

STRAFFORD COUNTY

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Docket No. 219-2022-CV-00224

The City of Dover, New Hampshire
288 Central Avenue
Dover, NH 03820

and

The City of Rochester, New Hampshire
31 Wakefield Street
Rochester, NH 03867

and

Debra Hackett
4 Brookmoor Road
Dover, NH 03820

and

Rod Watkins
18 Goen Road
New Ipswich, NH 03071

and

Kermit Williams
55 Burns Hill Road
Wilton, NH 03086

and

Eileen Ehlers
14 Ardon Drive
Hooksett, NH 03106

and

Janice Kelble
35 Hunt Street
Hooksett, NH 03106

and

Erik Johnson
43 Demeritt Avenue
Lee, NH 03861

and

Deborah Sugerman
135 Stepping Stones Road, Apartment A
Lee, NH 03861

and

Susan Rice
159 Ten Rod Road
Rochester, NH 03867

and

Douglas Bogen
21 Lois Lane
Barrington, NH 03825

and

John Wallace
184 Merry Hill Road
Barrington, NH 03825

v.

David Scanlan in his capacity as Secretary of State for New Hampshire
State House, Room 204
107 North Main Street
Concord, NH 03301

and

The State of New Hampshire
33 Capitol Street
Concord, NH 03301

COMPLAINT

NOW COME the plaintiffs, City of Dover, New Hampshire (“Dover”), City of Rochester, New Hampshire (“Rochester”), Debra Hackett, Rod Watkins, Kermit Williams, Eileen Ehlers, Janice Kelble, Erik Johnson, Deborah Sugerman, Susan Rice, Douglas Bogen, and John Wallace, by and through their undersigned counsel, and complain against the defendants, David Scanlan in his capacity as Secretary of State for New Hampshire and the State of New Hampshire (collectively “defendants”), as follows:

I. Introduction

1. This is a constitutional challenge to the decennial redistricting of the New Hampshire House of Representatives (“New Hampshire House” or “House”).
2. On March 23, 2022, the Governor signed House Bill 50, now Laws 2022, Chapter 9, repealing and reenacting RSA 662:5 to redistrict the New Hampshire House following the 2020 federal census.
3. Plaintiffs now seek declaratory and injunctive relief to declare Laws 2022, Chapter 9 (“Laws 2022, 9:1”) in violation of the New Hampshire Constitution, Part II, Article 11. Plaintiffs also seek permanent injunctive relief either requiring the State to create and institute a district map to address the constitutional violations stated herein, or implementing the Court’s own map as a permanent remedy.

II. Parties, Jurisdiction and Venue

a. Plaintiffs

4. Plaintiff Dover is a municipality with an address of 288 Central Avenue, Dover, NH 03820. Dover brings this action on its own behalf and on behalf of affected voters in Dover Ward 4. Dover Ward 4 should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

5. Plaintiff Rochester is a municipality with an address of 31 Wakefield Street, Rochester, NH 03867. Rochester brings this action on its own behalf and on behalf of affected voters in Rochester Ward 5. Rochester Ward 5 should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

6. Plaintiff Debra Hackett is an eligible voter who resides in Dover Ward 4, with an address of 4 Brookmoor Road, Dover, NH 03820. Ms. Hackett is also a Dover City Councilor (for Ward 4), but she is a party in her personal capacity only. Dover Ward 4 should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

7. Plaintiff Rod Watkins is an eligible voter who resides in New Ipswich, with an address of 18 Goen Road, New Ipswich, NH 03071. New Ipswich should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

8. Plaintiff Kermit Williams is an eligible voter who resides in Wilton, with an address of 55 Burns Hill Road, Wilton, NH 03086. Wilton should have, as required by Part II,

Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

9. Plaintiff Eileen Ehlers is an eligible voter who resides in Hooksett, with an address of 14 Ardon Drive, Hooksett, NH 03106. Hooksett should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

10. Plaintiff Janice Kelble is an eligible voter who resides in Hooksett, with an address of 35 Hunt Street, Hooksett, NH 03106. Hooksett should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

11. Plaintiff Erik Johnson is an eligible voter who resides in Lee, with an address of 43 Demeritt Ave, Lee, NH 03861. Lee should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

12. Plaintiff Deborah Sugerman is an eligible voter who resides in Lee, with an address of 135 Stepping Stones Road, Apartment A, Lee, NH 03861. Lee should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

13. Plaintiff Susan Rice is an eligible voter who resides in Rochester Ward 5, with an address of 159 Ten Rod Road, Rochester, NH 03867. Rochester Ward 5 should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

14. Plaintiff Douglas Bogen is an eligible voter who resides in Barrington, with an address of 21 Lois Lane, Barrington, NH 03825. Barrington should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

15. Plaintiff John Wallace is an eligible voter who resides in Barrington, with an address of 184 Merry Hill Road, Barrington, NH 03825. Barrington should have, as required by Part II, Article 11 of the State Constitution, been provided at least one New Hampshire House district (and representative), but Laws 2022, 9:1 failed to do so.

b. Defendants

16. Defendant David Scanlan is named solely in his capacity as Secretary of State for New Hampshire. Mr. Scanlan maintains a business address of State House, Room 204, 107 North Main Street, Concord, NH 03301.

17. Defendant State of New Hampshire is the body politic of this state and maintains an address at 33 Capitol Street, Concord, NH 03301.

c. Personal Jurisdiction, Venue, Subject Matter Jurisdiction

18. Personal jurisdiction lies in New Hampshire as to all parties. All parties are located in New Hampshire. The events giving rise to this matter all occurred in New Hampshire.

19. Venue is appropriate in Strafford County given the nature of this action and the fact that some of the plaintiffs reside or are located in Strafford County. *See* RSA 507:9.

20. This Court has general jurisdiction over civil claims pursuant to RSA 491:7 and general equitable jurisdiction pursuant to RSA 498:1.

III. Allegations Common to All Claims

a. Brief Overview of Relevant Law

21. Every ten years, Part II, Article 9 of the State Constitution requires the legislature to redistrict the New Hampshire House in accordance with the federal census results (or state census, should once be taken).

22. While various legal considerations govern that House redistricting process, this case in particular concerns the unequivocal requirement of Part II, Article 11 of the State Constitution that town or wards with a population “within a reasonable deviation from the ideal population for one or more representative seats, . . . **shall have its own district of one or more representative seats.**” (Emphasis added).

23. Part II, Article 11 was amended in 2006 and approved by New Hampshire voters on November 7, 2006, as a result of Constitutional Amendment Concurrent Resolution 41 (CACR 41). CACR 41 was likely a response to the New Hampshire Supreme Court’s decision in *Burling v. Speaker of the House*, 148 N.H. 143 (2002), declining to employ floterial redistricting schemes in the 2002 court-ordered reapportionment. *See Town of Canaan v. Secretary of State*, 157 N.H. 795, 797-98 (2008).

24. The purpose of CACR 41 is clearly expressed in its language and the voter guide:

[If adopted, t]his amendment will allow the legislature to create districts in the same manner that districts were drawn prior to 2002. It will increase the total number of districts and therefore increase the probability that the people of a town will be represented by a member of their own community.

Each town or ward having enough inhabitants to entitle it to one or more representative seats in the Legislature shall be guaranteed its own district for the purposes of electing one or more representatives, unless such action prevented a neighboring town from being included in a single-representative district before it is part of a floterial district. . . .

...

The Constitution does not guarantee that each town or ward having enough inhabitants to entitle it to one representative seat in the Legislature shall have its own district. The Constitution permits the Legislature to form multi-town and multi-ward districts for electing state representatives, but does not expressly permit or prohibit the Legislature to form so-called “floterial” or at-large districts using excess inhabitants from one district to create a representative seat in those towns or wards that do not have enough inhabitants to form a district.

25. A true and accurate copy of the CACR 41 voter guide, prepared pursuant to RSA 663:3-a, is attached hereto as Exhibit 1.

26. The constitutional requirement of a dedicated district rests on long-standing recognition of the importance of “insuring some voice to political subdivisions, as subdivisions.” *Reynolds v. Sims*, 377 U.S. 533, 580 (1964). This policy aim of ensuring a voice applies, by extension, to individual voters in the affected towns and wards that should, according to Part II, Article 11, have their own House district/representative.

27. The State’s failure to adhere to Part II, Article 11 in drawing new House districts weakens the voice and say, in legislation, of those districts who fail to get a dedicated House district/representative (and the voters of those affected towns and wards).

28. Not only do violations of Part II, Article 11 have concrete adverse consequences for affected municipalities and wards and their voters, but more fundamentally violations undermine the State Constitution itself, which “must be regarded by the judges as a fundamental law. It was created by the people, who in our republics, are the supreme power, and, it being the expression of their will, their agents, as are all the branches of government, can perform no act which, if contrary to that will, should be deemed lawful.” *Merrill v. Sherburne*, 1 N.H. 199, 201 (1818).

29. Due to the relatively small population of New Hampshire in comparison to its large number of House representatives, redistricting the House may require some “forced”

violations of Part II, Article 11, meaning a violation of the State Constitution is necessary in order to comply with the “one person, one vote” requirements of the state and federal constitution (discussed further below). *See generally City of Manchester v. Secretary of State*, 163 N.H. 689 (2012).

30. By way of brief overview, the constitutional “one person, one vote” requirement guarantees that all citizens will have an equal right to vote, known as the “one person, one vote” requirement. *See* N.H. CONST. pt. I, art. 11; U.S. CONST, amend XIV; *Reynolds v. Sims*, 377 U.S. 533, 577 (1964).

31. “The established method to determine whether a redistricting plan affords citizens an equal right to vote is to calculate the extent to which it deviates from the ideal district population.” *City of Manchester*, 163 N.H. at 699.

32. A redistricting plan with a population deviation in excess of 10% is prima facie unconstitutional. *See City of Manchester*, 163 N.H. at 703-704; *Brown v. Thompson*, 462 U.S. 835, 842-43 (1983).

33. In *City of Manchester*, the New Hampshire Supreme Court held that the State’s paramount need to comply with the 10% population deviation is a “rational or legitimate basis” justifying “forced” violations of Part II, Article 11. However, as will be discussed more below, the enacted redistricting scheme in this matter lacks the justification articulated in *City of Manchester*.

b. Current House Bill 50 (Enacted as Laws 2022, 9:1)

34. Effective March 2022, Laws 2022, 9:1 (originally House Bill 50) redistricted the House using 400 districts (the maximum allowed by Part II, Article 9 of the State Constitution).

35. Laws 2022, 9:1 enacted 55 violations of Part II, Article 11 of the State Constitution.

36. Yet, not all of those 55 violations of Part II, Article 11 were in fact “forced” violations necessary to comply with the “one person, one vote” standard or any other similar requirement of law—14 violations were voluntarily chosen for reasons that remain unexplained and lack any “rational or legitimate basis” that could justify such constitutional violations, as set forth below.

37. Over the course of the legislation, the legislature received public input and feedback.

38. As part of public feedback received by the legislature, the Map-a-Thon coalition provided proposed legislative maps for the House.

39. By way of background, Map-a-Thon is a non-partisan group of various professionals, including those with software coding, data, and redistricting knowledge and expertise, who, among other things, created proposed New Hampshire House districts/maps based on the 2020 census.

40. Map-a-Thon used the same legal criteria and traditional policies used by the legislature and created proposed House maps that comply with all applicable laws and traditional redistricting policies, as well as (i) showed how to reduce enacted violations of Part II, Article 11 of the State Constitution, and (ii) comply with the federal/state “one person one vote” requirements with under 10% population deviation statewide.

41. An Affidavit of David Andrews, of Map-a-Thon is attached as Exhibit 2 and incorporated by reference.¹

42. A true and accurate copy of Map-a-Thon's submission to the legislature on November 2, 2021 is attached as Exhibit D within Exhibit 2.

43. A true and accurate copy of Map-a-Thon's submission to the legislature on November 9, 2021 is attached as Exhibit E within Exhibit 2.

44. A true and accurate copy of Map-a-Thon's February 1, 2022 submission to the legislature is attached as Exhibit F within Exhibit 2.

45. For reasons that remain unclear, the legislature rejected Map-a-Thon's maps out of hand and ultimately enacted the legislature's own map, Laws 2022, 9:1.

46. The enacted districts within Laws 2022, 9:1 contained a total of 55 statewide violations of Part II, Article 11.

47. A true and accurate copy of the updated, proposed House map by Map-a-Thon, which takes account of late redistricting that occurred in certain municipalities such as Dover, is attached as Exhibit G within Exhibit 2. This updated map shows that it was possible to satisfy all legal and other redistricting criteria, yet reduce the amount of violations of Part II, Article 11 of the State Constitution to 41.

48. The Map-a-Thon map exposes the lack of "rational or legitimate basis" for the degree to which Laws 2022, 9:1 violates Part II, Article 11 of the State Constitution. Statewide, the Map-a-Thon proposed map could have reduced the "forced" violations of Part II, Article 11

¹ This affidavit was originally submitted to the New Hampshire Supreme Court with a Rule 11 Petition for original jurisdiction by two of the named plaintiffs herein, which the Court ultimately denied without prejudice to seeking relief in the trial court in the first instance.

in redistricting the House to only 41. Therefore, Laws 2022, 9:1 enacted 14 violations of Part II, Article 11 of the State Constitution more than the Map-a-Thon alternative.

49. By way of example, for Strafford County the Map-a-Thon contains only two “forced” violations of Part II, Article 11, whereas the enacted House districts in Laws 2022, 9:1 contain six violations.

50. The legislative history of House Bill 50, now Laws 2022, 9:1, offers no explanation or justification for the policy decisions made for the House districts and no rationale for rejecting the Map-a-Thon proposals that significantly reduced the number of violations of Part II, Article 11.

51. Laws 2022, 9:1 lacks any “rational or legitimate basis.” *See City of Manchester*, 163 N.H. at 698 (discussing standard of review). Importantly, the New Hampshire Supreme Court described this standard as “akin to the well-established rational basis standard,” which is to say that it is similar to but not necessarily the same as typical rational basis review. This standard “consider[s] . . . the specific violations claimed” but is also mindful of “the various legal requirements statewide.” *Id.* (quotation omitted).

52. The only possible type of rational or legitimate basis that could justify clear violations of the State Constitution in this case are the requirements of a separate constitutional or legal requirement, as *City of Manchester* essentially states and exemplifies. Put another way, run-of-the-mill policymaking considerations cannot be invoked to justify a violation of the State Constitution. Here, there can be no dispute that Laws 2022, 9:1 violates and does not comply with Part II, Article 11 of the State Constitution, meaning that the defendants must demonstrate a *comparable legal requirement* as a rational basis for violating the State Constitution and the degree to which that violation occurred. For example, in *City of Manchester*, the Court held that

the necessity of complying with another, overriding federal constitutional requirement—the “one person, one vote” standard—justified the legislature’s decision in 2012 to commit the “forced” violations of Part II, Article 11 at issue in that case. There is no such justification for Laws 2022, 9:1 and its significant degree of unnecessary violations of Part II, Article 11.

53. Even assuming *arguendo* some lower bar for “rational or legitimate basis” applied (it does not), Laws 2022, 9:1 still lacks such a basis. There is no justification in the legislative history or otherwise for why, in the face of a submitted redistricting plan that could significantly increase compliance with Part II, Article 11 and significantly reduce the number of Part II, Article 11 violations, the decision was made to forego such a map or to even review the merits of the submitted Map-a-Thon map or any alternative map. Nor can any post-hoc rationalization be invented or tendered that might justify the unnecessary violations of Part II, Article 11. No legitimate consideration that might constitute a “rational or legitimate basis” justifies Laws 2022, 9:1.

54. Worse, the enacted House districts within Laws 2022, 9:1 also exceed the federal and state constitutions’ 10% population deviation standard, as Laws 2022, 9:1 enacted House districts with a 10.13% population deviation statewide based on the 2020 federal census. *See Ex. 2, Affidavit of David Andrews at ¶ 2.*

55. Case law relied upon by the New Hampshire Supreme Court in *City of Manchester* (to establish and articulate the “rational or legitimate basis” framework) makes plain that a prima facie case for proving an unconstitutional redistricting plan exists once plaintiffs show “that the State has failed to meet constitutional or statutory standards or policies with regard to a specific part of the plan.” *In re Town of Woodbury*, 861 A.2d 1117, 1120 (Vt. 2004)

(quotation omitted). Laws 2022, 9:1 falls well short of meeting the constitutional standard set forth in Part II, Article 11.

56. Thus, “once petitioners have shown that the State has failed to meet constitutional or statutory standards or policies with regard to a specific part of the plan, the State then has the burden to show that satisfying those requirements was impossible because of the impermissible effect it would have had on other districts.” *Id.*; see also *In re Reapportionment of Towns of Hartland, Windsor and West Windsor*, 624 A.2d 323, 327 (Vt. 1993). Here, Defendants cannot justify Laws 2022, 9:1’s 55 violations of Part II, Article 11 of the State Constitution

57. In summary, the State inexplicably enacted Laws 2022, 9:1 and committed numerous undeniable violations of Part II, Article 11 without a “rational or legitimate basis,” while rejecting options that would have reduced the “forced” violations of Part II, Article 11 of the State Constitution in redistricting the House. The number (55) of forced violations of Part II, Article 11 of the State Constitution lacks any “rational or legitimate basis” and, worse, the State enacted a House redistricting scheme in Laws 2022, 9:1 that is presumptively unconstitutional by exceeding the 10% deviation safe harbor.

c. The Affected Towns/Wards at Issue

58. The following towns and wards, listed according to each county, comprise those represented by the plaintiffs in this Complaint who were entitled to a dedicated House representative/district based on the 2020 census, but were unconstitutionally deprived of same by Laws 2022, 9:1 (hereinafter collectively referred to as “affected towns/wards”). Each town or ward has a population that exceeds the ideal district size in New Hampshire based on the 2020 census, which is 3,444.

i. Strafford County (Dover Ward 4, Rochester Ward 5, Lee, Barrington)

59. In the last House redistricting (2012), Dover Ward 4, Rochester Ward 5, Lee, and Barrington had their own districts with their own representatives.

60. The population of Dover Ward 4 based on the 2020 census is 5,439. Given Dover Ward 4's population, Part II, Article 11 of the State Constitution requires that Dover Ward 4 receive at least one dedicated house district/representative.

61. Laws 2022, 9:1 denies Dover Ward 4 its own district by combining it with the Towns of Madbury and Lee.

62. The population of Rochester Ward 5 based on the 2020 census is 5,419. Given Rochester Ward 5's population, Part II, Article 11 of the State Constitution requires that Rochester Ward 5 receive at least one dedicated house district/representative.

63. Laws 2022, 9:1 denies Rochester Ward 5 its own district by combining it with the Town of Milton.

64. The population of Lee based on the 2020 census is 4,520. Given Lee's population, Part II, Article 11 of the State Constitution requires that Lee receive at least one dedicated house district/representative.

65. Laws 2022, 9:1 denies Lee its own district by combining it with the Town of Madbury and Dover Ward 4.

66. The population of Barrington based on the 2020 census is 9,326. Given Barrington's population, Part II, Article 11 of the State Constitution requires that Barrington receive at least one dedicated house district/representative.

67. Laws 2022, 9:1 denies Barrington its own district by combining it with the Town of Strafford.

68. Under Laws 2022, 9:1, Strafford County contained a total of six violations of Part II, Article 11 of the State Constitution.

69. The proposed Map-a-Thon map for Strafford County reduces the “forced” violations of Part II, Article 11 of the State Constitution to only two, giving Dover Ward 4, Rochester Ward 5, Lee, Barrington, and Milton their own districts/representatives.

ii. Hillsborough County (New Ipswich, Wilton)

70. The population of New Ipswich based on the 2020 census is 5,204. Given New Ipswich’s population, Part II, Article 11 of the State Constitution requires that New Ipswich receive at least one dedicated house district/representative.

71. Laws 2022, 9:1 denies New Ipswich its own district by combining it with the Towns of Temple and Wilton.

72. The population of Wilton based on the 2020 census is 3,896. Given Wilton’s population, Part II, Article 11 of the State Constitution requires that Wilton receive at least one dedicated house district/representative.

73. Laws 2022, 9:1 denies Wilton its own district by combining it with the Towns of Temple and New Ipswich.

74. Under Laws 2022, 9:1, Hillsborough County contained a total of six violations of Part II, Article 11 of the State Constitution.

75. The proposed Map-a-Thon map for Hillsborough County reduces the “forced” violations of Part II, Article 11 of the State Constitution to only four, giving New Ipswich and Wilton their own districts/representatives.

iii. Merrimack County (Hooksett)

76. In the last House redistricting (2012), Hooksett had its own district with its own representatives.

77. The population of Hooksett based on the 2020 census is 14,871. Given Hooksett's population, Part II, Article 11 of the State Constitution requires that Hooksett receive at least one dedicated house district/representative.

78. Laws 2022, 9:1 denies Hooksett its own district by combining it with the Town of Dunbarton.

79. Under Laws 2022, 9:1, Merrimack County contained a total of seven violations of Part II, Article 11 of the State Constitution.

80. The proposed Map-a-Thon map for Merrimack County reduces the "forced" violations of Part II, Article 11 of the State Constitution to only five, giving Hooksett and Bow their own districts/representatives.

d. Other Affected Towns

81. In addition to the towns and wards listed above, there are towns not represented by plaintiffs here that should also receive their own districts and representatives if the Legislature or this Court undertakes redistricting as a result of this suit. These towns are Chesterfield and Hinsdale (Cheshire County), Canaan and Hanover (Grafton County), Bow (Merrimack County), Plaistow (Rockingham County), and Milton (Strafford County).

Count I
Declaratory Relief (RSA 491:22) – Laws 2022, 9:1
Violates the New Hampshire Constitution Part II, Article 11

82. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

83. The New Hampshire Constitution, Part II, Article 11 was amended in 2006 to ensure that towns and wards with a population to entitle them to one or more House seats would be established as single-town districts. Additionally, the amendment explicitly allowed for the creation of “floterial” districts to combine the excess population of two or more districts to create an overlying, at-large district.

84. While violations of Part II, Article 11 of the State Constitution may be necessary to comply with the one person/one vote requirement, *see City of Manchester*, 163 N.H. at 702, the overwhelming weight of authority underscores the requirement that the legislature minimize violations of the State Constitution and enact only those violations necessary.

85. Part II, Article 11 uses mandatory language concerning districts with sufficient population, which mandatory language requires compliance to the greatest degree possible when redistricting the House.

86. The need to commit some violations of Part II, Article 11 is not a license to violate unnecessarily, such as that done by Laws 2022, 9:1.

87. Part II, Article 11’s history and purpose underscore the mandatory language and requirement to minimize violations of Part II, Article 11, as set forth above.

88. In addition, other states have construed similar State Constitutional requirements to require a sincere effort to avoid unnecessary violations. *See Twin Falls Cnty. v. Idaho Comm’n on Redistricting*, 271 P.3d 1202, 1203 (Idaho 2012) (“We hold that the plan is invalid because it violates Article III, section 5, of the Idaho Constitution by dividing more counties than necessary to comply with the Constitution of the United States.”); *Holt v. 2011 Legislative Reapportionment Comm’n*, 38 A.3d 711, 754-57 (Pa. 2012) (invalidating redistricting plan where alternative plan “avoided a highly significant percentage of political subdivision splits and

fractures while maintaining a lower average population deviation”); *In re Reapportionment of the Colo. Gen. Assembly*, 332 P.3d 108, 109 (Colo. 2011) (“We hold that the Adopted Plan is not sufficiently attentive to county boundaries to meet the requirements of article V, section 47(2) and the Commission has not made an adequate showing that a less drastic alternative could not have satisfied the hierarchy of constitutional criteria set forth in our most recent reapportionment opinion.”); *Legislative Research Comm’n v. Fischer*, 366 S.W.3d 905, 91-12 (Ky. 2012) (holding reapportionment scheme unconstitutional and reaffirming prior decisional law, which “requires division of the fewest number of counties mathematically possible in reapportionment plans”); *In re Colorado General Assembly*, 828 P.2d 185, 195-96 (Colo. 1992) (“We conclude that the Commission's explanation for dividing Pitkin County and the City of Aspen, and for the further division of Snowmass Village from Aspen, does not rise to the level of an adequate factual showing that less drastic alternatives could not have satisfied the equal population requirement of the Colorado Constitution.”); *cf. In re 2011 Redistricting Cases*, 294 P.3d 1032, 1034 (Alaska 2013) (“A reapportionment plan may minimize article VI, section 6 requirements when minimization is the only means available to satisfy Voting Rights Act requirements.”); *In re Legislative Districting of General Assembly*, 193 N.W.2d 784, 792-92 (Iowa 1972) (invalidating redistricting plan for failure to comply with compactness requirements in State Constitution).

89. Plaintiffs have met their burden of showing a violation of Part II, Article 11 as well as a lack of “rational or legitimate basis” for Laws 2022, 9:1 in view of Part II, Article 11 of the State Constitution.

90. Defendants have not met, and cannot meet, their burden of constitutionally justifying the 55 violations of Part II, Article 11 of the State Constitution within Laws 2022, 9:1.

91. The Court should find and declare the foregoing.
92. The Court should also find and declare, pursuant to RSA 491:22, that:
 - a. Laws 2022, 9:1 unnecessarily denies the plaintiffs their own representation by combining these aforesaid districts with other districts.
 - b. Laws 2022, 9:1 lacks a “rational or legitimate basis” for the 55 enacted violations of Part II, Article 11 of the State Constitution, at least with respect to the affected towns/wards stated in this Complaint.
 - c. Laws 2022, 9:1 violated Part II, Article 11 by failing to minimize the enacted violations of Part II, Article 11 of the State Constitution in the affected towns/wards stated in this Complaint.

93. Pursuant to RSA 491:22 and its equitable and constitutional authority, the Court should invalidate Laws 2022, 9:1 as to at least all affected towns/wards stated in this Complaint who were entitled, by Part II, Article 11 of the State Constitution, to their own dedicated House district/representative and who could have, but did not, receive same within Laws 2022, 9:1 due to the 55 violations of Part II, Article 11 enacted without “rational or legitimate basis” or legal justification.

94. Plaintiffs are entitled to, and hereby request, a meaningful, prompt, and equitable remedy, to be proven at trial, which may include, but may not be limited to, adopting the Map-a-Thon map proffered by plaintiffs as to each affected town/ward for all future House elections occurring prior to the next census and House redistricting (in 2024, 2026, 2028, and 2030).

Count II
Permanent Injunctive Relief

95. Plaintiffs reallege and reincorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

/s/ Jennifer R. Perez

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THE CITY OF ROCHESTER, NEW HAMPSHIRE

Dated: July 26, 2022

By: /s/ Terence M. O'Rourke

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