

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Docket No. 2022-0184

Theresa Norelli, Christine Fajardo, Matt Gerding, Palana Hunt-Hawkins, and Mackenzie Murphy

v.

David Scanlan in his official capacity as the New Hampshire Secretary of State

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**SECRETARY OF STATE'S STATEMENT REGARDING  
MATERIAL FACTS**

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David Scanlan, New Hampshire Secretary of State, by and through his counsel, the New Hampshire Office of the Attorney General, in response to the Court's April 11, 2022, order submits the ordered statement identifying which, if any, of the material facts alleged in the Plaintiffs' complaint are disputed by the Secretary of State. Any allegation not expressly admitted is denied.

1. The New Hampshire Constitution defines the powers and obligations of the branches of government. Each branch is obligated to respect and defer to the enumerated powers of coequal branches of government, and to refrain from making determinations outside the jurisdictional scope of that branch or entity.

2. To the extent that the paragraphs contained in the Complaint's Introduction (paragraphs 1-7) contain factual allegations differentiated from the facts asserted in paragraphs 19-41 and a response is required, the allegations are denied.

3. The Secretary of State admits that the plaintiffs' addresses as contained in paragraphs 8-12 are consistent with election records within the control of the Secretary's Office. To the extent that any additional material facts are asserted and a response is required, the allegations are denied.

4. The Secretary of State admits the factual assertions in paragraph 13 to the degree that the Secretary, personally and through the conduct of his employees and agents, acted under color of state law at all times and regarding all actions related to redistricting that are relevant to this action.

5. Relative to paragraph 14, the Secretary of State admits that RSA 491:7 gives the superior court jurisdiction to hear matters concerning New Hampshire RSAs contained in Title LXIII: Elections, containing the Section 662:1, concerning the U.S. Representative Districts.

6. The allegations set forth in paragraphs 15 and 16 are denied.

7. The Secretary of State admits the factual assertions in paragraph 17.

8. The Secretary of State admits the factual assertions in paragraph 18 relating to Plaintiff Murphy residing in Merrimack, and the judicial district of Hillsborough South being an appropriate venue as it relates to Merrimack. To the extent that any additional material facts are asserted and a response is required, the allegations are denied.

9. The Secretary of State admits the factual assertions in paragraphs 20 and 25.

10. A number of the factual assertions posed in the Plaintiffs' complaint—whether material to the underlying claims or not—are not within the Secretary of State's jurisdictional realm. As such, while some of the factual assertions may be commonly referenced or ascertainable, the

Secretary of State has no professional, statutory, or constitutional role or authority that imbues him with the capacity to determine the accuracy of those factual assertions.

11. As such, the Secretary of State has no grant of authority or knowledge pertaining to the information in paragraphs 19, 21, 22, 23, 24, 26, 28 (in part, except as it relates to deviation as discussed below), 29, 31, 33 (in part, except as it relates to the competitiveness of congressional districts as discussed below), 34, 35, 36, and 37. To the extent that a response is required, the allegations are denied.

12. The assertion in paragraph 27, concerning the 2010 population data being obsolete, sets forth a legal conclusion to which no response is required. To the extent that a response is required, the allegations are denied.

13. The assertion in paragraph 28, concerning the deviation from the ideal 2020 population, sets forth a legal conclusion to which no response is required. To the extent that a response is required, the allegations are denied.

14. The assertion in paragraph 30, concerning the existing configuration of New Hampshire's congressional districts, sets forth a legal conclusion to which no response is required. To the extent that a response is required, the allegations are denied.

15. The assertion in paragraph 32, concerning the "political branches'" attempts to engage in the redistricting process, sets forth a legal conclusion to which no response is required. To the extent that a response is required, the allegations are denied.

16. The assertion in paragraph 33, concerning the competitiveness of elections in congressional districts, sets forth a legal conclusion to which no response is required. To the extent that a response is required, the allegations are denied.

17. The assertion in paragraph 38, concerning the likelihood that the Governor and General Court will reach agreement on a congressional district map, sets forth speculation to which no response is required. To the extent that a response is required, the allegations are denied.

18. The assertion in paragraph 39, concerning the possibility to enact legislation relative to redistricting, sets forth a legal conclusion to which no response is required. To the extent that a response is required, the allegations are denied.

19. While the Secretary of State admits that the statutory filing period ends June 10, 2022, as asserted in paragraph 40, the remaining statements set forth legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

20. The assertion in paragraph 41, concerning the necessity of judicial intervention in the redistricting process, sets forth a legal conclusions to which no response is required. To the extent that a response is required, the allegations are denied.

21. To the extent that a material fact is presented, the Secretary of State admits the accuracy of the quoted constitutional provisions contained in paragraphs 43, 48, 49, and 50. To the extent that any additional response is required for paragraphs 42-58, the allegations are denied.

WHEREFORE Secretary of State Scanlan respectfully moves that this honorable Court:

A. Consider this statement of response only as it relates to the statement of material facts disputed per the Court's April 11, 2022, order, and not as the ordered brief, due April 25,

2022, addressing the Court's posed preliminary questions.

Respectfully submitted,

STATE OF NEW HAMPSHIRE  
DAVID SCANLAN, SECRETARY OF STATE

By his attorney,

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: April 20, 2022



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**Certification**

I certify that a copy of the foregoing was sent this day, first class postage prepaid, to Steven Dutton, 900 Elm Street, Manchester; and Paul Twomey, P.O. Box 623, Epsom, counsel of record.

Date: April 20, 2022



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