



STATE OF NEW HAMPSHIRE
HOUSE OF REPRESENTATIVES

Office of the Speaker

April 2, 2012

Alderman Jim Roy
Manchester Ward 4
401 Bridge Street
Manchester, NH 03104

Dear Alderman Roy:

I am writing regarding the redistricting of the New Hampshire House, which became law over Governor Lynch's veto last week. More particularly, I want to address two misconceptions about the redistricting law: that the veto override was improper and that the redistricting of the city of Manchester is not constitutional.

Let's begin with the veto override. Some have claimed that the veto override was improper because Part II, Article 44 of the State Constitution requires that the Governor's veto message be published in the House Calendar prior to an override vote. Part II, Article 44 contains no such requirement. What it actually requires is that the reasons provided by the Governor for his veto be recorded in the "journal" of the branch of the Legislature where the vetoed bill originated.

The term "journal" in Part II, Article 44 refers to constitutionally-required records of the legislative session. Specifically, the reference is to Part II, Article 24, which provides in relevant part, that "the journals of the proceedings, and all public acts of both houses, of the legislature, shall be printed and published immediately after every adjournment or prorogation..." Clearly, because the journals are to be published "after every adjournment or prorogation," they were not intended to provide notice of a veto override vote. We researched the historical record and found that the historical practice after Part II, Article 44 was added to the State Constitution in 1792 was for the Governor's veto messages to be read to the House upon delivery, after which the House would immediately take a vote.

Under the current House Rules, the custom and practice has been to publish veto messages in the House Calendar (which is not the constitutionally required journal that both branches must maintain), after which the veto would be brought up at the Speaker's discretion. That was not possible with the override veto.

(2)

New Hampshire is required by the federal Voting Rights Act to submit House redistricting to the United States Department of Justice for "preclearance." The submission cannot occur until after the redistricting plan becomes law, but the preclearance process can take up to 60 days. Accordingly, because the sign-up for the primary is scheduled to commence on June 6, 2012, the House and Senate had no choice but to take up the veto override last week.

It is important to note that, had the Governor acted in a timely manner, the veto message would have been published in the House Calendar. By waiting until after the House Calendar was published to veto House redistricting, the Governor prevented his veto message from appearing in the House Calendar. I think it is also important to note that the Senate agreed with the House's interpretation of the State Constitution as it proceeded to override the Governor's veto the same day the House voted to override.

Now let's turn to the claim that the redistricting of the city of Manchester is not constitutional. I understand the specific claims are that cities cannot be "broken up" and that Wards 8 and 9 have a right to be their own districts.

With respect to the first claim, there is nothing in either the Federal Constitution or the State Constitution that provides that cities cannot be "broken up." Indeed, the 2006 amendment to the State Constitution recognizes that in order to comply with the federal constitutional mandate of one-person-one-vote in some circumstances cities might have to be "broken up." More particularly, Part II, Article 11 provides that (1) towns and wards of a certain size population are to be their own districts, and that (2) wherever necessary to satisfy the one-person-one-vote mandate of federal law these districts can be formed into "floterial districts." Thus, the 2006 amendment expressly allows wards to be combined with towns to form floterials, which is what was done with Wards 8 and 9, and Litchfield.

That said it is important to understand that we made every effort to preserve city boundaries. However, Manchester is not unique. Seven out of the thirteen cities in the State are not self-contained. Southeastern Hillsborough County presented a considerable challenge because the towns of Litchfield and Hudson cannot be stand-alone districts under federal constitutional law, nor can they be formed into a floterial as contemplated by the 2006 amendment. In light of the relative populations of these two towns and the populations of the adjoining town of Pelham, Ward 8 and Ward 9, it was determined that the best means of effectuating the 2006 amendment involved the Ward 8/Ward 9/ Litchfield floterial.

As a matter of constitutional law, Wards 8 and 9 are treated exactly like every other ward in Manchester. More specifically, every ward in Manchester is its own district of two representatives and is part of a floterial district. As touched on above, the reason is that, under the federal constitutional mandate of one-person-one-vote, each ward has too much population to be a district of just two representatives, but not enough population to be a district of three representatives.

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It is important to understand that the federal constitutional mandate of one-person-one-vote takes precedence over state law. Indeed, as discussed above, the 2006 amendment to the State Constitution recognized this hierarchy by providing for floterial districts.

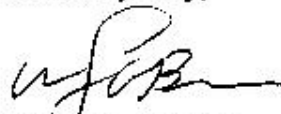
There is no question that the newly enacted House redistricting law conforms to the federal constitutional mandate of one-person-one-vote. The statewide "deviation" between districts from the ideal of 3,291 persons per state representative is less than ten percent, which the federal courts have ruled is presumptively constitutional.

There is also no question that the newly enacted House redistricting law is faithful to the 2006 amendment to the State Constitution. To the extent allowed by the federal one-person-one-vote mandate, towns and wards were made their own districts. The fact that some of these districts are within floterial districts does not render the redistricting law unconstitutional. As noted above, the 2006 amendment specifically provided for floterials in order to conform to the federal constitutional mandate of one-person-one-vote.

In closing, I want to note that the Special Redistricting Committee of the House put a tremendous amount of time and effort into producing a plan that manifestly conforms to the governing law while restoring local representation as contemplated by the 2006 amendment. For example, the Committee held ten hearings across the State in order to facilitate public input. I would also note that the Committee and the House as a whole were acutely sensitive to local concerns and traditional affinities. We are proud to say that as a result of this undertaking the newly enacted redistricting law approximately doubles the number of House districts.

Thank you.

Yours very truly,



William L. O'Brien
Speaker of the House

WLO/sg

Enclosures

cc: Mayor Theodore Gatsas
City Clerk Matthew Normand