WATCH  
&  
ANDREW WALTERS

v.

STATE OF NEW HAMPSHIRE,  
KELLY AYOTTE, ATTORNEY GENERAL,  
NEW HAMPSHIRE DEPARTMENT OF JUSTICE,  
&  
NEW HAMPSHIRE DEPARTMENT OF  
RESOURCES AND ECONOMIC  
DEVELOPMENT

Merr.Cnty.Super.Ct. No. \_\_\_\_\_

**PETITION FOR DECLARATORY JUDGMENT**

**N**OW COMES ATV Watch and Andrews Walters, by and through their attorney, Joshua L. Gordon, and respectfully requests this honorable court to declare that certain e-mails released by the Department of Resources and Economic Development and/or the Office of the Attorney General are lawfully in the possession of ATV Watch and Andrew Walters, that they are in whole or in part subject to disclosure pursuant to the New Hampshire Constitution and the Right-to-Know Act, and that they may be freely distributed without oversight by public authority.

As grounds it is stated:

1. ATV Watch is a non-profit corporation duly organized in the State of New Hampshire. Andrew Walters is its director. Both are available at PO Box 34, Fitzwilliam, New Hampshire 03447, [www.ATVWatch.com](http://www.ATVWatch.com), (603) 785-7722. They are represented by their attorney, Joshua Gordon, 26 South Main St., Concord, New Hampshire 03301, [www.AppealsLawyer.net](http://www.AppealsLawyer.net), (603) 226-4225.

2. The State of New Hampshire is a body politic. Kelly Ayotte is its Attorney General and head of its Department of Justice. The Department of Resources and Economic Development (DRED) is an administrative agency of the State of New Hampshire. The public parties are represented by Richard Head, Assistant Attorney General, 33 Capitol Street, Concord, New Hampshire 03301, (603) 271-3650.

3. On or about October 31, 2005, in response to Right-to-Know requests, DRED and/or the Office of the Attorney General disclosed to ATV Watch and Andrew Walters three e-mails among Assistant Attorney General Anne Edwards and officials of DRED. (The e-mails are not attached, but will be separately filed under seal).

4. Subsequently, in a series of letters (*Nov. 10, 2005* (DRED to Walters); *Dec. 21, 2005* (Walters to DRED); *Jan. 4, 2006* (DRED to Walters); *Jan. 20, 2006* (Walters to DRED)), the office of the Attorney General indicated to Mr. Walters that the e-mails were privileged in their entirety, and not subject to disclosure pursuant to the Right-to-Know act, RSA 91-A. The Attorney General demanded that ATV Watch and Mr. Walters return the documents, and further, that he reveal to whom he disclosed them. The Attorney General also threatened that if Mr. Walters did not comply with its demands, legal action would ensue.

5. On or about August 8, 2006, Mr. Walters met with Anne Edwards and George Bald, Commissioner of DRED. During this meeting Attorney Edwards and Commissioner Bald reiterated the State's demands both that the e-mails be returned, and that Mr. Walters provide the State with a list of names to whom they were disclosed. The officials again threatened legal action if the e-mails were not returned within 30 days.

6. Mr. Walters believes the e-mails in whole or in part provide insight into the conduct of the public's business and "about what its government is up to." He now finds himself in a situation in which the e-mails would be important for discussions with lawmakers and others. While he believes that the documents once having been disclosed are now public, and (more important) that the New Hampshire Constitution and the Right-to-Know Act compel their disclosure, Mr. Walters is aware of the State's threats to take legal action.

7. Even though the State's initial threat was over a year ago, and its most recent was almost eight months ago, the State has declined to take legal action. Consequently, Mr. Walters remains in a legal no-man's-land with regard to the documents: Are they public and susceptible to any use he or the public wishes, or are they protected from disclosure and that nature must be respected? Because the Attorney General has not taken the legal action it promised, nor has it relinquished its request for their return and for a list of disclosees, there appears to be no end to the limbo, resulting in a perpetual chilling of ATV Watch's and Mr. Walters's State and Federal constitutional rights to free speech, to petition their representatives, and to resist unlawful searches and seizures.

8. To resolve the situation, on February 2, 2007, through his attorney, Mr. Walters wrote a letter to the Attorney General requesting that the State either take immediate legal action against him, or tell him in writing that the documents are now public. He requested that the State promptly make the election, and in the event that no election is made, he would either consider the threat stale and the documents public, or he would seek a judicial declaration as to their status. Since mid-February, discussions have taken place between the office of the Attorney General and ATV Watch's counsel, but no resolution has resulted.

9. On April 4, 2007, the office of the Attorney General wrote a letter to Mr. Walters's attorney declining to seek a declaratory judgment, but reiterating both its position that the e-mails are non-disclosable and its request that they be either destroyed or returned, and leaving open the possibility of the State taking future legal action against Mr. Walters or ATV Watch. Although in its letter the State did not address the outstanding issue of its demand for a list of disclosees, it made a new demand that Mr. Walters provide the State advance notice of his intent to use the e-mails in any public body including legislative and administrative forums.

WHEREFORE, because the legal limbo remains as to the status of the documents, and the chilling effects of the threats and demands of the State remain, ATV Watch and Andrew Walters respectfully request this honorable Court to:

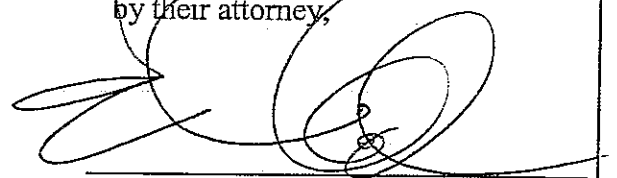
- A. Issue a declaratory judgment settling the status of the e-mails;
- B. Declare that they are lawfully in the possession of ATV Watch, Andrew Walters, and the public, for all purposes;
- C. Declare that they are subject to disclosure in whole or in part pursuant to the New Hampshire Constitution and the Right-to-Know Act;
- D. Declare that the e-mails may be freely distributed without oversight by public authority; and
- E. Declare that ATV Watch and Andrew Walters are under no obligation to provide the State a list of names to whom the emails were disclosed, nor to provide advance notice of use of the e-mails in any forum.

ATV Watch and Andrew Walters further request this honorable Court to:

- F. Find that DRED and the office of the Attorney General have acted in violation of RSA 91-A by continuing to shield the documents from disclosure;
- G. Find that DRED and the office of the Attorney General knew or should have known that the e-mails were subject to disclosure in whole or in part;
- H. Find that the threats of legal action intimidated and continue to intimidate ATV Watch and Mr. Walters into not further disclosing the e-mails or otherwise using them for lawful purposes, effectively resulting in an illegal seizure of the documents by the State and a chilling of their rights to free speech and to petition their representatives in violation of the New Hampshire and Federal Constitutions;
- I. Find that the threats of legal action by the State in an attempt to compel ATV Watch and Mr. Walters to provide a list of names to whom the e-mails were distributed is effectively an attempted illegal search, and has also chilled their rights to free speech and to petition their representatives in violation of the New Hampshire and Federal Constitutions;

- J. Find that this legal action was required to establish and maintain the public nature of the e-mails; and,
- K. Award attorneys fees and costs pursuant to provisions of RSA 91-A:8, and any other relevant provision of law.

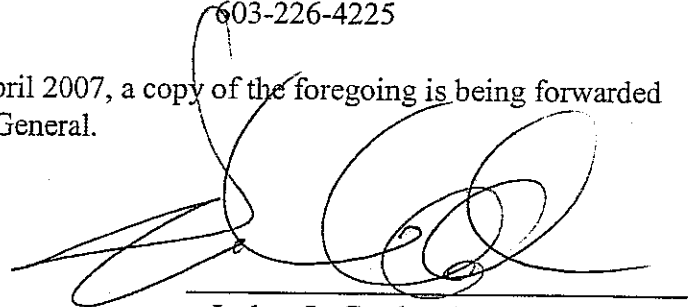
Respectfully submitted  
for ATV Watch and Andrew Walters  
by their attorney,



Joshua L. Gordon, Esq.  
Law Office of Joshua Gordon  
26 S. Main St., #175  
Concord, NH 03301  
603-226-4225

Dated: April 6, 2007

I hereby certify on this 6<sup>th</sup> day of April 2007, a copy of the foregoing is being forwarded to Richard Head, Esq., Assistant Attorney General.



Joshua L. Gordon, Esq.

Dated: April 6, 2007