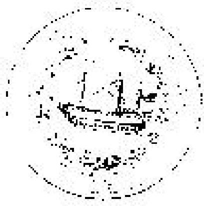

State of New Hampshire

House of Representatives

Office of the Speaker

April 2, 2012

Nate Torr
Meredith Board of Selectmen
41 Main Street
Meredith, NH 03253

Dear Selectman Torr:

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 town of Meredith 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 <u>not</u> 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.

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 town of Meredith is not constitutional. I understand the specific claim is that Meredith has a right to be its own district under the 2006 amendment to the State Constitution.

That claim is incorrect because the 2006 amendment gives a town or ward a qualified right to be its own town or district. One qualification is that a town or ward has a right to be its own district only if the district does not violate the federal constitutional mandate of one-person-one-vote.

If Meredith were a stand-alone district of two representatives, its deviation from the ideal population for two representatives would be negative 5.2 percent while the deviation for Gilford would be positive 8.3 percent. That would render the House redistricting plan presumptively unconstitutional because it would increase statewide deviation materially beyond the presumptively constitutional range of less than or equal to 10 percent. From the outset, one of the standards for House redistricting has been to create a plan that is presumptively constitutional.

To the extent that some have claimed or may claim that Meredith and Gilford can be made their own districts and then formed into a floterial district, that too is incorrect. The 2006 amendment allows floterials to be created using "excess population," as long as the federal constitutional mandate of one-person-one-vote is met: "The excess number of inhabitants of district may be added to the excess number of inhabitants of other districts to form at-large or floterial districts conforming to acceptable deviations." Combining Meredith and Gilford in this manner produces deviations that are well outside the constitutional range. Thus, such a floterial district is not constitutionally permissible.

Some have claimed that it is possible to create separate districts for Meredith and Gilford by assigning Gilford only one dedicated representative, as opposed to the two its population of 7,126 could support, and then forming a floterial district comprised of the "excess populations" of Meredith and Gilford. This is not permissible under the 2006 amendment. The term "excess population" clearly means the excess over the number of representatives the town or ward actually qualifies for under the one-person-one-vote principle.

It is important to understand that the federal constitutional mandate of one-person-one-vote takes precedence over state law. Indeed, as noted 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. As noted above, the 2006 amendment recognized that the federal constitutional mandate of one-person-one-vote takes precedence over the right of a town or ward to be its own district.

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

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Enclosures