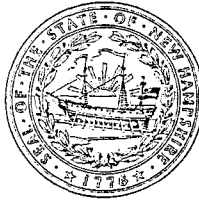


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February 14, 2013

Representative Marjorie Smith, Chair
House Judiciary Committee
Legislative Office Building, Room 208
Concord, NH 03301

Re: House Joint Resolution 2 (a resolution making restitution to Jeffrey Frost for inappropriate prosecution)

Dear Representative Smith and Members of the House Judiciary Committee:

I am writing with regard to House Joint Resolution 2 ("HJR 2") which is scheduled for hearing on February 14, 2013. Unfortunately, I will be in a trial in the U.S. District Court, and will be unable to be present during your hearing. Thus, I ask that this letter be accepted in lieu of live testimony before your Committee.

Mr. Frost has filed a civil lawsuit against the State in Superior Court. In his lawsuit, Mr. Frost is seeking damages related to the State's prosecution of Mr. Frost. Mr. Frost has named as defendants officials with the Banking Department and Attorney General's Office. Mr. Frost alleges federal constitutional violations under 42 U.S.C. §1983 and state common law tort claims including malicious prosecution, abuse of process, intentional infliction of emotional distress and defamation. The attorney's fees described in HJR 2 are directly related to the same facts and circumstances that are involved in Mr. Frost's lawsuit against the State. In fact, among the damages he is seeking in Superior Court are the same fees that are at issue in HJR 2.

The Attorney General's Office disputes liability in Mr. Frost's civil lawsuit, and a motion to dismiss has been filed with the Court. A response from Mr. Frost regarding the State's motion is expected in the coming weeks, and the motion remains pending before the Superior Court.

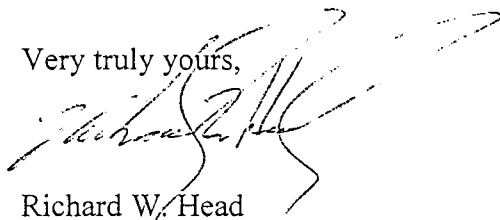
In addition, in 2012 the New Hampshire Supreme Court ruled on Mr. Frost's claim for attorney's fees in an appeal of the underlying administrative action taken by the Banking Department. In its order, the Supreme Court acknowledged that the legal issues involved in his case were, in fact, subject to honest dispute. *Frost v. Comm'r, N.H. Banking Dep't*, 163 N.H. 365, 378-79 (2012) ("the complexity of the underlying suit suggests that the petitioners were not forced to litigate a clearly defined right. We agree that the rights at issue were not clearly defined, as is evidenced by the fact that the petitioners filed an expert report to aid the trial court in understanding the statutes involved in this case.") The Supreme Court also upheld the

Representative Marjorie Smith, Chair
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Superior Court's conclusion that the Department's investigatory tactics did not warrant an award of attorney's fees. In reaching this decision, the Supreme Court referenced the trial court's conclusion that "the theory that the State's conduct in related criminal proceedings and issuing search warrants and administrative actions would authorize an award of attorney's fees ... [cannot] be sustained." *Frost*, 163 N.H. at 378.

This office does not take a position on House Joint Resolution 2. I will, however, apprise the Committee of any future developments in the pending litigation. Please do not hesitate to contact me should you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard W. Head", with a long, sweeping horizontal stroke extending to the right.

Richard W. Head
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