

U.S. DISTRICT COURT
BANGOR, MAINE
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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

2011 DEC 19 P 5:03

MICHAEL P. TURCOTTE)
)
 Plaintiff)
)
 v.)
)
 PAUL R. LEPAGE)
 in his official capacity as Governor of)
 the State of Maine.)
)
 Defendant)
)
 _____)

BY _____
DEPUTY CLERK

Civil Action No: 11-ev-0312-DBH

**PLAINTIFF’S OBJECTIONS TO REPORT AND RECOMMENDED DECISION
By MAGISTRATE JUDGE MARGARET J. KRACHUK and REQUEST FOR
HEARING ON MOTION TO DISMISS**

Pursuant to 28 U.S.C. § 636(b)(1)(B), the Plaintiff, Michael Turcotte, now files objections to the Report and Recommended Decision by Magistrate Judge Margaret J. Kravchuk.

List of Objections:

1. Report and Recommended Decision (Report) fails to address and or consider paragraphs 11-18 of Plaintiff’s amended complaint [Doc. No. 6] and page 2-3 of Response to Defendant’s Motion to Dismiss [Doc. No. 9] regarding his contention that Article IV, Part Third, Section 1-A of the Maine Constitution and 21-A M.R.S.A, §1206, Paragraph 1 is in violation of Section 1 (“*privileges and immunities*”, “*due process*” and “*equal protection*” clauses) of Amendment XIV in the U.S. Constitution.

2. Report does not consider relief sought in paragraph 19 of Plaintiff's amended complaint. [Doc. No. 6]

3. On page 1-1, the Report reads:

"Turcotte maintains that Maine's legislative and constitutional scheme up on the power of the two major political parties to achieve reapportionment through a legislatively-designated commission..."

The Plaintiff objects to the Report's logical reasoning of the above passage and suggests the reasoning is reversed. Maine's legislative and constitutional scheme does not "rel[y] upon the power of the two major political parties", but the Maine constitution *grants* power to the two major parties.

4. In page 1-1, the Report reads:

"...thereby unconstitutionally diluting the concept of "one man, one vote" in the congressional reapportionment context."

Plaintiff objects to the use of the word "concept" and suggests the word "worth" instead. In Wesberry v. Sanders (see 376 U.S. 8-9), the Supreme Court held:

"...construed in historical context, the command of Art. 1 §2, that Representatives be chosen by the People of several States mean that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."

The word "concept" by definition implies a notion or idea, or a construct, easily susceptible to objective interpretation – such as meaning. The Supreme Court definitively held that the meaning of one man's vote is to be *worth*, or valued, as much as another's. This is basis for the plaintiff's contention in

paragraph 1 of his amended complaint. If one person or individual is to be valued equally as another, based on the “equal protection” clause of Section 1 of Amendment XIV, then Maine’s Constitution devalues one group of individuals – the “nonaligned registered voters” - (*Report: page 1-1*) under another – the aligned registered voters.

5. On page 2-2, the Report reads:

“The primary thrust of Turcotte’s complaint in his request that this court construct an elaborate alternative method of selecting members to an apportionment committee.”

Plaintiff objects to “...primary thrust...” and “...this court construct an elaborative alternative method of selecting members to an apportionment committee” does not reflect the Plaintiff’s primary relief brought forth in paragraph 19 of his amended complaint [Doc. No. 6]. Further, the Plaintiff offered the “*elaborative alternative method*” with the understanding that the federal courts may intercede when a state’s reapportionment scheme violates the “equal protection” clause of Section 1 of Amendment XIV (*see Baker v. Carr; 369 U.S. 186, Snowden v. Hughes; 321 U.S. 1, and Reynolds v. Sims, 377 U.S. 533*).

6. On page 2-3, the Report reads:

“This court, like any federal court, can only decide ongoing cases and controversies and so, if an event occurs that makes it impossible for the federal court to provide some form of meaningful relief, there is,

generally speaking, no case or controversy, and [it] must dismiss the [matter] as moot.”

The Report cites Kuperman v. Wrenn, 645 F.3d 69, 72 (1st Cir. 2011) as the basis for not considering action on “three specific forms of relief” Plaintiff sought in his amended complaint [Doc. No. 6]. Plaintiff concedes the “three specific forms of relief” listed on page 2-2 and page 3-1 of the report. However, Plaintiff continues to seek relief sought in paragraph 19 of his amended complaint.

7. In page 3-2, the Report reads:

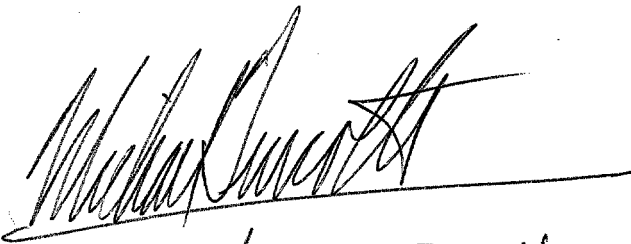
“It goes without saying that a state could devise an alternative method for the selection of the members of a Legislative Apportionment Commission if it chose to do so, or otherwise construct an alternative method for the task of congressional and/or state legislative redistricting.”

Plaintiff objects to the passage above for the following reason: the legislature did construct an alternative method for the congressional and/or state legislative redistricting. Article IV, Part Third, Section 1-A *is* the alternative method. This method was passed in the legislature as a constitutional amendment for ratification by Maine voters in a special election in 1975. It was placed in the same amendment that eliminated at-large representatives in response to the U.S. Supreme Court’s one man, one vote ruling, amidst the aftermath of a post-Watergate controversy and the election of Maine’s first independent Governor.

8. On page 4-2, the Report reads:

“And he maintains this is so despite the fact that the plan ultimately adopted rejected the Commission’s proposal and enacted a legislative compromise.”

The legislative compromise did not occur without the influence of the Legislative Apportionment Commission’s recommendation ordered by the legislature in Joint Order to Establish Commission To Reapportion Maine’s Congressional Districts (HP1186).

X 
Michael Turcotte
12/19/11