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To: Rep. Paul Mirski, Chairman, House Special Committee on Redistricting

From: Pam Smarling, Committee Researcher
House Committee Research

A handwritten signature in black ink, appearing to be "Pam Smarling", written over the name in the "From:" field.

Date: March 4, 2011

RE: Background Information on CACR 41 (2006)
Constitutional Amendment Relative to Apportioning State Representative
Districts

You asked:

What is the legislative history of CACR 41? What information in the file or in House and Senate journals addresses the intent of the proposal?

SUMMARY

As introduced, CACR 41 (2006) was intended to ensure that towns with enough inhabitants to entitle them to one or more House seats would be established as a single-town districts. In conjunction with this, the proposed constitutional amendment explicitly allowed for the creation of flotal districts. These districts combine the 'excess population' of two or more districts to create an overlying, at-large district. Flotal districts had been used in previous House redistricting plans, but had not been included in the House redistricting plan adopted by the state Supreme Court in 2002.

The House amendment to CACR 41 made several changes to the proposal including the addition of the stipulation that "The apportionment shall not deny any other town or ward membership in one non-flotal representative district." This requirement was also addressed in the Voters' Guide explanation of the amendment. The record indicates that the intent of the added language was to provide for as many single-town districts as possible while not allowing any town to be represented solely in a flotal district.

This memorandum summarizes the testimony addressing the intent of changes to the proposed amendment. The complete minutes and transcripts of hearings and floor debates are attached.

2006 Legislative Session

CACR 41, relating to representative districts. Providing that representative districts shall be apportioned according to specific standards.

Sponsors: Rep. Kurk, Rep. Kennedy and Sen. Flanders

Text as introduced:

As introduced, CACR 41 proposed amending the constitution to add a new article 11-b:

[Art.] 11-b [Representative Districts; Standards for Apportionment.] When any town or ward, according to the last federal decennial census, has enough inhabitants to equal or exceed the number required for one or more representative seats, the town or ward shall be its own district of one or more representative seats, and the excess number of inhabitants of a district may be added to the excess number of inhabitants of other contiguous districts to form "at-large" or floterial districts conforming to acceptable deviations.

House Action

Referred to: House Election Law Committee

House Hearing: January 12, 2006

Rep. Kurk offered an amendment at the outset of the House hearing. The amendment changed the wording of the proposed amendment to read as follows:

→ *Strikethrough, bolding and italics have been added to indicate changes in the CACR as introduced*

Kurk Amendment (2006-0392h):

[Art.] 11-b [Representative Districts; Standards for Apportionment.] When any town or ward, according to the last federal decennial census, has enough inhabitants to equal or exceed the number required for one or more representative seats, the town or ward shall ~~be~~ **have** its own district of one or more representative seats, **however, if a town or ward does not qualify for its own seat, it shall be combined with one or more towns or wards to form one contiguous district.** ~~and~~ ~~†~~The excess number of inhabitants of a district may be added to the excess

number of inhabitants of other contiguous districts to form “at-large” or floterial districts conforming to acceptable deviations.

Rep. Kurk explained that the proposed amendment was intended to allow towns with enough inhabitants to have their own representative. He felt that smaller House districts would make it more affordable for more people to run for state representative. (House Election Law Committee minutes, CACR 41, 1/12/06, attached)

Rep. Mirski, Secretary of State Gardner and Heleen Kurk spoke in favor of the proposal. *Claire Ebel*, NH Civil Liberties Union addressed the committee. No one appeared in opposition.

Committee Report: Ought to Pass with Amendment, vote 16-0

"Rep. Richard B. Drisko: The long standing tradition in New Hampshire is to have as many small representative districts as possible to as to best represent all the people of New Hampshire. This CACR, as amended, will allow the legislature to use floterial districts as used in the past without question or challenges in the courts. This will make sure that our state will have as many small house districts as possible."

Committee amendment (2006-1162h) amended the existing Article 11, rather than establishing a new article 11-b as originally proposed

→ *Strikethrough, bolding and italics have been added to indicate changes in Article 11*

[Art.] 11. [Small Towns; Representation by Districts.] ***When the population of any town or ward, according to the last federal census, is within a reasonable deviation from the ideal population for one or more representative seats the town or ward shall have its own district of one or more representative seats. The apportionment shall not deny any other town or ward membership in one non-floterial representative district.*** When any town, ward, or unincorporated place [~~according to the last federal census,~~] has ***fewer*** [less] than the number of inhabitants necessary to entitle it to one representative, the legislature shall form those towns, wards, or unincorporated places into representative districts which contain a sufficient number of inhabitants to entitle each district so formed to one or more representatives for the entire district. In forming the districts, the boundaries of towns, wards and unincorporated places shall be preserved and ***contiguous*** [~~the towns, wards and unincorporated places forming one district shall be reasonably proximate to one another.~~]. ***The excess number of inhabitants of a district may be added to the excess number of inhabitants of other districts to form “at-large” or floterial districts conforming to acceptable deviations.*** The legislature shall form the representative districts at [~~its next session after approval~~

~~of this article by the voters of this state, and thereafter at the~~] the regular session following every federal decennial census.

Floor debate: there was no floor debate on CACR 41 in the House. The only discussion was a point of order questioning the timing of the vote.

Floor Action: Amendment adopted, voice vote
Motion of Ought to Pass with Amendment,
adopted by necessary 3/5, Division vote (256-55)

Note: the language adopted by the House was the final version of the constitutional amendment.

Senate Action

Referred to: Senate Internal Affairs Committee

Senate Hearing: April 19, 2006

Rep. Kurk testified that CACR 41 would allow towns to have their own representative if they have enough inhabitants. It was intended to preserve an important New Hampshire tradition of ensuring representation for small towns. He noted that smaller districts provide citizens with greater access to state representatives and that the change would allow for floterials in a small number of cases. (pages 1 and 2, Senate transcript, public hearing on CACR 41, 4/19/06, attached)

Rep. Whalley, Chairman of the House Election Law Committee, described the problem with the large multi-town districts created by the Supreme Court in 2002. He felt that it was important to reduce the size of these districts. Changes he spearheaded in the 2004 legislative session led to a total of 103 House districts in contrast to the 88 districts in the Court plan. (page 4, Senate hearing transcript)

Rep. Whalley further testified that the challenge in drafting CACR 41 was ensuring that there would no longer be ‘illegal’ floterial districts. He said that the 1992 House districts did include some ‘illegal’ floterials. He defined illegal floterials as districts that include towns that are not part of an underlying non-floterial district. Specifically, Rep. Whalley stated: “...the original constitutional amendment that was proposed simply stated that if you had a community that had an adequate population for one or more representatives, they would have that number of representatives. The problem with that is we have to stay within county boundaries and there are some other parameters.” (page 4 and 5, Senate hearing transcript)

After describing the problem created by a small town such as Dunbarton which is located in the corner of a county and borders larger towns, Rep. Whalley noted that the proposed change to the constitution ensured that a town will have its own district when it doesn’t cause another town to be districted solely as part of a floterial district. “Every

community has to be part of a district before it can be part of a floterial district.” (page 5, Senate hearing transcript)

Sen. Burling testified in opposition to CACR 41 stating that he felt strongly that the use of floterial districts was a violation of the principle of one man/one vote. He suggested that it would be helpful to end the practice of not crossing county lines when creating House districts. He felt that rather than House members serving as the county delegation, counties could elect delegation members as a separate political office. (pages 7 and 8, Senate hearing transcript)

Secretary of State William Gardner explained the history of the formation of House districts in New Hampshire. He also testified that under the proposed amendment to the constitution “any town in the state or ward that has enough population for at least one representative would be entitled to that representative unless a town surrounding it, bordering it, did not have enough people for their own. So the Legislature would have to make that decision whether to add a town...It would be constrained by the counties.” (page 14, Senate hearing transcript)

Committee Report: Ought to Pass, vote 3-1

Floor debate:

Sen. Flanders presented the committee report to the full Senate. Sen. Burling spoke against reintroducing floterial districts to the House redistricting process. He also commented that the voters would be asked to vote on the proposed change and would not understand the “balance between floterials and the concept of each town gets at least one Rep.”

Floor Action: Motion of Ought to Pass, adopted, roll call vote (16-7)

Preparation of Voter’s Guide

Pursuant to RSA 663:3-a Voter's Guides, if the General Court proposes a constitutional amendment, “the joint committee on legislative facilities may authorize the printing of a voter's guide. Distribution of the voter's guide shall not take place until its text has been reviewed and approved by the house and senate policy committees which considered the proposed constitutional amendment.”

The file on CACR 41 contains three different versions of the explanation of the effect of the proposed change to the state constitution – a version adopted by the Senate, a suggested revision, and a version adopted by the House. The version adopted by the House became the final version.

→ *The differences between successive versions of the explanatory text is indicated by strikethrough, bold and italics.*

1. Explanation Adopted by the Senate Internal Affairs Committee, August 16, 2006

IF THE AMENDMENT IS ADOPTED

Each town or ward having enough inhabitants to entitle it to one representative seat in the Legislature shall be guaranteed its own district for the purposes of electing one or more representatives. Where a town, ward or unincorporated place does not have enough inhabitants necessary for a representative seat, the Legislature shall form floterial districts, or multi-town or multi-ward districts, to qualify for one or more representative seats. Excess population may be combined with other contiguous districts to allow for additional at-large or floterial representatives.

2. Revision Considered by House Election Law Committee

IF THE AMENDMENT IS ADOPTED

Each town or ward having enough inhabitants to entitle it to one *or more* representative seat in the Legislature shall be guaranteed its own district for the purposes of electing one or more representatives, *unless such action prevented a neighboring town from being included in a base district before it is part of a floterial district.* Where a town, ward or unincorporated place does not have enough inhabitants necessary for a representative seat, the Legislature shall form ~~floterial districts, or~~ multi-town or multi-ward districts, to qualify for one or more representative seats. Excess population *in one or more contiguous districts* may be combined ~~with other contiguous districts~~ to allow for additional at-large or floterial representatives.

This will allow the legislature to create districts in the same manner that districts were drawn prior to 2002. It will increase the total number of districts and therefore increase the probability that a town will be represented by a member of their own community.

3. Language Adopted by House Election Law Committee, September 6, 2006 and Printed in Voters' Guide

The language adopted by the House and printed in the Voters' Guide was very similar to the proposed revision presented to the House Election Law Committee. The final version shifted the second paragraph to the beginning and replaced the phrase "base district" with "single-representative district".

IF THE AMENDMENT IS ADOPTED

This *amendment* will allow the legislature to create districts in the same manner that districts were drawn prior to 2002. It will increase the total number of districts and therefore increase the probability that the people of a town will be represented by a member of their own community. (*paragraph moved from second to first position*)

Each town or ward having enough inhabitants to entitle it to one or more representative seats in the Legislature shall be guaranteed its own district for the purposes of electing one or more representatives, unless such action prevented a neighboring town from being included in a *single-representative* base district before it is part of a flotal district. Where a town, ward or unincorporated place does not have enough inhabitants necessary for a representative seat, the Legislature shall form multi-town or multi-ward districts, to qualify for one or more representative seats. Excess population in one or more contiguous districts may be combined to allow for additional at-large or flotal representatives.

Final Action **On ballot November 7, 2006**

Vote: Yes 240,767 (70.5%)
 No 100,688 (29.5%)

Adopted by the required 2/3

If I can provide further information on this, please let me know.

Attachments:

1. CACR 41 (2006), as introduced
2. Hearing minutes, House Election Law Committee, January 12, 2006
3. Hearing transcript, Senate Internal Affairs Committee, April 19, 2006
4. Transcript of Senate floor debate, May 4, 2006, Senate Journal, pp. 1224-1226
5. CACR 41 (2006), final version
6. 2006 Voters' Guide, explaining two amendments to the NH Constitution proposed by the Legislature

CACR 41 - AS INTRODUCED

2006 SESSION

06-2510

06/01

CONSTITUTIONAL AMENDMENT
CONCURRENT RESOLUTION **41**

RELATING TO: representative districts.

PROVIDING THAT: representative districts shall be apportioned according to specified standards.

SPONSORS: Rep. Kurk, Hills 7; Rep. Kennedy, Merr 4; Sen. Flanders, Dist 7

COMMITTEE: Election Law

ANALYSIS

This constitutional amendment concurrent resolution provides that when a town or ward has enough inhabitants to equal or exceed the number required for one representative seat, it shall have its own district. Excess population may be combined with other contiguous districts to allow for additional at-large or flotarial representatives.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

CONCURRENT RESOLUTION PROPOSING CONSTITUTIONAL AMENDMENT

RELATING TO: representative districts.

PROVIDING THAT: representative districts shall be apportioned according to specified standards.

Be it Resolved by the House of Representatives, the Senate concurring, that the Constitution of New Hampshire be amended as follows:

1 I. That the second part of the constitution be amended by inserting after article 11-a the
2 following new article:

3 [Art.] 11-b. [Representative Districts; Standards for Apportionment.] When any town or ward,
4 according to the last federal decennial census, has enough inhabitants to equal or exceed the number
5 required for one or more representative seats, the town or ward shall be its own district of one or
6 more representative seats, and the excess number of inhabitants of a district may be added to the
7 excess number of inhabitants of other contiguous districts to form "at- large" or flotarial districts
8 conforming to acceptable deviations.

9 II. That the above amendment proposed to the constitution be submitted to the qualified
10 voters of the state at the state general election to be held in November, 2006.

11 III. That the selectmen of all towns, cities, wards and places in the state are directed to insert
12 in their warrants for the said 2006 election an article to the following effect: To decide whether the
13 amendments of the constitution proposed by the 2006 session of the general court shall be approved.

14 IV. That the wording of the question put to the qualified voters shall be:
15 "Are you in favor of amending the second part of the Constitution by inserting a new article to
16 provide as follows:

17 [Art.] 11-b. [Representative Districts; Standards for Apportionment.] When any town or ward,
18 according to the last federal decennial census, has enough inhabitants to equal or exceed the number
19 required for one or more representative seats, the town or ward shall be its own district of one or
20 more representative seats, and the excess number of inhabitants of a district may be added to the
21 excess number of inhabitants of other contiguous districts to form "at- large" or flotarial districts
22 conforming to acceptable deviations."

23 V. That the secretary of state shall print the question to be submitted on a separate ballot or
24 on the same ballot with other constitutional questions. The ballot containing the question shall
25 include 2 squares next to the question allowing the voter to vote "Yes" or "No." If no cross is made in
26 either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall
27 be the same as the regular official ballot except that the words "Questions Relating to Constitutional
28 Amendments proposed by the 2006 General Court" shall be printed in bold type at the top of the ballot.

29 VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it
30 becomes effective when the governor proclaims its adoption.

CACR 41

January 24, 2006

Page 2

*Claire Ebel, representing New Hampshire Civil Liberties Union. She thought she understood this CACR but now realizes she doesn't. She has been looking at the amendment and has some suggestions. She will submit her suggestions tomorrow.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Janet F. Allen".

Rep. Janet F. Allen

Clerk



Town of Weare

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Board of Selectmen
Laura Buono, Chairman
Leon G. Methot, Vice Chairman
Heleen Kurk
Joseph M. Fiala
Donna M. Osborne

Selectmen's Office

Weare, NH 03281
January 24, 2006

Chairman Michael Whalley
Committee on Election Law
N.H. House of Representatives
Room 308
Legislative Office Building
Concord, NH 03301

Dear Chairman Whalley and Members of the Committee:

The Weare Board of Selectmen strongly support CACR 41 and respectfully request the bill be voted "ought to pass" by the Committee.

Please take into consideration that the citizens of Weare, N.H. are entitled to have at least two representatives to the General Court. Its population is over 8,000 people. The present Court imposed division has taken away that right. They have combined Weare with the neighboring town of Goffstown, which is twice its size. If a person from Goffstown and another from Weare run for state representative, both previously unknown, the town with the greater population will win the day. The cost for the person running from Weare may even make it prohibitive to do so. In addition, if influential people in Goffstown decide that they want all eight seats allotted to Goffstown they have the ability to make that happen and Weare can't do anything about it. The present system does not allow the citizens of Weare the one person, one vote representation.

Another issue is the needs of a small town may differ from one twice its size. One would expect their representatives to vote according to the best interest of the town that elected them. How then, does this give Weare a voice?

Please help us to be part of New Hampshire's great democracy.

Very truly yours,

Heleen Kurk, selectman
For the Weare Board of Selectmen

Date: April 19, 2006
Time: 3:15 p.m.
Room: LOB, Room 103

RJB

The Senate Committee on Internal Affairs held a hearing on the following:

CACR 41 relating to representative districts. Providing that representative districts shall be apportioned according to specified standards.

Members of Committee present: Senator Boyce
Senator Bragdon
Senator Flanders
Senator Roberge
Senator Hassan

The Chair, Senator Robert K. Boyce, opened the hearing and invited the prime sponsor, Representative Kurk, to introduce the legislation.

Representative Kurk: Good afternoon, Senator, members of the Committee. For the record, I'm Neal Kurk, Hillsborough District 7, representing the towns of Goffstown and Weare.

This amendment, this CACR, was put in in order to restore a several hundred year tradition in New Hampshire that started even before the turn of the eighteen hundreds with having representatives from each town. What the Supreme Court did in their decision for redistricting was to aggregate towns in order to preserve the one person/one vote concept so that there are some towns that have thirteen or fourteen representatives and districts are as large as Senate districts. I don't have to tell Senators how expensive it is to run in that large district and how, as much as a Senator might want to, how difficult it is to be responsive to such a large number of constituents.

Secretary of State Gardner is supposed to be here. He is deeply involved in another bill before House Commerce and I hope he will be here shortly, and he will lay out for you the history and why this is preserving a very important New Hampshire tradition. The key thing in New Hampshire government has been the closeness of representatives to their constituents. I represent, before 2004, three thousand eighty-nine people. I may not know every one of

them, but they all know and call me. That gives me a closeness that is absolutely essential. People who would not feel comfortable calling Senator Flanders because he is an almighty Senator, feel very comfortable in calling their Representative because he is in jeans down at the corner drugstore or the corner supermarket buying stuff and he is out raking his lawn. That is very important; that connection means that people are involved. That is why we have such a high rate of involvement in all sorts of activities, especially volunteer type activities.

So, this bill, in effect, allows the state to resume that practice. It doesn't do any harm to the court decision. It does allow, in a small number of cases, for flotarial districts, which the court said it didn't like, but did not ban. So, I would hope that this Committee and the full Senate would want to allow each town in this state to have their own Representative to the extent they have the minimum population. That is what this bill does.

For the technical details, Representative Whalley is the Chairman of the Election Law Committee and is very familiar with this, more familiar than I am because he has been involved in redistrictings for a while. With respect to the history, I hope Secretary of State Gardner will be down shortly.

That concludes my testimony.

Senator Robert K. Boyce, D. 4: Thank you. Senator Hassan?

Senator Margaret Wood Hassan, D. 23: Good afternoon. Didn't I just see you this morning in a different committee?

Representative Kurk: We wear many hats, Senator.

Senator Margaret Wood Hassan, D. 23: And, forgive me because I'm new here and I don't know all the history of redistricting and I am just trying to understand. When our Supreme Court drew the districts it did, you mentioned in your testimony just now that they did it because of their belief that they needed to to preserve one person/one vote, which I understand as being a principle in the United States Constitution as well as the New Hampshire one. How do you think this change impacts that principle of one person/one vote?

Representative Kurk: I don't think it does. I think a lawyer such as yourself is going to have to investigate, his or herself. It is not something that I feel I am expert to comment on.

RHB

Senator Margaret Wood Hassan, D. 23: Thank you for that. I'm not expert either and I am just trying to understand.

Representative Kurk: It is a very technical area. Perhaps Representative Whalley is in a better position to give you somewhat of a more significant background.

Senator Margaret Wood Hassan, D. 23: Okay. Thank you.

Representative Kurk: Thank you.

Senator Robert K. Boyce, D. 4: I am hoping that the Secretary of State does show up. I understand the story he has to tell is very enlightening. He gave me a brief preview yesterday.

Representative Kurk: Thank you.

Senator Peter E. Bragdon, D. 11: I have not heard the word brief attached to Secretary Gardner.

Senator Robert K. Boyce, D. 4: Would you like to speak, Mike?

Representative Whalley: Thank you. I apologize for being a few minutes late. For the record, I am Representative Mike Whalley. I am the Chairman of the House Election Law Committee and I'm here to speak in favor of CACR 41.

I would first like to start by saying that I don't believe that House members have the exclusive right or privilege to be wearing blue jeans, raking leaves, or at the grocery store buying things.

Senator Margaret Wood Hassan, D. 23: Thank you.

Representative Whalley: I know that Senator Flanders would certainly be one that would fall into all three of those categories and probably all of you have done one or more of those things at one time.

Senator Robert B. Flanders, D. 7: The reason he gets so many calls is I refer most of them to him.

Representative Whalley: I'm going to be kind because my Senator chairs this Committee and I don't want to say anything that will cause any problems later.

However, this is a bill, a CACR that was brought to us. We actually had this twice in two years and, interestingly enough, somebody who I have a great deal of respect for, who was the former chairman of Finance, brought a bill to us a year ago. It was, as has been said in this building many times, fatally flawed and the good member from Weare simply said, "Well, you are really smart people and I know you can fix it". It just wasn't fixable.

A brief history so that we understand how we got here. From 1992, the '92 election, though 2000, we had House districts that had flotarial districts and, interestingly enough, there were some illegal flotarial districts, which was the challenge with this CACR to make sure that we didn't encourage or allow for those illegal flotarial districts to exist.

An example of those illegal flotarial districts was the district in Merrimack County where Bow had a district of its own, Hopkinton had a district of its own, Boscawen had a district of its own. The town of Dunbarton and the town Webster, which were smaller towns, under the twenty-seven hundred and fifty population which at the time was what was necessary for there to be a Representative, were left out completely. Then there was a flotarial district that was laid over the five towns that I just mentioned and then those five towns would elect three additional Representatives. Now, I think people knew, and I wasn't here at the time, but I think people knew, prior to the 1992 election that that was an illegal, and it has been said to me by people who were here that they knew that that wasn't appropriate. But, with a wink and nod, everybody agreed to agree. Nobody challenged it in court in that ten year period and it continued until we went to redistrict after the 2000 census. I was the Vice Chairman of the Committee at that time of the House redistricting and I remember painfully trying to avoid those problems.

Why the court redistricted for the House was that the House didn't do it. In our initial period and meeting before the court, they pretty much said to us, "Look, go back. We're going to set a deadline. Do it. If you don't do it, we're going to do it." We didn't do it. We couldn't get along well enough to do it and I will leave it at that.

The court then hired an expert, who obviously knew everything about New Hampshire, from a southern state, who came in and, on a weekend, with a sheet of paper and the towns, said "Okay, this is how we will do it" and they came up with eighty-eight rather large districts. I think it was within the next two years, before the next election, we were able to take those existing districts and simply subdivide them using appropriate, by the court's standards, standards and we were able to take the eighty-eight districts and come up with a hundred and three.

An example of that would be in my own district, which was a five-town district. We had a community within the district that was three thousand and sixty people. It was only off by twenty-nine to be a perfect one seat one town district. There was an example of we just pulled that town out, it was a district of its own and my eight member district of five towns became a seven member district of four towns and this other town became a district of its own.

Now, what we are proposing here is, through a constitutional amendment, allowing communities, when they have an adequate population, whatever that may be, and we're not expecting this to happen because the court right along, and I don't know if I agree with the court and I'm not suggesting that it would prevent the Legislature from taking up redistricting again, but, they sent us a less than subtle message that they hoped to not see us again until, or a redistricting plan wouldn't be proposed until the 2012 election.

Having said that, I think the honorable member from Weare is right in that we ought to be doing it now and getting something in place so that we know what the parameters are going to be when we get to that point. But, we were careful and the original constitutional amendment that was proposed, simply said that, if you had a community that had an adequate population for one or more representatives, they would have that number of representatives. The problem with that is we have to stay within county boundaries and there are some other parameters.

If you take the town of Dunbarton, which is in the corner of a county, and we can't cross over into Hillsborough County and put that community with a small community that might be contiguous with it in Hillsborough County, for example, then Bow and Hooksett and Hopkinton are the only contiguous communities and those are all larger communities. Bow, I think at the present time, has about seventy-five hundred to eight thousand people. Hooksett, I believe, is about fifteen thousand, maybe twelve thousand. Hopkinton is again about eight thousand people. So, clearly, those three communities could have a rep or, in some cases, two or three or four of their own and Dunbarton would be left out of the picture.

So, what the CACR says specifically is, you will have a district of its own when you don't create that problem. When and if you create that problem, every community has to be part of a district before it can be a part of a flotarial district. That is how I think we satisfy your concern of the one man/one vote. I know it is complicated to understand, but in theory, everybody has the same amount of representation when you follow that format. So, this CACR would prevent, it would require is a better way to describe it, that that small town of Dunbarton, which at the present time is

JMB

about twenty-four hundred people and, in all probably, will not have a population grater than that number when you divide four hundred into the population of the state and they will have to be part of a district with one of those other towns. The House at the time will make a proposal, hopefully adopt it, come to the Senate, hopefully adopted by the Senate that that town of Dunbarton will be with another town and they will have some number of representatives and then the amount of population that is surplus, in order to remain within the five plus or minus deviation, will then have to be joined to form that flotarial district and hopefully, when we do that, we will have more towns.

I guess I will go to the member from Weare's situation. Goffstown and Weare together have eight, I believe. The situation is Weare, in present population, should have two; Goffstown should have, I believe, five; and then there is a population that is surplus from that amount that should be formed for an additional seat. Now, it could be that we will have an immensely popular person from Weare, even though it is a smaller town, and they may be elected. But, it is probable that it is a five to two probability that the member will be elected from Goffstown. But, it is still a better situation than potentially having all eight elected from Goffstown.

I'm going to stop there before I bore you to death and answer whatever questions you may have.

Senator Robert K. Boyce, D. 4: Thank you.

Senator Peter E. Bragdon, D. 11: Thank you. Question regarding the illegal flotarial that you talked about before. I'm trying to think back to my election law days back when we were doing the redistricting. What made that illegal – just the number of seats in that district?

Representative Whalley: The fact that the courts, in a decision, I believe it was Boyer v. Gardner. Now flashes of Don Stritch are coming into my mind because he could rattle off cases without looking and referencing. A community must be part of a district before it can be part of a flotarial district.

Senator Peter E. Bragdon, D. 11: Okay. I see.

Representative Whalley: It wasn't. Bow had a district; Hopkinton had a district; Boscawen had a district; Webster and Dunbarton; and there were others, but I'm just more familiar with those. But there were certainly other examples, and they were left out. Then they were allowed to vote in the flotarial and their populations were all added for three additional. They

didn't, in my belief, meet the one man/one vote. They were short-changed and this prevents that from happening.

Senator Robert K. Boyce, D. 4: Any other questions? Seeing none, thank you very much.

Representative Whalley: Thank you.

Senator Robert K. Boyce, D. 4: Is Bill on his way? I really wanted to hear that story he told me about.

Deputy Secretary of State David Scanlan: Well, if you want to wait, I'm sure he would like to tell it to you at some point.

Senator Robert K. Boyce, D. 4: We could recess and then go into exec. We have some bills we have to exec.

Deputy Secretary Scanlan: I will go up right now and tell him that you're ready for him.

Senator Robert K. Boyce, D. 4: You didn't want to speak?

Senator Robert B. Flanders, D. 7: No.

Senator Robert K. Boyce, D. 4: Senator Flanders signed in in favor. Representative O'Neil signed in in favor. I will recess the hearing on CACR 41.

Recessed at 3:30 p.m.

Reconvened at 3:45 p.m.

Senator Robert K. Boyce, D. 4: I will re-open the hearing on CACR 41 and recognize Senator Burling.

Senator Peter H. Burling, D. 5: Thank you. I'm here in opposition to this CACR and I'm sure it will come as no surprise. It is clear to me that the Supreme Court has spoken about floterials. I believe passionately in the concept of one person/one vote. In the two bruising difficult and horrible experiences I had with the redistricting fight, I don't want to see us go back there. However cozy it may seem. However congenial it may seem. However it may serve one party or the other, floterials are a bad device.

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They are uniformly condemned in the modern districting community. Academics, lawyers, judges, people who pay attention to these things, see floterials as the wrong way to design districts and I just think it is a step backwards we shouldn't take.

I have said to anybody who will listen to me that I think it is time we adopted a bi-partisan, non-political districting commission and try to begin the process of getting districting out of the middle of the political wars. I don't yet have people saying that they think that is a good idea, but at some point in the future, probably in my son's life, people will say, "Why didn't they do this". That's all I have to say about it and I'm glad I will never participate again in a redistricting fight because I guarantee you I won't and I wouldn't wish it on my best friend or my worst enemy.

I would be happy to answer any questions.

Senator Robert K. Boyce, D. 4: Thank you. Questions?

Senator Peter E. Bragdon, D. 11: Thank you. You said that the court has spoken about floterials. In your opinion, what has the court said, because I'm not sure what they said? What do you think they said?

Senator Peter H. Burling, D. 5: I think what they said is that floterial is a de facto violation of the concept of one person/one vote and that it is impossible to design a constitutional redistricting plan which uses floterials in anything like the way we have been using them or in anything like what this CACR would propose to do. It is because of our peculiar structure in the New Hampshire House that we run into this problem. Leave us face it, it is our insistence on creating districts for the ten counties and the four hundred seats in the House that results in the pressure to use floterials in the first instance.

If, and my fingers are crossed, in the course of this county study we get a chance to ask the question, why are we using House members as the county delegation anyway? The Constitution doesn't demand it; we just did it as a statutory decision. If we separated those two functions, we wouldn't have a problem. We wouldn't need floterials and we wouldn't be left with these bitter disputes that we have now fallen into. We might have bitter disputes, but they would be around different subjects.

So, I guarantee you I am a fan of separating the New Hampshire House from the county delegation functions, but I'm also a big fan of getting away from this notion that somehow our insistence on having county delegates be taken

from the House membership and all the contortions that puts us through. It is time we end that.

Senator Peter E. Bragdon, D. 11: I will do my own follow up. So, I suspect they didn't come out directly and say this is not, and I will have to go back and read from a couple of years ago, they didn't come out and directly say it is not constitutional, but you infer that from what they did say.

Senator Peter H. Burling, D. 5: I think they are very direct. I don't have the opinion before me.

Senator Peter E. Bragdon, D. 11: You don't have to find it now.

Senator Peter H. Burling, D. 5: I believe they are really quite direct that floterials are absolutely off the table.

Senator Robert B. Flanders, D. 7: We had earlier testimony that said that their opinion of it was that they didn't use them and they didn't like them, but didn't say as strongly as you're saying. So, we will have to read it ourselves.

Senator Peter E. Bragdon, D. 11: Yeah, we might have to.

Senator Robert B. Flanders, D. 7: I will do my own follow up.

Senator Peter E. Bragdon, D. 11: Follow up. I'm in charge now.

Senator Robert B. Flanders, D. 7: I signed onto this bill and the main reason I signed onto the bill is the situation in my district with Weare and Goffstown. For example. Weare is almost nine thousand people and they had two reps and when they had to combine with Goffstown, they got one and there is a good possibility in the future that they will have none.

So, I thought this, and I signed onto it for that very reason that a town the size of Weare should have their fair share as well as Webster, who doesn't have one and Dunbarton and that type of thing.

Senator Peter H. Burling, D. 5: If I may answer a question with a question, Senator, look at us. Each of us represents fifty-five thousand people and each of us gets, I think, very quickly, into a feeling of some comfort that our constituents are a coherent group of people who may have different views, but we do the best job we can representing their interests. I don't think that Lebanon should have its own Senator. Maybe if we doubled the size of the Senate, but that is not an issue. If we have a four hundred member House

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which is no longer sort of linked at the hip to county government, Weare may have whatever.

Senator Peter E. Bragdon, D. 11: Lebanon doesn't have fifty-five thousand people, does it?

Senator Peter H. Burling, D. 5: No.

Senator Peter E. Bragdon, D. 11: I understand. I just wanted to make sure. Any further questions for Senator Burling? Seeing none. Oops, there is one.

Senator Margaret Wood Hassan, D. 23: I think, and my understanding of the way floterials worked before, and the court's opinion is limited to that because I happen to have read the court's opinion. I think what Representative Whalley testified to was that, in the old floterial districts, you could make the districts before any of the excess or too small populations wherever in a district themselves, that their only corpus really was as a floterial. This, as I understand it, says you are put into a district first and then combined into a floterial if excess population from certain districts or too few population from districts and he seemed to think that that addressed some of the court's concerns. Is that something you can comment on?

Senator Robert B. Flanders, D. 7: I wish you had heard Representative Whalley.

Senator Peter H. Burling, D. 5: I have made this argument before, so I am familiar with it. He and I just disagree about it. As I say, once you get the House of Representatives into a four hundred member institution that can be districted according to the needs of the House of Representatives as opposed to county government, all of this goes out the window; it is just unnecessary. I read in the Supreme Court's language a much stronger admonition to the Legislature. I went into the redistricting fight with a plan that I thought was right on, bang on one person/one vote. I think we had a deviation of less than six tenths of one percent.

The opinion comes back and you read it and you read it in the terms of them looking at us as legislative leaders. They said, "You guys, not any one of you, are counting your deviation rights. Both of you are using the floterials in an utterly mendacious way. Stop it." I sure as heck felt chastised by the court's opinion. Frankly, I never could figure out why they hadn't given us a hint in some of the earlier decisions because it was perfectly clear that we were relying more and more on the floterials. But, I guarantee you, I think they

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are off the table and I think they are off the table forever unless somebody changes our Constitution or the U.S. Constitution.

Now, Bill's committee may tell me that I am utterly wrong in this, but that is my reading.

Senator Peter E. Bragdon, D. 11: Okay. Thank you. Senator Roberge?

Senator Sheila Roberge, D. 9: How would you make up the county delegation?

Senator Peter H. Burling, D. 5: Well, if I had my druthers, I would have each county basically elect its own legislative body. I think it would be interesting to see. Think of all the people that we approach, each of us, and say, "Wouldn't you like to run for the House? It's a great job." We all get into the lying mode.

Senator Robert B. Flanders, D. 7: You're going to get punished for that some day.

Senator Peter H. Burling, D. 5: But how many say, "If I didn't have to go down there every day, I'd love to be of some service. But, I just can't afford to give up all my time." I think there are people who would serve as the county legislature, which might meet twice a week for six weeks and I don't see why they have to be together. The current system just results in House members saying one thing in Concord and then going out to Unity and saying something entirely different and hoping they don't get caught at it.

Senator Peter E. Bragdon, D. 11: Let's not rip into county issues or malign the good people of Unity, of whom my cousin is one.

Senator Peter H. Burling, D. 5: I really don't mean to malign anyone. Were you in the House?

Senator Peter E. Bragdon, D. 11: Yes. Election Law.

Senator Peter H. Burling, D. 5: But, we all know that is what happens, particularly around budgetary items.

Senator Peter E. Bragdon, D. 11: Thank you.

Senator Peter H. Burling, D. 5: Thank you.

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Senator Peter E. Bragdon, D. 11: Secretary of State Bill Gardner, who will testify and also tell us a story, something about the king.

Secretary of State Bill Gardner: Well, the reason that we have the four hundred member House goes back to the colonial times. The royal governor used to decide what towns could send members to what was called then the Assembly. The royal governor liked to grant new towns because he could give land to his friends and supporters. The only reason that there is a Vermont today is because, Vermont is really part of New York and should be because it was part of the grant to New York.

But, the royal governor went across the Connecticut River, granted towns in Vermont and eventually those towns didn't want to be part of the New Hampshire government and they didn't want to be part of New York and that led to the creation of Vermont. They have had celebrations where the legislature has actually met across the Connecticut River and when they were having the anniversary, the now governor of Vermont, Jim Douglas, who was then Secretary of State of Vermont, and the two of us went from town to town giving lectures about the history of how this happened and when the governor and council met and at what time.

The royal governor had that right and at times the royal governor would take it away. If you didn't produce the proper number of white pines that they wanted in Portsmouth for the ships, the royal governor could say, "For the next two years, you have no representation". The towns, one by one, would fall into that and there was a lot of controversy.

For years, our provincial assembly tried to get a resolution passed to get the royal governor to agree to it to let this happen so that they could set a number. The idea was to have as many towns as possible have a member of the provincial assembly so that at town meeting they could talk about what was happening at the provincial assembly. So, they finally reached a point twelve years before the Declaration of Independence, when the royal governor wanted something from the assembly. They made this agreement and they ended up agreeing that every town, that the royal governor would no longer have the right to make that decision and that the towns would have representation without being denied by the royal governor. The royal governor agreed to it. It passed the assembly and the royal governor agreed to it.

Everything in those days had to be sent to the king. We have the document and I brought it over to the House committee. That resolution was vetoed by the king, but it was several years later. It took time because the king had sort of like a cabinet and it was the Earl of Rockingham. Some of our county

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names were based on the individuals who actually were part of making this decision with the king. It came back, we have that document at the state archives, vetoed.

So, every colony had certain issues that led to the revolution and one of the issues in New Hampshire was this representation issue that you should have the right to have representation and not have the royal governor decide whether you were good enough or deserved representation. So, when the king said, "No, I'm not going to let my royal governor who I appointed lose this authority", they were determined to change that.

The very first time that they were able to do it, they created, in the first written document that was the governing words of the time during the revolution, they set it at a hundred individuals who were able to vote. When it came time to actually of moving what we consider our first constitution ratified by the people, our first constitution in January of 1776 was not ratified by the people, but it was our governing document. The first constitution said a hundred and fifty eligible voters and that was the way it was and that continued until the 1870s when they then included women and children, everybody over the age of, everyone.

Originally, it was just men who were eligible to vote were included in the first number, the hundred and then the hundred and fifty. Now, to have a second representative, you have to have double that. So, you had to have a hundred and fifty for the first one. But, the second one, you had to have three hundred more than the hundred and fifty. So, you had to have the hundred and fifty and then three hundred on top of that and then three more hundred and three more hundred and three more hundred. Then, when it was changed, instead of just the eligible voters, to anyone alive that it was raised to six hundred. But, the argument was that six hundred, including women and everyone else, when you take what the average age would be at that time, was about the same a hundred and fifty. That continued through World War II.

When the Supreme Court's decision came down in Reynolds v. Sims, New Hampshire could have taken the position that the one man/one vote principle does not apply because our governing document predated. They could have taken this position. Predated the federal constitution.

It is like what happens, we have a state now that has four hundred thousand people and another state that has eight hundred and fifty thousand, but they both only have one Representative in the United States House of Representatives. We don't have one man/one vote principle when it comes to members of the House because you can have two states where one state has

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two and a half to three times the population of another, but they have equal representation in the House. We know that you can have equal representation in the Senate. There is that argument that is California compared to us. Because this was in the Constitution before, you can't go back because it was, at the same time, set up that way.

Well, our constitution was set up the way it was. But, we didn't go that route. We decided to apply by the one man/one vote principle and that began the redistricting in New Hampshire. Before that, it was in the constitution and it was automatic. Every town that had this population automatically got representation. What the Legislature had to deal with was those communities that didn't have enough and then they decided whether they would pool them, put them together. Some towns decided to share. If there were three towns, they would send one for two months, another for two months, and another one for two months. Some towns actually decided to send two and the two would have a half a vote. So there were different ways that the towns dealt with this in the older centuries.

So, what does this have to do with all of this? Well, this amendment doesn't prohibit the towns now. If Bedford wanted us to divide into six individual districts for purposes of representation, Bedford could still do it. And, your town, Exeter, could still do it under this proposal. What this does is say that any town in the state or ward that has enough population for at least one representative would be entitled to that representative unless a town surrounding it, bordering it, did not have enough people for their own. So, the Legislature would have to make that decision whether to add a town that didn't have town to which town around it. It would be constrained by the counties.

There are some examples in this state that have always been thorny during redistricting. The Legislature will still have that. But, if you take to Manchester to Nashua and down the Merrimack River to the Massachusetts line and you go east, you have to go pretty far to get a town that doesn't have enough for its own representative. So, what this would do, for instance, right now we have Litchfield, Hudson and Pelham. They are all big enough to have at least two representatives of their own, but they run at large, thirteen of them. This would say that Litchfield would get the two. Hudson would be guaranteed. If Hudson had enough for 6.4, they would get their six. If Pelham had enough for 3.3, they would get their three. Then, the Legislature would decide how to create a floterial district for those towns. What it would do is it would guarantee that all of those towns, and if you keep going east, you go from Pelham, to Salem, to Atkinson and you go from Litchfield to Londonderry, Derry, Windham, and then you keep going farther, Hampstead, Plaistow. They are all big enough that they would have their own, be

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guaranteed by this constitutional amendment, that they would have their own representation. So, they would always have that whereas, in the example I gave you, the thirteen member district, some towns at some point may not have representation. But, this way it brings it back to the original idea that if we're going to try to have as many towns and wards as possible to have their own representation in the House. It doesn't affect the Senate; it is the House.

That brings us back to the founders and what the idea here was that the towns would have. When the towns came together, they gave up certain rights to be part of the state and they did that before we were a state. When Portsmouth and Exeter and Dover and Hampton came together, they were willing to give up a little bit to form their rights and the towns have done that. The idea, at the provincial level, was to try to make sure that they were given back as much as possible and that was their representation, that was their opportunity to have someone in the assembly or now someone in the Legislature.

My guess is this will reduce the redistricting by at least half because there's going to be certain areas that it is all automatic. So, the Legislature and the decisions the Legislature will have to make in the future, will be much less than they have had to make in the past. In the past, since the 1960s, we have had the courts making the decision on more than one occasion instead of the Legislature. This way, that right will be given to the people of the state by their constitution that if they live in a community that is big enough for one, they will have that one and then be part of, once they decide how to group them together.

That was a very unique piece of New Hampshire history where that feeling in New Hampshire came to head because it was the royal governor. Remember, the only person that they could elect in those days was their member of the assembly. No one else was elected; everyone else was appointed by someone else. So, that issue, they had the tea party, the Stamp Act controversy in Massachusetts. In this state, for those dozen years before the Declaration of Independence that this issue was fermenting, they were determined when the people here had the right to write their first document, that this protect the towns by putting in a specific number.

We could have taken that gamble in the '60s and said, "Wait a minute. We're going to keep our system. Keep everybody at a hundred and we're going to double that for the second one". But, the decision was not to do it and this is what it led to. I think that this makes sure that there wasn't some unintended consequence; that there was not some town that somehow would get left out and, on the House side, the chairman of the House committee

made a valuable addition to this because of the specific area in the county that he lived in and that is why the town that doesn't have enough for their own, the Legislature will have to decide where the link is.

In your town in Exeter, there are some towns to the south that might not have enough. So, Exeter might have to, instead of Exeter, Stratham and North Hampton and all those towns that are big enough to have their own, they would all have their own and then, instead of having eight at large, you might have one at large. But, the Legislature could decide not to have those three; they could decide some other linkage. But, everyone would know that their House membership was guaranteed so long as everyone around them had numbers equal to what was necessary.

Senator Peter E. Bragdon, D. 11: Questions for the Secretary of State? Seeing none, I have one or two. Would you characterize yourself as being in favor of this or not in favor?

Secretary Gardner: Yes.

Senator Peter E. Bragdon, D. 11: You didn't really say and I didn't know if you were purposely not saying.

Secretary Gardner: Yes. I'm very much in favor of this and I think it goes back, as I said, to the very beginning. What was the intent here? The intent was to have as many towns as possible have someone who is in the Legislature or who was in the assembly back then who could come back and talk about what was happening at the state level and to spread that around as much as possible. That's why we have the four hundred member House because it was set up. The number was really small and they deliberately said, for the first representative, the number would be much smaller and would be double to have your second. That was an attempt to make sure that as many towns would have the representation. This just goes back to that same idea.

Senator Peter E. Bragdon, D. 11: You heard Senator Burling's opinion on what the court said about floterial districts. What's your opinion of what they said?

Secretary Gardner: My opinion is that what they said, they said that there were unsound. They didn't say that they were unconstitutional. It was extra language in that decision. The federal lawsuit, Boyer v. Gardner, Boyer was the chairman of the Democratic State Committee in 1981 and that lawsuit went from the District Court in Concord to the Federal Court of Appeals in Boston all the way to Justice William Brennan on the Supreme Court. He

summered on the cape. They went through that process to see whether floterials were unconstitutional under the federal Constitution. The federal courts back then said no. Now, our Supreme Court said that they were unsound. Some people took that to mean that they were unconstitutional. You're asking opinions. I don't know how they would end up ruling, but this clearly takes care of that, the unsound, and it would depend on who was there.

Senator Peter E. Bragdon, D. 11: Okay. Thank you. Senator Hassan?

Senator Margaret Wood Hassan, D. 23: Thank you. Just so I'm clear, in Boyer v. Gardner the U.S. Supreme Court said that floterials were not unconstitutional?

Secretary Gardner: They ruled in favor of the New Hampshire redistricting the first time when floterials were introduced in this state as a result of the census of 1980 and they were introduced at that point. In that year, we had two cases going before the Supreme Court and a federal court case. When we opened the filing period, when I opened the filing period for State Senate in 1982, we had no Senate districts. So, candidates couldn't file at the beginning and then we got a letter from the Supreme Court saying, "Do this".

The court said they had an agreement with the Legislature that the House and Senate will adopt it at some later point. What they did was get the legislative leaders together and the legislative leaders and the governor said, "We all agree with this". So, they went to the courts because they couldn't pass a bill in time for the filing period and so we opened the filing period without Senate districts. That's one of the other times that the Court. I actually wrote a chapter for a book. This book was, chapter by chapter, every state and what happened in the state since the Reynolds v. Sims decision. The professor at the University of South Carolina asked me if I would write the piece for New Hampshire and I wrote the chapter on New Hampshire. I researched the court cases going back and what had happened here. When you look at the other states, in many, many instances it ends up the courts making the decisions for redistricting.

Senator Peter E. Bragdon, D. 11: Follow up?

Senator Margaret Wood Hassan, D. 23: I am extraordinarily fond of New Hampshire's towns and extraordinarily fond of Exeter and all of the towns that I represent. But, I sometimes wonder and I wonder if you would like to comment on this question. Whether, in a modern time where communication is much different where we have a growing population that might need regional solutions to things, we are well served by relying on a tradition that

grew out of the colonial government or whether we should be thinking forward. Would you care to comment? I'm struggling with this.

Secretary Gardner: That is certainly an opinion that is a valid opinion if you consider the times that we're in and it does make a difference. I think it is the same argument that why does New Hampshire have two U.S. Senators for 1.2 million and California has thirty-three million people and they have two. Is that fair? Should we say California should be able to have...? That was something that was put together at the time. We have a right to propose amendments. As Jefferson said, you could have a revolution every generation. We can propose amendments, but for me, the fundamental question for me was would it be nice if every town that has its own government to have their own board or whatever would have representation at the state level? For me personally...

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For California to have the representation that we have in the Legislature here, they would have to have over eleven thousand members of their House of Representatives. That's what they would end up with and that would be incredible. Should we strive for that?

If you're big enough for one under the ruling by the Supreme Court, when we divide it out, the formula this last time was three thousand eighty-nine. If you're big enough, should we insure the people of that community have representation? Maybe some day someone else there will be...

Senator Margaret Wood Hassan, D. 23: Thank you.

Senator Peter E. Bragdon, D. 11: Senator Hassan has her own redistricting plan. I can tell.

Senator Margaret Wood Hassan, D. 23: No. Senator Hassan is just trying to think this through.

Senator Peter E. Bragdon, D. 11: This is great stuff. Any further questions for the Secretary of State? Thank you very much, Bill

Senator Robert B. Flanders, D. 7: Thank you for coming down.

Senator Peter E. Bragdon, D. 11: Now, I will close the hearing. Mike, do you need to speak again?

Representative Whalley: I have one quick point.

Senator Peter E. Bragdon, D. 11: Go right ahead.

Representative Whalley: It is not to contradict the Secretary of State. When we redistricted last time it was still a struggle, even with floterials. So, for the suggestion to be made that this would make it almost automatic, I think is hopeful at best. The other thing is that we have a hundred and three districts now from the '88 court decision. Prior to that, we had a number and seventy-nine districts.

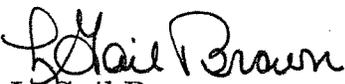
Senator Peter E. Bragdon, D. 11: I was going to ask you what it was before.

Representative Whalley: I meant to say that earlier and I didn't. I'm not saying we would have a hundred and seventy-nine again, but we would certainly be closer to a hundred and seventy-nine than we would be to a hundred and three and I think that goes to your question.

Senator Peter E. Bragdon, D. 11: I suspect you would have fewer to worry about, but just as much arguing about the ones you're worried about.

Hearing concluded at 4:20 p.m.

Respectfully submitted,



L. Gail Brown

Senior Senate Secretary

5/1/06

CACR 41, relating to representative districts. Providing that representative districts shall be apportioned according to specified standards. Internal Affairs Committee. Ought to pass, Vote 3-1. Senator Flanders for the committee.

SENATOR FLANDERS: Thank you, Mr. President. I move CACR 41 ought to pass. This Constitutional Amendment provides that when a town or a ward has enough inhabitants to equal or exceed the number required for one Representative seat, it shall have its own district. The legislature shall form towns, wards, or unincorporated places with fewer than the number of inhabitants necessary for a Representative seat into districts entitled to one or more Representatives. Excess population may be combined with other districts to allow for additional at-large or floterial representatives. A lot of thought went into this to make sure that we had no unintended consequences and that no towns were left out. This will bring us closer to the one-person, one-vote standard that we hold so dearly. If I may give an example in my district? Weare is my biggest town of a little over 9,000 people. They had two Representatives. They're combined with Goffstown. And it's a very good possibility that in the very near future, the town of Weare will have no Representatives under the present program. This way, the town of Weare would always have a Representative under this Constitutional Amendment. Please join the Internal Affairs Committee and vote CACR 41 ought to pass. Thank you.

SENATOR BURLING: Thank you, Mr. President. Mr. President, I rise in opposition to the adoption of the motion, and I want to speak briefly to that. I know for sure there is no beknighted soul on this Senate floor whose got more experience with floterials than I do. Reintroducing floterials to the redistricting mix of the House of Representatives is a serious, serious mistake. Floterials are a device which, on appropriate analysis in the 2002 Supreme Court case, it was determined severely misrepresent the one-person, one-vote concept, which is the foundation concept of our equal voting in New Hampshire. There is no way to equate one town, one Representative, with one-person, one-vote. If you proceed on a redistricting process in which your primary value is to insure that each town with more than 3,500 people gets one Rep., you will create floterials, and floterials will devalue the votes of some voters. That is simply the truth. And, if you read the Supreme Court decision in the case of Burling versus Chandler, I'm afraid it seems like a million years ago, but there it was, you'll understand the point that's made by the court. I want to move past that though, and say what we really should be doing is thinking about our constituents, because the House does have the right to do what it wants to do with its redistricting issues. Our constituents on the other hand, are going to be asked to vote on something in November which will be utterly indecipherable to them. And that is, they will be asked to vote on a concept, CACR 41, with no capacity to have comprehensible guidance in the form of a voter guide, because I guarantee you there is no human being in the state of New Hampshire who can write a voter guide that fully, adequately, and appropriately, describes the balance between floterials and the concept of each town gets at least one

Rep. You can't do it. The Supreme Court decision which deals with it doesn't make it all that much clearer, and takes fifteen pages. Both sides of eleven and a half paper. A proper voting guide is impossible to describe. The concept is that people...some people will lose the value of some of their votes. And my final point is to say it's all unnecessary because Senator Clegg and I, as usual, offered you the way out of this. There's only one reason why we're going through this tortuous process, and that is because we continue the statutory belief, it's not constitutional, it's only in statute, that the legislative bodies of the counties should be made up of equal numbers of the House members on the other side of that wall. It's not in our Constitution. If Senator Clegg and I got to do our study of county government, one of the things we would talk about is there's a more serious and appropriate way to have a legislative body for each county. They could be independently elected, in which case you have none of these floterial issues, you have none of these complex re-districting issues, and you'd never have to go back to court again to fight over the constitutionality of a floterial. I just...I've lived a long time in hopes that we would get a chance to make sense out of this mud pie. It's so close. I ask you please, don't do CACR 41. Do do the county study. Look at the question of how we would elect a county legislative body and let's begin to make this process reasonable and fair for all the voters. Thank you, Mr. President.

SENATOR BARNES: Thank you, Mr. President. I agreed with everything that Senator Burling said except asking you to overturn the motion. I've been up here, been in both bodies, sixteen years. We have sort of an agreement, and I was on the redistricting Committee at one time, and the agreement that we have had with each other, and you won't believe the agreements we have now with everything that is going on today and tomorrow, with all the stuff that's going on with bills. But one thing we have stood firm on, in both bodies, we let the bodies take care of their redistricting situation. So I'm gonna ask you all to please vote what the House wants to do on this and let the House take care of it, and let the chips fall where they may because next year, it might be us that wants something, here in this Senate, and we'd like them to extend the same favor. In other words, keep our hands off of theirs and we'll keep our hands off of theirs. Thank you, Mr. President.

SENATOR LARSEN: I rise also to oppose CACR 41 on the same basis that Senator Burling identified. What we heard is that we should keep our hands off of this, but we're asking the voters to understand the difficult concept, as you heard, of floterials. We're asking the voters to look at a one-person, one-vote, in perhaps some towns, which many, I know, towns want to accomplish, but the deadly language is the second part, which is the language that talks about that the legislature can then create floterials and that is what the Supreme Court's arguments identified causes the problem. This is not just an issue of let's keep our hands off and let the House solve their own problems. This is an issue of asking the voters to resolve something which we haven't yet fully figured out how to resolve amongst ourselves.

The question is on the committee report of ought to pass.

A roll call was requested by Senator Barnes.

Seconded by Senator Clegg.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Clegg, Gatsas, Barnes, Martel, Letourneau, Morse.

The following Senators voted No: Burling, Gottesman, Foster, Larsen, Estabrook, Hassan, Fuller Clark.

Yeas: 16 - Nays: 7

Adopted by the necessary 3/5 vote.

Ordered to third reading.

CA CR 41 - FINAL VERSION

08Mar2006... 1162h
11May2006... 2215eba

2006 SESSION

06-2510
06/01

CONSTITUTIONAL AMENDMENT
CONCURRENT RESOLUTION **41**

RELATING TO: representative districts.
PROVIDING THAT: representative districts shall be apportioned according to specified standards.
SPONSORS: Rep. Kurk, Hills 7; Rep. Kennedy, Merr 4; Sen. Flanders, Dist 7
COMMITTEE: Election Law

AMENDED ANALYSIS

This constitutional amendment concurrent resolution provides that when a town or ward has enough inhabitants to equal or exceed the number required for one representative seat, it shall have its own district. The legislature shall form towns, wards, or unincorporated places with fewer than the number of inhabitants necessary for a representative seat into districts entitled to one or more representatives. Excess population may be combined with other contiguous districts to allow for additional at-large or floterial representatives.

.....

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

CONCURRENT RESOLUTION PROPOSING CONSTITUTIONAL AMENDMENT

RELATING TO: representative districts.

PROVIDING THAT: representative districts shall be apportioned according to specified standards.

Be it Resolved by the House of Representatives, the Senate concurring, that the Constitution of New Hampshire be amended as follows:

1 I. That the second part of the constitution be amended by replacing article 11 with the
2 following:

3 [Art.] 11. [Small Towns; Representation by Districts.] When the population of any town or ward,
4 according to the last federal census, is within a reasonable deviation from the ideal population for
5 one or more representative seats the town or ward shall have its own district of one or more
6 representative seats. The apportionment shall not deny any other town or ward membership in one
7 non-floterial representative district. When any town, ward, or unincorporated place has fewer than
8 the number of inhabitants necessary to entitle it to one representative, the legislature shall form
9 those towns, wards, or unincorporated places into representative districts which contain a sufficient
10 number of inhabitants to entitle each district so formed to one or more representatives for the entire
11 district. In forming the districts, the boundaries of towns, wards, and unincorporated places shall be
12 preserved and contiguous. The excess number of inhabitants of a district may be added to the excess
13 number of inhabitants of other districts to form at-large or floterial districts conforming to acceptable
14 deviations. The legislature shall form the representative districts at the regular session following
15 every decennial federal census.

16 II. That the above amendment proposed to the constitution be submitted to the qualified
17 voters of the state at the state general election to be held in November, 2006.

18 III. That the selectmen of all towns, cities, wards and places in the state are directed to
19 insert in their warrants for the said 2006 election an article to the following effect: To decide
20 whether the amendments of the constitution proposed by the 2006 session of the general court shall
21 be approved.

22 IV. That the wording of the question put to the qualified voters shall be:
23 "Are you in favor of amending the second part of the Constitution by amending article 11 to read as
24 follows:

1 [Art.] 11. [Small Towns; Representation by Districts.] When the population of any town or ward,
2 according to the last federal census, is within a reasonable deviation from the ideal population for
3 one or more representative seats the town or ward shall have its own district of one or more
4 representative seats. The apportionment shall not deny any other town or ward membership in one
5 non-floterial representative district. When any town, ward, or unincorporated place has fewer than
6 the number of inhabitants necessary to entitle it to one representative, the legislature shall form
7 those towns, wards, or unincorporated places into representative districts which contain a sufficient
8 number of inhabitants to entitle each district so formed to one or more representatives for the entire
9 district. In forming the districts, the boundaries of towns, wards, and unincorporated places shall be
10 preserved and contiguous. The excess number of inhabitants of a district may be added to the excess
11 number of inhabitants of other districts to form at-large or floterial districts conforming to acceptable
12 deviations. The legislature shall form the representative districts at the regular session following
13 every decennial federal census.”

14 V. That the secretary of state shall print the question to be submitted on a separate ballot or
15 on the same ballot with other constitutional questions. The ballot containing the question shall
16 include 2 squares next to the question allowing the voter to vote “Yes” or “No.” If no cross is made in
17 either of the squares, the ballot shall not be counted on the question. The outside of the ballot shall
18 be the same as the regular official ballot except that the words “Questions Relating to Constitutional
19 Amendments proposed by the 2006 General Court” shall be printed in bold type at the top of the
20 ballot.

21 VI. That if the proposed amendment is approved by 2/3 of those voting on the amendment, it
22 becomes effective when the governor proclaims its adoption.

2006 VOTERS' GUIDE

IF THE AMENDMENT IS ADOPTED:

This amendment will allow the legislature to create districts in the same manner that districts were drawn prior to 2002. It will increase the total number of districts and therefore increase the probability that the people of a town will be represented by a member of their own community.

Each town or ward having enough inhabitants to entitle it to one or more representative seats in the Legislature shall be guaranteed its own district for the purposes of electing one or more representatives, unless such action prevented a neighboring town from being included in a single-representative district before it is part of a flotalerial district. Where a town, ward or unincorporated place does not have enough inhabitants necessary for a representative seat, the Legislature shall form multi-town or multi-ward districts, to qualify for one or more representative seats. Excess population in one or more contiguous districts may be combined to allow for additional at-large or flotalerial representatives.

EXPLAINING TWO AMENDMENTS TO THE NEW HAMPSHIRE CONSTITUTION PROPOSED BY THE LEGISLATURE

TO THE VOTERS OF NEW HAMPSHIRE:

At the November 7, 2006 general election, your ballot will include two questions which propose amendments to the New Hampshire Constitution. If *two-thirds* of the people who vote on either question vote YES, then the Constitution will be amended as indicated in the question.

Each question has been proposed by the New Hampshire Legislature which has the authority to consider and recommend changes to our constitution. This Voters' Guide was prepared at the direction of the Speaker of the House and the President of the Senate with the approval and assistance of the appropriate policy committees of both houses of the Legislature and the Joint Committee on Legislative Facilities.

The Guide includes the constitutional amendment question exactly as it will appear on the ballot, and it explains the effects of the proposed amendments. Each of the issues presented by Questions 1 and 2 are important and deserve your study and vote.

QUESTION NO. 1

EMINENT DOMAIN

1. “Are you in favor of amending the first part of the constitution by inserting a new article 12-a to provide that property can only be taken as follows:

[Art.] 12-a [Power to Take Property Limited.] No part of a person’s property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.”

AT THE PRESENT TIME:

Under Part 1, Article 12, and current law, a person’s property may not be taken by eminent domain or otherwise without the owner’s consent unless the taking is necessary to meet a specific public use. However, the United States Supreme Court has recently defined “public use” to permit the government to take private property for the purpose of promoting economic development through the resale of the property to private parties.

IF THE AMENDMENT IS ADOPTED:

While preserving those rights already stated in the Constitution, this amendment will, in addition, expressly prohibit the government from taking a person’s property for either private development or any other private use of the property.

QUESTION NO. 2

REPRESENTATION BY TOWN AND WARD

2. “Are you in favor of amending the second part of the Constitution by amending article 11 to read as follows:

[Art.] 11. [Small Towns; Representation by Districts.] When the population of any town or ward, according to the last federal census, is within a reasonable deviation from the ideal population for one or more representative seats the town or ward shall have its own district of one or more representative seats. The apportionment shall not deny any other town or ward membership in one non-floterial representative district. When any town, ward, or unincorporated place has fewer than the number of inhabitants necessary to entitle it to one representative, the legislature shall form those towns, wards, or unincorporated places into representative districts which contain a sufficient number of inhabitants to entitle each district so formed to one or more representatives for the entire district. In forming the districts, the boundaries of towns, wards, and unincorporated places shall be preserved and contiguous. The excess number of inhabitants of a district may be added to the excess number of inhabitants of other districts to form at-large or floterial districts conforming to acceptable deviations. The legislature shall form the representative districts at the regular session following every decennial federal census.”

AT THE PRESENT TIME:

The Constitution does not guarantee that each town or ward having enough inhabitants to entitle it to one representative seat in the Legislature shall have its own district. The Constitution permits the Legislature to form multi-town and multi-ward districts for electing state representatives, but does not expressly permit or prohibit the Legislature to form so-called “floterial” or at-large districts using excess inhabitants from one district to create a representative seat in those towns and wards that do not have enough inhabitants to form a district.