

STATE OF NEW HAMPSHIRE

BELKNAP, SS

SUPERIOR COURT

Town of Gilford, New Hampshire,
Peter V. Millham
and
Leo B. Sanfacon

v.

William M. Gardner, Secretary of State
of the State of New Hampshire

PETITION FOR DECLARATORY JUDGMENT,
TEMPORARY AND PERMANENT INJUNCTION

NOW COME the Town of Gilford, New Hampshire, Peter V. Millham and Leo B. Sanfacon, and state as follows:

1. The Town of Gilford is a municipal corporation situate in the County of Belknap and State of New Hampshire.
2. Peter V. Millham resides at 426 Belknap Mountain Road, Gilford, New Hampshire, and is a registered voter in the Town of Gilford.
3. Leo B. Sanfacon resides at 38 Hawthorne Way, Gilford, New Hampshire, and is a registered voter in the Town of Gilford.
4. The Legislature of the State of New Hampshire has adopted, over the Governor's veto, a redistricting law which the State intends to enforce in the 2012 primaries and elections relative to members of the New Hampshire House of Representatives.
5. The law as passed which became RSA 662:5 combines the Town of Gilford with the Town of Meredith in one district and assigns that district four (4) representatives.

6. The calculations used by the Legislature establish the optimal population for each of the 400 representatives as 3,291.

7. Gilford has a population of 7,126, according to the census used by the Legislature. This population is sufficient to entitle the Town of Gilford to two (2) representatives ($2 \times 3,291 = 6,585$ plus 541 excess).

8. The New Hampshire Constitution, Section 2, Article 11 provides:

"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 a 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 census." (emphasis added.)

9. Meredith, with a population of 6,241 is also entitled to "one non-floterial district". In addition, Meredith has excess population that is 344 voters less than the ideal number for two (2) representatives. This still presents only a minus five percent deviation. Assigning it an additional seat would, under the circumstances, be reasonable.

10. Since Meredith is entitled to a district of its own for at least one (1) seat, and probably two (2), it cannot provide a basis for depriving Gilford of its own separate district with two (2) representatives.

11. The redistricting act enacted therefore violates the New Hampshire Constitution as it applies to Gilford since the Article clearly requires that Gilford being "within a reasonable deviation from the ideal population for one or more representative seats, the town shall have its own district of one or more representative seats." In this case, two (2).

12. The Article also provides that any "excess number of inhabitants may be added to the excess number of inhabitants of other districts to form at-large or floterial districts." This clearly indicates that the excess population of 541 shall not deprive the Town of the two (2) full representatives to which it is entitled.

13. Deviation for the two (2) representatives is zero. For the purposes of this Article of the Constitution, the excess population does not create a deviation as to these two (2) representatives.

14. Even if the excess was considered, it would only be an 8% deviation, which is well within reason under all of the circumstances applying to this case. See *Boyer v. Gardner*, 540 F.Sup. 624 (1982) in which a 13.74% variation was held to be reasonable. There is no reason to believe that the deviation is being used to "mask invidious purposes of any kind, and no claim of racial, ethnic or religious discrimination is suggested." *Id. at 630*.

15. Also reflecting the extremes of deviation which the Supreme Court of the United States found reasonable. See *Mayhan v. Howell*, 410 US 315, 93 S.Ct. 979 (1973) in which Virginia is found not to have violated the U.S. Constitution with deviations of 16.7 percent and 23.6 percent between districts, pointing out the latitude afforded states in legislative redistricting is somewhat broader than that afforded those in congressional redistricting. The variation in this case was held to be within "tolerable limits". In *Brown v. Thompson*, 462 US 835, 103 S.Ct. 2690 (1983), the U.S. Supreme Court upheld a decision that Montana is within reason with an 89 percent deviation, "particularly where there is no taint of arbitrariness or discrimination...substantial deference is to be accorded..."

16. Another principal observed in New Hampshire is that when two towns are incorporated in one district, they must be abutting. Unfortunately, the legislative committee worked off a map that did not show the presence of Lake Winnepesaukee. They relied upon the fact that Gilford and Meredith abut in the middle of the lake. They ignored the fact that in real life, as people travel over the land, the City of Laconia separates the two towns and when using motor vehicles, one cannot travel from one town's boundary line to the other town's

boundary line without traveling through one of Laconia's built up sections, to wit downtown, Lakeport or the Weirs. The shortest route, going through the Lakeport, requires a citizen to drive a minimum of 3 miles from one boundary line to the other. As a practical matter, it hardly makes Gilford and Meredith contiguous.

17. It is understood by Plaintiffs that this case will be considered together with all other redistricting cases in one common proceeding. That being the case, Exhibits and arguments filed in one case will not have to be duplicated in another. Therefore, the Plaintiffs incorporate in this pleading by reference the very well stated argument of the City of Concord set forth under the heading Governing Law, and COUNT I - DECLARATORY RELIEF, VIOLATION OF THE NEW HAMPSHIRE CONSTITUTION, PART 2, ARTICLE 11, PARAGRAPHS 31, 32, 33, as well as Exhibits A, B and C.

18. The Town of Gilford is entitled to two (2) independent representatives. Failure of the plan as adopted deprives the voters of Gilford of the right to elect two (2) representatives who are residents of the Town to represent only the Town of Gilford.

19. The Secretary of State is scheduled to accept filings for the Office of State Representative on June 6, and thereafter also to hold a primary election on September 11, 2012 and a general election on November 6, 2012. If that registration and election is to be permitted to go forward, the Town of Gilford and its voters will be irreparably harmed by the denial of their constitutional rights. There is no adequate remedy at law, since the issue involved is the right to vote, which cannot be remedied by monetary damages or otherwise.

20. A preliminary injunction is necessary because there is immediate danger of irreparable harm to the voters of the Town of Gilford which can be averted only by a preliminary injunction against the Secretary of State and the State of New Hampshire from proceeding with filings for the Office of State Representative on June 6, 2012 until this Court has reached a decision relative to the merits of the Plaintiffs' case and correction of the deprivation of rights which the State's Redistricting Act imposes upon the Town of Gilford.

WHEREFORE, the Plaintiffs pray:

A. That the Court may issue a preliminary injunction based upon the irrefutable evidence set forth in this Petition that the merger of the Town of Gilford and the Town of Meredith into one district violates Section 2, Article 11 of the New Hampshire Constitution;

B. That the preliminary injunction prevent the State of New Hampshire and its Secretary of State from proceeding to accept filings for the Office of State Representative beginning on June 6, 2012 and from proceeding further than that to hold any primary and general elections until such time as this Court has had the opportunity to hold appropriate hearings and make a decision with regard to the declaratory judgment and injunction requested in this action;

C. That the Court may determine that this act is unconstitutional insofar as it deprives the Town of Gilford of its own district by combining the Town of Gilford and the Town of Meredith in one district for the election of State Representatives;

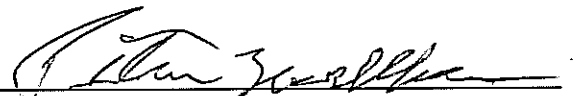
D. Enjoin the State of New Hampshire from enforcing the act until it has corrected the violation against the Town of Gilford's and its voters' rights; and

E. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

Town of Gilford,
Peter V. Millham and
Leo B. Sanfacon,

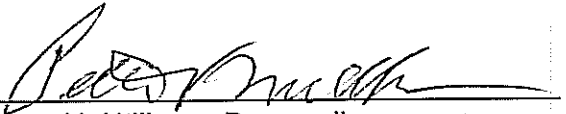
Counsel for Town of Gilford:



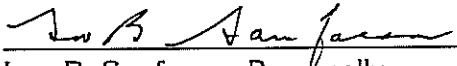
Peter V. Millham, NH Bar ID 1761
Wescott, Dyer, Fitzgerald & Nichols, PA
28 Bowman Street
Laconia, NH 03246
(603) 524-2166

Dated: April 30, 2012

Dated: April 30, 2012



Peter V. Millham, Personally

Dated: April 30, 2012


Leo B. Sanfacon, Personally

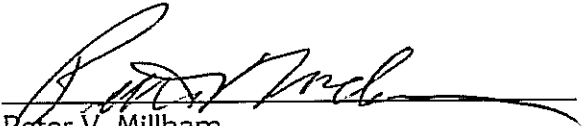
Counsel for Plaintiffs:

Dated: April 30, 2012


Peter V. Millham, NH Bar ID 1761
Wescott, Dyer, Fitzgerald & Nichols, PA
28 Bowman Street
Laconia, NH 03246
(603) 524-2166

I hereby affirm that the statements contained herein are true to the best of my knowledge and belief.

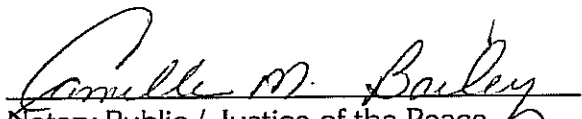
Dated: April 30, 2012


Peter V. Millham

STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

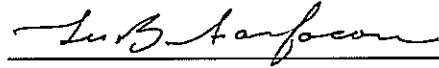
On this the 30th day of April, 2012, before me, the undersigned officer, personally appeared **PETER V. MILLHAM**, known to me (or satisfactorily proven) to be the person whose name appears subscribed to the within instrument, and affirmed under oath that the statements contained herein are true to the best of his knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public / Justice of the Peace

I hereby affirm that the statements contained herein are true to the best of my knowledge and belief.

Dated: April 30, 2012

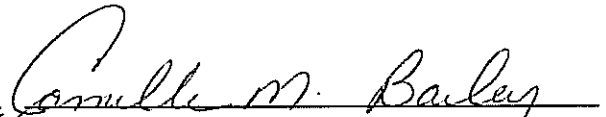


Leo B. Sanfacon

STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

On this the 30th day of April, 2012, before me, the undersigned officer, personally appeared **LEO B. SANFACON**, known to me (or satisfactorily proven) to be the person whose name appears subscribed to the within instrument, and affirmed under oath that the statements contained herein are true to the best of his knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.


Notary Public / Justice of the Peace