

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
Northern District

SUPERIOR COURT

City of Manchester

v.

William M. Gardner, Secretary of State

**VERIFIED PETITION FOR DECLARATORY JUDGMENT
AND PRELIMINARY AND PERMANENT INJUNCTION
CONCERNING HOUSE OF REPRESENTATIVES REAPPORTIONMENT**

City of Manchester (“Manchester”), a municipal corporation, by and through its attorneys McLane, Graf, Raulerson & Middleton, Professional Association, petitions this Court and complains against William M. Gardner, Secretary of State as follows:

1. The inhabitants of Manchester, the largest and most diverse municipality in New Hampshire, with twelve electoral wards and 8.3% of New Hampshire’s population, have been unconstitutionally deprived of representation in the State House of Representatives due to multiple defects with its reapportionment plan, adopted over the veto of the Governor. Manchester seeks a declaration that the reapportionment plan violates both the New Hampshire and United States Constitution and seeks injunctive relief to prevent the implementation of that plan.

A. Parties and Jurisdiction

2. Manchester is a municipal corporation with an address c/o City Solicitor, One City Hall Plaza, Manchester, NH 03101.

3. William M. Gardner is the New Hampshire Secretary of State with an address at 107 North Main St. Concord, NH 03301. He is the chief election officer of New Hampshire, RSA 652:23, and is named in his official capacity.

4. This Court has subject matter jurisdiction of this matter pursuant to RSA 491:7 and 22 and RSA 498:1. Venue is proper in this Court pursuant to RSA 507:9.

B. Statement of Facts

i. Representatives from Manchester and the 2010 Census

5. The 2010 decennial census conducted by the United States determined that the population of New Hampshire was 1,316,470. The New Hampshire House of Representatives consists of 400 members. N.H.CONST. part. II art. 9. Based on the constitutional mandate that representatives be apportioned “as equal as circumstances will admit”, each state representative should represent close to 3291 people. *Id.*

6. The 2010 decennial census conducted by the United States determined that the population of Manchester was 109,565, or 8.323 percent of New Hampshire’s population. Applying that percentage to the 400 members in the New Hampshire House of Representatives leads to the inference that Manchester would receive 33 to 34 representatives.

7. In recent years, Manchester voters elected 35 representatives, with 9 wards electing 3 representatives each and three wards sharing 8 representatives. Therefore some reapportionment is required.

8. Manchester is by far the largest municipality in New Hampshire. Its population exceeds that of six of New Hampshire’s ten counties.

9. For electoral purposes, Manchester divides itself into 12 wards of roughly equal population. RSA 44:4; Manchester City Charter §5.33. Following the 2010 decennial census, the voters of Manchester approved an amendment to §5.33 to reapportion the city’s 12 wards to reflect shifts in population. The average ward population is 9130, and when that is divided by the mean of 3291 inhabitants per representative, the quotient is 2.774 representatives per ward.

Manchester's average ward population would make the population of each ward equivalent to the 30th largest town out of 234 in New Hampshire.

ii. House Bill 592

10. Under N.H. CONST. part II, art. 9, the House of Representatives is required every ten years to apportion its representatives in accordance with the last general census of the United States. It devised a reapportionment plan for itself, HB 592, which it passed on January 18, 2012. The bill later passed the Senate, but on March 23, 2012 it was vetoed by Governor John Lynch who also provided a statement of his objections pursuant to N.H. CONST. pt. II, art. 44.

11. Pursuant to N.H.CONST. pt. II, art. 44, the Governor's veto along with his objections to HB 592 must be returned to the chamber in which the legislation originated, the House of Representatives. The House must then "enter the objections at large on their journal, and proceed to reconsider it" and only then may it again pass HB 592, but this time by a two-thirds vote. *Id.*

12. The House of Representatives did not first "enter at large on their journal" or on any other written document the Governor's objections to the vetoed bill. The House of Representatives gave no notice of any intent to take up the Governor's objections to the vetoed bill. Instead, William L. O'Brien, the Speaker of the House of Representatives, on the morning of March 28, 2012 called a closed door caucus for House members of his political party. Immediately thereafter, he called the House to order and arranged for the reading of the Governor's veto message on HB 592 "without first being printed in the House Calendar" and then presided over a vote to override the veto. The vote was 246 - 112 to override the veto. 2012 House Journal No. 15. There were 38 House members not present for the override vote.

The Senate thereafter voted to override the veto. HB 592 has now been adopted as Chapter 9 of 2012 Laws. It repeals and reenacts RSA 662:5.

13. House Bill 592 makes a number of changes to the make-up of the House of Representatives. With respect to Manchester, each ward starts with two representatives, for a total of 24, leaving a deficit of 9 or 10 representatives to make up. Seven additional representatives are allocated by grouping certain wards together, called floterial districts. Two groupings of three wards each share two representatives, for a total of four. One grouping of four wards shares three representatives. That brings the total to 31.

14. But two wards in Manchester, Wards 8 and 9, do not share additional representatives with other Manchester wards. Instead, Wards 8 and 9 are grouped with the Town of Litchfield to the south to share two additional representatives.

15. HB 592 therefore leaves Manchester with only 31 representatives, and it shares two additional representatives with Litchfield, which also receives two representatives on its own.

16. Manchester Wards 8 and 9 have 18,304 inhabitants and Litchfield has 8271 inhabitants. By allocating the two floterial seats in accordance with the combined populations of Wards 8 and 9 and Litchfield, Wards 8 and 9 receive 5.38 representatives (3,402 per representative) and Litchfield receives 2.62 representatives (3,157 per representative). Litchfield therefore is overrepresented by 4% from the 3,291 mean. Inhabitants of Wards 8 and 9 are underrepresented by 3% from the 3,291 mean. Applying this same analysis citywide, and even counting the two floterial seats, Manchester is underrepresented by 3%, i.e. there are 3,287 additional Manchester inhabitants above the mean number of 3,291 inhabitants per

representative, which translates almost precisely into Manchester being shortchanged another full representative.

17. The House of Representatives considered feasible reapportionment plans which preserved at least 33 seats wholly within Manchester, which afforded Litchfield its own district, and which did so while maintaining in all area districts less than a ten percent deviation from the ideal number of inhabitants per representative.

18. Manchester has found no record of it sharing a representative with a surrounding town since its incorporation as a city in 1846.

iii. Manchester and Litchfield Are Very Different Communities

19. Demographically, Manchester and Litchfield are very different communities. About half of Manchester inhabitants live in rental housing; about 90% of Litchfield inhabitants live in homes that they own. More than 18% of Manchester inhabitants are members of minority groups while the comparable number in Litchfield is 4%. 2010 United States Census. Median household income in Manchester is \$52,906, while it is almost twice that, \$97,591, in Litchfield. United States Census Bureau, 2009 American Community Survey.

20. Manchester is the state's largest school district, educating 15,762 students this year. Of those students, 31% are members of minority groups and 46% are income eligible to receive free or reduced price lunch. Litchfield educates this year 1580 students, one tenth that of Manchester. Of those students, only 7% are members of minority groups and only 9% are income eligible to receive free of reduced price lunch. New Hampshire Department of Education 2010 – 2011 School District Profiles.

21. Manchester and Litchfield do not share municipal or school services. For instance, the communities have entirely separate public school systems. They participate in

different regional planning commissions. There is no common drinking water or wastewater system. By contrast, Manchester shares one or more of those services with every other town in its vicinity, including Deerfield, Candia, Hooksett, Auburn, Londonderry, Derry, Bedford, Goffstown, New Boston and Weare.

22. Manchester has unique interests in dealing with state legislation. Manchester received from the state this fiscal year \$56,761,000 of annual education adequacy grants under a formula that currently targets additional funding based upon the number of English language learners, special education participants and free and reduced lunch. RSA 198:40-a and 41. Changes to this formula would affect Manchester profoundly. The re-establishment of school building aid is particularly important to Manchester, which hosts 22 separate public schools, more than any other community in the state. See, HB 533. Under the state budget, Manchester received from the state this fiscal year \$4,894,000 in revenue sharing from rooms & meals tax receipts. Since 90% of that revenue is obligated to bond repayment on the city-owned Verizon Wireless Arena, reduction or elimination of that revenue sharing would cause technical default of those bond covenants. A large portion of Manchester's budget comes from its receipt of federal contracts that pass through state government agencies. Those contracts, whether for public health, human services, education or refugee resettlement, all depend upon the continuation of Manchester's strong relationship with state government. Finally, with the advent of a new proposal to build replacement state prison facilities in Manchester, Manchester requires strong locally-focused advocacy from its representatives.

C. Cause of Action

Count I (Unconstitutionality of HB 592)

23. Manchester incorporates into this Count I the allegations that it has made in paragraphs 1 through 22 of this Petition.

24. HB 592 fails to comply with N.H.CONST. part II, art. 11 because it does not comply with the requirement that “[w]hen 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.” It also fails to comply with N.H.CONST. part II art. 9 because it does not comply with the requirement that the “house of representatives, [shall be] biennially elected and founded on principles of equality, and representation therein shall be as equal as circumstances will admit.”

25. Specifically, HB 592 is unconstitutional because Manchester has enough inhabitants to entitle the city to be guaranteed a total of 33 or 34 representatives on its own, and not merely the 31 representatives plus a floterial district set forth in HB 592. Wards 8 and 9 have enough inhabitants to entitle those wards, apart or together with other Manchester wards, to “have its own district of one or more representative seats.” Moreover giving Manchester its entitlement to its own representatives will not deprive Litchfield of its own district.

26. As a result, this Court should declare pursuant to RSA 491:22 that Chapter 9, Laws 2012 is unconstitutional as not complying with N.H. CONST. part II art. 9 and 11.

27. In addition, HB 592 deprives the Manchester and its inhabitants with equal voting rights and equal protection of the laws protected by N.H. CONST. part I art. 1, 2 and 11. These rights may be interpreted in light of the experience of the Fourteenth and Fifteenth Amendments to the United States Constitution, as well as by Section 2 of the Voting Rights Act, 42 U.S.C. §1973. The right to vote and the right to be elected are afforded the status of fundamental rights

in New Hampshire. *See Akins v. Secretary of State*, 154 N.H. 67, 71 (2006). Specifically, HB 592 impermissibly dilutes and abridges the voting strength of all Manchester voters, including those who belong to racial and color minorities, and those who are economically disadvantaged.

28. As a result, the Court should declare pursuant to RSA 491:22 that Chapter 9, Laws 2012 is unconstitutional because it denies Manchester and its inhabitants with equal voting rights and equal protection of the laws protected by N.H. CONST. part I art. 1, 2 and 11. See generally, the Fourteenth and Fifteenth Amendments to the United States Constitution and Section 2 of the Voting Rights Act, 42 U.S.C. §1973.

29. This Court should also issue a preliminary and permanent injunction to prevent the Secretary of State from preparing for the 2012 primary and general elections for the House of Representatives based upon Chapter 9, Laws 2012, which is unconstitutional. Manchester faces irreparable harm and there is no adequate remedy at law should the Secretary of State execute on the reapportionment plan of Chapter 9, Laws 2012. Immediate injunctive relief is required because otherwise the Secretary of State will rely upon Chapter 9, Laws 2012 to determine the districts within which candidates may file for election as representative during the primary election filing period which extends from June 6 to 15, 2012. See, Secretary of State's 2012 Political Calendar.

WHEREFORE, the City of Manchester requests that this Court:

- A. Issue orders of notice for a temporary hearing within fourteen days and for an expedited hearing on the merits of this matter;
- B. Declare that Chapter 9, Laws 2012 is unconstitutional because it fails to comply with the requirements of N.H.CONST. part I, art. 1, 2, and 11 and part II, art. 9 and 11;

C. Order a preliminary and permanent injunction against the Secretary of State to prevent him from preparing for the 2012 primary and general elections for the House of Representatives based upon Chapter 9, Laws 2012;

D. Order such other and further relief as may be just.

Respectfully submitted,

CITY OF MANCHESTER.

By its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: April 23, 2012

By:

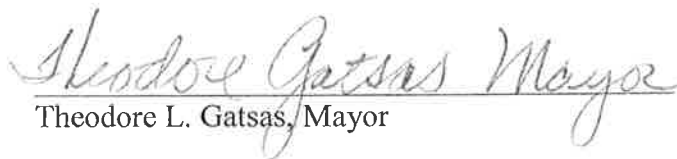


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VERIFICATION

I, Theodore L. Gatsas, Mayor, being duly authorized, have verified that the facts set forth in the foregoing Verified Petition are true and accurate to the best of my knowledge and belief.

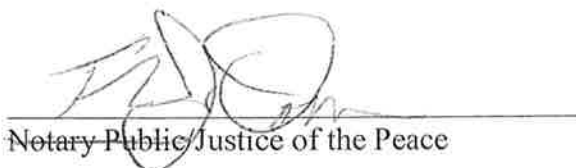
Dated: April 23, 2012



Theodore L. Gatsas, Mayor

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this 23rd day of April, 2012, Theodore L. Gatsas personally appeared before me and swore that the foregoing statements are true to the best of his/her knowledge and belief.



Notary Public/Justice of the Peace