

STRAFFORD COUNTY

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

City of Dover et. al.

v.

David Scanlan, Secretary of State for New Hampshire et. al.

Docket No. 219-2022-CV-00224

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

The plaintiffs, City of Dover, New Hampshire, City of Rochester, New Hampshire, 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, respectfully move for summary judgment, stating as follows:

1. This case challenges the constitutionality of the decennial redistricting of the State House of Representatives (“House”) by way of Laws 2022, ch.9 (RSA 662:5).

2. For the reasons set forth in the accompanying memorandum of law, incorporated herein by reference in its entirety along with the exhibits and statement of facts accompanying same, plaintiffs request summary judgment in their favor on all counts in this case given the unconstitutionality of RSA 662:5 with respect to the affected towns/wards of Barrington, Bow, Canaan, Chesterfield, Dover Ward 4, Hanover, Hinsdale, Hooksett, Milton, New Ipswich, Newton, Lee, Plaistow, Rochester Ward 5, and Wilton (“Affected Towns/Wards”).

3. As stated in the accompanying memorandum of law, plaintiffs specifically request the following declaratory judgments:

- a. The need to commit some necessary violations of Part II, Article 11 of the State Constitution is not a license to commit unnecessary violations.

- b. In redistricting or reapportioning the House, the State must follow the hierarchy of authority, prioritizing constitutional compliance over any non-constitutional considerations and minimizing violations of Part II, Article 11 of the State Constitution, even where perfect compliance is impossible.
  - c. During the legislative process resulting in current RSA 662:5 (Laws 2022, ch. 9), the legislature was provided with a Map-a-Thon map exemplifying how to reduce the total number of Part II, Article 11 violations by at least a net of 14 (from 55 to 41) while complying with all other constitutional mandates, but chose to enact Laws 2022, ch. 9 and in doing so failed to minimize Part II, Article 11 violations.
  - d. RSA 662:5 (and Laws 2022, ch. 9) unconstitutionally deprived (and continues to deprive) the Affected Towns/Wards, each of which otherwise qualified for a dedicated House seat per Part II, Article 11, of dedicated House seats.
  - e. In enacting RSA 662:5 (Laws 2022, ch. 9), the State unlawfully prioritized non-constitutional policymaking considerations over the requirements of Part II, Article 11 of the State Constitution.
  - f. Plaintiffs have demonstrated, as a matter of law, that RSA 662:5 (Laws 2022, ch. 9) lacks a “rational or legitimate basis” for the net of fourteen unnecessary, avoidable violations of Part II, Article 11 of the State Constitution.
  - g. Defendants have provided no or insufficient justification for Laws 2022, ch. 9’s fourteen unnecessary, avoidable violations of Part II, Article 11.
  - h. RSA 662:5 is declared unlawful and void to the extent that statute purports to deny dedicated House districts to the Affected Towns/Wards of Barrington, Bow, Canaan, Chesterfield, Dover Ward 4, Hanover, Hinsdale, Hooksett, Milton, New Ipswich, Newton, Lee, Plaistow, Rochester Ward 5, and Wilton.
4. As also stated in the accompanying memorandum of law, plaintiffs specifically request the following remedial rulings:
- a. The Secretary of State is enjoined from conducting House elections under the districts currently enacted in RSA 662:5 (Laws 2022, ch 9) for the counties of the Affected Towns/Wards, meaning the counties of Cheshire, Grafton, Hillsborough, Merrimack, Rockingham, and Strafford.
  - b. That for use in the 2024 state election and thereafter until such time as the legislature may enact a constitutionally permissible House redistricting, the House seats for these aforesaid counties be re-apportioned to address the unconstitutional aspects of RSA 662:5. The Map-a-Thon House districts illustrate one way of doing so, but whatever remedy is awarded the House apportionment within the counties of the Affected Towns/Wards must ensure: (i) there are no more than 41

total statewide violations of Part II, Article 11, and (ii) that each county for the Affected Towns/Wards contains no more than the number of Part II, Article 11 violations set forth in Map-a-Thon's House maps for each county. This remedy satisfies the normal "least change" approach used in judicially ordered redistricting. *See, e.g., Norelli v. Sec'y of State*, 175 N.H. 186, 203 (2022).

- c. That any June 2024 House candidate filing period be extended, as may be necessary in light of the final disposition of this summary judgment motion.
  - d. After consulting with the parties, the Court should set a deadline after which the Court will issue a judicial remedy should the legislature take no or insufficient action, all such that the unconstitutional aspects of the current House maps are not used in the 2024 election.
5. Defendants' concurrence with this motion was not sought due to the dispositive nature of this motion. *See Super. Ct. R.* 11(c).

WHEREFORE, the plaintiffs respectfully requests that this honorable Court:

- A. Grant this Motion for Summary Judgment and grant summary judgment on all counts/issues in favor of the plaintiffs; and
- B. Grant the specific requests for declaratory and injunctive relief set forth above and in the accompanying memorandum of law;
- C. Grant such additional and further relief in its favor as the Court deems just, equitable, and proper.

Respectfully submitted,

**THE CITY OF DOVER, NEW HAMPSHIRE**

Dated: January 9, 2024

By:  /s/ Joshua M. Wyatt

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**THE CITY OF ROCHESTER, NEW HAMPSHIRE**

Dated: January 9, 2024

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By their attorney,

Dated: January 9, 2024

By:  /s/ Henry Quillen

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**CERTIFICATE OF SERVICE**

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

Dated: January 9, 2024

By:  /s/ Joshua M. Wyatt

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