

GUEST COMMENTARY

Redistricting explanation left much to be desired

By TIMOTHY HORRIGAN

House Speaker William O'Brien, Speaker Pro Tempore Gene Chandler and Majority Leader D.J. Bettencourt sent out an op-ed piece to this and other newspapers on April Fools' Day that contained so many untrue and misleading statements, I hardly know where to begin.

O'Brien et al accused Gov. John Lynch of unnecessarily delaying his veto message, thus allegedly creating a "time crunch."

It is true he waited a few days to write up his veto message. Lynch vetoed HB 592 on March 7, but the House leadership did not "enroll" the veto until March 15. The official paperwork did not make it from the secretary of state's office to the governor's desk until March 19.

The state constitution gives the governor five business days to decide whether to veto a bill: he used up only four days before vetoing the bill on March 23.

There was ample time to print an addendum to the House cal-



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endar before the next session day, as required by the state constitution – and also by House rules and the state Right to Know Law.

No such addendum was ever printed.

In fact, the Democratic caucus was not officially notified in any way until after the March 28 session was suddenly interrupted by a Republican caucus. House Democrats and the public were locked out of Representatives Hall for about half an hour, while the speaker met secretly with his own caucus.

House Democrats didn't know for certain what was happening until the minority caucus was allowed back into the hall, and the speaker announced the veto was the next item of business.

This veto followed a long legislative process, which resulted in a plan that denies 62 communities the representation they are

entitled to under Part First, Article 11, of the state constitution.

Between the March 1 public hearing and mid-October, no meaningful work was done by the Special Committee on Redistricting, except on an ad hoc basis by individual legislators.

Once the committee belatedly got down to business in the late fall, the chairman, Rep. Paul Mirski, R-Enfield, set a constraint that made it impossible for the committee to come up with a plan that obeys the state constitution. Although the House leadership usually never misses any chance to defy Washington, in this case it became subservient to the "feds."

At O'Brien's urging, Mirski blatantly misinterpreted federal voting-rights law to claim that the population deviation of representatives per capita could never be more than plus or minus 5 percent off the ideal ratio of 3,291 representatives per capita. Mirski also claimed that federal law automatically trumps the state constitution.

One of the few true things

O'Brien et al said in their op-ed was that our plan has to be pre-cleared by the U.S. Department of Justice, thanks to a provision of the 1965 Voting Rights Law that singles out 10 New Hampshire municipalities for special scrutiny. The federal pre-clearance should not be – and never has been – a major problem.

O'Brien et al correctly pointed out that the filing deadline for the Sept. 11 primary is not far away: by state law, the filing period begins on Wednesday, June 6, leaving the feds just 60 days to pre-clear the plan.

That is no excuse for sending an illegal and unconstitutional plan to the feds. Even now, there is enough time to create a plan that obeys both state and federal law, and there would have been even more time if the House leadership had acted responsibly in the first place.

In the past, O'Brien has not always been so respectful of the election schedule. In May 2008, a certain attorney named William O'Brien was the lead counsel for

the complainants in a lawsuit called *Town of Canaan et al. vs. Secretary of State*.

He was not a state representative at the time: He was (and still is) the executive director of a somewhat mysterious entity called the New Hampshire Legal Rights Foundation.

O'Brien literally demanded that the 2008 election process be stopped. The rationale for this suit, which failed, was that the House redistricting plan in place at the time did not obey the state constitution, as amended in 2006.

Merrimack County Superior Court and the New Hampshire Supreme Court ruled that the election should be held as scheduled and that the House didn't need to be redistricted until 2011, after the next decennial census was completed.

It is now 2012, and the House has finally been redistricted – but O'Brien's plan does not obey the state constitution.

Rep. Timothy Horrigan, a Durham Democrat, serves in the New Hampshire House of Representatives.