



May 1, 2019

The Honorable Melanie Levesque  
Chair  
Senate Committee on Election Law and Municipal Affairs  
New Hampshire General Court

The Honorable Tom Sherman  
Vice Chair  
Senate Committee on Election Law and Municipal Affairs  
New Hampshire General Court

**Re: Statement for the Record in Support of HB 706**

The Campaign Legal Center (“CLC”) respectfully submits this statement to the Committee in support of HB 706, a bill establishing an independent redistricting commission (“IRC”) in New Hampshire. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Our work promotes every citizen’s right to participate in the democratic process. We appreciate the opportunity to submit a statement in support of this important legislation.

This statement begins with a discussion of HB 706’s constitutionality under the New Hampshire Constitution. Then, we examine HB 706’s constitutionality under the United States Constitution. Next, we review the benefits of HB 706’s transparency requirements. In the final section, we explain how partisan gerrymandering would be almost impossible under the new IRC.

To provide the Committee with additional information about IRCs around the country, we have included as an attachment CLC’s report from 2018, titled Designing Independent Redistricting Commissions.

## **I. HB 706 is constitutional under the New Hampshire Constitution.**

HB 706 grants authority to an IRC to create district maps for Legislative and Congressional districts and the Executive Council. The IRC would have the authority to draw the district maps, but the General Court would have final authority to approve or reject—but not to amend—the maps.

The relevant portion of part two, article 26 of the New Hampshire Constitution states:

And that the state may be equally represented in the senate, the legislature shall divide the state into single member districts, as nearly equal as may be in population, each consisting of contiguous towns, city wards and unincorporated places, without dividing any town, city ward or unincorporated place.

Although the IRC will be charged with drawing the maps, the General Court will be ultimately responsible for determining which maps govern the single and multi-member districts in accordance with New Hampshire's constitutional mandate. Thus, this statute should survive constitutional challenges.

## **II. HB 706 is constitutional under the United States Constitution.**

In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the state legislature brought a claim alleging that a ballot initiative creating an IRC violated the Elections Clause of the United States Constitution.<sup>1</sup> The Elections Clause states:

The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.<sup>2</sup>

In *Arizona*, the legislature did not have final authority to approve or reject the commission-created maps. Instead, voters vested redistricting authority solely in the IRC. The Supreme Court of the United States ultimately concluded that IRCs created by citizen referendum are constitutional.

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<sup>1</sup> *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 135 S. Ct. 2652 (2015).

<sup>2</sup> U.S. Const. art. I, §4, cl. 1.

Additionally, Judge Rosenblatt, who dissented from the District Court's opinion, argued that IRCs are unconstitutional because the Arizona legislature did not "have any outcome-defining effect" on the redistricting process.<sup>3</sup> HB 706 even addresses Judge Rosenblatt's concern because the commission-created maps cannot go into effect without the General Court's enactment. Thus, the General Court retains an outcome defining position in the redistricting process.

### **III. HB 706's transparency requirements are good public policy and will provide legitimacy to the maps the IRC creates.**

HB 706 contains strong transparency requirements including that all IRC meetings and records must be open to the public, allowing the public to submit draft maps, and creating and maintaining a website to disseminate data and information about the drafting process. The experiences in other states demonstrate that robust transparency requirements, such as the ones in HB 706, are vitally important to ensure that the commission is a success.

California's 2010 redistricting cycle was a success, in part, because of its IRC's transparency requirements. California's IRC had to adhere to transparency requirements that are similar to the requirements in HB 706. Scholars have found that California's "open and participatory redistricting process created a heightened interest among the public. Many advocacy and civil rights groups that had participated in prior redistricting cycles not only submitted statewide or regional maps, they mobilized members and constituents to attend and testify at individual hearings."<sup>4</sup> One commissioner found that

the overall process of constructing the maps . . . reflected the norms of transparency and participation. Compared to previous maps drawn by the legislature, the commission drawn maps were generally more compact, more competitive, better at advancing minority voting rights, and more successful in maintaining cities, counties, and communities of interest.<sup>5</sup>

Although much scholarship focuses on the California IRC's experiences, its transparency requirements are not an outlier. Iowa requires its non-partisan commission to conduct public hearings and accept comments at the

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<sup>3</sup> *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 997 F. Supp. 2d 1047, 1058 (D. Ariz. 2014).

<sup>4</sup> Angelo N. Ancheta, *Redistricting Reform and the California Citizens Redistricting Commission*, 8 Harv. L. & Pol'y Rev. 109, 129 (2014).

<sup>5</sup> *Id.*

meetings.<sup>6</sup> Idaho requires its bi-partisan commission to have meetings that are open to the public, subject to Idaho’s open access laws, and the commission has to accept maps submitted by the public.<sup>7</sup> These transparency requirements, similar to those in HB 706, have been crucial in maintaining the integrity of—and in resisting legal challenges to— IRCs around the nation.

**IV. HB 706’s consensus requirements will help ensure that the IRC does not create gerrymandered districts.**

Under HB 706, the commission will be composed of 15 commissioners. The 15 commissioners are selected from a process that empowers the majority and minority leaders in each chamber to strike applicants from the list of potential commissioners; empowers the secretary of state to select, in a randomized way, an equal number of commissioners who belong to the largest political party, the second largest political party, and those who are not members of either party; and then empowers the Secretary-of-State-selected commissioners to choose additional commissioners.

HB 706 requires nine commissioners to approve a map including at least two commissioners who are members of the largest political party, two commissioners who are members of the second largest political party, and two commissioners who are not members of either political party.

By requiring consensus from three pools, the commission is less likely to produce gerrymandered maps. Partisan gerrymandering occurs where one party intentionally gains a systematic advantage for itself through the drawing of district boundaries.<sup>8</sup> As a result, elections are determined not by the will of the people, but the will of map drawers.<sup>9</sup> Under HB 706, no party will be able to intentionally gain a systematic advantage for itself because the commissioners are required to reach a consensus across party lines.

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<sup>6</sup> Iowa Code Ann. §§ 42.2, 42.6

<sup>7</sup> Idaho Code Ann. § 72-1505

<sup>8</sup> *See Attachment A* Ruth Greenwood, Annabelle Harless, Blair Bowie, and Charquia Wright, *Designing Independent Redistricting Commissions*, 5 (2018).

<sup>9</sup> *Id.*

## V. Conclusion

In conclusion, we respectfully urge the Committee to support creating an IRC by supporting HB 706. We would be happy to answer any questions arising from this testimony.

Respectfully submitted,



**Ruth Greenwood**  
Co-Director, Voting Rights & Redistricting  
rgreenwood@campaignlegal.org



**Christopher Lamar**  
Legal Counsel, Redistricting  
clamar@campaignlegal.org  
\*Licensed to practice in Florida only,  
supervised by a member of the DC  
Bar

Campaign Legal Center  
73 W Monroe St, Suite 302  
Chicago IL 60615  
Tel: (312) 561-5508