

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

Docket No. 2022-0629

Miles Brown, et al.

v.

Secretary of State, et al.

**DEFENDANTS' BRIEF RESPONSE TO
PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

The Defendants, by and through the Office of the Attorney General, submit the following brief response to the Plaintiffs' Notice of Supplemental Authority.

On May 4, 2023, the Plaintiffs submitted a notice of supplemental authority, informing the court of the Alaska Supreme Court's April 21, 2023, decision in *In re 2021 Redistricting Cases*, 2023 Alas. LEXIS 33 (Alaska, April 21, 2023). The Plaintiffs assert that the Alaska Supreme Court's determination that its Constitution contained discoverable and manageable standards to resolve partisan gerrymandering claims, and its reliance on constitutional history, demonstrate that this Court should find that the New Hampshire Constitution prohibits partisan gerrymandering. The Plaintiffs fail to mention significant differences between the text and constitutional history of Alaska's Constitution and this State's Constitution.

Unlike New Hampshire's Constitution, the Alaska Constitution commits authority to redistrict to a constitutionally created five-member redistricting board. ALASKA CONST., Art. VI, §6. The power to appoint

members is divided among the governor, the presiding officer of the senate, the presiding officer of the house of representatives, and the chief justice of the supreme court, ensuring that no branch of the government or chamber of the legislature has full control over the board's membership. ALASKA CONST., Art. VI, §8. Moreover, members of the board are appointed "without regard to political affiliation." ALASKA CONST., Art. VI, §8.

Unlike the legislative history of New Hampshire's Constitution, the legislative history of the 1999 amendment to Alaska's Constitution that created this redistricting board contains numerous, express statements from sponsors, proponents, and opponents of the amendment that the amendment's purpose was to "eliminate gerrymandering" and have a "non-partisan redistricting process." *In re 2021 Redistricting Cases*, 2023 Alas. LEXIS 33, at *12-13.

Unlike New Hampshire's Constitution, the Alaska Constitution requires that house districts be "compact territory," with "as nearly as practicable a relatively integrated socio-economic area," that senate districts be composed "as nearly as practicable of two contiguous house districts, and that drainage and geographic features be used in describing boundaries wherever possible." ALASKA CONST., Art. VI, §6.

Moreover, the legislative history of Alaska's Constitution demonstrates that these redistricting requirements in Article VI, Section 6 (which are not found in New Hampshire's Constitution) were specifically intended to protect against political gerrymandering. *See In re 2021 Redistricting Cases*, 2023 Alas. LEXIS 33, at *12-13 (citing the Chair of the Committee on Suffrage, Elections, and Apportionment, of the Alaska Constitutional Convention, as explaining that the "contiguity, compactness,

socioeconomic integration, and population quotient requirements acted together to prohibit gerrymandering which would [otherwise take place]” (quotation and brackets omitted)); *see also Hickel v. Southeast Conference*, 846 P.2d 38, 45 (Alaska 1992) (relying on express statements from the 1956 Alaska Constitutional Convention to conclude that “the requirements of contiguity, compactness and socio-economic integration were incorporated by the framers of the reapportionment provisions to prevent gerrymandering”).

Conversely, the Plaintiffs’ supposed “legislative history” regarding the New Hampshire Constitution doesn’t contain any statements from the framers of this State’s Constitution or of any subsequent constitutional convention. Rather, the Plaintiffs rely instead on tenuous and speculative connections between other state’s constitutions and the 1689 English Bill of Rights, such as dicta from the now overturned *Harper v. Hall*, 380 N.C. 317, 373 (2022), decision that North Carolina’s free elections clause may have been derived from the English Bill of Rights. *See* Plaintiffs’ Br. at 34.

In sum, the Alaska Constitution provides a different redistricting process (a non-partisan redistricting board) that was expressly intended to prevent gerrymandering, and it includes additional redistricting requirements that were also expressly intended to prevent gerrymandering. Because of these fundamental differences between the text and legislative history of the Alaska Constitution and the New Hampshire Constitution, the Alaska Supreme Court’s decision in *In re 2021 Redistricting Cases* cannot be read to support a conclusion that the New Hampshire Constitution prohibits partisan gerrymandering or provides any judicially discoverable and manageable standards for resolving partisan gerrymandering claims.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE
AND THE NEW HAMPSHIRE
SECRETARY OF STATE

By its Attorneys,

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Date: May 5, 2023

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CERTIFICATE OF SERVICE

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

Date: May 5, 2023

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