

# RESHAPING NEW YORK:

Ending the Rigged Process of Partisan Gerrymandering With  
An Impartial and Independent Redistricting Process

## EXECUTIVE SUMMARY

Research and Policy Analysis by Citizens Union Foundation  
Written and Published by Citizens Union

**NOVEMBER 2011**



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## Executive Summary

The rigged system of redistricting is corrupting the spirit and reality of representative democracy in New York. It has become a form of collusion between the two parties, drawing safe districts that protect incumbents and limit voter choice by effectively ending competitive elections. This in turn forces power in our politics to the margins, giving disproportionate influence to special interests. An independent redistricting commission would empower people to choose their politicians, rather than vice versa. No election reform would do more to heal the harsh but artificial polarization of our politics while adding real accountability to Albany. It is a reform that could open the door to all others. And it is an idea whose time has come.

With the release of 2010 census data to New York earlier this year, the redistricting process is fully underway to draw legislative districts in time for the 2012 elections under the old system of partisan gerrymandering, even as the public calls for changes to create a fair and impartial process.

The redistricting process is a key determinant for how every citizen and community will be represented at the state and federal levels of government for the next ten years. Public support for reform is stronger and broader than ever before, as exemplified by ReShapeNY, a statewide campaign for redistricting reform led by good government groups Citizens Union, New York Public Interest Group (NYPIRG) and League of Women Voters of New York State. ReShapeNY is comprised of a coalition of 37 organizations from across the state, including civic groups, issue advocacy organizations, unions and business groups united in the goal to reform our state's redistricting process. Public approval for independent redistricting is also at an all time high: 76 percent of voters support an independent commission that removes some or all of the responsibility for drawing lines from the legislature (48 percent support a full independent commission and 28 percentage an independent commission with some legislative input).<sup>1</sup>

The campaign's goal is simple: creation of an independent commission to draw state legislative and congressional district boundaries according to fair and objective criteria while allowing for robust public input into the process. The members of ReShapeNY, like New Yorkers across the state, have joined in calling for legislative action before the 2012 elections to create a new redistricting paradigm.

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<sup>1</sup> Quinnipiac University Polling Institute, "Keep Race, Job Protection Out Of Redistricting, New York State Voters Tell Quinnipiac University Poll; Cuomo Should Veto Lawmakers' Lines, Voters Say," October 26, 2011. Available at: <http://www.quinnipiac.edu/x1318.xml?ReleaseID=1667>

## **A. THE NEED FOR A SPECIAL LEGISLATIVE SESSION TO PASS REDISTRICTING REFORM**

One of the most productive New York State legislative sessions in years occurred in 2011, owing to the leadership of Governor Andrew Cuomo, Senate Majority Leader Dean Skelos, Assembly Speaker Sheldon Silver and the other 210 members of the state legislature. Left on the table, however, was the creation of a new impartial redistricting process that would end the rigged practice of partisan gerrymandering and usher in a more representative and responsive era in state government.

The state legislature needs to return to Albany in a special session to pass legislation which ends the political manipulation for partisan advantage of the drawing of district lines and establishes an independent redistricting commission to draw lines before the 2012 elections. The politically balanced and impartial commission would use fair and sensible criteria and be guided by clear guidelines in drawing the maps to ensure the process serves all New Yorkers and their communities rather than preserves the Albany status quo.

Though 184 of the 212 state legislators co sponsored or pledged to support such legislation, no bill passed during the legislative session. This inaction reveals the worst tendencies in Albany – the inability of legislators to work together and forge solutions that the public demands and supports. Nonetheless, redistricting must be reformed, and the power must shift back to the voters, who should pick their elected officials at the polls, rather than legislators picking their voters in hand carved, safe districts.

Governor Cuomo has publicly and repeatedly reiterated his pledge to veto lines that are not drawn in an independent or nonpartisan manner following his introduction of a program bill to reform redistricting in February. Further, he does not believe that the current body responsible for drawing lines – the Legislative Task Force on Demographic Research and Reapportionment (LATFOR) – can be nonpartisan.<sup>2</sup> Twenty four members of the Senate Democratic Conference have committed to not override the Governor's veto<sup>3</sup> if an independent process is not put into place, resulting in the redistricting process possibly being thrown to the courts. The legislature, therefore, faces considerable opposition to the process it is currently conducting to draw lines under the old system.

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<sup>2</sup> Vielkind, Jimmy. "Cuomo: I'm still vetoing LATFOR's lines." Capitol Confidential, Times Union. July 6, 2011. Available at: [http://blog.timesunion.com/capitol/archives/73902/cuomo\\_im\\_still\\_vetoing\\_latfors\\_lines/](http://blog.timesunion.com/capitol/archives/73902/cuomo_im_still_vetoing_latfors_lines/)

<sup>3</sup> Reisman, Nick. "Senate Democrats To Cuomo: Get Out Your Veto Pen." Capital Tonight. April 6, 2011. Available at: [http://www.capitaltonight.com/2011/04/senate\\_democrats\\_to\\_cuomo\\_get\\_out\\_your\\_veto\\_pen/](http://www.capitaltonight.com/2011/04/senate_democrats_to_cuomo_get_out_your_veto_pen/)

We must get beyond the short term thinking in Albany that never sees beyond the horizon of the next election. Instead of doing what is right and beneficial for both parties in the long run, whatever their political fortunes today, our elected leaders seem to think that majorities cannot be built through policies that are appealing to New Yorkers but rather require the electoral insurance policy of gerrymandering. The resulting low voter turnout is not surprising in a political climate lacking competitive elections where voters see no real choice of candidates, and meaningful discussion of public policy and real debate on issues take a back seat to partisan interests.

Time is running out for reform, but with public and legislative support for reform at its strongest in decades, reform is still necessary and possible this year. This is a once in a decade opportunity. Time must not run out before voters see the kind of reform that they need and deserve. Redistricting reform cannot wait until next year, and New Yorkers deserve far better than having reform postponed yet another decade.

## **B. THE REPORT'S MAJOR FINDINGS**

This report reveals how the state's redistricting process contributes to uncompetitive elections, unaccountable public officials, unsolved public policy issues, and a state legislature that does not reflect the diversity of New York State. A summary of the major findings is provided below.

### **1. COMPETITION AT THE POLLS IS HISTORICALLY LOW**

- a.** The re-election rate for incumbents from 2002 to 2010 was a stunning 96 percent with only 38 incumbents in 941 races running for re election losing their seats, considering both primary and general elections.
- b.** Between 1968 and 2010, competition in New York State legislative general election contests diminished greatly, with the average margin of victory increasing from 33 percent to 51 percent. **An all-time low in competitiveness was reached in 2004, with the average margin of victory at 63 percent.**
- c.** Between 2002 and 2010, **93 percent of incumbents won in races that were either uncompetitive or uncontested. Uncompetitive races were won by margins of 10 percent or more. The average margin of victory neared 61 percent.** Even in races for open seats in which there was no incumbent running, which accounted for 35 percent of all races during that time period, the average margin of victory was 42 percent.

## **2. THE NUMBER OF UNCONTESTED ELECTIONS HAS INCREASED, LEAVING VOTERS FEW CHOICES AT THE POLLS**

- a. The number of **uncontested state general election legislative races** (in which there is no opponent or no major party challenger) **increased from 1 percent in 1968 to 19 percent of all seats in 2010.**
- b. **Assembly Democrats and Senate Republicans have fewer contested elections than their minority-party colleagues in each house**, in spite of the larger enrollment of Democrats statewide. In the Assembly, Democrats had no major party opponent or were wholly unopposed in 340 races between 1968 and 2010, whereas Republicans were unopposed in only 243 races. In the Senate, the reverse breakdown occurs – 165 Republicans saw no such opposition from 1968 to 2010, while Democrats were unopposed in only 129 races. Only with legislative districts drawn to weed out competition across the aisle would one see such an advantage for the party in power in each house.
- c. New York had the **fourth worst voter turnout in the nation in 2010, with only 34.9 percent of eligible voters voting for their governor**, the state's highest office, likely in part due to the lack of real choices at the polls.

## **3. THE STATE LEGISLATURE DOES NOT REFLECT THE DIVERSITY OF NEW YORK STATE**

- a. **In New York, minority representation in the State Legislature in 2011 is 25 percent, well under the nearly 42 percent of minorities that made up the state's entire population in 2010. Women are also underrepresented**, demonstrating how gerrymandering has been used to keep incumbents (who have historically been white males) in power at the expense of equal representation.
  - Latinos make up 17.6 percent of the state's population, yet only hold about 9 percent (19) of seats in the state legislature in 2011.
  - Asians Americans make up over 7 percent of the state's population, yet they hold, and have only ever held one seat (0.47 percent) in the state legislature.
  - New York ranks 31st in the nation in terms of the representation of women in its legislature at 22.6 percent of seats.

## **4. FRAGMENTATION OF DISTRICTS CREATES VOTER CONFUSION AND UNEQUAL TREATMENT OF COMMUNITIES IN EACH HOUSE OF THE LEGISLATURE**

- a. **The lack of collaboration between both houses of the legislature in drawing lines has led to a complex web of senate and assembly districts overlaying each other.**
  - All of New York City's senate districts contain parts of 4 or more assembly districts, and over half of them contain 6 or more assembly districts.

- Assembly districts are similarly diluted, with over half containing 3 or more senate districts in New York City.
  - b. With 150 assembly districts and 62 senate districts, there is no need to have more than three assembly districts in a given senate district. **The current fragmentation creates confusion for voters and results in collusion rather than cooperation among the houses in the legislature to represent natural and consistent communities of interest**, essentially treating the same communities differently in each house.
  - c. **Assembly districts and to a lesser degree senate districts often cross the same two county borders.** Population variances of counties might require that one district connect to another county, but there is no need for a county to be parceled between so many districts, crossing the same county lines more than once.
    - Eighteen assembly districts cross the same two county lines crossed by another district. The Erie Niagara county border is crossed by three different districts. The Rockland Orange, Putnam Westchester, Jefferson St. Lawrence, Dutchess Ulster, Broome Chenango, and Albany Rensselaer county borders are all crossed by two different districts. Four assembly districts – districts 106, 107, 108 and 127 – even cross the same county borders as other districts in two *separate* instances.
    - Six senate districts cross the same two county lines crossed by another district. Two districts cross the Bronx Westchester county line while another two districts cross the Bronx New York county line, thereby joining Bronx residents in districts from another county in four instances. Two districts also cross the Nassau Suffolk border in the senate.
- 5. REDISTRICTING IS CONDUCTED TO, ABOVE ALL ELSE, BENEFIT THE PARTIES IN POWER IN EACH HOUSE**
- a. In the past three redistricting cycles, **Democrats in the Assembly gained 10 seats in 1982, 6 seats in 1992 and 4 seats in 2002.**
  - b. **Despite the relative growth in Democratic registration, Senate Republicans have mostly preserved existing majorities in the past three redistricting cycles** and even gained two seats in 2002 for a total of 38 members taking office in 2003.
  - c. **Communities with the same demographics may also have different political party representation based simply on the collusion between the two houses and the resulting way in which lines are drawn.**
    - Rochester and its environs are a perfect case in point. The same metropolitan region has vastly different political representation in each house. In the Assembly, the area is represented by 3 Democrats; in the Senate, the area is represented by 3 Republicans. This owes in large part to how the city is divided into districts.

## **6. THE POPULATION DEVIATION ALLOWANCE LEAVES GREAT DISPARITIES IN REPRESENTATION**

- a. New York's current practice of a 10 percent deviation in population size from the largest to smallest district in the state legislature (+/- 5 percent) allows a difference of over 30,000 people among senate districts and 12,600 among assembly districts.**

If legislative lines were drawn fairly, the size of districts throughout the state would be roughly equal. Indeed, federal law requires that U.S. congressional districts be as nearly equal in population as possible, allowing a difference of no more than one person. The 10 percent deviation has allowed for large population gaps between districts and thus disparities in representation from one community to another. While the deviation has been used in certain districts to comply with segments of the state constitution and the Voting Rights Act, it more often than not has been used for the purpose of political manipulation and partisan advantage.

- **46 percent of assembly districts and 30 percent of senate districts were between 3 and 5 percent from the average district size in 2002.**
  - **Fewer than 12 percent of assembly districts and 17 percent of senate districts were within 1 percent of the average district size in 2002.**
- b. The population deviation has provided the legislature its greatest tool for partisan gerrymandering by inflating certain regions of the state over others.** Assembly districts have been underpopulated in New York City to allow for greater Democratic representation, and overpopulated in upstate New York and on Long Island to minimize Republican representation. The reverse has occurred in the state senate to maximize Republican representation in typically Republican leaning areas such as upstate New York.
- **Every district in Long Island in the Assembly was overpopulated by nearly 4 percent, while in New York City, districts were underpopulated by as much as 4 percent** (except for the borough of Manhattan, which was overpopulated by about only 1 percent).
  - **In the Senate, all districts in New York City were overpopulated**, the highest being 4 percent in Queens, while in the 36 districts outside of New York City, 32 of these districts were underpopulated (only 4 districts outside of New York City were overpopulated, all in the New York City metropolitan region in Westchester, Rockland and Orange Counties).
- c. There is now based on 2010 census data, a swing of 26 percent between the largest and smallest assembly district, a difference of nearly 40,000 people. In the senate, there is now a swing of 25 percent between the largest and smallest districts, a difference of over 75,000 people.** Due to shifts in population, many districts once within the 5 percent allowance in

2010 are well over the maximum deviation allowed, pointing to the need for tighter deviations to help prevent the disparities in representation as the years advance after each redistricting cycle. While redistricting every ten years recalibrates district size to reflect population shifts, drawing districts close to the 10 percent margin shows how quickly it can go beyond that acceptable allowance.

- **Over one third of current assembly seats – 52 of 150 – after the 2010 census are now above the 5 percent deviation from the average district size.**
- **Similarly, over one third of current senate seats – 22 of 62 – after the 2010 census are now above the 5 percent deviation.**

### **C. RIGGING THE SYSTEM: HOW NEW YORK'S LINES ARE CURRENTLY DRAWN**

Redistricting is the process that occurs to re draw state legislative and congressional district lines in order to maintain equitably populated electoral districts. Populations are not static, and over time electoral districts no longer represent the populations living within them. Redistricting was designed to protect the balance of power among electoral districts and among states, and ensure that the public is proportionally and fairly represented. Instead redistricting has become a grab for institutional power by those who control the redistricting process – in many cases, as in New York, the legislators themselves.

In New York incumbent legislators currently get to decide how they want their own electoral districts drawn, and which voters will reside in their districts. This essentially entrenches their power, allowing legislators to choose their voters before voters choose them. To ensure the redistricting process does not weaken the democratic process, Citizens Union has long called for reform and at this crucial time calls for reform before the lines are permanently drawn for the next 10 years, starting with the 2012 elections. Redistricting that is underway this year will greatly influence who is elected and, by extension, major policy decisions for the next decade. Citizens Union believes that control of the redistricting process must be removed from the direct control of the legislators – who have self interest in the drawing of lines – and placed into the hands of an independent and impartial redistricting commission guided by clear and consistent guidelines to ensure a fair practice that is accountable and independent of political self interest.

The Legislative Task Force on Demographic Research and Reapportionment (LATFOR) is currently charged with the responsibility of providing technical plans for the reapportionment of state senate, assembly and congressional districts, which are then approved via legislation by the full legislature and signed into law by the governor. The appointment process for members of LATFOR is inherently flawed, with legislators sitting on the appointment commission itself and thus having direct control over the

drawing of district lines. Even worse, the majority parties of each house each appoint two members to LATFOR, while the minority parties each appoint one member. This has led to the majority parties in each house essentially drawing their own lines, turning a blind eye to the other house where the other party is currently in the majority.

In addition to controlling the membership of LATFOR, legislators in the majorities of each house use several tools to retain and extend their grip on power. The rules for drawing lines are both complicated and too lax in New York. The primary federal rules that the state legislature follows in redistricting are those determined by the Voting Rights Act—which protects the right of minority citizens to elect a representative who will protect their interests—and by several United States Supreme Court decisions. U.S. Supreme Court precedent requires that state legislative districts are the same size within a total 10 percent deviation and congressional districts are nearly mathematically equal unless there is some legitimate objective that will be obstructed by this rule. The leeway allowed for the size of state legislative districts, in addition to techniques such as splitting communities, drawing challengers out of districts, and drawing partisan districts that serve to marginalize the minority party of each district, all result in partisan gerrymandering that has inhibited the ability of the legislature to properly serve the public.

#### **D. THE HARMFUL EFFECTS OF GERRYMANDERING**

##### *New York's Gerrymandered Affected Legislature*

Until most recently in 2011, New York's state legislature has historically failed to solve pressing issues in a timely manner. The much maligned body gained a degree of credibility the first half of this year, passing an on time budget and demonstrating it could forge compromises on intractable issues like ethics reform and marriage equality. It appeared that under the leadership of Governor Cuomo, functional government was not only possible but doable. Yet old habits die hard, and the state legislature is sowing the seeds of future dysfunction by maintaining the current system of partisan gerrymandering.

Historic policy gridlock has resulted in a lack of legislative action on a number of issues important to New Yorkers, perhaps most notably the almost always late passage of the state budget over the past two decades. Other historic inaction or delays includes the long term failure to consolidate and make more efficient government entities like school districts and public authorities, and provide mandate relief for localities. Issues like Rockefeller Drug Law reform, high property taxes, and affordable housing have taken years to address in spite of broad public support for change.

Issues of political reform have seen particular stagnation in spite of overwhelming public support. Though the state legislature and governor deserve credit for the passage of ethics legislation which for the first time provides a level of independent oversight over

the legislature and increased disclosure of outside business dealings, campaign finance reform and redistricting reform have failed to be addressed. New York now has the highest spending limits for candidates of the 45 states in the nation that have limits, allowing contributions of over \$100,000 to party committees.<sup>4</sup> Similarly, while states such as California and Arizona have seen the creation of independent redistricting commissions, New York lags behind in removing the conflict of interest inherent in legislators drawing their own seats.

The lack of action on these important issues is largely due to the increased polarization of districts and the creation of “safe” seats in which legislators do not face much competition at the polls, a major result of partisan gerrymandering. The level of partisan bickering reached a new low in the summer of 2009 when the New York State Senate entered into a month long deadlock, the root cause of which can be traced to the last round of redistricting that created an even number of seats in the state senate. The lack of outcomes has led to increased scrutiny of the state legislature and its political processes. Dubbed the “most dysfunctional legislature in the nation,” the New York State legislature has long been criticized for its lack of transparency, accountability and adherence to basic notions of a democratic process.<sup>5</sup>

Voters too are unsatisfied with the state legislature, with an October 2011 Quinnipiac poll finding that 63 percent of voters disapprove of the job the legislature is doing.<sup>6</sup> The low opinion of state government contributes to the disenchantment of New Yorkers who would turn out – or choose not to – at the polls on Election Day.

### *The Partisan Divide*

New York had the longest running political party split between houses of the legislature in the nation, starting in 1974 with the Senate under Republican control and the Assembly under Democratic control for decades. This changed briefly in January 2009 when the legislature was sworn in and Democrats controlled both houses. As a result of the 2010 General Election, Republicans have regained control of the Senate and Democrats continue to hold a large majority in the Assembly, meaning that there is a return to the status quo that existed between 1974 and 2008. This long standing partisan divide can be attributed to, among other things, the lack of competitive elections and the fact that both parties in power use the redistricting process to ensure that their members are protected from serious competition.

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<sup>4</sup> Katz, Celeste. “NYPIRG: New York On Track To Be First State With Contribution Limit Over \$100,000,” Daily Politics. January 21, 2011. Available at: [http://www.nydailynews.com/blogs/dailypolitics/2011/01/nypirg\\_new\\_york\\_on\\_track\\_to\\_be\\_first\\_state\\_with\\_contribution\\_limit\\_over\\_100000](http://www.nydailynews.com/blogs/dailypolitics/2011/01/nypirg_new_york_on_track_to_be_first_state_with_contribution_limit_over_100000)

<sup>5</sup> The Brennan Center has issued several reports on the dysfunctional nature of the New York State Legislature, the first being *The New York State Legislative Process: An Evaluation and Blueprint for Reform* in 2004.

<sup>6</sup> Quinnipiac University Polling Institute, “Keep Race, Job Protection Out Of Redistricting, New York State Voters Tell Quinnipiac University Poll; Cuomo Should Veto Lawmakers' Lines, Voters Say.” October 26, 2011. Available at: <http://www.quinnipiac.edu/x1318.xml?ReleaseID=1667>

## **E. SOLUTIONS TO GERRYMANDERING: CITIZENS UNION'S RECOMMENDATIONS**

The 2010 Census has been conducted and the political ramifications of the new legislative districts that will be drawn in 2011-2012 are enormous. For the U.S. House of Representatives, New York will lose two congressional seats, as it did not grow in population at the rate of other states such as Texas and Florida. Aside from the politics of redistricting, the State Legislature faces increasing public dissatisfaction with the functioning of state government. Voters are also disappointed with the legislature's lack of action thus far on redistricting reform – a chief campaign promise from the 2010 elections – and 48 percent of voters state they would feel betrayed the legislature were to approve district lines the same old way and not put in place an independent commission for 2012.<sup>7</sup> Public outcry for reform, combined with the recent strides states like California and Florida have made towards instituting redistricting reforms, are why Citizens Union believes that we must seize the moment to ensure the rights of New Yorkers are finally protected.

Though our preferred approach of constitutional changes to the redistricting process is no longer a viable option before the 2012 elections, statutory reforms remain possible before lines are drawn. Who draws the lines, what rules determine how lines are drawn, the amount of public input and the approval process are all important factors in considering a new redistricting system for New York. While several models exist for each of these factors and are explored in this report, it is clear that a more independent process is needed in New York.

One legislative proposal, sponsored by then Assemblymember Michael Gianaris and Senator David Valesky, saw advancement in both houses in 2010, passing the Senate Elections and Governmental Operations Committees, and the Assembly Governmental Operations Committee. The legislation (A.3432/S.2543) has been reintroduced in 2011 by now Senator Michael Gianaris and Assemblymember Hakeem Jeffries, and has the support of more than a majority of members of the Assembly and strong support among Democrats in the Senate.

Most notably in 2011, Governor Andrew Cuomo has put forth a program bill (S. 3419/A.5388) for redistricting reform that incorporates many of the elements of the Gianaris legislation. It is sponsored by Speaker Sheldon Silver in the Assembly and has been put into the Rules Committee in the Senate. While the measure has secured overwhelming support in the Assembly, with 96 co sponsors, its deliberate introduction into the Rules Committee in the Senate, where it cannot be co sponsored, enabled the

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<sup>7</sup> Quinnipiac University Polling Institute, "Storm Surge Takes Cuomo Approval To All Time High, Quinnipiac University Poll Finds; Voters Want Gov To Speak Up On Redistricting." September 20, 2011. Available at: <http://www.quinnipiac.edu/x1318.xml?ReleaseID=1647>

Senate majority to effectively stall its movement and prevent indications of support by rank and file members of both parties.

Statutory approaches to redistricting reform have predictably seen resistance, particularly from the Senate Republican Majority which claims that legislation introduced by Governor Cuomo is unconstitutional. In response, Citizens Union and the leaders of the ReShapeNY coalition released a legal memo written pro bono by the prestigious international law firm Weil, Gotshal and Manges LLP<sup>8</sup>, which concluded that the Cuomo redistricting reform bill is indeed constitutional, as well as similar legislation introduced by Senators Gianaris and Valesky, and Assemblymember Jeffries. The legislation is consistent with the legislature's ability to delegate its powers in a circumscribed manner and does not violate the separation of powers between different branches of government.

In perhaps one of the more cynical acts of 2011, a measure to amend the State Constitution to alter the redistricting process was passed by the State Senate in March. The legislation (S.3331) was sponsored by Senator John Bonacic, and while heralded by the Senate Republican Majority as creating a more independent redistricting process and absolving the conference of its commitments to voters to pass redistricting reform, it was opposed by reform advocates as not containing a truly independent commission and not being effective until 2022. As a constitutional amendment, it could not have taken effect this redistricting cycle, and therefore was dismissed by New York Uprising (a PAC founded by former Mayor Ed Koch supporting reform in Albany) as not satisfying their campaign pledge.

### *Common Ground for Reform*

While the legislature has yet to come to consensus around the details of redistricting reform in advance of 2012, there is broad agreement on the principles of change as seen in redistricting reform bills sponsored in the legislature that during the 2011 legislative session, as mentioned previously.

The major redistricting reform proposals are:

- S.3419/A.5388 (Cuomo/Silver)
- S.2543/A.3432 (Gianaris/Jeffries)
- S.3331/A.5271 (Bonacic/Galef – passed the Senate on March 14, 2011 with a vote of 35 to 24, with 3 Senators absent or excused)
- S.660/A.5602 (Valesky/Cahill)

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<sup>8</sup> Weil Gotshal Memorandum to Citizens Union. Available at:  
[http://www.citizensunion.org/www/cu/site/hosting/Redistricting/WeilGotshal%20Manges\\_memo\\_on\\_constitutionality\\_of\\_Cuomo\\_bill\\_FINAL.pdf](http://www.citizensunion.org/www/cu/site/hosting/Redistricting/WeilGotshal%20Manges_memo_on_constitutionality_of_Cuomo_bill_FINAL.pdf)

All of these bills possess the following core principles:

- 1) **Legislators should not draw district boundaries.** All four proposals recognize the conflict of interest that occurs when legislators draw districts for the very offices they will run again for. All four proposals put the district drawing pen in the hands of non legislators.
- 2) **Those with political influence should be disqualified from being members of the independent redistricting commission.** All four proposals have prohibitions that are aimed to prevent political insiders too closely affiliated with legislators and therefore, also have a conflict of interest, from drawing maps.
- 3) **Majority and minority parties in both houses of the legislature should be equally represented on the independent commission.** The bills all reflect the conclusion that majority and minority parties have an equal stake in a fair redistricting process and should therefore have equal representation on any commission that draws the lines. This will prevent majority parties, whether they are Democrats or Republicans, from using redistricting as a political cudgel against their minority colleagues in the legislature.
- 4) **Less Incumbent Protection.** All proposals seek to prevent elections with preordained outcomes by prohibiting lines drawn to favor or disfavor particular incumbents, challengers, or parties.
- 5) **One person/One Vote, The Voting Rights Act, Contiguity, and Compactness are all criteria in common for drawing district boundaries.** All proposals, in accordance with federal law, identify One person/ One Vote and the Voting Rights Act as being criteria that must be followed in making maps. All proposals also include contiguity and compactness as goals in drawing district boundaries.

Given the lack of action to create an independent redistricting process for 2012, Citizens calls on the state legislature to return in a special session this fall to enact statutory redistricting reforms and fulfill legislators' commitments to voters.

## *CITIZENS UNION RECOMMENDATIONS: A New and Impartial Approach*

Given the state legislature's authority under the State Constitution to approve district lines, the only way to establish an absolutely independent redistricting process is through a constitutional amendment. While we still support and prefer a constitutional amendment, it is too late for a constitutional amendment to take effect before the 2012 elections. For this redistricting cycle, Citizens Union has supported legislation to create an independent process through statute, coupled with passage of a constitutional amendment to create permanent reform.

With little time remaining to propose and finalize lines for 2012, Citizens Union calls on the Governor, the State Senate, and the State Assembly to resolve the impasse on redistricting and adopt a two staged approach in achieving redistricting reform. The first stage would involve enacting legislation that creates a less than ideal reform approach for 2012, but one that is consistent with the principles of current reform proposals put forward by Governor Cuomo, Senators Gianaris and Valesky, and Assemblymember Jeffries. An independent panel, appointed directly and equally by the four legislative leaders but on which no legislator would serve, would inherit the work done to date by LATFOR and be guided by established and agreed upon criteria. The criteria would not be as strong as originally proposed, but sufficiently clear so as not to continue the rigged practice of political manipulation in the drawing of lines for partisan gain. This process and panel would still recommend maps to the legislature, which would have the final say.

In accepting this less than ideal approach, Citizens Union would insist on it being coupled with a second stage. This year's "reform light" legislative approach must be tied to first passage of a much stronger constitutional amendment that would bring wholesale change to the redistricting process and create a new impartial and independent process – one promised to the voters in the campaign of 2010.

We recognize that a statute alone cannot take the process entirely out of the hands of the legislature. Our long standing proposal, therefore, is intended to create a degree of independence by: establishing an independent commission with a certain degree of legislative input; giving the commission clear standards to follow; and requiring the legislature to act on its plans, while recognizing that the ultimate decision still remains with the legislature, which can reject the independent commission's recommendations if it so chooses. As previously mentioned, however, the Governor has pledged to veto any redistricting plan that is not independent, so there is greater onus on the legislature to accept a plan that is drawn independently.

With the goal of establishing a fair solution that will put an end to partisan maneuvering and ensure that the public interest is served in the redistricting process, Citizens Union provides the following recommendations and framework for creating an independent commission via statute or constitutional amendment. Our ideal solution is provided

below, and while we recognize that there is not currently time for a full independent process to unfold for this cycle, particularly with regards to forming an independent commission through a nominating pool, we provide the framework below for an ideal statutory solution or constitutional amendment creating an independent commission. This proposal would be truncated for a statutory solution for 2012, consistent with the goals of creating a more independent and fair process.

### **1. Creation of Nominations Committee to Select Potential Commission Members**

While Citizens Union would prefer that an independent commission be given full authority over the redistricting process without sign off by the legislature, we support avenues to allow legislative input and for the legislature to make appointments to the commission. We also recognize that the legislature is unlikely to pass legislation amending the constitution to fully remove its role in the process.

Citizens Union believes a nominations committee should be formed to select a pool of candidates for appointment to the redistricting commission. In order to advance needed reform before 2012 via statute, however, there is no longer time for a nominations committee to be formed. The two step process of a nominations committee in a constitutional amendment would be used to provide a degree of separation from the elected officials whose district lines will be drawn by the commission. We also support prohibitions on membership on the commission and requiring consultation with organizations devoted to protecting the voting rights of minorities and other voters in order to remove potential conflicts and ensure diversity.

Legislative representation should be balanced with statewide representation through appointments by the governor, attorney general, comptroller and chief judge, for example, to enhance independence and provide for broader perspective of the nominating commission.

The nominations committee would be composed of eight members, with the following individuals appointing members of the commission:

- the governor – 4 members, 2 from each major party;
- the temporary president of the senate – 2 members;
- the speaker of the assembly – 2 members;
- the minority leader of the senate – 2 members; and
- the minority leader of the assembly – 2 members.

No member of the appointed nominations committee shall:

- hold or have held within the previous four years an elected government office or any other partisan appointed governmental or political party position;
- be employed or have been employed within the previous four years in any other position by the US Congress, the State Legislature, or the Executive Chamber;
- be or have been within the previous four years a registered lobbyist in New York;
- be a spouse of or related to any member of the US Congress, the State Legislature, or the Executive Chamber; or
- hold or have held a position within the previous four years as a senior campaign staffer for candidates running for office in New York State for state or federal office, or for political committees operating in New York State.

## **2. Selection of a Nominations Pool**

The nominations committee would then select a pool of nominees, or “nominations pool,” which would represent the diversity of the state with regard to race, ethnicity, and gender; would include persons from each region of the state (Long Island, New York City, Hudson Valley, Northern, Central, Southern Tier, and Western); and would include a total of 40 persons:

- 15 enrolled Democrats,
- 15 enrolled Republicans, and
- 10 persons not enrolled in either party

No member of the nominations pool shall:

- hold or have held within the previous four years an elected government office or any other partisan appointed governmental or political party position;
- be employed or have been employed within the previous four years in any other position by the US Congress, the State Legislature, or the Executive Chamber;
- be or have been within the previous four years a registered lobbyist in NY;
- be a spouse of or related to any member of the US Congress, the State Legislature, or the Executive Chamber; or
- hold or have held a position within the previous four years as a senior campaign staffer for candidates running for office in New York State for state or federal office, or for political committees operating in New York State.

### **3. Formation of the Independent Citizens Redistricting Commission**

The redistricting commission would consist of a total of 11 members selected from the nominations pool. In a statutory approach for 2012, however, there is no longer time for a nominations committee to form and select candidates, so a different approach will be needed to form an independent commission as is possible in the time allowed. Eight of these selected members would be appointed from the nominations pool by each of the legislative leaders as follows:

- 2 members by the temporary president of the senate;
- 2 members by the speaker of the assembly;
- 2 members by the minority leader of the senate; and
- 2 members by the minority leader of the assembly.

These 8 members would then appoint 3 additional members from the nominations pool, 1 of whom would serve as chair of the commission, for a total of 11 members.

Citizens Union believes that the structure as outlined above would be a significant improvement from the status quo in which the minor parties in each house are marginalized by having fewer appointments to the redistricting body. Further consideration, however, should be given to the presence of gubernatorial appointments on the redistricting commission to provide a statewide perspective and greater independence. We recognize that there may be legislative resistance to such appointments; however, given the full legislature's ultimate approval of the redistricting plans and ability to amend a final plan under this proposal, this resistance does not have a sound basis. In the absence of a nominations pool, which provides a layer of separation between the legislature and its appointments, Citizens Union believes gubernatorial appointments would be an important addition to those that would be made directly by the legislative leaders.

No more than 4 members of the redistricting commission would be enrolled in the same political party, and members would be selected to represent the diversity of the state to the extent practicable. As the members would be selected from the "nominations pool," they would be composed of registered voters of the State of New York who do not hold, or have not held, an elective office, a party position or an appointment to a partisan position; have not been employed as a lobbyist within four years of selection to the redistricting commission; are not the spouse or relative of an elected official in the state legislative or state executive branch or the U.S. Congress; and have not held a senior position in a campaign for a state or federal office, or for political committees operating in New York State for the previous four years.

#### **4. Establishing Fair Criteria for the Drawing of Lines**

Just as important as who holds the pen in drawing district lines are the rules that must be followed in the formation of districts. The current maps of district lines are drawn for partisan goals rather than in the interests of the voting public, and often split communities and result in voter confusion.

Citizens Union specifically recommends that four main requirements be followed in the drawing of lines, consistent with the requirements of federal law, including the federal Voting Rights Act of 1965 (to the extent that they are applied via statute, consistent with the State Constitution):

- (a) all congressional districts shall be as nearly equal in population as is practicable;
- (b) each district shall consist of contiguous territory; no district shall consist of parts entirely separated by the territory of another district of the same body, whether such territory be land or water, populated or unpopulated. A populated census block shall not be divided by a district boundary, unless it can be determined that the populated part of such block is within a single district;
- (c) senate, assembly, or congressional districts shall not be established that are intended to or result in a denial or abridgement of minority voting rights including the opportunity of minority voters to participate in the political process and to elect the candidates of their choice, including but not limited to instances in which minority populations do not comprise a majority of the district; and
- (d) senate, assembly, or congressional districts shall not be drawn with an intent to favor or oppose any political party, any incumbent federal or state legislator, or any previous or presumed candidate for office.

In addition to the required principles (a), (b), (c) and (d) above, the following prioritized principles would be used in the creation of senate, assembly, and congressional districts *to the extent practicable*.

- (i) the most and least populous senate districts shall not exceed or be lower than the mean population of all senate districts by more than one percent, and the most and least populous assembly districts shall not exceed or be lower than the mean population of all assembly districts by more than one percent. In no event shall the commission advantage any region of the state over any other by creating multiple districts therein exceeding or lower than the mean population by more than one percent.
- (ii) a senate, assembly, or congressional district shall unite communities defined by actual shared interests, taking account of geographic, social, economic, and other factors that indicate commonality of interest, and districts shall be formed so as to promote the orderly and efficient administration of elections.

- (iii) counties shall not be divided in the formation of districts, except to create districts wholly within a county. Where such division of counties is unavoidable, more populous counties shall be divided in preference to the division of less populous counties. To the extent practicable, if any assembly district or any senate district includes the territory of two counties, then no other assembly district or senate district shall include territory of both of the same two counties.
- (iv) county subdivisions shall not be divided in the formation of districts, except to create districts wholly within a county subdivision. For the purposes of this article, a county subdivision shall be a city, except the city of New York, a town, or an Indian reservation whose territory is exclusive of the territory of any city or town. County subdivisions with larger populations shall be divided in preference to the division of those with smaller populations.
- (v) incorporated villages shall not be divided in the formation of districts.
- (vi) the senate, assembly, and congressional districts shall be as compact in form as possible.

In presenting its plan to the legislature and the public, the legislature should be required to submit a standardized scorecard indicating compliance with the criteria and requirements, presenting the plan's score on each of the aforementioned principles.

## **5. Creating an Open and Transparent Process**

The commission should submit the first plan to the legislature after holding required public hearings throughout the state in the following locations: Albany, Buffalo, Syracuse, Rochester, Glen Cove, White Plains, and Bronx, Kings, New York, Queens and Richmond Counties. To the extent practicable, meetings should be webcast.

Regarding the materials used for redistricting, the commission should make available to the public in print form and in electronic form on the internet, using the best available technology, all redistricting plans, relevant data and web based mapmaking software used to prepare such plans, information on the members of the redistricting commission and all other relevant information. The commission should be required to post plans submitted by the public on its website and consider public plans in the formulation of its plans.

## **6. Encouraging Approval of the Independent Plan**

Citizens Union recommends that the legislature have the opportunity to provide feedback on up to two plans submitted by the commission, and can only amend a third plan with amendments that meet the statutory guidelines established. In addition, the legislature should be constrained from making amendments that affect more than 2 percent of the population of any district. In a statutory scheme, the ability to comment and amend the plan is consistent with the state legislature's authority under the State Constitution to ultimately approve a redistricting plan. Ideally in a constitutional

amendment, the independent commission's plan would not require legislative approval, but Citizens Union recognizes that the state legislature is unlikely to approve legislation removing their role in the approval process. The process would work as follows:

- The first plan would require a vote of the legislature without amendments. If the proposal is rejected, the commission would submit an amended proposal after hearing the reasons given by the legislature regarding the first plan's rejection at a public hearing.
- The second plan, again, would be voted upon by the legislature without amendments. If the second proposal is also rejected, the commission would submit a third plan following a second public hearing at which the legislature would testify.
- The third plan would be subject to the normal amendment process within the established statutory guidelines for redistricting, given the legislature's ultimate authority over redistricting under the State Constitution.

The Court of Appeals should be given original and exclusive jurisdiction over challenges to the redistricting plan to prevent "forum shopping" and to allow for the expedited review of suits from members of the public.

### *Citizens Union Recommendations For 2012 Redistricting Plans*

Regardless of what entity will draw district lines for the 2012 elections, Citizens Union has a number of recommendations regarding how the maps should be drawn. Through our research of the current process, we have identified instances in which communities have been split apart and certain groups have been marginalized in order to protect incumbents. The maps that will be drawn will have a profound impact on communities throughout the state, and we believe that the state must take action to allow for fair representation for all New Yorkers. Citizens Union's recommendations for the lines drawn in 2012 are listed below.

- 1. Greater Opportunities Should be Given for Minorities to Elect Candidates of Their Choice** - The diversity of the state is not reflected in our elected representation, as discussed in Section 5b of this report. Taking into consideration growing minority populations in New York, particularly in New York City and Long Island, we recommend the following:
  - **New York City**
    - **Asian Americans should be given greater opportunities to elect candidates of their choice in the City of New York through the creation of one or more majority-minority districts in each house.** The borough of Queens has only one Asian American state legislator in the Assembly, and Asian Americans have no representation in the Senate. It should also be noted that Asian Americans are a diverse community, and that South Asians communities are also growing in New York City.

- Flushing, Queens; Elmhurst, Queens; Sunset Park, Brooklyn; and Dyker Heights, Brooklyn are areas for possible districts given growing Asian American populations.
- **Latinos should be given greater opportunities to elect candidates of their choice in the City of New York through the creation of one or more majority-minority districts in each house.** Latinos hold only 19 seats in the state legislature (9 percent), while having 17.6 of the state's population.
  - Washington Heights and Inwood, Manhattan; as well as Jackson Heights, Queens are areas for possible districts given growing Latino populations.
- **Long Island**
  - **Growing Black and Latino communities in Long Island should be given greater opportunities to elect candidates of their choice, particularly in the State Senate,** and consideration should be given to the creation of opportunity to elect districts where these communities do not comprise a majority of the district.
    - The town of Hempstead in Nassau County and the towns of Islip and Babylon in Suffolk County are areas for possible districts, given growing minority populations.
- 2. **Cities in Upstate New York Should Not Be Carved Up** – Upstate New York's urban areas have been divided up for partisan advantage in both houses of the legislature. Consideration should be given to respecting the existing political boundaries of cities so that these urban communities can remain whole and have more unified representation in the state legislature. These include but are not limited to the cities of Buffalo, Rochester, Albany, Syracuse, Schenectady and Utica. New York's cities should be represented by as few districts as dictated by the population, to the extent that it protects the unified voice of these communities.

## F. MAKING REFORM A REALITY

New York State is in need of fundamental change to the way in which legislative district lines are drawn. Decades of gerrymandering have resulted in polarized discussion and on too many occasions a less than fully functional state legislature that shields itself from competition—and therefore from accountability. Now is the time to end the self interested drawing of district lines by legislators, and create an independent commission as well as clear and consistent rules for the drawing of lines.

### *Unprecedented Support for Redistricting Reform*

The future of redistricting reform is in the hands of the state legislature, who must approve legislation to create a more independent process, and the governor, who would sign the legislation into law. There is unprecedented and historic support for creating an independent commission to draw district lines, with a majority of legislators in both houses, 184 of 212, including a majority of both conferences in each house of the legislature, supporting the creation of an independent commission to draw district lines according to fair and objective criteria, as stated above.

In addition to the unprecedented level of legislative support, public opinion polls show the highest ever public support for independent redistricting: 77 percent of voters support an independent commission to draw district lines. The voters also agree that Governor Cuomo should veto lines that are not drawn by an independent commission, with 49 percent of those polled in agreement and only 30 percent disagreeing.<sup>9</sup>

While the legislature has conducted public hearings throughout the state with the intent to solicit public input on how maps should be drawn, a significant number of those testifying have pointed to the need to change the process itself. At LATFOR hearings throughout the state, the public has continued to call for an independent commission and a fair process, including members of the ReShapeNY coalition. The public has spoken loud and clear in favor of reform, and will continue to speak in favor of an independent commission to draw state legislative and congressional district boundaries according to fair and objective criteria while allowing for robust public input into the process.

Pressure has also been mounting in the media, with a new editorial nearly every month this past year from news outlets throughout the state asking for an independent process to be put in place in advance of 2012 as LATFOR has continued its road show of public hearings.

Legislators must honor their word and keep their commitments by returning to Albany in a special legislative session to finally end partisan gerrymandering and enact redistricting reform. New Yorkers have already waited for many decades for redistricting reform. The fulfillment of that promise cannot wait another ten years.

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<sup>9</sup> Quinnipiac University Polling Institute, "August 11, 2011 New York Voters Back Fracking, Despite Concerns, Quinnipiac University Poll Finds; More Women In Government Means Fewer Sex Scandals." August 11, 2011. Available at: <http://www.quinnipiac.edu/x1318.xml?ReleaseID=1635>