

THE STATE OF NEW HAMPSHIRE

MERRIMACK, S.S.

SUPERIOR COURT

City of Concord, Petitioner

v.

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

Docket No. _____

**CITY OF CONCORD'S PETITION FOR DECLARATORY AND PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF WITH REQUEST FOR EXPEDITED HEARING**

The City of Concord, by and through the Office of the City Solicitor, moves for declaratory and injunctive relief against William M. Gardner, in his official capacity as Secretary of the State, to declare RSA 662:5 (2012) to be unconstitutional to the extent that the statutory redistricting plan denies Concord Ward 5 a state representative and, instead, combines Concord Ward 5 with the Town of Hopkinton to create a multi-member district which votes for three state representatives. This multi-member district, which denies Concord Ward 5 its own representative, violates the New Hampshire Constitution, Part II, Article 11. The City of Concord also seeks a preliminary injunction to enjoin the Secretary of State from the acceptance of filings for the office of State Representative commencing on June 6, 2012, and to require the Legislature to create and institute an alternate apportionment plan for Concord Ward 5 under RSA 662:5 in time for the primary election to be held on September 11, 2012 and the general election to be held on November 6, 2012.

PARTIES, JURISDICTION AND VENUE

1. Petitioner, the City of Concord ("City"), is a municipal corporation duly chartered by the State of New Hampshire with a usual place of business at 41 Green Street, Concord, New Hampshire.

2. Respondent, William M. Gardner, is the Secretary of State of the State of New Hampshire with an office at 107 North Main Street, Concord, New Hampshire. Respondent William M. Gardner is named as a Respondent in this action solely in his official capacity as Secretary of the State of New Hampshire.

3. The Superior Court has jurisdiction pursuant to RSA 491:7, RSA 498:1 and RSA 498:2.

4. Merrimack County Superior Court is the appropriate venue for this matter pursuant to RSA 507:9, although the City of Concord is seeking to transfer venue pursuant to RSA 507:11 to allow the consolidation of this case with other lawsuits that are being filed in the Hillsborough County Superior Court, Northern District.

GOVERNING LAW

5. The biennially elected New Hampshire House of Representatives has 400 members. The New Hampshire Legislature is entrusted with the power to divide our state into districts for purposes of electing its members. The New Hampshire Constitution, Part I, Article 11, guarantees that all citizens will have an equal right to vote. The United States Constitution similarly contains a “one person, one vote” requirement, which has been interpreted to require all districts be nearly equal in population “as practicable.” U.S. CONST. amend XIV, §1 (“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws”); *Reynolds v. Sims*, 377 U.S. 533, 577 (1964) (explaining that the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution requires state legislative districts to be substantially equal in population so that each person’s vote has equal weight as nearly as practicable).

6. With respect to the New Hampshire House of Representatives, the constitutional requirements governing the activities of redistricting are set forth in the New Hampshire Constitution, Part II, Articles 9 and 11. The New Hampshire Constitution requires the Legislature to redraw each representative district “as equal as circumstances will admit” every ten years, based upon the decennial census conducted by the United States Census Bureau. N.H. CONST. pt. II, art. 9. In apportioning seats, “no town, ward or place shall be divided nor the boundaries thereof altered.” *Id.*

7. The New Hampshire Constitution, Part II, Article 11, as amended in 2006, further requires the formation of districts for the New Hampshire House of Representatives in the following manner:

[Small Towns; Representation by Districts.] When the population of any town or ward, according to the last federal census, is within a reasonable deviation from the ideal population for one or more representative seats, *the town or ward shall have its own district of one or more representative seats*. The apportionment shall not deny any other town or ward membership in one non-floterial representative district. When any town, ward, or unincorporated place has fewer than the number of inhabitants necessary to entitle it to one representative, the legislature shall form those towns, wards, or unincorporated places into representative districts which contain a sufficient number of inhabitants to entitle each district so formed to one or more representatives for the entire district. In forming the districts, the boundaries of towns, wards, and unincorporated places shall be preserved and contiguous. The excess number of inhabitants of district may be added to the excess number of inhabitants of other districts to form at-large or floterial districts conforming to acceptable deviations. The legislature shall form the representative districts at the regular session following every decennial federal census.

(Emphasis added.)

8. The New Hampshire Constitution, Part II, Article 11 was most recently amended by New Hampshire voters on November 7, 2006, as a result of Constitutional Amendment Concurrent Resolution 41 (CACR 41). The New Hampshire Supreme Court has recognized that CACR 41 was likely a response to its decision in *Burling v. Speaker of the House*, 148 N.H. 143

(2002), where it declined to employ “floterial” redistricting schemes within the 2002 court-ordered reapportionment. *See Town of Canaan v. Secretary of State*, 157 N.H. 795, 797-98 (2008) (discussing history of Part II, Article 11 of the New Hampshire Constitution). In the *Burling* case, the New Hampshire Supreme Court placed many towns that had enough inhabitants to elect their own representatives into large multi-member legislative districts. *See Burling*, 148 N.H. at 159 (discussing the court-ordered redistricting plan).

9. In 2006, New Hampshire voters passed CACR 41 to ensure that towns and wards with enough inhabitants to entitle them to one or more House seats would be established as single-town districts. Exhibit A (2006 Voters Guide); Exhibit B (Memorandum from Pam Smarling, Committee Researcher for the House Committee Research Office dated March 4, 2011).

10. The constitutional amendment also explicitly allowed for the creation of “floterial” districts. The purpose of floterial districts is to combine the “excess population” of two or more districts to create an overlying, at-large district. As the voter guide explained:

The Constitution does not guarantee that each town or ward having enough inhabitants to entitle it to one representative seat in the Legislature shall have its own district. The Constitution permits the Legislature to form multi-town and multi-ward districts for electing state representatives, but does not expressly permit or prohibit the Legislature to form so-called “floterial” or at-large districts using excess inhabitants from one district to create a representative seat in those towns and wards that do not have enough inhabitants to form a district.

[If adopted, t]his amendment will allow the legislature to create districts in the same manner that districts were drawn prior to 2002. It will increase the total number of districts and therefore increase the probability that the people of a town will be represented by a member of their own community.

Each town or ward having enough inhabitants to entitle it to one or more representative seats in the Legislature shall be guaranteed its own district for the purposes of electing one or more representatives, unless such action prevented a neighboring town from being included in a single-representative district before it

is part of a floterial district. Where a town, ward or unincorporated place does not have enough inhabitants necessary for a representative seat, the Legislature shall form multi-town or multi-ward districts, to qualify for one or more representative seats. Excess population in one or more contiguous districts may be combined to allow for additional at-large or floterial representatives.

11. In anticipation of the reapportionment process required by the 2010 United States Census released on April 1, 2011, the House Special Committee on Redistricting conducted a review of the requirements for a redistricting plan. On March 15, 2011, Representative Paul Mirski, Chairman of the House Special Committee on Redistricting, sent a letter to all of the cities and towns for the purpose of obtaining information regarding realignment of wards. Exhibit C (Letter dated March 15, 2011 from Representative Paul Mirski, Chairman of the House Special Committee on Redistricting). In the letter, Representative Mirski explained:

Due to the passage of a constitutional amendment in 2006, there's one change this time around. Every city, town, or ward that has enough population for a representative (it appears 3,291 will be the ideal number) must in fact be given a representative. That means that for all cities with wards in excess of 3,291 people, we may no longer allow representatives to be chosen at-large citywide.

Our work will proceed under the assumption that all cities will realign their wards so as to be as equal in population as possible. After all, if you elect local officials on a ward basis, you fall under the "one man/one vote" mandate as well. If you do not plan to create an equal realignment, please contact us as soon as possible. If you do, please let us know of your new ward lines and populations when you complete the process. We will certainly need to group certain wards together for the purpose of floterials after each ward is provided its requisite number of stand alone representatives.

It is apparent from this letter that the House Special Committee on Redistricting recognized the constitutional mandate that all wards with at least 3,291 people would be given its own representative.

12. The results of the 2010 United States Census established that the City of Concord's wards were unevenly distributed, and, therefore, the City subsequently undertook

measures to realign its wards so as to be as equal as possible. Exhibit D (2010 Census for Merrimack County). The new ward lines were approved by the City of Concord voters during the November 8, 2011 elections. Exhibit E (Status of City Ward Line Revision Process; Proposed New Ward Populations, Updated November 14, 2011).

13. With respect to Concord Ward 5, the 2010 United States Census determined that Concord Ward 5 had a total of 4,370 people. The realignment of ward lines resulted in Concord Ward 5 having a total population of 4,077 people, which still requires it to maintain its own district of one representative. The ideal population of a district is 3,291, and, therefore, the excess population of 786 inhabitants may also be combined with the excess population from other districts to allow for an additional at-large or floterial representative.

14. The City of Concord brings this action because RSA 662:5 denies Concord Ward 5 its own representative. In enacting RSA 662:5, the Legislature has unconstitutionally created a multi-member legislative district in which Concord Ward 5 and the Town of Hopkinton have been combined to elect a total of three representatives. Concord Ward 5 has a total population of 4,077 people, and the Town of Hopkinton has a total of 5,589 people. Both of those political subdivisions have enough inhabitants to entitle them to their own representative seat in the New Hampshire House of Representatives. The creation of a multi-member district, which combines Concord Ward 5 and the Town of Hopkinton, denies the citizens of Concord Ward 5 with their constitutional right to vote for their own representative.

15. Significantly, the New Hampshire Constitution, Part II, Article 11 requires a ward to elect its own representative *unless* the apportionment will deny any other town or ward membership in one non-floterial representative district. A reapportionment plan which provides

Concord Ward 5 with its own representative will not deny any other town or ward membership in one non-floterial representative district.

16. The constitutional requirement that towns and wards are entitled to vote for a representative in its own district is based on the long-standing recognition of the importance of “insuring some voice to political subdivisions.” *Reynolds*, 377 U.S. at 580. In New Hampshire, local government entities are political subdivisions of the State, and the powers of the political subdivisions are delegated by the State. *Hunter v. City of Pittsburg*, 207 U.S. 161 (1907); *Opinion of the Justices*, 134 N.H. 711 (1991); *Board of Water Comm’rs v. Mooney*, 139 N.H. 621 (1995). The State has the power to create municipalities and to move existing municipal boundaries. *Id.* The State also determines under what conditions a municipality may tax and/or raise revenue. *Indian Head Nat’l Bank v. Portsmouth*, 117 N.H. 954, 955 (1979).

17. Taking a representative away from the City of Concord and creating a multi-member district which combines Concord Ward 5 and the Town of Hopkinton, without first providing Concord Ward 5 its own representative to which it is entitled, weakens the representative voice of the City of Concord, and that of the citizens located in Concord Ward 5. Historically, the New Hampshire Legislature has never reapportioned the City of Concord to share a representative with another town.

18. The City of Concord and the Town of Hopkinton are vastly different communities, and they also have different financial requirements. The City of Concord’s total population is 42,695, which is significantly larger than the Town of Hopkinton’s 5,589 total population. Each community, among other things, raises its own taxes, operates its own schools, and maintains its own roads. The City of Concord’s emergency services include police and fire departments, which are likewise vastly different in size and scope than the Town of Hopkinton.

The City of Concord's interests with respect to education funding, the meals and rooms tax and health and human services, may not be consistent with the Town of Hopkinton.

19. In his veto of the redistricting plan established in RSA 662:5, Governor Lynch expressed his concerns about the unconstitutionality of the plan:

Under federal and state law, towns and wards that equal or are within 5 percent of this ideal population are entitled to their own representative. Based on the 2010 census, there are 152 towns and wards in New Hampshire that qualify for their own representative.

HB 592 denies a total of 62 New Hampshire towns and wards their own seats in the House. For example, the towns of Atkinson, Hudson, Meredith, and Pelham all have sufficient population under state and federal constitutional standards to have their own representative, but all are denied their own representative under the House-approved plan. This is completely contrary to what the citizens of New Hampshire called for in the state constitutional amendment adopted in 2006.

Another significant flaw with the House-approved redistricting plan is that it unnecessarily breaks-up cities and wards.

For example, in Manchester, the state's largest city, HB 592 combines Wards 8 and 9 with the town of Litchfield. Pelham will again share its representatives with Hudson. Strafford will share a representative with New Durham. And Concord's Ward 5 will now be made part of a district that includes the Town of Hopkinton.

Exhibit F (Governor's Veto Message).

20. The New Hampshire Legislature has nonetheless justified its violation of the New Hampshire Constitution, Part II, Article 11 on the basis that it was compelled by adherence to the "one person, one vote" doctrine under the Equal Protection Clause of the United States Constitution. In adopting guidelines for redistricting, the New Hampshire Legislature has taken the untenable position that a reapportionment plan must stay within the 10% deviation which the United States Supreme Court has stated will be considered presumptively constitutional. Exhibit G (Correspondence from Edward C. Mosca, House Legal Counsel, dated April 2, 2012). The Legislature also chose to create a plan in which the representative districts: (1) do not divide any

towns or wards; (2) are composed of contiguous territories; and (3) do not cross county lines. It is anticipated that the Legislature will argue that, based on that criteria, it could not draft a reapportionment plan with a constitutionally permissible population deviation except by creating multi-member legislative districts.

21. That argument should be rejected. The United States and New Hampshire Constitutions contain multiple requirements in redistricting which must be balanced. In choosing to enact the redistricting plan adopted by RSA 662:5, the Legislature has ignored its obligation to adopt a plan that complies with both the United States and New Hampshire Constitutions. Moreover, as discussed below, the constitutional mandates set forth in the New Hampshire Constitution, Part II, Article 11 have been recognized by the United States Supreme Court as legitimate state interests that may affect, and warrant, deviations in population equality.

22. The United States Supreme Court has never required a redistricting plan to stay within a 10% deviation, but rather, has stated that States may exceed such a deviation to the extent that they have a legitimate and constitutionally valid countervailing interest. *Reynolds*, 377 U.S. at 579. The United States Supreme Court has further stated that “deviations from population equality *may be necessary* to permit States to pursue other legitimate objectives such as maintaining the integrity of various political subdivisions and providing for compact districts of contiguous territory.” *Brown v. Thomson*, 462 U.S. 835, 842 (1983) (emphasis added) (quotations and brackets omitted); *see also Gaffney v. Cummings*, 412 U.S. 735, 749 (1973) (critiquing apportionment approaches that slavishly labor under an “unrealistic overemphasis on raw population figures” such that relevant and legitimate factors and interests that states must account for are submerged). For that reason, it is constitutionally permissible for a plan to exceed the *de minimus* deviation of 10% so long as the plan “may reasonably be said to advance

a rational state policy.” *Brown*, 462 U.S. at 843 (brackets and quotations omitted) (quoting *Mahan v. Howell*, 410 U.S. 315, 328 (1973)).

23. The United States Supreme Court has upheld the constitutionality of a number of redistricting plans based on the need to pursue legitimate constitutional policies, such as the integrity of political subdivisions. *See, e.g., Brown*, 462 U.S. at 837-48 (upholding constitutionality of redistricting plan which allowed a county to vote for its own representative, even though it resulted in a deviation from population equality by 60%); *Mahan*, 410 U.S. at 319-28 (upholding constitutionality of redistricting plan created in which political subdivisions were largely left intact, even though the total deviation of floterial districts from ideal population equality was 16.4%); *Abate v. Mundt*, 403 U.S. 182, 184-87 (1971) (upholding redistricting plan which assigned a legislator to all towns, even though the plan resulted in a total deviation of 11.9%, because the “particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality”).

24. The New Hampshire Legislature is required to take measures to meet both the United States and New Hampshire Constitutions. There should be no dispute that there are rational state policies which require a total deviation that exceeds the so-called 10% standard set forth by the United States Supreme Court. The Legislature’s self-imposed decision to enact the most “conservative” reapportionment plan to maintain a *de minimus* standard, while at the same time disregarding the constitutional mandate of the New Hampshire Constitution, Part II, Article 11, is unconstitutional.

25. The need to exceed the 10% *de minimus* standard is particularly important for New Hampshire, which has the largest state House of Representatives (400 members) in the country. *Burling*, 148 N.H. at 484. New Hampshire also has one of the smallest state

populations (1,316,470 people) in the country. *Id.* According to the 2010 federal census, New Hampshire's population ranks 42nd in the country. Exhibit H (United States Census Overview – New Hampshire). Because New Hampshire has such a large House of Representatives and such a small population, it takes very few people to affect deviation substantially. *Id.* For instance, a 10% deviation represents only 329 people, and a 1% deviation represents a mere 32 people. As the New Hampshire Supreme Court recognized in 2002, this is in contrast with Pennsylvania, in which a 10% deviation in 2002 represented 6,050 individuals or Maine in which a 10% deviation represented more than 800 people. *Burling*, 148 N.H. at 484-85.

26. In accordance with the New Hampshire Constitution, Part II, Article, 11, the New Hampshire Legislature was obligated to enact a plan which would meet the requirements of the United States and New Hampshire Constitutions, and which would have allowed Concord Ward 5 to elect its own representative, even if the redistricting plan required the utilization of an increased range of deviation.

27. Moreover, under its conservative approach to developing a reapportionment plan, the Legislature employed the component method to adhere to the 10% *de minimus* deviation standard. By way of background, there are two primary methods for calculating deviations for house redistricting. Exhibit I (Joel Anderson, House Committee Research, Calculating Deviations for House Redistricting dated February 7, 2011). The component method for calculating floterials will result in a deviation that is significantly higher than the deviation using the aggregate method. *Boyer v. Gardner*, 540 F. Supp. 624, 627-28 (D.N.H. 1982).

28. The New Hampshire Supreme Court has considered the component method for purposes of calculating the proposed deviation of floterials submitted for a court-ordered redistricting plan in the *Burling* case, but it has never required the Legislature to utilize this

method to calculate deviations. *See Burling*, 148 N.H. at 155. It is also respectfully noted that, for purposes of calculating deviation, the New Hampshire Supreme Court's use of the component method appears to be flawed. *Id.* at 152-55. There appears to be no basis to utilize the aggregate method to calculate multi-member districts, while at the same time, using the component method to calculate the deviation of floterials, because both of these types of districts combine wards and towns to elect an at-large representative. *Id.* Even more importantly, the New Hampshire Constitution, Part II, Article 11 was amended to expressly allow the use of floterial districts after the *Burling* case was issued. The New Hampshire Supreme Court has recognized that the constitutional amendment was likely a response to the New Hampshire Supreme Court's refusal to allow floterial districts, which was based on a determination that the deviation of such districts was too high when calculated under the component method of calculation. *Town of Canaan*, 157 N.H. at 797.

29. The United States Supreme Court also has never required the component method to be used to calculate deviations for a redistricting plan. *See, e.g., Mahan*, 410 U.S. at 319, n. 6 (adopting aggregate method to calculate floterial districts, and rejecting argument that component method of computation for calculating deviation of floterial districts would have resulted in maximum deviation of 23.6% because “[w]e decline to enter this imbroglio of mathematical manipulation and confine our consideration to the figures actually found by the court and used to support its holding of unconstitutionality); *see also Boyer*, 540 F. Supp. at 628 (explaining that the United States Supreme Court has traditionally applied aggregate method in examining challenged reapportionment plans, and to use component method into percentages discussed by United States Supreme Court's decisions would be to compare “apples to oranges”); *Hellar v. Cenarrusa*, 682 P.2d 524, 572 (1984) (applying aggregate method of

calculation to floterial districts for purposes of determining whether requirements under both United States and Idaho Constitutions could be achieved). For that reason, the Legislature could have alternatively utilized the aggregate method to calculate the total deviation, which would have provided more flexibility in meeting its constitutional obligations under the United States and New Hampshire Constitutions with respect to redistricting. A redistricting plan that utilized the aggregate method would be constitutional, and it would provide Concord Ward 5 the right to elect its own representative.

COUNT I– DECLARATORY RELIEF
VIOLATION OF NEW HAMPSHIRE CONSTITUTION PART II, ARTICLE 11

30. Each and every fact and allegation set forth herein are incorporated within the First Cause of Action as if set forth in full.

31. When interpreting a constitutional provision, it is presumed to be constitutional and the court “will not declare it invalid except upon inescapable grounds.” *New Hampshire Ass’n of Counties v. State*, 158 N.H. 284, 288 (2009). However, a statute will be held unconstitutional when a “clear and substantial conflict exists between it and the constitution.” *Id.* When the court is required to interpret a provision of the constitution, the Court should “look to its purpose and intent,” and “give the words in question the meaning they must be presumed to have had to the electorate when the vote was cast.” *Opinion of the Justices*, 126 N.H. 490, 495 (1985).

32. The New Hampshire Supreme Court has instructed that it is the reviewing court’s “duty . . . to place itself as nearly as possible in the situation of the parties at the time the instrument was made, that it may gather their intention from the language used, viewed in the light of the surrounding circumstances.” *Warburton v. Thomas*, 136 N.H. 383, 387 (1992) (quotation omitted). “The language used . . . by the people in the great paramount law which

controls the legislature as well as the people, is to be always understood and explained in that sense in which it was used at the time when the constitution and the laws were adopted.” *N.H. Motor Transport Assoc. v. State*, 150 N.H. 762, 765 (2004) (quotation and brackets omitted).

33. Part II, Article 11 of the New Hampshire Constitution states:

[Small Towns; Representation by Districts.] When the population of any town or ward, according to the last federal census, is within a reasonable deviation from the ideal population for one or more representative seats, the town or ward shall have its own district of one or more representative seats. The apportionment shall not deny any other town or ward membership in one non-floterial representative district. When any town, ward, or unincorporated place has fewer than the number of inhabitants necessary to entitle it to one representative, the legislature shall form those towns, wards, or unincorporated places into representative districts which contain a sufficient number of inhabitants to entitle each district so formed to one or more representatives for the entire district. In forming the districts, the boundaries of towns, wards, and unincorporated places shall be preserved and contiguous. The excess number of inhabitants of district may be added to the excess number of inhabitants of other districts to form at-large or floterial districts conforming to acceptable deviations. The legislature shall form the representative districts at the regular session following every decennial federal census.

This constitutional language, as amended in 2006, is mandatory language.

34. RSA 662:5 unnecessarily denies Concord Ward 5 its own representative.

Concord Ward 5 and the Town of Hopkinton have been combined into a multi-member district to elect three representatives which violates Part II, Article 11 of the New Hampshire Constitution. Providing Concord Ward 5 with its own representative complies with the constitutional requirements under both the United States and New Hampshire Constitutions.

35. RSA 662:5 violates the New Hampshire Constitution, Part II, Article 11 because it unnecessarily denies Concord Ward 5 the right to elect its own representative. Failure to abide by the requirements of Part II, Article 11 of the New Hampshire Constitution renders RSA 662:5 unconstitutional and illegal.

COUNT II—PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF
VIOLATION OF NEW HAMPSHIRE CONSTITUTION PART II, ARTICLE 11

36. Each and every fact and allegation set forth herein are incorporated within the Second Cause of Action as if set forth in full.

37. The City of Concord also seeks a preliminary injunction to enjoin the Secretary of State from the acceptance of filings for the office of State Representative on the June 6 to 15, 2012 dates, and to require the creation and institution of an alternate apportionment plan for Concord Ward 5 under RSA 662:5 in time for the primary election to be held on September 11, 2012 and the general election to be held on November 6, 2012.

38. A preliminary injunction should issue when there is an immediate danger of irreparable harm to the party seeking injunctive relief, there is no adequate remedy at law and the party seeking the injunction is likely to succeed on the merits. *N.H. Dep't of Envtl. Servs. v. Mottolo*, 155 N.H. 57, 63 (2007). Each of those conditions are met.

39. In the instant 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 conduct the primary and general election in accordance with RSA 662:5. More specifically, conducting the upcoming primary and general election under RSA 662:5 denies the citizens of the City of Concord their constitutional right to elect a representative to the New Hampshire House of Representative from Concord Ward 5.

40. The City will be irreparably harmed because it and its inhabitants will be denied the right under Part II, Article 11 of the New Hampshire Constitution to have representation from within Concord Ward 5 in the New Hampshire House of Representatives.

41. There is no adequate remedy at law because this Petition involves the right to vote. The loss of this right cannot be remedied by monetary damages or otherwise.

42. The City of Concord is likely to succeed on the merits, based on the clear and mandatory language of the New Hampshire Constitution, Part II, Article 11.

PRAYER FOR RELIEF

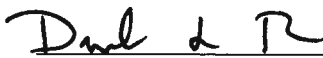
For all of the reasons set forth above, the City of Concord respectfully prays for relief as follows:

- A. Schedule an expedited preliminary hearing;
- B. Issue a preliminary injunction enjoining the Secretary of State from the acceptance of filings for the office of State Representative commencing on June 6, 2012, and requiring the creation and institution of an alternate apportionment plan for Concord Ward 5 under RSA 662:5 in time for the primary election to be held on September 11, 2012 and the general election to be held on November 6, 2012.
- C. Declare RSA 662:5 to be unconstitutional;
- D. Enter the foregoing as permanent injunctive relief; and
- E. Grant such further and other relief as justice and equity may require.

Respectfully submitted,

CITY OF CONCORD

Dated: April 24, 2012

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