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www.LWVNH.org

March 1, 2021

To: Chair Sen. Gray and Senate Election Law Committee members

From: Liz Tentarelli, president, League of Women Voters NH LWVNewHampshire@gmail.com

Re: **SB 90, transparency in the redistricting process**

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 are the fair apportionment of districts and the transparency of government. We are here today to urge you to recommend Ought To Pass on **SB 90**.

This bill calls upon the legislature to affirm their support for three things in the upcoming redistricting process:

Part 1 any resources used by the committee shall be shared with both parties.

Part 2 maps drawn and considered by the committee shall be available to the public, and posting them on a website is very sensible and accessible to all.

Part 3 the legislative redistricting committee's meetings shall be available to the public live-streamed and the public shall be able to comment.

These steps will demonstrate the legislature's willingness to conduct this most important work with integrity and fairness. They will go a long way to restoring the voters' confidence in the redistricting process. That confidence was lost in 2011 when there was a lack of transparency, when public hearings were held with no plans to share, and when a few members of the dominant party refused to share its work and software even with members of the appointed special committee until just days before they were to vote. That year's frustration led many Granite Staters to ask that the process be done differently in 2021.

In voting down bills for an independent redistricting commission, the legislature has affirmed its responsibility and ability to create a 2021 districting plan that is fair. Now it is time to affirm that the process will be as open to the public as hearings like this committee's are.

I have sent the details of the 2011 process in earlier testimony, am copying it here again for your consideration in light of SB90. I have confidence that the special committee can do much better this year, and SB90 would ensure that.

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In 2011 I attended two of the public hearings held on the redistricting plans. The meetings had been hastily scheduled in response to public cries for information, but the meetings were frustrating for all.

Representatives on the redistricting 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 tasked with presenting 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, because the House maps had not yet been made public. The public had no way to give input without draft maps!

In 2011 the House redistricting plan was created behind closed doors by key Republicans. None of the dozens of plans submitted by the public and organizations were ever considered, according to Rep. David Pierce at the time.^[1] The Democrats and even most of the Republicans on the committee were not included in these discussions and had to answer “I don’t know” when the public asked questions. Three representatives who no longer are in the House were identified as being among 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 on the plan was to be held on Dec. 15. *[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 tried to pass 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 arguments 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 the cities of 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. The court’s grudgingly worded ruling is cited in the appendix. ^[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 be allotted their own rep (a constitutional requirement that was ignored by legislators in 2011 in a number of towns, possibly as many as 63 towns I've been told.)

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] Not surprisingly, except that it wasn't 0%, they rate NH in the 2010 cycle at 25% for transparency, 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.)

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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, says 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?](https://commons.clarku.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1025&context=mosakowskiinstitute)

[referer=&httpsredir=1&article=1025&context=mosakowskiinstitute](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/](https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3753&context=wmlr)

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