

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2012-0338, City of Manchester & a. v. Secretary of State; City of Concord v. Secretary of State; Mary Jane Wallner & a. v. Secretary of State; Town of Gilford & a. v. Secretary of State; Marshall Quandt & a. v. Secretary of State, the court on May 22, 2012, issued the following order:

On May 14, 2012, we accepted the following question for review: “Whether the petitioners lack standing, thereby depriving the court of subject matter jurisdiction to decide the constitutionality of RSA 662:5?” We ordered the parties contending that the court lacked jurisdiction to address the constitutionality of the statute to file briefs on this question on or before May 17, 2012.

On May 17, 2012, the intervenor, the New Hampshire House of Representatives, through its Speaker, filed a brief contending that the court lacked jurisdiction to decide the constitutionality of RSA 662:5 because some or all of the petitioners lacked standing. Also on May 17, 2012, the respondent, the Secretary of State for the State of New Hampshire, indicated that he took no position regarding the constitutionality of RSA 662:5, or upon whether the court had jurisdiction to decide this question. The Attorney General for the State of New Hampshire indicated that he concurred with the brief filed by the intervenor.

The intervenor argues that some or all of the petitioners lack standing to bring a declaratory judgment pursuant to RSA 491:22 (2010). To have standing under RSA 491:22, a party must claim “a present legal or equitable right or title.” RSA 491:22; see Avery v. N.H. Dep’t of Educ., 162 N.H. 604, 608 (2012). This requires a party to show that “some right of his is impaired or prejudiced” by the challenged law. See Avery, 162 N.H. at 608. Moreover, “[t]he claims raised in any declaratory judgment action must be definite and concrete touching the legal relations of parties having adverse interests.” Baer v. N.H. Dep’t of Educ., 160 N.H. 727, 731 (2010) (quotation omitted). Additionally, “[t]he action cannot be based on a hypothetical set of facts, and it cannot constitute a request for advice as to future cases.” Id. (quotation omitted.) “Furthermore, the controversy must be of a nature which will permit an intelligent and useful decision to be made through a decree of a conclusive character.” Id. (quotation omitted).

The intervenor first contends that all of the petitioners lack standing to argue that the New Hampshire Constitution requires the legislature to consider community of interest factors when redistricting. The intervenor argues that because the New Hampshire Constitution does not include such a requirement, the petitioners lack standing to argue that it does. In our view, this is not a

standing argument, but rather an argument about the merits of the litigation. We decline to dismiss the petitioners' claims for lack of standing merely because the petitioners disagree with the intervenors regarding how best to interpret the State Constitution.

The intervenor next asserts that the petitioners who reside in Manchester, Exeter, Belmont, Ward 4 in Concord, Peterborough, or Wards 1 and 2 in Dover, lack standing to bring this declaratory judgment action because redistricting was conducted properly in these locations. This argument too concerns the merits of this litigation, and does not warrant dismissing these petitioners on standing grounds. Although we agree with the intervenor that each individual petitioner has standing only to challenge the redistricting of the legislative district in which he or she resides, this truism does not deprive this court of subject matter jurisdiction to decide the questions in this action.

Finally, the intervenor argues that the municipal petitioners, the cities of Manchester, Concord and Dover, and the Town of Belmont, lack standing to challenge the constitutionality of RSA 662:5. Because individual residents of each of these locations are also petitioners in this action, we conclude that regardless of whether the municipal petitioners lack standing, we have subject matter jurisdiction to decide the questions in this action.

On May 22, 2012, the City of Dover filed an uncontested motion seeking leave to be dismissed as a party, reserving the right to file an amicus brief. This motion is hereby granted.

Dalianis, C.J., and Hicks, Conboy, and Lynn, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

Jason B. Dennis, Esq.
Tony F. Soltani, Esq.
Jason M. Surdukowski, Esq.
Martin P. Honigberg, Esq.
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James W. Kennedy, III, Esq.
Thomas J. Donovan, Esq.
Peter V. Millham, Esq.

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