

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
NORTHERN DISTRICT

SUPERIOR COURT
DOCKET NO:

Honorable Marshall Lee Quant -R/Exeter, Stratham, North Hampton,
Honorable Tony F. Soltani -R/Epsom, Allenstown, Pittsfield,
Honorable Matthew Quant-R/Exeter, Stratham, North Hampton,
Honorable Leo Pepino R/Manchester Ward 4,
Honorable Julie Brown-R/Rochester,
Honorable Steve Vaillancourt-R/Manchester, Ward 8,
Honorable Irene Messier-R/Manchester, Ward 10,
Honorable James Pilliod, MD-R/Belmont, Gilford, Alton, Barnstead, and
Honorable James MacKay, PhD-R/Concord, Ward 4
Mary Ellen Moran-Siudut, M.S.
Honorable Jean-Guy Bergeron
Petitioners

v.

William M. Gardner, in his official capacity as Secretary
of State of New Hampshire
Respondent

MOTION FOR PRELIMINARY INJUNCTION

By Petition of even date, the Petitioners respectfully challenged and seek to enjoin the unconstitutional House Redistricting Plan (Ch. 9 Laws of 2012) enacted over a veto of Governor John Lynch. See Verified Petition for Delcaratory and Injunctive Relief Challenging the Constitutionality of the House Redistricting Plan and Request for Expedited Preliminary and Final Hearings. In support of the same, the Petitioners state as follows:

- 1- The factual allegations of the Verified Petition for Delcaratory and Injunctive Relief Challenging the Constitutionality of the House Redistricting Plan and Request for Expedited Preliminary and Final Hearings are incorporated herein by reference.
- 2- The House Redistricting Plan was adopted in violation of the New Hampshire Constitution. The Plan violates one of the two newest amendments to the State

Constitution - adopted by the people of New Hampshire by overwhelming popular vote on November 7, 2006 - an amendment in which over seventy percent (70%) of the voters declared their preference for having as many House districts as possible for the citizen in every town and city subdivision with sufficient population to entitle those citizens to at least one full seat in the House. See NH Const. Part II, Art. 11. The Petitioners request that the Court enjoin implementation of the House Redistricting Plan. It is possible to honor the commanders of both the Federal and State Constitutions, or at least do less damage to the stated will of the citizens of New Hampshire as demonstrated in the State Constitution, and the State should be required to do so.

- 3- A preliminary injunction is warranted when there is 1) immediate danger of irreparable harm to the party seeking injunctive relief, 2) no adequate remedy at law, and 3) the party seeking the injunction is likely to succeed on the merits. See e.g. ATV Watch v. New Hampshire Dept. Of Resources and Economic Development, 923 A.2d. 1061, 1065 (N.H. 2007).
- 4- In this case, there is an immediate danger of irreparable harm that can be avoided only by the issuance of a preliminary injunction because the Secretary of State would otherwise proceed to prepare for the primary and general election in accordance with the unconstitutional House Redistricting Plan. If the election proceeds, the voting rights of the Petitioners would be violated because they will not have the representation to which they are entitled.
- 5- There is no adequate remedy at law because this Petition involves the right to vote and the right to be elected, the loss or denial of which cannot be remedied by money damages

or otherwise.

- 6- Petitioners are likely to succeed on the merits, based on the plain command of Part II, Article 11 of the Constitution. There is no dispute that the House Redistricting Plan does not comply with the requirements of Part II, Article 11, in many locations throughout the state. The House Redistricting Plan's advocates have argued instead that the House Redistricting Plan adopted was the only one possible that could contain acceptable deviations from the United States Constitution's command of "one person/one vote." That argument is simply not correct, as petitioners have identified plans or approaches to redistricting that fully comply with the provisions of both constitutions; or that are less violative of the New Hampshire Constitution, while being no more problematic under the United States Constitution; or that fully comply with the United States Constitution and ignore different provisions of the New Hampshire Constitution (provisions that are older and that many believe are anachronistic).
- 7- The Court is likely to conclude that at least one of four plans or approaches presents a viable constitutional method of redistricting: 1) there is at least one plan that is equally valid under the United States Constitution, but does less damage to the state constitution; 2) there is at least one plan that would be equally valid under the United States Constitution and would also satisfy the New Hampshire Constitution as completely as possible; 3) there is at least one plan that would be an acceptable alternative under the United States Constitution as completely as possible. Such plans have been found constitutional in other jurisdictions when state legislatures have sought to pass plans which respect local concerns like county and municipal lines while still respecting the

commands of “one person/one vote.” See *e.g.* Mahan v. Howell, 410 U.S. 315(1973); Wuilter v. Voinovich, 857 F. Supp. 579 (N.D. Ohio, 1994); Brown v. Thomson, 462 U.S. 835 (1983); 4) if the New Hampshire Constitution must be violated, it is possible to violate another, anachronistic provision like the prohibition on breaking up towns/wards unless the municipality asks.

- 8- The Legislature must redistrict the House based on the 2010 census in order to create House districts that conform to Part II, Article 11. As the Petitioners will show in their action for declaratory judgment, there are plans and approaches to achieve satisfaction of the State and Federal Constitutions or at least plans and approaches which satisfy federal law and are less-violative of the New Hampshire Constitution. In conclusion, the Court should enjoain an imminent unconstitutional election while considering the Petitioner’s constitutional challenge.
- 9- No separate memorandum of law accompanies this motion as the grounds for the same are stated herein and in the Verified Petition for Declaratory and Injunctive Relief Challenging the Constitutionality of the House Redistricting Plan and Request for Expedited Preliminary and Final Hearings

WHEREFORE, the Petitioners respectfully request that the Court:

- A- Issue a preliminary injunction against the implementation of the House Redistricting Plan for the 2012 elections;
- B- Grant such further relief as this Court may deem just and proper.

Respectfully submitted,
Honorable Marshall Lee Quant
Honorable Tony F. Soltani
Honorable Matthew Quant
Honorable Leo Pepino
Honorable Julie Brown
Honorable Steve Vaillancourt
Honorable Irene Messier
Honorable James Pilliod, MD
Honorable James MacKay, PhD
Mary Ellen Moran-Siudut, M.S.,i
Honorable Jean-Guy Bergeron,
By and through their attorney,
THE MUNILAW GROUP,

Signed: _____

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