

February 14, 2017

re **SB 107—establishing an independent redistricting commission**

To the Chair Senator Birdsell and members of the Senate Election Law Committee:

As you know, the League of Women Voters is a non-partisan grassroots organization that has been working for 97 years to protect the voting rights of all citizens. LWVNH members have followed nationwide redistricting efforts and testified in support of New Hampshire's earlier bills to establish an independent commission. **We urge the committee to vote Ought to Pass on SB 107, with one slight amendment, the inclusion of Executive Council districts in the plan.**

We are sure that some of you remember the 2001 redistricting plan in NH that engendered so much criticism and loss of public confidence that the NH Supreme Court stepped in and required a new plan in 2002. (1) The result among voters was first confusion and then distrust of the legislature that had erred so badly. That led to further legislation in 2006 to avoid some of the problems in future, including requiring communities with a population equal to or greater than the minimum for a representative to have their own representative.(2)

The 2011 redistricting effort was worse, in some ways. The legislators who went out to run the required public hearings were embarrassed by having to admit they didn't have a plan to share with voters, as most of the decisions were being made by a very small group of legislators behind closed doors. I personally attended the meeting in West Lebanon. I went with a bit of skepticism that the description by a League colleague of an earlier hearing elsewhere was accurate: surely there was some concrete information presented, I believed. But there was not. The public was rightly frustrated and angry, and the legislators were embarrassed. "Transparency" was non-existent at that stage. When a plan was finally presented, public input had been negligible and voters felt cheated by the process.

With the 2021 redistricting creeping over the legislature's horizon, the League believes two things must be considered. Firstly, a lack of confidence by the public in the legislature's ability to determine districts fairly and without partisan bias leads to the public's disinclination to participate in elections. Low voter turnout is a negative outcome no matter which party happens to be in power. Secondly, the legislature's public reputation will be at stake: in a small state such as NH, where many of us know our representatives and senators personally, we want to believe that they will be fairly chosen, not gerrymandered into their positions.

An independent redistricting commission, as described in SB107 or in the related House bill HB203, can create the transparency and fairness demanded by the voters, and it can also build public confidence in the legislature.

The other reason the League urges this committee and the legislature to establish an independent redistricting commission is that it a forward-looking move. Our research (3) shows that at least 14 states have an independent redistricting commission with primary responsibility for drawing a plan for state legislative districts. Five other states have an advisory commission that may assist the legislature

in drawing the plan. Five more states have back-up commissions that will make the decision if the legislature is unable to agree. And then there's Iowa that has legislative staff draw plans without any political or election data and submits that to the legislature for a vote.

In addition Indiana has just created a special committee to study establishing a commission, and interestingly a New York state legislator has proposed a bill to create a redistricting commission for county districts.

Among the states that have adopted independent commissions, at least two states report that legislative races have become more competitive (Arizona, predominantly Republican, and California, a Democrat state). That's good for voters, for people running for election, and good for our democracy principles.

The courts, in some cases all the way to the Supreme Court, have approved all the commissions listed in the National Conference of State Legislatures' chart. In NH, if a commission is charged with designing the plan and then turning it over to the legislature for its vote, court opinion is that such a situation is constitutional as the final decision remains with the General Court. The League has confidence that legislators tasked with appointing members to the commission would do so with the best principles of good government in mind.

The League refers the committee to two other sources of information on redistricting. The Brennan Center for Justice at NYU Law School is a non-partisan law and policy institute that seeks to improve our systems of democracy and justice. They have studied redistricting for years. Their report and updates can be found online: <https://www.brennancenter.org/issues/redistricting>. Common Cause's Education Fund also undertook an analysis of redistricting methods and their effects on voter choices nationally in 2016 (4) finding that "When nonpartisan citizen redistricting commissions draw state and congressional districts, there is a much greater chance that at least two candidates – one from each major party – will be on the general election ballot. Our analysis also shows that commissions give voters more choices in primary elections by producing fewer districts in which only one person from a major party files to run. The competition pushes candidates to work harder to connect with voters, boosting turnout and strengthening democracy."

The League urges a vote of "Ought to Pass" on SB 107, with an amendment to include the Executive Council in the districts listed on page 2 lines 28-29 and page 6 lines 8-9.

Respectfully submitted,

Liz Tentarelli, president League of Women Voters New Hampshire
home phone and email: 603-763-9296 LWV@kenliz.net

Notes:

(1)<http://www.courts.state.nh.us/supreme/opinions/2002/0207/house085.htm>

July 26, 2002. The court concluded its decision thus: "The court recognizes that its redistricting plan changes house districts significantly. These changes were unavoidable because past house districting plans have not given the fundamental democratic principle of one person/one vote the attention and weight to which it is entitled. The court's plan reinstates the primacy of this principle and ensures that "the vote of any citizen is approximately equal in weight to that of any other citizen in the State." Reynolds, 377 U.S. at 579."

(2) From the NH constitution [Art.] 11. [Small Towns; Representation by Districts.] When the population of any town or ward, according to the last federal census, is within a reasonable deviation

from the ideal population for one or more representative seats, the town or ward shall have its own district of one or more representative seats. The apportionment shall not deny any other town or ward membership in one non-floterial representative district. ...Amended November 7, 2006 to enable towns with sufficient population to have their own representative district and permits the use of floterial districts.

(3) National Conference of State Legislatures: <http://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx>

The following states have independent redistricting commissions: Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Missouri, Montana, Nebraska (passed in 2016), New Jersey, Ohio (begins 2020), Pennsylvania, and Washington.

The following states have advisory redistricting commissions: Maine, New York (begins 2020), Rhode Island, Vermont, Virginia.

The following states have back-up redistricting commissions: Connecticut, Illinois, Mississippi, Oklahoma, and Texas.

(One copy of the table referenced from this organization is submitted as an addendum to this testimony. It details how the commissions function in each of these states.)

(4) From Common Cause, report based on 2016 primaries and events just before the November 2016 general elections. <http://www.restoringvoterchoice.org/> Of particular interest is the third bullet item.

Major Findings:

Political gerrymandering strangles political competition, depriving voters of choices in primary and general elections alike. When legislators control redistricting, districts typically are so skewed that only the incumbent or the candidate anointed by leaders of the majority party bothers to run.

- **Thanks to partisan gerrymandering, millions of Americans will have only one choice in next month's [Nov. 2016] congressional election.** Only one major party entered candidates this year in 47 – **almost one in five** – of the 250 congressional districts drawn by state legislators. That means that districts that are home to approximately 33 million people will likely have only one major party choice in the congressional election.
- **Competition flourishes where congressional boundaries were drawn by a citizen redistricting commission.** Voters in all but eight percent of the districts in states with commissions will have two or more major party candidates on their congressional ballots next month.
- **Voter choices are even more limited in state legislative elections.** Candidates from only one major party filed to run in 1,507 (43 percent) of the 3,506 legislative districts in states where legislators control redistricting. In 1,114 (32 percent) of the districts in those states, competition has been so thoroughly strangled that **just one person** sought a major party nomination this year, effectively ending the campaign even before the primary.
- **In eight states, a majority in the next legislature has probably already been decided.** Candidates from only one major party in those states filed to run in 60 percent or more of legislative districts drawn by politicians.
- **In seven states, this year's state legislative campaigns effectively ended even before the primary election** because only one major party candidate filed to run in more than half of the districts.