House GOP leadership runs amok

BY TIMOTHY HORRIGAN

Around April Fools Day, 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 that contained so many untrue and/or misleading statements, I hardly know where to begin responding. (The piece ran in the April 3 edition of the Herald.)

O'Brien et al. accused the governor of unnecessarily delaying his veto message, thus allegedly creating a "time crunch." It is true that he waited a few days to write up his veto message. The Senate vetoed HB 592 on Wednesday, March 7, but the House leadership did not "enroll" the veto until Thursday, March 15. The official paperwork did not make it from the secretary of state's office to the governor's desk until Monday, March 19.

The state constitution gives Gov. Lynch five business days to decide whether or not to veto a bill: he used up only four days before vetoing the bill on Friday, March 23. There was ample time to print an addendum to the House calendar before the next session day, as required by the state constitution (and also by House rules and state right-to-know law). No such addendum was ever printed and, in fact, the Democratic caucus was not officially notified in any way until after the Wednesday, March 28, session was suddenly interrupted by a Republican caucus. The House Democrats and the general public were locked out of Representatives Hall for about half an hour, while the speaker met secretly with his own caucus only. The House Democrats didn't know for certain what was happening until the minority caucus was allowed back into the hall, and the speaker announced that the veto was the next item of business.

This veto followed a very 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. From March 1, 2011, when there was a public hearing, until mid-October 2011, no meaningful work was done by the Special Committee on Redistricting, except on an ad hoc basis by individual legislators.

A few cities did have to redraw their ward boundaries, which made it impossible to adopt a final plan until January 2012, but there was no reason to put off the rest of the committee's work for seven months. The ward boundaries would have been less of a problem were it not for the fact that the committee proved to be eager to combine city wards with neighboring communities. Portsmouth's Ward 3, for example, was split off from the rest of the city to be placed in a district with Greenland, North Hampton and Newington. For another example, Dover's Ward 6 and Somersworth's Ward 2 are combined in one district. Only four of the state's 10 cities remained whole, and that included one (Berlin) that outsmarted the committee by eliminating its wards in 2011.

Once the committee belatedly got down to business in the late fall, the chairman, Rep. Paul Mirski, 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, D.C., in this case they became absurdly subservient to the "feds." At O'Brien's urging, Mirski blatantly misinterpreted federal voting-rights law to claim that the population deviation of reps per capita could never be more than plus or minus 5 percent off of the ideal ratio (which is 3,291 reps 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 (redistricting) 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. Newington is one of those places. The federal pre-clearance should not be — and in the past never has been — a major problem since New Hampshire is a relatively racially homogenous state with no "majority-minority" communities.

O'Brien et al. correctly pointed out that the filing deadline for the Sept. 11, 2012, primary is not far away: by state law, the filing period begins 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, Speaker O'Brien has not always been so respectful of the election schedule. In May 2008, a certain Attorney William O'Brien was the lead counsel for the complainants in a lawsuit called "Town of Canaan et al. v. Secretary of State." O'Brien 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 New Hampshire House redistricting plan in place at the time did not obey Part First Article 11 of the state constitution, as amended in 2006. The Merrimack Superior Court and the New Hampshire Supreme Court both 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 Part First Article 11, which has not been amended since 2006.

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