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Jan. 22, 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

Re: **CACR9**, 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 CACR9**.

Transparency in government is protected by many statutes, but that is not true in the 21st century history of districting in New Hampshire. In 2011 transparency was non-existent.

That year I attended two of the public hearings held on the redistricting plans. Scheduled public meetings would suggest transparency, but that was not the case in 2011. Representatives on the districting committee were sent to meetings around the state with nothing to show the public. I attended a meeting in West Lebanon on November 8 and was embarrassed for the legislators trying to present information, who had to deal with the frustration and anger of the hundred or more people who turned out and were not shown any draft maps nor able to get answers.

In 2011 the redistricting was done behind closed doors by key Republicans. None of the dozens of plan submitted by the public and organizations were ever considered, according to David Pierce at the time. [1] The Democrats and even most of the Republicans on the committee were not included in these sessions and had to answer "I don't know" when the public asked questions. Three representatives who no longer are in the House were the architects of the final plan, according to NHPR articles at the time: Steve Vaillancourt, Spec Bowers, and Seth Cohn. [1] By mid-December of 2011 they released their maps, months after the public had expected information and input and just days before the public hearing was to be held. [NHVoter, Jan. 2012]

What happened next was even more confusing. On Dec. 20, 2011, the Special Committee on Redistricting voted 12-5 to adopt the House Republican Leadership Plan for new districts. They also passed an order that the plan be implemented by the Secretary of State without going to Governor John Lynch. [2—Foster's Daily Democrat, Dec. 22, 2011]

The bill went to the full House on Jan. 18, 2012, where it was approved 205-68. An alternative Democrat plan was soundly defeated, despite their argument that 50 towns that qualified for their own representatives were not allotted one. [2—Concord Patch, Jan. 18, 2012]

But it was not smooth sailing for the Republican leadership, who had to contend with protests from Manchester Republican reps and some others who said they would sustain the expected Governor's veto of the plan. [2—Union Leader, Feb. 19, 2012]

When the bill finally got to the Senate in March, four Republicans broke rank and voted with the Democrats against the plan. [2—NH Insider, March 9, 2012]

The plan for Senate districts faced controversy too, with charges by Sen. Sylvia Larsen that "...the plan was designed in backrooms with clear partisan motivation to promote a future of Republican domination in the State House." [2—Nashua Telegraph, Jan. 6, 2012]

The Senate plan was passed along party lines by a vote of 19-4 on February 1, 2012. It included changes to 18 of the 24 Senate districts. The bill advanced to the House where it passed by a vote of 253-91 on March 7 [2—Boston.com]

Eventually Governor Lynch approved the Senate districts but vetoed the House districts. I won't go into the tricky maneuvers of trying to override that veto, but it worked, and that led to the lawsuit by Manchester, Concord, Laconia and other groups.

Finally, on June 19 of 2012 (which must have delayed filings for state primaries), the NH Supreme Court ruled that the House plan was constitutional while admitting that it could have created smaller districts. A grudging ruling is cited below. [3] [4]

The redistricting mess in 2001 is its own story, which I won't go into here except to remind you that it involved a gubernatorial veto that could not be overridden. The NH Supreme Court eventually hired a company to draw districts that were so bad they had to be redone two years later. And that led to a CACR passing in 2006 requiring that towns large enough to have their own representative must indeed have their own rep.

I've attached two other references for you. In a Clark University publication [5] Dante Scala describes the congressional redistricting process in 2011-12, explaining it was heavily manipulated by the two Congressmen in power. The Governor finally signed that plan on April 23, 2012, rather late in the usual scheme of things.

The other reference is to a publication by professors at William and Mary Law School, in which they rate states for transparency in redistricting. [6] No surprise, except that it wasn't 0%, they rate NH in the 2010 cycle at 25%, point out that NH accepted no plans from the public, and rate NH as 0% for holding open meetings on the plans (presumably because the legislators in charge of those meetings had no plans to present.)

New Hampshire has the opportunity right now to join the many other states that use an Independent Redistricting Commission to do this important work. Voters demand an end to gerrymandering and a restoration of confidence in the election process. **Please recommend Ought to Pass on CACR9.**

Appendix:

[1] <https://www.nhpr.org/post/redistricting-tangle-pushes-forward#stream/0>

"Redistricting Tangle Pushes Forward." NHPR, Sam Evans Brown

Dec. 16, 2011

[2] https://ballotpedia.org/Redistricting_in_New_Hampshire_after_the_2010_census

“Redistricting in New Hampshire after the 2010 census: Public Policy in New Hampshire”

[3] <https://www.nhpr.org/post/nh-supreme-court-upholds-house-redistricting-plan#stream/0>

“NH Supreme Court Upholds House Redistricting Plan”

NH Public Radio, Sam Evans Brown June 19, 2012

The State Supreme Court has put an end to the long debate over the redistricting of New Hampshire’s House of Representatives. It unanimously upheld a redistricting plan championed by House Republican Leadership.

Governor Lynch vetoed the redistricting plan, saying it ran afoul of a 2006 amendment to the state’s constitution. When the legislature passed the plan over the veto, the cities of Manchester, Concord, Laconia, and other groups brought suit.

They argue Republican leaders could have created more districts, if they had allowed for slightly more variation in population per district. But the court, citing federal case law, say the plan is up to constitutional snuff.

In its ruling the court notes that redistricting plans are presumed constitutional, until found otherwise on "inescapable grounds." And while an argument might be made that the plan could have created more, small districts, the court writes it can't fault the legislature for giving primary consideration to the federal "one person/one vote" principal, saying "the Supreme Court has held that population equality must be the predominant factor in redistricting plans."

[4] NH Supreme Court ruling June 19, 2012.

<https://www.courts.state.nh.us/supreme/opinions/2012/2012061redistricting.pdf>

[5] <https://commons.clarku.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1025&context=mosakowskiinstitute>

Dante Scala, chapter titled “New Hampshire’s Congressional Redistricting”

[6] <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3753&context=wmlr>

Redistricting Transparency by Rebecca Green, William & Mary Law School, co-director Election Law Program.