

January 18, 2018

Re: HB 1666

Before: NH House Election Law Committee

Chairperson Griffin and Members of the Committee,

I would like to add a little legal and technological history to today's discussion.

*Partisan* gerrymandering, the process by which electoral districts are drawn with the intent of favoring the party in power, has been around in this country since at least the early 19th century. It's a tactic with a long tradition within both Republican and Democratic parties.

The courts have long ruled other forms of gerrymandering to be unconstitutional. In the 1993 North Carolina case, *Shaw v. Reno*, The Supreme Court found *racial* gerrymandering, the drawing of district boundaries to minimize the electoral power of a particular racial group, in violation of the equal protection clause of the Fourteenth Amendment.

The Supreme Court has maintained that partisan gerrymandering should be unconstitutional as well, but has never struck down an electoral map on that basis. Why? Because (1) the Court, as a rule, is reluctant to wade into political/partisan matters, and, more importantly, (2) there had been as yet no available measure of gerrymandering that justices could agree distinguished between a truly partisan map and one that was simply poorly conceived. The Court put out a call to political scientists and mathematicians to come up with such a measure.

Then along comes *Gill v. Whitford* in 2017. The case deals with the map of State Assembly districts drawn by Wisconsin Republicans in 2011. In the newly redistricted 2012 election, Republicans won over 60% of Assembly seats despite receiving less than half the popular vote. A lower court, using the newly conceived "efficiency gap" metric, concluded that partisan gerrymandering had indeed taken place, and called for a new, unbiased map to be drawn. Armed with a viable measure of partisan gerrymandering, the Supreme court has taken up the case, hearing arguments last fall and scheduled to render a decision in June of this year.

The efficiency gap appears to be the metric of choice at the moment, though there are competing statistics. The efficiency gap can tell us whether a redistricting process favors one party over another, but it cannot tell us whether that result is intentional on the part of those drawing the map, or whether it is simply a consequence of political geography—say, for example, when those likely to vote for the disfavored party just happen to be clustered in a small area.

That's where computer simulations come in. Today's redistricting algorithms are powerful. They can be (and are) used to maximize partisan advantage. Or they can be used to draw sensible, fair maps—lots of them. We can compare the efficiency gap produced by a legislatively drawn map with efficiency gaps produced from simulated election results using many unbiased, computer-drawn maps. And if the efficiency gap from the legislatively drawn map is an outlier with respect to the simulation results, we know we have conclusively identified intentional, partisan gerrymandering.

HB 1666 is an attempt to harness the power of modern technology to solve the gerrymandering problem. It mandates redistricting when the currently used electoral map has been proven to be intentionally biased. The lovely irony of HB 1666 is that, if it is enacted, re-redistricting will likely not be necessary. Why? Because those drawing the maps will know that the technology will catch them if they engage in partisan gerrymandering.

I strongly encourage the Committee to vote *Ought to Pass* on HB 1666.

Thank you for considering my testimony,

Rick Bourdon, Open Democracy Action co-chair