

**STATE OF NEW HAMPSHIRE
SUPREME COURT**

DOCKET NO: 2012-0338

City of Manchester, et al

v.

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

City of Concord

v.

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

Honorable Mary Jane Wallner, et al

v.

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

Town of Gilford, et al

v.

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

Honorable Marshall Lee Quant, et al

v.

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

**MEMORANDUM OF LAW IN OPPOSITION TO
THE SPEAKER'S CHALLENGE TO JURISDICTION**

NOW COMES the Petitioners, Honorable Marshall Lee Quant, et al, in the above-captioned matters, by and through their attorneys, The MuniLaw Group and objection to the brief filed by the Speaker of the House and jointed by the Secretary of State challenging the jurisdiction of this court and says as follows:

I- FACTS

The facts in this case remain uncontested and the record speaks for itself.

II- ARGUMENT

A- The Petitioners in this matter associate themselves with the briefs and

memoranda filed by the remaining petitioners and incorporate their arguments by reference.

B- The Speaker, in an ironic twist, appears to challenge the ability of any person or entity in the state of New Hampshire to be a party to this action except himself, without any authority granted by the House of Representatives. It is the position of the petitioners in this matter that every voter in New Hampshire is entitled to challenge the validity of RSA 662:5 as unconstitutional for various grounds. One such ground is the violation of the 2006 amendment to Part II, Article 11 of the New Hampshire Constitution. The balance of the challenges are constitutional in nature as elucidated by the New Hampshire Supreme Court in that they violate various provisions of the United States and the New Hampshire Constitutions in requiring the preservation of the “one person-one vote” principle. The court observed in Burling that because of the New Hampshire’s large House of Representatives, and relatively small population, a small number, by itself can constitute a major deviation. At that time, the Supreme Court held that a differential of 31 persons will constitute a one percent (1%) deviation. After the 2010 decennial census, only a population of 33 people can constitute a one percent (1%) deviation.

The speaker attempts to exclude certain parties to this particular action claiming they live in a ward or town which has been given one or more freestanding seats. He ignores that the compound method used by him was roundly rejected by this court. The court also held that certain methods were proposed as potentially acceptable as long as within the “reasonable proximity” to the ideal number. One such method was the

component method and the other was to use “the deviation for a floterial district is the same as the method for calculating the deviation for a single-member district.” See Id at 54. In short the method used by the House, called the aggregate method in calculating the deviation for floterial districts is, in the words of the Supreme Court of New Hampshire “misleading” See Id Supra The speaker challenges the standing of the Honorable Leo Pepino, Steven Valencourt, Irene Messier of Manchester, claiming that their multi-ward district received its own representative or representatives in addition to two or three floterial representatives. However, this would require the wards in their districts to be merely perfect divisions. Leftover populations of Wards 4, 5, 6, and 7 to be nearly perfectly divisible by 4; the populations of Wards 8 and 9 to be divisible nearly perfectly by 2 and the populations of Wards 10, 11 and 12 to be nearly perfect divisible by 2. The speaker does not seem to understand the concept of one person-one vote and continues to insist that the aggregate method deemed as misleading and unconstitutional cannot be the basis for such a deviation. As the Supreme Court held in Burling, such a method would magnify the voting powers of one group and necessarily diminish the voting powers of a subsidiary group. Similarly, the speaker claims that representatives Marshall Lee Quant and Matthew Quant do not have standing since the town of Exeter received four (4) representative seats plus one floterial district with another municipality. Again, for the same reasons, this argument is misguided. The speaker advances a similar argument for the Honorable Julie E. Brown of Rochester and Representative James Pilliod of Belmont. In order for that to be accurate, Representative Brown’s and Representatives Pilliod’s district overage population must be necessarily divisible equally by two, which they are

not. Representatives James MacKay and Peter Schmidt reside in Concord and Dover respectively. Again, the overage for the floterial overlay district has been combined with other wards or towns. Overage population must be nearly perfectly divisible by 3 and by 2 respectively. The Supreme Court has required that they are politically neutral to the extent possible and not seek to disenfranchise any particular group based on political or other specific agenda. Similar example to that given by the Supreme Court in Burling at 155 in that a floterial with a population of 10,000 under the latter methodology would yield a deviation of two hundred twenty-three percent (223%). The entire state is plagued by such gamesmanship and gerrymandering.

Out of the 152 towns and wards in the state, 59% are denied their constitutional right under Part II, Article XI of the Constitution as amended in 2006. Similarly, different segments of the population's have been subjected to floterial districts so as to magnify the voting power of some groups by at times nearly 100% .

The issue of the floterial districts must be revisited by this court. If they are to be allowed, the court is called upon to decide if a non-weighted mechanism of determining deviation is at all appropriate and if so, what limits may be imposed on the standard deviation if one of the two accepted methodologies of calculating the deviation percentile would be acceptable to this court. Certainly the method used by the speaker is not.

WHEREFORE, the Petitioners, Honorable Marshall Lee Quant, et al, pray that this honorable court:

- A- Deny the speaker's challenge to jurisdiction;
- B- Grant such further relief as this court deems just and proper.

Respectfully submitted,
Honorable Marshall Lee Quant,
Honorable Tony F. Soltani,
Honorable Matthew Quant,
Honorable Leo Pepino,
Honorable Julie Brown,
Honorable Steve Vaillancourt,
Honorable Irene Messier,
Honorable James Pilliod, MD,
Honorable James MacKay, PhD,
Mary Ellen Moran-Siudut, M.S.,
Honorable David Pierce,
Honorable Peter Leishman.
Nicholas J. Lavasseur,
Honorable Shaun Doherty ,
Honorable Peter Schmidt
By and through their attorney,

THE MUNILAW GROUP,

Signed: _____

Jason B. Dennis
The MuniLaw Group
P.O. Box 300
Epsom, NH 03234-0300
(603) 736-3320
Admissions for this writer:
MA State Bar 675078
NH State Bar 19865
NH Federal Bar

Signed _____

Tony F. Soltani, *pro se*
The MuniLaw Group
P.O. Box 300
Epsom, NH 03234-0300
(603) 736-3320
Admissions for this writer:
ME State Bar 7363
NH State Bar 8837
NH Bkr. Bar 0477
ME Federal Bar
NH Federal Bar
First Circuit Bar 23848

CERTIFICATE OF SERVICE

I hereby certify that this motion was served on all parties of record by electronic filing, by agreement on this 21st day of May, 2012.

Jason B. Dennis