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New Hampshire Lawyers Sue State Over Court Budget Cuts and Delays

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A group of New Hampshire lawyers led by Chuck Douglas, a former Congressman and New Hampshire Supreme Court justice, is suing the state in a bid to get about \$4 million from the state's biennial budget restored to the courts.

The group filed *Baxter v. State of New Hampshire* in Merrimack County Superior Court on Sept. 28 as a petition for injunctive and declaratory relief and writ of mandamus.

Douglas of Concord, N.H.-based [Douglas, Leonard & Garvey](#) filed the case with eight other lawyers, including plaintiffs' attorneys, family law practitioners and defense lawyers. He served on the New Hampshire high court from 1977 to 1985 and in the U.S. House of Representatives from 1989 to 1991.

In 1997, he co-founded Douglas Leonard, which represents plaintiffs in personal injury, medical malpractice, employment and discrimination cases. The firm also handles divorce, family law and criminal defense cases.

The petition asks the court to order Catherine Provencher, the state treasurer, to restore \$4 million in cuts made during the biennial state budget cycle, which runs through June 30, 2011. The petitioners say this amount would eliminate cutbacks to civil jury trials, clerk's hours and staff.

The petitioners also seek a writ of mandamus and/or permanent injunction seeking adequate funding for civil cases. They're also asking the court to award attorney fees and costs.

Although the petitioners seek a \$4 million restoration to the court's budget, they estimate the courts have taken about a \$6 million hit during the current budget cycle, Douglas said.

The petition claims the state court budget cuts violate the New Hampshire Constitution, a 1784 document that promises prompt civil jury trials to citizens. According to the petition, "the denial of civil jury trials for almost a year on top of normal scheduling is unconstitutional."

The suit claims the state has cancelled all civil schedules in Concord District Court, in the state's capital, and small claims cases in Manchester District Court, in the state's largest city. It also details the impact of judicial and state vacancies, reduced judge hours and jury days, employee furloughs and court closures.

A June 30 letter to the state's citizens from New Hampshire Supreme Court Chief Justice John Broderick Jr., which is posted on the court's website, noted that the court system "has been hit especially hard" by state budget cuts. Broderick wrote that the court system decided to absorb a \$3.1 million budget cut imposed by the state legislature in March with nine unpaid furlough days this year and four in 2011.

When the legislature directed the courts to find another \$1 million in savings in June, the court cut its use of "per diem" judges in district and family courts, wrote Broderick. The letter also noted that the legislature mandated \$1.2 million in new security cost spending not covered by the budget.

"To families in crisis, prosecutors trying to protect communities and civil litigants trying to protect their rights and property, the budget resources we have now will not be enough," Broderick wrote. "Please know that we are doing all we can to keep the system from failing further."

The petition details four civil case litigants who were allegedly denied a speedy trial.

Patricia Baxter of Sanbornville filed a lead paint poison exposure case concerning her minor child in 2001. A 2007 state Supreme Court ruling called for a jury trial. "Plaintiff has prepared for trial, including preparing all witnesses and then faced the emotional trauma of having the case continued indefinitely," stated the petition.

The second set of plaintiffs, Wayne and Kristy Haggie of Manchester, have two minor children and have been involved in a court custody dispute with Mrs. Haggie's parents since June 2009.

The third plaintiff is the executrix of the estate of a John Doe, a 39-year-old insurance property inspector at the time of his March 2005 death following heart surgery. Her medical malpractice case dates back to September 2006.

The fourth plaintiff, "Jack Doe," settled his 2009 slip-and-fall case for \$18,500 after learning that he'd have to wait much more than a year for a jury trial. "Therefore, the plaintiff sacrificed what should have been a reasonable settlement and took an unreasonably low settlement because he could not have his day in court," stated the petition. "Thus for him justice delayed was justice denied."

The New Hampshire treasurer's office and governor's office did not return calls for comment. Laura Kiernan, spokeswoman for the state's judicial branch, said the judiciary does not comment on pending litigation.

All the state's departments have been faced with budget cuts, and the judicial branch cut was smaller than those to parts of the executive branch, said New Hampshire Secretary of State Bill Gardner. "There are choices you make" when deciding where to make the cuts, Gardner said. He added, "The [budget for the] judiciary is not like the budget for an executive branch agency. There are many, many more lines to it."

Despite widespread court budget cuts across the United States, the last case that "squarely attacked the public access aspect of declining court budgets" was decided in 1984, according to Greg Hurley, a knowledge management analyst at the National Center for State Courts.

The Connecticut Supreme Court's 3-2 ruling in *Pelligrino v. O'Neill* that year ruled that the trial court did not erroneously dismiss the case at issue. The majority ruled that the complaint "could be construed to question the adequacy of the number of judges appointed to the Superior Court by the legislature," and the remedy would have to come from the state legislature.