

# **Redistricting in the 1980s**

## **A 50-State Survey**

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## NEW HAMPSHIRE

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Although the last two times the New Hampshire legislature was involved in redistricting (1965 and 1971) there was little controversy, the peace and harmony did not continue when the legislature was constitutionally mandated to do another redistricting following the 1980 decennial federal census.<sup>1</sup> Whereas during the two previous redistrictings there were no partisan floor debates, no vetoes, and no court challenges, the 1982 legislative session had several of all three. Before it was over there were strident and sometimes bitter partisan debates, several vetoes, and three separate court challenges—one in the state Supreme Court and two in the U.S. District Court.

During the regular 1981 legislative session, the House and Senate began the redistricting process. The president of the Senate and speaker of the House each appointed special reapportionment committees in their respective bodies to carry out the constitutional requirement that redistricting be done after each federal census.<sup>2</sup> Since the state's population had increased 19.8 percent since the last redistricting, with most of the growth concentrated in the towns in the southern part of the state, there would be, by necessity, substantial change in the legislative districts. Controversy began to surface immediately as the number of changes in legislative districts became more apparent and the House decided, because of its other workload, to defer any action on redistricting until a special legislative session would meet during the next year.

When the legislature reconvened, four separate redistricting bills were introduced: one for the congressional districts, one for the Executive Council districts, and one each for the House and Senate.<sup>3</sup> The congressional districts were almost equal in population already because the state was roughly cut in half from top to bottom and the population increase over the ten years was almost equal in both. Only two towns were affected, both moving from the 1st or eastern district

to the 2nd or western district. Neither congressman objected and the redistricting bill passed without opposition. The same was true for the councilor districts. There are five executive councilors, each representing 20 percent of the state, and they were in agreement with the few changes needed to put their districts in balance.

By the end of February 1982, only the House and Senate were left to complete. The Republican leadership of each chamber had an agreement that one body would not interfere with the legislative redistricting of the other. Therefore, the House would not make any changes to the Senate bill and the Senate would not make any changes to the House bill. The minority leadership, however, did not agree to this plan. The House Reapportionment Committee presented its final proposal for the House redistricting early in February of 1982, and it consisted of using, for the first time in New Hampshire, the concept of flotal districts in some areas of the state. The U.S. Supreme Court has defined the term flotal district as a

legislative district which includes within its boundaries several separate districts or political subdivisions which independently would not be entitled to additional representation but whose conglomerate population entitled the entire area to another seat in the particular legislative body being apportioned.<sup>4</sup>

An example of a flotal district would be as follows—two towns, A and B, each have one and one-half times the number of residents for one state representative. Under the former system, it would be one district and together they would elect three representatives. Under the flotal concept, there would be three districts, with town A electing one representative, town B electing one representative, and the two together electing one which would be the flotal district.

The House redistricting legislation was approved by the special reapportionment committee on a party-line vote—12 Republicans in favor to seven Democrats in opposition. The minority was not opposed to the flotal concept per se, but rather to the political makeup of several districts, and felt the alternative minority proposal was closer to the one man-one vote principle. The majority committee position was stated by its chairman, Russell Chase, who said, "After eight months of study, the majority position was a most correct and fair solution."<sup>5</sup> In addition, House Speaker John Tucker sent a letter to all House Republicans on the morning of the vote, asking for their support:

Today's vote on the unanimous Republican Committee's position on reapportionment may well be the most crucial vote you will ever cast because the result of today's action will be a matter of law for the next ten years. The Majority Report of the committee reflects a painstaking, thoughtful deliberation which was conducted over several months. The Majority Report deserves our united Republican support. Throughout both the regular and special session, the overwhelmingly consistent support to the Majority Committee position has been the key factor in the Republican leadership role in state government. Your past support has been genuinely appreciated and your continued support today is more important than ever.

The majority position prevailed on the House floor on a party-line vote, and six days later the Senate, also along party lines, voted to approve the House plan.<sup>6</sup> The plan consisted of 175 House districts, 15 more than the previous redistricting, including 53 single-member districts vs. 33 previously. In addition, there were 20 flotal districts made up of roughly one-third of the towns and cities of the state.

With the final passage of the House redistricting bill, the next battleground became the governor's office. The House Democratic leadership implored fellow party member Governor Hugh Gallen to veto the bill, while the Republicans sought his approval. In the end, the governor signed the bill but only after he felt there

was an agreement with the speaker to further review certain districts. According to the speaker, a review was made, resulting in no changes. As a result, many Democratic House members, led by their minority leader, were severely critical of the governor and refused to work for his reelection. He was defeated in the general election later that year.

After the governor's signature, when the bill became law, several minority-party House members joined with the Democratic state committee chairman in a suit filed in the U.S. District Court, challenging the constitutionality of the new law.<sup>7</sup> Less than a week before the filing period began on June 2, 1982, a three-judge panel ruled that the House redistricting plan was not unconstitutional and would stand. This decision was upheld on appeal by U.S. Supreme Court Justice William Brennan on the day the state filing period began.

The Senate redistricting bill went through an equally dramatic process. Unlike the House, the Senate has all single-member districts. The Senate reapportionment committee voted along party lines, as did the full Senate, which had three roll call votes before final passage. When the bill went to the House for its approval, the Democrats tried to make changes but were unsuccessful.<sup>8</sup> This time the governor did exercise his veto, and it was sustained by a vote of 14-10 in the Senate when the majority failed to get the necessary two-thirds to override. After the failure to override, Senate President Robert Monier filed a request with the New Hampshire Supreme Court, asking it to implement the provisions of the Senate redistricting plan, notwithstanding the successful gubernatorial veto, because there were only two weeks before the filing period for state offices and not enough time for the legislators to act.<sup>9</sup> The Democrats countered with their own request, filed with the New Hampshire Supreme Court and with the U.S. District Court, offering their alternative plan instead and requesting that the Senate be required to meet and resolve the issues before the state filing period began.<sup>10</sup> This argument was successful with the state Supreme Court, and the senators from both parties agreed to meet and attempt to work out a revised plan that both

sides could agree to support. This effort was successful and, because there was not enough time for enactment by the legislature before the filing period began, the new plan was presented to the Court, and the judges allowed the secretary of state to accept candidate filings based on the plan as agreed upon by the parties and the Court. As part of the stipulation, both parties agreed to enact legislation implementing the senatorial districts as expeditiously as possible—which they did, subsequent to the actual filing period.

Although the House and Senate plans were finally in place, several of the 13 cities had not redistricted their ward lines, and so legislation calling for local referenda to change ward lines had to be approved by the House and Senate. All 13 cities were losing representatives because they had not shared in the population growth to the extent the towns had, which added to the controversy because most Democratic legislators came from the cities. The new plan reduced the number of city representatives from 179 to 156. The House and Senate redistricting bills had used the existing ward lines for the 1982 election, with the new lines to be implemented for the 1984 election. Each of the city bills was debated along party lines, with the majority Republican position prevailing. But as a result of the stinging criticism the governor received for his signing of the House reapportionment plan, he successfully vetoed every city redistricting bill. Thus the final House and Senate plans for 1984 and beyond had to wait until after the election and the next legislative session. With the governor's defeat for reelection and a new Republican governor, each of the city redistricting plans was reintroduced and passed into law during the next legislative session, in 1983. Thus the Senate and House plans would be in effect for the 1984 through 1990 elections.

During the many debates over the House and Senate redistricting proposals, each party claimed it was defending the one man-one vote principle, and each accused the other of tilting its proposals in its own favor. Since the governor was a Democrat and the Republicans had a majority in the House and Senate (although not a veto-proof majority), each side was

fairly positioned. When redistricting was finally completed in 1983 with passage of the city ward plans, the House Democratic minority leader estimated his party would lose over 30 seats as a result of the new districts. Unlike what happened after the 1971 redistricting, when the minority party actually ended up gaining seats in the House and Senate, the first election subsequent to this new redistricting was devastating to the minority party in the House and Senate. In 1984, the Democrats lost 56 House seats, for the biggest loss this century—far above the 30-seat loss predicted by the minority leader. Only 103 Democrats were elected out of 400 House members and only six Democrats out of 24 senators. Only three Democratic senators who had a Republican opponent were elected.

Although some will argue the cause of these Democratic losses was gerrymandering through redistricting, others will point to factors such as the reduced number of Democratic legislators from the cities because of the population changes; or the national trend with President Reagan's popularity and coattails from the New Hampshire straight-ticket ballot, where you can vote once at the top of the ballot for all candidates of the same party. One telling fact, however, was that the loss of Senate Democrats equaled that of the House, yet the Senate redistricting was shared equally by the two parties. In subsequent elections, however, Democratic party members increased fractionally more in the Senate than in the House, as shown in Table 1.

Looking ahead to 1991 and the next legislative redistricting, it is likely that the cities will again be the losers when the population count is completed. Not that their

*Table 1. Party Strength in New Hampshire State Legislature and Congressional Delegation, 1980-88.*

YEAR	HOUSE	SENATE	U.S. HOUSE
1980	240R, 160D	14R, 10D	1R, 1D
1982	239R, 159D, 2I	15R, 9D	1R, 1D
1984	297R, 103D	18R, 6D	2R, 0D
1986	267R, 133D	16R, 8D	2R, 0D
1988	281R, 119D	16R, 8D	2R, 0D

population figures will be down, but rather the increase will not match those of the smaller towns, particularly in the southern section of the state.

#### NOTES

1. For a discussion of reapportionment politics in New Hampshire prior to the 1980s, see Janelle Hobbs and Blake Isaacson, "New Hampshire," in Leroy Hardy, Alan Heslop, and Stuart Anderson, eds., *Reapportionment Politics: The History of Redistricting in the 50 States* (Beverly Hills: Sage Publications, 1981), pp. 209-215.
2. *Journal of the New Hampshire Senate 1981*, Vol. 1, pp. 379-80 (April 14, 1981) (cited hereafter as *Senate Journal*, followed by year); *Journal of the New Hampshire House 1981*, p. 867 (May 14, 1981) (cited hereafter as *House Journal*, followed by year).
3. *House Journal 1981*, p. 13 (November 17, 1981); *Senate Journal 1981*, p. 16 (November 17, 1981).
4. *David v. Mann*, 377 U.S. 686, n. 2.
5. *House Journal 1982*, p. 54 (February 4, 1982).
6. *Senate Journal 1982*, pp. 178-80 (April 8, 1982).
7. U.S. District Court for the District of New Hampshire, *Boyer v. Gardner*, C 82-287-D, May 1982.
8. *House Journal 1982*, p. 495 (April 8, 1982); *Senate Journal 1982*, pp. 182-91 (February 10, 1982).
9. New Hampshire Supreme Court, *Monier v. Gallen*, 82-208, May 1982.
10. U.S. District Court for the District of New Hampshire, *Boyer v. Monier*, May 1982.