

THE SUPREME COURT OF NEW HAMPSHIRE

No. 2022-0249

The City of Dover & a.

v.

Secretary of State & a.

ASSENTED-TO MOTION FOR LEAVE TO FILE REPLY

NOW COME the petitioners in the above matter, by and through their undersigned counsel, and move, with assent of counsel for the respondents, to file a short reply memorandum responding to certain points within the Respondents' Joint Brief Memorandum, stating as follows:

1. On May 3, 2022, petitioners filed their petition for original jurisdiction.
2. By Order dated May 5, 2022, this Court joined the State of New Hampshire as a respondent and directed the respondents to file brief memoranda addressing whether the "questions to be reviewed" meet the criteria within Supreme Court Rule 11.
3. On May 13, 2022, the respondents filed their joint brief memorandum, in essence objecting to the exercise of original jurisdiction.
4. The petitioners request permission to file a short reply memorandum. Attached as Exhibit 1 to this motion is the proposed reply memorandum, which is limited to three pages of substantive analysis addressing certain points raised by the respondents' brief memoranda.

5. Counsel for the respondents assents to the petitioners' request for leave to file a short reply memorandum.

WHEREFORE, the petitioners respectfully request that this Honorable Court:

- A. Grant petitioners permission to file the proposed reply memorandum attached as Exhibit 1;
- B. Grant such other relief as the Court deems just, equitable and proper.

Respectfully submitted,

CITY OF DOVER

By its attorneys,

Dated: May 16, 2022

/s/ Joshua M. Wyatt
Joshua M. Wyatt, Esquire
N.H. Bar No. 18603
City Attorney
288 Central Avenue
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Dated: May 16, 2022

/s/ Jennifer R. Perez
Jennifer R. Perez, Esq.
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DEBRA HACKETT

By her attorney,

Dated: May 16, 2022

/s/ Henry Quillen
Henry Quillen
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CERTIFICATION OF SERVICE

I hereby certify that on this 16th day of May, 2022, I filed the foregoing Assented-to Motion to File Reply to Respondents' Joint Brief Memorandum through the New Hampshire Supreme Court's e-filing system, which caused a copy to be electronically served upon counsel of record.

Dated: May 16, 2022

/s/ Joshua M. Wyatt
Joshua M. Wyatt

Exhibit 1

THE SUPREME COURT OF NEW HAMPSHIRE

No. 2022-0249

The City of Dover & a.

v.

Secretary of State & a.

REPLY TO RESPONDENTS' JOINT BRIEF MEMORANDUM

NOW COME the petitioners in the above-captioned matter, City of Dover and Debra Hackett, by and through their undersigned counsel, and reply to the Respondents' Joint Brief Memorandum, stating as follows:

I. The timing of this petition accords with past cases.

There is nothing remarkable or out of step about the timing of this petition for original jurisdiction, which was filed on May 3rd.¹

In Monier, also involving a petition for original jurisdiction, this Court awaited May 28th to take action on the merits. See Monier v. Gallen, 122 N.H. 474, 476 (1982). In Below v. Gardner, 148 N.H. 1 (2002), an April original jurisdiction filing resulted in oral argument on June 11th. In Petition of Below, 151 N.H. 135 (2004), an original petition was filed May 27th and accepted by the Court. In City of Manchester v. Secretary of State, 163 N.H. 689 (2012), oral argument was held June 6th.

¹ The petitioners were not dilatory. The Governor signed the legislation at issue on March 23rd. Dover's City Council, which had been working on its annual budget throughout April, took up concerns over House Bill 50 on April 27th. Undersigned counsel filed the petition days later (on May 3rd).

To the extent the Court needs time beyond the current statutory filing period to work through the merits of this matter, the Court could, as it has in the past, extend the candidate filing period for the New Hampshire House election. See Petition of Below, 151 N.H. at 139 (recounting May 28th order staying statutory filing periods); Petition of Burling, 2002 N.H. LEXIS 217 (July 26, 2002) (non-precedential Order); see also Petition of Burling, 148 N.H. 143 (2002) (issuing order on the merits on July 26th).

The so-called Purcell doctrine urged by respondents is one followed by federal courts for federal judicial reasons—it has not been followed in New Hampshire or this Court, which effectively rejected the very same arguments in Norelli v. Secretary of State, __ N.H. __, 2022 N.H. LEXIS 61 (May 12, 2022). And, to countenance that doctrine here would create a perverse incentive for the legislature to enact redistricting legislation as late as possible, in order to foreclose any ability to pursue a legal challenge.

II. Factual issues in this case can be streamlined.

The respondents neither dispute nor even foreshadow dispute over any facts proffered by the petitioners. Beyond that, this Court is well-equipped to address any limited factual issues presented in this matter.

First, the Court could easily address factual issues concerning Part II, Article 11 in this case by inquiring of the Respondents, similar to the process in Norelli, if and to what extent they dispute that the Map-a-Thon map correctly shows that four violations of Part II, Article 11 (including Dover Ward 4) could have been avoided in Strafford County.

Second, as for the population deviation issues, the respondents should be well aware of the statewide population deviation of the enacted

map. It strains credibility to suggest that this issue—one of simple math—requires any protracted discovery or fact-finding.

III. This case presents novel questions of law.

The respondents misconstrue the petitioners' Part II, Article 11 claims. The petitioners not asking this Court to overrule City of Manchester v. Secretary of State, 163 N.H. 689 (2012). As the petitioners noted in their petition, this case presents the factual scenario not presented in City of Manchester, in that proposed maps presented to the legislature and now this Court show reduced violations of Part II, Article 11 and comply with the 10% population deviation safe harbor.

Respondents also fault the petitioners for lack of analysis of the rational basis test articulated in City of Manchester. First, that issue is subsumed within the issue statements contained within the petition. See Sup. Ct. R. 11(2)(b). Moreover, respondents have conflated the briefing on the merits with petitioning to allow that briefing. In any event, petitioners are well-prepared to articulate and expose the lack of rational basis for the unnecessary violations of the State Constitution. The respondents, for their part, neither articulate nor foreshadow any rational basis to enact House Bill 50 with numerous unnecessary violations of Part II, Article 11.

At bottom, this petition falls well line with the timing and substance of preceding petitions, which are a “particularly appropriate action when the parties desire and the public need requires a speedy determination of the important issues in controversy.” Monier, 122 N.H. at 476.

Respectfully submitted,

CITY OF DOVER

By its attorneys,

Dated: May __, 2022

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Dated: May __, 2022

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DEBRA HACKETT

By her attorney,

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CERTIFICATION OF SERVICE

I hereby certify that on this _____ day of _____, 2022, I filed the foregoing Reply to Respondents' Joint Brief Memorandum through the New Hampshire Supreme Court's e-filing system, which caused a copy to be electronically served upon counsel of record.

Dated: May ____, 2022

Joshua M. Wyatt