

STATE OF NEW HAMPSHIRE
STRAFFORD COUNTY SUPERIOR COURT

219-2022-CV-00224

CITY OF DOVER, et al

v.

DAVID M. SCANLAN, et al

DEFENDANTS' MOTION TO ADOPT CASE STRUCTURING ORDER

The Defendants, David Scanlan, in his official capacity as the New Hampshire Secretary of State, and John Formella, in his official capacity as the New Hampshire Attorney General, through counsel, request that this Court adopt the attached case structuring order.

I. **Background:**

1. The Plaintiffs served their complaint on September 16, 2022. In their complaint, the Plaintiffs challenge RSA 662:5 (eff. Mar. 23, 2022), which divides the state into districts for the election of state representatives.
2. The Defendants timely moved to dismiss, arguing that the Plaintiffs' claims were not justiciable and failed to state a claim upon which relief may be granted.
3. On June 30, 2023, the Court denied the Defendants' motion to dismiss.
4. The Defendants timely moved for reconsideration of the Court's order.
5. On July 21, 2023, the Court denied the Defendants' motion for reconsideration.
6. On August 22, 2023, the Defendants filed their answer to the Plaintiffs' complaint.
7. Pursuant to Superior Court Rule 5, the Parties were required to confer regarding case structuring by September 11, 2023. See Super. Ct. R. 5(a).

8. On September 11, 2023, the Defendants e-mailed a proposed case structuring order to the Plaintiffs.

9. The Plaintiffs requested a call on September 12, 2023, to discuss the Defendants proposed case structuring order. The Parties were not able to reach an agreement on case structuring during this call.

10. On September 15, 2023, the Plaintiffs submitted a “proposed briefing schedule in lieu of a structuring Order.” The Plaintiffs’ proposed briefing schedule did not provide for any period of discovery.

11. On September 21, 2023, the Plaintiffs’ filed a slightly modified version of their “proposed summary judgment briefing schedule” with the Court.

II. **Proposed case structuring order:**

12. The Defendants request that this Court adopt the Defendants’ proposed case structuring order, which is attached as **Exhibit A**.

13. The Defendants’ proposed case structuring order provides a short, approximately five-month period for discovery, to be completed by March 15, 2023.

14. The Defendants’ proposed case structuring order requests a trial date of July 15, 2023, which would allow parties to file dispositive motions after the close of discovery but more than 120 days prior to trial.

15. The Defendants proposed case structuring order seeks to balance the Plaintiffs’ desire to expeditiously resolve this litigation with the rights of all parties to conduct full discovery and file dispositive motions at least 120 days prior to trial.

16. Conversely, the Plaintiffs’ proposed summary judgment briefing schedule includes no discovery deadlines and would deprive the Defendants of the opportunity to conduct discovery.

17. For example, the Plaintiffs’ proposed briefing schedule would deprive the Defendants of their right to conduct discovery regarding the veracity of the data that the legislature relied upon in reenacting RSA 662:5 and regarding the opinions, data, and exhibits underlying the Plaintiffs’ proposed redistricting plan, and the qualifications of the persons who prepared that plan. Nor would the Defendants have the opportunity to hire an expert to review RSA 662:5 or the Plaintiffs’ proposed redistricting plan. Nor would the Defendants have an opportunity to hire an expert or otherwise produce another redistricting plan that may have “less change” than the Plaintiffs’ proposed redistricting plan. See Norelli v. Sec’y of State, 175 N.H. 186, 201 (2022) (explaining that when a court determines a redistricting plan is constitutionally deficient, the court’s task is “simply to remedy the constitutional deficiencies in the existing” districts, and the court should use the “least change approach in devising new court-drawn” districts).

18. Accordingly, the Defendants request that the Court adopt the Defendants’ proposed case structuring order, which is the only plan before the Court that would ensure every party has an opportunity to conduct discovery.

19. Because the Plaintiffs already filed their proposed briefing schedule, which conflicts with the Defendants’ proposed case structuring order, it can reasonably be assumed that the Plaintiffs will not assent to this motion. Accordingly, the Defendants did not seek the Plaintiffs’ assent before filing this motion. See Super. Ct. R. 11(c).

WHEREFORE, the Defendants respectfully request that this Honorable Court:

- A. Adopt the Defendants’ proposed case structuring order; or
- B. Schedule a case structuring conference to determine appropriate case structuring deadlines for this matter.

Respectfully submitted,

DAVID SCANLAN, SECRETARY OF STATE

and

THE STATE OF NEW HAMPSHIRE

By their attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: October 2, 2023

/s/ Brendan A. O'Donnell
Brendan A. O'Donnell, No. 268037
Assistant Attorney General
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3658
Brendan.a.odonnell@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was served on all counsel of record through the Court's electronic-filing system.

Date: October 2, 2023

/s/ Brendan A. O'Donnell
Brendan A. O'Donnell, No. 268037