

The State of New Hampshire

MERRIMACK COUNTY

SUPERIOR COURT

GEORGE MAGLARAS, ROBERT J. WATSON, and DEANNA ROLLO

v.

DAVID M. SCANLON, in his official capacity as the ACTING NEW HAMPSHIRE
SECRETARY OF STATE, and
JOHN FORMELLA, in his official capacity as the NEW HAMPSHIRE ATTORNEY
GENERAL

Docket No.: 217-2024-CV-00247

ORDER

The plaintiffs, George Maglaras, Robert J. Watson, and Deanna Rollo, bring this action against the defendants, David Scanlan and John Formella in their official capacities as the acting Secretary of State and Attorney General, respectively, arising out of the reapportionment of county commissioner districts in 2023. Specifically, the plaintiffs bring claims against the defendants for violating Part I, Articles 11 and 15 of the New Hampshire Constitution. The defendants move to dismiss. The plaintiffs object. The Court held a hearing on the matter on June 13, 2024. For the following reasons, the motion to dismiss is GRANTED.

I. Standard

When ruling on a motion to dismiss, the Court considers “whether the allegations in the plaintiff’s pleadings are reasonably susceptible of a construction that would permit recovery.” Clark v. N.H. Dep’t of Emp’t Sec., 171 N.H. 639, 645 (2019). The Court assumes the facts from “the plaintiff’s pleadings to be true and construe[s] all

reasonable inferences in the light most favorable to [him].” Id. However, the Court “need not assume the truth of statements in the plaintiff’s pleadings that are merely conclusions of law.” Id. The Court ultimately engages “in a threshold inquiry that tests the facts in the complaint against the applicable law.” Id. The Court should grant the “motion to dismiss if the facts pleaded do not constitute a basis for legal relief.” Id.

II. Background

In February 2022, the legislature approved HB 54 establishing the apportionment of county commissioner districts, among other elected offices. (Compl. ¶ 38.) HB 54 established these districts consistent with the latest federal decennial census. (Id. ¶ 40.) Pursuant to HB 54, the three county commissioners for Strafford County would be elected at large. (Id. ¶ 45.) The Governor signed HB 54 in February 2022 and the new county commissioner districts were effective for the November 2022 elections. (Id. ¶¶ 46-47.)

The plaintiffs were elected Strafford County Commissioners in November 2022. (Id. ¶ 47.)

In 2023, the legislature passed and the Governor signed HB 75, effective October 3. (Id. ¶ 53.) HB 75 redistricted Strafford into three county commissioner districts. (Id. ¶ 52.) The districts, as established in HB 75, are not at large, a departure from the tradition of Strafford County commissioner districts since 1865. (Id. ¶ 19.)

III. Analysis

The defendants move to dismiss both Counts I and II. The Court addresses each count in turn.

Count I: Violation of Part I, Article 11

The defendants argue that the New Hampshire Constitution does not prohibit the legislature from creating or altering county commissioner districts at any time. The plaintiffs contend that the legislature lacks constitutional authority to reapportion until after the next federal census because the constitution ensures stability in all elections. The Court addressed these arguments in a previous order on the plaintiffs' motion for a preliminary injunction. See 217-2024-CV-00247, Court Doc. 15. In reviewing the filings relating to the defendants' motion to dismiss, the Court's analysis is unaltered.

"The New Hampshire Constitution directs the legislature to reapportion the house and the senate at its regular session following the federal decennial census." In re Below, 151 N.H. 135, 137 (2004) (citing N.H. CONST. pt. II, arts. 9, 11, and 26). "Once the legislature has enacted a valid apportionment law, no future act may be passed by it until after the next regular apportionment period prescribed by the Constitution." Id.

This is contrasted with the office of the county commissioner, which is "purely of statutory origin." Opinion of the Justices, 99 N.H. 540, 541 (1955). Accordingly, there is no constitutional provision requiring decennial reapportionment even if such has been the practice and policy of the legislature. Policy and procedure do not impose a constitutional requirement on the legislature to reapportion county commissioner districts decennially.

In Reynolds, the United States Supreme Court considered whether Alabama's failure to reapportion its state legislature districts in over sixty years violated the Equal Protection Clause of the Fourteenth Amendment. Reynolds v. Sims, 377 U.S. 533, 537 (1964). The Court's main concern was the implications apportionment had on political

equality, the principle underlying one person, one vote. Id. at 558. Though the Court recognized the importance of stability, the Court did not state that reapportionment more frequently than ten years would violate the federal constitution. Id. at 583 (“[W]e do not mean to intimate that more frequent reapportionment would not be constitutionally permissible or practically desirable.”).

In short, the plaintiffs’ allegations do not show that the defendants violated Part I, Article 11 of the New Hampshire Constitution. The plaintiffs’ complaint is not “reasonably susceptible of a construction that would permit recovery.” Clark, 171 N.H. at 645. Accordingly, Count I is DISMISSED.

Count II: Violation of Part I, Article 15

The defendants contend that the plaintiffs do not allege a recognized legal right that entitles them to due process protection. The plaintiffs assert that they have a due process right to vote in, be elected in, and serve in constitutionally created districts.¹

Part I, Article 15 of the New Hampshire Constitution provides that “[n]o subject shall be . . . deprived of his property, immunities, or privileges . . . or deprived of his life, liberty or estate, but by . . . the law of the land.” The “law of the land” refers to due process of law. Grant v. City of Rochester, 168 N.H. 640, 647 (2016). Addressing procedural due process claims calls for a two-part analysis. Id. First, the Court determines “whether the individual has an interest that entitles him or her to due process protection; and second, if such an interest exists, [the Court] determine[s] what process is due.” Id.

¹ Counsel for the plaintiffs’ clarified in the June 13, 2024 hearing that Commissioners Maglaras and Rollo are not running against each other in the same district. In its previous order, the Court understood the complaint to allege that HB 75 forced Commissioners Maglaras and Rollo to run against each other in the primary.

Here, the plaintiffs have not pleaded sufficient facts to demonstrate they have an interest that entitles them to due process protection. The plaintiffs have not been deprived of their right to be elected or vote. Although the plaintiffs assert that they have an interest in voting, being elected, and serving in constitutionally created districts, the Court has dispensed with the notion that HB 75 violates the New Hampshire Constitution. Accordingly, Count II is DISMISSED.

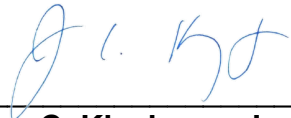
IV. Conclusion

For the foregoing reasons, the defendants' motion to dismiss is GRANTED.

SO ORDERED.

July 13, 2024

Date



John C. Kissinger, Jr.
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 07/15/2024