

STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY

SUPERIOR COURT

The City of Dover, et al.

v.

David M. Scanlan, in his official capacity as the New Hampshire Secretary of State; and the State of New Hampshire

Docket No. 219-2022-CV-00224

ORDER ON DEFENDANTS' MOTION TO DISMISS

This case challenges the constitutionality of the decennial redistricting of the State House of Representatives under Laws 2022, 9:1 (signed March 23, 2022). The plaintiffs are the cities of Dover and Rochester and several individual voters in affected districts across the State. The plaintiffs seek a declaratory judgment and injunctive relief against the defendants. (Court index #1). The defendants now move to dismiss the complaint. (Court index #9). The plaintiffs object. (Court index # 12). Based on the parties' arguments, the relevant facts, and the applicable law, the defendants' motion to dismiss is DENIED.

Facts

Consistent with the standard of review, the court derives the following facts from the Complaint. In March 2022, the Governor signed a bill changing the boundaries for New Hampshire's House of Representative districts. (Compl. ¶ 2). The plaintiffs allege that the newly drawn district maps violate "the unequivocal requirement of Part II, Article 11 of the State Constitution that towns 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,'" as the maps deny 55 qualifying towns and wards their own district. (Id. ¶¶ 22, 35). The maps also "exceed[] the federal and statute constitutions' 10% population deviation

standard” for determining whether a redistricting plan affords citizens an equal right to vote. (Id. ¶¶ 31-32, 54). The plaintiffs acknowledge, however, that redistricting may require some “forced” violations of Part II, Article 11, but argue that 14 of the 55 violations are unexplained and lack any “rational or legitimate basis.” (Id. ¶¶ 29, 36). A plan created by the Map-A-Thon coalition and presented to the legislature by way of public input during the redistricting process

[complies] 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.

(Id. ¶ 40).

As a result, the plaintiffs have brought this action seeking: (1) a declaration that the newly drawn districts unnecessarily deny the plaintiffs their own representation; lack a rational or legitimate basis for the 55 enacted violations of Part II, Article 11 of the State Constitution; and violate Part II, Article 11 by failing to minimize the enacted violations of Part II, Article 11 of the State Constitution in the affected towns and wards; and (2) seek permanent injunctive relief either ordering the State to redraw the House maps for the affected towns and wards in compliance with Part II, Article 11 or for the Court to develop its own map to cure violations of Part II, Article 11. (See generally, id.)

The defendants now move to dismiss on grounds that the complaint presents non-justiciable political questions and otherwise fails to state a claim for which relief may be granted.

Legal Standard

When ruling on a motion to dismiss, the court must discern “whether the allegations in the [complaint] are reasonably susceptible of a construction that would permit recovery.” Boyle v. Dwyer, 172 N.H. 548, 553 (2019). The court assumes the well-pleaded facts in the complaint to be true and construes all reasonable inferences in the light most favorable to the pleading’s

proponent. Weare Bible Baptist Church, Inc. v. Fuller, 172 N.H. 721, 725 (2019). The court then engages in a threshold inquiry that tests the facts alleged by the plaintiff against the applicable law, and if the allegations constitute a legal basis for relief, the court must deny the motion to dismiss. Pro Done, Inc. v. Basham, 172 N.H. 138, 141–42 (2019). “In conducting this inquiry, [the court] may also consider documents attached to the plaintiffs' pleadings, documents the authenticity of which are not disputed by the parties, official public records, or documents sufficiently referred to in the complaint.” Boyle, 172 N.H. at 553 (quoting Ojo v. Lorenzo, 164 N.H. 717, 721 (2013)). The court rigorously scrutinizes the facts contained on the face of the complaint to determine whether a cause of action has been asserted. In re Guardianship of Madelyn B., 166 N.H. 453, 457 (2014). The court “need not...assume the truth of statements that are merely conclusions of law.” Lamb v. Shaker Reg’l Sch. Dist., 168 N.H. 47, 49 (2015).

Analysis

I. Political Question Doctrine

“The political question doctrine is essentially a function of the separation of powers, existing to restrain courts from inappropriate interference in the business of the other branches of Government, and deriving in large part from prudential concerns about the respect we owe the political departments.” Horton v. McLaughlin, 149 N.H. 141, 143 (2003) (internal brackets and ellipses omitted). To comport with the principle of separation of powers, the New Hampshire Supreme Court has held that “the range of the matters subject to judicial review is limited by the concept of justiciability.” In re Judicial Conduct Comm., 145 N.H. 108, 111 (2000). “A controversy is nonjusticiable—i.e., involves a political question—where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.” Burt v. Speaker of the

House of Representatives, 173 N.H. 522, 525 (2020). “Deciding whether the matter has in any measure been committed by the Constitution to another branch of government is itself a delicate exercise in constitutional interpretation.” Id.

The court recognizes that “redistricting is an inherently political process.” In re Below, 151 N.H. 135, 136 (2004). If the legislature fails to draw districts that comply with the mandatory requirements of each article, “it is . . . appropriate to provide judicial intervention,” as “[c]laims regarding compliance with these kinds of mandatory constitutional provisions are justiciable.” Baines v. N.H. Senate President, 152 N.H. 124, 132 (2005). However, “political considerations are tolerated in legislatively-implemented redistricting plans,” Burling v. Chandler, 148 N.H. 143, 156 (2002), and therefore the Court must “tread lightly in this political arena” as to not “materially impair the legislature’s redistricting power.” In re Below, 151 N.H. at 150. “Judicial relief becomes appropriate only when a legislature fails to reapportion according to constitutional requisites in a timely fashion after having the opportunity to do so.” City of Manchester v. Sec’y of State, 163 N.H. 689, 697 (2012) (brackets and ellipses omitted).

The New Hampshire Supreme Court has held justiciable alleged violations of other constitutional requirements similar to Part II, Article 11. For example, in Hughes v. Speaker of the N.H. House of Representatives, 152 N.H. 276, 288 (2005), the Court held that whether private negotiations regarding a school funding bill violated the *mandatory constitutional requirement* governing the public’s right to know by excluding a House member and members of the public from separate meetings of the House and Senate conferees was justiciable.

Indeed, while reluctant to intervene in this arena, the New Hampshire Supreme Court has also decided several cases involving alleged constitutional redistricting violations. See Norelli v. Sec’y of State, 175 N.H. 186 (2022); City of Manchester, 163 N.H. 689; Town of Canaan v.

Sec’y of State, 157 N.H. 795 (2008); In re Below, 151 N.H. 135; Burling, 148 N.H. 143; Below v. Gardner, 148 N.H. 1 (2002); Monier v. Gallen, 122 N.H. 474 (1982). For example, in Burling, the court addressed a redistricting case concerning the constitutional requirement of “one person, one vote.” 148 N.H. at 143. The Burling Court determined that the enacted map created an unconstitutional deviation from approximate population equality and the “one person, one vote principle.” Id. at 155. As a result, the court created its own plan for new house districts consistent with state and federal constitutional requirements. Id. at 157. Likewise, in City of Manchester, the court addressed alleged violations of Part II, Article 11—the same constitutional provision at issue here. 163 N.H. at 702. The court accepted the enacted plan and rejected the plaintiffs’ proposed plan, finding that although the plaintiffs’ plan yielded fewer violations of Article 11, it exceeded the acceptable deviation (10%) from the ideal population for the “one person, one vote” principle, whereas the enacted plan did not. Id. at 703-704. Compliance with the 10% deviation standard was a rational and legitimate basis for enacting a plan with Article 11 violations. Id. at 704.

Here, the plaintiffs claim that the plan violates the mandatory, express requirement of Part II, Article 11, which provides:

When the population of any town or ward, according to the last federal census, is within a reasonable deviation from the ideal population for one or more representative seats the town or ward shall have its own district of one or more representative seats.

N.H. CONST. pt. II, art. 11

The plain language of Article 11 creates a mandatory requirement that towns or wards with the requisite population shall have their own district of one or more representative seats. See City of Rochester v. Corpening, 153 N.H. 571, 574 (2006) (“The intention of the Legislature as to the mandatory or directory nature of a particular statutory provision is determined primarily

from the language thereof . . . The general rule of statutory construction is that the word ‘may’ makes enforcement of the statute permissive and that the word ‘shall’ requires mandatory enforcement.”). As alleged in the Complaint, the redistricting plan created 55 violations of Article 11, 14 of which the plaintiffs allege were not “forced” violations and lack any rational or legitimate basis. See City of Manchester, 163 N.H. at 698. Given the Complaint alleges a violation of the constitutional requirements under Part II, Article 11, the court finds the case does not involve a political question and is justiciable.

II. Failure to State a Claim

Alternatively, the defendants move to dismiss on the ground that the Complaint fails to state a claim upon which relief may be granted. Specifically, the defendants aver that the plaintiffs have failed to show that the enacted map lacks a legitimate or rational basis. See City of Manchester, 163 N.H. at 698 (“To prevail, the [plaintiffs] must establish that the [p]lan was enacted without a rational or legitimate basis.”). The Complaint alleges:

[N]ot 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 . . .

(Compl. ¶ 36).

The Complaint further alleges that as part of the public input the Legislature received throughout the redistricting process, the Map-a-Thon Coalition provided a proposed legislative map for the House. The Map-a-Thon plan, as alleged in the Complaint, “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

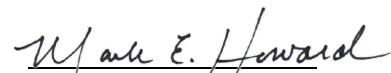
deviation statewide.” (Id. ¶ 40). The Map-A-Thon map “exposes the lack of ‘rational or legitimate basis’ for the degree to which [the enacted plan] violates Part II, Article 11 of the State Constitution.” (Id. ¶ 48). Taking the facts in the Complaint as true, and construing all reasonable inferences in the light most favorable to the plaintiffs, the court finds that the Complaint sufficiently alleges that the enacted map lacks a legitimate or rational basis. As a result, the Court DENIES the defendants’ motion to dismiss for failure to state a claim.

Conclusion

Based on the foregoing, the court DENIES the defendants’ motion to dismiss.

SO ORDERED.

Date: June 23, 2023


Mark E. Howard
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 06/30/2023