

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

George Maglaras, Robert J. Watson, and Deanna Rollo

Plaintiffs,

v.

David M. Scanlan, in his official capacity as the Acting New Hampshire Secretary of State, and
John M. Formella, in his official capacity as the New Hampshire Attorney General,

Defendants.

Case No. 217-2024-CV-00247

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION**

NOW COME Plaintiffs George Maglaras, Robert Watson, and Deanna Rollo, by and through counsel, Shaheen & Gordon, PA. filing their Memorandum of Law in Support of Motion for Preliminary Injunction and, in support thereof, state as follows:

1. On April 15, 2024, Plaintiffs George Maglaras, Robert Watson, and Deanna Rollo filed a Verified Complaint for Declaratory and Injunctive Relief and Motion for Preliminary Injunction challenging HB 75 (2023) which redistricted the Strafford County Commissioner districts for a second time since the 2020 census in violation of the New Hampshire Constitution. As made clear in In Re Below, 151 N.H. 135, 148 (2004), “once the legislature has fulfilled its constitutional obligation to reapportion based upon the decennial census figures, it has no constitutional authority to make another apportionment until after the next federal census.” The legislature fulfilled this constitutional obligation in 2022 when it enacted HB 54 which redistricted county commissioner districts based upon the 2020 federal census. In Strafford County, HB 54 created a single county wide district in which the three county commissioners were elected at large. See Verified Complaint at ¶¶ 2, 37-46.

2. Nevertheless, in 2023, the legislature enacted HB 75 which redistricted the Strafford County commissioner districts to create three single member districts starting with the 2024 election. *Id.* at ¶¶ 3, 48-54. However, because the legislature may reapportion or redistrict an elective district only once after the decennial census, it had no authority to enact HB 75 and, therefore, it must be enjoined as unconstitutional. *Below* 151 N.H. at 137, 148.

3. After the Complaint was filed, Senator James P. Gray, a sponsor of HB 75, was quoted in a *Boston Globe* article concerning the lawsuit. *See* *Strafford County, N.H., commissioners challenge newly drawn districts* (<https://www.bostonglobe.com/2024/04/17/metro/new-hampshire-redistricting-gerrymandering-2024-election-lawsuit/>). Senator Gray stated: “I consulted several attorneys that said that ‘districting’ and ‘redistricting’ are separate things, and that it was perfectly legal to district an entity **that has not been districted before ... But now that it is districted, there would be a prohibition against redistricting it until the next census.**” *Id.* at p. 5 (emphasis added). Senator Gray appears to take the position that because HB 54 created a district in which the 3 Strafford County Commissioners were elected at large that Strafford County was not districted when HB 54 was passed in 2022. However, this position is foreclosed by the United States Supreme Court decision in *Reynolds v. Sims*, 377 U.S. 533 (1964).

4. In *Reynolds*, the Supreme Court held that the “Equal Protection Clause requires both houses of a state legislature to be apportioned on a population basis.” 377 U.S. at 576. The Court made clear that “single-member” or “**multimember**” districts can satisfy this constitutional mandate in conformance with the principle of one person one vote. *Id.* at 577, 579 (emphasis added). *Reynolds*, in part, lead to the amendments to the New Hampshire Constitution requiring redistricting in New Hampshire once every ten years. *Below*, 151 N.H. at 144-145. Every ten

years since the adoption of the 1964 amendments to the New Hampshire Constitution, the legislature has redistricted the county commissioner districts along with the House and the Senate districts. See Verified Complaint at ¶¶ 36-37.

5. In 2022, the New Hampshire legislature passed reapportionment bills for the House, the Senate, the Executive Council, delegates to state party conventions, and county commissioner districts. Id. at ¶ 37. On February 24, 2022, the legislature approved House Bill 54 (“HB 54”) “AN ACT apportioning county commissioner districts.” See Id. at ¶ 38; Ex. 1 (HB 54 – FINAL VERSION”). HB 54 was prepared by the Special Committee on Redistricting. Id. at ¶ 39. According to HB 54, “[t]his bill establishes new county commissioner **districts** in accordance with the latest federal decennial census.” Id. at ¶ 40 (emphasis added). The county commissioner districts are defined in RSA 662:4. HB 54 “repealed and reenacted” RSA 662:4 in accordance with the latest federal decennial census. Id. at ¶¶ 41-42. HB 54 divided the following counties into three districts: Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Rockingham, and Sullivan. Id. at ¶ 43. HB 54 did not divide Strafford County into three districts. Under HB 54, Strafford County is a multimember district and the “3 county commissioners [in Strafford County] shall be elected at large.” Id. at ¶¶ 44-45.

6. HB 54 was prepared by the Special Committee on **Redistricting** which redistricted the Senate, the House, the Executive Committee, and the County Commissioners. The bill stated it establishes county commissioner **districts** in accordance with the latest federal decennial census as required by Below. In Strafford County, it created a **multimember district** as permitted by Reynolds. Senator Gray was simply incorrect in his belief that the Strafford County commissioners were not districted in 2022—they were districted into a multimember district where they were elected at large just like many House districts within the State of New Hampshire.

However, Senator Gray is correct that once districted, as Strafford County was with HB 54 in 2022, that it could not be redistricted a second time. Therefore, HB 75 is unconstitutional.

Respectfully submitted,

George Maglaras
Robert J. Watson
Deanna Rollo

By Their Attorneys:
SHAHEEN & GORDON, P.A.

Dated: April 29, 2024

/s/ William E. Christie
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been filed with the Court using the Court's filing system and served on all counsel of record.

/s/ William E. Christie
William E. Christie