

January 29, 2019

The Honorable David Cote, Chair
NH House Election Law Committee, Legislative Office Building, Room 308
Concord, New Hampshire

TESTIMONY by Rick Bourdon in support of HB 706

Chairman Cote and members of the Election Law Committee:

Re: HB 706, a bill to create a nonpartisan redistricting commission

There is strong evidence that New Hampshire lawmakers have engaged in partisan redistricting, otherwise known as gerrymandering. How do I know?

First a little history. In recent years, the US Supreme Court has maintained that redistricting with partisan intent should be unconstitutional, 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.

They did. In fact they came up with a number of measures. The most talked about of these, and the apparent metric of choice at the moment, is known as the *efficiency gap*. Briefly, the efficiency gap is calculated as the difference between *wasted votes* cast for one political party and wasted votes cast for the opposing party, expressed as a percentage of total votes cast. Wasted votes are either votes cast for a losing candidate or the excess of votes cast for a winning candidate beyond the number of votes needed to win. In equation form:

In the spring of 2018, in order to satisfy both my interest in gerrymandering in New Hampshire and my rather strong geeky tendencies, I calculated efficiency gaps for NH Council, Senate, and House using data from the 2016 elections. It was a big job, one I don't plan on replicating any time soon. Here are the results:

| Office | Efficiency Gap |
|------------------|-----------------------------|
| NH Exec. Council | 9.0% (favoring Republicans) |
| NH Senate | 10.1% " " |
| NH House* | 9.8% " " |

Now, an efficiency gap greater than 8% is considered highly suspicious and cause for examination. Using the 8% threshold, partisan redistricting favoring Republicans appears to have been the case for all three sets of races.

That's the logical conclusion from the 2016 data. As we all know, election results in 2018 were vastly different from those in 2016. Democrats gained majorities in the Executive Council and both chambers of the legislature. District boundaries, however, had not changed between elections. So do the more recent results suggest that gerrymandering hadn't taken place after all?

The short answer is no. Gerrymandered districts don't maintain their partisan bias forever, and a good deal of time has passed since the last round of redistricting. Moreover, there are a lot more factors in play besides district boundaries: demographic changes; current events affecting both state and national politics; the large number of independent voters in NH; the comparative energy levels, dollars spent, and effectiveness of candidates and political parties; and more I'm sure.

The 2016 data points the finger at Republicans, but it matters not to me which party did what when. Clear evidence from other states shows that the Democratic party is guilty of gerrymandering as well. It's time for an end to the practice. Redistricting for partisan advantage is undemocratic (small d) and flies in the face of the principle of one person one vote. A nonpartisan redistricting commission is the logical solution, a solution being chosen by more and more states across the country.

I am encouraged by the fact that HB 706 enjoys bipartisan support. I am also encouraged by the fact that the bill enjoys broad support among members of the current majority party, a party that might well, should this bill fail, have the upper hand in the next round of redistricting. Having the "upper hand" is what has led to gerrymandering in the past. It reflects short-term thinking, a choice for partisan gain at the expense of the democratic values (again small d) that this country was founded upon.

I strongly encourage the Committee to vote *Ought to Pass* on HB 706.

Thank you for considering my testimony.

Respectfully,

Rick Bourdon, Co-Chair, Open Democracy Action
50 Preston Road
Lyme, NH 03768
(603) 759-1888

*End note

The House efficiency gap from 2016 data is especially interesting. It does not, in my opinion, indicate gerrymandering. Rather, it reflects a serious bias created by the majority-party-take-all nature of New Hampshire's multi-member districts. Below is a comparison of small districts (1 to 3 members) and larger ones (4 to 11 members).

| Seats/district | # districts | # seats | Efficiency Gap |
|----------------|-------------|---------|------------------------------|
| 1 to 11 (all) | 204 | 400 | 9.8% (favoring Republicans) |
| 1 to 3 | 183 | 286 | -.4% (favoring no party) |
| 4 to 11 | 21 | 114 | 22.2% (favoring Republicans) |

In districts with just one or a few seats, the efficiency gap is essentially zero—no evidence of undue partisan advantage. The efficiency gap for larger multi-seat districts, however, is off the charts in favor of Republicans. While there are multi-member districts with Democratic voting majorities and all-Democrat house delegations, they are relatively few and with mostly small numbers of seats per district. The big districts are almost exclusively located in the southern part of the state where there are Republican majorities. Hence the Republican advantage.

Whether a non-partisan redistricting commission could solve this problem is up for debate. Certainly it could draw attention to the issue and spur further action by the legislature and multimember districts. There are several possible remedies. We could break these districts up into smaller ones, institute ranked choice voting, or—my personal favorite—do a combination of both.