

Appeal No. 12-1229

IN THE UNITED STATES COURT
OF APPEALS FOR THE FIRST CIRCUIT

MICHAEL P. TURCOTTE
Plaintiff-Appellant

v.

PAUL R. LEPAGE, STATE OF MAINE GOVERNOR
Defendant-Appellee

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF MAINE

BRIEF OF DEFENDANT-APPELLEE

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STATEMENT OF THE ISSUE PRESENTED

Whether the district court properly dismissed Appellant's claims as moot.¹

STATEMENT OF THE CASE

Michael Turcotte's amended complaint challenges the make-up of a commission that was established by the Legislature on June 28, 2011, pursuant to a Joint Order to develop a plan for reapportioning Maine's congressional districts. Turcotte alleges that assigning the task of reapportioning congressional districts to a commission comprised of members of the two majority political parties – Republicans and Democrats – violated Article 1, section 2 of the United States Constitution, as well as his rights under the Due Process, Equal Protection, and Privileges and Immunities clauses of the Fourteenth Amendment. Amend. Compl. (Doc. No. 6).

On October 17, 2011, the defendant, Governor Paul LePage, moved to dismiss the complaint as moot. Doc. No. 8. By that time, the commission had disbanded, the Maine Legislature had adopted its own congressional reapportionment plan, that plan had become law with the Governor's signature,

¹ The three issues presented in Appellant's brief relate to the merits of his claims, which the lower court did not address, having dismissed the action as moot. In passing, however, the lower court did note that "State legislatures are not required to divorce themselves from political motivations in drawing congressional lines," and "there is certainly no constitutional infirmity in allowing [political motivations] to factor into the composition of a legislatively committee charged with designing the redistricting plan." (Doc. No. 11, reproduced in Appellant's Addendum at 43).

and no one (including Mr. Turcotte) had challenged the plan during the appeal period established by order of the Maine Supreme Judicial Court.

The Magistrate recommended dismissal of the action as moot (Doc. No. 11, reproduced in Appellant's Addendum ("App. Add.") at 40-44), and the district court (Hornby, J.) affirmed that decision following *de novo* review (Doc. No. 17, App. Add. 45). Turcotte's motion for reconsideration was rejected, and this appeal followed.

CONSTITUTIONAL AND STATUTORY FRAMEWORK

At the time this lawsuit was filed, the procedure for reapportioning Maine's congressional districts was set forth in statute, 21-A M.R.S. § 1206(1), as follows:

1. Procedure. In 1993 and every 10 years thereafter, when the Secretary of State has received notification of the number of congressional seats to which the State is entitled and the Federal Decennial Census population count is final, the Legislative Apportionment Commission, established every 10 years pursuant to the Constitution of Maine, Article IV, Part Third, Section 1-A, shall review the existing congressional districts. If the districts do not conform to Supreme Judicial Court guidelines, the commission shall reapportion the State into congressional districts.

In making such a reapportionment, the commission shall ensure that each congressional district is formed of compact and contiguous territory and crosses political subdivisions the least number of times necessary to establish districts as equally populated as possible. The commission shall submit its plan to the Clerk of the House of Representatives no later than 120 days after the convening of the Legislature at which apportionment is required. The Legislature shall enact the submitted plan of the commission or a plan of its own in regular or special session by a vote of 2/3 of the members of each house within 30 calendar days after the plan is submitted to the Clerk

of the House of Representatives. This action is subject to the Governor's approval, as provided in the Constitution of Maine, Article IV, Part Third, Section 2.

Pursuant to 21-A M.R.S. § 1206(2) & (3), the Maine Supreme Judicial Court had jurisdiction to adjudicate any challenge to an apportionment law enacted by the Legislature, and to reapportion the districts if the Legislature failed to do so.

After this lawsuit was filed, Maine voters ratified a constitutional amendment which sets forth a procedure for congressional reapportionment to be implemented beginning in 2021. Const. Res. 2011, ch. 1, *passed in 2011*, adopting Me. Const., Art. IX, § 24 (copy attached hereto as Addendum 1-5). This procedure is identical to the one described in 21-A M.R.S. § 1206, except that it establishes a different deadline – June 11th of the year in which apportionment is required – by which the Legislature must enact a congressional apportionment plan. *Id.* Both the statute and this new provision of Maine's Constitution direct the Legislature to “enact the submitted plan of the commission *or a plan of its own.*” *See* 21-A M.R.S. § 1206(1) and Me. Const., art. IX, § 24(1) (emphasis added).

STATEMENT OF FACTS

In March, 2011, Maine received federal decennial census data showing that population shifts over the previous decade had created a population disparity of 8,669 residents between Maine's two congressional districts. William Desena and

others filed suit against various state officials, alleging that this situation violated the constitutional mandate that each congressional district be equal in population, pursuant to Article I section 2 of the United States Constitution, and that it was unconstitutional for Maine to defer reapportionment until 2013 as provided in 21-A M.R.S. § 1206(1). *Desena v. LePage*, No. 1:11-cv-00117-GZS-DBH-BMS. A three-judge panel of the U.S. District Court agreed. *Desena v. Maine*, 793 F. Supp. 2d 456, 462 (D. Me. 2011).

On June 22, 2011, the court directed the state defendants to proceed with the process of redistricting in order to remedy the constitutional violation prior to January 1, 2012 – the date on which those seeking to run for Congress in Maine could begin circulating petitions to run for office. *Desena*, No. 1:11-cv-00117-GZS-DBH-BMS, Doc. No. 34. In its order, the court “anticipate[d] that the Maine Legislature will complete its redistricting work no later than September 30, 2011,” and that “[t]o the extent that the Maine Supreme Judicial Court plays any role in the redistricting for the 2012 congressional election, [it] will complete its work no later than November 15, 2011.” *Id.* Should those efforts fail, the court made clear that it would “proceed with its own reapportionment of Maine’s congressional districts” in order to meet the January 1, 2011 deadline. *Id.*

On June 28, 2011, the Maine Legislature adopted a Joint Order establishing a 15-member Commission to Reapportion Maine’s Congressional Districts (“the

Commission”) to “review the State’s existing congressional districts” and to develop redistricting recommendations to the Legislature. *See* H. P. 1186, Joint Order to Establish the Commission to Reapportion Maine’s Congressional Districts (125th Legis. 2011) (App. Add. 55-56) (“Joint Order”). The Joint Order directed the Commission to submit a report no later than August 31, 2011, including its recommendations, a reapportionment plan and a draft of emergency legislation to implement the plan. Joint Order § 7.

The members of the Commission were appointed by the Speaker of the House of Representatives, the President of the Senate, and the House and Senate leaders of the minority party, in accordance with the terms of the Joint Order. *Id.* § 2. Two of the public members – one from the majority and one from the minority political party – selected the third public member, *id.* § 2(B)(2), and the Commission members selected the chair, *id.* at § 3.

The Commission held several public meetings, at which different redistricting plans were proposed. Members of the public were invited to testify and to submit comments to the Commission on the redistricting plans. At its final meeting on August 30, each Commission member was given an opportunity to speak and to state a preference for a particular plan. All seven Democratic members preferred the Democratic plan, and all seven Republican members supported one or both Republican plans. The Chairman, who, like Turcotte, is not

enrolled in any political party, concluded the discussion by stating his preference for the Democratic plan.² A motion to recommend the Democratic plan was then approved by a vote of 8 to 7. Having completed its work, the Commission submitted its report to the Legislature containing both plans, and then disbanded.³

Governor LePage called for a Special Legislative Session to be held on September 27, 2011. The plan supported by the minority on the Commission was printed and submitted as Legislative Document 1590 (*see* copy attached as an exhibit to Appellant’s Motion to Supplement Record on Appeal, Doc. 116388967 (“App. Mot. Ex.”) at 1-3). The plan supported by the majority of the Commission (the Democrats plus the unenrolled chairman) was printed as Legislative Document 1591 (*see* copy attached hereto as Addendum 6-8). Neither plan was enacted.

Instead, a compromise plan was developed. *See* House Amend. C to L.D. 1590, No. H-681 (125th Legis. 2011) (App. Mot. Ex. at 4). It was approved by overwhelming majorities in both chambers of the Legislature, with a final vote of 140-3 in the House and 35-0 in the Senate. Governor LePage signed this plan into law. P.L. 2011, ch. 466 (eff. Sept. 28, 2011), repealing and replacing 21-A M.R.S.

² Turcotte does not acknowledge anywhere in his court filings that the Commission created by Joint Order of the Legislature included one unenrolled member, or that this member served as chair of the Commission.

³ The Commission’s final report is on record and available at the Maine State Law and Legislative Reference Library.

§ 1205(1) & (2) (*see* Doc. No. 8-2, attached hereto as Addendum 9). The population variance between the reconfigured districts is one vote, with the First District having a population of 664,180 and the Second District 664,181.

By order dated October 4, 2011, pursuant to its authority under 21-A M.R.S. § 1206(3) and 4 M.R.S. § 8, the Maine Supreme Judicial Court directed that any challenges to the enacted redistricting plan be filed on or before October 12, 2011, and that if no challenge was filed, the plan would be considered final on that date. *In re 2011 Congressional Redistricting*, Docket No. SJC-11-1 (Procedural Order, dated Oct. 4, 2011) (Doc. No. 8-3). As Turcotte acknowledges (Appellant's Br. at 6), he did not file a challenge in state court within that time period, and no one else did either. Accordingly, the new congressional districts became final and are codified at 21-A M.R.S. § 1205(1) and (2). *See* Addendum 9.

Turcotte filed his initial complaint on August 17, 2011. Doc. No. 1. On August 19, he filed an amended complaint. Amend. Compl. (Doc. No. 6). The amended complaint asserts that the Congressional redistricting process set forth in 21-A M.R.S. § 1206(1) violates a number of provisions of the United States Constitution, including the Due Process, Equal Protection and Privileges and Immunities clauses of the Fourteenth Amendment. Amend. Compl., ¶¶ 6-18. As relief, Turcotte requested:

- a temporary injunction preventing the legislatively-created redistricting commission from performing its duties in making recommendations, *id.* at ¶ 21;
- the creation of an alternative apportionment commission of 21 – 31 registered voters, with 2 – 3 alternates, to be chosen by lottery, with a current or retired Maine Supreme Court Justice to be the moderator or facilitator, *id.* at ¶¶ 23 – 37; and
- a procedure by which the alternative commission would finalize the congressional reapportionment map by a two-thirds vote, and send it to the Maine House of Representatives, *id.* at ¶¶ 42 – 45. If this alternative commission failed to pass the map by a majority vote, the map would then be “sent to the Justices of the Supreme Court of Maine to be enacted by decree.” *Id.* If the House “passes” the commission’s map, the Governor would sign it into law. *Id.* at ¶ 46.

Turcotte did not pursue his request for temporary injunctive relief.

After the Governor signed the Legislature’s apportionment plan into law on September 28, 2011, and the appeal period established by the Maine Supreme Judicial Court for challenging that plan elapsed on October 11, 2011, the defendant moved to dismiss Turcotte’s complaint. Doc. No. 8.

The Magistrate Judge recommended dismissal of the complaint as moot on the grounds that the subsequent events rendered it impossible for the court to provide the relief that Turcotte requested, and that the claims for restraining orders against the Governor and the Commission were therefore moot. Doc. No. 11 at 3 (App. Add. 42). The Magistrate further concluded that Turcotte’s complaint “now seeks nothing from this Court but an advisory opinion confirming his belief that the creation of a Legislative Apportionment Commission which is primarily

controlled by political appointees is unconstitutional.” *Id.* With regard to this aspect of his claim, the Magistrate observed that “Turcotte’s remedy is to seek legislative change and, if necessary, constitutional amendment through the political process.” Doc. No. 11 at 4 (App. Add. 43). The Magistrate concluded that while Turcotte’s amended complaint did not seek declaratory relief on the constitutionality of Maine’s statutory and constitutional provisions on apportionment, 21-A M.R.S. § 1206 and Me. Const. art. IV, pt. 3, § 1-A, if it had, “it is abundantly plain that the provisions of Maine law pass constitutional muster.” *Id.*

Turcotte filed objections and supplemental objections to the Magistrate’s Recommended Decision. Doc. Nos. 12 & 13. Following *de novo* review, the district court adopted the Recommended Decision in full and dismissed the amended complaint as moot. Doc. No. 17 (App. Add. 46). Turcotte filed a timely appeal to this Court.

SUMMARY OF ARGUMENT

Turcotte acknowledges that he is not contesting the constitutionality of the Legislature’s redistricting plan insofar as it meets the test of population equality. App. Br. at 19-20. He contends nonetheless that the involvement of a bi-partisan Commission in the process of reapportionment “devalued the *worth* of his vote because the plan was selected only by members of the two major parties.” App.

Br. at 20.⁴ This is not a cognizable claim, but, even if it was, it is moot. The plan selected by the Commission was not adopted by the Legislature. A different plan was enacted into law without challenge and has since been implemented.

Turcotte continues to argue the merits of his claims on appeal without addressing mootness.

ARGUMENT

Standard of Review. The district court’s dismissal of an action as moot is reviewed *de novo* by this Court on appeal, with the Court “accepting as true the material factual allegations contained in the complaint and drawing all reasonable inferences therefrom in the plaintiff’s favor.” *Libertarian Party of New Hampshire v. Gardner*, 638 F.3d 6, 12 (1st Cir. 2011), quoting *Ramirez v. Sanchez Ramos*, 438 F.3d 92, 96-97 (1st Cir. 2006).

I. Turcotte’s claims are moot.

This court has consistently held that a case becomes moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome of the controversy. *Gulf of Maine Fisherman’s Alliance v. Daley*, 292 F.3d 84, 87 (1st Cir. 2002) (internal quotations and citations omitted). A party “can have no legally cognizable interest in the outcome of a case if the court is not

⁴ In his argument, Turcotte ignores the reality that the commission chair was not a member of either major party and was unenrolled, like Turcotte himself.

capable of providing any relief which will redress the alleged injury.” *Id.* at 88. If this occurs while the case is pending in federal court, then “a case or controversy ceases to exist, and dismissal of the action is compulsory.” *Libertarian Party*, 638 F.3d at 12, quoting *Cruz v. Farquharson*, 252 F.3d 530, 533 (1st Cir. 2001).

Turcotte’s claims fit this description.

A. The relief Turcotte seeks can no longer be granted.

Turcotte’s complaint seeks relief in the form of temporary restraining orders against the Governor and the Legislative Apportionment Commission (Amend. Compl. ¶¶ 20- 22) with regard to the development or implementation of a Congressional apportionment plan, and appointment of a “Voter’s Apportionment Commission” to develop a Congressional redistricting plan (*id.* ¶¶ 23- 46). The Commission that was established by Joint Order of the Legislature disbanded upon submission of its final report including the majority and minority redistricting plans. Both of those plans were rejected and superseded, in effect, by the Legislature’s enactment of an entirely different redistricting plan, which became state law when it was signed by the Governor on September 28, 2011.⁵ That plan was not challenged in court during the appeal period by Turcotte or anyone else,

⁵ Contrary to Turcotte’s argument (App. Br. at 21-22), the fact that the apportionment plan adopted by the Legislature was printed as an amendment to the minority bill proposed by the Commission (*see* App. Mot. Ex. at 4), bears no legal significance. The Joint Order creating the commission in no way constrained the Legislature’s authority to adopt its own reapportionment plan, nor could it.

and it has now been implemented.⁶ Accordingly, as noted by the Magistrate Judge with respect to the request for restraining orders, “[t]he deed is done and the requested relief is impossible to achieve.” Docket Item 11 at 3 (App. Add. 42).

As Turcotte acknowledges, the new districts satisfy the test of population equality (i.e., the “one person, one vote” rule), and there is no constitutional infirmity in the enacted apportionment plan. App. Br. at 19-20. There is no longer any redistricting task for an alternative “Voter’s Apportionment Commission” to undertake even if Turcotte had a cognizable claim for such relief. The Legislature’s action has mooted Turcotte’s challenge. *See Diffenderfer v. Gomez-Colon*, 587 F.3d 445, 449 (1st Cir. 2009).

B. There is no live controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

In effect, as noted by the Magistrate Judge, “Turcotte now seeks nothing from this Court but an advisory opinion confirming his belief that the creation of a Legislative Apportionment Commission which is primarily controlled by political appointees is unconstitutional.” Docket Item 11 at 3 (App. Add. 42). However, “a federal court has neither the power to render advisory opinions nor ‘to decide questions that cannot affect the rights of litigants in the case before them.’”

⁶ The Court may take judicial notice of the fact that Congressional candidates have qualified for the ballot and are now campaigning for election in November, 2012, to represent the two new districts delineated in 21-A M.R.S. § 1205(1) & (2), *repealed and replaced by* P.L. 2011, ch. 466.

Preiser v. Newkirk, 422 U.S. 395, 401 (1975), quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)).

To avoid dismissal on the grounds of mootness, the facts alleged in a complaint must “show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant issuance of a declaratory judgment.” *Preiser*, 422 U.S. at 402, quoting *Maryland Casualty Co. v. Pacific Co.*, 312 U.S. 270, 273 (1941) (emphasis omitted). The mere desire for a declaratory judgment to vindicate some perceived violation of constitutional rights does not create a live controversy. *See Governor Wentworth Regional School District v. Hendrickson*, 2006 WL 3259203 (1st Cir. 2006) (parents’ claim for declaratory judgment that student’s school suspension was unconstitutional dismissed as moot after student graduated where no collateral consequences would result from suspension).

The prospect that a bi-partisan commission, primarily comprised of members of the two major political parties, may be appointed in 2021 to develop a reapportionment plan for Maine’s congressional districts following the next decennial census does not create a live controversy now between the parties to this litigation. It is unknown at this point whether Maine will continue to have two congressional districts by the time of the next decennial census. Accordingly, it is unclear whether Maine’s existing congressional districts will even need to be

reapportioned after the next census. Maine’s statutory and constitutional procedures for undertaking reapportionment may not remain the same in 2021. Any dispute about a procedure that may or may not be invoked nearly a decade from now is not yet ripe for adjudication.

C. No exception to mootness applies here.

The exception to mootness for disputes that are “capable of repetition, yet evading review” is a narrow one, *Cruz*, 252 F.3d at 534, and the party seeking to invoke the exception bears the burden of showing that both prongs of the test apply, *Libertarian Party*, 638 F.3d at 12. The “capable of repetition” prong of the exception applies only if there is “some demonstrated probability that the same controversy, involving the same parties, will reoccur.” *Cruz*, 252 F.3d at 534 (citations omitted). To meet the second prong, Turcotte must show that if the same controversy reoccurs in 2021, there will be insufficient time for meaningful judicial review. He has not, and cannot, make that showing here.

Given the uncertainties as to what the next federal decennial census will show, whether Maine will continue to have two congressional districts by that time, and whether Maine’s statutes and constitutional provisions regarding reapportionment will remain the same nine years from now, there can be no “demonstrated probability” that this dispute will reoccur. If the apportionment procedure does remain the same and is invoked in 2021, however, there will be

ample opportunity for Turcotte to seek and obtain judicial review at that time. In the meantime, as the Magistrate properly concluded, “Turcotte’s remedy is to seek legislative change and, if necessary, constitutional amendment through the political process,” not through the courts. Doc. No. 11 at 3-4 (App. Add. 42-43).

CONCLUSION

For the foregoing reasons, Appellee asks that the Court affirm the district court’s judgment dismissing Turcotte’s claims as moot.

DATED: July 24, 2012

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation, because it has 3,512 words, excluding the parts that Rule 32(a)(7)(B)(iii) exempts. *See* Fed. R. App. P. 28.1(e)(2)(B)(i). This brief complies with the typeface requirements, because it has 14 point Times New Roman font in Microsoft Word 2007. *See id.* 32(a)(5).

Dated: July 24, 2012

/s/ Phyllis Gardiner

Phyllis Gardiner

Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this, 24th day of July, 2012, I electronically filed the above document with the Clerk of Court using the CM/ECF system and I sent a copy by First-Class Mail, postage prepaid, to the following person:

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CONSTITUTIONAL
RESOLUTION

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 387 - L.D. 494

RESOLUTION, Proposing an Amendment to the Constitution
of Maine To Change the Schedule for Redistricting

Constitutional amendment. Resolved: Two thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of Maine be proposed:

Constitution, Art. IV, Pt. First, §2 is amended to read:

Section 2. Number of Representatives; biennial terms; division of the State into districts for House of Representatives. The House of Representatives shall consist of 151 members, to be elected by the qualified electors, and hold their office 2 years from the day next preceding the first Wednesday in December following the general election. The Legislature which convenes in ~~1983~~ 2013, and also the Legislature which convenes in 2021 and every 10th year thereafter, shall cause the State to be divided into districts for the choice of one Representative for each district. The number of Representatives shall be divided into the number of inhabitants of the State exclusive of foreigners not naturalized according to the latest Federal Decennial Census or a State Census previously ordered by the Legislature to coincide with the Federal Decennial Census, to determine a mean population figure for each Representative District. Each Representative District shall be formed of contiguous and compact territory and shall cross political subdivision lines the least number of times necessary to establish as nearly as practicable equally populated districts. Whenever the population of a municipality entitles it to more than one district, all whole districts shall be drawn within municipal boundaries. Any population remainder within the municipality shall be included in a district with contiguous territory and shall be kept intact.

Constitution, Art. IV, Pt. First, §3 is amended to read:

Section 3. Submission of reapportionment plan to Clerk of House; Legislature's action on commission's plan. The apportionment plan of the commission established under Article IV, Part Third, Section 1-A shall be submitted to the Clerk of the House no later than ~~120 calendar days after the convening of the Legislature~~ June 1st of the year in which apportionment is required. In the preparation of legislation implementing the plan, the commission, following a unanimous decision by commission members, may adjust errors and inconsistencies in accordance with the standards set forth in this Constitution, so long as substantive changes are not made. The Legislature shall

enact the submitted plan of the commission or a plan of its own by a vote of 2/3 of the Members of each House ~~within 30 calendar days after the plan of the commission is submitted~~ by June 11th of the year in which apportionment is required. Such action shall be subject to the Governor's approval as provided in Article IV, Part Third, Section 2.

In the event that the Legislature shall fail to make an apportionment ~~within 130 calendar days after convening by June 11th,~~ the Supreme Judicial Court shall, within 60 days following the period in which the Legislature is required to act, but fails to do so, make the apportionment. In making such apportionment, the Supreme Judicial Court shall take into consideration plans and briefs filed by the public with the court during the first 30 days of the period in which the court is required to apportion.

The Supreme Judicial Court shall have original jurisdiction to hear any challenge to an apportionment law enacted by the Legislature, as registered by any citizen or group thereof. If any challenge is sustained, the Supreme Judicial Court shall make the apportionment.

Constitution, Art. IV, Pt. Second, §2 is amended to read:

Section 2. Submission of reapportionment plan to Secretary of Senate; Legislature's action on commission's plan; division of State into Senatorial Districts; division by Supreme Judicial Court. The Legislature which shall convene in the year ~~1983~~ 2013, and also the Legislature which shall convene in the year 2021 and every tenth year thereafter, shall cause the State to be divided into districts for the choice of a Senator from each district, using the same method as provided in Article IV, Part First, Section 2 for apportionment of Representative Districts.

The apportionment plan of the commission established under Article IV, Part Third, Section 1-A shall be submitted to the Secretary of the Senate no later than ~~120 calendar days after the convening of the Legislature~~ June 1st of the year in which apportionment is required. In the preparation of legislation implementing the plan, the commission, following a unanimous decision by commission members, may adjust errors and inconsistencies in accordance with the standards set forth in this Constitution, so long as substantive changes are not made. The Legislature shall enact the submitted plan of the commission or a plan of its own by a vote of 2/3 of the Members of each House, ~~within 30 calendar days after the plan of the commission is submitted by June 11th of the year in which apportionment is required.~~ Such action shall be subject to the Governor's approval as provided in Article IV, Part Third, Section 2.

In the event that the Legislature shall fail to make an apportionment ~~within 130 days after convening by June 11th,~~ the Supreme Judicial Court shall, within 60 days following the period in which the Legislature is required to act but fails to do so, make the apportionment. In making such apportionment, the Supreme Judicial Court shall take into consideration plans and briefs filed by the public with the court during the first 30 days of the period in which the court is required to apportion.

The Supreme Judicial Court shall have original jurisdiction to hear any challenge to an apportionment law enacted by the Legislature, as registered by any citizen or group

thereof. If any challenge is sustained, the Supreme Judicial Court shall make the apportionment.

Constitution, Art. IX is amended by adding after Section 23 the following:

Section 24. Reapportionment. Congressional districts must be reapportioned as follows.

1. Procedure. Beginning in 2021 and every 10 years thereafter, when the Secretary of State has received notification of the number of congressional seats to which the State is entitled and the Federal Decennial Census population count is final, the Legislative Apportionment Commission, established every 10 years pursuant to Article IV, Part Third, Section 1-A, shall review the existing congressional districts. If the districts do not conform to Supreme Judicial Court guidelines, the commission shall reapportion the State into congressional districts.

In making such a reapportionment, the commission shall ensure that each congressional district is formed of compact and contiguous territory and crosses political subdivisions the least number of times necessary to establish districts as equally populated as possible. The commission shall submit its plan to the Clerk of the House of Representatives no later than June 1st of the year in which apportionment is required. The Legislature shall enact the submitted plan of the commission or a plan of its own in regular or special session by a vote of 2/3 of the members of each House by June 11th of the year in which apportionment is required to the Clerk of the House of Representatives. This action is subject to the Governor's approval, as provided in Article IV, Part Third, Section 2.

2. Court apportionment. If the Legislature fails to make an apportionment by June 11th, the Supreme Judicial Court shall make the apportionment within 60 days following the period in which the Legislature is required to act but fails to do so. In making the apportionment, the Supreme Judicial Court shall take into consideration plans and briefs filed by the public with the court during the first 30 days of the period in which the court is required to apportion.

3. Judicial review. The Supreme Judicial Court has original jurisdiction to hear any challenge to an apportionment law enacted by the Legislature, as registered by any citizen or group of citizens. If a challenge is sustained, the Supreme Judicial Court shall make the apportionment.

Section 25. Apportionment of county commissioner districts. County commissioner districts must be apportioned as follows.

1. Redistricting, generally. Beginning in 2021 and every 10 years thereafter, the apportionment commission established under Article IV, Part Third, Section 1-A shall review the existing county commissioner districts and, as necessary, reapportion those districts in each county to establish as nearly as practicable equally populated districts. The Speaker of the House of Representatives is responsible for calling the commission together to review the county commissioner districts. No action may be taken by the commission without a quorum of 7.

A. The apportionment commission shall divide the number of commissioners in each county into the number of inhabitants of the county, excluding foreigners not naturalized, according to the latest Federal Decennial Census or a state census previously ordered by the Legislature to coincide with the Federal Decennial Census, to determine a mean population figure for each county commissioner district. Each county commissioner district must be formed of contiguous and compact territory and must cross political subdivision lines the least number of times necessary to establish as nearly as practicable equally populated districts. Whenever the population of a municipality entitles it to more than one district, all whole districts must be drawn within the municipal boundaries. Any population remainder within the municipality must be included in a district drawn to cross the municipal boundary as long as the population remainder within the municipality is contiguous to another municipality or municipalities included in the district. Any county that already meets the standards and guidelines for equally populated districts, as established by this section, this Constitution and the Constitution of the United States, need not be reapportioned.

B. Interested parties from each county may submit redistricting plans for the commission to consider. Those plans must be submitted to the commission no later than 30 calendar days after the commission is called together by the Speaker of the House of Representatives under this subsection. The commission may hold public hearings on plans affecting each county.

C. The commission shall submit its plan to the Clerk of the House of Representatives no later than June 1st of the year in which apportionment is required. The Clerk of the House of Representatives shall submit to the Legislature, no later than January 15, 2022, and every 10th year thereafter, one legislative document to reapportion the county commissioner districts based on the plan submitted by the apportionment commission. The Legislature must enact the submitted plan or a plan of its own in regular or special session by a vote of 2/3 of the members of each House within 30 calendar days after the plan is submitted to it by the Clerk of the House of Representatives. This action is subject to the Governor's approval, as provided in Article IV, Part Third, Section 2.

2. Supreme Judicial Court. If the Legislature fails to make an apportionment within the 30 calendar days, the Supreme Judicial Court shall make the apportionment within 60 calendar days following the period in which the Legislature is required to act but fails to do so. In making the apportionment, the Supreme Judicial Court shall consider plans and briefs filed by the public with the court during the first 30 days of the period in which the court is required to apportion.

; and be it further

Constitutional referendum procedure; form of question; effective date.

Resolved: That the municipal officers of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for holding a statewide election, at a statewide election held in the month of November following the passage of this resolution, to vote upon the ratification of the amendment proposed in this resolution by voting upon the following question:

"Do you favor amending the Constitution of Maine to change the years of redistricting the Maine Legislature, congressional districts and county commissioner districts after 2013 from 2023 and every 10th year thereafter to 2021 and every 10th year thereafter?"

The legal voters of each city, town and plantation shall vote by ballot on this question and designate their choice by a cross or check mark placed within the corresponding square below the word "Yes" or "No." The ballots must be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns. If it appears that a majority of the legal votes are cast in favor of the amendment, the Governor shall proclaim that fact without delay and the amendment becomes part of the Constitution of Maine on the date of the proclamation; and be it further

Secretary of State shall prepare ballots. Resolved: That the Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this resolution necessary to carry out the purposes of this referendum.



125th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2011

Legislative Document

No. 1591

H.P. 1196

House of Representatives, September 26, 2011

An Act To Reapportion Maine's Congressional Districts

(EMERGENCY)

Submitted by the Commission to Reapportion Maine's Congressional Districts pursuant to Joint Order 2011, H.P. 1186.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative MARTIN of Eagle Lake.

1 Wayne, West Gardiner, Windsor and Winthrop. The Second District consists of
2 Androscoggin County, Aroostook County, Franklin County, Hancock County, Oxford
3 County, Penobscot County, Piscataquis County, Somerset County, Waldo County and
4 Washington County and the following municipalities of Kennebec County: Benton,
5 Clinton, Fayette, Gardiner, Litchfield, Rome, Unity Township, Vassalboro, Vienna,
6 Waterville and Winslow.

SEP 28 '11

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BY GOVERNOR PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

H.P. 1195 - L.D. 1590

An Act To Reapportion the Congressional Districts of the State

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, current law provides for the reapportionment of Maine's congressional districts in 2013; and

Whereas, the United States District Court has ruled that Maine may not wait until 2013 to redraw its 2 congressional districts to reflect population shifts, but must instead redraw the districts in time for the congressional election in 2012; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1205, sub-§§1 and 2, as enacted by PL 1993, c. 628, §2, are repealed and the following enacted in their place:

1. First District. The First District consists of the counties of Cumberland, Knox, Lincoln, Sagadahoc and York and the following municipalities within Kennebec County: Augusta, Chelsea, China, Farmingdale, Hallowell, Manchester, Pittston, Readfield, Vassalboro, Waterville, Windsor, Winslow and Winthrop.

2. Second District. The Second District consists of the counties of Androscoggin, Aroostook, Franklin, Hancock, Oxford, Penobscot, Piscataquis, Somerset, Waldo and Washington and the following municipalities and areas within Kennebec County: Albion, Belgrade, Benton, Clinton, Fayette, Gardiner, Litchfield, Monmouth, Mount Vernon, Oakland, Randolph, Rome, Sidney, Vienna, Wayne, West Gardiner and Unity Township.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.