

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

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CASE NO. 2012-0338

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City of Manchester, et al.

v.

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

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City of Concord

v.

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

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Hon. Mary Jane Wallner, et al.

v.

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

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Town of Gilford, et al.

v.

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

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Hon. Marshall E. Quandt, et al.

v.

William M. Gardner, in his official capacity as Secretary of State of New Hampshire

**PETITIONERS' MOTION FOR PRELIMINARY INJUNCTION TO DELAY**  
**THE OPENING OF THE FILING PERIOD FOR CANDIDATES**  
**FOR THE NEW HAMPSHIRE HOUSE OF REPRESENTATIVES**

NOW COME the Petitioners in the five consolidated actions pending in this Court and ask the Court to enjoin the Respondent Secretary of State from opening the filing period for candidates for the New Hampshire House of Representatives. Under RSA 655:14, the filing period is scheduled to commence on Wednesday, June 6, 2012, the same day as oral argument in this matter, and run through Friday, June 15. The Petitioners in these cases argue that RSA

662:5, the statute that sets the districts for the House of Representatives, is unconstitutional and all request injunctive relief prohibiting an election using those the districts established in RSA 662:5. The likelihood of confusion and duplicative efforts if the Petitioners prevail militates strongly in favor of holding off on opening the filing period.

As explained below, the Petitioners are likely to succeed on the merits of some or all of their challenges to RSA 662:5; and if the filing period begins as scheduled, there is a great likelihood of irreparable harm. Moreover, to the extent it is relevant to the consideration of whether to grant preliminary relief; there is little harm in delaying the filing period for as many as three weeks; and the public interest would be best served by waiting until the Court has ruled on the merits of the Petitioners' claims.

### **FACTS**

1. Collectively, the Petitioners in these matters have challenged RSA 662:5 under both the State and Federal Constitutions. The specifics of their allegations are in the Appendix filed with the Interlocutory Transfer Statement. In part, they argue that RSA 662:5 deprives dozens of towns and city wards, and the residents of those towns and wards, the rights granted to them by the New Hampshire Constitution in that those towns and wards do not constitute their own legislative districts but are instead combined in large, at-large, multi-member districts. They also argue, among other things, that RSA 662:5 fails to properly account for communities of interest, combines certain towns that are not contiguous, and combines certain city wards and a neighboring town so as to deprive the ward's residents of their constitutional rights.

2. The parties' briefs on the merits of the Petitioners' claims are due on May 23 with responses due May 29, and oral argument is scheduled for June 6. June 6 is also the day that,

under RSA 655:14, candidates for the New Hampshire House may begin filing papers to run for office.

3. It is, therefore, highly unlikely, if not impossible, that the merits of this matter will be resolved before the beginning of the filing period.

4. If the Petitioners prevail and RSA 662:5 is declared unconstitutional, the election will not be held using the districts set forth in that statute. Some other redistricting plan – one that comports with constitutional requirements – will have to be put in place. In some if not most parts of the State, the districts will be very different.

5. If that happens and if candidates have filed for office using the districts in RSA 662:5, some number will have to re-file in proper districts. Those new districts may have different boundaries and different district numbers; and they may bear little resemblance to those contained in RSA 662:5. The possibilities and permutations are endless, and the level of confusion this could cause is limitless.

### **DISCUSSION**

6. A preliminary injunction is appropriate when the party seeking relief is likely to succeed on the merits and there is no adequate remedy at law. The latter factor is sometimes stated as requiring that the party seeking relief is likely to suffer an irreparable injury if relief is not granted. *See, e.g., N.H. Dep't of Envtl. Servs. v. Mottolo*, 155 N.H. 57, 63 (2007). The Court also must consider whether injunctive relief is in the public interest and whether the granting the injunction may cause harm to others that would be greater than the harm in denying relief. *See, e.g., UniFirst Corp. v. City of Nashua*, 130 N.H. 11, 13-14 (1987).

7. The irreparable injury to the Petitioners who may want to run for seats in the House of Representatives is described above. The redrawing of district is highly likely to create significant confusion to both the candidates and the public.

8. With respect to the likely success on the merits, the parties will be filing their merits briefs on May 23, at which time the full positions of all of the parties will be presented to the Court. At this point, it undisputed that the overwhelming majority of Petitioners either are (or live in) municipalities that are large enough to constitute their own representative districts, but are not their own districts under RSA 662:5.

9. Indeed, it is undisputed that more than one quarter of the residents of the State live in such municipalities despite the clear constitutional mandate in Part II, Article 11, of the New Hampshire Constitution that any town or ward that is large enough should be its own representative district. Given the foregone or unconsidered approaches the Legislature could have taken that would have complied with the Federal Constitution and been less violative of the State Constitution, some of the Petitioners are likely to succeed on the merits of their claims that RSA 662:5 is unconstitutional.

10. On the balance of harms, there is some leeway in the schedule for getting ballots prepared and distributed to comply with State and Federal requirements. Counsel for the Secretary of State informed all of the other parties that opening a filing period as late as June 26 and running through July 6 would allow the ballot preparation and distribution process to be completed in compliance with the various statutory requirements.

11. Finally, the public interest clearly is served by having all parts of the election process proceed under a system that meets appropriate constitutional requirements.

12. Counsel for all of the Petitioners join in the relief requested in this Motion.

Counsel for the Secretary of State and the House of Representatives do not concur.

WHEREFORE the Petitioners request that the Court enter an order enjoining the opening of the filing period for the New Hampshire House of Representatives contained in RSA 655:14 pending resolution of the merits of the Petitioners' constitutional claims or further order of the Court, and grant such other relief as is just and proper.


Respectfully submitted,

HON. MARY JANE WALLNER, ET AL.

By their Attorneys

SULLOWAY & HOLLIS, P.L.L.C.

Dated: May 21, 2012

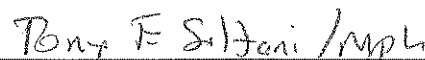
  
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CERTIFICATE OF SERVICE

I hereby certify, that on this 21<sup>st</sup> day of May, 2012 the within document was forwarded via U.S. mail to Anne M. Edwards, Associate Attorney General, Stephen LaBonte, Assistant Attorney General, Richard Lehmann, Esquire, David Vicinanza, Esquire, Anthony Galdieri, Esquire, Peter V. Millham, Esquire, Matthew D. Huot, Esquire, Danielle L. Pacik, Esquire, Thomas J. Donovan, Esquire, Allan B. Krans, Esquire, Tony Soltani, Esquire and Jason B. Dennis, Esquire.

  
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