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# Committee Report

**CONSENT CALENDAR**

**February 20, 2019**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Election Law to which was referred  
HB 706-FN-A,**

**AN ACT establishing an independent redistricting  
commission. Having considered the same, report the  
same with the following amendment, and the  
recommendation that the bill OUGHT TO PASS WITH  
AMENDMENT.**

**Rep. Wayne Moynihan**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	Election Law
Bill Number:	HB 706-FN-A
Title:	establishing an independent redistricting commission.
Date:	February 20, 2019
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-0597h

### STATEMENT OF INTENT

This bill establishes an independent redistricting commission. Legislators will recall that the decennial census of the United States will occur in 2020. Thereafter, using the new population and other relevant data from the census, each state must undertake the redistricting of its county, state, and federal electoral districts. Heretofore, NH has conducted redistricting in committees composed of members of the NH House and Senate. In NH and in other states the process of redistricting has routinely becomes an often bitterly contested, expensive and litigated, partisan battle. The word frequently used to describe the result is "gerrymandering". This bill creates a framework in statutory law which will enable NH to have the next redistricting process conducted by an independent commission. The bill is designed to have the redistricting process undertaken by 15 citizens, selected from a pool of 45 citizens who fulfill the qualifications set out in the bill, including party, non-party status, and with as little partisan impact as is reasonably possible. The commission is independent but the process continues to involve the Secretary of State, and the elected leadership of both the NH House and Senate. The process leaves the ultimate decision to adopt the commission's plan in the legislature as our NH Constitution requires. 21 other states have adopted an independent process for redistricting. This NH independent redistricting commission will put the interest of voters, constituents, and communities of common interest ahead of purely political considerations.

Vote 20-0.

Rep. Wayne Moynihan  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

Election Law

**HB 706-FN-A**, establishing an independent redistricting commission. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Wayne Moynihan for Election Law. This bill establishes an independent redistricting commission. Legislators will recall that the decennial census of the United States will occur in 2020. Thereafter, using the new population and other relevant data from the census, each state must undertake the redistricting of its county, state, and federal electoral districts. Heretofore, NH has conducted redistricting in committees composed of members of the NH House and Senate. In NH and in other states the process of redistricting has routinely becomes an often bitterly contested, expensive and litigated, partisan battle. The word frequently used to describe the result is "gerrymandering". This bill creates a framework in statutory law which will enable NH to have the next redistricting process conducted by an independent commission. The bill is designed to have the redistricting process undertaken by 15 citizens, selected from a pool of 45 citizens who fulfill the qualifications set out in the bill, including party, non-party status, and with as little partisan impact as is reasonably possible. The commission is independent but the process continues to involve the Secretary of State, and the elected leadership of both the NH House and Senate. The process leaves the ultimate decision to adopt the commission's plan in the legislature as our NH Constitution requires. 21 other states have adopted an independent process for redistricting. This NH independent redistricting commission will put the interest of voters, constituents, and communities of common interest ahead of purely political considerations. **Vote 20-0.**

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HB 706

This bill establishes an independent redistricting commission. Legislators will recall that the decennial census of the United States will occur in 2020. Thereafter, using the new population and other relevant data from the census, each state must undertake the redistricting of its county, state, and federal electoral districts. Heretofore, NH has conducted redistricting in committees of the NH House and Senate. In NH and in other states the process of redistricting has routinely become an often bitterly contested, expensive and litigated, partisan battle. The word frequently used to describe the result is "Gerrymandering". This bill creates a framework in statutory law which will enable NH to have the next re-districting conducted by an independent commission. The bill is designed to have the redistricting process undertaken by 15 citizens, selected from a pool of 45 citizens who see the qualifications set out in the bill, including party, non-party status, and with as little partisan impact as is reasonably possible. The commission is independent but the process continues to involve the Secretary of State, and the elected leadership of both the NH House and Senate. The process leaves the ultimate decision to adopt the commission's plan in the legislature as our NH constitution requires. 21 other states have adopted an independent process for redistricting. This NH independent redistricting commission will put the interest of voters, constituents, and communities of common interest ahead of purely political considerations.

Committee Vote: 20 yes. 0 no

Respectfully submitted for the majority,

Wayne Moynihan

*OK*  
*per*  
*Dawn Cote*

Amendment to HB 706-FN-A

1 Amend the bill by replacing section 1 with the following:

2  
3 1 New Chapter; Independent Redistricting Commission. Amend RSA by inserting after chapter  
4 662-A the following new chapter:

5 CHAPTER 662-B

6 INDEPENDENT REDISTRICTING COMMISSION

7 662-B:1 Independent Redistricting Commission Established. There is hereby established a New  
8 Hampshire independent redistricting commission ("commission"), that shall convene no later than  
9 July 1 every 10 years beginning in 2021, in order to:

10 I. Conduct an open and transparent process enabling full public consideration of and  
11 comment on the drawing of district lines.

12 II. Draw district lines according to the redistricting criteria specified in this chapter.

13 III. Conduct its business with integrity and fairness.

14 662-B:2 Eligibility to Serve on the Commission.

15 I. A person shall be eligible for appointment to the commission if the person has registered  
16 as a voter in New Hampshire, and has been a member of the same political party or with no political  
17 party since the previous statewide election.

18 II. Each commission member shall have voted in 2 of the last 3 statewide general elections  
19 immediately preceding his or her application for appointment to the commission.

20 III. No person shall be eligible to serve as a member of the commission if, at any point  
21 during the 4 years prior to submitting an application for appointment to the commission, the  
22 person:

23 (a) Has been a candidate for, or elected to, any federal, state, or county elective public  
24 office.

25 (b) Served as an officer or employee of, or consultant to, a major political party or a  
26 campaign committee of a candidate for federal, state, or county elective public office.

27 (c) Served as an elected or appointed member of the state committee of a political party.

28 (d) Has been registered as a lobbyist in New Hampshire.

29 (e) Has contributed 75 percent or more of the individual campaign contribution limit  
30 allowable under the Federal Election Campaign Act, or any successor law that replace the Federal  
31 Election Campaign Act, to any one federal candidate.

32 IV. No person shall be eligible to serve as a commission member if he or she is a staff

Amendment to HB 706-FN-A

- Page 2 -

1 member, consultant to, under a contract with, or a person with an immediate family relationship  
2 with the governor, secretary of state, any member of the legislature, executive council, county  
3 commission, or any member of the United States Congress. As used in this section, a member of a  
4 person's immediate family is one with whom the person has a bona fide relationship established  
5 through blood or legal relation, including parents, children, siblings, and in-laws.

6 V.(a) By joining the commission, a member waives his or her right to hold any federal,  
7 state, county, elective public office or to hold any appointed state public office for a period of 4 years  
8 from the date of appointment to the commission, and agrees to complete a financial disclosure form  
9 15A as is required of legislators before accepting appointment as a commissioner.

10 (b) A member of the commission shall not be eligible, for a period of 2 years from the  
11 appointment, to serve as an officer or employee of, or as a consultant to, the New Hampshire  
12 general court, or any individual legislator in the state or in the United States Congress, or to  
13 register as a lobbyist in this state.

14 662-B:3 Appointment of Commissioners.

15 I. The secretary of state shall identify the pool of eligible commissioners. He or she shall, to  
16 the extent practicable, notify all eligible persons and invite them to apply. These efforts shall  
17 include, but not be limited to:

18 (a) Advertising the application period and criteria in all daily newspapers in the state  
19 once a week for 4 consecutive weeks.

20 (b) Advertising the application period and criteria on the home page of all state agency  
21 websites.

22 (c) Requesting media to publicize the commission's search for eligible members.

23 II.(a) A person who is eligible to serve as a member of the commission may submit an  
24 application to the secretary of state no later than February 1 of each year ending in the number  
25 one. From all timely and eligible applications received, the secretary of state shall choose 45  
26 potential members of the commission by March 15 of each year ending in the number one. The 45  
27 persons so selected shall proportionally represent the 5 current executive council districts. In  
28 addition to fair geographic representation, the secretary of state shall, to the extent practicable,  
29 achieve racial, ethnic, and gender diversity within the applicant pool, reflective of the state's  
30 diversity.

31 (b) The 45 persons so selected shall be divided into 3 pools: 15 members who are  
32 members of the largest political party in the state; 15 members who are members of the next largest  
33 political party in the state; and 15 persons who are not members of either the largest or next largest  
34 political party in the state. The secretary of state shall interview the 45 persons, screening for  
35 applicants who are compromise oriented, are able to be impartial, and have an appreciation for New  
36 Hampshire's diverse demographics and geography. As a result of those interviews, and no later  
37 than May 1 of each year ending in the number 1, the 3 pools shall be reduced by 5 persons each.

Amendment to HB 706-FN-A

- Page 3 -

1 The majority and minority leaders in each house of the general court shall review the 30 potential  
2 members for a period of up to 3 weeks and may each strike 2 applicants, up to a maximum of 8 total  
3 strikes by the 4 legislative leaders in total.

4 (c) From the potential members remaining, and no later than May 22 of each year  
5 ending in one, the secretary of state shall appoint at random 3 members who are members of the  
6 largest political party in the state, 3 members who are members of the next largest political party in  
7 the state, and 3 persons who are not members of either the largest or next largest political party in  
8 the state. These 9 members shall then appoint the final 6 members from those persons remaining  
9 in the pool. Of the final 6 members, 2 members shall be members of the largest political party in  
10 the state, 2 members shall be members of the next largest political party in the state, and 2 persons  
11 shall not be members of either the largest or next largest political party in the state.

12 III. In the event of substantial neglect of duty, gross misconduct in office, or inability to  
13 discharge the duties of office, a member of the commission may, after being served written notice  
14 and given an opportunity for a response, be removed by a vote of 11 members of the commission. A  
15 finding of substantial neglect of duty or gross misconduct in office may result in referral to the New  
16 Hampshire attorney general for criminal prosecution.

17 IV. Vacancies on the commission shall be filled when they occur, by selecting a new  
18 member from among the original pool of applicants still willing to serve and from the same party  
19 category as the member that held the now vacant position, or by seeking a replacement in the same  
20 manner as initial appointments.

21 V. The term of office of commission members expires upon the appointment of the first  
22 member of the succeeding commission.

23 662-B:4 Commission Meetings.

24 I. The commission shall act in public meetings by the affirmative vote of at least 9  
25 members, including at least 2 members who are members of each of the 2 largest political parties in  
26 the state and 2 who are not members of either the largest or next largest political party in the state.

27 II. All meetings of the commission shall be open to the public. The commission shall  
28 publicly post notice of its meetings on the commission website and other appropriate outlets at least  
29 7 days prior to such meetings. All records of the commission, including all communications to or  
30 from the commission regarding the work of the commission, shall be made available for public  
31 inspection.

32 III. The commission shall hold at least one public meeting in each county prior to drawing  
33 any maps and at least one public meeting in each county after releasing any proposed maps.

34 IV. The commission shall create a website that shall provide, at a minimum, a description  
35 of the role of the commission in the redistricting process, timely information to the public about the  
36 time, place, and purpose of each meeting of the commission, reports, minutes, and such other  
37 information that will support an open and transparent process.



Amendment to HB 706-FN-A

- Page 4 -

1 V. The commission shall provide a meaningful opportunity for all persons to participate in  
2 the public meetings, including, but not limited to, issuing notices in multiple languages and  
3 ensuring that translation and sign language services are available at all hearings at the  
4 commission's expense or through partnership with outside organizations. Meetings shall be held  
5 only in spaces that are accessible under the Americans with Disabilities Act of 1990, as amended.

6 VI. Commission meetings shall be adequately advertised and planned so as to encourage  
7 attendance and participation across the state. This includes scheduling meetings outside of regular  
8 work hours and using technology that allows for real-time, virtual participation and feedback.

9 VII. The commission shall be considered a public body subject to RSA 91-A. No documents  
10 created or received by the commissioners or staff as part of official duties, including emails and text  
11 messages, shall be exempt from disclosure for any privilege other than attorney-client privilege.

12 VIII. Commissioners and staff may not communicate with outside persons attempting to  
13 influence commissioners or commission action outside of public meetings. To the extent that  
14 commissioners and staff receive such communications, the identity of the person or group and the  
15 subject of the communication shall be publicly disclosed on the commission website.

16 662-B:5 Developing Redistricting Maps.

17 I. During the map drawing process, any member of the public may submit maps or portion  
18 of maps for consideration by the commission. These submissions shall be made publicly available  
19 and shall include the name of the person making the submission. Electronically submitted maps  
20 may be posted on the commission website.

21 II.(a) The commission shall release proposed maps and shall display the proposed maps, in  
22 a manner determined by the commission, providing that such display shall include posting on the  
23 commission website for a minimum of 14 days for public comment and by distribution to the news  
24 media in a manner designed to achieve the widest public access reasonably possible before  
25 establishing a final plan. Additionally, the efforts to achieve access shall include but not be limited  
26 to:

27 (1) Advertising the availability of the proposed maps in all daily newspapers in the  
28 state.

29 (2) Advertising the availability of the proposed maps on the home page of all state  
30 agency websites.

31 (3) Requesting media to publicize the availability of the proposed maps.

32 (b) When releasing a proposed map, the commission shall also release population data,  
33 geographic data, election data, and any other data used to create the plan.

34 III. The commission shall issue with all proposed and final maps written evaluations that  
35 measure the maps against external metrics. These metrics shall cover all criteria set forth in RSA  
36 662-B:6, including the impact of the maps on the ability of minority communities to elect candidates  
37 of choice, measures of partisan fairness using multiple accepted methodologies, and the degree to

Amendment to HB 706-FN-A

- Page 5 -

1 which the maps preserve or divide communities of interest.

2 IV.(a) No later than January 15 of any year ending in 2, the commission shall act to  
3 approve final plans for New Hampshire county commission, house, senate, executive council, and  
4 congressional districts. Upon approval, the commission shall submit the final New Hampshire  
5 house and senate, executive council, and congressional district plans to the senate president,  
6 speaker of the house of representatives, and senate and house minority leaders. It is the intent of  
7 this chapter that the general court shall conduct a roll-call vote on the plan in either the house of  
8 representatives of the senate expeditiously, but not less than 7 days after the plan is received and  
9 made available to the members of the general court, under a procedure or rule permitting no  
10 amendments except those of a purely corrective nature. It is further the intent of this chapter that  
11 if the bill is approved by the first house in which it is considered, it shall expeditiously be brought to  
12 a vote in the second house under a similar provision or rule.

13 (b) If a chamber of the legislature fails to pass the final plans for the New Hampshire  
14 house and senate, the presiding officer of that chamber shall issue a written explanation specifying  
15 how the final plan fails the criteria listed in RSA 662-B:6 or any other binding federal or state law.  
16 The commission shall then amend the final plans to the extent necessary to satisfy the criteria in  
17 RSA 662-B:6 or other legal requirements and resubmit it to the legislature for a subsequent up or  
18 down floor vote.

19 (c) This process shall repeat until the legislature passes final plans for the New  
20 Hampshire house and senate at which point the plans shall be filed with the Secretary of State.

21 662-B:6 Redistricting Criteria.

22 I. The commission shall establish single or multi-member districts for the New Hampshire  
23 county commissions, house of representatives, and single member districts for the New Hampshire  
24 senate, executive council, and United States representative, using the following criteria as set forth  
25 in the following order of priority:

26 (a) Districts shall comply with the United States Constitution and all applicable federal  
27 laws. Districts shall be drawn on the basis of total population.

28 (b) Districts shall comply with the New Hampshire constitution and all applicable state  
29 laws.

30 (c) Districts shall form single boundaries and shall not be bisected or otherwise divided  
31 by other districts, and shall respect the geographic integrity of political boundaries to the extent  
32 practicable without violating the requirements of state law or any of the preceding subdivisions.

33 (d) Districts shall provide racial minorities and language minorities with an equal  
34 opportunity to participate in the political process and shall not diminish their ability to elect  
35 candidates of choice, whether alone or in coalition with others.

36 (e) Districts shall respect the integrity of communities of interest to the extent  
37 practicable. For purposes of this section a community of interest is defined as an area with

**Amendment to HB 706-FN-A**

**- Page 6 -**

1 recognized similarities of interests, including but not limited to racial, ethnic, economic, social,  
2 cultural, geographic, or historic identities. Communities of interest shall not include common  
3 relationships with political parties or political candidates.

4 II. The plan as a whole shall not have the intent or the effect of unduly favoring or  
5 disfavoring any political party, incumbent, or candidate for political office.

6 662-B:7 Failure of Commission and Legislature to Reach Consensus. If the commission fails to  
7 approve and file redistricting plans by January 15 in a year ending in 2, or the legislature fails to  
8 adopt and file a redistricting plan by February 15 of the even year following a federal decennial  
9 census, the New Hampshire supreme court shall appoint by March 1 in the even year following a  
10 decennial census a special master to create the relevant plans in accordance with the redistricting  
11 criteria and requirements set forth in RSA 662-B:6. The court shall make the special master's plans  
12 public and schedule a hearing where interested parties may present testimony and other evidence  
13 regarding the plans' compliance with redistricting criteria. The supreme court shall accept the  
14 master's proposed plan no later than April 1 of the even year following the decennial census and  
15 certify the results to the secretary of state, who shall forward the plan to the president of the  
16 senate, the speaker of the house of representatives, and the minority leaders of both the house of  
17 representatives and senate for adoption in accordance with RSA 662-B:5, IV.

18 662-B:8 Judicial Review.

19 I. The New Hampshire supreme court has original and exclusive jurisdiction in all  
20 proceedings in which the final and legislatively adopted redistricting map is challenged or is  
21 claimed not to have taken timely effect.

22 II. Any registered voter in this state may file a petition, within 45 days after adoption of a  
23 final map on the grounds that the plan violates any federal or state law.

24 III. The New Hampshire supreme court shall give priority to ruling on any matter related  
25 to redistricting presented to the court. If the court determines that the final plan violates any  
26 federal or state law, the court shall fashion the relief that it deems appropriate, including, but not  
27 limited to, appointment of a new special master in accordance with RSA 662-B:7.

28 662-B:9 Compensation. Members of the commission shall receive mileage reimbursement at  
29 the federal rate for expenses incurred in connection with the duties performed pursuant to this  
30 chapter.

31 662-B:10 Financial Independence.

32 I. For the fiscal year ending June 30, 2021, the governor may draw a warrant out of sums  
33 not otherwise appropriated to fund expenses of the commission established pursuant to this  
34 chapter.

35 II. For each subsequent biennium preceding the decennial census, the governor shall  
36 include in his or her budget recommendation appropriations sufficient to meet the estimated  
37 expenses of the commission, including but not limited to adequate funding for a statewide outreach

**Amendment to HB 706-FN-A**

**- Page 7 -**

1 program to solicit broad public participation in the redistricting process and adequate office space  
2 available for the operation of the commission.

3 662-B:11 Secretary of State to Provide Support. The secretary of state shall provide such  
4 administrative and staff support as is necessary for the commission to perform its duties.

# Voting Sheets

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 706-FN-A

**BILL TITLE:** establishing an independent redistricting commission.

**DATE:** February 20, 2019

**LOB ROOM:** 308

**MOTIONS: OUGHT TO PASS WITH AMENDMENT**

Moved by Rep. Moynihan

Seconded by Rep. Lang

AM Vote: Voice Vote

Amendment # 2019-0597h

Moved by Rep. Moynihan

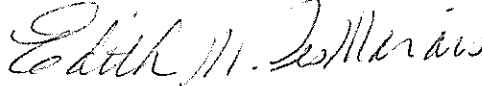
Seconded by Rep. Hoelzel

Vote: 20-0

**CONSENT CALENDAR: YES**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,



Rep Edith DesMarais, Clerk

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 706-FN-A

BILL TITLE: establishing an independent redistricting commission.

DATE: 2/20/19

LOB ROOM: 308

MOTION: (Please check one box)

- OTP                       ITL                       Retain (1<sup>st</sup> year)                       Adoption of <sup>2019</sup> Amendment # 0597h (if offered)
- Interim Study (2nd year)

Moved by Rep. Mynahan      Seconded by Rep. Lang      Vote: <sup>240 VR</sup> ~~0597h~~ Aye

MOTION: (Please check one box)

- OTP       OTP/A       ITL                       Retain (1<sup>st</sup> year)                       Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. Mynahan      Seconded by Rep. Hoetzel      Vote: 20-6

MOTION: (Please check one box)

- OTP       OTP/A       ITL                       Retain (1<sup>st</sup> year)                       Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP       OTP/A       ITL                       Retain (1<sup>st</sup> year)                       Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

CONSENT CALENDAR:  YES       NO

Minority Report?  Yes       No      If yes, author, Rep: \_\_\_\_\_      Motion \_\_\_\_\_

Respectfully submitted: Edith M. DesMarais  
Rep Edith DesMarais, Clerk



2019 SESSION

Election Law

Bill #: 706 Motion: OTPA AM #: ~~2019~~ 2597h Exec Session Date: 2-20-19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Cote, David E. Chairman	20		
Moynihan, Wayne T. Vice Chairman	1		
Ward, Gerald W.R.	2		
Pearson, William A.	3		
DesMarais, Edith M. Clerk	4		
Komi, Richard N.	5		
Bergeron, Paul R.	6		
Sandler, Catt	7		
Hamer, Heidi M.	8		
Higgins, Peg	9		
Lane, Connie B.	10		
Morrill, David J.	11		
Hoelzel, Kathleen M.	12		
Gay, Betty I.	13		
Lang, Timothy P.	14		
Prudhomme-O'Brien, Katherine T.	15		
Hayward, Peter T.	16		
<del>Merlino, Timothy A.</del> <i>Merrill</i>	17		
<del>Owens, Becky A.</del> <i>Plett</i>	18		
Rooney, Abigail G.	19		
<b>TOTAL VOTE:</b>	<b>20</b>	<b>0</b>	



Amendment to HB 706-FN-A

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CHAPTER 662-B

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26 campaign committee of a candidate for federal, state, or county elective public office.

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32

IV. No person shall be eligible to serve as a commission member if he or she is a staff

Amendment to HB 706-FN-A

- Page 2 -

1 member, consultant to, under a contract with, or a person with an immediate family relationship  
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34 political party in the state. The secretary of state shall interview the 45 persons, screening for  
35 applicants who are compromise oriented, are able to be impartial, and have an appreciation for New  
36 Hampshire's diverse demographics and geography. As a result of those interviews, and no later  
37 than May 1 of each year ending in the number 1, the 3 pools shall be reduced by 5 persons each.

Amendment to HB 706-FN-A

- Page 3 -

1 The majority and minority leaders in each house of the general court shall review the 30 potential  
2 members for a period of up to 3 weeks and may each strike 2 applicants, up to a maximum of 8 total  
3 strikes by the 4 legislative leaders in total.

4 (c) From the potential members remaining, and no later than May 22 of each year  
5 ending in one, the secretary of state shall appoint at random 3 members who are members of the  
6 largest political party in the state, 3 members who are members of the next largest political party in  
7 the state, and 3 persons who are not members of either the largest or next largest political party in  
8 the state. These 9 members shall then appoint the final 6 members from those persons remaining  
9 in the pool. Of the final 6 members, 2 members shall be members of the largest political party in  
10 the state, 2 members shall be members of the next largest political party in the state, and 2 persons  
11 shall not be members of either the largest or next largest political party in the state.

12 III. In the event of substantial neglect of duty, gross misconduct in office, or inability to  
13 discharge the duties of office, a member of the commission may, after being served written notice  
14 and given an opportunity for a response, be removed by a vote of 11 members of the commission. A  
15 finding of substantial neglect of duty or gross misconduct in office may result in referral to the New  
16 Hampshire attorney general for criminal prosecution.

17 IV. Vacancies on the commission shall be filled when they occur, by selecting a new  
18 member from among the original pool of applicants still willing to serve and from the same party  
19 category as the member that held the now vacant position, or by seeking a replacement in the same  
20 manner as initial appointments.

21 V. The term of office of commission members expires upon the appointment of the first  
22 member of the succeeding commission.

23 662-B:4 Commission Meetings.

24 I. The commission shall act in public meetings by the affirmative vote of at least 9  
25 members, including at least 2 members who are members of each of the 2 largest political parties in  
26 the state and 2 who are not members of either the largest or next largest political party in the state.

27 II. All meetings of the commission shall be open to the public. The commission shall  
28 publicly post notice of its meetings on the commission website and other appropriate outlets at least  
29 7 days prior to such meetings. All records of the commission, including all communications to or  
30 from the commission regarding the work of the commission, shall be made available for public  
31 inspection.

32 III. The commission shall hold at least one public meeting in each county prior to drawing  
33 any maps and at least one public meeting in each county after releasing any proposed maps.

34 IV. The commission shall create a website that shall provide, at a minimum, a description  
35 of the role of the commission in the redistricting process, timely information to the public about the  
36 time, place, and purpose of each meeting of the commission, reports, minutes, and such other  
37 information that will support an open and transparent process.

Amendment to HB 706-FN-A

- Page 4 -

1 V. The commission shall provide a meaningful opportunity for all persons to participate in  
2 the public meetings, including, but not limited to, issuing notices in multiple languages and  
3 ensuring that translation and sign language services are available at all hearings at the  
4 commission's expense or through partnership with outside organizations. Meetings shall be held  
5 only in spaces that are accessible under the Americans with Disabilities Act of 1990, as amended.

6 VI. Commission meetings shall be adequately advertised and planned so as to encourage  
7 attendance and participation across the state. This includes scheduling meetings outside of regular  
8 work hours and using technology that allows for real-time, virtual participation and feedback.

9 VII. The commission shall be considered a public body subject to RSA 91-A. No documents  
10 created or received by the commissioners or staff as part of official duties, including emails and text  
11 messages, shall be exempt from disclosure for any privilege other than attorney-client privilege.

12 VIII. Commissioners and staff may not communicate with outside persons attempting to  
13 influence commissioners or commission action outside of public meetings. To the extent that  
14 commissioners and staff receive such communications, the identity of the person or group and the  
15 subject of the communication shall be publicly disclosed on the commission website.

16 662-B:5 Developing Redistricting Maps.

17 I. During the map drawing process, any member of the public may submit maps or portion  
18 of maps for consideration by the commission. These submissions shall be made publicly available  
19 and shall include the name of the person making the submission. Electronically submitted maps  
20 may be posted on the commission website.

21 II.(a) The commission shall release proposed maps and shall display the proposed maps, in  
22 a manner determined by the commission, providing that such display shall include posting on the  
23 commission website for a minimum of 14 days for public comment and by distribution to the news  
24 media in a manner designed to achieve the widest public access reasonably possible before  
25 establishing a final plan. Additionally, the efforts to achieve access shall include but not be limited  
26 to:

27 (1) Advertising the availability of the proposed maps in all daily newspapers in the  
28 state.

29 (2) Advertising the availability of the proposed maps on the home page of all state  
30 agency websites.

31 (3) Requesting media to publicize the availability of the proposed maps.

32 (b) When releasing a proposed map, the commission shall also release population data,  
33 geographic data, election data, and any other data used to create the plan.

34 III. The commission shall issue with all proposed and final maps written evaluations that  
35 measure the maps against external metrics. These metrics shall cover all criteria set forth in RSA  
36 662-B:6, including the impact of the maps on the ability of minority communities to elect candidates  
37 of choice, measures of partisan fairness using multiple accepted methodologies, and the degree to

Amendment to HB 706-FN-A

- Page 5 -

1 which the maps preserve or divide communities of interest.

2 IV.(a) No later than January 15 of any year ending in 2, the commission shall act to  
3 approve final plans for New Hampshire county commission, house, senate, executive council, and  
4 congressional districts. Upon approval, the commission shall submit the final New Hampshire  
5 house and senate, executive council, and congressional district plans to the senate president,  
6 speaker of the house of representatives, and senate and house minority leaders. It is the intent of  
7 this chapter that the general court shall conduct a roll-call vote on the plan in either the house of  
8 representatives of the senate expeditiously, but not less than 7 days after the plan is received and  
9 made available to the members of the general court, under a procedure or rule permitting no  
10 amendments except those of a purely corrective nature. It is further the intent of this chapter that  
11 if the bill is approved by the first house in which it is considered, it shall expeditiously be brought to  
12 a vote in the second house under a similar provision or rule.

13 (b) If a chamber of the legislature fails to pass the final plans for the New Hampshire  
14 house and senate, the presiding officer of that chamber shall issue a written explanation specifying  
15 how the final plan fails the criteria listed in RSA 662-B:6 or any other binding federal or state law.  
16 The commission shall then amend the final plans to the extent necessary to satisfy the criteria in  
17 RSA 662-B:6 or other legal requirements and resubmit it to the legislature for a subsequent up or  
18 down floor vote.

19 (c) This process shall repeat until the legislature passes final plans for the New  
20 Hampshire house and senate at which point the plans shall be filed with the Secretary of State.

21 662-B:6 Redistricting Criteria.

22 I. The commission shall establish single or multi-member districts for the New Hampshire  
23 county commissions, house of representatives, and single member districts for the New Hampshire  
24 senate, executive council, and United States representative, using the following criteria as set forth  
25 in the following order of priority:

26 (a) Districts shall comply with the United States Constitution and all applicable federal  
27 laws. Districts shall be drawn on the basis of total population.

28 (b) Districts shall comply with the New Hampshire constitution and all applicable state  
29 laws.

30 (c) Districts shall form single boundaries and shall not be bisected or otherwise divided  
31 by other districts, and shall respect the geographic integrity of political boundaries to the extent  
32 practicable without violating the requirements of state law or any of the preceding subdivisions.

33 (d) Districts shall provide racial minorities and language minorities with an equal  
34 opportunity to participate in the political process and shall not diminish their ability to elect  
35 candidates of choice, whether alone or in coalition with others.

36 (e) Districts shall respect the integrity of communities of interest to the extent  
37 practicable. For purposes of this section a community of interest is defined as an area with

1 recognized similarities of interests, including but not limited to racial, ethnic, economic, social,  
2 cultural, geographic, or historic identities. Communities of interest shall not include common  
3 relationships with political parties or political candidates.

4 II. The plan as a whole shall not have the intent or the effect of unduly favoring or  
5 disfavoring any political party, incumbent, or candidate for political office.

6 662-B:7 Failure of Commission and Legislature to Reach Consensus. If the commission fails to  
7 approve and file redistricting plans by January 15 in a year ending in 2, or the legislature fails to  
8 adopt and file a redistricting plan by February 15 of the even year following a federal decennial  
9 census, the New Hampshire supreme court shall appoint by March 1 in the even year following a  
10 decennial census a special master to create the relevant plans in accordance with the redistricting  
11 criteria and requirements set forth in RSA 662-B:6. The court shall make the special master's plans  
12 public and schedule a hearing where interested parties may present testimony and other evidence  
13 regarding the plans' compliance with redistricting criteria. The supreme court shall accept the  
14 master's proposed plan no later than April 1 of the even year following the decennial census and  
15 certify the results to the secretary of state, who shall forward the plan to the president of the  
16 senate, the speaker of the house of representatives, and the minority leaders of both the house of  
17 representatives and senate for adoption in accordance with RSA 662-B:5, IV.

18 662-B:8 Judicial Review.

19 I. The New Hampshire supreme court has original and exclusive jurisdiction in all  
20 proceedings in which the final and legislatively adopted redistricting map is challenged or is  
21 claimed not to have taken timely effect.

22 II. Any registered voter in this state may file a petition, within 45 days after adoption of a  
23 final map on the grounds that the plan violates any federal or state law.

24 III. The New Hampshire supreme court shall give priority to ruling on any matter related  
25 to redistricting presented to the court. If the court determines that the final plan violates any  
26 federal or state law, the court shall fashion the relief that it deems appropriate, including, but not  
27 limited to, appointment of a new special master in accordance with RSA 662-B:7.

28 662-B:9 Compensation. Members of the commission shall receive mileage reimbursement at  
29 the federal rate for expenses incurred in connection with the duties performed pursuant to this  
30 chapter.

31 662-B:10 Financial Independence.

32 I. For the fiscal year ending June 30, 2021, the governor may draw a warrant out of sums  
33 not otherwise appropriated to fund expenses of the commission established pursuant to this  
34 chapter.

35 II. For each subsequent biennium preceding the decennial census, the governor shall  
36 include in his or her budget recommendation appropriations sufficient to meet the estimated  
37 expenses of the commission, including but not limited to adequate funding for a statewide outreach

**Amendment to HB 706-FN-A**

**- Page 7 -**

1 program to solicit broad public participation in the redistricting process and adequate office space  
2 available for the operation of the commission.

3 662-B:11 Secretary of State to Provide Support. The secretary of state shall provide such  
4 administrative and staff support as is necessary for the commission to perform its duties.

# Sub-Committee Minutes



HOUSE COMMITTEE ON ELECTION LAW

**SUBCOMMITTEE WORK SESSION** on HB 706-FN-A

**BILL TITLE:** establishing an independent redistricting commission.

**DATE:** February 20, 2019

**Subcommittee Members:** Reps. Bergeron, Moynihan, Ward, Hoelzel and Lang

**Comments and Recommendations:**

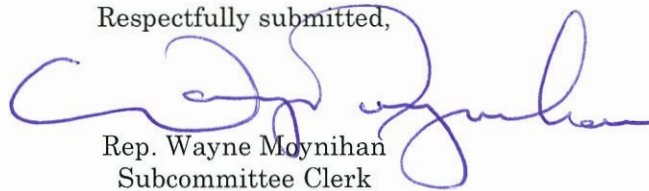
**MOTIONS:** OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Bergeron                      Seconded by Rep. Ward                      AM Vote: 5-0

Amendment # 2019-0597h

Moved by Rep. Bergeron                      Seconded by Rep. Lang                      Vote: 5-0

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Wayne Moynihan', is written over the typed name and title.

Rep. Wayne Moynihan  
Subcommittee Clerk

HOUSE COMMITTEE ON ELECTION LAW

SUBCOMMITTEE WORK SESSION on HB 706-FN-A

BILL TITLE: establishing an independent redistricting commission.

DATE: 2-20-19

Subcommittee Members: Reps. Cote, Moynihan, DesMarais, Ward, W. Pearson, Komi, Bergeron, Sandler, Hamer, Higgins, Lane, Morrill, Hoelzel, Gay, Lang, Prudhomme-O'Brien, Hayward, Merlino, Owens and Rooney

Comments and Recommendations:

Three horizontal lines for handwritten comments and recommendations.

MOTIONS: OTP, (OTP/A), ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. BERGERON Seconded by Rep. WARD AM Vote: 54 ON

Adoption of Amendment # 2019 0597h

Moved by Rep. BERGERON Seconded by Rep. LANG Vote: 54 ON

X Amendment Adopted Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. \_\_\_\_\_ Secoded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_

Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Secoded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

Respectfully submitted,

Rep. \_\_\_\_\_ Subcommittee Chairman/Clerk

# Hearing Minutes

HOUSE COMMITTEE ON ELECTION LAW

PUBLIC HEARING ON HB 706-FN-A

**BILL TITLE:** establishing an independent redistricting commission.

**DATE:** January 29, 2019

**LOB ROOM:** 308

**Time Public Hearing Called to Order:** 2:40pm

**Time Adjourned:** 4:18pm

**Committee Members:** Reps. Cote, Moynihan, DesMarais, Ward, W. Pearson, Komi, Bergeron, Sandler, Hamer, Higgins, Lane, Morrill, Hoelzel, Gay, Lang, Prudhomme-O'Brien, Hayward, Merlino, Owens and Rooney

**Bill Sponsors:**

Rep. M. Smith  
Rep. Knirk  
Rep. Gordon  
Sen. Chandley

Rep. Berch  
Rep. Danielson  
Rep. Myler  
Sen. Feltes

Rep. Porter  
Rep. Ebel  
Sen. Fuller Clark

TESTIMONY

**Rep. Smith:** Redistricting is critical and important to create a level playing field. The goals have been getting a majority for those already in power rather than fair voting. Voters will choose. The Brennan Center developed a 15 member commission to research what worked in other states. It is important for compromise, community based decision making in a non-partisan way.

**Q. Rep. Pearson:** Are you familiar with CACR 9?

**A.** Yes.

**Q. Rep. Pearson:** As a comparison, this goes through the legislature and CACR 9 does it through the constitution?

**A.** Members who support this support that as well. But, the clock is slower in that and it would make it too late for 2020 election. The bill would go into effect as soon as it is approved, for the 2020 election. It covers the problem sooner. It also has a larger group to provide greater diversity in decision makers.

**Sen. Fuller-Clark:** Dist. 21, Portsmouth. She is a co-sponsor. It is carefully crafted and thought out. It is comprehensive with both the house and senate involved in the design. It establishes an independent commission and it is large enough to remove individual bias, determines how selected, how maps are developed, criteria and how to deal if no consensus. The participants are compensated and have resources to do what is needed. Gerrymandering for 2004-2010 when city re-districting took Portsmouth out to dramatically gerrymander to favor one party. There is a need for fair and equitable bipartisan opportunity to get elected. This will provide fair and equitable representation.

**Q. Rep. Cote:** Do you share the views on CACR of Rep. Smith?

**A.** Yes, but we need both due to timing.

**Q. Rep. Prudhomme O'Brien:** Do you have a fiscal note?

**A.** No, but we need to move forward because the cost is small compared to the benefit.

**Q. Rep. Prudhomme O'Brien:** Is the 12 year prohibition too long for people who may want to serve locally?

**A.** Arrived at the number regarding the legislature to keep it fair and un-biased.

Corinne Dodge, Derry, NH Voters Restoring Democracy: Supports the bill. Is upset about partisan votes instead of what is best for the state. Eliminate gerrymandering. Whoever wins will take advantage and solidify votes through gerrymandering. We have the opportunity to do better. Send a message to voters. She support CACR9 and HB 706. Please support them!

**Rep. Ned Gordon:** Salamander districts are bad. His has many faults and poorly favors Republicans. It is not fair. His district overlaps three separate school districts. There are no paved

roads that connect them without going into other counties or towns. These have very different interests and focus.

**Q. Rep. Prudhomme O'Brien:** Wouldn't a new commission have to deal with the same issues?

A. Yes, but need to follow different goals and objectives.

**Q. Rep. Prudhomme O'Brien:** Isn't the outcome going to be the same?

A. Feels the legislature can do better and can do the right thing!

**Claudia Damon:** Came from Germany after the war and knew the contrast of what could be. Is concerned people are losing faith in elections. Feels these changes are needed. When canvassing, people felt a waste of time to vote. Why do we think 50% participation is something to be proud of. Everyone is now paying attention. It is our opportunity.

**Rick Bourdon:** Supports the bill. 8% efficiency gap is considered suspicious. Demographics show we have real issues. Bipartisan support and the support of the majority is critical.

**Q. Prudhomme O'Brien:** Are you concerned about appointed rather than elected commission members?

A. No as they will be accountable to all and the model has been successful in other places.

**Q. Rep. Lang:** When was the current map made active? In 2012 but flipped in 2018, so how can we say it doesn't work?

A. It was a wave election and is not a permanent effect.

**Q. Rep. Prudhomme O'Brien:** Speaking of the will of the people, I question the SOS choosing the participants.

A. While it does, it must be non-partisan.

**Q. Rep. Gay:** It tries to add in ethnicities when some groups have so few people to choose from.

A. The commission can use computer programs to look for ethnicity groups, not electoral data.

**Eric Gallagher:** He is in favor of the bill and would like to be clear why. He wants to remove incumbency advantage. A study shows it has no effect in Washington, Idaho and Montana. In one case the speaker of the houses' wife was on the commission. There was not enough degree of separation. If you exclude those three states, the numbers are better.

**David Scanlon, Dep. SOS:** Is taking no position. The SOS currently has no role in redistricting. This plan does involve the SOS in naming a pool and interviewing candidates. It is a serious responsibility. It should either remove the process outside of election time or add more resources so staff could be hired.

\*Liz Tantarelli

\*Timothy McKernan: The timing has deadlines. It has requirements of time (Pg. 1, 6 & 7) no later than 12/30 conflicts with later dates. With 30% of vote, yet get 40% of seats shows that gerrymandering is still active.

\*Nancy Marashio, League of Women Voters: A task force was chosen for a study of what was happening in 50 states with gerrymandering. It is an important principle to consider.


\*Liz Wester, America Votes: Supports the bill and agrees with fair and transparent process.

\*Hon. Bob Perry, Open Democracy Action.

\*Joe Magruder: Feels that gerrymandering poisons the process and reduces participation in the elections and destroys trust.

\*Henry Klementowitz, ACLU-NH: Supports the bill and the method of selections. Feels it is reasonable with people as removed as can be from legislators. They can be removed by chair if issues arise. Gerrymandering created districts that leaned. Page 5 provides criteria for districts. Some requirements are already national law to protect minorities

**Gwen Friend:** Supports the bill and believes it is urgent and necessary.

Respectfully Submitted by: Rep DesMarais 

HOUSE COMMITTEE ON ELECTION LAW

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Rep. Myler  
Sen. Feltes

Rep. Porter  
Rep. Ebel  
Sen. Fuller Clark

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

\* ~~Rep. M. Smith~~ - redistricting - trying to create a level playing field. Getting majority instead of fair voting. Voters will choose, Brennan Center develop 15 member commission - research what worked in other states. Compromise, community based decision making. Non-partisan?  
Rep. Pearson: Familiar with CACR 9

A yes.

Comparison - has going to legislature CACR 9 does through constitution.

A. Members who support this as well as CACR 9. But clock is slow and make it too late for 2022 election. Bill could go into effect as soon as approved - for 2020 election

It covers the problem sooner. It also has a larger group to provide greater diversity.

② Sen. Fulla Clark, <sup>Dist 21</sup> Portsmouth area Co. Sponsor.  
Carefully crafted & thought out. Comprehensive. House & Senate Involved.

Establishes independent commission & large enough to remove bias, how selected, how maps developed, criteria & how to deal if no consensus. Compensated & have resources to do what is needed.

Gerrymandering - served 2004-2010 - city re-districting took Portsmouth out to dramatically gerrymandering to favor one party. Need fair & equitable bipartisan opportunity to get elected. Fair, equitable, representative.

? Cote -

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? Is the 12 year prohibition too long for people who may want to serve locally.

A. Arrived at regarding the legislature to keep it fair and unbiased.

③ Corinne Dodge, NH voters restoring democracy.  
<sup>Deny!</sup>

Supports bill upset about partisan votes instead of what is best for the state. Eliminate gerrymandering. Whomever wins will take advantage & solidify votes through gerrymandering opportunity to do better.

message to voters - Support CACR9 & AB706

Please support -

- 4 Rep. Ned Gordon - Salamanda district. Has many faults and poorly favors Republicans. Not fair. Overlaps 3 separate School districts. No paved roads connect without going into other counties or towns. Very different interests & focus.

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Everyone is now paying attention. It is our opportunity.

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8% efficiency gap considered suspicious. Demographics show have issues. Bipartisan support and support of majority.

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A. No-accountable to all end model has been successful in other places.

? Lang - When was current map made active?

2012 - but flipped in 2018 - so how can we say doesn't work. A. Not a permanent effect



? Burkholder D3 non  
speaking of will of people - question 505  
chartering the participant

(A) while ideas, but must be non-partisan.

? stay - time to add in ethnics when some groups

have so few people of some groups.

(B) Can we compare programs to look for  
affinity groups, not ethnic data.

(7) Eric Staller - in danger of being  
would like to be clear why to remove incumbency

advertisers, a study which no effect

Washington, ~~the~~ Idaho & Montana.

Speaker of House - wife ex commissioner? Not

enough signs of separation. If you exclude

these 3 states, numbers are better.

(8) Deputy 505 David Stender  
negotiation - 505 has no role in negotiating.

who does involve 505 of naming a post & interviewing  
candidates. Serious responsibility. More processes

outside election time or add resources so staff  
could be hired.

\* (9) Fig Fortelli

\* (10) Timothy McKeon

Timing the deadline - could start budget and to

help with deadline. (11) but no later than 12:30 conflict

with later date. With 50% of vote - get get

#11 Nancy Maceo League of Women Voters  
40% of seats shows gerrymandering still active.

Take done - chosen for a study what was happening  
in 50 states with gerrymandering. Impacted primary  
to consider

\*12 To Water - Convince Vote  
Suggests - agree with your's transport in a case

\*13 Hon Bob Perry  
Open Economy Action

\*14 Joe Maguire - Strongly endorsing previous process  
and reduce participation in elections and duties  
first.

\*15 Henry Klimentz - ACTU - N4 Suggest

Method of selection - get reasonable with people  
as named as can be. Can be reviewed by chair.

Strongly endorsing as districts learned.

Page 5: Critical for districts pg. 5

Some requirements already in internal laws - minutes  
Lower Fund: Suggest - urgent & necessary

# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 706 Date 1-27-11  
 Committee E+L

\*\* Please Print All Information \*\*

Name	Address	Phone	Representing	(check one)	
				Pro	Con
Rep Stu Gusk	Rye		District 24	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Becky McBeth	Portsmouth, NH		Rock District	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Dick Hinch	House Republican office			<input type="checkbox"/>	<input checked="" type="checkbox"/>
REP GREG INDRUK	HILLS	34		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Josh Yokela			Rock 33	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep JORDAN ULERY			Hills 37	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Mayme Forte	Hillsboro		Hills 1	<input checked="" type="checkbox"/>	<input type="checkbox"/>
rep Jacqueline Chretien			Hills. 42	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep LINDA TANNER			Sullivan 9	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Cole Riel	Goffstown			<input checked="" type="checkbox"/>	<input type="checkbox"/>
America Votes				<input checked="" type="checkbox"/>	<input type="checkbox"/>
Maura willing	Concord NH		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jilly Hatch	CONCORD		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP. DAVID MEUSE	PORTSMOUTH			<input checked="" type="checkbox"/>	<input type="checkbox"/>
John W Friede	54 High St		Peterborough	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. SPARKY Von Pinsky				<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Dan Wolf				<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Debra Altschuler			Stratham Rockingham 19	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Linda Mettley	Concord			<input checked="" type="checkbox"/>	<input type="checkbox"/>
STEFAN MATLACE	30 HAMPSHIRE DD		CONCORD	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP MARK VALLONE			ROCK DIS 9	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Deb Hobson			Rock 35	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Judy Stadtman	Portsmouth	603 419 7217	SELF	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP DIANNE SCHUETT			CO-SPONSOR MERRID	<input checked="" type="checkbox"/>	<input type="checkbox"/>

# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 706 Date \_\_\_\_\_

Committee \_\_\_\_\_

\*\* Please Print All Information \*\*

Name	Address	Phone	Representing	(check one)	
				Pro	Con
Kathy Spielman	Durban		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Susan Conery	ContraCook		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rebecca Hutchinson	Deerfield		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dennis Jakubowski	Londar		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Laurie Koch	Concord		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helmut Koch	Concord, NH		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gwen Friend	Northwood NH		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kathleen Wikstrom	Exeter NH			<input type="checkbox"/>	<input checked="" type="checkbox"/>
Carl Wikstrom	Exeter NH		Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dennis Jakubowski			self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Elizabeth Corell	Concord		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Elen Reed	Rock 17			<input checked="" type="checkbox"/>	<input type="checkbox"/>
Liz Anne Platt	Concord NH		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sara Smith	Bembroke		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Laurel Keeffe	CONCORD NH		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Ben Jankin			Rock 37	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep Jane Danielson			Millbury 7	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Clara Samson	Concord NH 226 4561		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kate Kaynak	Hopkinton		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Louise Spencer	Concord NH		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep Liz McConnell	Brentwood		self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Martha Clark	Conterbury		Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
S Chandley	SDII			<input checked="" type="checkbox"/>	<input type="checkbox"/>

# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 706 Date 1/26/19  
 Committee \_\_\_\_\_

\*\* Please Print All Information \*\*

Name	Address	Phone	Representing	(check one)	
				Pro	Con
SUZANNE FOURNIER	MILFORD, NH (603) 9 WOODLAND DR	673-7389	Day	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP THOMAS WALSH			MERRIMACK 24	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Shannon Chondley				<input checked="" type="checkbox"/>	<input type="checkbox"/>
Elizabeth Janeway			Webster NH self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ros WBRNBA			CONCORD NH LCJ	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Margalyn Doyle			Newbury NH self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Helen Tam-Semmens			Stoddard NH self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TROIS MOORE			Goffstown, NH self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP PAUL BERCH			CHESHIRE-01	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alvin See			Loudon Self	<input type="checkbox"/>	<input checked="" type="checkbox"/>
William Bolton			Plymouth self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marcia Garber			5 HILLS ENDWAY MANCHE self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Glenn Brackett			NH AFL-CIO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Julia Freeman-Woodport			self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KATHY CAHILL			Concord NH self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Brian Hawkins			SEA/SEIU Local 1984	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PAULA M. NOONAN			BOW SELF	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Frances Nutter-Upham			Nashua NH Self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP BRIAN SULLIVAN				<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP Pat Brushway			Hampton	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DAVID CAHILL			CONCORD self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
William F. Johnson			Concord self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cordell Johnston			NH Municipal Ass'n self	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Joe Magruder			Concord self	<input checked="" type="checkbox"/>	<input type="checkbox"/>



# Testimony

January 29, 2019

The Honorable David Cote, Chair  
NH House Election Law Committee, Legislative Office Building, Room 308  
Concord, New Hampshire

TESTIMONY by Rick Bourdon in support of HB 706

Chairman Cote and members of the Election Law Committee:

Re: HB 706, a bill to create a nonpartisan redistricting commission

There is strong evidence that New Hampshire lawmakers have engaged in partisan redistricting, otherwise known as gerrymandering. How do I know?

First a little history. In recent years, the US Supreme Court has maintained that redistricting with partisan intent should be unconstitutional, but has never struck down an electoral map on that basis. Why? Because (1) the Court, as a rule, is reluctant to wade into political/partisan matters, and, more importantly, (2) there had been as yet no available measure of gerrymandering that justices could agree distinguished between a truly partisan map and one that was simply poorly conceived. The Court put out a call to political scientists and mathematicians to come up with such a measure.

They did. In fact they came up with a number of measures. The most talked about of these, and the apparent metric of choice at the moment, is known as the *efficiency gap*. Briefly, the efficiency gap is calculated as the difference between *wasted votes* cast for one political party and wasted votes cast for the opposing party, expressed as a percentage of total votes cast. Wasted votes are either votes cast for a losing candidate or the excess of votes cast for a winning candidate beyond the number of votes needed to win. In equation form:

$$EG(\%) = \frac{WV_{P1} - WV_{P2}}{TV} \times 100$$

In the spring of 2018, in order to satisfy both my interest in gerrymandering in New Hampshire and my rather strong geeky tendencies, I calculated efficiency gaps for NH Council, Senate, and House using data from the 2016 elections. It was a big job, one I don't plan on replicating any time soon. Here are the results:

Office	Efficiency Gap
NH Exec. Council	9.0% (favoring Republicans)
NH Senate	10.1% " "
NH House*	9.8% " "



Now, an efficiency gap greater than 8% is considered highly suspicious and cause for examination. Using the 8% threshold, partisan redistricting favoring Republicans appears to have been the case for all three sets of races.

That's the logical conclusion from the 2016 data. As we all know, election results in 2018 were vastly different from those in 2016. Democrats gained majorities in the Executive Council and both chambers of the legislature. District boundaries, however, had not changed between elections. So do the more recent results suggest that gerrymandering hadn't taken place after all?

The short answer is no. Gerrymandered districts don't maintain their partisan bias forever, and a good deal of time has passed since the last round of redistricting. Moreover, there are a lot more factors in play besides district boundaries: demographic changes; current events affecting both state and national politics; the large number of independent voters in NH; the comparative energy levels, dollars spent, and effectiveness of candidates and political parties; and more I'm sure.

The 2016 data points the finger at Republicans, but it matters not to me which party did what when. Clear evidence from other states shows that the Democratic party is guilty of gerrymandering as well. It's time for an end to the practice. Redistricting for partisan advantage is undemocratic (small d) and flies in the face of the principle of one person one vote. A nonpartisan redistricting commission is the logical solution, a solution being chosen by more and more states across the country.

I am encouraged by the fact that HB 706 enjoys bipartisan support. I am also encouraged by the fact that the bill enjoys broad support among members of the current majority party, a party that might well, should this bill fail, have the upper hand in the next round of redistricting. Having the "upper hand" is what has led to gerrymandering in the past. It reflects short-term thinking, a choice for partisan gain at the expense of the democratic values (again small d) that this country was founded upon.

I strongly encourage the Committee to vote *Ought to Pass* on HB 706.

Thank you for considering my testimony.

Respectfully,

Rick Bourdon, Co-Chair, Open Democracy Action  
50 Preston Road  
Lyme, NH 03768  
(603) 759-1888

\*End note

The House efficiency gap from 2016 data is especially interesting. It does not, in my opinion, indicate gerrymandering. Rather, it reflects a serious bias created by the majority-party-take-all nature of New Hampshire's multi-member districts. Below is a comparison of small districts (1 to 3 members) and larger ones (4 to 11 members).

Seats/district	# districts	# seats	Efficiency Gap
1 to 11 (all)	204	400	9.8% (favoring Republicans)
1 to 3	183	286	-.4% (favoring no party)
4 to 11	21	114	22.2% (favoring Republicans)

In districts with just one or a few seats, the efficiency gap is essentially zero—no evidence of undue partisan advantage. The efficiency gap for larger multi-seat districts, however, is off the charts in favor of Republicans. While there are multi-member districts with Democratic voting majorities and all-Democrat house delegations, they are relatively few and with mostly small numbers of seats per district. The big districts are almost exclusively located in the southern part of the state where there are Republican majorities. Hence the Republican advantage.

Whether a non-partisan redistricting commission could solve this problem is up for debate. Certainly it could draw attention to the issue and spur further action by the legislature and multimember districts. There are several possible remedies. We could break these districts up into smaller ones, institute ranked choice voting, or—my personal favorite—do a combination of both.

Chairman Cote and Members of the Committee,

For the record, my name is Liz Wester, State Director for America Votes, a nonprofit organization that works to expand access to the ballot, coordinate issue advocacy and election campaigns, and protect every American's constitutional right to vote. I am here today to urge the committee to vote ought to pass on HB 706, to create an independent redistricting commission to draw all state and federal election districts in New Hampshire.

Currently, New Hampshire tasks the legislature with forming these districts. The process in the past has been secretive, confusing, and ended up in the courts. An independent redistricting commission made up of Granite State voters will create a transparent process allowing for fair maps to be created. New Hampshire's districts should not favor one party over another and instead send the power back to the people by letting voters pick their representatives, not the other way around. A citizen engaged and led redistricting process helps to do just that.

I urge the committee to vote in favor of HB706 and pass a independent redistricting commission.

Thank you for you time,

Liz Wester  
America Votes State Director

## LWVUS Position on Redistricting

### THE LEAGUE'S POSITION ON REDISTRICTING

The League of Women Voters believes responsibility for redistricting preferably should be vested in an independent special commission, with membership that reflects the diversity of the unit of government, including citizens at large, representatives of public interest groups, and members of minority groups.

Every redistricting process should include:

- Specific timelines for the steps leading to a redistricting plan
- Full disclosure throughout the process and public hearings on the plan proposed for adoption
  - Redistricting at all levels of government must be accomplished in an open, unbiased manner with citizen participation and access at all levels and steps of the process, and
  - Should be subject to open meeting laws.
- A provision that any redistricting plan should be adopted by the redistricting authority with more than a simple majority vote.
  - Remedial provisions established in the event that the redistricting authority fails to enact a plan. Specific provisions should be made for court review of redistricting measures and for courts to require the redistricting authority to act on a specific schedule.
    - Time limits should be set for initiating court action for review.
    - The courts should promptly review and rule on any challenge to a redistricting plan and require adjustments if the standards have not been met.

The standards on which a redistricting plan is based, and on which any plan should be judged, must:

- Be enforceable in court
- Require:
  - Substantially equal population
  - Geographic contiguity
  - Effective representation of racial and linguistic minorities
- Provide for (to the extent possible)
  - Promotion of partisan fairness
  - Preservation and protection of “communities of interest”
  - Respect for boundaries of municipalities and counties
- Compactness and competitiveness may also be considered as criteria so long as they do not conflict with the above criteria
- Explicitly reject
  - Protection of incumbents, through such devices as considering an incumbent’s address
  - Preferential treatment for a political party, through such devices as considering party affiliation, voting history and candidate residence.

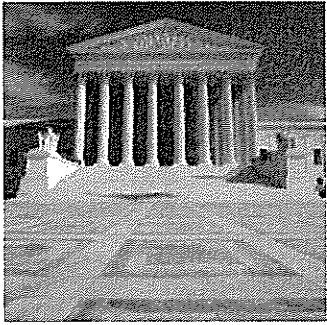
Statement of Position on Redistricting, as Adopted by Concurrence, June 2016. This position does not supersede any existing state League redistricting position.



# Redistricting and the Supreme Court: The Most Significant Cases

7/19/2018

## Overview



Time was, redistricting was left to the near complete discretion of state lawmakers. However, over the past five decades, the United States Supreme Court has developed an extensive and complex jurisprudence on redistricting.

Much of the case law is devoted to the constitutional requirement of one person, one vote, but over the past 20 years, more and more of the case law has addressed the impermissible uses of race in redistricting. In addition to the constitutional cases dealing with redistricting, the court has addressed the requirements of the Voting Rights Act, one of the most significant pieces of legislation passed during the last half of the 20th century. In its current term, the court will address once again whether or not standards for partisan gerrymandering can be determined

and applied.

This page provides an overview of the most significant Supreme Court decisions on redistricting from the last five decades. These cases are grouped into four categories: cases relating to population, a case relating to using a redistricting commission, cases relating to race and cases relating to partisanship.

For more information on how states draw their legislative and congressional districts, see NCSL's main redistricting page. For detailed information about litigation, see NCSL's Redistricting Case Summaries. For case summaries from the current decade, see NCSL's Redistricting Case Summaries: 2010 – Present.

## Cases Relating to Population

### ***Baker v. Carr*, 369 U.S. 186 (1962)**

**Significance:** For the first time, the court held that the federal courts had jurisdiction to consider constitutional challenges to state legislative redistricting plans.

**Summary:** Since the earliest days of the republic, redrawing the boundaries of legislative and congressional districts after each decennial census has been primarily the responsibility of state legislatures. Following World War I, as the nation's population began to shift from rural to urban areas, many legislatures lost their enthusiasm for the decennial task and failed to carry out their constitutional responsibility. For decades, the U.S. Supreme Court declined repeated invitations to enter the "political thicket" of redistricting, *Colegrove v. Green*, (1946), and refused to order the legislatures to carry out their duty.

In this case, the Tennessee General Assembly had failed to reapportion seats in the Senate and House of Representatives since 1901. *Baker v. Carr*, 369 U.S. 186, 191. By 1960, population shifts in Tennessee made a vote in a small rural county worth 19 votes in a large urban county. *Id.* at 245. The Court held that a federal district court had jurisdiction to hear a claim that this inequality of representation violated the Equal Protection Clause of the Fourteenth Amendment.

### ***Gray v. Sanders*, 372 U.S. 368 (1963)**

**Significance:** The Court established the constitutional standard for equality of representation as "one person, one vote."

**Summary:** Under the county unit system, Georgia tabulated votes for candidates in the Democratic primary for statewide

offices in accordance with the population of the county in which the votes were cast, so that votes in less-populated counties were given greater weight than votes in more populated counties. This gave a voter in Georgia's least populous county an influence in the nomination of candidates equivalent to 99 voters in the most populous county. In striking down this system of weighted voting, Justice William O. Douglas declared: "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote." 372 U.S. at 381.

### ***Wesberry v. Sanders*, 376 U.S. 1 (1964)**

**Significance:** The Court held that the constitutionality of congressional districts was a question that could be decided by the courts.

**Summary:** Voters in Georgia's Congressional District 5, which had three times the population of Congressional District 9, alleged that this imbalance denied them the full benefit of their right to vote. A three-judge federal district court held that drawing congressional districts was a task assigned by the Constitution to state legislatures, subject to guidance by Congress, and not assigned to the courts. The district court held that the complaint presented a "political question" the court had jurisdiction to decide, but should not. 376 U.S. at 2-3. The Supreme Court reversed, holding that congressional districts must be drawn so that "as nearly as is practicable one man's vote in a congressional election is worth as much as another's." *Id.* at 7-8.

### ***Reynolds v. Sims*, 377 U.S. 533 (1964)**

**Significance:** Both houses of a bicameral state legislature must be apportioned substantially according to population. Legislative districts may deviate from strict population equality only as necessary to give representation to political subdivisions and provide for compact districts of contiguous territory. Legislative districts should be redrawn to reflect population shifts at least every 10 years. Once a constitutional violation has been shown, a court should take equitable action to correct it, bearing in mind the practical requirements of running an election.

**Summary:** Alabama Senate and House seats had not been reapportioned among the counties since 1903. 377 U.S. at 539-40. Each county had one or more senators and one or more representatives, regardless of population. According to the 1960 Census, the largest Senate district had about 41 times the population of the smallest Senate district, and the largest House district had about 16 times the population of the smallest House district. *Id.* at 545.

Alabama attempted to justify the disparity in the Senate by analogy to the federal system, but the Supreme Court found that comparison to not be pertinent. *Id.* at 571-75. Justice Earl Warren declared, "Legislators represent people, not trees or acres." *Id.* at 562.

The Court held that "the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Id.* at 568. More flexibility is allowed for legislative districts than for congressional districts. "[M]athematical nicety is not a constitutional requisite" when drawing legislative plans. *Id.* at 569. A that is necessary is that the maps achieve "substantial equality of population among the various districts." *Id.* at 579. Deviations from population equality in legislative plans may be justified if they are "based on legitimate consideration incident to the effectuation of a rational state policy," such as maintaining the integrity of political subdivisions and providing for compact districts of contiguous territory. *Id.* at 578.

Redrawing legislative districts at least every 10 years to reflect population shifts is not constitutionally required, but to redraw them less often "would assuredly be constitutionally suspect." *Id.* at 583-84.

Once a constitutional violation has been shown, a court should take equitable action to correct it, bearing in mind the practical requirements of running an election. *Id.* at 585.

### ***Gaffney v. Cummings*, 412 U.S. 735 (1973)**

**Significance:** A legislative plan will not be struck down for inequality of population if the difference in population between its largest district and its smallest district is less than 10 percent.

**Summary:** Connecticut voters challenged the 1971 redrawing of Senate and House districts by the Apportionment Board. The Senate districts had a total population deviation of 1.81 percent. The House districts had a total deviation of 7.83 percent. 412 U.S. at 737. The complaint alleged that the population deviations were larger than required by the Equal Protection Clause of the Fourteenth Amendment and split too many town boundaries. *Id.* at 738-39. The Supreme Court held that the Board was not required to justify population deviations of this magnitude. *Id.* at 740-51. In dissent, Justice William J. Brennan surveyed the various legislative plans whose total deviations the Court had approved or rejected and alleged it had established a ten-percent threshold: "deviations in excess of that amount are apparently acceptable only on a showing of justification by the State; deviations less than that amount require no justification whatsoever." *Id.* at 777.

In later cases, the Court majority has endorsed and followed the rule Brennan's dissent accused them of establishing. See e.g., *Chapman v. Meier*, 420 U.S. 1 (1975); *Connor v. Finch*, 431 U.S. 407 (1977); *Brown v. Thomson*, 462 U.S. 835, -43 (1983); *Voinovich v. Quilter*, 507 U.S. 146 (1993). But a total deviation of less than 10 percent is not a safe harbor; plaintiff may provide other evidence of discrimination within the 10 percent. See *Larios v. Cox*, 300 F. Supp.2d 1320 (N.D. Ga. 2004), *aff'd*, 542 U.S. 947, 2004 (mem.).

### ***Karcher v. Daggett*, 462 U.S. 725 (1983)**

**Significance:** Congressional districts must be mathematically equal in population, unless necessary to achieve a legitimate state objective.

**Summary:** The New Jersey Legislature drew a congressional plan that had a total deviation of 3,674 people, or 0.6984 percent. 462 U.S. at 728. The Supreme Court held that parties challenging a congressional plan bear the burden of proving that population differences among districts could have been reduced or eliminated by a good-faith effort to draw districts of equal population. If the plaintiffs carry their burden, the state must then bear the burden of proving that each significant variance between districts was necessary to achieve some legitimate state objective. Brennan, now writing for the 5-4 majority, noted that complying with what we now call "traditional redistricting principles," such as compactness, respecting municipal boundaries, preserving the cores of prior districts and avoiding contests between incumbents, could meet the state's burden. 462 U.S. 740-41.

### ***Evenwel v. Abbott*, 578 U.S. \_\_\_\_, 136 S. Ct. 1120 (2016)**

**Significance:** Total population is a permissible metric for calculating compliance with "one person, one vote."

**Summary:** Since *Reynolds* and *Wesberry*, states have almost universally used total population as the unit for calculating population equality for districting plans. Plaintiffs in *Evenwel* challenged Texas's 2011 redistricting scheme, arguing that its use of total population violated the Equal Protection Clause by discriminating against voters in districts with low immigrant populations by giving voters in districts with significant immigrant populations a disproportionately weighted vote. The Supreme Court held that its past opinions confirmed that states *may* use total population in order to comply with one person, one vote. The court did not hold that other methods are impermissible.

## **Cases Relating to Legislatures vs. Commissions**

### ***Arizona State Legislature v. Arizona Independent Redistricting Commission*, No. 13-1314, 576 U.S. , 135 S. Ct. 2652 (2015)**

**Significance:** The creation of a redistricting commission for congressional districts via ballot initiative does not violate the Elections Clause of the U.S. Constitution.

**Summary:** In 2000, Arizona voters created the Arizona Independent Redistricting Commission via ballot initiative to redraft state legislative districts and congressional districts. In 2015, the Arizona Legislature challenged the right of the commission to draft congressional lines, arguing that the Elections Clause of the U.S. Constitution only grants two institutions the power to regulate the time, place, or manner of electing congressional representatives: the legislatures in each of the states, or Congress. The Supreme Court held that the reference to the "Legislature" in the Elections Clause encompassed citizen initiatives in states like Arizona, where the state constitution explicitly includes the people's right to

bypass the legislature and make laws directly through such initiatives.

## Cases Relating to Race

### ***Beer v. United States*, 425 U.S. 130 (1976)**

**Significance:** Section 5 of the Voting Rights Act of 1965 only prohibits retrogression, not other forms of discrimination. Preclearance of a new redistricting plan will be denied only if it causes a minority group to have less opportunity to elect representatives of their choice than under the current plan. (Note: Section 5 of the VRA is unenforceable since *Shelby County v. Holder*, see below.)

**Summary:** Section 5 of the Voting Rights Act prohibits certain states and political subdivisions with a history of racial discrimination from changing any voting law or practice without obtaining approval from either the U.S. Attorney General or the U.S. District Court for the District of Columbia. Approval for voting law changes in those jurisdictions would only be granted if the law had neither the purpose nor effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In this case, The attorney general refused to preclear the 1971 redistricting plan for the New Orleans city council because it would have given black voters a black voting age majority in only one district and a black population majority in only two of the seven districts, despite African-Americans constituting 45 percent of the city's population and 35 percent of its registered voters. Prior to 1971, there were no majority-minority wards in the city. The Supreme Court held the plan was entitled to preclearance even though it disproportionately favored white voters, because by increasing the number of majority-minority wards in the city it placed black voters in a better position than they had been in under the previous plan.

### ***Thornburg v. Gingles*, 478 U.S. 30 (1986)**

**Significance:** This case created the standard for determining whether § 2 of the Voting Rights Act requires that a majority-minority district be drawn.

**Summary:** Following the 1982 amendments to the Voting Rights Act (VRA), it was unclear precisely *when* the VRA would require a majority-minority district be drawn to prevent vote dilution. Here, the Supreme Court held that for a plaintiff to prevail on a § 2 claim, he or she must show:

1. The racial or language minority group "is sufficiently numerous and compact to form a majority in a single-member district."
2. The minority group is "politically cohesive," meaning its members tend to vote similarly.
3. The "majority votes sufficiently as a bloc to enable it...usually to defeat the minority's preferred candidate."

A later case, *Bartlett v. Strickland*, 556 U.S. 1 (2009), added the requirement that a minority group be a numerical majority of the voting-age population in order for § 2 of the Voting Rights Act to apply.

### ***Shaw v. Reno*, 509 U.S. 630 (1993)**

**Significance:** Legislative and congressional districts will be struck down by courts for violating the Equal Protection Clause if they cannot be explained on grounds other than race. While not dispositive, "bizarrely shaped" districts are strongly indicative of racial intent.

**Summary:** Plaintiffs brought a novel legal claim, arguing that a North Carolina congressional district was so bizarrely shaped that it amounted to a "racial gerrymander," which they claimed violated the Equal Protection Clause. The Court rejected the state's defense that the district was justified as a so-called "majority-minority district," holding that the Voting Rights Act required no such district to be drawn where one did not previously exist. Claiming the North Carolina district resembled "the most egregious racial gerrymanders of the past," the court struck down the district on the basis that it reflected the incorrect belief that members of minority groups in different geographic areas (e.g. Durham vs. Charlotte) had the same interests, and did not have independent local needs that would be better served by having a more locally-oriented representative.

### ***Miller v. Johnson*, 515 U.S. 900 (1995)**

**Significance:** A district becomes an unconstitutional racial gerrymander if race was the "predominant" factor in the drawing



of its lines.

**Summary:** Following *Shaw*, it remained unclear what the standard of review was under the new racial gerrymandering doctrine. In *Miller*, the U.S. Department of Justice in 1991 refused preclearance to Georgia's initial congressional redistricting plan under § 5 of the Voting Rights Act, claiming the state needed to create an additional majority-minority district. Plaintiffs challenged the newly drawn districts as racial gerrymanders. The Supreme Court held for the plaintiffs, and established the rule for racial gerrymandering claims: if a district is drawn predominantly on the basis of race, it violates the Equal Protection Clause.

***Bush v. Vera*, 517 U.S. 952 (1996)**

**Significance:** If you want to argue that partisan politics, not race, was your dominant motive in drawing district lines, beware of using race as a proxy for political affiliation. To survive strict scrutiny under the Equal Protection Clause and avoid being struck down as a racial gerrymander, a district must be reasonably compact.

**Summary:** Under the 1990 reapportionment of seats in Congress, Texas was entitled to three additional congressional districts. The Texas Legislature decided to draw one new Hispanic-majority district in South Texas, one new African-American-majority district in Dallas County, and one new Hispanic-majority district in the Houston area. In addition, the legislature reconfigured a district in the Houston area to increase its percentage of African Americans. The legislature used sophisticated software that allowed it to redistrict with racial data at the census block level. Plaintiffs challenged 24 of the state's 30 congressional districts as racial gerrymanders. The Supreme Court struck down three districts, holding that race was the predominant factor in drawing the lines. Importantly, the court held that even if race was used solely as a proxy for political affiliation, a district could nonetheless be struck down as a racial gerrymander. Reaffirming *Shaw*, the court noted that "cutting across pre-existing lines or other natural divisions" provided evidence that race was the predominant factor in drawing the lines, rather than making them reasonably compact.

***Shelby County v. Holder*, No. 12-96, 570 U.S. \_\_\_\_ (June 25, 2013)**

**Significance:** Section 5 of the Voting Rights Act no longer applies to any jurisdictions in the United States. As a result, redistricting plans and other changes in voting laws, such as voter identification requirements, need not be approved before they take effect.

**Summary:** Section 5 of the Voting Rights Act of 1965 (VRA) (codified as amended at 52 U.S.C. § 10304), prohibits certain states and political subdivisions from changing any voting law or practice without first obtaining from either the U.S. Attorney General or the U.S. District Court for the District of Columbia a determination that the change neither had the purpose nor would have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. (A "language minority group" is defined as "American Indian, Asian American, Alaskan Natives or of Spanish heritage." 52 U.S.C. § 10310(c)(3) (2018)). This process is called "preclearance." A redistricting plan had to be precleared before it could take effect. Section 5 applies only to certain jurisdictions in the South and elsewhere that meet the requirements of § 4(b) (codified as amended at 52 U.S.C. § 10303(b)): the jurisdiction had imposed a literacy test or similar requirement making it difficult to vote and less than 50 percent of its voting-age population had been registered to vote or had voted in the presidential election of 1964, 1968, or 1972 (depending on when the jurisdiction first became subject to § 5).

In 2011, Shelby County, Alabama, challenged the constitutionality of both the formula that determined whether § 5 applied to a jurisdiction—§ 4(b)—and § 5 itself. It alleged that the coverage formula in § 4(b) had not changed since the VRA was enacted in 1965, that conditions in Shelby County had changed drastically since then, and that standards based on old data should no longer apply.

The Supreme Court held that § 4(b) was unconstitutional. It balanced the exceptional conditions surrounding implementation of the Voting Rights Act with the basic principles of the 10th Amendment. The 10th Amendment reserves to the states all powers not specifically granted to the federal government. This includes the power to regulate elections. In addition, the principle of equal sovereignty among the states frowns upon their disparate treatment. It also found that the exceptional conditions that gave rise to the Voting Rights Act no longer existed.

Post-*Shelby*, it is still possible that states or jurisdictions could be “bailed in” under § 3 of the VRA for preclearance, if a pattern of current discrimination is found.

***Alabama Legislative Black Caucus v. Alabama*, No. 13-895, 575 U.S. \_\_\_\_, 135 S. Ct. 1257 (2015)**

**Summary:** Racial gerrymandering claims proceed district-by-district, not against an entire plan. Further, equal population not a “factor to be considered” when redistricting, but rather a constitutional mandate. Section 5 of the Voting Rights Act does not require a covered jurisdiction to maintain a specific numerical minority percentage when redistricting.

**Significance:** The district court upheld an Alabama Legislative redistricting plan that tried to make populations nearly equal in the districts, and attempted to maintain the same black population percentages in these districts as those in the plan from the previous decade. The Supreme Court reversed and remanded the case to the district court for several reasons. These reasons are:

1. The district court’s analysis of the racial gerrymandering claim erroneously referred to the state “as a whole,” rather than district-by-district. Case law since *Shaw v. Reno* (SEE ABOVE) has made clear that racial gerrymandering claims are judged on a district-by-district basis.
2. The state could not use its equal-population goal as a factor to be weighed against other factors when redistricting. Rather, equal population is a constitutional mandate that undergirds the entire redistricting process and can neither give way to other mandatory factors nor justify deviating from them.
3. As for Section 5 of the Voting Rights Act, the state had asked how to maintain the present minority percentages in majority-minority districts instead of asking the extent to which they must preserve existing minority percentages in order to maintain the minority’s present ability to elect the candidate of its choice. Because asking the wrong question may have led to the wrong answer, the Supreme Court rejected the district court’s conclusions.

***Cooper v. Harris*, No. 15-1262, 581 U.S. \_\_\_\_, 137 S. Ct. 1455 (2017)**

**Significance:** Partisanship cannot be used to justify a racial gerrymander. Further, § 2 of the Voting Rights Act merely requires that a racial minority have the opportunity to elect a “candidate of choice,” not that a particular percentage of minority voters be present in a district.

**Summary:** Voters in two North Carolina congressional districts challenged their districts as unconstitutional racial gerrymanders. The state argued the case on two primary grounds. First, the state argued the increase in the percentage of black voters in the district was required to avoid a potential vote dilution challenge under Section 2 of the Voting Rights Act. Second, the state argued that any gerrymandering that had transpired was strictly partisan. The court rejected these arguments, holding that: (1) § 2 of the Voting Rights Act does not require a numerical majority of voters in a particular district; rather, it only requires that a compact and politically cohesive minority have the opportunity to elect its candidate of choice; and (2) Even if the underlying intent of the legislature in drawing maps is for partisan advantage and not with racial intent, the predominant use of race as a proxy for partisanship nonetheless constitutes racial gerrymandering.

## Cases Related to Partisanship

***Gaffney v. Cummings*, 412 U.S. 735 (1973)**

**Significance:** An otherwise acceptable reapportionment plan is not constitutionally vulnerable when its purpose is to provide districts that would achieve “political fairness” between the political parties.

**Summary:** Connecticut voters challenged the 1971 redrawing of Senate and House districts by the Apportionment Board. The board followed a policy of “political fairness,” using results from the preceding three statewide elections to create a number of Republican and Democratic legislative seats that would reflect as closely as possible the actual statewide plurality of votes for House and Senate candidates in a given election. *Id.* at 738. The complaint alleged that the plan was political gerrymander that favored the Republican Party. *Id.* at 738-39. The Supreme Court held that a state’s attempt, within tolerable population limits, to fairly allocate political power to the parties in accordance with their voting strength is constitutional. *Id.* at 752-54.

***Davis v. Bandemer*, 478 U.S. 109 (1986)**

**Significance:** Partisan gerrymandering claims may be brought in federal courts under the Equal Protection Clause. While a standard for measuring partisan gerrymanders was established, it was so difficult to satisfy that no partisan gerrymander

was struck down under the *Bandemer* discriminatory effects test, which was abandoned in *Vieth v. Jubelirer*, 541 U.S. 267 (2004) (below).

**Summary:** Democrats in Indiana challenged the 1981 legislative redistricting plan, claiming the district lines intentionally discriminated against them in violation of the Equal Protection Clause. The Supreme Court held that the claim was not a “political question,” and instead posed questions of law. The fact that a bright-line rule such as “one person, one vote” does not exist for partisanship did not mean that such challenges were non-justiciable political questions. The court required that, in order to prove partisan discrimination, a plaintiff political group must prove that those drawing a plan had an intent to discriminate against them, and that the plan had a discriminatory effect on them.

The court assumed that a discriminatory intent would not be hard to prove. As Justice Byron White said for the majority, “We think it most likely that whenever a legislature redistricts, those responsible for the legislation will know the likely political composition of the new districts and will have a prediction as to whether a particular district is a safe one for a Democratic or Republican candidate or is a competitive district that either candidate might win.” 478 U.S. at 128. On the other hand, a discriminatory effect, until at least 2016, has been impossible to prove. The court said:

[U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole.

. . . Such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

478 U.S. at 132-33.

Merely showing that the minority is likely to lose elections held under the plan is not enough. As the Court pointed out, “the power to influence the political process is not limited to winning elections . . . . We cannot presume . . . without actual proof to the contrary, that the candidate elected will entirely ignore the interests of those voters [who did not vote for him or her].”

### ***Vieth v. Jubelirer*, 541 U.S. 267 (2004)**

**Significance:** While a plurality of justices in this case held that partisan gerrymandering claims were non-justiciable, Justice Anthony Kennedy left the door open for potential future claims under the First Amendment, rather than the Fourteenth Amendment as had been cited in *Bandemer*.

**Summary:** Between *Bandemer* and *Vieth*, nearly 20 years elapsed. During that time, no lower court successfully created manageable legal standard under which to scrutinize partisan gerrymanders. The majority of justices in this case held that this particular challenge also failed to prove a violation of the Constitution. Four of the five justices in the majority went further, stating that they believed no such standard existed and that partisan gerrymandering claims should be excluded from federal courts under the political question doctrine. However, the fifth justice in the majority—Kennedy—would not go that far. In his view, partisan gerrymandering claims could still be justiciable, but under the First Amendment. Under this theory, a partisan gerrymander would be unconstitutional not for violating the rights of the aggrieved party, but because voters of a particular party would be retaliated against by the government (via a redistricting plan) for their previously expressed speech (voting for a particular party). Because Kennedy did not join the other four justices in the majority on this point, partisan gerrymandering claims remained justiciable.

### **2018 Supreme Court Action**

In 2018, four partisan gerrymandering cases came before the Supreme Court. None had substantive rulings. In *Gill v. Whitford*, No. 16-1161, the Court remanded the case for the plaintiffs to prove standing. In *Benisek v. Lamone*, No. 17-333, the Court refused to grant a preliminary injunction on the Maryland Congressional map. In *Rucho v. Common Cause*, No. 17A745, the Court vacated the judgement and remanded for further consideration in light of *Gill v. Whitford*. As for *Turzai v. League of Women Voters of Pa*, No. 17A.795, Pennsylvania legislative leaders filed a petition for *certiorari* at the U.S. Supreme Court on June 21, appealing the Pennsylvania Supreme Court's decision to adopt a remedial map.

**Additional Resources**

- [Major Redistricting Cases | 2010-Present](#)
- [Redistricting Law 2010](#)
- [Redistricting Criteria](#)

**NCSL Member Toolbox**

**Members Resources**

- [Get Involved With NCSL](#)
- [Jobs Clearinghouse](#)
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**Denver**

7700 East First Place  
Denver, CO 80230  
Tel: 303-364-7700 | Fax: 303-364-7800

**Washington**

444 North Capitol Street N.W., Suite 515  
Washington, D.C. 20001

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Testimony of Joe Magruder for HB 706-FN-A

House Election Law Committee

January 29, 2019

My name is Joe Magruder, I live in Concord and speak for myself although I am an active volunteer with both Open Democracy and the Kent Street Coalition. I support this bill and the independent, nonpartisan restricting commission it would create. I hadn't planned to testify but changed my mind after reading in the Concord Monitor on Monday that the chief justice of the U.S. Supreme Court called a proposed test for extreme partisan gerrymandering "gobbledygook."

As a citizen with deep concerns about attacks on and loss of faith in democracy both here and abroad, I am offended. I am offended because the Supreme Court ruled 33 years ago (*Davis v. Bandemer*, 1986) that partisan gerrymandering could be extreme enough to be unconstitutional, but the Court has yet to adopt a workable standard for identifying it. That's a flabbergasting lack of urgency, comparable to knowing that banks had brazenly and routinely stolen money from their customers for three decades while the Supreme Court dithered.

I am not alone. The Campaign Legal Center, a nonpartisan nonprofit that litigates gerrymandering cases, had two polling firms, one Democratic, one Republican \_ survey 1,000 likely voters a year before the 2018 election. Overwhelmingly, people supported having the Supreme Court adopt clear rules for identifying partisan gerrymandering, even when their party might win fewer seats as a result. There was majority support in every voter group: Independents, Democrats, Republicans, likely Trump voters and likely Clinton voters. There's no reason to expect anything different from New Hampshire voters.

Please vote this bill Ought to Pass.

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[https://campaignlegal.org/sites/default/files/memo.CLCPartisanRedistricting.FINAL\\_.2.09082017%20%28002%29.pdf](https://campaignlegal.org/sites/default/files/memo.CLCPartisanRedistricting.FINAL_.2.09082017%20%28002%29.pdf)

HB 706-FN-A - establishing an independent redistricting commission

Tuesday, January 29, 2019

Rm. 308

2:00 P.M.

Time: 3:05

Chairman Cote, and members of the committee:

I speak in support of this bill.

After years of refusing to hear cases involving challenges to redistricting plans, refusing to direct state legislators to abide by their constitutional responsibilities, the U.S. Supreme Court in 1962, for the first time, held that the federal courts have jurisdiction to consider constitutional challenges to state legislative redistricting plans.

Beginning in 1962, SCOTUS has ruled on apportionment cases in four major areas:

- 1) Cases relating to Population
- 2) Cases relating to Legislatures vs. Commissions
- 3) Cases Relating to Race
- 4) Cases Relating to Partisanship

Gerrymandering is legalized fraud committed upon voters. Members of the majority party believe they have earned the opportunity to skew districts in order to protect incumbents, pick their voters, or exercise other acts of rigging the system for self-benefit. In reality, the majority party has only earned the opportunity to serve their constituents, consistent with federal and state laws.

The situation of gerrymandering has worsened over the years because of the advent and use of algorithms much more sophisticated than the software available in prior redistricting plans, federal or state.

We are now more than 56 years from the court's earliest intervention. In the meantime, the overt manipulation of apportionment continues throughout most of the country. But public opinion is sharply on the side of fairness. A bi-partisan survey from September, 2017, concludes by a margin of 73 to 14 percent, voters support removing partisan bias from redistricting, even if it means their preferred political party will win fewer seats.

This bill's robust commission membership screening process is likely to result in a body of members who, to the extent possible in politics, is non-partisan. Its redistricting criteria respond to the issues identified by SCOTUS as having been abused in the past.

In addition, this bill contains:

- Public notification and information requirements that are lacking in so many important initiatives
- Clear requirements for public disclosure
- A registered voter challenge process
- And a backup plan should the commission fail in its responsibilities.

The nation's highest court has recently agreed to consider yet another apportionment lawsuit, Rucho v Common Cause. If the court does not deflect from ruling, as it did in Gill v Whitford, a ruling in Rucho could set federal standards for fair redistricting outcomes, and spotlight blatant gerrymandered maps existing in North Carolina and Maryland. In the meantime, however the buck must stop with the states.

I thank members for their attention.

<http://www.ncsl.org/research/redistricting/redistricting-and-the-supreme-court-the-most-significant-cases.aspx>

<https://campaignlegal.org/update/results-are-most-americans-want-limits-gerrymandering>

Bob Perry - Strafford



**Testimony in Support of HB 706,  
AN ACT establishing an independent redistricting commission.  
House Election Law Committee, 01.30.19**

My name is Timothy McKernan and I'm the research director of Granite State Progress, a multi-issue advocacy organization working on issues of immediate state and local concern.

I'm here today to testify in support of HB 706, which would establish an independent redistricting commission in New Hampshire. We urge the committee to recommend this bill Ought to Pass.

An independent redistricting commission is an essential element of a fair, equitable electoral system in this state.

Simply put, our present system is weak.

Right now, the party in power can draw electoral maps behind closed doors.  
Right now, the party in power can choose winners and losers in the legislature.  
Right now, the party in power can use redistricting to reward party loyalty and punish party enemies.

Every ten years our state is held hostage by a political spectacle that creates distrust in the system and feeds into voter cynicism. Every ten years our state becomes vulnerable to the political calculations of the majority party, whichever it may be.

This legislature has the opportunity to take these political fights off the table. Let's keep political discourse focused on policy, not power. Let's protect our electoral system against partisan cronyism and petty payback. Let's spare the state, cities, towns, and political parties the frequent costs of redistricting-related litigation that, by its nature, will inevitably require the valuable time of the New Hampshire Supreme Court. Let's work together to make our electoral system stronger and more fair.

Voters should pick their elected officials, not the other way around. An independent redistricting commission ensures that our state puts the best interests of constituents and communities of interest ahead of any other interest.

We urge the committee to empower an independent commission through this bill or a constitutional amendment. We urge the committee to vote HB 706 Ought to Pass. Thank you.

Timothy M. McKernan  
Research Director  
Granite State Progress  
(603) 225-2471  
[tim@granitestateprogress.org](mailto:tim@granitestateprogress.org)





Statement by Henry Klementowicz, Staff Attorney, ACLU-NH  
House Election Law Committee  
House Bill 706  
January 29, 2019

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (“ACLU-NH”)—a non-partisan, non-profit organization working to protect civil liberties throughout the state for over 50 years. House Bill 706 (HB 706) would create an Independent Redistricting Commission. We respectfully urge the Committee to support HB 706.

Daniel Webster once said, “The right to choose a representative is every man’s portion of sovereign power.” HB 706 would further enshrine that right.

Currently, under the New Hampshire Constitution, election districts are created by the legislature. Every ten years following the decennial census, the legislature is tasked with drawing boundaries which are sent to the Governor for signature. Unfortunately, this procedure is ripe for misuse through a process called Gerrymandering. Through Gerrymandering, a legislature can draw the districts in a way to “pack” voters in a political minority into few districts while “cracking” other voters in a political minority into other districts. For example, following the 2018 elections, one party received 53% of the votes for the Wisconsin State Assembly, yet won only 36 of 99 seats. We have seen both parties Gerrymander districts to favor themselves.

In addition, by creating “safe” seats for one political party, Gerrymandering can make it so the only competitive election for a particular office is a primary. This incentivizes candidates to run to the left or to the right rather than the center. Since they have less of an incentive to convince voters in the middle, politicians tend to take more polarized positions, which in turn leads to increased partisan gridlock and decreased bipartisanship. Partisan Gerrymandering is currently being challenged before federal judge described Gerrymandering as “cancerous, undermining the fundamental tenets of our form of democracy.”

The current processes whereby the legislature draws the districts has also broken down in the past when the legislature and Governor could not agree on maps after the 2000 census. The Court had to draw the maps instead, which led to confusion and delay. *See Burlington v. Chandler*, 148 N.H. 143 (2002). We believe that an Independent Redistricting Commission would be less likely to deadlock than a legislature, thus lowering the likelihood of need for court involvement.

This proposal would create an Independent Redistricting Commission and would move the power to set districts from the legislature to the Commission in the first instance. This would improve our democracy by enabling the voters to choose their politicians, rather than allowing politicians to choose their voters. In addition, this bill promotes transparency and fairness by creating criteria to guide the



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

New Hampshire

Commission in its work to draw the districts in a fair way that does not unduly favor or disfavor any political party.

For these reasons, we urge the Committee to support HB 706.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry Klementowicz", is written over a faint, light-colored signature line.

Henry Klementowicz  
Staff Attorney, ACLU-NH



706

4 Park St Room 200  
Concord, NH 03301

[www.LWVNH.org](http://www.LWVNH.org)

January 29, 2019

To: Chair David Cote and members of the House Election Law Committee

From: Liz Tentarelli, president, League of Women Voters NH [LWVNewHampshire@gmail.com](mailto:LWVNewHampshire@gmail.com)

Re: **HB 706**, creating an Independent Redistricting Commission

The League of Women Voters is a non-partisan organization with voting rights at the core of our mission. Central to the power of the vote is the fair apportionment of districts. The League has supported an independent redistricting commission in New Hampshire since 2004, and has testified a number of times since then. We are back today to urge you to recommend **Ought to Pass on HB 706**.

Last week in the hearing on CACR9 on this same topic I spoke to you about democracy's expectation of transparency in government. I gave details of a profound lack of transparency in the 2011 redistricting cycle in New Hampshire, as well as the public's frustration and the legislators' embarrassment. If anyone didn't get a paper copy of my testimony, I can supply that today, and it is online on the Action & Testimony page of our website.

**In last week's hearing several questions were raised about the CACR that I believe are well addressed in the current bill.**

One committee member asked how this can be considered a **non-partisan** commission when the appointees are chosen by party leaders. HB 706 solves that problem by having the commission members chosen from applicants in a multi-stage process (see page 2 lines 21-38 and p. 3 lines 1-8).

The qualifications for commission members are also quite detailed and exclude those people who have run for or held public office in the 6 years before the selection process. Other partisan activity (other than voting) can also exclude applicants (see page 1 lines 13-31 and page 2 lines 1-4).

The small size of the commission and the **possibility of a "rogue agent"** impeding the work of the commission under CACR9 were other concerns expressed last week that are better addressed in this bill. The commission in HB 706 has 15 members (rather than the 7 in the CACR). Also a process for removal of a member who does not perform up to standards is spelled out (page 3, lines 1-13).

**Transparency** is supported by a number of provisions in HB 706, including "all meetings of the commission shall be open to the public" (page 3, line 21), a requirement for a public meeting in each county before maps are drawn (page 3, lines 26-27) and in the same section requirements for public notice of meetings and wide dissemination of information about the process and plans (page 3 lines 28-38 and page 4 lines 1-2).

This bill also lays out the **timetable for consideration of the plans by the Legislature** very specifically and the process to be followed if the first plan or a subsequent plan is not approved by the Legislature (page 4 lines 24-38 and page 5 lines 1-4) and (page 5 lines 26-38 and page 6 lines 1-4).

The redistricting **criteria** are slightly different in this bill. The word “contiguous” was a problem last week for one person testifying, which has been resolved by this phrasing: “Districts shall form single boundaries and shall not be bisected or otherwise divided by other districts.” (page 5, lines 12 & 13).

What has not changed and the committee may wish to discuss this further is the last place position of the criterion for respecting the integrity of political boundaries in the order of priorities (page 5, lines 22-23).

The League realizes that eventually the various versions of these redistricting bills should align. The advantage of proceeding with an amended CACR is that the commission would create plans that are binding, while in this bill today the commission must get legislative approval of a plan because that is currently required in the Constitution.

We ask that the committee consider the positive aspects of this bill. **Please support an independent redistricting commission for New Hampshire.**

(no appendix today)

Testimony for HB 706

Election Law Committee

Jan. 29, 2019

LOB, Rm 308, 2:00 pm

Good Afternoon Chairman Cote,  
Vice-Chair Moynihan, and members of the Election Law Com:

My name is Corinne Dodge. I live in Derry, and am here again to represent both myself and NH Voters Restoring Democracy. Today I am here in support of HB 706 to establish an independent redistricting commission as I was 2 weeks ago for a similar bill, CACR 9.

Five years ago I started attending public hearings at the State House for reform legislation. I learned quickly to determine the outcome of each hearing by counting the number of Republican and the number of Democratic hearing members who would be voting on each bill. It was consistently a partisan vote right down the line. NH voters are sick and tired and disgusted that many legislators consistently vote in the best interests of their political party instead of in the best interests of NH constituents. I am in hopes that on this non-partisan redistricting issue and in this particular time in history, this extreme partisanship will stop.

It is time to abolish our current gerrymandered system of redistricting. If we do not do so, each one of you, as a Republican and as a Democratic legislator, have a lot to lose personally in your future election plan if the opposing political party wins in the 2020 election cycle. Under our current system, whichever political party is in the majority will then be legally free to unilaterally meet behind closed doors to engage in the corrupting practice of redistricting so that their own party members will be at a distinct advantage to win elections for the next 10 years.

On the other hand, each of you as an Election Law Committee member has a lot to gain by abolishing gerrymandering and establishing a comprehensive, non-partisan redistricting plan. By joining with your fellow committee members here and sending onto the House, a bill for non-partisan redistricting as unanimously "ought to pass", you will be sending a message to NH voters that our NH legislature is now ready and willing to work across the aisle to support the well-being of both our citizens and of our NH governance.

While no plan is ever perfect, this plan will be far superior to the corrupted plan we now have for redistricting. Please consider combining the best of these redistricting bills and sending it onto the full House as unanimously "Ought to Pass".

Thank You

To: Interested Parties  
 Fr: Lake Research Partners and WPA Intelligence  
 Re: Partisan Redistricting – New Bipartisan National Poll  
 Date: September 11, 2017

Our recent national survey of 1,000 likely 2018 general election voters regarding partisan redistricting, commissioned by the Campaign Legal Center, reports that a significant majority of voters, across all partisan breaks, would like the Supreme Court to set new, clear rules to determine when partisan gerrymandering violates the U.S. Constitution. Support for this position is strong, even after hearing the opposition’s argument.<sup>1</sup>

Voters want to remove partisan bias from redistricting, even if it means their party might not win as many seats. People strongly prefer free and unbiased elections rather than what is best for their own party.

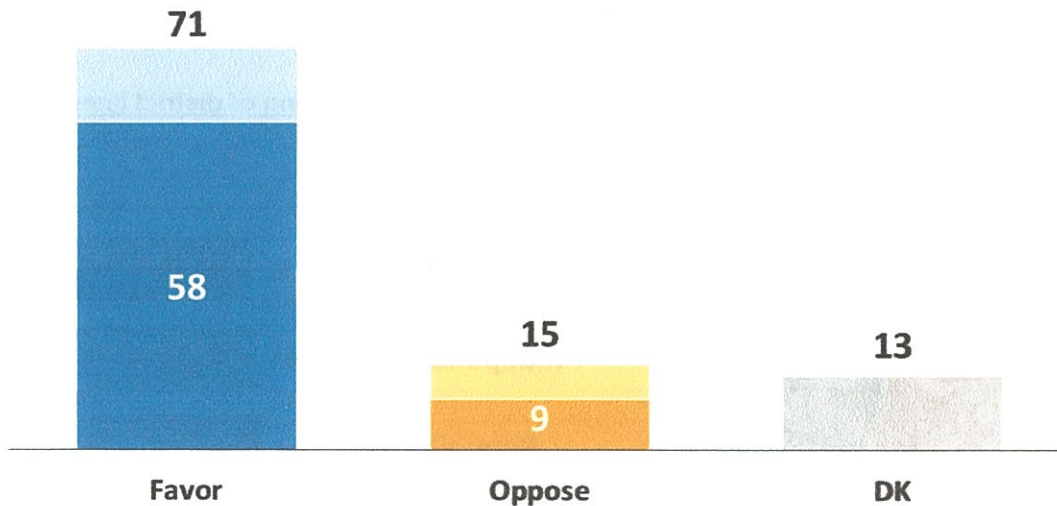
A strong majority of voters of all major parties say that they are less likely to vote for a politician who supports partisan gerrymandering.

Concerns about partisan redistricting are rooted in strong values and shared perspectives. The fundamental freedom to choose one’s own elected officials and the importance of political leaders working for the common good are especially important. Across the board, voters are very concerned that redistricting allows politicians to choose their voters, while putting partisan interests ahead of their constituents and solving important problems.

**Key Findings**

Americans want the Supreme Court to set rules to stop partisan gerrymandering.

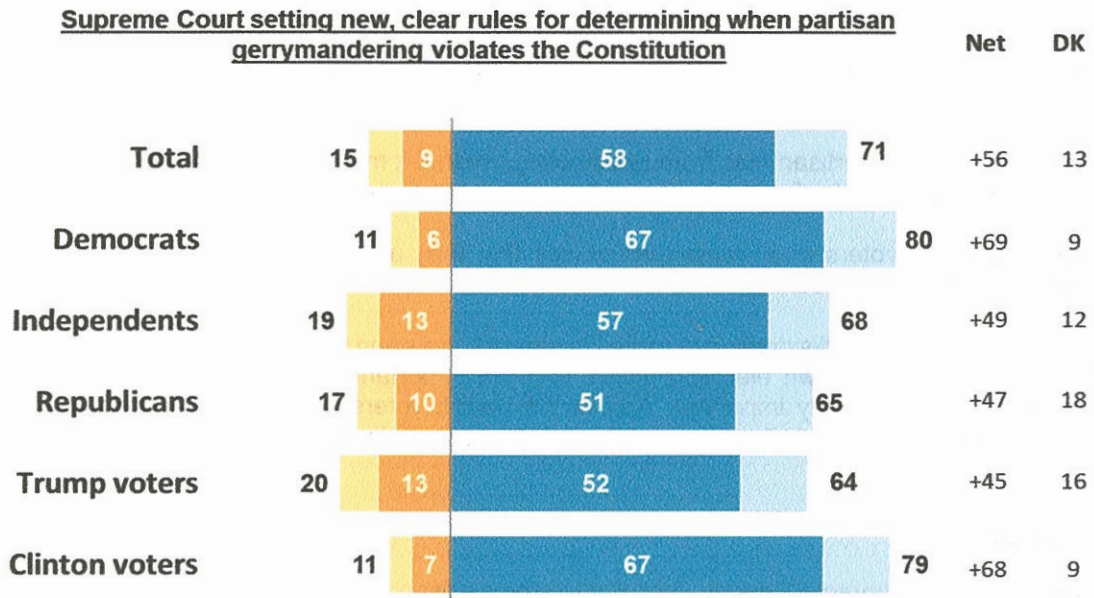
**Would you say you generally favor or oppose the Supreme Court setting new, clear rules for determining when partisan gerrymandering violates the Constitution?**



*Darker colors indicate intensity throughout the report*

<sup>1</sup> Lake Research Partners and WPA Intelligence designed and administered this survey that was conducted by live telephone interviews between August 26-31, 2017. The survey reached 1,000 likely 2018 General Election voters. The margin of error for this poll is +/- 3.1%, and higher among subgroups.

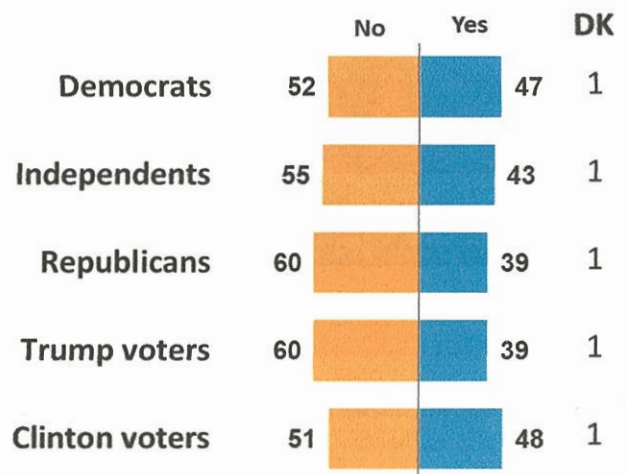
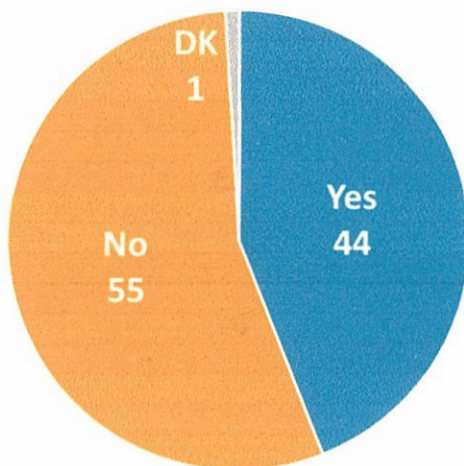
Voters of all major parties are strongly in favor of the Supreme Court setting rules to limit partisan gerrymandering, as are both Trump voters and Clinton voters. There is a significant intensity driving those who would like to see the Supreme Court set new, clear rules when it comes to partisan gerrymandering, with majorities strongly in favor across all major party breaks, and among those who supported either Secretary Clinton or President Trump in the 2016 general election.



*Darker colors indicate intensity throughout the report*

These numbers are strong, despite the fact that less than half of voters have heard about redistricting recently. Slightly more Democrats and Clinton voters have heard about redistricting recently than independent voters, Republicans, or Trump voters.

**Have you heard anything recently about redistricting or the redrawing of district lines?**



Re: HB 706-FN-A an act establishing an independent redistricting commission.

**Written Testimony Supporting HB 706**

**To Honorable Members of the House Election Law Committee:**

For 25 years I administered a non-profit, most recently in Peterborough, focused on numerous educational and justice issues. Since 2004, when I got to know Doris "Granny D" Haddock, founder of Open Democracy, my interest in electoral fairness blossomed.

I urge you to support HB 706, to establish an independent redistricting commission.

The legislation's numerous attributes are timely and much-needed to provide an open and transparent process enabling full public consideration of and comment on the drawing of district lines. The commission's design will ensure integrity and fairness. Much thought and consideration has been given to eligibility specifications to serve on the commission.

HB 706's sponsors should be commended for crafting the eligibility requirements and redistricting criteria.

By defining districts as communities of interest (an area with recognized similarities of interests, including but not limited to racial, ethnic, economic, social, cultural, geographic, or historic identities) common relationships with political parties or political candidates shall be avoided.

Stipulations regarding judicial review are also detailed thoughtfully.

Please decisively support passage of HB 706.

Please include this in the legislative record.

Thank you.

John Friede  
54 High St.  
Peterborough, NH 03458  
603-924-9750



Chairman Cote and Members of the Committee,

For the record, my name is Liz Wester, State Director for America Votes, a nonprofit organization that works to expand access to the ballot, coordinate issue advocacy and election campaigns, and protect every American's constitutional right to vote. I am here today to urge the committee to vote ought to pass on HB 706, to create an independent redistricting commission to draw all state and federal election districts in New Hampshire.

Currently, New Hampshire tasks the legislature with forming these districts. The process in the past has been secretive, confusing, and ended up in the courts. An independent redistricting commission made up of Granite State voters will create a transparent process allowing for fair maps to be created. New Hampshire's districts should not favor one party over another and instead send the power back to the people by letting voters pick their representatives, not the other way around. A citizen engaged and led redistricting process helps to do just that.

I urge the committee to vote in favor of HB706 and pass a independent redistricting commission.

Thank you for you time,

Liz Wester  
America Votes State Director

X |

Testimony: Rep. Edith DesMarais, Wolfeboro

HB 554 1/29/19

Thank you Honorable Chairman and fellow legislators

I am speaking to urge you to support HB 554 relative to the authority of the moderator to verify the device count.

This bill provides the option for town moderators, if they choose, to publicly and randomly select one of the counting machines in their polling place to do a verifying hand count of one of the major elections (senator, congressman, or governor) immediately after the polls close.

This random verification of the accuracy of machines around the state would provide a deterrent to the hacking of our elections.

Right after a similar bill was blocked last session, I got home just in time to see on TV a Senate National Intelligence Committee hearing. A question was asked by a senator about Russian Interference operations in our 2018 elections and our nation's election vulnerability from hacking.

One by one – FBI director Wray, CIA Director Pompeo, Dir. National Intelligence Coats, Defense Agency Director Lt. General Ashley, and NSA Director Admiral Rogers confirmed YES we are at serious risk and the hacking is on-going!

How prepared is NH for this threat?

According to information found in the National Council of State Legislators, Center for American Progress, Verified Voter Foundation, Common Cause and the Rutgers School of Law surveys and studies, we get Kudos for having 100% paper ballots and for our ballot counting and reconciliation procedures.

However, there are five criteria – including the paper ballots, contingency plans in the event of machine failure, military voting protection and **tabulation practices**.

**They all require post-election audits to insure electronically reported outcomes are correct! Because we don't require, or even now permit, the process, NH rates a C- for voter security!**

Our moderators do check the machines pre-polling. However machines get updated data cards from a third party vender for every election.

These can be vulnerable to programming alterations in counts and timing to bypass that check. In a documentary, Harri Hursti, a recognized computer security expert, successfully manipulated, without a trace, the result of a mock election in Florida. He used one of the open gateways to the machine, its memory card, to corrupt the result. The manufacturer subsequently acknowledged 16 security defects in the firmware chip residing in optical-scan voting machines including those used in NH until 2010. Many of our machines are old.

Our election machine system is privatized and subject to corporate privacy laws. Andrew Appel, a Princeton University computer expert, testified to a NH committee in 2010 that Accuvote machines will never be perfect or unhackable! As a result, he recommended audits!

**The least expensive and most effective way to ensure the accuracy is to conduct random hand-counted audits of tabulator counts immediately after the election.**

32 states and the District of Columbia require post-election random audits in from 1 to 10% of precincts. 3 more require them in some circumstances. NH is one of the 17 that doesn't— and currently, no longer even includes allowing it in our municipal election worker training!

NH can do better than a C – rating. Especially because it's primarily for this omission.

This bill – that imposes no requirements on any over-extended moderator after a tough day, simply allowing a moderator who wishes – to be able to do a hand count of one of the elections on a machine to confirm the accuracy of the count. A right they had until recently.

The bill importantly includes procedures if discrepancies are found between the electronic count and verification.

- The candidate shall be notified and have the opportunity to request a recount under RSA 660
- The clerk will use the verification count when completing the election return.
- The moderator shall report discrepancies greater than 1% to the Sec. of State

The secretary of state shall then;

Develop a procedure to investigate the discrepancies to determine and address the reason through review of the contents of the memory cards used for the election or constitutional question.

- determine a remedy if needed
- publicly report the results of the investigation to standing committees of the house and senate with jurisdiction over election law and the attorney general for consideration of possible legal action.
- No person disqualified under RSA 658:24 or RSA 659:58 from handling of marked ballots and the counting of votes can participate in the verification count.

In jurisdictions overseen by a city clerk, the clerk shall perform the duties of the moderator in the process selecting a machine randomly from all ballot devices in use under their jurisdictions.

**I urge you to vote OTP for this bill so we can move it through the legislature to restore public confidence in our elections.**

**STATEMENT OF REPRESENTATIVE MARJORIE SMITH ON HB 706 INDEPENDENT REDISTRICTING COMMISSION BEFORE THE HOUSE ELECTION LAW COMMITTEE. January 29, 2019**

Recently we've focused lots of attention on what happens when the voter walks into the polling place. But that's not the start of the voting process. Before we honor our civic responsibility by voting, candidates have to decide to run. Before that, every ten years after the decennial census, voting districts have to be established. And that is where the rub is. Under current law, the process is backwards. Rather than the voters deciding whom to elect, elected officials draw the district lines and decide which Granite Staters will have the chance to vote for them.

For our democracy to truly function as it should, we need a system in which the people choose the voters—not the other way around.

There is only one way that we can make sure that elected officials can't be permitted to stack the deck, and that's by establishing an independent redistricting commission, free of influence of political parties or specific interest groups.

Such an approach benefits everyone. It certainly benefits voters, but it also benefits partisan politicians. We might guess which political party will be in the majority when the time comes to draw new district lines. But we can't be sure. It might be ours or it might be the other guy's. An independent redistricting commission means that the playing field is level for everyone. Without such an approach, we have districts that take bizarre shapes. Take a look, for example, at the Executive Council District 2 which runs from the Connecticut River to the Maine boundary. It is shaped like a salamander. Districts with bizarre shapes is where the term 'gerrymander' originated. The history of gerrymandering is an interesting story from the past, but I want to focus on the future.

The point is, gerrymandering happens here in New Hampshire, and we need to fix it.

The state constitution requires that New Hampshire's legislature "forms the maps" that set our district lines, but there is one way in which we can guarantee that elected officials are unable to stack the deck in their favor. Our state needs an independent redistricting commission that is free from the influence of political parties or special interests. New Hampshire needs a commission that is fair, inclusive, transparent, and gives all Granite Staters an equal say in our democracy, and HB 706 does exactly that.

This bill would put into place a 15-member commission comprised of individuals determined through an extensive application and interview process to serve as unbiased decisionmakers who reflect diversity in terms of political views, gender, race and ethnicity that is representative of our state's population. These commissioners will develop district maps for both chambers of the state legislature, as well as the Executive Council and U.S. House, that don't favor any political party, incumbent or candidate and provide racial and language minorities with an equal opportunity to participate in the democratic process.

The maps must be approved by both chambers of the state legislature, and any rejection of maps by lawmakers must be accompanied by a legal explanation. The commission will continue to revise the maps until they have been approved. The commission must also be completely transparent when it comes to the data used to create the maps and provide analysis justifying the maps they ultimately submit for approval.

Importantly, there will be ample opportunities before, during and after the map-drawing process for public input. From open meetings and records to an online portal for citizens to submit suggestions before and after maps have been sent to legislators for a vote, the people of New Hampshire will have plenty of chances to hold the commission accountable and make sure the maps are giving all Granite Staters an equal say with their votes.

We're the first-in-the-nation state that boasts "Live Free or Die" as our motto, but you wouldn't know it from the state of our voting districts. Partisan gerrymandering across New Hampshire is an affront to democracy and the values that we as Granite Staters hold dear. It's long past time we fix our district lines, and an independent redistricting commission is the only way forward.

**Remarks of Yuriy Rudensky, Redistricting Counsel,  
Brennan Center for Justice at New York University School of Law  
January 29, 2019**

The Brennan Center for Justice at New York University School of Law appreciates the opportunity to testify in support of redistricting reform once again, this time on House Bill 706.

The Brennan Center has studied the redistricting processes of all 50 states and the results that they have produced. The bottom line is that independent commission-based redistricting works. But not all commission designs are equal. HB 706 pulls together best practices from around the country that will shield New Hampshire from gerrymandering and its many negative consequences. There are a number of features of HB 706 that are worth highlighting:

1. **Independence.** There are clear rules about who can and cannot serve as a commissioner and a vetting and selection process that ensures commissioners are not beholden to any individuals or interests. This is important to avoid conflicts of interest on the part of those tasked with drawing political districts.
2. **Balance and compromise.** The commission would be composed of 15 members with an equal number of Democrats, Republicans, and individuals unaffiliated with either major party. To pass district maps, no one party could dictate the decisions because the affirmative votes of members from all three caucuses would be required. This puts the political interests of all parties and political views on equal footing.
3. **Community based decision-making.** By taking partisan gamesmanship off the table, New Hampshire's numerous communities would be the true drivers of redistricting. When one political party cannot steamroll the other, legitimate community-based considerations begin to guide the decisions. This, in turn, can have a profound positive impact on politics. Elections become more about ideas to address community needs and concerns and less about party affiliation.

This is the strength of HB 706. It will prevent mapmakers from reducing New Hampshire's voters to partisan labels. Rather, mapmakers would take public testimony through extensive public hearing requirements and would explain the redistricting decisions in a public report.

The other strength of this proposal are the rules that would guide the process. During last week's hearing on CACR 9, several individuals raised concerns regarding the criteria, specifically around

communities of interest. Like CACR 9, HB 706 ranks preserving communities of interest higher than the splitting of municipal boundaries. Towns can, should, and would be considered communities of interest for purposes of drawing state house districts. Indeed, HB 706 does not alter or change the constitutional provisions relating to the splitting of towns.

But these criteria also apply to state senate and executive council districts, some of which will invariably combine multiple municipalities. For these districts, it is important to allow communities with shared local concerns to be kept whole regardless of where town boundaries fall. And at its core that is what HB 706 is all about—empowering communities to be the primary drivers of redistricting. This means preserving communities of interest as a top consideration.

The Brennan Center supports HB 706 enthusiastically. It would be a model for other states and would ensure that New Hampshire's political system is responsive to its voters. There is, however one area where HB 706 could be strengthened. It does not currently empower the commission to adopt binding maps. Instead, under the proposal as written, the legislature would ratify whatever plans the commission produces. This does not, of course, undermine the many other strong aspects of the bill. But it does mean that HB 706 could benefit from being reconciled with CACR 9 to make sure that the mapdrawing process is independent from beginning to end.

The Brennan Center is prepared to answer questions, address concerns, and work with New Hampshire's leaders to get redistricting reform right. We are committed to making sure that the abuses and consequences of gerrymandering are relegated to the past.

## MEMORANDUM

To: The Honorable David Cote, Chairman, NH House of Representatives, Election Law Committee

Cc: The Honorable Members of the Committee

From: Gwen Friend



Re: **HB 706 – follow up to hearing on January 29, 2019**

Date: Feb. 1, 2019

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I am writing to express my support for *HB 706, An Act Establishing an independent redistricting commission*. I apologize for the length of my comments – I had hoped to keep them briefer – but it is my belief that this is one of the most important actions the NH Legislature needs to complete this year.

It is my experience that when partisan politics play a role in any districting process, the resulting districts are often gerrymandered to support one party or another, regardless of the party in the majority at the time of redistricting. This leads to districts which may be heavily weighted in such a way that voters can be completely disenfranchised. In New Hampshire, with 400 state representatives, this should never happen unless by chance.

For all the reasons stated at the hearing on January 29<sup>th</sup>, I am in favor of this bill. I like the size of the commission, the structure for determining who will be on the commission, and the very strong wording concerning public input. The process must be completely transparent, and this bill will do that. I do understand the Secretary of State's concerns about work overload, but I believe this can be managed.

I have a few comments on specifics:

**662-B: IV** (bottom of page 1 to top of page 3) This clause deals with conflict of interest. However, at the top of page 2 members of the Executive Council are left off the list. I think this is probably an oversight but should be corrected.

**662-B:3 I:** This section deals with advertising for people to apply to be on the commission. In section (b) I would change the sentence to: "Advertising the application period and criteria on the home page of all state agency *and city/town* websites." I believe that many people are very town oriented and use their town/city websites more often than state websites – even if not, it is a simple way to expand the advertising.

### **662-B:4 – Commission Meetings**

Generally, I think this is a great section. I wonder though if it makes any sense to add a provision concerning the conduct of meetings, especially those where the public is expected to attend. I find that the management of public hearings by the General Court is excellent as are town hearings and Town Meetings. It may make some sense to include a provision regarding how meetings are managed.

**662 -B:4** – line 29, page 4: I think there is a typo – "either the house of representatives *or* (not of) senate"

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Gwen Friend  
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## MEMORANDUM

### 662-B:6 Redistricting Criteria (a few comments)

First, I was surprised to see in I (a) that the NH state constitution was not referenced. There may be a legal reason for this, but there are some specific requirements in the state constitution which should apply to this commission.

In the same section I, paragraphs (d) and (e) discuss respecting communities of interest and geographic boundaries. While I like all of the existing language, I think it could be more specific. In particular I think that any town with an adequate population should have its own state representative if at all possible, as required by the NH State Constitution. I am aware that there will be instances when combining two towns makes more sense and that in some cases more than two towns need to be combined in order to create the correct population to representative ratio.

I believe that as many single member districts should be created as possible. Voters find it very confusing to "vote for up to 3" or "vote for up to 11." When a town elects the person they see as best for their town that town get better representation from someone who is representing only their town, rather than the much higher population of three or more towns.

I realize that many of the larger towns do not have ward or precinct divisions, making single member districts difficult. At the same time, there are currently districts in which rather than providing one representative per town, towns are combined, and multi-representative districts are created when it is not necessary.

This is the case in Rockingham District 2, where each of the three towns had an adequate population in 2011 to get single member districts, but instead were combined to create one 3-member district. Another district, Rockingham 4, combined three towns resulting in 5 state representatives, although each town had an adequate population to have their own state representative. In this case, no single town had enough to have 2 state reps, but a district with one per town, plus two flatorial reps could have worked; or the towns could have been combined differently.

In both the case of District 2 and District 4 there is no clear "community of interest." In district 2, Deerfield is in the center and has a relationship with both Candia and Nottingham; Nottingham and Candia are not contiguous and do not have a strong relationship. In the case of District 4, Chester is in the middle and therefore relates to both Auburn and Sandown, but Sandown and Auburn are quite far apart.

In both District 2 and District 4, every town in the districts are in different SAUs. In both District 2 and 4, different State Senators represent different towns; In District 2, Candia and Nottingham are in CD1 and Deerfield is in CD2.

I know this is very complicated. I know the end results won't make everyone happy. But I do believe it can be done, and with the transparency provisions of the bill, voters will be able to understand why certain decisions are made.

**In conclusion**, I know that there will be a lot of work going on in the upcoming weeks to sort out the details of this bill. The Senate will be holding hearings on a similar bill and a lot of work will take there as well. I thank you for taking my thoughts and opinions into consideration.

---

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# **Fiscal Note**

**HB 706-FN-A- FISCAL NOTE**  
**AS INTRODUCED**

AN ACT establishing an independent redistricting commission.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

The Judicial Branch and Department of Justice were originally contacted on January 8, 2019, with follow up on January 15, 2019 for a fiscal note worksheet, which they have not provided as of February 12, 2019.

**METHODOLOGY:**

This bill creates an independent redistricting commission to convene no later than December 30th every 10 years, beginning in 2020. The Secretary of State would identify the pool of eligible individuals to serve as commissioners, notify such eligible persons and invite them to apply, and use advertisements and media to publicize the search for eligible members. The Secretary of State shall select 60 qualified individuals from this process and further interview and screen these individuals to offer a list of 30 individuals to the House and Senate majority and minority leaders of the General Court for further review and selection, and the Secretary shall then appoint 9 members who will appoint the final 6 members. The Secretary of State shall provide administrative and staff support to the commission.

The Department of State indicates the process of selection of commissioners is involved and would be concurrent with election responsibilities, which may necessitate additional staff. Actual costs are indeterminable at this time.

The Legislative Branch assumes additional costs associated with independent commission member mileage reimbursement would be addressed through appropriations to the Secretary of State's Office. Expenses of the leadership of the General Court in striking applicants and voting on final plans could be absorbed without additional legislative funding.

# Bill as Introduced

HB 706-FN-A - AS INTRODUCED

2019 SESSION

19-0192  
11/03

HOUSE BILL

**706-FN-A**

AN ACT

establishing an independent redistricting commission.

SPONSORS:

Rep. M. Smith, Straf. 6; Rep. Berch, Ches. 1; Rep. Porter, Hills. 1; Rep. Knirk, Carr. 3; Rep. Danielson, Hills. 7; Rep. Ebel, Merr. 5; Rep. Gordon, Graf. 9; Rep. Myler, Merr. 10; Sen. Fuller Clark, Dist 21; Sen. Chandley, Dist 11; Sen. Feltes, Dist 15

COMMITTEE:

Election Law

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ANALYSIS

This bill establishes an independent redistricting commission.

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.



1 with the governor, secretary of state, any member of the legislature, or any member of the United  
2 States Congress. As used in this section, a member of a person's immediate family is one with  
3 whom the person has a bona fide relationship established through blood or legal relation, including  
4 parents, children, siblings, and in-laws.

5 V.(a) By joining the commission, a member waives his or her right to hold any federal,  
6 state, or local elective public office or to hold any appointed state or local public office for a period of  
7 6 years from the date of appointment to the commission.

8 (b) A member of the commission shall not be eligible, for a period of 3 years from the  
9 appointment, to serve as an officer or employee of, or as a consultant to, the New Hampshire  
10 general court, or any individual legislator in the state or in the United States Congress, or to  
11 register as a governmental affairs agent in this state.

12 662-B:3 Appointment of Commissioners.

13 I. The secretary of state shall identify the pool of eligible commissioners. He or she shall, to  
14 the extent practicable, notify all eligible persons and invite them to apply. These efforts shall  
15 include, but not be limited to:

16 (a) Advertising the application period and criteria in all daily newspapers in the state  
17 for one month.

18 (b) Advertising the application period and criteria on the home page of all state agency  
19 websites.

20 (c) Requesting media to publicize the commission's search for eligible members.

21 II.(a) A person who is eligible to serve as a member of the commission may submit an  
22 application to the secretary of state no later than September 1 of each year ending in the number  
23 zero. From all timely and eligible applications received, the secretary of state shall choose 60  
24 potential members of the commission by October 15 of each year ending in the number zero. The 60  
25 persons so selected shall proportionally represent the 5 current executive council districts. In  
26 addition to fair geographic representation, the secretary of state shall, to the extent practicable,  
27 achieve racial, ethnic, and gender diversity within the applicant pool, reflective of the state's  
28 diversity.

29 (b) The 60 persons so selected shall be divided into 3 pools: 20 members who are  
30 members of the largest political party in the state; 20 members who are members of the next largest  
31 political party in the state; and 20 persons who are not members of either the largest or next largest  
32 political party in the state. The secretary of state shall interview the 60 persons, screening for  
33 applicants who are compromise oriented, are able to be impartial, and have an appreciation for New  
34 Hampshire's diverse demographics and geography. As a result of those interviews, and no later  
35 than the first Wednesday after the first Tuesday of December of each year ending in the number  
36 zero, the 3 pools shall be reduced by 10 persons each. The majority and minority leaders in each  
37 house of the general court shall review the 30 potential members for a period of up to 3 weeks and  
38 may each strike 2 applicants, up to a maximum of 8 total strikes by the 4 legislative leaders in total.

1 (c) From the potential members remaining, and no later than January 31 of each year  
2 ending in one, the secretary of state shall appoint at random 3 members who are members of the  
3 largest political party in the state, 3 members who are members of the next largest political party in  
4 the state, and 3 persons who are not members of either the largest or next largest political party in  
5 the state. These 9 members shall then appoint the final 6 members from those persons remaining  
6 in the pool. Of the final 6 members, 2 members shall be members of the largest political party in  
7 the state, 2 members shall be members of the next largest political party in the state, and 2 persons  
8 shall not be members of either the largest or next largest political party in the state.

9 III. In the event of substantial neglect of duty, gross misconduct in office, or inability to  
10 discharge the duties of office, a member of the commission may, after being served written notice  
11 and given an opportunity for a response, be removed by a vote of 11 members of the commission. A  
12 finding of substantial neglect of duty or gross misconduct in office may result in referral to the New  
13 Hampshire attorney general for criminal prosecution.

14 IV. Vacancies on the commission shall be filled in the same manner as initial appointments.

15 V. The term of office of commission members expires upon the appointment of the first  
16 member of the succeeding commission.

17 662-B:4 Commission Meetings.

18 I. The commission shall act in public meetings by the affirmative vote of at least 9  
19 members, including at least 2 members who are members of each of the 2 largest political parties in  
20 the state and 2 who are not members of either the largest or next largest political party in the state.

21 II. All meetings of the commission shall be open to the public. The commission shall  
22 publicly post notice of its meetings on the commission website and other appropriate outlets at least  
23 7 days prior to such meetings. All records of the commission, including all communications to or  
24 from the commission regarding the work of the commission, shall be made available for public  
25 inspection.

26 III. The commission shall hold at least one public meeting in each county prior to drawing  
27 any maps and at least one public meeting in each county after releasing any proposed maps.

28 IV. The commission shall create a website that shall provide, at a minimum, a description  
29 of the role of the commission in the redistricting process, timely information to the public about the  
30 time, place, and purpose of each meeting of the commission, a portal for the submission of proposed  
31 maps, all preliminary maps, all data used to create maps, all reports analyzing the maps, and all  
32 other disclosures.

33 V. The commission shall provide a meaningful opportunity for all persons to participate in  
34 the public meetings, including, but not limited to, issuing notices in multiple languages and  
35 ensuring that translation and sign language services are available at all hearings at the  
36 commission's expense or through partnership with outside organizations. Meetings shall be held  
37 only in spaces that are accessible under the Americans with Disabilities Act of 1990, as amended.

38 VI. Commission meetings shall be adequately advertised and planned so as to encourage

1 attendance and participation across the state. This includes scheduling meetings outside of regular  
2 work hours and using technology that allows for real-time, virtual participation and feedback.

3 VII. The commission shall be considered a public body subject to RSA 91-A. No documents  
4 created or received by the commissioners or staff as part of official duties, including emails and text  
5 messages, shall be exempt from disclosure for any privilege other than attorney-client privilege.

6 VIII. Commissioners and staff may not communicate with outside persons attempting to  
7 influence commissioners or commission action outside of public meetings. To the extent that  
8 commissioners and staff receive such communications, the identity of the person or group and the  
9 subject of the communication shall be publicly disclosed on the commission website.

10 662-B:5 Developing Redistricting Maps.

11 I. During the map drawing process, any member of the public may submit maps or portion  
12 of maps for consideration by the commission. These submissions shall be made publicly available on  
13 the commission website and open to comment.

14 II.(a) The commission shall release proposed maps and shall display the proposed maps for  
15 a minimum of 14 days for public comment in a manner designed to achieve the widest public access  
16 reasonably possible before establishing a final plan.

17 (b) When releasing a proposed map, the commission shall also release population data,  
18 geographic data, election data, and any other data used to create the plan.

19 III. The commission shall issue with all proposed and final maps written evaluations that  
20 measure the maps against external metrics. These metrics shall cover all criteria set forth in RSA  
21 662-B:6, including the impact of the maps on the ability of minority communities to elect candidates  
22 of choice, measures of partisan fairness using multiple accepted methodologies, and the degree to  
23 which the maps preserve or divide communities of interest.

24 IV.(a) No later than December 31 of any year ending in one, the commission shall act to  
25 approve final plans for New Hampshire house, senate, executive council, and congressional  
26 districts. Upon approval, the commission shall submit the final New Hampshire house and senate,  
27 executive council, and congressional district plans to the senate president, speaker of the house of  
28 representatives, and senate and house minority leaders. It is the intent of this chapter that the  
29 general court shall conduct a roll-call vote on the plan in either the house of representatives of the  
30 senate expeditiously, but not less than 7 days after the plan is received and made available to the  
31 members of the general court, under a procedure or rule permitting no amendments except those of  
32 a purely corrective nature. It is further the intent of this chapter that if the bill is approved by the  
33 first house in which it is considered, it shall expeditiously be brought to a vote in the second house  
34 under a similar provision or rule.

35 (b) If a chamber of the legislature fails to pass the final plans for the New Hampshire  
36 house and senate, it shall issue a written explanation specifying how the final plan fails the criteria  
37 listed in RSA 662-B:6 or any other binding federal or state law. The commission shall then amend  
38 the final plans to the extent necessary to satisfy the criteria in RSA 662-B:6 or other legal



1 requirements and resubmit it to the legislature for a subsequent up or down floor vote.

2 (c) This process shall repeat until the legislature passes final plans for the New  
3 Hampshire house and senate at which point the plans shall be certified and filed with the Secretary  
4 of State.

5 662-B:6 Redistricting Criteria.

6 I. The commission shall establish single or multi-member districts for the New Hampshire  
7 house of representatives, and single member districts for the New Hampshire senate, executive  
8 council, and United States representative, using the following criteria as set forth in the following  
9 order of priority:

10 (a) Districts shall comply with the United States Constitution and all applicable federal  
11 laws. Districts shall be drawn on the basis of total population.

12 (b) Districts shall form single boundaries and shall not be bisected or otherwise divided  
13 by other districts.

14 (c) Districts shall provide racial minorities and language minorities with an equal  
15 opportunity to participate in the political process and shall not diminish their ability to elect  
16 candidates of choice, whether alone or in coalition with others.

17 (d) Districts shall respect the integrity of communities of interest to the extent  
18 practicable. For purposes of this section a community of interest is defined as an area with  
19 recognized similarities of interests, including but not limited to racial, ethnic, economic, social,  
20 cultural, geographic, or historic identities. Communities of interest shall not include common  
21 relationships with political parties or political candidates.

22 (e) Districts shall respect the geographic integrity of political boundaries to the extent  
23 practicable without violating the requirements of state law or any of the preceding subdivisions.

24 II. The plan as a whole shall not have the intent or the effect of unduly favoring or  
25 disfavoring any political party, incumbent, or candidate for political office.

26 662-B:7 Failure of Commission and Legislature to Reach Consensus. If the commission fails to  
27 approve and file redistricting plans by December 31 in the odd year following a decennial census, or  
28 the legislature fails to adopt and file a redistricting plan by February 15 of the even year following a  
29 federal decennial census, the New Hampshire supreme court shall appoint by March 1 in the even  
30 year following a decennial census a special master to create the relevant plans in accordance with  
31 the redistricting criteria and requirements set forth in RSA 662-B:6. The court shall make the  
32 special master's plans public and schedule a hearing where interested parties may present  
33 testimony and other evidence regarding the plans' compliance with redistricting criteria. The  
34 supreme court shall accept the master's proposed plan no later than April 1 of the even year  
35 following the decennial census and certify the results to the secretary of state, who shall forward  
36 the plan to the president of the senate, the speaker of the house of representatives, and the minority  
37 leaders of both the house of representatives and senate for adoption in accordance with RSA 662-  
38 B:5, IV.

1       662-B:8 Judicial Review.

2           I. The New Hampshire supreme court has original and exclusive jurisdiction in all  
3 proceedings in which a certified final map is challenged or is claimed not to have taken timely  
4 effect.

5           II. Any registered voter in this state may file a petition, within 45 days after adoption of a  
6 final map on the grounds that the plan violates any federal or state law.

7           III. The New Hampshire supreme court shall give priority to ruling on any matter related  
8 to redistricting presented to the court. If the court determines that the final plan violates any  
9 federal or state law, the court shall fashion the relief that it deems appropriate, including, but not  
10 limited to, appointment of a new special master in accordance with RSA 662-B:7.

11       662-B:9 Compensation. Members of the commission shall receive mileage reimbursement at the  
12 federal rate for expenses incurred in connection with the duties performed pursuant to this chapter.

13       662-B:10 Financial Independence.

14           I. For the fiscal year ending June 30, 2020, the governor may draw a warrant out of sums  
15 not otherwise appropriated to fund expenses of the commission established pursuant to this  
16 chapter.

17           II. For each subsequent biennium preceding the decennial census, the governor shall  
18 include in his or her budget recommendation appropriations sufficient to meet the estimated  
19 expenses of the commission, including but not limited to adequate funding for a statewide outreach  
20 program to solicit broad public participation in the redistricting process and adequate office space  
21 available for the operation of the commission.

22       662-B:11 Secretary of State to Provide Support. The secretary of state shall provide such  
23 administrative and staff support as is necessary for the commission to perform its duties.

24       2 Effective Date. This act shall take effect upon its passage.

LBAO  
19-0192  
1/17/19

**HB 706-FN-A- FISCAL NOTE  
AS INTRODUCED**

**AN ACT**            establishing an independent redistricting commission.

**FISCAL IMPACT:**

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, as introduced, as it is awaiting information from the; Department of State, Judicial Branch and Department of Justice, who were originally contacted on January 8, 2019, with follow up on January 15, 2019 for a fiscal note worksheet, which they have not provided as of January 17, 2019. When completed, the fiscal note will be forwarded to the House Clerk's Office.

**AGENCIES CONTACTED:**

Department of State, Legislative Branch, Judicial Branch, and Department of Justice