
Coates' Canons Blog: Did the Legislature Redistrict in the Wrong Year? A Footnote

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A short while ago I **wrote** about the state constitutional provisions on redistricting, noting the argument that for decades North Carolina might have been drawing legislative districts at the wrong time. The state constitution can be read to say that the General Assembly should have waited until the 2013 session to redistrict rather than going ahead in 2011 — because the 2013 session will be the “first regular session convening after the return” of the detailed population figures needed for redistricting.

A question asked at the end of that piece was whether federal equal protection law would preempt the state constitution. That is, would the one-person/one-vote requirement of the United States Constitution mandate that the state redraw its legislative districts as soon as possible after receiving the necessary census reports — and before the next election in 2012 — even though the state constitution might say wait until 2013?

It turns out that there is a case on this issue and it says go ahead and redistrict. The case is *Desena v. Maine*, 793 F. Supp.2d 456 (D. Me. 2011), from the federal district court in Maine.

In 1975 Maine rewrote its constitution to provide for redistricting to occur in 1983 and every ten years thereafter. The change was part of a package of reforms, including the establishment of a bipartisan redistricting commission, apparently intended to reduce partisan gerrymandering. But it meant there would always be an election between receipt of the census and redistricting.

Maine has two congressional districts. The 2010 census, when reported in detail in March 2011, showed them to be unequal in population. Some voters then sued to require redrawing of the congressional districts before the 2012 election rather than waiting until 2013. The federal court agreed, holding that equal protection establishes a “constitutional obligation to remedy that disparity as expeditiously as practicable” and that there was no legitimate state interest justifying a delay.

The *Desena* decision is merely a decision of a federal district court, and it is from Maine, so it has no binding effect on North Carolina. Still, it appears to be the only case directly addressing whether federal equal protection law requires redistricting immediately after the census regardless of a state constitutional provision providing for a more leisurely reapportionment. If the *Desena* reasoning were applied to North Carolina, it would not matter whether the state constitution was read to say redistricting should be done by the 2013 session, federal law would preemptively require it to be done in 2011 anyway.