

New Hampshire House Redistricting 2022:

Background Facts, Law, and Other
Considerations

April 27, 2022

By: Office of City Attorney

Legal Requirements of House Redistricting

- Federal & State Constitution:
 - “overriding objective” must be “substantial equality of population” among districts;
 - Using “ideal population” (i.e. state population divided by the number of districts), must measure deviations to ensure one person/one vote;
 - 10% deviation range is presumptively compliant (+/- 5% on either side).
- State Constitution:
 - Whenever a ward “is within a reasonable deviation from the ideal population for one or more representative seats the . . . ward shall have its own district of one or more representative seats”. *See State Constitution, Part II, Article 11.*
- State Statute/Policy:
 - State redistricting occurs within compartmentalized counties by virtue of the county delegation statutes (RSA 24:1 et seq).
- Considering/maintaining “communities of interest” is not a constitutional requirement, though can be a discretionary policy consideration.

New Hampshire Constitutional Decisions

- Burling v. Speaker of the House:
 - 2002 decision challenging house redistricting, found invalid because of deviation;
 - NH Supreme Court created redistricting plan that included multi-member districts (but no floterials);
 - After Burling, State Constitution amended in 2006 to include current requirements for towns/wards with sufficient population to have dedicated house district(s).
- City of Manchester et al v. Secretary of State:
 - 2012 decision of the New Hampshire Supreme Court in action brought by various plaintiffs, including Cities of Manchester and Concord;
 - Dover participated as amicus curiae;
 - Rejected claims concerning city wards not receiving dedicated house representative;
 - State's justification was that it first and foremost must comply with the federal 10% requirement and the alternatives proposed by the Cities did not do so.

HB 50 (2022): Brief Legislative History

- HB 50 repeals and reenacts RSA 662:5, State Rep. Districts.
- House Bill 50 was introduced January 6, 2021 and referred to redistricting committee.
- Census results received later in 2021.
- Significant public comments received, including Dover-specific comments and from Map-a-Thon Project Coalition identifying proposed maps (multiple submissions).
- March 10 through 17 (2022): House/Senate adopt HB 50.
- March 23, 2022: HB 50 signed into law.

- Specific to Dover, HB 50 provides:
 - One dedicated district for Wards 1, 2, 3, 5, and 6 (House District Nos. 13-18) with one House representative;
 - One multi-ward floterial district for these same wards to elect three House representatives (House District No. 21);
 - One multi-town district consisting of Dover Ward 4, Lee, and Madbury to elect three House representatives (House District No. 11);
 - One floterial district consisting of Dover Ward 4, Durham, Lee, and Madbury to elect one House representative (House District No. 20).
- Strafford County contains six apparent violations of the State Constitution, including the failure to provide Dover Ward 4 its own dedicated district.
- Deviation calculated by State (for Strafford Co.) appears to be 9.16%, range being -4.20% to 4.97%.

Map-A-Thon Map

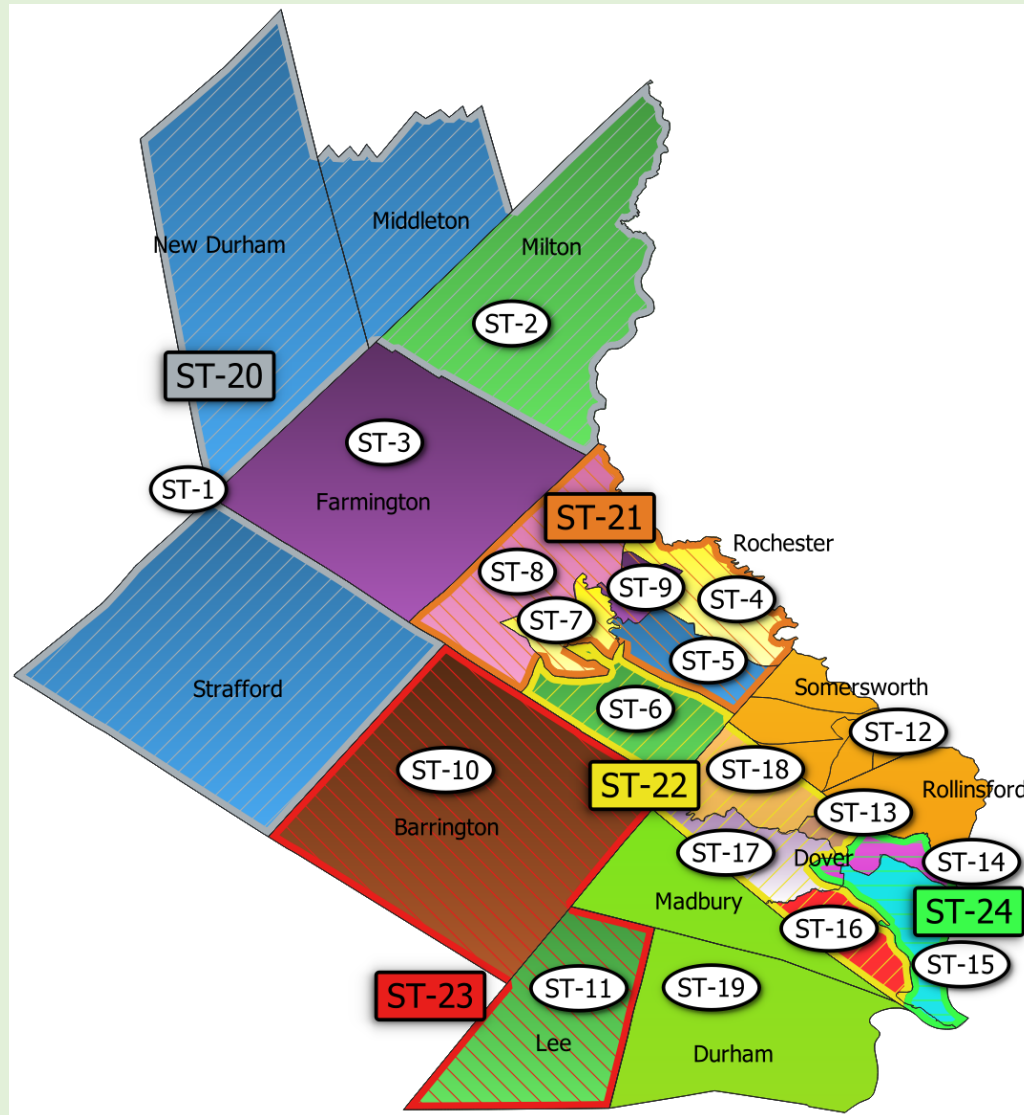
- Non-partisan coalition created various maps, including a NH house map.
- Takes account of communities of interest.
- Complies with federal one person/one vote.
- Aims to minimize State Constitutional violations concerning dedicated districts
 - Original Map-A-Thon Map still contained 45 “forced” violations.
- Strafford County:
 - Map A Thon originally submitted a map to the legislature for Strafford County showing only 2 “forced” State Constitutional violations and giving each of Dover’s wards a dedicated house representative.

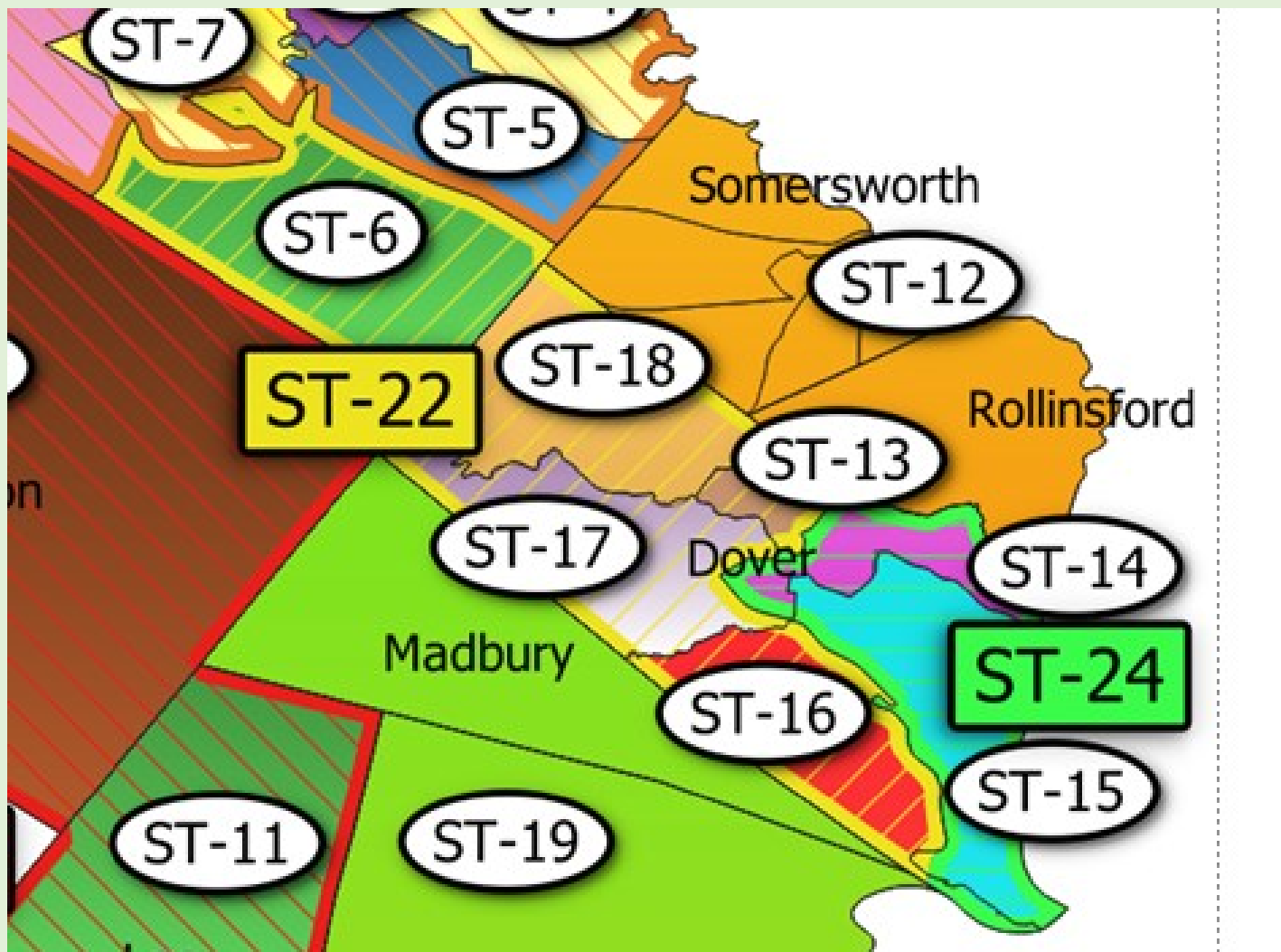
* Note the Democratic Party also created a proposed Strafford County map, but it contained one more State Constitutional violation than the Map-A-Thon map.

Updated Map-A-Thon (Post-local redistricting)

	# of Violations	
County	Map-a-Thon Maps	HB50 Maps
Belknap	6	6
Carroll	3	3
Cheshire	3	5
Coos	0	0
Grafton	3	5
Hillsborough	4	6
Merrimack	5	7
Rockingham	10	12
Strafford	3	7
Sullivan	3	3
Total	40	54
	14 more violations in HB50 Maps	

Map-A-Thon Map Strafford (Updated)





- Each of Dover's wards has one dedicated representative (ST-13, ST-14, ST-15, ST-16, ST-17, ST-18).
- ST 22 is a floterial with Dover wards 1, 4, 5 and 6 and Rochester ward 3 (3 reps).
- ST 24 is a floterial district with Dover wards 2 and 3 (1 rep).

Legal Claim?

- Next ten years of house representation is likely at issue, though legislature or a Court could conceivably redraw boundaries in the interim.
- Legal challenge would likely take the form of a challenge to constitutionality of statute:
 - Strafford County only?
 - Statewide?

Proving A Claim

- Rational basis review/Courts generally very deferential.
- Legal theory here=failure to minimize violations of State Constitution:
 - There is case law in some out-of-state cases addressing similar situations;
 - Burling: “We [draw a new map in this case] by eliminating floterials and creating as many single-member districts as possible, with as few multi-member districts as necessary.”
- Any Dover challenge in Court would have to be meaningfully distinct from the facts of City of Manchester et al v. Secretary of State.
- Unclear what defense State would argue to justify failure to minimize, but we should assume it will have some kind of analysis to present the Court.
 - EG, “If and only if” type of deviation argument based on text of State Constitution.

Remedy for any Proven Violation

- Assuming a constitutional violation is proven, remedy would be hard to predict with certainty.
- Court could redraw the map itself. In Burling, the Court drew the map and extended the candidate filing period by one month.
- Dover wouldn't necessarily be guaranteed to get dedicated representatives for each ward if at least some "forced" violations in Strafford County persist.
- New map could conceivably reduce the number of districts (State Constitution says at least 375 and no more than 400, per Part 2, Article 9).
- Other factors?

Other Considerations

- Precedential concern?
- Currently unaware if other communities are considering a legal challenge.
- Candidate filing period will begin June 1st per RSA 655:14.
- Venue considerations—Burling accepted action originating in NH Supreme Court.

Questions?