THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Docket No. 2012-0338

City of Manchester, *et al.*
v.
William M. Gardner, in his official capacity as Secretary of State of the State of New Hampshire

---

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

---

Hon. Mary Jane Wallner, *et al.*
v.
William M. Gardner, in his official capacity as Secretary of State of the State of New Hampshire

---

Town of Gilford, *et al.*
v.
William M. Gardner, in his official capacity as Secretary of State of the State of New Hampshire

---

Hon. Marshall E. Quandt, *et al.*
v.
William M. Gardner, in his official capacity as Secretary of State of New Hampshire

---

Interlocutory Transfer Pursuant to Rule 9

RESPONSE BRIEF FOR THE ATTORNEY GENERAL

MICHAEL A. DELANEY
ATTORNEY GENERAL

Anne M. Edwards [Bar #6826]
Associate Attorney General
Stephen G. LaBonte [Bar #16178]
Assistant Attorney General
NH Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3658

May 29, 2012

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

RESPONSE ARGUMENT

I.   RSA 662:5 (2012) USES AN IDEAL POPULATION OF 3,291 WHEN CALCULATING THE DEVIATIONS OF THE LEGISLATIVE DISTRICTS IN DOVER AND STATEWIDE.

In their Amicus Curiae brief Dover and Meredith incorrectly claim that RSA 662:5 (2012) uses an ideal population of 4,997.8 when calculating the deviations of the six wards in Dover. *See* Brief of Amicus Curiae, Dover, Meredith, at p. 11. The 4,997.8 number is the ideal population of the wards during city elections. *See* Appendix to the Interlocutory Transfer Statement, pp. 42-43. (Dividing population of Dover being 29,987 by the number of wards being 6 equals 4997.8). Deviations used when drafting RSA 662:5 (2012) with regard to the wards in Dover, Somersworth, and for the Town of Rollinsford were calculated using the component method as they all receive representation from a floterial district and used an ideal population figure of 3,291 as illustrated in the table below:

Legislative District	Pop	Seats	Ratio Share (Population ÷ Total)	Adj. Seats (seats + ratio share)	Ideal Pop. (seats x 3,291)	Absolute Population (Pop - Ideal)	Relative Deviation (Absolute ÷ Ideal)
Dov W1, D13	4,991	1	.486	1,496	4,923	68	1.4%
Dov W2, D14	5,074	1	.504	1,504	4,950	124	2.5%
Float D19	10,065	1					

Legislative District	Pop	Seats	Ratio Share	Adj. Seats	Ideal Pop.	Absolute Population	Relative Deviation
Dov W3, D15	5,028	1	.495	1,495	4,920	108	2.2%
Dov W4, D16	5,134	1	.505	1,505	4,953	181	3.7%
Float D20	10,162	1					

Legislative District	Pop	Seats	Ratio Share	Adj. Seats	Ideal Pop.	Absolute Population	Relative Deviation
D17	12,075	3	.502	3,502	11,525	550	4.8%
D18	11,978	3	.498	3,498	11,512	466	4.0%
Float D21	24,053	1					

See Appendix to the Interlocutory Transfer Statement, p. 111. (Deviations as calculated and illustrated in the table above also appear on p. 85 of the Appendix to the Interlocutory Transfer Statement.)

The Amici erroneously claim that using an ideal population of 3,291, while calculating the deviations for Dover Wards 1-6, leads to intolerable deviations ranging from 45.03% to 46.00%. Brief Amicus Curiae, Dover, Meredith, at p. 12. The reason the Amici deviations were so high is because they incorrectly applied the aggregate method to each ward individually and assigned one representative to each. *Id.* The methodology used by the Amici is flawed because it does not reconcile for the ratio of representation each underlying district receives from the overlying floterial district's representation. Simply put, when the Amici calculated the deviation of 51.65% for the population of Ward 1 (4,991), it does not account for the .496% ratio share of representation Ward 1 receives from a floterial District 19. The same is true for Wards 2 thru 6. *Id.*

II.   THE AMICI DOVER AND MEREDITH INCORRECTLY CALCULATE THE FOR THE MULTI MEMBER DISTRICTS 17 AND 18.

On pages 15 and 16 in Table A of their brief, the Amici claim that District 17 has a deviation of 22.3% and District 18 has a deviation of 19.17%. The reason why the deviations are so high is because when calculating the ideal population they used the wrong multiplier of 3. *Id.* This is incorrect because it does not account for the ratio of representation each district gets from the at-large representative representing the overlying floterial District 21. *See* Appendix to the Interlocutory Transfer Statement, pp. 64 and 85. Calculation for District 18 has further problems because they incorrectly calculated the actual population using a population figure from Somersworth Ward 2, which is part of District 17, instead of using the population figure from

2

Somersworth Ward 3, which is part of District 18. *See* Brief Amici Curiae at p. 15 (Somersworth Ward 2 with population of 2,215 is considered in both tables, where Somersworth Ward 3 with a population of 2,527 does not appear).

III.   AMICI DOVER AND MEREDITH INCORRECTLY CALCULATE THE DEVIATION FOR DISTRICT 21.

On page 16 of their Brief, the Amici Dover and Meredith claim that District 21 has a deviation of 82.72%. Again, this figure is incorrect because when calculating the ideal population, they used a multiplier of 4 instead of 7. To correctly calculate the ideal population in this manner, they should use a multiplier of 7 to account for the 3 representatives for Dover Wards 5 and 6, and Somersworth Ward 2, the 3 representatives for Somersworth Wards 1, 3, 4, 5 and the Town of Rollinsford, plus the 1 representative for floterial District 21. Using the correct multiplier of 7 calculates the ideal population at 23,037 as opposed to 13,164, which in turn changes the deviation to 4.2%.

On page 17 of their Brief, Amici claim that District 19 has a deviation of 205.83%, District 20 has a deviation of 208.78%, and District 21 has a deviation of 630.87%, when calculating the deviation with the component method. Brief Amicus Curiae, p. 17. In reality what they have done is reapply the aggregate method without considering all of the representatives to the underlying districts when calculating the ideal population. *See* Appendix to the Interlocutory Transfer Statement, p. 110. The component method when correctly applied reconciles the representation provided by the at-large representative assigned to the floterial district by apportioning it to the underlying wards and towns within that floterial district. *See Id.* at p. 111.

IV.   ONE PERSON, ONE VOTE IS BEST SATISFIED WITH GILFORD AND MEREDITH AS A MULTI MEMBER DISTRICT.

If Meredith was given its own district, its deviation would be -5.2%. If Gilford was given its own district, its deviation would be 8.3%. These deviations would increase the range of deviation for the entire enacted plan to 13.5%, a range of deviation that is presumptively constitutional under the one person, one vote requirement and well above the 9.9% range of deviation the Legislature determined results in substantial equality among voters.

Also, the Gilford petitioners offer no principled basis at which to draw the line. For example, if Gilford and Meredith get their own districts, this means that the Legislature would likely have to give all towns and wards within -5.2% and 8.3% their own districts with their own representatives. This would create widespread voter inequality across the state. Moreover, the Gilford petitioners do not offer a principled basis concerning why -5.2% or 8.3% is a sufficient place to draw line and why, so long as the Legislature is within the presumptively unconstitutional range, it is not then obligated to provide town with a -5.4% or 8.6% deviation its own district. *See Burling v. Chandler*, 148 N.H. 143, 158-59 (2002) ("The court discovered, however, that reducing the range of deviation further required dividing wards into single-member districts. Dividing wards would violate Part II, Article 11-a . . . . Indeed, if the court divided one ward, it would have no principled basis for keeping the boundaries of any other ward intact.").

V.   THE BOUNDARY LINE BETWEEN GILFORD AND MEREDITH IS NOT AN ARBITRARY LINE, BUT A SYSTEMATIC ONE.

Petitioner Gilford implies that Gilford and Meredith are not contiguous because the boundary line runs through Lake Winnipesaukee. The boundary line between the two towns as laid out in the Lake purposefully separates a number of islands dividing them between the two

4

towns. *See* Meredith Town Line Report 1968, Lines ran 1975, Report updated in 1975, as cited in the Interlocutory Transfer Statement, ¶ 72. Report attached hereto as an Addendum. This boundary line allows each town to assess property taxes on its respective islands, which benefits each town.

CONCLUSION

Based on the specific information and arguments presented in Petitioners' Amici's briefs, they have failed to overcome RSA 662:5's presumption of constitutionality. As a result, this court should find RSA 662:5 (2012) constitutional and deny the Petitions.
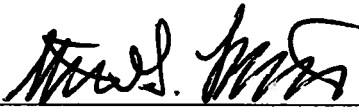
ORAL ARGUMENT

The Attorney General yields his time for oral argument to the Intervenor.

Respectfully submitted,

MICHAEL A. DELANEY
ATTORNEY GENERAL

By his attorneys,

By: _____
Anne M. Edwards [Bar #6826]
Associate Attorney General
Stephen G. LaBonte [Bar #16178]
Assistant Attorney General
NH Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3658

Date: May 23, 2012

CERTIFICATION

I hereby certify that two (2) copies of the foregoing were mailed this day, postage prepaid, to: Thomas J. Donovan, Esquire, Richard J. Lehmann, Esquire, David A. Vicinanzo, Esquire/Anthony J. Galdieri, Esquire, Peter V. Millham, Esquire, Danielle L. Pacik, Esquire, Martin P. Honigberg, Esquire/Jay Surdukowski, Esquire, Tony F. Soltani, Esquire/Jason B. Dennis, Esquire, and Allan Krans, Esquire.

Stephen G. LaBonte [Bar #16178]
Assistant Attorney General

Dated: May 23, 2012

754762.doc

ADDENDUM

TABLE OF CONTENTS

State of New Hampshire

Office of Secretary of State

I, David M. Scanlan, Deputy Secretary of State of the State of New Hampshire do hereby certify that attached is a true copy of the 1968 Town Line Report for Meredith, as recorded in this office and held in the custody of the State Archives.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Seal of the State, at Concord, this ninth day of May, 2012.

_____
Deputy Secretary of State

MEREDITH

TOWN LINE REPORT

1968

Lines ran in 1975.

Report up-dated in 1975

Compiled from maps, USGS maps and aerial photos.

Pace and hand compass.

Bearings True North.

Declination 15 - 45

Robert V. Woodward
137 Oak St.
Laconia, N.H.

RECOMMENDATIONS

1. Stone monument set at Montgomery turn on Keyser Road

2. Stone monument on Route #3 - Reset - Broken off.
Top missing

3. Monument set on Chapman Island in Waukewan

4. Line spotted from Hatch Corner Road to Forest Pond and a monument set at the pond

5. Monument set on the southwesterly side of the pond

6. Monuments set on Island in Pemi-Pond
Monument set on the southwesterly side of the pond and a line established to the monument on the Edgerly School Road

7. Line spotted from Ridge Road to the Saddle Hill Road

8. Stone monument set to replace the "flat stone" on the "New Road" Meredith-Sanbornton line

9. Stone monument set on the westerly side of Pickerel Pond Meredith-Laconia line

10. Need new stone on Chase Road

11. Need new stone on Hatch Corner Road

12. Need new stone on Hermit Woods Road

TO THE SELECTMEN OF THE TOWN OF ...Meredith........

In accordance with your instructions to perambulate the
boundary lines, as required by law, I have attended to
this duty and submit the following report.

In witness whereof we have hereunto set our hands this
........14th........ day of ......April... 19 76.

.....R M Brown........) Town Manager

.....R L Allber........)

.....James L Waldron........) Selectmen
                              of
.....A H Wyatt........) ..Meredith...

Robert V. Woodward
.....Robert V. Woodward. Agent for the

January 8, 1976 Town of ..Meredith..

From the stones on the westerly shore of Meredith Bay to the ledge at the end of the wall near the Sands of Brookhurst Dev.

As noted on the drawing #23 the line meanders through the lake, passing by several islands and reaching a point in the lake off South Point on Long Island in Moultonboro where Meredith and Gilford converge upon the Moultonboro line. The line turns to the left at this point and runs N46W.

The line passes to the west of Crescent Island and Ozone Island, some times called Little Six Mile Island, thence passing to the east of Six Mile Island and also to the east of Five Mile Island, thence running N46W to and through the southern most tip of Hall's Island. It is quite possible the entire island is in Moultonboro. Thence continuing N46W to a cement post on the southeast shore of Black Cat Island, marked M-B-M-C-26-33-68-75

thence running N46W through the island to a cement post on the northwest shore of the island, marked M-B-M-C-26-33-68-75

thence continuing N46W through the lake to a cement post on the southeast shore of the Second Neck, marked M-B-M-C-26-33-68-75

thence running N46W to a cement post on the northwest shore of the Second Neck, marked M-B-M-C- 26-33-68-75

See drawing #25

Thence running N46W into the lake for a distance of about 700 feet to a point where the Meredith and Center Harbor line converge upon the Moultonboro line.

Thence turning to the left, S54W through the lake to the ledge at the end of the wall, marked M-CH-1884-91-98-05-12-19-26-33-40 47-54-62-68-75

SECOND NECK

BLACK CAT

NELL.

MOULTONBORO 45°

TRUE NORTH
Dec.1 15:45' (1-76)

FIVE MILE

SIX MILE

LITTLE SIX MI.

CRESCENT

BLACK

JOLLY

MEREDITH BAY

PINNACLE HILL

MEREDITH NECK

BEAR ISLAND

MINK

MINA

STONE DAM

SHEEP PT.

PINNACLE

WINNIPESAUKEE

RT.3

LACONIA

GILFORD

GOV. IS.

WEIRS

LONG ISLAND

LACONIA
GILFORD

MEREDITH - LACONIA - GILFORD - MOULTONB.
USGS SCALE 1" = 5208'

DRAWING # 23

RV WOODWARD
11-75

cement Post

Moultonboro
Meredith

Winnipesaukee

cement Post

BLACK CAT ISLAND

Winnipesaukee

cement Post
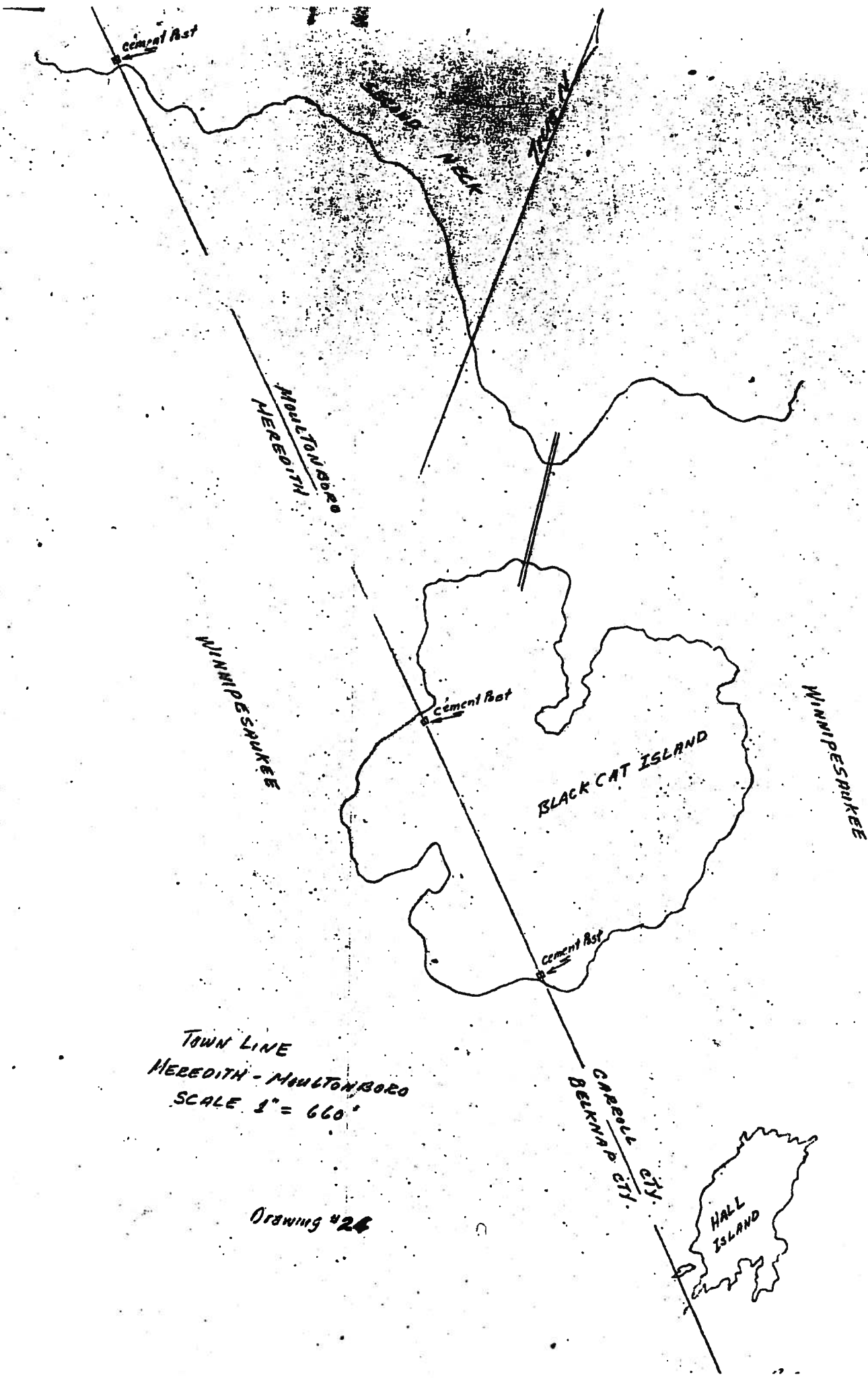
TOWN LINE
MEREDITH - MOULTONBORO
SCALE 1" = 660'

Carroll cty.
Belknap cty.

HALL
ISLAND

Drawing #26

SECOND NECK

Cement Post

Cement Post

BARNES.

N 73°17' W

CARROLL CTY.

BELKNAP CTY.

46°

WINNIPESAUKEE

54°

Center Harbor

MEREDITH

MEREDITH-CTR.HARBOR-MOULTONBORO

SCALE 1" = 660'

DRAWING #25

Ledge

45°

59°

PT.25

C.HBR

59°

BROOKHURST

R.V.WOODWARD
11-95