
THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Case No. 2022-0184

Theresa Norelli & a.,

Plaintiffs,

v.

Secretary of State & a.,

Defendants.

**PLAINTIFFS' RESPONSE TO THE MAJORITY LEADERS' EX PARTE
MOTION TO DISMISS THE CASE OR, ALTERNATIVELY, STAY THE
SPECIAL MASTER'S RELEASE OF A PROPOSED CONGRESSIONAL MAP**

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This is an action challenging New Hampshire's current congressional districts, which this Court has held are unconstitutionally malapportioned as a result of population shifts. *See* Opinion 11 (May 12, 2022). Today, on the last day for legislative action to remedy this malapportionment, the Speaker of the New Hampshire House of Representatives and the President of the New Hampshire Senate (together, the "Majority Leaders") filed a motion to disrupt the Court's previously adopted schedule and end this matter prematurely. *See generally* Ex Parte Mot. to Dismiss Case or, Alternatively, Stay the Special Master's Release of a Proposed Congressional Map ("Mot.") (May 26, 2022). Plaintiffs respectfully submit the following response in opposition to that motion.

On April 11, 2022, this Court ordered that the parties respond to a set of preliminary questions, including the following:

What is the last date by which the court will have assurance that a congressional reapportionment plan will be validly enacted in time for the 2022 primary election for the purpose of nominating candidates for the United States House of Representatives?

Order 5 (Apr. 11, 2022). On April 25, the Majority Leaders filed a brief purportedly in response to the Court's preliminary questions—but did not provide an answer to this question regarding timing. *See generally* Br. of Hon. Sherman Packard, Speaker of the New Hampshire House of Representatives and Hon. Charles Morse, President of the Senate (Apr. 25, 2022). However, "[b]ased on representations made during oral argument on the preliminary questions," the Court "determined that May 26, 2022, is the last date for legislative action in this session on a congressional redistricting plan, unless the legislature were to suspend its rules or to meet in special session." Order 1 (May 5, 2022). In light of

this May 26 deadline, the Court issued a schedule affording the General Court the opportunity to enact a new congressional redistricting plan:

The special master's appointment, although effective immediately, does not preclude the legislature from enacting a congressional redistricting plan on or before May 26, 2022—the date identified to us as the last date for legislative action in this session on a congressional redistricting plan, unless the legislature were to suspend its rules or to meet in special session.

Order 1 (May 12, 2022).

As the Majority Leaders note in their motion, today—the Court's deadline for legislative adoption of a new congressional plan—both chambers of the General Court voted to pass Senate Bill 200, “establishing new U.S. Congressional Districts based upon the 2020 census data.” Mot. 1. But they omit a crucial detail: Governor Chris Sununu immediately vowed to veto the legislation, as news outlets quickly reported. *See* Holly Ramer, *Sununu to Veto Congressional Map, Letting Court Take Over*, AP (May 26, 2022), <https://apnews.com/article/gun-politics-legislature-new-hampshire-supreme-court-congress-358f0dc0da2b1f6de1b5158e01272168> (“Sununu quickly said he will veto [Senate Bill 200.]”); Adam Sexton (@AdamSextonWMUR), Twitter (May 26, 2022, 2:30 PM), <https://twitter.com/AdamSextonWMUR/status/1529892808659722240> (quoting Governor Sununu as stating, in reference to Senate Bill 200, that “[o]ur races have to be fair, which is why I will veto this map”); Kevin Landrigan (@KlandriganUL), Twitter (May 26, 2022, 3:19 PM), <https://twitter.com/KlandriganUL/status/1529904959285780481> (same). In short, on the “last date for legislative action,” the General Court and Governor Sununu remain at an impasse.

Under the New Hampshire Constitution, a bill that is vetoed by the governor is not law. *See* N.H. Const. pt. II, art. 44; *see also Below v. Gardner*, 148 N.H. 1, 3 (2002) (per curiam) (noting that “the New Hampshire Legislature failed to enact a new district plan” after proposed plan “was passed by both houses, but was vetoed by the Governor”); *id.* at 12–13 (declining to adopt proposed plan because “[e]ven though [it] was passed by the legislature, it did not become law,” and “[o]nly fully enacted plans ‘have the virtue of political legitimacy’” (quoting *Prosser v. Elections Bd.*, 793 F. Supp. 859, 867 (W.D. Wis. 1992) (per curiam) (three-judge court))). As in *Below*, Governor Sununu’s imminent veto means that New Hampshire does not have a legislatively enacted congressional redistricting plan. And given the Court’s conclusion that today is the last day for legislative action on a new map, New Hampshire will not have a valid congressional redistricting plan in time for the 2022 midterm elections absent action by this Court.

Today’s events—yet another demonstration of the ongoing impasse between the General Court and Governor Sununu—demonstrate why the Court’s previously adopted schedule should not be disturbed. Plaintiffs therefore respectfully request that the Court deny the Majority Leaders’ motion.

Dated: May 26, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 26, 2022, I served the foregoing pleading on all parties or counsel of record in accordance with the rules of the Supreme Court, as follows: I am serving all registered e-filers through the court's electronic filing system; I am serving all other parties by mailing a copy to them.

/s/ Steven J. Dutton

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