**UNITED STATES DISTRICT COURT**
**DISTRICT OF MAINE**

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| WILLIAM DESENA & SANDRA DUNHAM, | ) | |
| Plaintiffs, | ) | |
| | ) | Docket No. |
| v. | ) | 1:11-cv-117-GZS-DBH-BMS |
| PAUL LEPAGE, in his official capacity as Governor of the State of Maine, et al. | ) | |
| Defendants. | ) | |

**ORDER REGARDING PLAN FOR REDISTRICTING**

The panel has reviewed and discussed the proposed orders and comments on said orders (Docket #s 25-29 & 31), all of which were filed in accordance with the Court's June 9, 2011 oral order (Docket # 22). In furtherance of this Court's June 21, 2011 Memorandum and Order (Docket # 33), the Court now hereby ORDERS:

1. All Defendants shall proceed forthwith with the process of redistricting in accordance with the June 21, 2011 Memorandum and Order.
2. Defendants shall file regular status reports on the docket regarding the progress of their redistricting efforts. The first status report shall be filed on or before July 5, 2011. Additional status reports shall be filed every twenty days thereafter. All other parties may comment or supplement a status report by filing a response on the docket within five days of the filing of any status report.
3. The Court anticipates that the Maine Legislature will complete its redistricting work no later than September 30, 2011. To the extent that the Maine Supreme Judicial Court plays any role in the redistricting for the 2012 congressional election, the Court anticipates the Maine Supreme Judicial Court will complete its work no later than November 15, 2011. If a redistricting plan based on the 2010 census data is not adopted in accordance with these deadlines, the Court will proceed with its own reapportionment of Maine's congressional districts in order to cure the Constitutional violation prior to January 1, 2012.

4. If at any point the Court determines that Defendants are not acting expeditiously to complete reapportionment in accordance with the orders of this Court, the Court may issue additional orders on or before November 15, 2011 in order to put into place a schedule that allows this Court to complete redistricting by the end of this year.
5. The parties shall appear for a conference of counsel before Judge Singal on July 6, 2011 at 11:00 AM. If all parties are not available at this time, they shall immediately contact Judge Singal's case manager to reschedule the conference for another time during the week of July 5, 2011. The purpose of this conference shall be to discuss establishing a mechanism for the parties to collect and provide to the Court any and all demographic data that is relevant to the redistricting process. While the Court only anticipates needing this data if Defendants do not comply with the deadlines set forth in this Order, the Court wishes to have such data available in a useable format no later than November 15, 2011.
6. This Court shall retain jurisdiction until completion of the redistricting process and the entry of a final order of this Court.

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 22nd day of June, 2011.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

CIVIL ACTION NO. 1:11-cv-117

WILLIAM DESENA AND
SANDRA W. DUNHAM,

Plaintiffs,

v.

STATE OF MAINE ET AL.,

Defendants.

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Before Selya,* Circuit Judge,
Hornby and Singal, District Judges.

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MEMORANDUM AND ORDER

June 21, 2011

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**SELYA, Circuit Judge.** This case, brought in the aftermath of the 2010 decennial census, posits that population shifts have made Maine's two congressional districts unequal and that, given Maine's redistricting format, the disparity will not be rectified before the 2012 election. The upshot, the plaintiffs say, is unconstitutional vote dilution.

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* Hon. Bruce M. Selya, of the United States Court of Appeals for the First Circuit, sitting by designation.

To put this claim in perspective, we begin with an overview of Maine's approach to congressional apportionment. Following each federal decennial census, Maine (like every other state) receives population data and an allotment of congressional seats from the federal government. See 2 U.S.C. § 2a(a)-(b). For many years, Maine traveled a well-worn path, see Nat'l Conf. of State Legis., Redist. Law 2010 180-86 (2009), and redrew district lines in the interlude between the release of the official census data and the next congressional election. See Opinion of the Justices, 283 A.2d 234, 235 (Me. 1971).

In 1975, Maine veered from this path. The genesis of this deviation can be traced to an amendment to the state constitution requiring that state legislative reapportionment be completed in 1983 and at ten-year intervals thereafter. See Me. Const. art. IV, pt. 2, § 2; see also In re 1983 Legis. Apport. of House, Senate, and Cong. Dists., 469 A.2d 819, 822-24 (Me. 1983). The legislature subsequently enacted a statute that made the same time line applicable to congressional redistricting. See Me. Rev. Stat. tit. 21-A, § 1206.

Under this blueprint, the legislature convening in the third year after each decennial census is tasked with establishing a bipartisan apportionment commission (the Commission). Id. § 1206(1). The Commission is charged with reviewing the census data and submitting a recommended redistricting plan. Id. If the

legislature fails to adopt either the Commission's plan or a surrogate within a prescribed time frame, the obligation to reapportion becomes the responsibility of the Maine Supreme Judicial Court. Id. § 1206(2). In either event the redrawn districts take effect for use in the election cycle that occurs in the fourth calendar year following the census year. For example, when the results of the 2000 census were received, reapportionment took place in 2003; and the new district lines (congressional and legislative) were first used in the 2004 election cycle.

At all times material hereto, Maine has been allotted two seats in the United States House of Representatives. According to the 2000 census, it had 1,274,923 residents. After a legislative stalemate, the Supreme Judicial Court drew the district lines. See In re 2003 Apport. of the State Senate and U.S. Cong. Dists., 827 A.2d 844, 845 (Me. 2003). As apportioned, the first congressional district contained 637,450 residents and the second district contained 637,473 residents. These districts were used for the 2004, 2006, 2008, and 2010 congressional elections.

In March of 2011, Maine received the 2010 decennial census data from the federal government. These figures revealed that the state's population had swelled to a total of 1,328,361 residents. The population of the first district had grown to 668,515, whereas the population of the second district had only

increased to 659,846. Thus, the population differential between the two districts had widened from 23 residents to 8,669 residents.

The next regularly scheduled congressional election will occur in November of 2012. Pursuant to Maine law, the lines demarcating its two districts will not be redrawn until 2013.

The plaintiffs, William Desena and Sandra Dunham, are residents of, and registered voters in, Cape Elizabeth (a community that lies wholly within Maine's first congressional district). Four days after Maine received the 2010 census data, they sued the state, a state agency, and a coterie of state officials.[1] They challenge the constitutionality of Maine's congressional redistricting scheme on its face and as applied. The district court found the constitutional challenge colorable and, upon its certification to that effect, the Chief Judge of the United States Court of Appeals for the First Circuit convened a three-judge court. See 28 U.S.C. § 2284(a). The court allowed the Maine Democratic Party to intervene as a defendant.

Following a preliminary hearing, the parties stipulated to the facts and engaged in extensive briefing. On June 9, 2011, the court heard oral arguments and, at the conclusion of the hearing, ruled ore tenus that Maine's current congressional

[1] With a view toward Eleventh Amendment immunity, see U.S. Const. amend. XI, the plaintiffs subsequently dropped both the state and the state agency as defendants, and are proceeding only against the individual defendants. See Ex parte Young, 209 U.S. 123, 155-56 (1908).

apportionment is unconstitutional and that the 2012 congressional election cannot go forward under that apportionment. The court informed the parties that it would issue an explicative opinion at a later date. This rescript is intended as the fulfillment of that promise.[2]

Refined to bare essence, the plaintiffs claim that the Maine legislature has a constitutional obligation, following the receipt of new decennial census data, to reapportion the state's congressional districts in time for the next election (the facial challenge) and that, in all events, the legislature has an obligation to reapportion the current congressional districts in light of received data from the 2010 census showing a significant inter-district disparity in population (the as-applied challenge). The state defendants concede the force of the as-applied challenge, but the intervenor insists that Maine's scheme passes constitutional muster both on its face and as applied. Because we conclude, on the facts of this case, that the state's failure to redraw the district lines in time for the 2012 election violates Article I, Section 2 of the Constitution, we need not address the plaintiffs' facial challenge.

Congressional apportionment demands an exacting balance. The Constitution requires that each congressional district within

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[2] The court solicited, on a tight time line, submissions addressing how best to remedy the constitutional infirmity. That aspect of the case is currently in progress.

a state should be equal in population. U.S. Const. art. I, § 2; see id. amend. XIV, § 2. While absolute equality is not required — the command of Article I, Section 2 is aspirational rather than literal — the state must seek "to achieve precise mathematical equality." Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969). The goal is that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." Wesberry v. Sanders, 376 U.S. 1, 7-8 (1964). The goal, then, is to make congressional districts within the state as nearly equal as is practicable under all the circumstances.

The Supreme Court has choreographed a two-step pavane for demonstrating that a state's congressional districts do not achieve this goal. First, a challenger must show that a population disparity exists, which "could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population." Karcher v. Daggett, 462 U.S. 725, 730 (1983). Once the challenger makes that showing, the devoir of persuasion shifts to the party defending the apportionment to justify the population differential. Kirkpatrick, 394 U.S. at 531-32. If no such showing is made, the apportionment fails. We follow this burden-shifting model here.

The initial question is whether a significant population disparity exists. The plaintiffs have the burden of proof on this issue. Karcher, 462 U.S. at 730-31. Where, as here, a numerical

disparity exists, the plaintiffs' burden is not a heavy one: the Supreme Court has explained that, in the context of congressional apportionment, even "de minimis population variations" offend the command of Article I, Section 2. Id. at 734.

The existence of a numerical disparity is beyond question. According to the 2010 census, Maine's first congressional district has 8,669 more residents than Maine's second congressional district. This amounts to a deviation of 0.6526 percent.[3] This variation is significant; it is greater, in both absolute and percentage terms, than variances previously deemed unconstitutional by the Supreme Court in congressional apportionment cases. See, e.g., Karcher, 462 U.S. at 728, 734 (rejecting disparity of 3,674 residents and deviation from ideal of 0.1384 percent); Kirkpatrick, 394 U.S. at 529-30 & n.1 (rejecting deviation from ideal of 0.19 percent as not per se de minimis).

In an effort to blunt the force of this reasoning, the intervenor argues that the disparity here falls within acceptable limits because the Court occasionally has approved larger variances. See, e.g., White v. Regester, 412 U.S. 755, 764 (1973); Gaffney v. Cummings, 412 U.S. 735, 740-41 (1973). This argument

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[3] This "deviation from the ideal" represents the percentage variation of Maine's current districts from the ideal population (664,180.5) that a district in the state would have based on the 2010 census figures. This calculation serves as a typical basis for comparison in vote dilution cases. See, e.g., White v. Weiser, 412 U.S. 783, 785 (1973); Mahan v. Howell, 410 U.S. 315, 323-24 (1973).

rests on quicksand. The cases to which the intervenor adverts are, without exception, cases dealing with the reapportionment of state legislative districts, not congressional districts. This difference renders those cases inapropos. States enjoy materially greater latitude in apportioning state legislative districts — a process vetted under the general provisions of the Equal Protection Clause — than they do in apportioning congressional districts — a process vetted under the specific provisions of Article I, Section 2. See White v. Regester, 412 U.S. at 763; see also Brown v. Thomson, 462 U.S. 835, 850 n.2 (1983) (O'Connor, J., concurring).

In yet another effort to lessen the impact of the numerical disparity, the intervenor seeks to contrast the size of Maine's congressional districts with the size of congressional districts elsewhere (say Montana, which boasts a single congressional district of nearly 1,000,000 residents). This is a red herring. In an Article I, Section 2 analysis, interstate comparisons are irrelevant. No less an authority than the Supreme Court has declared that "the Constitution itself, by guaranteeing a minimum of one representative for each State, made it virtually impossible in interstate apportionment to achieve the standard imposed by Wesberry." Wisconsin v. City of New York, 517 U.S. 1, 14-15 (1996). That impediment has no bearing on a state's ability to make its own congressional districts uniform in size (or as near thereto as may be practicable).

To be sure, showing a significant numerical disparity, without more, does not satisfy the plaintiffs' burden. At the first step of the pavane, the plaintiffs also must show that the disparity was not "unavoidable despite a good-faith effort to achieve absolute equality." Kirkpatrick, 394 U.S. at 531.

In the circumstances at hand, this showing is child's play. The 2010 census figures were made available to Maine in March of 2011 — more than nineteen months before the 2012 election. Notwithstanding the availability of these new figures, Maine has not undertaken any effort to ameliorate the evident inequality in population between its two congressional districts. The only barriers to such remedial action are self-imposed. It follows from these facts that the plaintiffs have carried their burden of showing that the disparity is not unavoidable. Simply put, Maine's congressional districts, as they presently stand, do not achieve "the paramount objective" of population equality with respect to the upcoming 2012 election cycle. Karcher, 462 U.S. at 732.

The plaintiffs' "success in proving that the [current apportionment] was not the product of a good-faith effort to achieve population equality means only that the burden shift[s] to the State to prove that the population deviations in its plan were necessary to achieve some legitimate state objective." Id. at 740; see White v. Weiser, 412 U.S. 783, 795 (1973). The Supreme Court has not spelled out the full range of justifications that might

suffice to dodge this bullet. It has, however, noted that "[a]ny number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives." Karcher, 462 U.S. at 740. Even so, only small deviations may be justified and the greater the deviation, the more compelling the justification must be. Id. at 740-41.

For their part, the state defendants concede the absence of any constitutionally adequate justification. The intervenor, however, advances several reasons for concluding that the disparity, though significant and easily avoidable, is nevertheless justified. All of these reasons lack force.

The intervenor's most bruited claim is that the bona fides of the process undertaken in 2003 deserve respect. This claim is unavailing. Although we do not question the legitimacy of the state's earlier process, the origins of the existing district lines are immaterial here. What counts is that the available 2010 census figures show conclusively that the two congressional districts are now malapportioned and that sufficient time exists to correct that malapportionment.

Next, the intervenor suggests that a delay in rectifying the newly emergent malapportionment is acceptable (and, thus, justifies the use of the current districts in 2012) because natural

population shifts inevitably result in vote dilution from election to election. Cf. Gaffney, 412 U.S. at 746 ("District populations are constantly changing, often at different rates in either direction, up or down."). We disagree. The phenomenon of a continually shifting population is omnipresent and, thus, could always be used to justify a delay in reapportionment. Such a result would eviscerate the promise of Article 1, Section 2. We hold, therefore, that the ebb and flow of population in the years between decennial censuses cannot justify a state in ignoring updated census figures that, if used, would enable it to approach more closely the ideal of mathematical equality.

The case law is consistent with this view. See Karcher, 462 U.S. at 732; see also Georgia v. Ashcroft, 539 U.S. 461, 488 n.2 (2003) ("When the decennial census numbers are released, States must redistrict to account for any changes or shifts in population."). Where, as here, there is ample time to ameliorate a significant population disparity between congressional districts revealed by a new decennial census, the Constitution obliges a state to act in time for the next election. Maine has not fulfilled this obligation.

Finally, the intervenor insists that, notwithstanding the existence of a significant disparity, there is no authority for the proposition that a state must redraw congressional district lines in the interval between the release of decennial census data and

the next election. Rather, the policies supporting Maine's carefully constructed redistricting process, laudably designed to prevent partisan gerrymandering, are worthy of deference and, therefore, justify the state in using the 2010 census figures more deliberately in revamping its congressional district lines (with the result that reapportionment will be delayed until after the 2012 election). This thesis is unpersuasive.

It is true that no Supreme Court case has squarely addressed the question of how long a state may delay congressional reapportionment after it receives decennial census data. But certain propositions follow inexorably from the Court's interpretation of the mandate that Article I, Section 2 imposes — and framing the issue solely as a matter of timing distorts that interpretation. Once a court finds a violation of the right to equal voting power, it must order the state to redress the violation by promptly redrawing the congressional district lines to achieve the equality that the Constitution demands. See, e.g., Farnum v. Burns, 548 F. Supp. 769, 773 (D.R.I. 1982) (three-judge court) ("[O]pinions of the Supreme Court indicate that a state can constitutionally be compelled to reapportion in time for the first election after a census, even where the existing reapportionment scheme is less than ten years old."); Flateau v. Anderson, 537 F. Supp. 257, 265 (S.D.N.Y. 1982) (three-judge court) (similar); see also Ashcroft, 539 U.S. at 488 n.2 ("[I]f the State has not

redistricted in response to the new census figures, a federal court will ensure that the districts comply with the one-person, one-vote mandate before the next election."). Constitutional violations, once apparent, should not be permitted to fester; they should be cured at the earliest practicable date.

So it is here: the current apportionment reflects a variance that is both avoidable and unjustified by legitimate state concerns. Given its statutory time line, Maine will default on its constitutional obligation to remedy that disparity as expeditiously as practicable unless this court orders otherwise. That is a default that we cannot allow to occur. See Growe v. Emison, 507 U.S. 25, 34 (1993); Wesberry, 376 U.S. at 18; Black Political Task Force v. Galvin, 300 F. Supp. 2d 291, 316 (D. Mass. 2004) (three-judge court).

The short of it is that no party has advanced a compelling reason for permitting the 2012 congressional election to proceed despite a significant, unjustified, and easily correctable population variance between the two congressional districts. Consequently, the state must undertake, here and now, a good-faith effort to achieve numerical equality, as nearly as may be practicable, between the districts in time for the next election.

We need go no further. Maine's congressional districts, as they stand, are malapportioned and violate Article I, Section 2

of the Constitution.[4] The district lines must be redrawn prior to, and for the purpose of, the 2012 congressional elections. We will, by separate order, approve a plan and timetable for accomplishing this objective; and we will retain jurisdiction for that purpose.

**Settle Order on Notice.**

/s/ Bruce M. Selya
U.S. Circuit Judge

/s/ D. Brock Hornby
U.S. District Judge

/s/ George Z. Singal
U.S. District Judge

Dated this 21st day of June, 2011.

[4] We take no view on the question of how (if at all) our finding that Maine's congressional districts violate Article I, Section 2 affects Maine's statutory scheme for reapportionment of the state legislature. Legislative redistricting must be analyzed under a different standard, see Reynolds v. Sims, 377 U.S. 533, 577-78 (1964); see also U.S. Const. amend. XIV, § 2, and no challenge to the apportionment of legislative districts is before us.

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

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

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

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

A. The commission consists of the following appointed members:

(1) Three members from the political party holding the largest number of seats in the House of Representatives, appointed by the Speaker of the House;

(2) Three members from the political party holding the majority of the remainder of the seats in the House of Representatives, appointed by the floor leader of that party in the House;

(3) Two members of the political party holding the largest number of seats in the Senate, appointed by the President of the Senate; and

(4) Two members of the political party holding the majority of the remainder of the seats in the Senate, appointed by the floor leader of that party in the Senate.

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

(1) The chairs of each of the 2 major political parties in the State or their designated representatives; and

(2) Three members from the public generally, one to be selected by each group of members of the commission representing the same political party and the 3rd to be selected by the other 2 public members.

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

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

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

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

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

STATE OF MAINE
SUPREME JUDICIAL COURT

DOCKET NO. SJC-03-237

IN RE 2003 APPORTIONMENT OF THE STATE SENATE AND UNITED STATES CONGRESSIONAL DISTRICTS

**FINAL ORDER**

[¶1] Because the Maine Legislature was unable to reach agreement regarding the reapportionment of the State Senate or the United States Congressional Districts, pursuant to the Constitution of the State of Maine, art. IV, pt. 1, § 2; art. IV, pt. 2, §§ 1-2, and 21-A M.R.S.A. §§ 1206-1206-A (Supp. 2002), the Supreme Judicial Court is required to apportion the State Senate and United States Congressional Districts.

## I. PROCEDURAL BACKGROUND

[¶2] The Court issued a Preliminary Procedural Order on May 9, 2003, scheduling a public hearing for May 28 and inviting all interested persons to file reapportionment plans, proposals, and comments with the Court prior to June 2. In that order, the Court announced that two public hearings would be held, the first on May 28 and the second after the Court published its proposed plans. Prior to and immediately following the May hearing, the Court received full proposed plans from the Honorable Beverly C. Daggett, Senate President, submitting the Apportionment Commission Congressional Plan and the Democratic Senate Plan; the Maine Republican Party; and a second proposed plan from the Maine Democratic Party. The Court also received numerous written comments from

citizens throughout Maine.

[¶3] Following a consideration of the plans and oral and written comments that were presented on or before June 2, the Court published its proposed plans. The Order accompanying the proposed plans set the second public hearing for June 23, and requested that written comments be submitted before noon on that day. At the June 23 hearing, a number of people spoke and offered alternate partial plans.[1] The Court received additional written materials and comments.

[¶4] The Court finds that the submitted plans, presentations and comments were extremely helpful and extends its gratitude to all who participated.

## II. THE SENATE REAPPORTIONMENT

[¶5] The Court has considered the various suggestions and submissions and has accepted or rejected them as set out below. The changes that have been made to the Court's proposed Senate plan do not result in any further division of individual municipalities or counties, nor do they increase the relative overall population range of 3.57%.

[¶6] The suggestions fell roughly into five separate geographic areas. To the extent that any suggestions were made that have not been addressed within this decision, the Court has declined to accept those suggestions.

### A. Suggestions Resulting in Changes to the Court's Proposed Senate Plans

#### 1. Aroostook County, Districts 34 and 35

[¶7] Aroostook County comprises only two Districts. A concern was raised regarding the Court's proposed configuration of those districts because of the size of District 35 and the substantial distance involved in representing that district, in contrast with the much more compact area of proposed District 34. The Court concluded that the

concerns raised at the public hearing directly addressed the Constitutional requirement of compactness. After careful consideration, the Court has reconfigured the two districts for Aroostook County, roughly along an east-west line. This configuration was adopted because:

(a) It better meets the constitutional requirement of compactness;
(b) The population ratio of the two districts is better balanced with the new lines;
(c) The change has no effect on bordering districts; and
(d) At the public hearing, no one objected to the proposal of the east-west line, including the representatives of the Democratic and Republican parties, each of whom were specifically asked to comment on the recommendation.

2. Oxford County, Districts 13 and 14

[¶8] The Court's proposed plan split a community of interest by placing Norway and Paris in different districts, Districts 13 and 14. A suggestion was presented that would place both towns in the same district, District 13, while maintaining population parity in Districts 13 and 14. The Court has accepted that suggestion with minor modifications to maintain population parity. The suggestion was accepted because:

(a) It returned a significant community of interest to a single district;
(b) The changes have no effect on other districts;
(c) The population distribution for Districts 13 and 14 as reconfigured fell well within the mean; and
(d) At the public hearing, no one objected to the reconfiguration.

3. The Portland Districts, Districts 8 and 9

[¶9] Portland is the only municipality that is larger in population than a single district.[2] It must by necessity be split into two districts, one of which must be wholly contained within Portland. ME. CONST. art. IV, pt. 1, § 2; art. IV, pt. 2, § 2. The Court

established a roughly north-south line to accomplish that goal, taking into account requests from the public filed earlier with the Court, including a request that the City of South Portland not be placed into a district with the City of Portland.

[¶10] The City of Portland, while not objecting to the external boundaries of the two Portland districts, has represented that their precinct lines would be more easily administered if the court adopted an east-west line. The Mayor of the City of Portland also represented that a change from the tradition of an east-west line would be cumbersome and expensive for the city. A proposal was presented at the public hearing on June 23 that would maintain the external boundaries of the two Portland districts established by the Court's proposal, but would divide the city along an east-west axis. The proposal has a slightly better population variance than the Court's proposal and creates a compact and contiguous configuration. The suggestion to divide Portland along an east-west axis was accepted because:

(a) It brings the populations of Districts 8 and 9 into nearly total parity;
(b) It creates compact and contiguous districts;
(c) It does not change the external boundaries of the districts and does not affect any districts other than Districts 8 and 9; and
(d) It reduces the prospects of additional costs and administrative difficulties for the City of Portland.

B. Suggestions Not Accepted by the Court

1. Piscataquis and Penobscot Counties, District 27

[¶11] Similar to the issues raised regarding Aroostook County, concerns were raised regarding the size of District 27, which spans Piscataquis and Penobscot Counties.

[¶12] The Court seriously considered those concerns, recognizing that the proposed configuration of District 27 will require the senator representing the district to travel from

Palmyra to Patten and Mount Chase. We therefore considered carefully, and at length, the several different proposals submitted at the public hearing designed to reduce the geographic size of District 27. As is demonstrated by the variety of suggestions for addressing the problem, it is not possible to change the configuration of District 27 without substantially affecting Districts 30, 31, 33, and possibly 32 and 25. In each instance, the changes would have a negative effect on population parity, compactness, contiguity, or communities of interest in other districts. Ultimately, the Court concluded that the problems created by changing the configuration of District 27 outweigh the legitimate concerns raised regarding the size of that district. Therefore the Court declines to accept the suggestions regarding District 27.

2. York County, Districts 2, 3, 4, and 5

[¶13] The Court heard from a number of people, including current legislators, regarding a request to include the Town of Lebanon in the same district as the Town of Sanford.[3] In order to achieve population parity, however, the suggested revision changed the configuration of more than just Districts 2 and 3. Ultimately, it affected Districts 2, 3, 4, and 5 creating substantial changes in those districts.

[¶14] The Court therefore attempted to address the request without causing a ripple effect into other districts. Notwithstanding the Court's efforts, we were not able to accommodate the Lebanon/Sanford request without substantially affecting several other districts in ways that the court determined were not acceptable. Therefore, the Court has declined to accept the suggested changes to the York County districts.

## III. THE CONGRESSIONAL REAPPORTIONMENT

[¶15] Many comments received by the Court addressed the proposed configuration of Maine's two Congressional Districts. The Court heard from a number of Knox County

residents who indicated a preference for remaining in the First District. In addition, a significant issue of geographic size has been raised regarding the Court's proposed configuration of District Two. It was represented to the Court that District Two is the largest Congressional District east of the Mississippi River and that the Court's proposal would significantly increase its size and create an additional travel burden on the representative from the Second District. To the extent that the Court can avoid adding a substantial geographic increase and burden on travel, we must attempt to do so.

[¶16] Therefore, the Court has crafted a new configuration that would reduce the added square miles and travel challenges that resulted from the Court's proposed plan, while at the same time fulfilling the Court's responsibility to minimize divisions of counties, municipalities, and communities of interest. We have done so by dividing only one county, Kennebec, and dividing it in such a way that no municipalities are divided and communities of interest are kept together. The Court's final plan meets several objectives:

(a) It reduces the population overall range of the Districts from 41 to 23;
(b) It reduces the added miles and travel burden in District Two;
(c) It divides only one county;
(d) It preserves communities of interest as much as possible;
(e) It moves fewer communities into different districts; and
(f) It maintains the long-standing presence of Knox County in District One.

## IV. FINAL PLANS

[¶17] Accordingly, the Court unanimously apportions the State of Maine into Senate Districts described in the following documents:

Final Senate 2003 Plan Components Report

Final Senate Map 2003

[¶18] The Court unanimously apportions the state into Congressional Districts described in the following documents:

Final Congressional 2003 Plan Components Report

Final Congressional Map 2003

[¶19] The Final Plan for the Senate has the following characteristics:

| | |
|---|---|
| Relative Mean Deviation: | 0.97% |
| Population overall range: | 3.57% |
| Roeck compactness: | .4 |
| Towns splits: | 4 |
| (Biddeford, Portland, Scarborough, Westbrook) | |
| Districts with one county: | 23 |
| Districts with two counties: | 8 |
| Districts with three counties: | 4 |

[¶20] The Final Plan for the Congressional Districts has the following characteristics:

| | |
|---|---|
| Relative mean Deviation: | 0.00% |
| Population overall range: | .01 |
| Absolute population range: | -12 to 11 |
| Roeck compactness: | 0.43 |
| County splits: | 1 |

[¶21] A copy of this final order of apportionment will be provided to the Office of the Revisor of Statutes along with the details in electronic format so that the report can be converted into geographic descriptions to be appended to the original of this order. Copies of this order and the preliminary order shall be filed with the Secretary of State.

Dated: July 2, 2003

/S/
Leigh I. Saufley
Chief Justice

/S/
Robert W. Clifford

/S/
Paul L. Rudman

/S/
Howard H. Dana Jr.

/S/
Donald G. Alexander

/S/
Susan Calkins

/S/
Jon D. Levy
Associate Justices

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[1] The Court heard from the following people at the final public hearing: Portland Mayor James Cloutier; Senator Richard Bennett; Representative Roger Sherman; Rob Brandenstein; Senator Paul Davis; former Senate President Charles Pray; Karin Gerrish; Lorraine Patch; Ronald Patch; Representative Jonathan Courtney; Representative Richard Brown; Representative Oscar Stone; Steven Scharff; Senator Richard Nass; Terren Braggdon; Kevin Lamoreau; Ken Cole; former Congressman David Emery; Phillip Merrill; Gerald Petruccelli; Benjamin Meiklejohn; Representative David Bowles.

[2] An ideal district would have a population of 36,426. The population of the City of Portland is 64,924.

[3] Although we recognize the existence of a community of interest among the citizens of Lebanon and Sanford, there also exists a community of interest among the Alfred and Sanford citizens. Because of population size, it is not feasible to create a district that includes both the Lebanon-Berwick-North Berwick area (a school district) and the Sanford-Alfred area.