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 A Dismissal In A Civil Case
Entered In The
United States District Court
for the District of Maine

BRIEF FOR THE PLAINTIFF - APPELLATE

Respectfully submitted by,

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CORPORATE DISCLOSURE STATEMENT

Plaintiff-appellant Michael P. Turcotte is a natural person. As such, a corporate disclosure statement is not required. FED. R. APP. P. 26.1(a)

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JURISDICTIONAL STATEMENT

This appeal arises from the matter of Turcotte v. LePage[1], case number 11-cv-312, originally filed in the U.S. District Court for the District of Maine on August 17, 2011. Turcotte asserted jurisdiction based upon federal question pursuant to 28 U.S.C. § 1343 (a)(3)[2][3], which provides that "[t]he district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person."

The District Court issued an order in which it adopted the Recommended Decision of the Magistrate Judge and granted Appellee's Motion to Dismiss on January 13, 2012. Judgment was entered January 13, 2012.[4]

Plaintiff Michael P Turcotte appealed from this Order and judgment on February 16, 2012. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

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[1] 11-cv-312-DBH.

[2] Plaintiff erred in his Amended Complaint by omitting the "(a)".

[3] (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights of citizens or all persons within the jurisdiction of the United States;"

[4] Subsequent order on Amended Motion for Reconsideration was denied on March 9, 2012.

STATEMENT OF THE ISSUES

I. DOES ARTICLE IV, PART 3RD, § 1-A OF THE MAINE CONSTITUTION VIOLATE THE APPELLANT'S RIGHT TO EQUAL PROTECTION OF THE LAW WHEN IT ALLOWS ONLY MEMBERS OF STATE'S TWO MAJOR POLITICAL PARTIES, AND/OR THEIR DESIGNEES, TO PANEL THE LEGISLATIVE APPORTIONMENT COMMISSION AND RECONFIGURE HIS CONGRESSIONAL DISTRICT?

II. DID THE DISTRICT COURT COMMIT A REVERSIBLE ERROR IN GRANTING A MOTION TO DISMISS BASED ON THE ILLOGICAL CONCLUSION DERIVED IN THE MAGISTRATE JUDGES RECOMMENDED DECISION?

III. DOES THE MAINE CONSTITUTION DIMINISH AND LIMIT THE APPELLANT'S FUNDAMENTAL RIGHT OF POLITICAL FRANCHISE WHEN IT DENIES HIM THE EQUAL OPPORTUNITY TO SIT, OR BE PANELED ON A STATE REDISTRICTING, OR REAPPORTIONMENT, BOARD OR COMMISSION RECONFIGURING HIS CONGRESSIONAL DISTRICT THEREBY DILUTING THE EFFECTIVENESS OF HIS VOTE.

STATEMENT OF THE CASE

On August 17, 2011, Michael Turcotte (Plaintiff) a *pro se* litigant filed a complaint against Governor Paul LePage of Maine (Defendant), the Chief Executor of the State of Maine Constitution, asserting that the Legislative Apportionment Commission authorized by the State of Maine Constitution under joint order of the state legislature, violated Article 1 § 2 and Section 1 of Amendment XIV of the U.S. Constitution. On August 19, 2011, the Plaintiff filed an Amended Complaint. Also on August 17, 2011, the Plaintiff filed and was

granted by the Magistrate Judge a Leave to Proceed in *forma pauperis* and the Court completed a preliminary review and ordered the complaint to be served.

On October 17, 2011, the Defendant, through his attorneys, filed a Motion to Dismiss and a Memorandum in Support thereof. The Plaintiff subsequently filed a response to the motion on November 7, 2011, and the Defendant filed a reply on November 21, 2011.

A Report and Recommended Decision was entered by the Magistrate Judge on November 30, 2011, the Plaintiff timely filed an objection on December 19, 2011, and filed a motion to supplement those objections on December 22, 2011. The motion to supplement objections was granted. The Defendant filed a timely Memorandum in Opposition to Plaintiff's Objections on January 11, 2012.

On January 13, 2012, the District Court Judge ordered that the Recommended Decision of the Magistrate Judge be adopted, and in his judgment the Plaintiff's Amended Complaint be dismissed as moot. The Plaintiff timely filed a Motion to Reconsider on January 27, 2012, and an Amended Motion to Reconsider on January 30, 2012.

The Plaintiff filed a timely appeal within 21 days of judgment, February 16, 2012, before the District Court Judge ruled on the Motion to Reconsider. On February 16, 2012, the Plaintiff also filed a Motion for Leave to Proceed in *forma pauperis*, which was granted by the United States Magistrate Judge.

On February 22, 2012, the District Judge ordered that no action will be taken on Plaintiff's Motion for Reconsideration because the Plaintiff had taken his case to the Court of Appeals. On March 6, 2012, an Appellate Judge ordered the district court to rule on the pending Amended Motion for Reconsideration, and on March 9, 2012, the District Court Judge denied the Amended Motion for Reconsideration.

On March 29, 2012, the Plaintiff submitted a Motion to Appoint Counsel, which was denied on April 2, 2012.

STATEMENT OF THE FACTS

On August 19, 2011, Appellant Mike Turcotte (Appellant), a *pro se* litigant, filed an Amended Complaint against Maine Governor Paul LePage (Appellee), in Federal District Court alleging that pursuant to the state's constitution[1], adopted by a joint order of the state legislature[2], and paneled with only members of the two major political parties the actions of Maine's Legislative Apportionment Commission (Commission), violated his constitutional rights as a non-politically affiliated, independent citizen, thus interfering with his political affairs and diluting the effectiveness of his fundamental franchise.

Background

[1] Art. IV, Pt. 3rd, § 1-A (1975)
[2] HP 1186

In March of 2011, a suit[1] challenging the reapportionment of Maine's congressional district was filed in federal court. Under 21-A M.R.S. § 1206, (21-A) beginning 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 Commission is established pursuant to the Constitution of Maine, Article IV, Part Third, Section 1-A ("Statute").[2]

On June 21, 2011, a three-judge panel held that Maine's law allowing for the redistricting to occur after the 2012 congressional elections violated the federal Constitution. On a separate order dated June 22, 2011, the panel directed the state defendants to proceed with the process of redistricting in order to remedy the constitutional violation prior to January 1, 2012. In this order, the court anticipated that the Maine Legislature will complete its redistricting work no later than September 30, 2011; and, if necessary, any role that the Maine Supreme Judicial Court played in the redistricting would complete its work no later than November 15, 2011.[3]

"On June 28, 2011, the Maine Legislature adopted a Joint Order establishing a 15-member Commission to make redistricting recommendations to the

[1] *Densa v. LePage*, 1:11-cv-117
[2] Docket No. 8, p. 1
[3] Docket 8, pp. 1-2

Legislature.[1] The Speaker of the House of Representatives, the President of the Senate, and the House and Senate leaders of the minority party had authority to and did appoint the members of the Commission.[2] As specified in 21-A, the Commission submitted its final congressional redistricting report to the Legislature on August 31, 2011 and disbanded.

On September 27, 2011, the Defendant called for a Special Legislative Session. In that session, again, as specified under 21-A, the Legislature "enacted…a plan of its own in…special by a vote of 2/3 of members of each house"[3] on September 28, 2011.

Within a week of Legislative approval, the Maine Supreme Judicial Court filed a Procedural Order on October 4, 2011, requiring any challenges to the approved congressional redistricting plan be submitted by on or before October 12, 2011. Already challenging the process of congressional redistricting on U.S. Constitutional grounds in federal court, the Plaintiff filed no challenge in state court.

Present Lawsuit

On August 17, 2011 the Plaintiff filed his initial complaint[4] in Federal

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[1] Docket 8-1
[2] Docket 8, p. 2
[3] 21-A M.R.S. § 1206
[4] Turcotte v. LePage, 1:11-cv-312-DBH

District Court and an Amended Complaint[1] two days later (August 19, 2011). The Plaintiff's asserted his primary contention was that the make-up of the Commission violates Article 1, Section 2 and Section 1 of the Fourteenth Amendment because it was only paneled by members of the two major political parties, or their designees; and, that his vote for his Congressional Representative is not *worth* the same as a political party voter. (emphasis added.)

It was also the Plaintiff's contention that under Article 1, Section 2 of the U.S. Constitution, that members of the House of Representatives shall be "*chosen* every second year *by the people* of the several states" not by the political parties of the several states. (emphasis added.)

Further, the Plaintiff argued that the "Statute", authorizing the formation of the "Commission" to configure Congressional Districts with only members of the two major political parties, violated the "privileges or immunities", "due process", and "equal protection" clauses of Section 1 in Amendment XIV of his constitutional rights by discriminating against his non-political affiliation or independent voter status. The Plaintiff prayed and sought injunctive relief against the Defendant, relief[2] from the "Commission" and alternative relief from the "Commission".

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[1] Docket No. 6

[2] At the time, the Plaintiff, a *pro se* litigant with no legal knowledge or experience, was ignorant of the many types of relief available.

On October 17, 2011, answering the Plaintiff's Amended Complaint, the Defendant filed a Motion to Dismiss and Incorporated Memorandum in Support Thereof[1] arguing that the lawsuit should be dismissed as being moot. The Defendant claimed that: "the Legislature act[ed] in manner that renders the claim for relief impossible;"[2] *See* Diffenderfer v. Gomez-Colon, 587 F.3d 445 (1st Cir. 2009) the Plaintiff failed to take any action under Maine's Supreme Judicial Court Procedural Order;[3] and the "primary responsibility" for congressional redistricting lies with each state's legislative branch, not the federal courts.[4] See League of United Latin American Citizens v. Perry, 548 U.S. 399, 414-415 (2006) Also exhibited in the Motion was the Legislature's Act to Reapportion the Congressional Districts of the State, and the Joint Order to Establish the Commission to Reapportion Maine's Congressional Districts[5] – which requires the Speaker of the House to invite the chairs of the two major political parties in the State or their designated representatives.[6]

The Plaintiff filed a timely Response to the Defendant's Motion to Dismiss[7] on November 21, 2011. In his response, the Plaintiff reiterated his original and

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[1] Docket No. 8
[2] Docket No. 11, p. 4
[3] Docket No. 8, p. 3
[4] Id., p. 4
[5] Docket No. 8-1
[6] Id., Section 2, § (B)(1)
[7] Docket No. 9

primary contention which the Defendant failed to address; that only members of the two major political parties paneled the "Commission"[1]. The Plaintiff also addressed the Defendant's allegation that he did not challenge the Legislature's final redistricting plan in the Supreme Judicial Court of the State of Maine – a suit was already on record in federal court; the Defendant's claim that the legislature plan comported to the "one man, one vote" population equality cited in Gray v. Sanders, 372 U.S. 368, 381 (1968) - the process did not comply with the Plaintiff's primary contention of "political equality" as cited in Wesberry v. Sanders, 376 U.S. 1, (1964): "as nearly as is practicable one man's vote in a congressional election is to be *worth* as much as another's" Id. at 4-5 and, in citing League, *supra*, at 414-415, the Defendant asserted that the "primary responsibility" for congressional redistricting lies with each state's legislative branch, not the federal courts[2] - which the Plaintiff rebutted by citing the next page of the same Supreme Court's opinion:

> "Although the legislative branch plays the primary role in congressional redistricting, our precedents recognized an important role for the courts when a districting plan violates the Constitution See, e.g., Wesberry v. Sanders, 376 U.S. 1 (1964)" League, *supra*, at 415-416.

Finally, in his Response, the Plaintiff stated that despite actions by the Maine Legislature and the timeliness of relief, the constitutional statute, Art. IV,

[1] Id. p. 1
[2] Docket No. 8, p. 4

Pt. 3 § 1-A, remains.

The Defendant filed a Reply Memorandum in Support of Motion to Dismiss on November 21, 2011,[1] claiming the "Plaintiff seeks no relief that could alter [the] result"[2] of the Legislature's enactment of its own reapportionment plan.

On November 30, 2011, the Magistrate Judge issued a Recommended Decision[3] regarding the Defendant's Motion to Dismiss. A dismissal was recommended based on: the Plaintiff's "primary thrust" that the "court construct an elaborate alternative method of selecting members to an apportionment committee."[4] that "the federal court can only decide ongoing cases" See Kuperman v.Wrenn, 643 F.3d 69, 72 (1st Cir. 2011) "the states have the primary duty and responsibility to perform the task of congressional reapportionment"[5], that "this Court would craft its own intricate plan…in the absence…any allegation that a plan…violate[d] the "one person, one vote" mandate…is simply preposterous"[6], and, "it was abundantly plain that the provisions of Maine law pass constitutional muster."[7]

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[1] Docket No. 10
[2] Id., p. 1
[3] Docket No. 11
[4] Id., p. 2
[5] Id., p. 3
[6] Id.
[7] Id., p. 4

The Plaintiff filed his Objection to the Recommended Decision[1] on December 19, 2011, and a list of Supplemental Objections on December 22, 2011.[2]

Among the list of objections were: the Magistrate Judge "failure to address and or consider paragraphs 11-18[3] of the Plaintiff's [A]mended [C]omplaint" – specifically Section 1 in Amendment XIV of the U.S. Constitution; nor the non-specified relief sought in ¶19;[4] the interpretation of "the primary thrust of Turcotte's complaint,"[5] in which the Plaintiff reiterated the "primary thrust" of the Amended Complaint[6] was the relief the make-up of the "Commission"; and, the citation of Kuperman *supra, at* 72 - in which the First Circuit Court of Appeals ruled injunctive relief for the Defendant after a subsequent event occurred that made it impossible for the federal court to provide meaningful relief for the Plaintiff. The Plaintiff (Turcotte), in this case, re-asserted the primary relief sought in ¶19[7] of his Amended Complaint.

Also, included in the Plaintiff's Objections to the Recommended Decision was the Magistrate Judge's reiteration of the Defendant's assertion that the Maine's legislative body rejected the proposed plan of "Commission" and enacted

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[1] Docket No. 12
[2] Docket No. 13
[3] Docket No. 6, pp. 5-8.
[4] Id. p. 9.
[5] Docket No. 1, p. 3.
[6] Docket No. 6
[7] Id. p. 9

its own compromise plan in special session, when it was still operating within the context of its own Joint Order, H.P. 1186[1] under 21-A.[2]

The Defendant filed a timely Memorandum in Opposition to the Plaintiff's Objections and Supplemental Objections to the Recommended Decision and opposition to the Plaintiff's request for Hearing on Motion to Dismiss. Recapping the Magistrate Judge's Recommend Decision, that his motion should be granted, and stating the Plaintiff failed "to refute or even address"[3] its conclusion of mootness. The Defendant stated that the Plaintiff's request for a hearing on his Motion to Dismiss should be rejected.[4]. Also, citing Diffenderfer v. Gomez-Colon, 587 F.3d 445 (1st Cir. 2009), the Defendant asserts the Legislature acted in a manner that rendered claim of relief impossible; and, declaratory relief is doomed as well because, citing Preiser v. Newkirk, 422 U.S. 395 (1975), there must be a "substantial controversy…of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Id. at 402. Further, the Defendant suggested that if the Plaintiff wanted a declaration that "the prefatory activity involving the

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[1] Docket 8-1, p. 2 at 7: "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."

[2] "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 Clerk of the House of Representatives."

[3] Docket No. 15, p. 1

[4] Id, p. 1-2

political configuration of an advisory committee is unconstitutional"[1], he could bring such a declaratory claim in 10 years when it is ripe. Finally, the Defendant re-interpreted League, *supra*, 415-423 from the Magistrate Judge's Recommended Decision.[2]

On January 13, 2012, the Federal District Judge issued an Order the affirming the adoption of the Magistrate Judge's Recommended Decision, and granted the Defendant's Motion to Dismiss. The same day, the Clerk of Court issued a Judgment of dismissal based on the Order Affirming Recommended Decision of the United States Magistrate Judge.

The Plaintiff filed a timely Motion to Reconsider and an Amended Motion to Reconsider reiterating that: as long as the Statute remains, it continues to discriminated against his non-political party affiliation; the *manifest of error of fact of law* existed because the Magistrate Judge failed to consider paragraphs 11-18[3] or the non-specific relief prayed and sought in paragraph 19[4] of the Plaintiff's Amended Complaint. (emphasis added.) Further, the Plaintiff indirectly pointed out to the Court that, besides the next decade's congressional redistricting, the "Commission" is used in the redistricting of Maine's House of Representatives and Senate districts in 2013.

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[1] Docket No. 14, p. 6
[2] Docket No. 11, p. 3-4.
[3] Docket No. 6, pp. 5-8
[4] Id. p. 9

On June 7, 2011, the Appellant filed a Motion to Supplement the Record[1] after discovering the Appellee's exhibit[2] was incomplete. The title page for L.D. 1590, "An Act to Reapportion the Congressional Districts pursuant of the State" also included a subtitle: "*Submitted by the Commission to Reapportion Maine's Congressional Districts pursuant to Joint Order 2011, H.P. 1186.*" (Emphasis added.) The motion is still pending.

SUMMARY OF ARGUMENT

The arguments below convey the Appellant's contentions in his Amended Complaint including: The Statute denies him equal protection of the law under the Equal Protection Clause of the Fourteenth Amendment; The District Court committed reversible error when it granted Motion to Dismiss; and the Statute diminishes and limits his fundamental right of political franchise and devalues the effectiveness of his vote when only members of the two major political parties are appointed to the Commission to reconfigure his congressional district.

ARGUMENT

I. ARTICLE IV, PART 3RD, § 1-A OF THE MAINE CONSTITUTION VIOLATES THE APPELLANT'S RIGHT TO EQUAL PROTECTION OF THE LAW WHEN IT ALLOWS ONLY MEMBERS OF STATE'S TWO MAJOR POLITICAL PARTIES, AND/OR THEIR DESIGNEES, TO PANEL THE LEGISLATIVE APPORTIONMENT COMMISSION AND RECONFIGURE HIS CONGRESSIONAL DISTRICT.

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[1] As of this filing, 2012, Motion is still pending.
[2] Docket 8-2.

In adopting her Recommended Decision, the district court affirmed the Magistrate Judge's nonexistent interpretative consideration of the Appellant's Fourteenth Amendment, Equal Protection Clause violation claim. Constitutional interpretation of the Statute presents a question of law in which this Court exercises an *intermediate scrutiny*[1] of review. Dunn v. Blumstein, 405 U. S. 330; see also, Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621 (1969); Williams v. Rhodes, 393 U.S. 23 (1968); Civil Rights Cases, 109 U.S. 3 (1883). The Appellate understanding of the *intermediate scrutiny* of review "is to determine the constitutionality of a statute, when the statute applies to a quasi-suspect classification (*i.e.* political party membership), and that the statute must further an important government interest by means that are substantially related to that interest.[2] See Dunn, 405 U.S. at 336.

As a non-political party member, the Appellant is denied equal protection of the law (*i.e.*, the Statute) when he is not allowed the opportunity to participate in the reconfiguration of his congressional district *as an appointee of a redistricting or reapportionment board or commission* because he is *not* a member of the two major political parties in Maine. (*emphasis added*.)

[1]The Appellant understands the level of *intermediate scrutiny* review to determine a law's constitutionality.

[2] http://www.nolo.com/dictionary/intermediate-scrutiny-term.html.

The Supreme Court held in *Williams* that "[N]o state can *pass a law regulating elections* that violate the Fourteenth Amendment's command that 'No state shall…deny to any person…the equal protection of the laws.' " Williams v. Rhodes, 393 U.S. 23, 29 (1968) It also recognized in *Kramer*, that "[a]ny unjustified discrimination in determining who may participate in political affairs ...undermines the legitimacy of representative government." Kramer v. Union Free School Dist. No. 15, 395 U.S. 621, 626 (1969)

In his Motion to Dismiss, the Appellee claimed in *League*, that "the 'primary responsibility' for congressional redistricting lies with each state's legislative branch, not the federal courts."[1] League, *supra*, at 414-415.. And in her Recommended Decision,[2] the Magistrate Judge stated: "…the states have the primary duty and responsibility to perform the task of congressional reapportionment." Growe v. Emison, 507 U.S. 25, 34 (1993). However, the Court recognized early on in its history that the:

> "[The Fourteenth Amendment] nullifies and makes void all state legislation, and *state action of every kind*, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws." *Civil Rights Cases*, 109 U.S. 3, 11 (1883). (emphasis added.)

[1] Docket No. 8, p. 4
[2] Docket No. 11, p. 3

The Court reaffirmed the original meaning of the Equal Protection Clause almost a century later in *Plyler*: "[It] was intended as a restriction on state legislative action inconsistent with elemental constitutional premises." Plyler v. Doe, 457 U.S. 202, 217. Within a generation of the Equal Protection Clause's passage, the Supreme Court set a clear standard and since reiterated the prohibitions States have when passing laws that affect individual citizens. In this case, the Appellant is being denied the "equal protection of the law (*i.e.* the Statute) because he is not a member of a political party.

II. THE DISTRICT COURT ERRED IN GRANTING MOTION TO DISMISS BASED ON THE ILLOGICAL CONCLUSION DERIVED IN THE MAGISTRATE JUDGES RECOMMENDED DECISION.

The Magistrate Judge based her Recommended Decision on the misstatements of the Appellee's Motion to Dismiss and Reply Memorandum in Support of Motion to Dismiss.

Statutory interpretation presents a question of law over which this Court exercises *de novo* review. Under a *de novo* standard of review, this Court owes no deference to the district court's statutory interpretation analysis. See Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621 (1969).

A. The Magistrate Judge showed bias toward the Appellant's Amended Complaint by accepting the Appellee's claims prima facie.

The Magistrate Judge's Recommended Decision, for which the District Court affirmed when granting the Appellee's Motion to Dismiss, misinterpreted

the Appellant's primary contention for relief; his construal of the "one person, one vote" Supreme Court ruling; and relied on the Appellee's misstatements of previous court decisions and the constitutional authority of the Maine Legislature. "Conscientious judges sometimes are misinformed or draw inferences from conflicting evidence with which we would not agree. "[C]ounsel … could have taken steps to see that [her Recommended Decision was] not predicated on misinformation or misreading of court records." Townsend v. Burke, 334 U.S. 736, 741 (1948).

1. The Magistrate Judge derived an illogical conclusion based on her misinterpretation of the Appellant's primary contention.

In her Recommended Decision[1], the Magistrate Judge states the Appellant's "primary thrust…is his request that this court construct an elaborative method of selecting members to the apportionment committee."[2]

The Appellant sought injunctive relief in his Amended Complaint[3] against the Appellee, relief[4] against the Commission, and sought alternative relief from the Commission. The Appellant's primary relief is in the first paragraph under "RELIEF" ¶19, in the Amended Complaint:

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[1] Docket No. 11,
[2] Id. p. 2.
[3] Docket No. 6
[4] The Appellant is a *pro se* litigant, and, at the time, did not know or understand the legal term; "declaratory relief."

> "As a citizen of the United States, resident of Maine, and an independent voter, *the Plaintiff prays for and seeks relief from Article IV, Part 3rd, Section 1-A of the Maine Constitution and 21-A M.R.S.A. §1206, Paragraph 1* allowing political parties to determine the apportionment of the U.S. House Congressional and Maine House of Representative and Senate districts under Article 1, Section 2 and Amendment XIV, Section 1 of the U.S. Constitution."[1]

The Appellant disputed the Magistrate Judge's interpretation in his objections to the report,[2] and reiterated his primary contention is the unconstitutional make-up of the Commission.

One Man, One Vote

The Magistrate Judge misinterpreted the Appellant's "one man, one vote" explanation as population parity based on the Appellee's description of Legislative action.

The Appellant cited Gray v. Sanders, 372 U.S. 368 (1963) in which the Supreme Court concluded "the concept of political equity…can mean only one thing – one man, one vote." Id. 381. In a later case, he cited the Supreme Court's reiteration of the concept in Wesberry v. Sanders, 376 U.S. 1 (1964) that when choosing Representative, as "nearly as is practicable one man's vote in a congressional is to be *worth* as much as another's." Id. 8-9 (*emphasis added*).

The Appellant did not contest the outcome of the Legislature's redistricting plan in as far as it had followed the Supreme Court's call for population equality in

[1] Docket No. 6, p. 9
[2] Docket No. 12, p 3.

the number of citizens. See Gray, *supra* Id. 381. However, he did reiterate his contention that the Commission had devalued the *worth* of his vote because the plan was selected only by members of the two major parties. The Magistrate Judge failed to consider – nor make mention – of the Appellant's contentions in paragraphs 15 and 16 listed in his Amended Complaint.[1] (*emphasis added*)

2. The Appellee misstated to the Magistrate Judge the authority of Maine's Legislature in the reapportionment process of the State's congressional districts.

The Appellee misstated to, or misinformed the Magistrate Judge claiming the Maine Legislature had acted on its own accord when it passed a congressional redistricting plan.

Maine Redistricting Procedures

When the Maine Secretary of State receives notification by the Federal Decennial Census of the final population count, the Commission is established every 10 years pursuant to the Statute. 21-A legislatively establishes the Commission through a Joint Order. The Commission uses the final population count to reconfigure the congressional districts and submits its final report to the Clerk of the House of Representatives not later than 120 calendar days after convening of the Legislature in which apportionment is required. Pursuant to 21-A, the Legislature shall either enact the submitted plan of the Commission or a

[1] Docket No. 6, p. 7

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 was submitted to the Clerk of the House of Representatives..

Appellee's Legislative Compromise Claim

In his Motion to Dismiss, the Appellee misinformed the District Court as to the authority of the Legislature when it rejected the Commission Report. The Commission completed its redistricting process and submitted its report to the Clerk of the House pursuant to the Joint Order on August 31st. In accordance to 21-A, the Commission's report, now titled "An Act to Reapportion the Congressional Districts of the State",[1] was presented to the Legislature during the First Special Session – 2011 on September 26, 2011. The Governor had already called for a Special Legislative Session to be held on September 27, 2011.

In accordance with Legislative procedures, three amendments were proposed. Two were voted down, one, the compromise plan the Appellee refers to in his Motion, was approved. Both houses of the Legislature passed the final version[2] of L.D. 1590 by a vote of more than 2/3 on September 28, 2011.

[1] H.P. 1195 – L.D. 1590: "Submitted by the Commission to Reapportion Maine's Congressional Districts pursuant to Joint Order 2011, H.P. 1186.".
[2] Docket No. 8-2.

In his Motion to Dismiss, the Appellee's claim that Maine Legislature adopted a different process by Joint Order is incorrect because in his exhibit[1], the "Duties"[2] of the Commission listed in the "Order", call for the Commission to act "in accordance with the requirements contained in 21-A in pursuance of the Statute.

Further, in his Motion to Dismiss, the Appellee states:

> "Whatever concerns [Appellant] had regarding the role of the Commission created by the Legislature's Joint Order, these concerns are wholly eliminated by the Legislature adopting its own plan. The make-up of the Commission created by the Joint Order, therefore, does not matter because the Legislature did not adopt the Commission's majority or minority plans."

As shown above, and true to the Appellant's contention, at no time did the Legislature act outside the authority it was given by 21-A, the Statute, and the Order when it passed L.D. 1590.

Therefore, the Appellee, in his Motion to Dismiss, misstated to the Magistrate Judge that the Legislature, having rejected the commission's plan, acted on its own and passed a compromise plan when in fact it was operating within its own Joint Order.

Magistrate Judge's Recommended Decision and Legislative Compromise Plan

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[1] Docket 8-1
[2] Docket 8-1, p. 2

In her Recommended Decision, the Magistrate Judge accepted the Appellee's claim that the Commission's plan had "been rejected by the Legislature, and the Legislature has itself adopted a compromise plan…"[1] The Magistrate Judge dismissed the Appellant's contention "that as long as the statute and constitutional provision[s]… remains in existence, his constitutional rights are being violated,"[2] and confirmed the Appellee's claim of the Legislature acting on its own volition by stating that the Appellant "maintains this is so despite the fact that the plan ultimately adopted rejected the Commission's proposal and enacted a legislative compromise."[3]

However, as detailed in 'REDISTRICTING PROCEDURES" above, the Magistrate Judge rejected the Appellant's contention that Legislature was still acting in accordance of its own Joint Order and accepted the Appellee's misstated version of events.

3. <u>All court cases in the docket cited by the Appellee and the Magistrate Judge were either misstated and or misapplied.</u>

Both the Appellee, in his claims, and the Magistrate Judge, in her Recommended Decision, misstated or misapplied all cited Court Cases

Appellee's Citations

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[1] Docket No. 11, p. 1
[2] <u>Id.</u> p. 4
[3] <u>Id.</u>

In his Motion to Dismiss,[1] the Appellee cites Diffenderfer, *supra*, 445 (1st Cir. 2009), and League, *supra*, 399. In *Diffenderer*, the Appellant only spoke and read English and the election ballots were only printed in Spanish. Appellant filed suit under the Voting Rights Act and Equal Protection Clause and the federal district court found for the Plaintiff on the merits and granted them a permanent injunction. The Defendant appealed and the Plaintiff cross appealed. While the appeals were in process, Puerto Rico passed legislation requiring all ballots in future elections be bilingual. Both parties agreed their appeals were now moot; however, the issue before the court was whether the Plaintiff's were still entitled to the awarded of attorney fees after the permanent injunction rendered the complaint moot.

The Appellee in this case claims the actions of the Maine Legislature, in approving a congressional redistricting plan, rendered the Appellant's complaint moot.[2] However, the Appellant objected to the rationale because Maine's constitutional statute authorizing the Commission remained and the Legislature was acting under its own Joint Order[3] authorized by the same Statute co-joined with 21-A.

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[1] Docket No. 8.
[2] Docket No. 8, p. 4.
[3] H.P. 1186

In *League,* the Appellee claims that "being political bodies, state legislatures need not be immune from political motivations in drawing congressional lines." League, *supra*, 415-423. The Appellant objected[1] to the claim citing "[a]lthough the legislative branch play the primary role in congressional redistricting, our precedents recognize an import role for the courts when a districting plan violates the Constitution. See e.g., Wesberry v. Sanders, 376 U.S. 1 (1964)." Id. 415-416.

Memorandum in Opposition to Plaintiff's Objections…

In his Memorandum in Opposition to Plaintiff's Objections…, the Appellee misapplied Preiser v. Newkirk, 422 U.S. 395 (1975). A New York prisoner, Newkirk, was transferred from a medium-security to a maximum-security prison in 1972 without explanation. He filed suit in District Court claiming his Due Process rights under the Equal Protection clause had been violated. He won his suit and later was returned to the medium security prison. The Court of Appeals affirmed the judgment with modifications – dismissing a requested judgment declaration – and "held that the suit was not moot" Id. 400 since Newkirk could be subjected to a new transfer at any time. Over the course of time, Newkirk was sent to a less secure facility. "The record of events since the challenged transfer hardly bears out a genuine claim of an injury or possible injury "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Casualty Co.,*

[1] Docket No. 9

312 U. S., at 273" Id. 403. The Appellee claims in *Preiser* that there must be a "substantial controversy…of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Id. 402. And further adds that the complaint would "fit under the 'capable of repetition, yet evading review' exception to mootness."[1] Ten Voters of City of Biddeford v. City of Biddeford, 2003 ME 59, ¶10, 822 A.2d 1196. The "substantial controversy…[for] issuance of a declaratory judgment" still exists and is immediate because, as noted in the Appellant's Motion to Reconsider,[2] the Statute requires the establishment of the Commission "to apportion the districts of the House of Representatives or the Senate, or both"[3] in 2013.

Also in his Memorandum in Opposition to Plaintiff's Objections…, the Appellee misstated and misapplied in *League* "there is no constitutional problem with political *affiliations* being part of the line-drawing process."[4] League, *supra* 415-423. The Appellee misstates his own claim above, transforming "political motivations" to "political affiliations", thus misrepresenting *League* entirely. Unlike this case in which the Appellant's primary contention is the exclusive political party make-up of the Commission, the Appellee's misapplication of *League* is in the interpretation that, as "long as the redistricting comports with the

[1] Docket No. 14, p. 6, n1
[2] Docket No. 17, p. 3.
[3] ME. Const. art. IV., pt. 3rd, § 1-A.
[4] Docket No. 11, p. 3-4.

one person, one vote constitutional requirement,"[1] the Court will no longer attempt to conceive a standard for which reapportionment considerations is void of political partisanship.

Magistrate Judge's Citations

In her Recommended Decision[2], the Magistrate Judge states "[t]he Court…can only decide ongoing cases and controversies" and, because the Maine legislature approved a congressional redistricting plan, "it [is] impossible for the federal court to provide some form of meaningful relief."[3] The Magistrate Judge citing Kuperman v. Wrenn, 645 F.3d 69 (1st Cir. 2011); misapplied that "there is, generally speaking, no case or controversy, and [the Court] must dismiss the [matter] as moot." Id. 72. The plaintiff, Kuperman, a prisoner and an Orthodox Jew, requested injunctive and declaratory relief. No longer incarcerated he conceded his claim for injunctive relief, but maintained his fourteenth amendment, equal protection claim for declaratory relief. He was, however, unable to fortify his selective enforcement claim, and the case was dismissed because there was no longer any controversy. In this case, the controversy remains; the Maine Statute authorizing the Commission is still law.

[1] Docket No. 8, p 4-5.
[2] Docket No. 11
[3] Docket No. 11, p 2.

Also in her Recommended Decision, the Magistrate Judge cites the "primary… responsibility" to perform the task of congressional reapportionment. Growe v. Emison, 507 U.S.25, 34 (1993). And, "the notion that this Court would craft its own intricate plan…is simply preposterous."[1] Under Art. 1, § 2, the States do have the primary responsibility; however, the courts can intervene if there is a question of constitutionality arises in the process of reapportionment or redistricting. "It becomes the 'unwelcome obligation' of the federal court to devise and impose a reapportionment plan pending later legislative action." *Wise* v. *Lipscomb*, 437 U. S. 535, 540 (1978) (principal opinion) (quoting *Connor* v. *Finch*, 431 U. S. 407, 415 (1977)); See also, Wesberry v. Sanders, 376 U.S. 1 (1964).

In *League,* the Magistrate Judge re-cited Appellee's "political motivations" claims "[s]tate legislatures are not required to divorce themselves from political motivations in drawing congressional lines" League, *supra* 415-423[2] - word for word.

Relying on misstatements and misapplied court cases prima facie from the Appellee without verifying its context and relevance, the Magistrate Judge showed bias toward the Appellant.

III. THE MAINE CONSTITUTION DIMINISHES AND LIMITS THE APPELLANT'S FUNDAMENTAL RIGHT OF POLITICAL FRANCHISE WHEN IT DENIES HIM THE EQUAL OPPORTUNITY TO SIT, OR BE

[1] Id. p. 3.
[2] Docket No. 11, p. 4

PANELED ON A STATE REDISTRICTING, OR REAPPORTIONMENT, BOARD OR COMMISSION RECONFIGURING HIS CONGRESSIONAL DISTRICT THEREBY DILUTING THE EFFECTIVENESS OF HIS VOTE.

The interpretation of the Maine Statute[1] presents a question of whether, upon its enactment, significantly abridges an individual's fundamental right, explicitly or implicitly guaranteed by the U.S. Constitution, for which this Court exercises a *strict scrutiny*[2] of review. Reynolds v. Sims, 377 U.S. 533; see also, Plyer v. Doe, 457 U.S. 202 (1982); Williams v. Rhodes, 393 U.S. 23 (1968). Under *strict scrutiny* of review, it is presumed that this Court determines whether the state of Maine had "a compelling interest in creating the law, whether the statute is 'narrowly tailored' to meet the government's objectives, and whether there are less restrictive means of accomplishing the same thing."[3] See Reynolds, 377 U.S. at 562.

In similar conditions and circumstances, Maine laws must treat an individual in the same manner as another. Members of political parties are, foremost, individual citizens of Maine and subject to the same laws and the same protection of laws as any other citizen. The Statute is not discriminatory in its results, but its application. As a result, it diminishes and/or limits the effectiveness of the Appellant's fundamental right of political franchise and devalues the worth of his

[1] ME Const. Art. IV, Pt. 3rd § 1-A
[2] The Appellant understands the level of *strict scrutiny* of review to determine to the constitutionality of certain laws.
[3] http://www.nolo.com/dictionary/strict-scrutiny-term.html

vote. "In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an *equal basis* with other citizens in the jurisdiction. See, e.g., Evans v. Cornman, 398 U.S. 421-422, 426 (1970); Kramer v. Union Free School District, 395 U.S. 621, 626-628 (1969); Cipriano v. City of Houma, 395 U.S. 701, 706 (1969); Harper v. Virginia Board of Elections, 383 U.S. 663, 667 (1966); Carrington v. Rash, 380 U.S. 89, 93-94 (1965) Dunn v. Blumstein, 405 U.S. 330, 336 (1972). (emphasis added.) The question before this Court is: On the basis of political equality, as individual citizen, does the Appellant's fundamental right of political franchise include the opportunity to participate on a state redistricting, or reapportionment board or commission to determine the reconfiguration of his congressional district? The State has no compelling interest for applying the Statute differently amongst its citizens.

CONCLUSION

As in his Amended Complaint, the Appellant's primary contention throughout is the relief from Maine's constitutional Statute and its violation of the Equal Protection Clause; the exclusionary make-up of the Commission that denies him the opportunity to participate on a redistricting board or commission that reconfigures his congressional district; and, the fundamental right to determine his political affairs.

Dated this 17th day of June, 2012, in Bangor, Maine.

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

Certificate of Compliance With Rule 32(a)

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(s) Michael Turcotte

Attorney for _____

Dated: June 17, 2012

CERTIFICATE OF SERVICE

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

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Dated: June 17th, 2012

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ADDENDUM

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MICHAEL P. TURCOTTE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:11-cv-00312-DBH
	)	
PAUL R. LEPAGE,	)	
	)	
Defendant	)	

RECOMMENDED DECISION

On August 19, 2011, Michael Turcotte filed an amended complaint requesting that this Court convene a three-judge panel to determine whether 21-A M.R.S. § 1206 and Article IV, Part Three, Section 1-A of the State of Maine Constitution violate Article 2, Section 1 of the United States Constitution when the mechanism for establishing a legislative apportionment commission is made applicable to congressional reapportionment regarding representation in the United States House of Representatives. Turcotte maintains that Maine's legislative and constitutional scheme relies upon the power of the two major political parties to achieve reapportionment through a legislatively-designated commission, thus negating the voice of nonaligned registered voters in the redistricting process and thereby unconstitutionally diluting the concept of "one man, one vote" in the congressional reapportionment context. The State has moved to dismiss Turcotte's lawsuit because the legislatively-created commission has completed its work, its plan has been rejected by the Legislature, and the Legislature has itself adopted a compromise plan that fully comports with the "one person, one vote" federal constitutional mandate. Thus, according to Defendant, Plaintiff's lawsuit has been rendered moot and should be dismissed. Turcotte argues that because Article IV, Part Three, Section 1-A of the Maine Constitution continues to govern how the Legislature will structure any future legislative

apportionment commission, a viable case or controversy remains for this Court to decide. I now recommend that the Court grant the motion and dismiss this complaint as moot.

Turcotte's amended complaint sought injunctive relief against the Governor of the State of Maine and the Legislative Apportionment Committee tasked with reapportioning the United States congressional districts in the State of Maine. (Am. Compl. ¶ 1 (actually the second numbered paragraph of the complaint), Doc. No. 6.) The primary thrust of Turcotte's complaint is his request that this court construct an elaborate alternative method of selecting members to an apportionment committee. The alternative method would be more desirable to Turcotte because its members would not be designated based upon affiliation with any political party, but rather would be randomly chosen based upon a lottery. (Id. ¶¶ 23-46.) In the body of his amended complaint, Turcotte also requested a temporary restraining order against Governor Paul Lepage and against the established, but now disbanded, Legislative Apportionment Commission. (Id. ¶¶ 20-21.) No further action was taken on this matter until Defendant filed a motion to dismiss on October 17, 2011, taking the position that the entire matter was moot because the congressional reapportionment process had been completed and the congressional districts had been realigned in compliance with the federal constitutional mandate of "one person, one vote." (Mot. to Dismiss at 6, Doc. No. 8.)[1]

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." Kuperman v. Wrenn, 645 F.3d 69, 72 (1st Cir. 2011). The amended complaint in this action sought three specific forms of relief: separate temporary restraining

[1] Attached to Defendant's motion are public record documents establishing these facts, of which the Court may take judicial notice.

orders directed at the Governor and the Legislative Apportionment Commission halting their work, injunctive relief creating an alternative mechanism for selection of members to any legislative apportionment commission, and injunctive relief associated with review of a commission's proposals for congressional redistricting. Defendant is correct that, to the extent the complaint seeks temporary restraining orders barring the commission from devising a congressional reapportionment scheme or preventing the Governor from implementing any redistricting plan, subsequent events have rendered those issues moot. A congressional redistricting plan, not the commission's proposal, has been adopted by the State Legislature and no objection to the plan was timely filed with the State Supreme Judicial Court. The deed is done and the requested relief is impossible to achieve. Therefore, the claims for restraining orders against the Governor and the Legislative Apportionment Commission are moot.

The primary bedrock principle underlying this litigation is that the states have the primary duty and responsibility to perform the task of congressional reapportionment. Growe v. Emison, 507 U.S. 25, 34 (1993). The notion that this Court would craft its own intricate plan for the selection of the members of a "legislative" committee to oversee congressional reapportionment in the first instance, in the absence of any evidence or even any allegation that the plan ultimately crafted by the State of Maine violates the "one person, one vote" mandate, is simply preposterous. 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. 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. Turcotte's remedy is to seek

legislative change and, if necessary, constitutional amendment through the political process. This court is unable to provide Turcotte with meaningful relief as to this aspect of his claim any more than it can render him relief in the form of temporary restraining orders.

In his response to the motion to dismiss, Turcotte clarifies that he is not challenging any legislative reliance on improper criteria for the ultimate redistricting determination and that his challenge is simply that the State of Maine employs "improper criteria for membership of Maine's Commission" without regard to whether the final plan adopted by the State ultimately results in any improper congressional redistricting. (Pl.'s Response at 4-5, Doc. No. 9.) Thus, Turcotte contends that as long as the statute and constitutional provision concerning the political affiliation of the members of the Legislative Apportionment Commission remains in existence, his constitutional rights are being violated. And he maintains this is so despite the fact that the plan ultimately adopted rejected the Commission's proposal and enacted a legislative compromise. However, Turcotte's amended complaint does not seek declaratory relief on the issue of the constitutionality of the current Maine statutory and constitutional provisions. Were the amended complaint to seek such relief, it is abundantly plain that the provisions of Maine law pass constitutional muster. State legislatures are not required to divorce themselves from political motivations in drawing congressional lines. League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 415-23 (2006). It stands to reason that if political motivations are not forbidden when making the ultimate decision, there is certainly no constitutional infirmity in allowing them to factor into the composition of a legislatively committee charged with designing the redistricting plan.

CONCLUSION

Based upon the foregoing, I recommend that the Court GRANT Defendant's Motion to Dismiss (Doc. No. 8) and DISMISS the amended complaint as moot.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof. A responsive memorandum shall be filed within fourteen (14) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

November 30, 2011

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MICHAEL P. TURCOTTE,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**CIVIL NO. 1:11-cv-312-DBH**
	)	
PAUL R. LePAGE, STATE OF MAINE GOVERNOR,	)	
	)	
DEFENDANT	)	

ORDER AFFIRMING RECOMMENDED DECISION OF THE MAGISTRATE JUDGE

On November 30, 2011, the United States Magistrate Judge filed with the court, with copies to the parties, her Recommended Decision. The plaintiff filed an objection to the Recommended Decision on December 19, 2011, and a supplemental objection on December 29, 2011. I have reviewed and considered the Recommended Decision, together with the entire record; I have made a *de novo* determination of all matters adjudicated by the Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in the Recommended Decision, and determine that no further proceeding is necessary and that oral argument would not be helpful.

It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **ADOPTED**. The defendant's motion to dismiss is **GRANTED** and the Amended Complaint is **DISMISSED** as moot.

SO ORDERED.

DATED THIS 13TH DAY OF JANUARY, 2012

/S/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MICHAEL P. TURCOTTE,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**CIVIL NO. 1:11-cv-312-DBH**
	)	
PAUL R. LePAGE, STATE OF MAINE GOVERNOR,	)	
	)	
DEFENDANT	)	

ORDER ON AMENDED MOTION FOR RECONSIDERATION

The amended motion for reconsideration is **DENIED** for the reasons stated by the Magistrate Judge, whose reasoning I endorsed in adopting her Report and Recommended Decision on January 13, 2012. Order Affirming Recommended Decision of the Magistrate Judge (Docket Item 17). The redistricting process for the Congressional districts is now complete. The full Maine Legislature drew the new boundary. The plaintiff does not suggest that the newly drawn districts violate the "one person, one vote" constitutional mandate. Reynolds v. Sims, 377 U.S. 533, 558 (1964) (quoting Gray v. Sanders, 372 U.S. 368, 381 (1963)). If the plaintiff is aggrieved by the redistricting process following the next decennial census in 2020, he can file a suit at that time.

SO ORDERED.

DATED THIS 9TH DAY OF MARCH, 2012

/S/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

U.S. CONSTITUTION

ARTICLE 1 § 2

The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

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.

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.

UNITED STATES CODE

FINAL DECISIONS OF DISTRICT COURTS

28 USC § 1291:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292 (c) and (d) and 1295 of this title.

UNITED STATES CODE

CIVIL RIGHTS AND ELECTIVE FRANCHISE

28 USC § 1343:

§(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

§(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

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).

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.

HEATHER J.R. PRIEST
Clerk

Presented by Representative FOSSEL of Alna.

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 Androscoggin, Cumberland, Oxford and York and the following municipalities and areas within Franklin County: Avon, Carthage, Chesterville, Farmington, Jay, Rangeley Plantation, Sandy River Plantation, Township 6 North of Weld, Township D, Township E, Weld and Wilton.

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

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

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

SUMMARY

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

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

United States Court of Appeals
For the First Circuit

No. 12-1229

MICHAEL P. TURCOTTE

Plaintiff - Appellant

v.

PAUL R. LEPAGE, State of Maine Governor

Defendant - Appellee

APPELLEE'S BRIEFING NOTICE

Issued: June 18, 2012

Appellee's brief must be filed by **July 17, 2012**.

The deadline for filing appellant's reply brief will run from service of appellee's brief in accordance with Fed. R. App. P. 31 and 1st Cir. R. 31.0. Parties are advised that extensions of time are not normally allowed without timely motion for good cause shown.

Presently, it appears that this case may be ready for argument or submission at the coming **October, 2012** session.

The First Circuit Rulebook, which contains the Federal Rules of Appellate Procedure, First Circuit Local Rules and First Circuit Internal Operating Procedures, is available on the court's website at www.ca1.uscourts.gov. Please note that the court's website also contains tips on filing briefs, including a checklist of what your brief must contain.

Failure to file a brief in compliance with the federal and local rules will result in the issuance of an order directing the party to file a conforming brief and could result in the appellee not being heard at oral argument. See 1st Cir. R. 3 and 45.

Margaret Carter, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
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