

STATE OF NEW HAMPSHIRE

STRAFFORD COUNTY

SUPERIOR COURT

City of Dover et. al.

v.

David Scanlan, Secretary of State for New Hampshire et. al.

Docket No. 219-2022-CV-00224

**PLANTIFFS' RESPONSES TO DEFENDANTS' STATEMENT OF MATERIAL FACTS  
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, City of Dover, New Hampshire (“Dover”), City of Rochester, New Hampshire (“Rochester”), Debra Hackett, Rod Watkins, Kermit Williams, Eileen Ehlers, Janice Kelble, Erik Johnson, Deborah Sugerman, Susan Rice, Douglas Bogen, and John Wallace, by and through their undersigned counsel, respectfully submit the following responses to the Defendants’ Statement of Material Facts In Support of Defendants’ Motion for Summary Judgment:

1. The New Hampshire Legislature reapportioned the 400 State House of Representatives districts following the 2020 federal Census through House Bill 50 (“HB 50”). See RSA 662:5 (eff. Mar. 23, 2022); see also *Bill Docket – HB50*, N.H. Gen. Court, *available at* [http://gencourt.state.nh.us/bill\\_Status/billinfo.aspx?id=610&inflect=2](http://gencourt.state.nh.us/bill_Status/billinfo.aspx?id=610&inflect=2).

**Plaintiffs’ Response: Undisputed**

2. The individual plaintiffs reside in the City of Dover Ward 4, the City of Rochester Ward 5, the Town of Barrington, the Town of Hooksett, the Town of Lee, the Town of New Ipswich, or the Town of Wilton. See Pls. Compl., ¶¶6-15.

**Plaintiffs' Response: Undisputed**

3. RSA 662:5, as amended by HB 50, does not provide a single-member district to Dover Ward 4, Rochester Ward 5, Barrington, Hooksett, Lee, New Ipswich, or Wilton. See RSA 662:5 (eff. Mar. 23, 2022).

**Plaintiffs' Response: Undisputed**

4. According to the United States Census for 2020, Dover Ward 4 had a population of 5,439. Pls. Compl., ¶60; Defs. Ans., ¶60.

**Plaintiffs' Response: Undisputed**

5. According to the United States Census for 2020, Rochester Ward 5 had a population of 5,419. Pls. Compl., ¶62; Defs. Ans., ¶62.

**Plaintiffs' Response: Undisputed**

6. According to the United States Census for 2020, Lee had a population of 4,520. Pls. Compl., ¶64; Defs. Ans., ¶64.

**Plaintiffs' Response: Undisputed**

7. According to the United States Census for 2020, Barrington had a population of 9,326. Pls. Compl., ¶66; Defs. Ans., ¶66.

**Plaintiffs' Response: Undisputed**

8. According to the United States Census for 2020, New Ipswich had a population of 5,204. Pls. Compl., ¶70; Defs. Ans., ¶70.

**Plaintiffs' Response: Undisputed**

9. According to the United States Census for 2020, Wilton had a population of 3,896. Pls. Compl., ¶72; Defs. Ans., ¶72.

**Plaintiffs' Response: Undisputed**

10. According to the United States Census for 2020, Hooksett had a population of 14,871. Pls. Compl., ¶77; Defs. Ans., ¶77.

**Plaintiffs’ Response: Undisputed**

11. According to the United States Census for 2020, the State of New Hampshire had a population of 1,377,529. See Defs. App’x at 14.

**Plaintiffs’ Response: Undisputed**

12. The Plaintiffs “have not asserted a stand-alone cause of action on” the basis of “the population deviation of the enacted plan exceed[ing] 10%.” Defs. App’x at 70-71.

**Plaintiffs’ Response: Undisputed that Plaintiffs have not brought a “stand-alone cause of action” on the basis of the population deviation, however, disputed to the extent this fact is meant to suggest population deviation is not an issue in this case expressly raised in the Complaint. A state redistricting plan that exceeds a 10% population deviation is prima facie unconstitutional. *See City of Manchester v. Secretary of State*, 163 N.H. 689, 703-04 (2012); *Brown v. Thompson*, 462 U.S. 835, 842-43 (1983). In addition, Part II, Article 11 references “deviation” as part of the Part II, Article 11 analysis.**

13. The Plaintiffs’ Complaint included proposed redistricting maps created by Map-A-Thon (the “Map-a-Thon Redistricting Plan”). See Defs. App’x at 12-33.

**Plaintiffs’ Response: Undisputed**

14. The Map-a-Thon Redistricting Plan generated redistricting maps county by county. Defs. App’x at 62.

**Plaintiffs’ Response: Undisputed**

15. No county map in the Map-a-Thon Redistricting Plan depended on the maps for other counties. Defs. App’x at 62-63).

**Plaintiffs' Response:** For purposes of Part II, Article 11's dedicated House seat requirement, this assertion is undisputed in that a change to Map-a-Thon's individual House districts in one county would not necessarily affect a district in another county. However, this assertion is disputed as a matter of law with respect to the issue of relative population deviation, which in New Hampshire is analyzed statewide and a change in any one district has a relative impact on others. *See generally* Ex. 1 to Plaintiffs' Mem. of Law filed in Support of Summary Judgment, and specifically Exhibits G and H to same, analyze and explain the House apportionment proposed by Map-a-Thon with relative population deviation expressed statewide (Exhibit G to Ex. 1), as well as the same information concerning House apportionment enacted in Laws 2022, ch. 9 (Exhibit H to Ex. 1).

16. HB 50 did not provide a single-member district to every town and city ward with a population greater than or within a reasonable deviation of 3,444. See Defs. App'x at 34-55.

**Plaintiffs' Response: Undisputed**

17. The Map-a-Thon Redistricting Plan did not provide a single-member district to every town and city ward with a population greater than or within a reasonable deviation of 3,444. See Defs. App'x at 12-33.

**Plaintiffs' Response: Undisputed**

18. It is not possible to create a New Hampshire House of Representatives redistricting map that provides at least one single-member district to every town or ward with a population greater than or within a reasonable deviation of 3,444. Defs. App'x at 68, Line 11 to 69, Line 4.

**Plaintiffs' Response: Undisputed in the sense that neither plaintiffs nor their expert witness are currently aware of any such method of House apportionment based on the results of the 2020 federal decennial census.**

19. Under HB 50, each of Dover Ward 4, Rochester Ward 5, Barrington, Hooksett, Lee, New Ipswich, and Wilton did not receive a single-member district. See Defs. App'x at 46 (Hillsborough County), 49 (Merrimack County), 56 (Strafford County).

**Plaintiffs' Response: Undisputed if referring to House Bill 50 enacted as Laws 2022, ch. 9.**

20. Under the Map-a-Thon Redistricting Plan, Dover Ward 4, Rochester Ward 5, Barrington, Hooksett, Lee, New Ipswich, and Wilton each received a single-member district. See Defs. App'x at 24 (Hillsborough County), 27 (Merrimack County), 32 (Strafford County).

**Plaintiffs' Response: Undisputed**

21. The Map-a-Thon Redistricting Plan did not provide a single-member district to every municipality that had a single-member district under HB 50. Compare Defs. App'x at 21, 32 (Map-a-Thon Redistricting Plan does not provide Durham (population of 15,490) or Campton (population of 3,343) with single-member districts) with Defs. App'x at 43, 54 (HB 50 provides Durham and Campton with single-member districts).

**Plaintiffs' Response: Undisputed if referring to House Bill 50 enacted as Laws 2022, ch. 9.**

22. According to the United States Census for 2020, Durham had a population of 15,490. Defs. App'x at 54.

**Plaintiffs' Response: Undisputed.**

23. Durham's 2020 population of 15,490 is more than 60% bigger than the next most populous town or ward in Strafford County. See Defs. App'x at 32, 54.

**Plaintiffs' Response: Undisputed to the extent this assertion compares the total population of Durham in the 2020 federal decennial census against the populations of Dover Ward 4 and Rochester Ward 5 based on this same census information. By way of further response, this characterization by Defendants is potentially misleading in that the Cities of Dover and**

**Rochester each contain more than double the population of Durham based on the 2020 federal decennial census. *See generally* Ex. 1 to Plaintiffs’ Mem. of Law filed in Support of Summary Judgment, and specifically Exhibits G and H to same, analyze and explain the House apportionment proposed by Map-a-Thon with relative population deviation expressed statewide (Exhibit G to Ex. 1), as well as the same information concerning House apportionment enacted in Laws 2022, ch. 9 (Exhibit H to Ex. 1). Plaintiffs also object to the relevancy/materiality of Durham population data.**

**PLAINTIFFS’ STATEMENT OF ADDITIONAL MATERIAL FACTS:**

Plaintiffs believe certain other facts are material to the issues raised in the Defendants’ joint motion for summary judgment. Plaintiffs have separately moved for summary judgment. Plaintiffs incorporate herein the Plaintiffs’ Statement of Undisputed Facts In Support of Motion for Summary Judgment and the record citations for same. It is Plaintiffs’ understanding that Defendants are in the process of responding to Plaintiffs’ assertions of fact and, under Superior Court Rule 12(g)(6), after filing of this document the parties will prepare a consolidated statement of facts for “both the original motion for summary judgment and the cross-motion containing the respective statements of material facts and responses thereto”, for the benefit of the Court. As such, to avoid unnecessary duplication Plaintiffs have not reproduced herein their assertions of fact in support of summary judgment to the Plaintiffs.

Respectfully submitted,

**THE CITY OF DOVER, NEW HAMPSHIRE**

Dated: January 19, 2024

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**THE CITY OF ROCHESTER, NEW HAMPSHIRE**

Dated: January 19, 2024

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Dated: January 19, 2024

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on all counsel of record through the Court's electronic filing system. A Word version copy of the foregoing responses to the Defendants' statement of material facts is also being emailed this day directly to counsel of record for the defendants.

Dated: January 19, 2024

By:  /s/ Joshua M. Wyatt  
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