

No. 12-1229

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

MIKE TURCOTTE
Plaintiff - Appellant

v.

PAUL LEPAGE
In his capacity as Governor of the State of Maine
Defendant - Appellee

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

REPLY BRIEF OF THE PLAINTIFF - APPELLATE

Respectfully submitted by,

MIKE TURCOTTE
24 Cortland Circle
Bangor, ME 04401
(207) 991-7070

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INTRODUCTION

Turcotte claims Article IV, Part Third, §1-A (Statute) of the Maine Constitution violates his constitutional rights under the ‘equal protection’ clause of the Fourteenth Amendment when it authorizes the Legislature to establish an Apportionment Commission paneled with only members of the two largest political parties;¹ tasked to develop a plan apportioning Maine’s congressional districts or enacting a plan of the own.² Turcotte also claims such authorization devalues the worth of his vote. Here, Turcotte addresses whether the district court erred when it dismissed his contentions as moot by contending LePage’s claims of mootness.

ARGUMENT

I. LEPAGE’S CLAIMS OF MOOTNESS FAILS TO ADDRESS THE LIVE CONTROVERSY; THE CONSTITUTIONAL STATUTE AUTHORIZING THE APPORTIONMENT COMMISSION.

In his Motion to Dismiss, LePage claimed the congressional reapportionment process was completed and the court could grant no relief to Turcotte. In his brief, the Apellee also reiterates his claim from District Court that Turcotte’s case before this court is moot. However, in the court cases cited by LePage, specifically on the basis that the controversy no longer exists, his assertion of mootness does not apply. Article IV, Part Third, § 1-A (Statute) of the Maine

¹ Including the Commission’s unenrolled chair.

² In accordance with 21-A M.R.S. §1206 (21-A).

Constitution still exists and continues to violate Turcotte's constitutional rights as prescribed in the Equal Protection Clause in the Fourteenth Amendment.

A. Claims of Mootness are Unsubstantiated

In his response, LePage cites the following cases as to why Turcotte's case is moot (in order as they appear): Libertarian Party of New Hampshire v. Gardner, 638 F.3d 6 (1st Cir. 2011) (the question of removing a second set of Libertarian names from ballot was mooted because the election was over); Ramirez v. Sanchez Ramos, 438 F.3d 92 (1st Cir. 2011) (first amendment constitutional claims in the face of the Riot Act were mooted when criminal charges were dropped); Gulf of Maine Fisherman's Alliance v. Daley, 292 F.3d 84, 87 (1st Cir. 2002) (subsequent fishing frameworks made the case moot because the framework for which the controversy rested no longer existed); Cruz v. Farquharson, 252 F.3d 530 (1st Cir. 2001) (the manner in which the Immigration and Naturalization Service (INS) processed, or failed to process, petitions by citizens requesting permanent residence in the United States for their alien spouses was declared moot because within 10 weeks of filing after all petitions were granted); Diffenderfer v. Gomez-Colon, 587 F.3d 445 (1st Cir. 2009) (legislative action made the pending case moot); Preiser v. Newkirk, 422 U.S. 395 (1975) (case declared moot because the prisoner was no longer imprisoned and suffered no ill effects toward his probation); Governor Wentworth Regional School District v. Hendrickson, 2006

WL 3259203 (1st Cir. 2006) (student graduated from the district and no collateral consequences would result from suspension).

Despite his court citations listed above, LePage fails to address that the fact that Maine Statute remains; and, regardless of the passage of a congressional redistricting “compromise” plan (LD 1590) by the Maine Legislature – subsequently signed by the Governor, the controversy between the parties has not been eliminated.

B. Live Controversy Exists and Warrants Issuance Declaratory Relief

Article III, Section 2 of the U.S. Constitution requires that judicial power extend only to ‘cases’ and ‘controversies.’ *See Friends of the Earth v. Laidlaw*, 528 U.S. 167, 180 (2000). Also, “[f]or adjudication of constitutional issues ‘concrete legal issues, presented in actual cases, not abstractions’ are requisite.” *United Public Workers v. Mitchell*, 330 U.S. 75, 86-94 (1947), *See Electric Bond & Share Co. v. Securities and Exchange Commission*, 303 U.S. 419, 443 (1938); *United States v. Appalachian Electric Power Co.*, 311 U.S. 377, 423 (1940). Further, a case is not moot so long as Turcotte continues to have an injury for which the court can award relief, even if entitlement to the primary relief has been mooted and what remains is small. *See Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). And, “[w]here one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a

case or controversy.” *Powell v. McCormack*, 395 U.S. 486, 497 (1944), quoting *United Public Workers v. Mitchell*, 330 U.S. 75, 86-94 (1947).

LePage claims that there is no ‘live controversy’ and cites the Magistrate Judge’s assertion, “that Turcotte seeks nothing from this Court but an advisory opinion.”³ His assertion, Turcotte’s case “must show that there is a substantial controversy, between parties have adverse legal interests, of sufficient immediacy and reality to warrant issuance of a declaratory judgment” *Preiser, supra* at 402, quoting *Maryland Casualty Co. v. Pacific Co.*, 312 U.S. 270, 273 (1941)⁴ is unsubstantiated; the controversy between the parties is exists because the Statute remains in effect.

The Declaratory Judgment Act⁵ allows any Court of the United States to remedy ongoing violations of statutory or constitutional provisions in “case[s] of actual controversy within its jurisdiction...declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. §2201(a). Turcotte seeks declaratory relief since the controversy is definite and concrete, real and substantial, and he “will

³ Docket No. 11 at 3.

⁴ In *Maryland*, the Supreme Court *reversed* the Court of Appeals ruling of mootness stating, “we hold that there is actual controversy between petitioner and Orteca, and hence, that petitioner’s complaint states a cause of action against the latter.” 312 U.S. at 274. (emphasis added.)

⁵ 28 U.S.C. §2201 and §2202.

again be subjected to the alleged illegality” *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983) again.

C. Turcotte’s Exception to Mootness

To be granted declaratory relief, the Court recognizes three principal exceptions to the mootness doctrine. First; voluntary cessation of unlawful conduct.⁶ Second; conduct ‘capable of repetition yet evading review.’ *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911) Third; plaintiff must show that he, rather than anyone, “will again be subjected to the alleged illegality.” *Lyons, supra*, at 109.⁷

Splitting ‘capable of repetition, yet evading review’⁸ into two parts, in ‘capable of repetition’, two standards exist: first “demonstrated probability” and the lesser “reasonable expectation.” *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) “Demonstrated probability” the injury will reoccur to Turcotte lies in the Statute’s history. Since 1975, four Legislative Apportionment Commissions have convened for congressional redistricting and acted in accordance to the Statute. Barring the outcome of this case, Turcotte, a Maine citizen, expects to be subjected to the illegality of the same Statute for next congressional redistricting in 2021.⁹

⁶ Not applicable in this case.

⁷ The Court has also invoked exception in circumstances of public importance. *See United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953); *See also United States v. Trans-Missouri Freight Assn.*, 166 U.S. 290, 309 (1897).

⁸ *Id.* at 515.

⁹ The Statute doubles in Maine’s House and Senate legislative redistricting process as well.

In ‘yet evading review’, Turcotte initially file his complaint on August 17, 2011, and an amended complaint on August 19, 2011. The Commission started its work on June 28, 2011, completed it on August 30, 2011, and entered a majority (LD 1591) and minority (LD 1590) plans into the Legislative docket on September 26, 2011. Actions evade review when they are “too short to be fully litigated prior to cessation or expiration” Southern Pacific Terminal Co. v. ICC, *supra*, at 515 (1911). Turcotte acknowledges that he did not take legal action (i.e. motion for preliminary hearing or injunction) immediately after he filed his Amended Complaint for the simple reason, as a pro se’ litigant with no legal experience at the time, he did not know what legal measures were available to him. Nonetheless, in First Nat. Bank of Boston, both elements for the “evade review,” identified in Weinstein v. Bradford, *supra* at 149, as a preclusion in finding mootness in the absence of a class action: "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again”, are present in this case. First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 775 (1978)¹⁰; see also Turner v. Rogers, 131 S.Ct. 2507 (2011)¹¹. In regards to first element, Turcotte had less than two weeks to complete litigation before the

¹⁰ In First Nat. Bank of Boston, the Supreme Court ruled 18 months was too short a time to litigate.

¹¹ In Turner, the Supreme Court ruled 12 months was too short a time to litigate through state courts to the Supreme Court.

Commission, under district court order¹², was to submit their plan and 44 days before the Legislature, under the same district court order, was to meet its deadline. Under normal circumstances, as noted in LePage’s brief (Appellee Br. at 2), pursuant to 21-A M.S.R. §1206, “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 in which apportionment is required.”¹³

For the second element; because the Statute is part of the Maine Constitution, it is reasonable to expect Turcotte, a Maine citizen, will be subjected to the ‘alleged illegality’ again. *Lyons, supra*, at 109.

II. LEGISLATIVE PASSAGE OF THE REDISTRICTING
“COMPROMISE” PLAN WAS PURSUANT TO ARTICLE IV, PART
THIRD §1-A, AND IN ACCORDANCE WITH 21-A M.R.S § 1206.

LePage continues to assert that the Legislature, having rejected both the majority plan (Legislative Document (LD) 1591)) and the minority plan (LD 1590) from the Commission, acted on its own accord in passing the congressional redistricting “compromise” plan. LePage suggests that “the fact that the apportionment plan adopted by the Legislature was printed as an amendment to the

¹² *Densa v. Maine*, 793 F. Supp. 2d 456 (2011).

¹³ A constitutional amendment has since been passed (2011) by the voters requiring the Commission to submit its plan to the Clerk of the House of Representatives no later than June 1st of the year in which apportionment is required; approximately 200 days from the first Wednesday of the previous December to June 1, taking into account the holiday season. (Maine Constitution: Article IV, Pt. Second, §2) However, 21-A M.R.S. §1206 remains as cited above.

minority bill (LD 1590) proposed by the Commission (*see* App. Mot. Ex. at 4) bears no legal significance.” (Appellee Br. At 11 n.5) Despite this convenient assertion, the Legislature amended the Commission’s minority plan (LD 1590) and, pursuant to its own Joint Order 2011, H.P. 1186, acted in accordance to the Statute and within the legal parameters of 21-A M.R.S. § 1206 (21-A) – allowing it to reject the Commission’s plan and pass a plan of its own. The bind between the Statute and 21-A was not broken.¹⁴ At no time, subsequent to the Commission’s Plan, did any legislator introduce a new bill proposing the “compromise” redistricting plan into the legislative docket.

CONCLUSION

At issue is whether the Statute denies Turcotte equal protection of the law under the Equal Protection Clause of the Fourteenth Amendment when it only appoints members of the two major political parties to the apportionment commission tasked to reconfigure his congressional district. The District Court committed reversible error when it granted Motion to Dismiss on the ground of

¹⁴ Notwithstanding 21-A M.R.S § 1206 (21-A), Art. IV, Pt. 3, § 1-A (Statute), establishing the Legislative Commission, is also integrated within: ME. Const. art. IV, pt. 1 § 3 (Appellee Br. Add. 1-2) (Submission of reapportionment plan to Clerk of House; Legislature’s action on commission’s plan); ME Const. art. IV, pt. 2 § 2 (Appellee Br. Add. 2-3) (Submission of reapportionment plan to Secretary of Senate; Legislature’s action on commission’s plan; division of State into Senatorial districts; dvision by Supreme Judicial Court); and ME Const. art. IX, § 24 (Reapportionment) (Appellee Br. Add 3).

“mootness”. Turcotte has demonstrated above that LePage’s claim for mootness is unsubstantiated; there is live controversy between the parties and exception to mootness; and the Legislature was acting in accordance to the Maine constitutional statute integrated within the legal parameters of the state revised code.

Dated this 19th day of August, 2012, in Bangor, Maine.

/s/ Michael Turcotte
Michael P. Turcotte
24 Cortland Circle
Bangor, Maine 04401
Telephone: 207-991-7070
michaelturcotte@gmail.com

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Michael P. Turcotte certifies that he served a copy of this document by

Electronic Mail today on the following:

PAUL STERN

Deputy Attorney General

Office of the Attorney General

paul.d.stern@maine.gov

Tel: (207) 626-8568

PHYLISS GARDINER

Assistant Attorney General

phyllis.gardiner@maine.gov

Tel: (207) 626-8830

6 State House Station

Augusta, ME 0433-0006

Dated: August 19th, 2012

/s/ Michael Turcotte

MICHAEL P. TURCOTTE

24 Cortland Circle

Bangor, ME 04401

207-991-7070

ADDENDUM

U.S. CONSTITUTION

ARTICLE III, § 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

U.S. CONSTITUTION

AMENDMENT XIV

SECTION 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE

DECLARATORY JUDGMENT ACT

28 USC § 2201

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

Maine Constitution Article IV. -- Part Third. Legislative Power.

**Article IV. -- Part Third.
Legislative Power.**

Section 1-A. Legislature to establish Apportionment Commission; number of quorum; compensation of commission members; commission's budget; division among political parties. A Legislature which is required to apportion the districts of the House of Representatives or the Senate, or both, under Article IV, Part First, Section 2, or Article IV, Part Second, Section 2, shall establish, within the first 3 calendar days after the convening of that Legislature, a commission to develop in accordance with the requirements of this Constitution, a plan for apportioning the House of Representatives, the Senate, or both.

The commission shall be composed of 3 members from the political party holding the largest number of seats in the House of Representatives, who shall be appointed by the Speaker; 3 members from the political party holding the majority of the remainder of the seats in the House of Representatives, who shall be appointed by the floor leader of that party in the House; 2 members of the party holding the largest number of seats in the Senate, who shall be appointed by the President of the Senate; 2 members of the political party holding the majority of the remainder of the seats in the Senate, to be appointed by the floor leader of that party in the Senate; the chairperson of each of the 2 major political parties in the State or their designated representatives; and 3 members from the public generally, one to be selected by each group of members of the commission representing the same political party, and the third to be selected by the other 2 public members. The Speaker of the House shall be responsible for organizing the commission and shall be chairperson pro tempore thereof until a permanent chairperson is selected by the commission members from among their own number. No action may be taken without a quorum of 8 being present. The commission shall hold public hearings on any plan for apportionment prior to submitting such plan to the Legislature.

Public members of the commission shall receive the same rate of per diem that is paid to Legislators for every day's attendance at special sessions of the Legislature as defined by law. All members of the commission shall be reimbursed for actual travel expenses incurred in carrying out the business of the commission. The Legislature which is required to apportion shall

establish a budget for the apportioning commission within the state budget document in the fiscal year previous to the fiscal year during which the apportioning commission is required to convene and shall appropriate sufficient funds for the commission to satisfactorily perform its duties and responsibilities. The budget shall include sufficient funds to compensate the chairperson of the commission and the chairperson's staff. The remainder of the appropriation shall be made available equally among the political parties represented on the commission to provide travel expenses, incidental expenses and compensation for commission members and for partisan staff and operations.

MAINE REVISED STATUTES

Title 21-A: ELECTIONS Chapter 15: APPORTIONMENT

§1206. Reapportionment

Congressional districts must be reapportioned as follows. [1995, c. 360, §1 (AMD) .]

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 calendar days after the convening of the Legislature 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 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.

[1993, c. 628, §2 (NEW) .]

2. Court apportionment. If the Legislature fails to make an apportionment within 120 calendar days of the convening of the session in which apportionment is required, 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.

[1993, c. 628, §2 (NEW) .]

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.

[1993, c. 628, §2 (NEW) .]

SECTION HISTORY

1993, c. 628, §2 (NEW). 1995, c. 360, §1 (AMD).

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Joint Order To Establish the Commission To Reapportion Maine's Congressional Districts

ORDERED, the Senate concurring, that, notwithstanding Joint Rule 353, the Commission to Reapportion Maine's Congressional Districts is established as follows.

1. Commission to Reapportion Maine's Congressional Districts established. The Commission to Reapportion Maine's Congressional Districts, referred to in this order as "the commission," is established.

2. Membership. The commission consists of 15 members appointed or invited as specified in this section.

A. The commission consists of the following appointed members:

- (1) Three members from the political party holding the largest number of seats in the House of Representatives, appointed by the Speaker of the House;
- (2) Three members from the political party holding the majority of the remainder of the seats in the House of Representatives, appointed by the floor leader of that party in the House;
- (3) Two members of the political party holding the largest number of seats in the Senate, appointed by the President of the Senate; and
- (4) Two members of the political party holding the majority of the remainder of the seats in the Senate, appointed by the floor leader of that party in the Senate.

B. The Speaker of the House shall invite the following to be members of the commission:

- (1) The chairs of each of the 2 major political parties in the State or their designated representatives; and
- (2) Three members from the public generally, one to be selected by each group of members of the commission representing the same political party and the 3rd to be selected by the other 2 public members.

3. Commission chair; quorum. The Speaker of the House shall organize the commission and is the chair pro tempore thereof until a permanent chair is selected by the commission members from among their own number. Action may not be taken by the commission without a quorum of 8 members present.

4. Appointments; convening of commission. All appointments must be made no later than 7 days following passage of this order. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. When the appointment of all members has been completed, the chair of the commission shall call and convene the first meeting of the commission. If 7 days or more after the passage of this order a majority of but not all appointments have been made, the chair may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

5. Duties. The commission shall review the State's existing congressional districts. If the districts do not conform to Supreme Judicial Court guidelines, the commission shall reapportion the State into 2 congressional districts for the election of representatives to the United States Congress in accordance with the requirements contained in the Maine Revised Statutes, Title 21#A, section 1206, subsection 1. The commission shall hold public hearings on any plan for apportionment prior to submitting the plan to the Legislature.

6. Staff; compensation. The commission may hire staff determined necessary by the chair to complete the duties specified in section 5. Public members of the commission must receive the same rate of per diem that is paid to Legislators for every day's attendance at special sessions of the Legislature as specified in the Maine Revised Statutes, Title 3, section 2. All members of the commission must be reimbursed for actual travel expenses incurred in carrying out the business of the commission.

7. Report; legislative intent. The commission shall submit a report no later than August 31, 2011 that includes its recommendations, including a suggested reapportionment plan and emergency legislation to implement that plan, to the 125th Legislature. It is the intent of the Legislature that these recommendations be acted on by the 125th Legislature convened in special session prior to September 30, 2011.



125th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2011

Legislative Document

No. 1590

H.P. 1195

House of Representatives, September 26, 2011

An Act To Reapportion the Congressional Districts of the State

(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 FOSSEL of Alna.

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

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

5 **Whereas,** the United States District Court has ruled that Maine may not wait until
6 2013 to redraw its 2 congressional districts to reflect population shifts, but must instead
7 redraw the districts in time for the congressional election in 2012; and

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

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

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

15 **1. First District.** The First District consists of the counties of Androscoggin,
16 Cumberland, Oxford and York and the following municipalities and areas within Franklin
17 County: Avon, Carthage, Chesterville, Farmington, Jay, Rangeley Plantation, Sandy
18 River Plantation, Township 6 North of Weld, Township D, Township E, Weld and
19 Wilton.

20 **2. Second District.** The Second District consists of the counties of Aroostook,
21 Hancock, Kennebec, Knox, Lincoln, Penobscot, Piscataquis, Sagadahoc, Somerset,
22 Waldo and Washington and the following municipalities and areas within Franklin
23 County: Alder Stream Township, Beattie Township, Carrabasset Valley, Chain of Ponds
24 Township, Coburn Gore, Coplin Plantation, Dallas Plantation, Davis Township, Eustis,
25 Freeman Township, Gorham Gore, Industry, Jim Pond Township, Kibby Township,
26 Kingfield, Lang Township, Lowelltown Township, Madrid Township, Massachusetts
27 Gore, Merrill Strip Township, Mt. Abram Township, New Sharon, New Vineyard,
28 Perkins Township, Phillips, Rangeley, Redington Township, Salem Township, Seven
29 Ponds Township, Skinner Township, Stetsontown Township, Strong, Temple, Tim Pond
30 Township, Washington Township and Wyman Township.

31 **Sec. 2. Congressional district reapportionment.** Notwithstanding any
32 provision to the contrary in the Maine Revised Statutes, Title 21-A, section 1206,
33 subsection 1, enactment of this Act reapportions the congressional districts of the State.

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

1

SUMMARY

2 This bill is the minority report of the Commission to Reapportion Maine's
3 Congressional Districts.

4 Under this bill, the First District consists of the counties of Androscoggin,
5 Cumberland, Oxford and York and the following municipalities and areas within Franklin
6 County: Avon, Carthage, Chesterville, Farmington, Jay, Rangeley Plantation, Sandy
7 River Plantation, Township 6 North of Weld, Township D, Township E, Weld and
8 Wilton. The Second District consists of the counties of Aroostook, Hancock, Kennebec,
9 Knox, Lincoln, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo and Washington
10 and the following municipalities and areas within Franklin County: Alder Stream
11 Township, Beattie Township, Carrabasset Valley, Chain of Ponds Township, Coburn
12 Gore, Coplin Plantation, Dallas Plantation, Davis Township, Eustis, Freeman Township,
13 Gorham Gore, Industry, Jim Pond Township, Kibby Township, Kingfield, Lang
14 Township, Lowelltown Township, Madrid Township, Massachusetts Gore, Merrill Strip
15 Township, Mt. Abram Township, New Sharon, New Vineyard, Perkins Township,
16 Phillips, Rangeley, Redington Township, Salem Township, Seven Ponds Township,
17 Skinner Township, Stetsontown Township, Strong, Temple, Tim Pond Township,
18 Washington Township and Wyman Township.



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.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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:

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.