

STRAFFORD COUNTY

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

219-2022-CV-00224

CITY OF DOVER,
CITY OF ROCHESTER,
DEBRA HACKETT,
ROD WATKINS,
KERMIT WILLIAMS,
EILEEN EHLERS,
JANICE KELBLE,
ERIK JOHNSON,
DEBORAH SUGERMAN,
SUSAN RICE,
DOUGLAS BOGEN, and
JOHN WALLACE

v.

DAVID M. SCANLAN,
in his official capacity as the New Hampshire Secretary of State

&

THE STATE OF NEW HAMPSHIRE

**DEFENDANTS' OBJECTION TO PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

The Defendants, David Scanlan, in his official capacity as the New Hampshire Secretary of State, and the State of New Hampshire, through counsel, object to the Plaintiffs' motion for summary judgment.

I. **Introduction:**

1. On January 9 and 10, 2024, the parties each filed cross motions for summary judgment in accordance with the Court's October 25, 2023 procedural order. The Plaintiffs' motion should be denied for the reasons advanced in the Defendants' motion, which the Defendants incorporate herein. Additionally, as explained below, the Plaintiffs' motion misstates the legal standards

before the Court and mischaracterizes the Attorney General's prior position on legislative redistricting.

II. **Plaintiffs' cross-motion for summary judgment should be denied for the reasons stated in the Defendants' cross-motion for summary judgment:**

2. The Plaintiffs' motion should be denied for the reasons advanced in the Defendants' motion. Specifically, HB50 is presumed constitutional and cannot be read as requiring a redistricting plan to provide a single-member district to every town, ward, and place with sufficient population because it is not possible to do so. See Def. Mot. for Summ. J. 6-8. The Plaintiffs lack standing to assert claims on behalf of municipalities not represented in this action, and the Plaintiffs are not alleging that HB 50's total population deviation discriminates against them in violation of the state or federal constitutions. See id. 8-9. HB 50 constitutionally complies with all redistricting requirements when those requirements are balanced and read in conjunction with each other, and the Plaintiffs cannot prove that HB50 lacked a legitimate or rational basis. See id. 11-16. For all of these reasons, the Plaintiffs' motion should be denied.

III. **Plaintiffs misstate the proper standard of review:**

3. The Plaintiffs' motion and accompanying memorandum of law repeatedly misstate the standard that the Plaintiffs must meet to prove that HB 50 is unconstitutional.

4. HB 50 is presumed constitutional, and this Court can only invalidate HB 50 if the Plaintiffs demonstrate both that HB 50 violates some constitutional redistricting requirement and that there is a rational or legitimate basis for HB 50's redistricting plan. See City of Manchester v. Secretary of State, 163 N.H. 689, 698 (2012) (holding that "[t]o prevail, the petitioners must establish that the Plan was enacted 'without a rational or legitimate basis'"). The Court's "only role in this process is to ascertain whether a particular redistricting plan passes constitutional muster, not whether a better plan could be crafted." Id. at 705 (citation omitted).

5. Throughout their pleadings, the Plaintiffs repeatedly argue that HB 50 should be viewed “in context of what else could have been done.” See, e.g., Pls.’ Mem. of Law 6. As explained by the Supreme Court in City of Manchester—the Court must evaluate whether HB 50 is constitutional and not whether the Plaintiffs or some other “resourceful mind” is able to come up with a “better plan.” See City of Manchester, 163 N.H. at 697; Gaffney v. Cummings, 412 U.S. 735, 750-51 (1973) (explaining that a redistricting plan is not unconstitutional simply because some “resourceful mind” has come up with a better plan).

IV. **Plaintiffs mischaracterize the Attorney General’s historical stance on the standard before the Court:**

6. In their pleadings, the Plaintiffs assert that “the Attorney General acknowledged Part II, Article 11’s intent ‘to provide as many single town districts as possible’” in a brief in another case. Pls.’ Mem. of Law 12. The Plaintiffs’ assertion is of no moment for several reasons.

7. First, the Plaintiffs have not identified any authority or suggested that the Defendants are somehow bound by prior statements regarding the meaning of a constitutional provision in another matter involving different parties and different facts.

8. Second, the Court—not the parties—is the arbiter of the meaning of constitutional provisions. See, e.g., In re Below, 151 N.H. 135, 139 (2004). The meaning of constitutional provisions is a question of law, and the Court interprets the meaning of the Constitution from its text—not from prior party statements.

9. Third, the Plaintiffs’ reliance on an isolated statement from a single pleading in a case decided more than ten years ago reveals the fatal flaw in the Plaintiffs’ argument—there is no textual support for the Plaintiffs’ argument that Part II, Article 11 of the State Constitution requires the legislature to maximize the quantity of towns and wards who receive single-member districts in a legislative redistricting plan. Part II, Article 11 identifies which towns and wards

should be provided single-member districts, but the provision does not set forth and judicially manageable or discoverable standards for how the Legislature should provide such single-member districts in situations where, as the Plaintiffs acknowledge here, it is mathematically impossible for a redistricting plan provide every otherwise eligible town and ward with a single-member district. The Court should adhere to the ordinary rules of statutory and constitutional interpretation and decline the Plaintiffs' request to add language to the Constitution that the people did not see fit to include.

V. **Plaintiffs misstate the least change standard:**

10. The Plaintiffs additionally misunderstand the Supreme Court's least change approach. The "least change" approach is exactly that: the "least change necessary to remedy constitutional deficiencies." Norelli v. Sec'y of State, 175 N.H. 186, 202 (2022). For example, the New Hampshire Supreme Court's ultimate ruling in Norelli, resulted in **five** out of New Hampshire's hundreds of municipalities being moved to satisfy the least change standard. See Norelli v. Secretary of State, 2022 N.H. LEXIS 66 at 2-4 (holding that moving "Jackson; Albany; Sandwich; Campton; and New Hampton" satisfied the "least change" standard). Prior to Norelli, the Supreme Court previously ruled that a state senate district plan that affected "only 18.82% of the State's population" would satisfy the least change standard. See Below v. Gardner, 148 N.H. 1, 14 (2002).

11. The Plaintiffs are municipalities or voters in just seven towns and wards in New Hampshire, and which towns and wards are located in just three of New Hampshire's ten counties. Nevertheless, the Plaintiffs seek court-ordered relief to redraw the redistricting maps for seven out of ten counties, which would affect as many as 1,189,386 people or **86%** of the population of New Hampshire.

12. As explained in the Defendants' cross-motion for summary judgment, the Plaintiffs do not have standing to assert alleged constitutional violations on behalf of other towns and wards. Therefore, there is no possible justification for the Court redrawing redistricting plans for counties in which none of the plaintiffs are located or reside. See Def. Mot. for Summ. J. 8-9.

13. For all of the reasons stated above, and the reasons previously outlined in the Defendants' motion for summary judgment, the Plaintiffs' motion should be denied, and this Court should preserve the currently enacted maps as they are.

WHEREFORE, the Defendants respectfully request that this Honorable Court:

- A. Deny the Plaintiffs' motion for summary judgment; and
- B. Grant such further relief as the Court deems just and equitable.

Respectfully submitted,

DAVID SCANLAN, SECRETARY OF STATE

and

THE STATE OF NEW HAMPSHIRE

By their attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: January 22, 2024

/s/ Matthew G. Conley
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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: January 22, 2024

/s/ Matthew G. Conley
Matthew G. Conley