



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the State Senate Majority Conference and
Senate Legislative Task Force on Demographic Research and Reapportionment
on the Need for Redistricting Reform
December 14, 2010

Good morning, Co-chair and Senator Dilan and Dr. Flateau. My name is Dick Dadey, and I am the Executive Director of Citizens Union of the City of New York, an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good. We thank you for giving Citizens Union and the public the opportunity to comment on the important topic of how legislative lines are drawn in New York.

While we appreciate the opportunity to discuss the goals and criteria for the drawing of legislative lines – which I will address – given the public discussion of, and broad public support for, an independent commission, I will direct much of my comments to the creation of an independent redistricting commission. Citizens Union firmly believes that we cannot have truly fair redistricting unless we remove the inherent self-interested conflict of legislators drawing their own district lines. The partisan practice of gerrymandering of where legislators draw districts choosing their voters before the voters choose them must end. The result of this partisan control has been the splitting of communities, challengers being drawn out of districts, and districts sprawling across too many communities and too many counties make it difficult for some legislators to properly serve their constituents. Creating an independent commission to draw the lines will ensure that the broader public interest will be served and not partisan legislative interests.

The public has been clamoring for the creation of an independent redistricting commission, with 59 percent of voters – across all parties – believing that legislators should pledge to create an independent body to draw district lines.¹ Legislators have responded to this public clamor for redistricting reform. An overwhelming majority of State Senators have pledged to support the creation of an independent commission, including a majority of the Democratic conference. A total of 19 members of the current Majority conference have made such a pledge, as have 5 additional Senate Democrats who are newly coming into office on January 1st. When you add several additional senators who did not sign a public pledge but are co-sponsors of Senator David Valesky and Assemblymember Michael Gianaris's legislation, S.1614-B/A.5279-B, which has passed two Senate Committees this year – Elections and Governmental Operations – there is clearly a groundswell of support for this important reform in the Senate. Given this level of support from the public and the legislators themselves, I ask the question, why are we not moving forward with passing S.1614-B?

I'd like to take this opportunity to discuss what we believe constitutes an independent commission, as is represented in S.1614-B, as well as the criteria established for drawing the lines in this legislation, as is the subject of this hearing today. Citizens Union believes that an independent commission, together with an established set of criteria for drawing lines, will provide the best result for the public in terms of representation and improving confidence in the process. It is important to note that Senator Valesky's legislation preserves an important role for the legislature in drawing district lines, as under the State Constitution, the legislature must approve the final redistricting legislation.

¹ Quinnipiac University Polling Institute, "New York State Is Dysfunctional, 83% Of Voters Say, Quinnipiac University Poll Finds." 6/23/2010. Available at: <http://www.quinnipiac.edu/x1318.xml?ReleaseID=1469>

Creating an Independent Redistricting Commission

In order to create a better process for drawing district lines, one must not only look at the criteria or rules used for drawing the lines, but also the criteria for membership on the redistricting commission. Citizens Union believes that the criteria for membership that is present in the Valesky/Gianaris legislation, taken together with the two-step appointment process, creates the necessary structural independence for forming the commission that will draw district lines. Under the legislation, there would be a nominations committee that would create a “pool” of potential redistricting commission members, with the nominations committee composed of eight members. The Senate Majority Leader, the Speaker of the Assembly, the Senate Minority Leader, and the Assembly Minority Leader would each choose two such members.

Under the legislation, no member of the nominations committee shall:

- Hold or have held within the previous two years an elected government office or any other partisan appointed governmental or political party position;
- Be employed or have been employed within the previous two years in any other position by the US Congress, the State Legislature, or the Executive Chamber;
- Be or have been within the previous two years a registered lobbyist in NY; or
- Be a spouse of or related to any member of the US Congress, the State Legislature, or the Executive Chamber.

Citizens Union and our good government colleagues believe that the above prohibitions on membership and two-year black out periods are essential to ensuring the independence of the body and removing conflicts of interest. We also believe that by creating this additional layer of separation adds independence to the process, by ensuring that legislators cannot directly appoint commissioners of the redistricting commission.

The committee then chooses member of a “nominations pool,” from which the members of the redistricting commission will be appointed. The Committee would establish, based on majority vote, a list of forty eligible persons for the “Nominations Pool.” The Nominations Pool would represent the diversity of the state with regard to race, ethnicity, and gender; would include persons from each NY region (Long Island, New York City, Hudson Valley, Northern, Central, Southern Tier, and Western); and would include fifteen enrolled Democrats, fifteen enrolled Republicans, and ten persons not enrolled in either party. Nominees shall not fall under any of the above listed categories of political affiliation as would be prohibited for nominations committee members.

The redistricting commission would then be established (called the “Apportionment Commission”), which would assist the legislature in the reapportionment of Congressional, Senate, and Assembly districts based on the ensuing Federal Census. The Commission will be made up of eleven members chosen from the “nominations pool” (which as previously noted is balanced with regard to party and diversity), with eight appointed by the following: two each from the Senate Majority Leader, the Speaker of the Assembly, the Senate Minority Leader, and the Assembly Minority Leader. The three remaining Commission members will be appointed by the eight initially appointed members. No more than four members shall be enrolled in the same political party, and to the extent practicable would represent the diversity of the state with regard to race, ethnicity, gender and geographic residence.

Drawing the Lines

Under S.1614-B, there are four main requirements that must be followed in the drawing of lines, the first three of which are mirrored in federal law or case precedent:

- (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. (It should be noted that this requirement includes language that is stronger than that provided by the federal Voting Rights Act); 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 principles I will go through next would be followed in the creation of senate, assembly, and congressional districts to the extent practicable. For these criteria, a principle with a lower number shall have precedence over a principle with a higher number. It is important to emphasize that the criteria in S.1614-B is prioritized, meaning that the overarching principles of (a) – (d) would be of foremost importance. For example, in order to meet the requirements of (c) with regard to voting rights, a district may not necessarily be compact as per (v) below.

- (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) 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.
- (iii) 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.
- (iv) incorporated villages shall not be divided in the formation of districts.
- (v) the senate, assembly, and congressional districts shall be as compact in form as possible.
- (vi) 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.

We would also like to note that the S.1614 was changed in the 2010 version to include criteria that were established in a program bill supported by former Governor Eliot Spitzer, which were developed and vetted by various groups, including good government, voting rights, and civic organizations. This new version of the legislation also does not require competitiveness to be used as a criterion for drawing district lines. Citizens Union believes that it is not necessary for competitiveness to be a criterion, as the other criteria together ensure that districts are not drawn to be uncompetitive. For example, as noted in (d) above, lines should not be drawn to intentionally discourage competition.

Public Input and Final Legislative Approval

The commission would submit the first apportionment plan to the legislature after holding required public hearings throughout the state in the following regions: Albany, Buffalo, Syracuse, Rochester, Glen Cove, White Plains, and Bronx, Kings, New York, Queens and Richmond Counties. Currently, LATFOR is not required to hold such hearing, though has in practice held hearings throughout the state.

The public would also have access from the commission's website, using the best available technology, all apportionment plans, relevant data and mapmaking software used to prepare such plans, information on the members of the apportionment commission and all other relevant information. We believe that this level of transparency is essential to allowing the public to adequately review plans and operations of the commission, and offer feedback.

Under the Valesky legislation, the Legislature has 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. This is consistent with the Legislature's authority under the State Constitution to ultimately approve a redistricting plan. Citizens Union also believes that this preserves an important role for legislators, who have great familiarity with the communities represented in their districts. 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, given the legislature's ultimate authority over redistricting under the State Constitution. We believe that holding public hearings regarding the legislature's objections to the plan will allow for a public discussion of these objections, as well as add an important level of transparency to the process.

Size of the Senate

Citizens Union would also like to respond to the request of the Task Force regarding an additional issue that is not addressed by S.1614-B. Regarding the size of the State Senate, the variability of the number of Senate seats is determined by the State Constitution and court precedent, and therefore any changes to this formula would need to be made via constitutional amendments. We believe that the increase in size from the 2002 redistricting to 62 seats was the result of political maneuvering, and believe that this discretion should be removed. Though we do not have a position on whether the size should be fixed, in general we believe that even-numbered bodies are more prone to gridlock.

I thank you for the opportunity to present Citizens Union's views on the redistricting process, and am available to answer any questions you have.