

## Tricia Melillo

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**From:** Phil Hatcher <phil.hatcher@gmail.com>  
**Sent:** Monday, January 31, 2022 11:35 AM  
**To:** Tricia Melillo  
**Subject:** testimony for HB 50

Dear Chairman Gray and the other members of the Senate Election Law and Municipal Affairs Committee,

This is written testimony for the public hearing on Monday January 31, 2022 for HB 50. I plan to also present this testimony in person at the hearing.

I am a resident of Dover, and I was a member of the Open Democracy Map-A-Thon technical mapping team. On the team my focus was on NH House redistricting.

I was disappointed that Sen. Gray's amendment to HB 50 does not address the concerns that I have with the districts proposed for Strafford County. With six eligible towns and wards being denied their own district, I believe the proposal does not serve the residents of the county well. Moreover, I believe the proposal violates the NH constitution.

I am also disappointed in the response that I and others have received when we complain about how Strafford County is treated.

For instance, when Rep. Turcotte introduced the majority's plan for Strafford County in a work session of the House special committee in November, he was asked by a member of the minority why the plan denied a large number of eligible towns and wards their own district, in fact a larger number than the map approved after the 2010 census. He replied that he did not want to get into all the details. I call this the No-Response response.

Then there is what I call the Constitutional response. We are told that we are not reading all of Article 11 of Part 2 of the NH constitution. That if we would only read all of Article 11 then the wisdom of the majority's plan would be revealed to us. Note that this is really just a variant of the No-Response response, because it does not in fact provide a justification for the majority plan.

I have read all of Article 11. I understand that there is conflict between the requirement that large-enough towns get their own district and the requirement that smaller towns be placed in a district with another town. I am not arguing that all eligible towns and wards should get their own district. I understand that sometimes this cannot be done.

And then there is the Supreme Court argument. People tell me that I need to read the 2012 NH Supreme Court opinion that let the legislature's NH House district plan stand. These people seem to think that that court ruling allows the legislature to do whatever they want now. But, I have read the 2012 opinion and I know that that opinion does not apply to the current situation. In that case the court was asked to consider whether the legislature should be required to loosen the population deviation requirements in order to give more towns and wards their own districts. The court decided that it was reasonable for the legislature to prioritize the population deviation over the treatment of towns and wards.

But, today, I am not asking the legislature to consider loosening the population deviations. Instead I am asking you to consider alternative maps for Strafford County that minimize the number of eligible towns and wards that are denied their own district, while still being within the 10% population deviation requirement.

So, the Supreme Court argument is also another variant of the No-Response response. It avoids the question.

Finally, there is the Jigsaw Puzzle argument. Let me explain this rhetorical strategy by example. In Rochester, HB 50 is controversial because it denies Rochester Ward 5 its own district. A supporter of HB 50 might try to justify the treatment of Ward 5 by showing that Ward 5 cannot be treated as it was after the 2010 census, that it cannot be given its own district and then combined with Ward 4 in a floterial, that the population deviations will be too large given the 2020 populations. And then the supporter of HB 50 might show that the population deviations will work if you combine Ward 5 with Milton. And since those two fit together so well, let's now complete the rest of the puzzle around those two pieces.

But this is not a jigsaw puzzle. There are many ways you can fit together the towns and wards of Strafford County, while still fulfilling all the constitutional requirements. And this is known. Joel Anderson, who developed the mapping software used by the House special committee, announced in an August work session of the committee that his tool provided many pre-compiled maps for each county that the committee could review to help guide their selection. And I testified in September at the Strafford County listening session that I had written software that automatically generated district maps that minimized the number of eligible towns and wards that are denied their own district, while meeting all other constitutional requirements. And there are indeed many possible maps. In some counties there are tens of maps, while in other counties there are hundreds of possible maps.

So, please, it is time to drop the rhetorical devices and let's have a real discussion. Please look at the alternative maps available for Strafford County and decide upon criteria to select among them. I recommend that the top-priority criterion should be that the map should be constitutional, which HB 50 is currently not.

As the SB 3 debacle recently showed us, passing unconstitutional laws has consequences. In that case, over 4 million of them. Let's avoid that this time.

Thank you very much for this opportunity to address you.

Phil Hatcher  
Dover, NH  
[phil.hatcher@gmail.com](mailto:phil.hatcher@gmail.com)