

RESHAPING NEW YORK:

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

A Citizens Union Report

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The version of this report originally released in November 2011 contained an oversimplification of data regarding the competitiveness of elections in New York State. The report stated on pages 3 and 55 that in 2006, 100 percent of the incumbents that ran for re-election were victorious. The statement should have read that 100 percent of incumbents running for re-election in the 2006 General Election in New York City were victorious. The incumbent re-election rate of 96% statewide from 2002 to 2010 remains correct, and considers both primary and general elections. - January 4, 2012.

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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).¹

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.

¹ 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.² Twenty-four members of the Senate Democratic Conference have committed to not override the Governor's veto³ 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.

² 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/>

³ 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/>

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.⁴ 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.⁵

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.⁶ 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.

⁴ 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>

⁵ 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.

⁶ 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 2012.⁷ 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

⁷ 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 LLP⁸, 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)

⁸ 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

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.⁹

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.

⁹ 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>

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Introduction

This report is the culmination of several years of research by Citizens Union Foundation staff. It has been an evolving product, as the path of redistricting reform has taken many turns. Support for redistricting has grown tremendously within state government in recent years and the issue has also seen a resurgence of public and media interest with the completion of the 2010 Census and the start of the process of drawing district lines for the state legislature and the U.S. House of Representatives. At this point in time, redistricting reform is a top priority for New Yorkers, and one that must be addressed by the state legislature in a special session in order to have an affect before the 2012 elections.

Citizens Union Foundation intends for this report to be both relevant to today's debate in Albany regarding redistricting reform for the 2012 cycle, and as an historic document noting trends of decreased voter participation and confidence in state government over time, as well as the lack of competition in the state's elections. To balance these two goals, we provide significant research of the state's elections and a long-term view of issues such as legislative gridlock and polarization of the legislature, while also noting the support in 2011 for proposals to create an independent commission. This report utilizes this research and case studies to demonstrate why redistricting reform is needed in New York State, showing the connection between redistricting reform and the lack of action on issues of importance to New Yorkers in Albany. The report is also a primer on the redistricting process and the means by which communities have been marginalized and partisan interests and incumbency have been protected over the needs of voters.

Reformers have long decried the state's redistricting process, and Citizens Union, first founded in 1897, has been a participant in the call for reform for decades. In the 1980s, we drew our own legislative maps, forming a "shadow commission," and in the 1990s, we continued to advocate for a more independent and fair process for drawing district lines. As has often been the case in Albany, reform has taken a back seat to other issues, and entrenched partisan interests have failed to address the flaws of the state's redistricting process.

Looking ahead to the 2012 redistricting cycle, Citizens Union with its coalition partners first drafted state legislation in 2005 with then Assemblymember Michael Gianaris (D-Queens), to create an independent commission to draw legislative district lines. Legislative support has steadily increased, and legislation was also introduced by Governor Andrew Cuomo in 2011 which proposed the creation of an independent commission, modeled after the Gianaris legislation. Today, 184 of the 212 members of the state legislature have either signed on to legislation creating an independent commission or pledged to support such a reform.

Public support for reform is stronger and more diverse than ever before, as exemplified by ReShapeNY, Citizens Union's statewide campaign for redistricting reform formed in early 2011. ReShapeNY is comprised of a coalition of over 37 organizations from across the state, including civic groups, issue-advocacy groups, unions and business groups united in the common goal to reform our state's redistricting process. ReShapeNY seeks 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.

Citizens Union, along with the League of Women Voters of New York State and the New York Public Interest Research Group (NYPIRG) serve on the leadership team of ReShapeNY. Members of the Steering Committee and endorsers of the campaign include ACT NOW, the Association for a Better NY, Citizens Committee for New York City, Citizens for a Better New York, the Interfaith Alliance of Rochester, Natural Resources Defense Council, New York Uprising, the Long Island Progressive Coalition, the Mental Health Association of New York, MinKwon Center for Community Action, the Public Employees Federation, the Regional Plan Association, and Transportation Alternatives, among others.¹⁰

A number of high-profile New Yorkers serve as ReShapeNY's co-chairs from across party lines, including Former Democratic New York City Mayor Edward I. Koch, former Republican State Senator Frank Padavan, former Democratic Attorney General Robert Abrams, and former Republican Candidate for State Comptroller, Harry Wilson. These co-chairs are joined by six other significant civic and public service leaders: John Avlon, Phoebe Bender, Dr. Gerald Benjamin, Rev. Calvin O. Butts III, Grace Lyu-Volckhausen, and Lillian Rodriguez Lopez.

Media attention has increased on the issue, as the legislature has failed to enact legislation creating a more independent and fair process. Editorials have been written across the state in recent months calling for independent redistricting by the New York Times, the Rochester Democrat and Chronicle, the Albany Times Union, the New York Daily News, the Buffalo News, Newsday, the Oneida Dispatch, the Henrietta Post, the Gates Chili Post, the Poughkeepsie Journal, Wayne County Messenger Post, the Staten Island Advance, Crain's New York, the Utica Observer Dispatch, Hudson Valley Journal News, Schenectady Daily Gazette, the Corning Leader, and the Herald Community papers in Long Island. Op-eds and letters to the editor have also been printed in papers across the state, pointing to further public support for reform.

Governor Cuomo made his stance known on redistricting reform during the 2010 campaign season, and has now repeated several times his pledge to veto district lines that are not drawn independently or are partisan. He has further stated that he does not believe that the Legislative Task Force on Demographic Research and Reapportionment (known as LATFOR, which is the current body responsible for drawing lines) can be nonpartisan. Ignoring the public will and continuing with LATFOR proceedings, though the only legally mandated process at this time, will

¹⁰ The full list of ReShapeNY coalition members is available in Appendix 7.

only end in Governor Cuomo vetoing the lines, making this entire process a waste of time until the power of the pen is placed in the hands of an independent commission.

The state legislature is in an untenable position having not passed reform supported by the public, civic groups, the Governor, the media, and its own members and continuing the status quo – thereby sowing the seeds of future inaction and polarization on big issues.

Citizens Union's recommendations as provided in this report provide the framework for an independent commission to draw district lines according to fair and objective criteria while allowing for robust public input. It may be past time for all the elements of these reforms to be put in place for this redistricting cycle, but it is not too late to still create an impartial process for 2012 and a more lasting level of reform in the form of a constitutional amendment.

The work that is being conducted by LATFOR could easily be taken over by an independent commission, who would consider the public input given thus far and seek additional comment in drawing maps for submission to the legislature. The last of LATFOR's public hearings have concluded soliciting input on the public before maps are drafted. Indeed, we would hope that it would not be currently drawing lines without considering the public input given at these hearings. Not only is reform still possible, it is needed more than ever.

New York government saw one of the most productive legislative sessions in recent memory in 2011. Redistricting reform, however, is the major piece of unfinished business. Citizens Union calls on the state legislature to return to Albany in a special session and keep their promises to finally end partisan gerrymandering and enact redistricting reform. New Yorkers have waited decades for redistricting reform, and we now have a once-in-a-decade opportunity to draw the lines in 2012 for the better. We cannot wait another ten years for reform, and urge immediate action by the legislature to put an independent commission in place to finish the job of LATFOR.

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Rigging the System: How New York State's Legislative Districts are Currently Drawn

The power to draw congressional and state legislative district lines, as mandated every ten years by the U.S. Constitution, has been largely left to the states. States must undertake redistricting following every census, and 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. Here in New York, as elsewhere, it is also a key factor in determining whether the state's minority communities will have sufficient political strength to elect candidates of their choice. Under the current system of redistricting in New York State, the majority party in each house of the state legislature is essentially given the power to design districts through their appointment powers to the body in charge of drawing the maps. In practice, leaders of both houses, with input from fellow majority members, have determined how district lines will be drawn independently of one another. In one legislative bill, the Senate and Assembly – led by the majorities in each house – have historically passed each others' plans to preserve their own majorities and the seats of incumbents in their party, and the plan has been passed with little input from the Governor.

With an eye toward maintaining power and incumbency, political leaders use a myriad of tools and careful calculations to craft districts that minimize not only the electability of an opposition party or independent candidate, but also of insurgent candidates within the majority party as well as communities that are growing in electoral strength that can potentially threaten an incumbent's hold on power.

A. A BRIEF HISTORY OF REDISTRICTING

The U.S. Constitution requires that congressional district boundaries for the House of Representatives be reapportioned and redrawn every ten years to reflect population shifts detected by the Federal census.¹¹ As is the practice, in every year ending in "1", the allocation of congressional seats among states for the House of Representatives are reapportioned to reflect changes in population, with the number of a state's congressional districts based upon each state's proportion of the national population. While the national total number of congressional house seats has essentially remained static at 435 since 1929,¹² reapportionment in each state might alter the number of congresspersons that each particular state sends to Washington following the decennial census.

¹¹ U.S. Constitution, Article 1, § 2.

¹² 435 seats were established by Public Law 62-5, which took effect in 1913.

Dating back to the country's founding, politicians have realigned and redrawn political districts to attain or protect power. Legend has it that Patrick Henry tried to draw James Madison out of his district in the late 1780s.¹³ A Massachusetts newspaper in 1812 printed a comical depiction (at right) of an oddly shaped district that gave rise to a name for the practice. According to lore, the artist and editor looked at a cartoon and dubbed it "Gerrymander," a combination of the name of then Governor Elbridge Gerry and the amphibious "salamander" it resembled.



Illustration 1: "The Gerry-Mander" by Gilbert Stuart. Originally published in the *Boston Centinel*, 1812.

Until the last half century, the courts or the federal government rarely intervened in redistricting efforts. However, prior to 1960, the state of Tennessee had failed to reapportion the state legislature for 60 years despite the growth and redistribution of its population. Consequently, the issue was for the first time taken to the courts in the landmark decision *Baker v. Carr*,¹⁴ which established a plaintiff's right to bring cases to court to determine the constitutionality of a state redistricting plan. This eventually led to the decision establishing the "one person, one vote" principle in *Gray v. Sanders*¹⁵ in 1961 that was extended to federal elections in 1964 under *Wesberry v. Sanders*.¹⁶

The suit in *Baker v. Carr* was brought by Charles Baker, a voter, against the state in federal district court, and Joe Carr, the state official in charge of elections. Baker claimed that his vote was diluted as a result of the state's failure to reapportion and that it violated the equal protection clause of the Fourteenth Amendment to the Constitution. The federal district court dismissed the complaint on the grounds that it could not decide a political question. However, upon appeal, the U.S. Supreme Court ruled in 1962 that a case raising a political issue could be heard. This landmark decision set a precedent that allowed for the resolution of redistricting conflicts in court, and opened the way for numerous suits on legislative redistricting.

B. NEW YORK STATE'S REDISTRICTING PROCESS

Since the 1980s, New York's Legislative Task Force on Demographic Research and Reapportionment (LATFOR) has been responsible for assisting the legislature in drawing congressional and state legislative districts every ten years. LATFOR was established by Chapter 45

¹³ Toobin, Jeffrey. "Drawing the Line," *The New Yorker*. March 6, 2006.

¹⁴ *Baker v. Carr*, 369 U.S. 186 (1962)

¹⁵ *Gray v. Sanders*, 372 U.S. 368 (1963)

¹⁶ *Wesberry v. Sanders*, 376 U.S. 1 (1964)

of the New York State Laws of 1978 “to research and study the techniques and methodologies to be used by the U.S. Commerce Departments' Bureau of the Census in carrying out the decennial federal census.”¹⁷

Funding for LATFOR is provided every year as part of the budget bill funding the legislature, and includes LATFOR’s committees, task forces and other legislative bodies. The FY 2011-2012 budget provides for \$358,325 to the Task Force for Assembly purposes, \$358,325 for Senate purposes, and \$1,142,109 for joint operations, for total funding of \$1,858,759.¹⁸

Using highly technical demographic and geographic data provided by the Census Bureau, LATFOR is charged with aiding the legislature “by providing technical plans for meeting the requirements of legislative timetables for reapportionment of Senate, Assembly and Congressional districts.”¹⁹ After receiving the data from the U.S. Census by April 1st of years ending in “1”, LATFOR conducts hearings and receives input from the public about how best to develop plans that address the interests of communities, minorities, and the public at large. Each house then develops its own plan, with the staff not even seeing the other house’s plan before their own is finished.²⁰ The public can testify and comment on LATFOR’s plans, as well as submit their own plans, though public hearings are not required by law. LATFOR may modify its proposed plans based on public input, though it is not required to. While the process for drawing maps is supposed to follow public input and feedback, legislators have reported that at least in some instances district boundaries have been drawn in advance of LATFOR public hearings. When not formulating redistricting plans, LATFOR conducts research on boundary suggestions and Census tracts.

Legislators sit on LATFOR as members and have a direct hand in the process. The commission is made up of six members, including four legislators and two non-legislators, appointed as follows:²¹

- One legislator and one private citizen chosen by the Temporary President of the Senate, with the legislator serving as co-chair
- One legislator and one private citizen chosen by the Speaker of the Assembly, with the legislator serving as co-chair
- One legislator selected by the Senate Minority Leader
- One legislator appointed by the Assembly Minority Leader

The current commission members are:

- Appointed by the Temporary President of the Senate:
 - Senator Michael Nozzolio (Co-Chair)
 - Welquis R. Lopez

¹⁷ New York Consolidated Laws A.5-A § 83-m (1978).

¹⁸ New York State Legislature and Judiciary budget legislation, A.4001-A/S.2801-A. Available at: http://assembly.state.ny.us/leg/?default_fld=&bn=A04001&term=2011&Summary=Y&Text=Y

¹⁹ The New York State Legislative Task Force on Demographic Research and Reapportionment, see <http://www.latfor.state.ny.us/>

²⁰ Rizzo, Nick. “Redistricting Reformers Charge, Albany Shrugs.” Capital New York. December 1, 2010. Available at: <http://www.capitalnewyork.com/article/culture/2010/12/870203/crooked-lines-redistricting-reformers-charge-albany-shrugs>

²¹ State Legislative Law, §83-m

- Appointed by the Speaker of the Assembly:
 - Assemblymember Jack McEneny (Co-Chair)
 - Dr. Roman Hedges
- Appointed by the Senate Minority Leader
 - Senator Martin Malavé Dilan (Co-Chair)
- Appointed by the Assembly Minority Leader
 - Assemblymember Robert Oaks

C. THE APPROVAL PROCESS

The proposed plans developed by LATFOR in the past have been compiled into two legislative bills: one for state legislative districts and one for congressional districts. The legislature votes on the legislation as it would on any other bill. It is worth noting that not only does the legislature have a key role in shaping the plans at the LATFOR level, but it also has the power to alter the plans through the legislative process. This past redistricting cycle, the bills were S6796/A11014 (with an amending bill S7300/A11184) passed in April 2002 creating state legislative districts.²² The bill and amendment were each passed within a day of their submission. Congressional districts were created with S.7536/A.11750 of 2002, which was passed with the use of a message of necessity from the Governor, negating the need for the normal three day aging process. After passage by both houses, the bills then go on to the governor for his or her signature.

Three counties of New York City (Bronx, Kings, and New York) are covered by Section 5 of the Voting Rights Act of 1965 as amended in 1982, meaning that the redistricting plans approved by the state must be reviewed and approved by the United States Department of Justice for pre-clearance before implementation. Section 5 pre-clearance relates to legislative changes to the election process such as polling place locations, voting methods, and boundaries for legislative districts. In theory, a proposed change would be denied if it would negatively impact minority group members with respect “to their opportunity to exercise the electoral franchise effectively.” The Voting Rights Act is further discussed in Section 5b of this report.

D. SUBVERTING THE PUBLIC INTEREST

Due to their near absolute power over the process, legislators and LATFOR can manipulate the lines in such a way as to fashion districts meant to ensure the majority party retains or increases its control in each house as well as re-elects individual legislators. Oftentimes, these partisan interests run counter to the public interest.

The protection of majority parties and incumbents has been prioritized, and LATFOR has used the lack of rules and criteria for drawing lines to advantage incumbents and the parties in control of each house. Past practices, which are described in greater detail in the following sections, have included: drawing a challenger’s home or political bases out of districts after having mounted a strong challenge against an incumbent; going to the margins of allowable district population size

²² Legislation available from LATFOR at <http://latfor.state.ny.us/maps/amend.html>

to advantage regions of the state over others; and the gerrymandering of districts and dividing of communities to split the vote of burgeoning ethnic communities.

i. Population Deviation

The central goal of redistricting that is established by law, if not practice, is to ensure that voters are afforded fair and equal representation; the main tenet of fair representation is a near equal distribution of population between districts.

In New York State, the State Constitution requires there be 150 assembly districts and provides a formula for the determination of the number of senate districts (currently set at 62).²³ The average number of people represented by these legislators as of the last redistricting in 2002 was 126,510 per assembly district and 306,072 per senate district. New York's 29 congressional districts averaged 654,361 people, with a difference of only 1 person between the smallest and largest district. The current allowance of a 10 percent deviation in population size from the largest to smallest district in each house has allowed for large differences in representation from one community to another – a difference between districts of over 30,000 people in a senate district and over 12,600 in an assembly district.

The 2010 Census showed that New York State's population grew to 19,378,102 residents, an increase of 2.1 percent. As a result, after the 2012 redistricting cycle the average state assembly seat will have 129,187 people, the average senate seat will have 312,550 people (assuming there will still be 62 seats), and there will be 717,707 people per congressional district. New York will have 27 seats in the U.S. House of Representatives, down from 29. This decrease is due to other states having larger population gains such as Texas and Florida, which saw 20.6 and 17.6 percent growths, respectively.²⁴

All districts must contain essentially the same number of people to preserve the principle of one person, one vote.²⁵ As provided in case law, however, state legislative districts have been allowed to be drawn within 5 percent of the average district size (either 5 percent above or below the average, meaning that there is a 10 percent spread between the smallest and largest district).²⁶ In practice, this allowance of deviation has allowed those drawing district lines to over or under populate districts in such a manner that creates a strategic advantage for one party over the other.

Currently, the size of congressional districts must be of equitable population "as nearly as is practicable," which is a higher standard than applied to state legislative districts.²⁷ Indeed, federal law requires that U.S. congressional districts differ from one another by no more than one person. Other states such as Iowa and Oregon have set a similarly high standard for population equity by

²³ New York State Constitution, Article III, § 4-5. It should be noted, however, that there were concerns in the 2002 redistricting cycle that the constitution was falsely interpreted for political advantage.

²⁴ U.S. Census, available at: <http://2010.census.gov/2010census/popmap/>

²⁵ Reynolds v. Sims, 377 U.S. 533 (1964).

²⁶ Brown v. Thomson, 462 U.S. 835, 842-43 (1983)

²⁷ Wesberry v. Sanders, 376 U.S. 1, 7-8, (1964).

requiring, or in practice, holding to a deviation of less than +/-1 percent.²⁸ Specifically in Iowa, the deviation percentage variance for state legislative districts must not exceed 1 percent and the overall difference in size between the largest and smallest state legislative districts must not exceed 5 percent.²⁹ As shown in the table below, only 12 percent of the state assembly and senate districts drawn in 2002 in New York would live up to a 1 percent deviation standard.³⁰

Table 1: New York State Deviation from Average District Size, 2002

Deviation from Average District Size	Assembly Districts	Senate Districts
Less than 1%	18 (12%)	11 (17%)
Between 1% and 3%	63 (42%)	32 (51%)
Between 3% and 5%	69 (46%)	19 (30%)

Deviations from the mean district size are often great and often run right up against the legal limit, causing wide variations in population from the largest to smallest districts. The smallest assembly district in 2002 was District 78 in the Bronx (currently held by Democrat Jose Rivera) with a population of 121,111 constituents, according to 2000 census numbers. The largest assembly district was District 143 (currently represented by Democrat Dennis Gabryszak), which makes up Erie County in western New York and houses 133,038 constituents, a difference of almost 12,000 constituents or about 10 percent, bumping right up against the legal threshold.

The senate district with the smallest number of constituents in 2002 was District 48 (currently represented by Republican Pattie Ritchie), which incorporates portions of Oswego, Jefferson, and Saint Lawrence County in the northwestern portion of New York with a population of 290,925. The largest senate district was District 38 (currently represented by David Carlucci), combining portions of Orange and Rockland County located just north of New York City, with a population of 320,851, a difference of almost 30,000 constituents or about 10 percent, again pushing the legal threshold.

Shifting Populations

Under the 2010 U.S. Census counts, 52 of the 150 assembly districts have populations more than 5 percent above the average district size utilized in 2002, according to Citizens Union Foundation research. While the new lines drawn for the 2012 elections will correct some of this change in population to ensure more equal representation, the 5 percent deviation allowance has meant that near the end of the decade in the redistricting cycle, districts have widely vary in size, as shown on the table below. Districts downstate experienced tremendous growth from 2000 to 2010, with the largest assembly district (AD 1 in Suffolk County, currently represented by Republican Dan Losquadro) seeing a growth of 18,243, now having a population deviation of 18

²⁸ For more information, see “State of Oregon Redistricting: Frequently Asked Questions,” Oregon State Legislature, <http://www.leg.state.or.us/redistricting/faqs.htm>

²⁹ “Legislative Guide to Redistricting in Iowa.” Iowa Legislative Services Agency. Available at: <http://www.legis.iowa.gov/DOCS/Central/Guides/redist.pdf>

³⁰ “Unfair Advantage: New York State’s Redistricting Process,” New York Public Interest Research Group, April 2006. All data regarding New York legislative district sizes and deviations in 2002 comes from this source.

percent from the average district size in 2002. The smallest assembly district (AD 141 in Buffalo, represented by Democrat Crystal Peoples-Stokes) saw a decrease of 21,937, and now deviates 13 percent from the average district size in 2000. Overall, there is now a swing of 26 percent between the largest and smallest assembly district, a difference of nearly 40,000 people.

Similarly in the senate, 22 of the 62 senate districts in 2010 have populations more than 5 percent above the average district size utilized in 2002, as shown on the table below. The largest district in 2010 (SD 38, represented by Carlucci) grew by 26,525 people, and now deviates 13 percent from the 2002 average district size. The smallest senate district (SD 60 in the Buffalo area, represented by Republican Mark Grisanti), saw a decrease of 27,900, and now deviates nearly 12 percent from the average district size in 2002. Overall, there is now a swing of 25 percent between the largest and smallest districts, a difference of over 75,000 people. See Appendix 3 for the breakdown in each district.

Congressional districts, which were drawn to within one person in 2002 (either 654,320 or 654,321 people in each district) have also grown or lost population based on the 2010 census count, but do not come anywhere near the current difference in size for state senate and assembly districts. There are no districts deviating more than 10 percent in based on the 2010 census count and the average district size in 2002, and the vast majority of districts vary by less than 5 percent (24 of the 29 congressional districts), as shown in the table below.

Table 2: New York State Deviation from Average District Size, 2010

Deviation from Average District Size	Assembly Districts	Senate Districts	Congressional Districts
Less than 1%	27 (18%)	8 (13%)	4 (14%)
Between 1 and 3%	39 (26%)	16 (26%)	9 (31%)
Between 3 and 5%	32 (21%)	16 (26%)	11 (38%)
Between 5 and 10%	38 (25%)	18 (29%)	5 (17%)
Larger than 10%	14 (9%)	4 (6%)	0 (0%)

The tendency to create districts with such a variance from the mean district size transcends party lines. The Senate Republican majority had historically fixed upstate districts to be “under-populated” and downstate districts to be “over-populated” to maximize the number of Republican districts that they can win every year. Conversely, the Assembly has a Democratic majority and underpopulates downstate districts while overpopulating upstate districts to create more districts in Democratic-friendly territory (see map below). This practice is done specifically by packing constituents into districts where the majority party does not have an enrollment advantage and creating less populated districts in areas where the majority party has an enrollment advantage. By carefully concentrating rival party’s voters and spreading out their own party’s voters, the parties have created wide deviations between the sizes of districts, resulting in less than equal representation for voters.

In practice, this arrangement has historically led to more Republican senate districts upstate and more Democratic assembly districts downstate. The impact this has on the public is that it has given downstate voters less than adequate representation in the Senate and conversely, upstate

voters less than adequate representation in the Assembly. It also marginalizes both the upstate Democratic vote and downstate Republican vote by diluting each respective group's voting strength. See Appendix 4 for detailed maps of the deviations of districts from 2002. Specifically:

- 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 outside of New York City were overpopulated, all in the New York City metropolitan region in Westchester, Rockland and Orange Counties).

Legal challenges from both major political parties over the past couple of decades have failed to overturn this practice. In 2002, plaintiffs in the case *Allen v. Pataki* challenged the State Senate redistricting plan on the grounds that it failed to meet the equal population requirements, among other things.³¹ The plaintiffs alleged that “an honest and good faith effort” could not have been made because the difference between the smallest and largest population (a 9.78 percent deviation) and the deviation from the ideal (2.22 percent) were so great that they could not have occurred incidentally. They also noted that deviations from the ideal in past Senate redistricting plans had never been as high as in the current plan. The Court found that because the deviation was within the legal limit (despite running up against it) the plan did not violate equal population requirements.

The Counting of Prisoners

In past redistricting cycles, New York State has used U.S. census data in counting populations for the purpose of redistricting state legislative and congressional districts. The Census Bureau currently counts inmates as residents in the area where they are incarcerated, as opposed to the location where they are originally from, even though these inmates are not able to vote. A recent change to state law from 2010 will require New York State going forward to amend the U.S. census data to count prisoners in their last known residence rather than their place of incarceration for the purposes of redistricting of county and state legislative districts, as well as congressional districts. While the new law is currently under a legal challenge, LATFOR has determined that it will follow the law as written and allocate prisoners at their last known residence despite previous indication that it would not follow the law.³²

The previous method of counting was controversial for a number of reasons. Critics argued it violated the State Constitution, which reads: “For the purpose of voting, no person shall be deemed to have gained or lost a residence...while confined in any public prison.”³³ Additionally, it was argued that counting prisoners in districts where they cannot vote when the average sentence

³¹ *Allen v. Pataki*, No. 02 Civ. 0618 (New York 2002), available at:

<http://decisions.courts.state.ny.us/nyscomdiv/may02/101712-02-006.pdf>

³² Campbell, Jon. “Nozzolio: Following prisoner count law was always the plan: UPDATE,” Politics on the Hudson.

August 4, 2011. Available at: <http://polhudson.lohudblogs.com/2011/08/04/nozzolio-following-prison-count-law-was-always-the-plan/>

³³ New York State Constitution, Article II, § 4

is 34 months distorts the voting strength of communities by inflating rural communities' voices and weakening urban communities, both in upstate New York's cities and in New York City.³⁴

ii. Dividing Communities

Though both houses use the same demographic data to draw their lines, assembly and senate district lines often form strange combinations together, such as pieces of many assembly districts nested in a single senate district, or neighborhoods within an individual district joined by nothing more than a strip of highway.

Under current practice and a lack of legal precedent against partisan districting, legislative leaders are afforded the ability to draw lines to protect party interests. The legislative leaders have also used the drawing of district boundaries to protect incumbents and minimize the competition they face. This has led to a confusing overlap of Assembly and Senate districts that affects voters and their political strength.

Though sometimes necessary to account for population shifts and to protect minority voting rights, this extreme parsing of neighborhoods and creative map-making results in districts that lack cohesion between assembly and senate district lines and the breaking apart of what could be natural alliances between assembly and senate constituent groups and representatives. This divides neighborhoods and communities of shared interests and leaves certain communities marginalized, without the ability to have a common voice for their community.

CASE STUDY: BRIGHTON BEACH

Dividing the Russian Community

While the manipulation of district lines is often thought to occur for partisan gain, incumbents have used the power to draw lines to protect themselves from challengers in party primaries, often at the expense of communities that are divided by such efforts.

In 2000, former Assemblymember Adele Cohen of the 47th district in Brooklyn nearly lost a primary election to challenger Susan Lasher, who received a large majority of her votes from the burgeoning Russian-American community of Brighton Beach. Lasher received 75% of the votes from Brighton Beach but ultimately lost by a slim 100 vote margin to the incumbent Cohen.

Following the close election, and the subsequent redistricting effort in time for the 2002 election, the district was redrawn in such a way that eliminated the predominantly Russian sections of Brighton Beach only to be replaced with sections of Bay Ridge, a move that critics claim helped Cohen expand her base in the district.¹ Furthermore, according to letters secured by the New York Sun, Cohen successfully requested having several polling sites moved, which critics claim presented a burden to senior Russian voters by requiring them to make a longer trek to the polls than they are accustomed to— their previous polling place was on the ground floor of their high-rise apartment buildings. The Sun also cites the firing of several Russian-American inspectors and the opportunity presented by the Board of Elections for Cohen to address a class for new inspectors as factors that weighed greatly in her favor.²

¹ Adam Dickter. "Russians Long for Clout." The Jewish Week. March 14 2003.

² Jack Newfield. "Another Dirty Trick." The New York Sun. Sept. 10 2004. Available at http://www.nysun.com/article/1523?page_no=1.

³⁴ Wagner, Peter. "New York to correct miscount of incarcerated people." Prisoners of the Census, August 3, 2010. Available at: http://www.prisonersofthecensus.org/news/2010/08/03/ny_law/

CASE STUDY: BRONX

Dividing the Mosholu Community

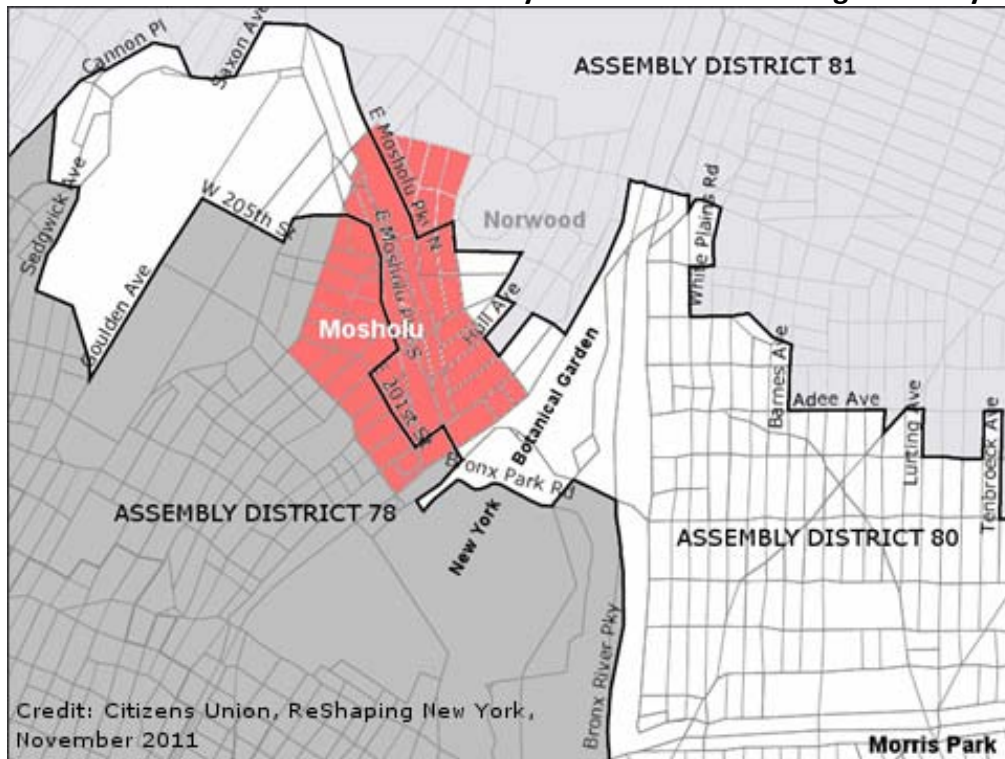
The Mosholu community straddles the Mosholu Parkway in the Bronx and is composed of two neighborhoods with shared interests, Bedford to the south and Norwood to the north. Mosholu is currently represented by three separate assembly districts – AD 78, AD 80 and AD 81. The division of districts has left the Mosholu community at the far end of each of these districts, and without full-time district office staff in the neighborhood. Specifically for AD 80, the community is near the end of a “hook” that connects the much larger Morris Park neighborhood through the New York Botanical Garden to the edge of the Jerome Park Reservoir. This has led to the inability of the community to have a singular advocate for its issues in the Assembly.

Members of the community have felt that the redistricting in 2002 detrimentally affected their representation, and that it is more difficult to advocate for their interests. Specifically regarding a recent proposal for a filtration plant to be built in nearby Van Cortlandt Park, funds were allotted for parks to offset the loss of green space in the neighborhood. They were unable to acquire such funds for the Mosholu Parkway, and felt that this was a result of their division among the assembly districts.

Prior to the 2002 redistricting, the Mosholu community was primarily served by AD 80, and there was a state legislative district office located in the community. There is also no longer a political club in the community due to its fragmentation between the three assembly districts.

Illustration below

Illustration 2 - The Mosholu Community and its Division Among Assembly Districts

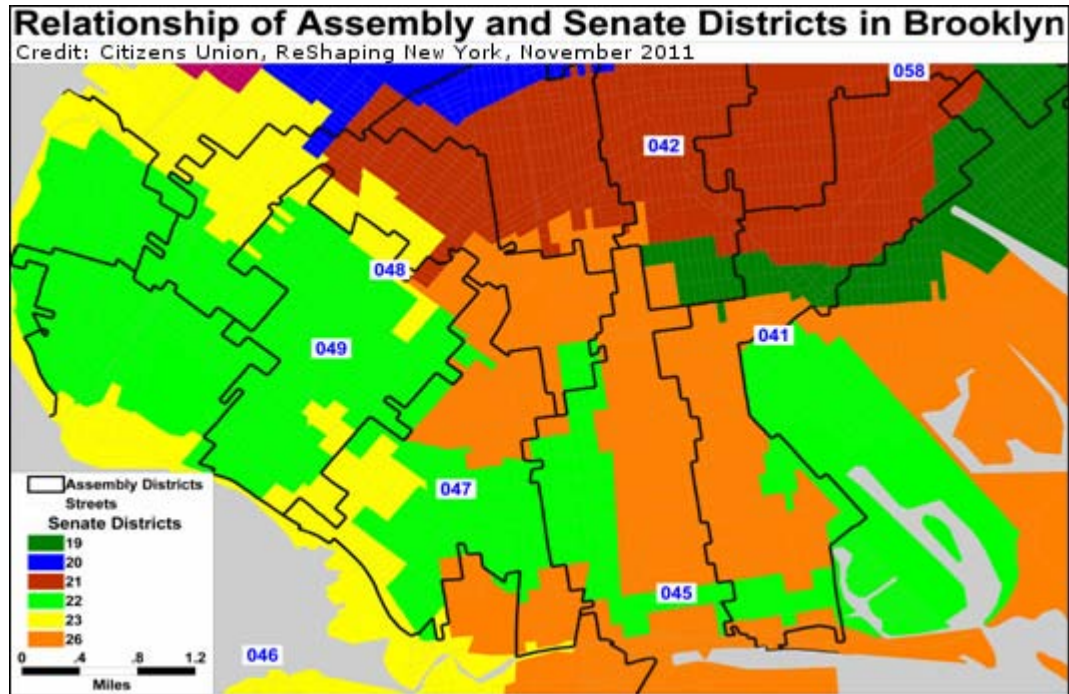


Nesting

The division of communities and diluting of neighborhoods due to redistricting is not limited to neighborhoods such as Brighton Beach or Mosholu, as seen in the case studies above. In New York City, Senate districts are made up of pieces of multiple assembly districts, a situation called nesting. The lack of collaboration between both houses of the legislature in drawing lines has led to a complex web of

assembly and senate districts overlaying each other. 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 lack of collaboration between both houses of the

Illustration 3: Nesting of Districts in Brooklyn after 2002 Redistricting (black boundary lines delineate Assembly districts)



legislature in drawing lines has led to a complex web of senate and assembly districts overlaying each other. 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. All of New York City's senate districts contain parts of four or more assembly districts, and over half of them contain six or more assembly districts. Assembly districts are similarly diluted, with over half containing three or more senate districts. The fracturing of communities among so many districts makes advocacy and arguably effective representation difficult, particularly when a community is split in six pieces, as representatives may contain a small portion of one neighborhood and a larger portion of another that may drown out the other's voice.

The neighborhoods of Bay Ridge and Borough Park in Brooklyn serve as prime examples of how the splitting of a senate district over multiple assembly districts can have an impact on communities, as seen in the map above. Senate District 23, included portions of Brooklyn and Staten Island, and until the redistricting of 2002, encompassed the near entirety of Bay Ridge. After the 2002 redistricting effort, the neighborhood was split and parceled out among two senate districts – Senate District 22, represented by Republican Senator Marty Golden and Senate District

23, represented by Democrat Diane Savino. Bay Ridge is also divided up between five assembly districts: 46, 48, 49, 51 and 60.

Borough Park, which was nearly wholly represented by Senate District 22 prior to 2002, is now split between five state senate districts, as seen in the map on the previous page. Instead of having to contact only one or two state senators to have their neighborhood's interests represented in Albany, Borough Park residents found themselves "diluted" among five state senators. Having fewer Borough Park residents in each of the new districts of roughly equal size meant, in effect, that Borough Park's voice in each district became fainter and easier to discount when its residents needed to call Albany's attention to a problem.³⁵ Additionally, a complex web of assembly districts covers Borough Park, including Assembly District 44, 48 and 51. Please see Appendix 1 for a detailed listing of nesting in Assembly and Senate districts in New York City.

As the Assembly Democrats and Senate Republicans have historically given each house free reign over their own maps, collaboration between the houses has suffered, and districts are drawn without regard to the other's maps. Nesting has resulted, which has split communities between so many different senate and assembly districts, preventing communities from having a unified voice in Albany.

Crossing County Lines

District boundaries are often drawn with little adherence to or respect for the integrity of political subdivisions like counties, cities or other governmental entities, although towns can't be divided in drawing districts according to the state constitution. This occurs to some extent because districts must be approximately equal in size but more often because lines are drawn for political purposes. Citizens Union analyzed districts in relation to adherence to county borders in the assembly and state senate.

While most of the language in the state constitution prescribing how redistricting should be done is no longer valid because it does not follow the federal principle of one person, one vote, some language related to county lines is arguably still valid. For the drawing of lines in the state senate districts, the constitution states in relation to counties, "Such districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade as above defined, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county."³⁶ Court precedents do, however, indicate that the federal principle of one person, one vote reigns supreme among redistricting criteria potentially providing latitude for the division of counties in the state senate. There appears to be no prohibition in the state constitution in dividing counties in the assembly.

³⁵ Lachman, Seymour. Three Men in a Room: The Inside Story of Power and Betrayal in an American Statehouse. (New Press: New York, 2006) p. 93.

³⁶ New York State Constitution, Article III, Section 4. Available at: <http://www.dos.state.ny.us/info/constitution.htm>

In practice, assembly districts both span across multiple counties and divide up counties between multiple districts. Assembly District 127 sprawls seven counties including Chenango, Columbia, Delaware, Greene, Ulster, Otsego, and Schoharie. Forty-two total districts in the assembly include parts of at least two counties within their borders. Twenty-two districts contain three or more counties within their districts. Senate districts also show little respect for the integrity of county lines or compactness. Senate District 51 sprawls seven counties including Chenango, Cortland, Greene, Herkimer, Otsego, Schoharie, and Tompkins. Twenty-four other districts contain parts of at least two counties within their borders. Fourteen districts contain three or more counties within their districts.

Assembly districts and to a lesser degree senate districts also often cross the same two county borders. Eighteen assembly districts cross the same two county lines crossed by another district. The Erie-Niagara county border, for example, 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*. 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.

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.

For more information on the counties contained in each district and instances in which districts cross the same county lines, see Appendix 5.

CASE STUDY: LONG ISLAND

New York State Senate Lines Cracking Minority Communities in Suffolk and Nassau

Suffolk County

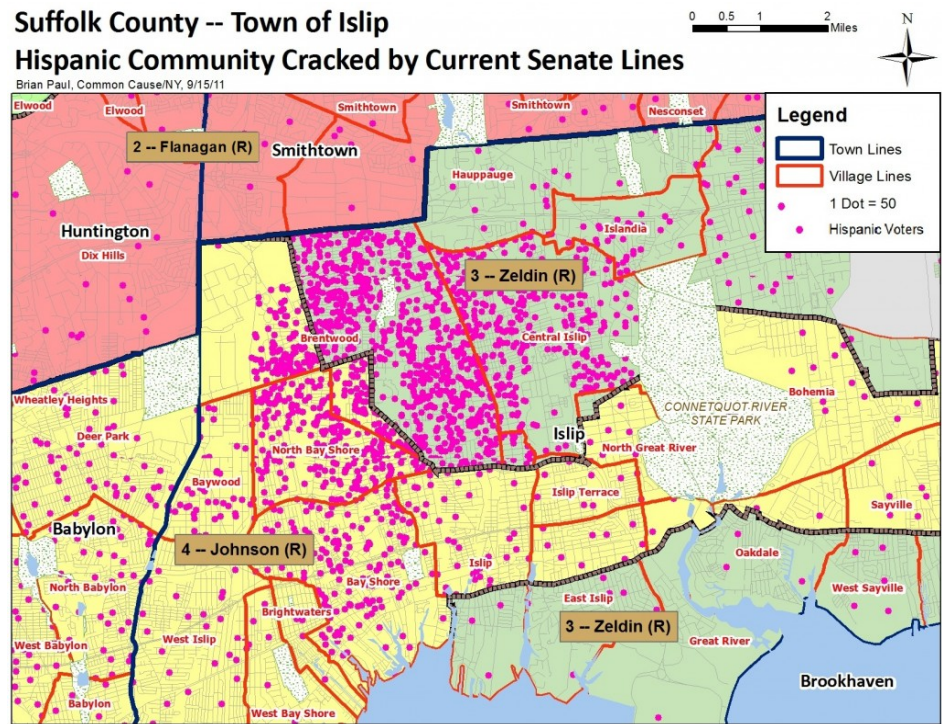
Suffolk County covers approximately 75% of Long Island and extends from Montauk to the border with Nassau County. With 1.5 million residents, it is the second-most populous county in the state after the counties of New York City.³⁷ East Suffolk County is quite rural and sparsely populated, while West Suffolk County is a densely populated, suburban area. Concerns over senate district lines in Suffolk County reside with districts in the western half of the county (the towns of Huntington, Smithtown, Babylon, Islip, and the west half of Brookhaven) where the majority of the population resides.

³⁷ Common Cause NY, Citizens Redistricting Commission. Available at: <http://www.citizenredistrictny.org/2011/10/suffolk/>

In looking at the population and demographic changes of Western Suffolk County in the last decade, the majority of population growth occurred among minorities, such that the population would not have grown much at all if not for an influx of minority groups to the area since 2000. Between 2000 and 2010, the non-Hispanic Black voting age population has grown by 18% and the Hispanic voting age population has grown by nearly 68% (in contrast, the white voting age population declined by 0.7%).³⁸ According to the U.S. Census, Latinos alone now make up 16.5% of the total population of Suffolk County.³⁹ However, what is even more notable than the growing minority populations in Suffolk County is how extremely concentrated they are in certain pockets of West Suffolk, particularly in Islip and Babylon.

A close-up of the state Senate lines in West Suffolk show how the districts have been created to divide the minority communities between three Senate districts, as shown in the maps and analysis below developed by Common Cause NY through its Citizens Redistricting Committee.⁴⁰

Illustration 4: Division of the Hispanic Community in Suffolk County



A large voting block of Hispanics has essentially been divided between Senate Districts 3 and 4. “When Hispanics march along Fifth Avenue in Brentwood in our annual parade, they have a leg in one district and another in the adjacent district,” said Assemblyman Phil Ramos (D) of Central Islip.⁴¹

³⁸ Common Cause NY, Citizens Redistricting Commission.

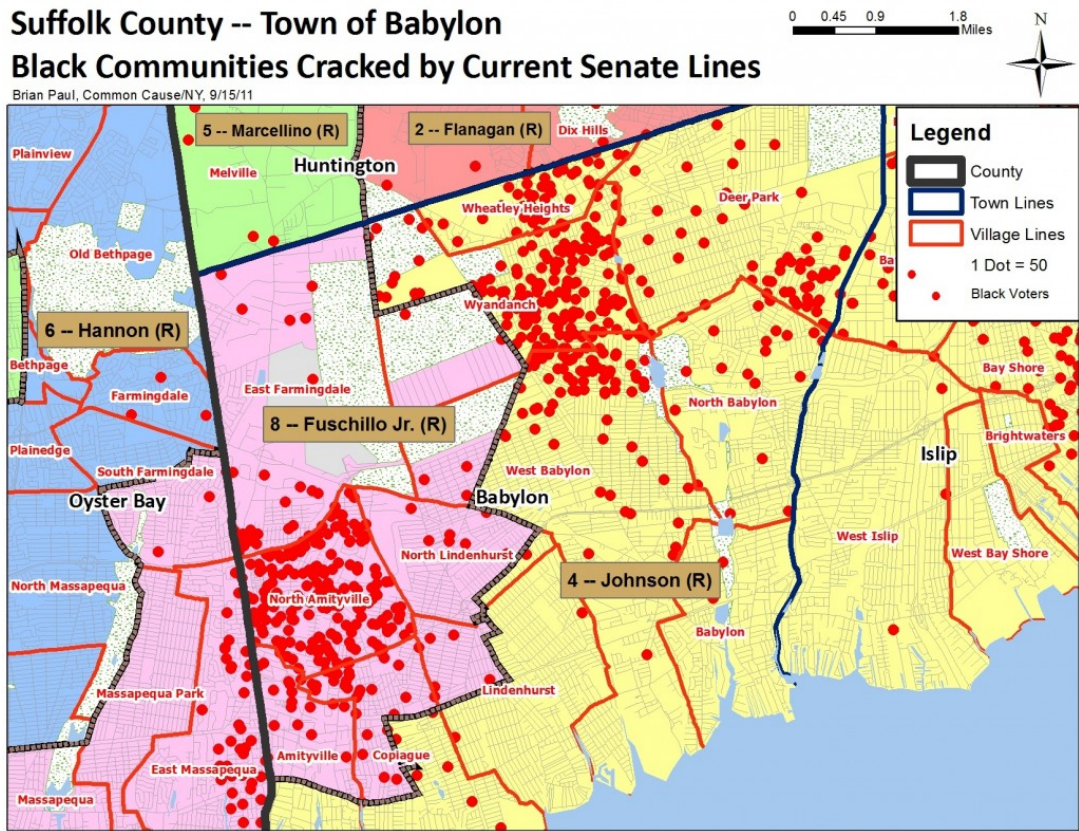
³⁹ 2010 U.S. Census Data, Available at: <http://quickfacts.census.gov/qfd/states/36/36103.html>

⁴⁰ All maps in this section from Common Cause NY, Citizens Redistricting Commission. Available at: <http://www.citizenredistrictny.org/2011/10/suffolk/> and <http://www.citizenredistrictny.org/2011/10/nassau/>

⁴¹ Vielkind, Jimmy. “Redistricting raises bias concerns.” Times Union, October 5, 2011. Available at: <http://www.timesunion.com/local/article/Redistricting-raises-bias-concerns-2204924.php>

Then, again in Babylon, a large Black community is split between the State Senate districts 4 and 8, as show in the map below developed by Common Cause. Ultimately, there are two levels of cracking occurring: first, individual racial minority groups are being divided where they might otherwise have considerable voting power. Second, minority racial groups as a whole are being split among three districts, when again, they might be better represented in a unified district. A look at the 2008 presidential election results in Suffolk indicates a disparity in the politics of the county as a whole versus its representation in the State Senate. Suffolk County voted for Barack Obama by a margin of about 5%, which although not overwhelmingly pro-Democrat, is a challenge to its current representation in the state Senate (9 of 9 State Senate seats in Long Island are held by Republicans, all of whom are white men).

Illustration 5: Division of the Black Community in Suffolk County



Nassau County

Nassau County has begun to take on some of the characteristics of its neighbor to the west, Queens County. Population density has rapidly increased, with 1.3 million people now living in a roughly 300 square mile area, making Nassau County one of the most densely populated suburbs in the U.S.⁴² However, its demography mimics that of its eastern neighbor, Suffolk County, with

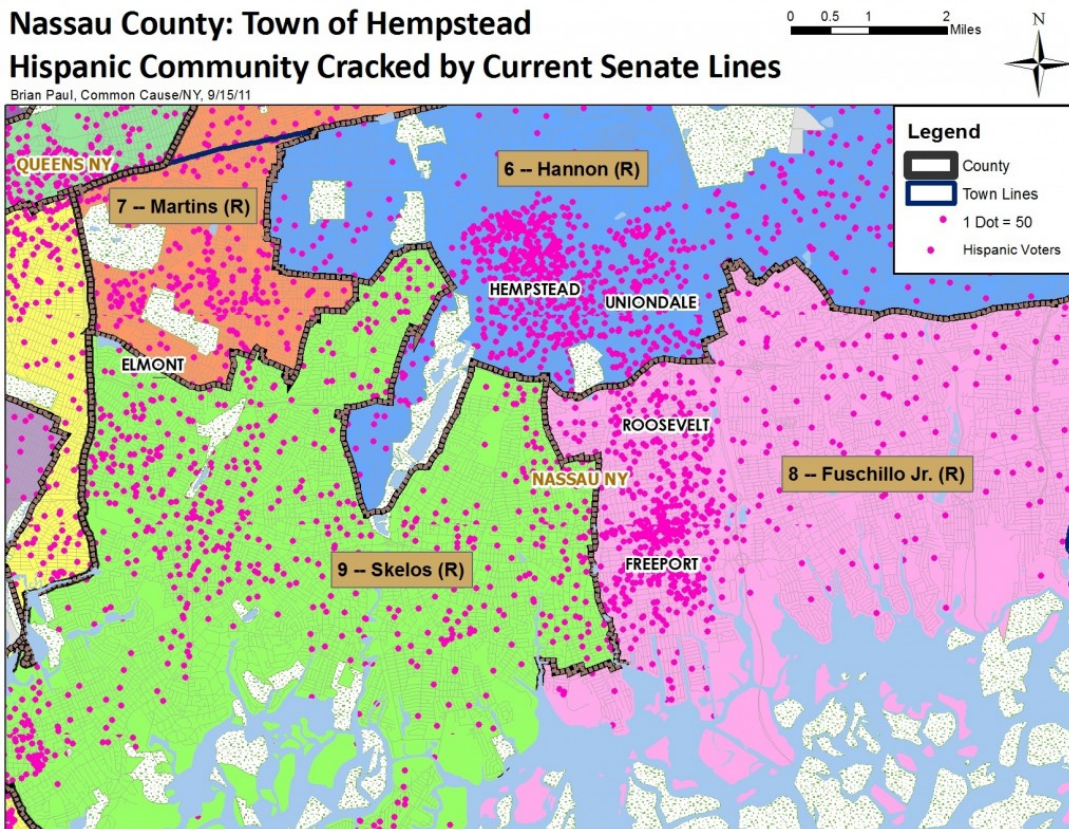
⁴² Common Cause NY, Citizens Redistricting Commission. Available at: <http://www.citizenredistrictny.org/2011/10/nassau/>

*wealthier, whiter communities making up the north shore (and less densely populated) part of the county and more low-middle income and minority groups in the southern half of the county. A close look at the demographics of Nassau County, and the town of Hempstead in particular, tells essentially the same story as that of Suffolk County. Black and Hispanic populations have boomed in the last decade and are clustered in the Southern part of the county. State Senate lines from 2002 again divide these communities by quartering the demographically distinct Hempstead and dividing Black and Hispanic populations between four separate districts.*⁴³

*Like Suffolk County, Nassau has seen an increase in its minority population, with 68% of the voting age population in Central Nassau minority. Overall, in Nassau County, the non-Hispanic black voting-age population increased by almost 16% and the Hispanic population boomed by more than 48%. Also on the rise is the Asian American population, although that has occurred more in northern Nassau in relation to the huge rise in the Asian population in northeast Queens. The Asian American voting-age population increased by 68% since the 2000 census, and with Asians already making up 7.4% of voters, it is a demographic to watch in 2020.*⁴⁴

A closer look at the state Senate district lines in Nassau County again shows the cracking of communities, similar to what is occurring in Suffolk County, as shown in the maps below of the Town of Hempstead, also developed by Common Cause NY.

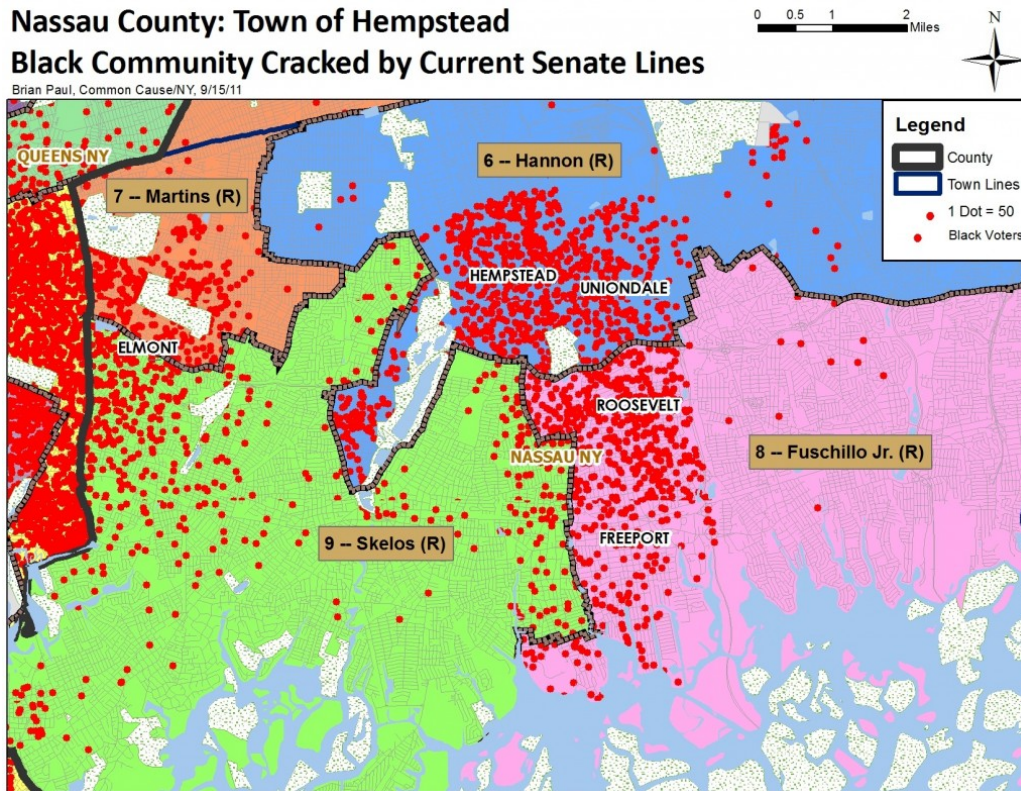
Illustration 6: Division of the Hispanic Community in Nassau County



⁴³ Common Cause NY, maps and analysis available at: <http://www.citizenredistrictny.org/2011/10/nassau/>

⁴⁴ Ibid.

Illustration 7: Division of the Black Community in Nassau County



Minority groups in Nassau County are split even further than those in Suffolk County, as state Senate lines divide them between four districts. The very obviously demographically distinct region of Hempstead is fractured, as shown in the map above.

The Protected Incumbents

Senate Majority Leader Dean Skelos in the 9th Senate District in Nassau County is a prominent figure in the gerrymandering debate. Despite his campaign promise to support a ban on partisan gerrymandering, after being elected, he has rescinded his support for such a measure and has called an independent redistricting commission “unconstitutional.”⁴⁵ Furthermore, Majority Leader Skelos was the recipient of the controversial LATFOR memo written in 2001 about how to gerrymander a 63rd State Senate seat—when the district lines were drawn in 2002, he served as LATFOR’s co-chair.⁴⁶ His district is also one that figures into the narrative about cracking minority groups in Nassau County, as the 9th district is drawn to crack both Black and Hispanic communities.

⁴⁵ Editorial. “Majority Leader Dean Skelos must not be allowed to back out of promise on redistricting reform,” New York Daily News, March 2, 2011. Available at: http://www.nydailynews.com/opinions/2011/03/02/2011-03-02_dean_the_deceiver.html

⁴⁶ Seiler, Casey. “Senate spokesmen duel over prospect of 63rd member.” Capitol Confidential, Times Union. September 19, 2011. Available at: <http://blog.timesunion.com/capitol/archives/81427/senate-spokesmen-duel-over-prospect-of-63rd-member/>

Skelos certainly stands to gain by continuing to gerrymander district lines on Long Island, especially as the number of registered democrats surpasses registered republicans⁴⁷ in his home district.

Other state Senators in cracked districts include Senators Owen Johnson in the 4th, Charles Fuschillo in the 8th, Lee Zeldin in the 3rd, Kemp Hannon in the 6th, and Jack Martins in the 7th. Senator Fuschillo's district is particularly interesting, as it manages to crack Black communities in Nassau County to the west and in Suffolk County to the east. The LATFOR Suffolk County hearing in 2001 provides some important testimony from citizens concerned about their gerrymandered districts (transcripts for the 2011 hearings in Long Island were not available at the time of writing this report):

"My name is Judith Cruz. I live in Brentwood, New York, a hamlet of the Town of Islip. I'm here to testify that there has been clear, intentional discrimination based principally on race, which has been the predominant factor in determining the boundaries of the Long Island Senate Districts. The Senate Districts drawn by the Legislature for the 1970s, 1980s and 1990s show a consistent and unvarying pattern of splitting the black and Hispanic communities...Systematically splitting the minority communities decade after decade undermines democracy. This practice promotes racial polarized and segregated politics which has a corrosive effect on democracy. The splitting of minority populations dilutes the voting power of the minority voter and forces candidates to win elections by responding to those voters who have a vested interest in the status quo, like school finances and other issues. The redrawing of Congressional, State Senate and State Assembly Districts must look to correct the obvious discriminatory practice which has tainted our voting process and disgusted voters.⁴⁸

Similar testimony was presented from other residents of both Nassau and Suffolk Counties, almost all of whom cite the splitting of their communities and call for reform in the redistricting process. However, these concerns were not addressed by the lines drawn in 2002, which kept minority communities divided between districts. Looking ahead to redistricting in 2012, the grievances of the residents of Long Island can be expected to be the same.

Protecting incumbents is central motivator for gerrymandering and the division of minority communities, and in fact, most of the Senators in the affected districts have held their office for more than a decade:

- *Senator Lee Zeldin (R, SD 3) – first term (unseated 1 term incumbent Brian Foley in 2008, who in turn unseated Republican Cesar Trunzo who had held the office since 1972)*
- *Senator Owen Johnson (R, SD 4) – first elected in 1972; 19 terms*
- *Senator Kemp Hannon (R, SD 6) – first elected in 1989; 12 terms (Assembly from 1977-1989)*
- *Senator Jack Martins (R, SD 7) – first term (defeated incumbent Democrat Craig Johnson in 2010 by only 451 votes)*
- *Senator Charles Fuschillo (R, SD 8) – first elected in 1998; 7 terms*
- *Senate Majority Leader Dean Skelos (R, SD 9) – first elected in 1984; 14 terms (Assembly from 1982-1984)*

⁴⁷ Confessore, Nicholas. "Democrats are Gaining in State, Registration Data Shows." New York Times, October 10, 2008. Available at: <http://www.nytimes.com/2008/10/11/nyregion/11register.html>

⁴⁸ Legislative Task Force on Demographic Research and Reapportionment, 2001 Transcripts from Suffolk County Hearings. Available at: <http://www.latfor.state.ny.us/docs/20010614/suffolk.html>

CASE STUDY: UPSTATE NEW YORK⁴⁹

Dividing New York's Other Urban Areas for Partisan Advantage

In the larger cities in the state other than New York City, cities have often been split into multiple districts rather than having as few districts as possible represent the interests of cities. Voter enrollment favors Democrats in these urban areas, and cities have been split either to shore up Democratic districts that contain Republican-leaning suburbs, or to split the cities in some many pieces that the Democratic votes are marginalized to maximize Republican representation. Because there are constitutional requirements that towns not be divided, cities are on the chopping block and are carved up for partisan advantage.

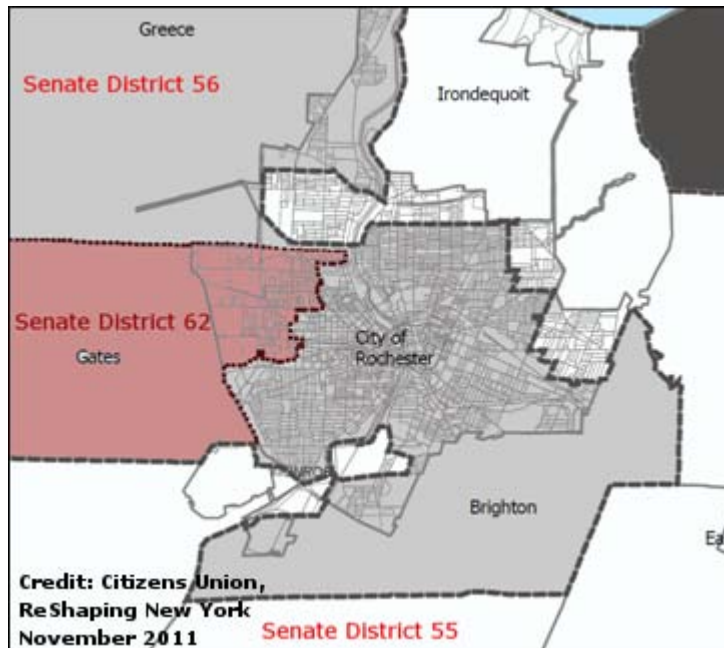
AVERAGE POPULATION FOR STATE LEGISLATIVE DISTRICTS FOLLOWING 2010 CENSUS

- **State Assembly – 129,187 (+2,667 from 2002)**
- **State Senate, assuming 62 seats – 312,550 (+6,235 from 2002)**

Rochester

With a population of 210,565 as of the 2010 Census, Rochester could be contained solely in one state senate district and could be split between two state assembly districts. The city's population decreased by only 4.2% from the 2000 Census, meaning that even in 2002 there was not enough of a population to necessitate more than one senate district in 2002.⁵⁰ The city is currently split by three assembly districts and three senate districts, as shown in the map to the right and on the next page. Rochester's current state assembly districts are Districts 131 (Harry Bronson, D), 132 (Joe Morelle, D), and 133 (David Gantt, D). The state senate districts are Districts 55 (James Ales, R), 56 (Joe Robach, R), and 62 (George Maziarz, R). District 62 has a small portion of the city, and connects as far west as Buffalo's suburbs.

Illustration 8 - Senate Districts in Rochester

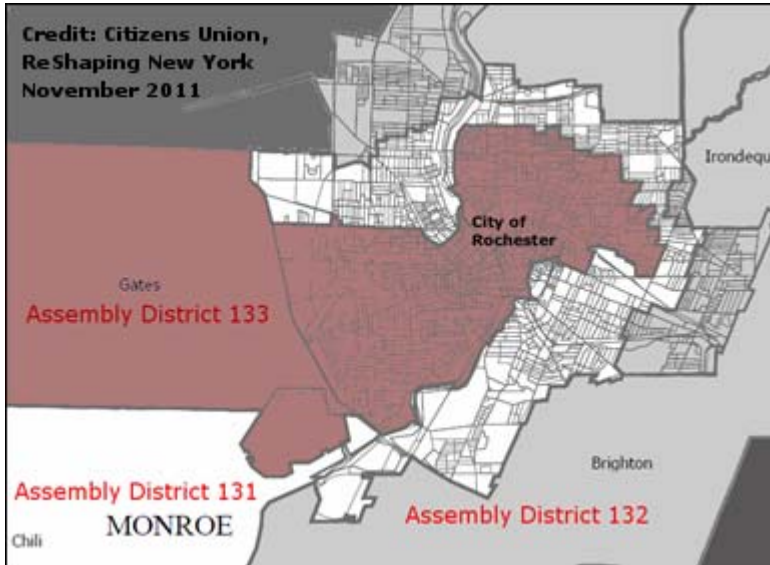


⁴⁹ All district maps in this section obtained from the Legislative Task Force on Demographic Research and Reapportionment (LATFOR) unless otherwise noted, available at: <http://www.latfor.state.ny.us/maps/>. Maps edited and further illustrated by Citizens Union Foundation.

⁵⁰ For Census data, see: <http://quickfacts.census.gov/qfd/states/36/3663000.html>

In both cases, the city is split to maximize the majority party in each house, marginalizing Republicans in the Assembly and marginalizing Democrats in the Senate. Thus, gerrymandering allows the same demographics to be used to the advantage of different partisan interests.

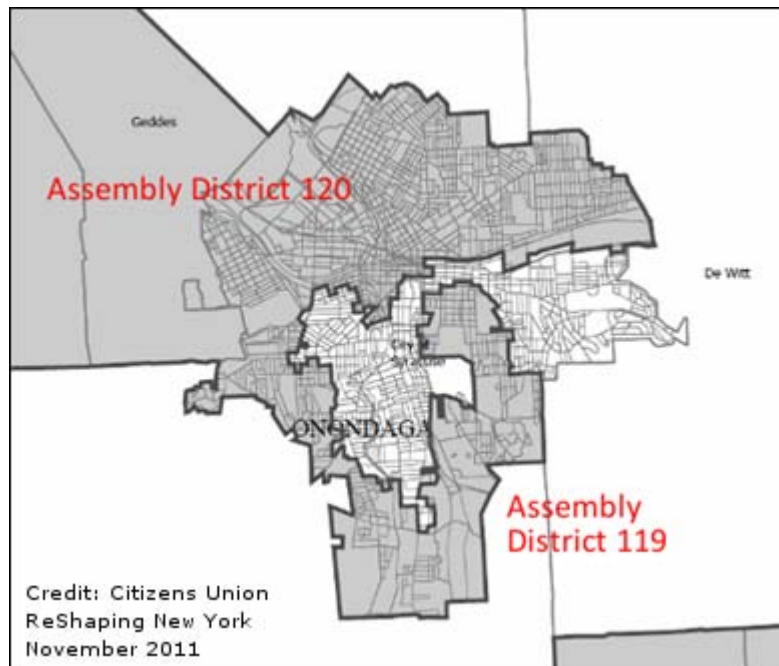
Illustration 9 - Assembly Districts in Rochester



Syracuse

The city of Syracuse has population of 145,170 as of 2010, a decrease of only 1.5% from 2000⁵¹. It could be contained within one state senate district but is split into two, and while it could not be contained in only one assembly district, the division of the city could be done in a more manner that would be less confusing to voters. Syracuse has two state assembly districts: District 119 (Sam Roberts, D) and District 120 (William Magnarelli, D), as seen in the map to the right. Syracuse's current state senate districts are District 49 (David Valesky, D) and District 50 (John DeFrancisco, R). David Valesky is a relatively new member of the Senate having been first elected in 2004, defeating a long-term Republican incumbent, Nancy Lorraine Hoffman.

Illustration 10 - Assembly Districts in Syracuse



⁵¹ For the Census data, see: <http://quickfacts.census.gov/qfd/states/36/3673000.html>

iii. Protecting Incumbents from Competition

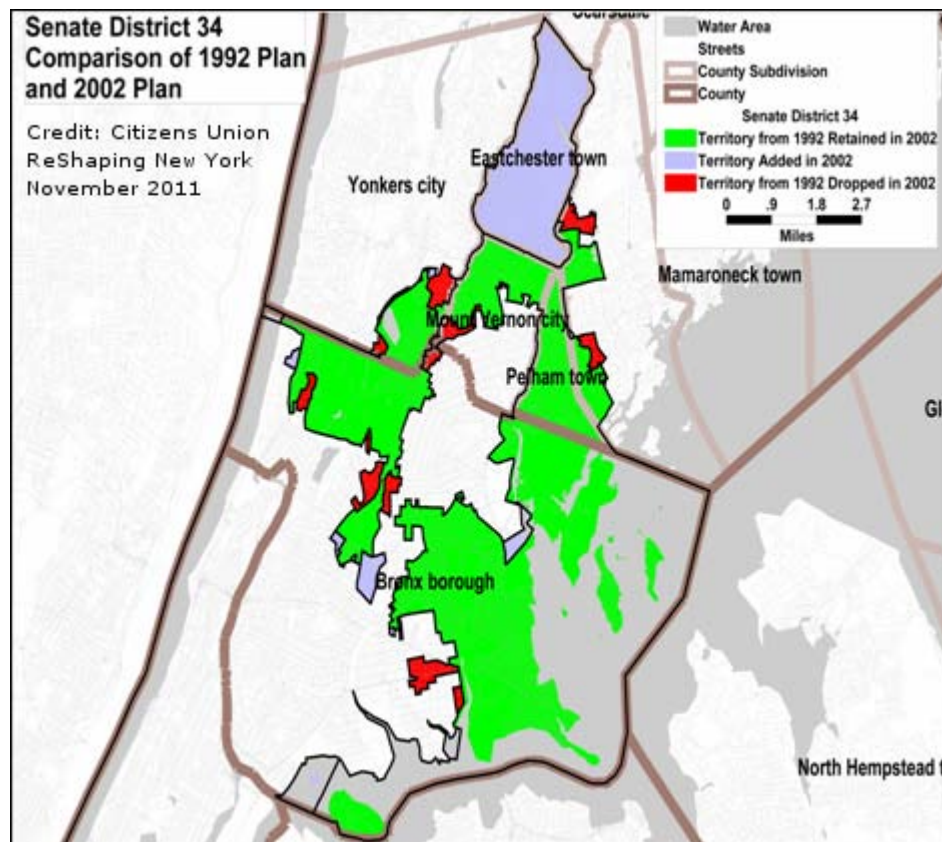
The art of gerrymandering is an effective tool for protecting legislators, as described in the previous case study of Long Island with the splitting of minority communities. The current redistricting process gives incumbents the opportunity to select their constituents as well as target particular individuals to ensure that they do not challenge them for a given seat. The outcome of the 2002 redistricting efforts offered several examples in New York City alone of how the process can be used to protect incumbents from both primary and general election challengers.

CASE STUDY: THE BRONX, WESTCHESTER

Protecting Guy Vellela

*Former
Republican State
Senator Guy Vellela
in 2000 had to fight
off a spirited
challenge for his
seat in Senate
District 34 from
Democrat Lorraine
Coyle Koppell⁵² who
received 46 percent
of the vote that
year. In order to
avoid this level of
competition in
2002, the
redistricting plan
added Republican-
leaning Eastchester
to the district,
avoiding minority*

Illustration 11 – Senate District 34



communities in Mt. Vernon, Yonkers and Co-op city, while including the Republican community in east Yonkers and portions of Riverdale, and craftily slicing rival Lorraine Coyle Koppell out of the district by one block. Vellela was also vulnerable due to ethical lapses, including his conflicted role as Chair of the Insurance Committee while his law firm represented insurance industry members.⁵³ Lorraine Coyle Koppell, who found herself in Democrat Eric Schneiderman's district, described the districting change in her neighborhood in the following way: "Think of a balloon, and how when

⁵² Wife of New York City Council member and former Attorney General Oliver Koppell.

⁵³ Hevesi, Dennis. "Guy Vellela, 66, Politician Brought Down by Ethical Lapses, Dies," City Room. The New York Times. January 27, 2011. Available at: <http://cityroom.blogs.nytimes.com/2011/01/27/guy-velella-a-politician-brought-down-by-ethical-lapses-dies-at-66/>

you put your finger in a balloon, it changes shape. That was the district, and that part of the balloon where your finger would be was my house."⁵⁴

*The bizarrely shaped district won the dubious Pablo Picasso/Salvador Dali Award, awarded by the New York Public Interest Research Group, who dubbed the district, "Oops I Spilled My Coffee on the Map."*⁵⁵

Having won reelection in 2002, Vellela later resigned in 2004, being found guilty of taking bribes for steering state contracts to clients of his firm.

CASE STUDY: BROOKLYN

Marginalizing Hakeem Jeffries

Hakeem Jeffries in 2000 challenged nineteen-year incumbent Roger Green (D) in the Democratic primary in Brooklyn's 57th district. Jeffries won 41 percent of the vote, an impressive showing against a longtime incumbent. When the redistricting plans of 2002 were revealed, the district boundary had shifted a couple of blocks in Prospect Heights and Jeffries's home was no longer located in the 57th Assembly district, as seen in the maps on the following page.

*"The district was cut out by just that one block," Jeffries said, "It's unfortunate that the dysfunctional nature of the legislature in Albany allows politicians to slice and dice communities to meet their own needs."*⁵⁶ *Most notably, the new lines split the Prospect Heights neighborhood into two districts.*

Because Jeffries then resided outside of the district and other portions of his base of support were removed, he did not run for the seat. Ultimately, Green won an unopposed primary in 2002 and was elected back into office. As it turned out in 2004, Roger Green was found guilty of petty larceny charges and was forced to resign from the Assembly only to run again after regretting his decision to step down. In 2006, Green did not again seek election to the 57th district assembly seat, but instead mounted an unsuccessful bid for Congress. Jeffries ultimately moved back into the 57th Assembly District⁵⁷ and won the 2006 primary election for the legislative seat with 64 percent of the vote and went on to win the general election.

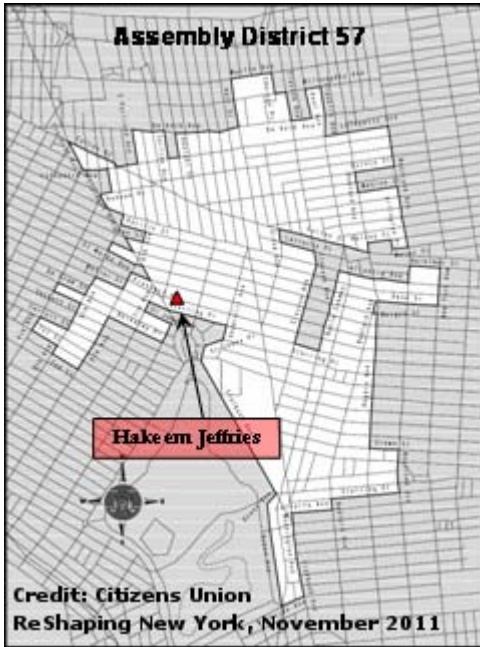
⁵⁴ Cooper, Michael. "Civic Groups Back a Bill to Stop Gerrymandering." The New York Times. March 5, 2005. Available at: <http://query.nytimes.com/gst/fullpage.html?res=9C0DE7DF143CF932A25750C0A9639C8B63&sec=&spon=&pagewanted=1>

⁵⁵ Robinson, Gail. Issue of the Week: Redistricting. Gotham Gazette. April 1, 2002. Available at: <http://www.gothamgazette.com/iotw/redistricting/>

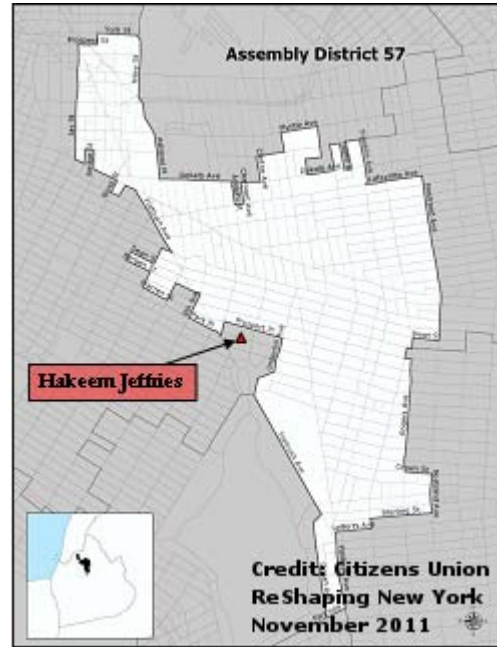
⁵⁶ Hicks, Jonathan. "In District Lines, Critics See Albany Protecting Its Own." The New York Times. November 2, 2004. Available at: <http://query.nytimes.com/gst/fullpage.html?res=9501E4DE1F3DF931A35752C1A9629C8B63>

⁵⁷ All district maps in this section obtained from the Legislative Task Force on Demographic Research and Reapportionment (LATFOR) and edited by Citizens Union, available at: <http://www.latfor.state.ny.us/maps/>

**Illustration 12: Assembly District 57
Before 2002 Redistricting**



**Illustration 13: Assembly District 57
After 2002 Redistricting**

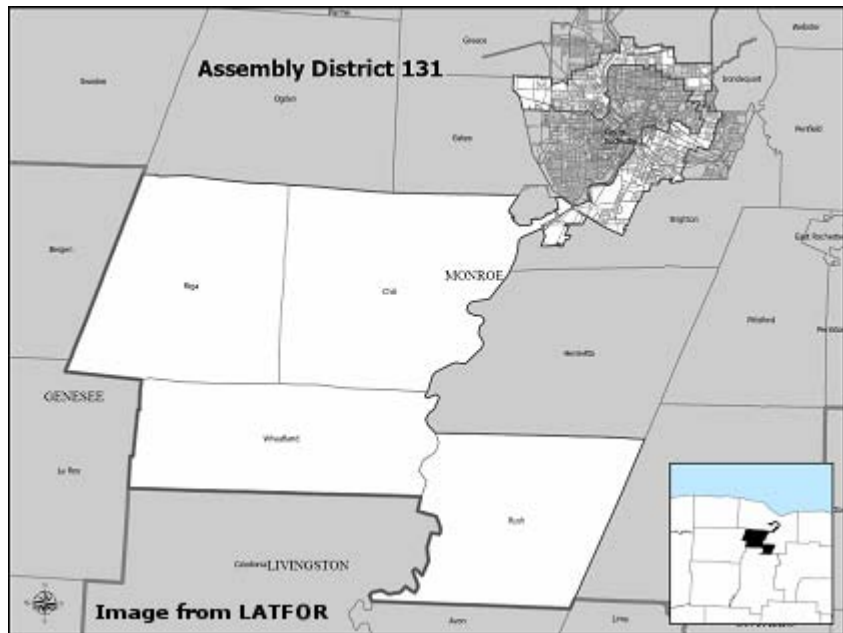


CASE STUDY: ROCHESTER

Protecting Susan John

Other districts have changed over time to keep majority members in power, including former Assemblywoman Susan John of Assembly District 131 in Monroe County. The redistricting process added to the suburban towns of her district that were leaning Republican a “hook” to capture votes in the Democratic City of Rochester.⁵⁸ See pages 46 and 47 for maps of other Rochester districts.

Illustration 14: Assembly District 131 After 2002 Redistricting



⁵⁸ “Redistricting, New York Style.” The New York Times. Available at: <http://documents.nytimes.com/redistricting-games-in-new-york#document/p6>

iv. Marginalizing the Minority Party

In addition to protecting incumbents from challengers, line drawers often seek to marginalize the minority party by shifting lines to pit minority party incumbents against one another in regions of the state where the minority party has an advantage in party enrollment. Furthermore, if a minority party legislator holds a seat in what has been typically a majority party region, territory can be added from an adjacent majority party district to bolster the majority party's enrollment advantage and potentially unseat the minority party incumbent in the next election.

CASE STUDY: UPSTATE NEW YORK

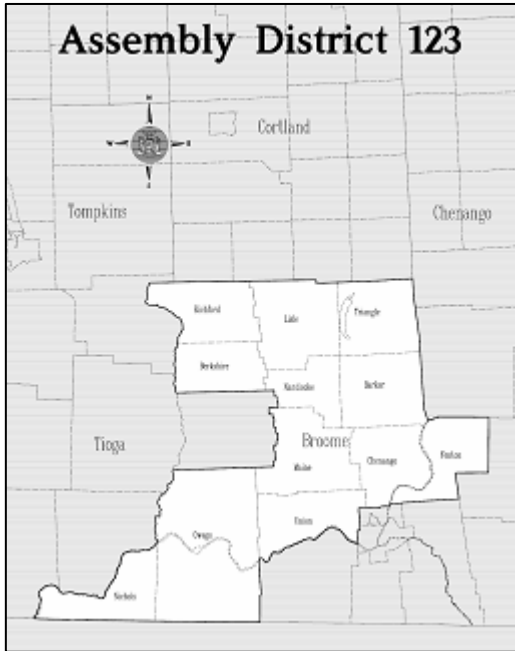
Merging and Shifting Republican Assembly Districts

Historically districts had been drawn in the Senate to favor Republicans and in the Assembly to favor Democrats – each party having held decades-long majorities in the respective houses – meaning that after redistricting occurred, incumbents of the minority party found themselves in new districts that no longer contained a base of support for re-election. In certain cases, minority party incumbents were pitted against each other by merging their districts to create new districts for preferred candidates of the majority party. Such was the case with Assemblymembers Jay Dinga (R-Broome County), formerly of Assembly District 123, and Robert Warner (R-Broome County) formerly of Assembly District 124, whose districts were merged into a newly constituted District 126. Warner ultimately won the Primary Election in the new 126th. The merge also shifted another Republican Assemblyman, Gary D. Finch, to the current 123rd Assembly from the pre-redistricting 126th.

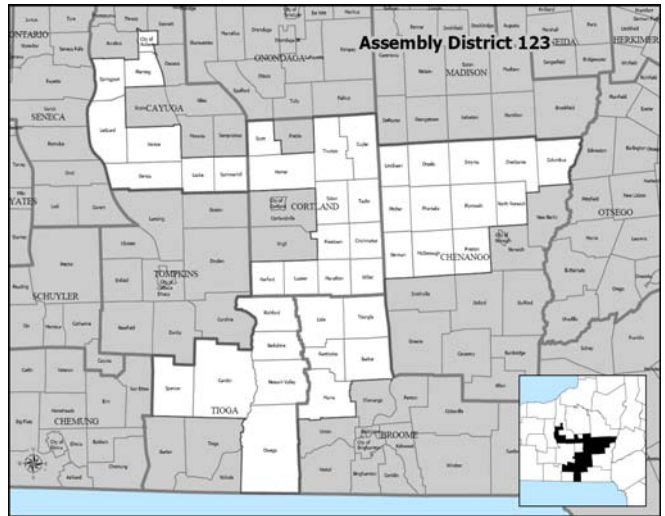
Prior to 2002, the 123rd district's boundaries closely tracked today's 126th district. Finch's district expanded from three counties to five after redistricting. Stretching from Cayuga Lake at its northernmost point to the border of Pennsylvania at its southernmost tip, it takes Finch three hours to drive across his gerrymandered district. The newly drawn 126th enabled Democrat Donna Lupardo to defeat incumbent Republican Robert Warner in 2004 following the 2002 redistricting. See the maps on the following page for the evolution of districts 123 and 126.⁵⁹

⁵⁹ Images obtained from the Legislative Task Force on Reapportionment and Redistricting, edited by Citizens Union. Available at: <http://www.latfor.state.ny.us/maps/>

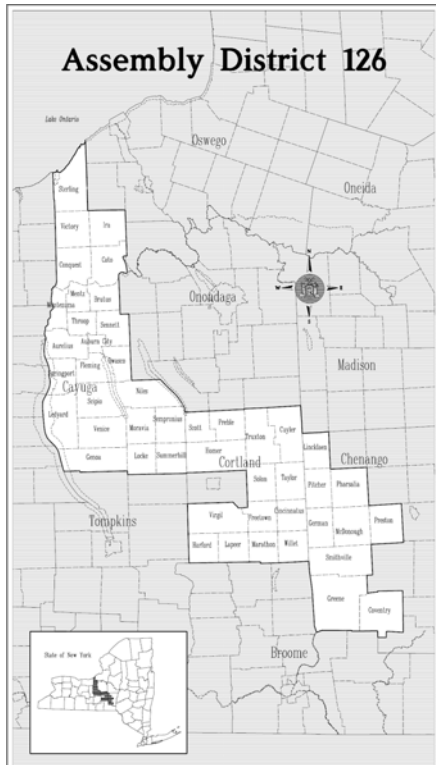
**Illustration 15: Assembly District 123
Prior to 2002 Redistricting**



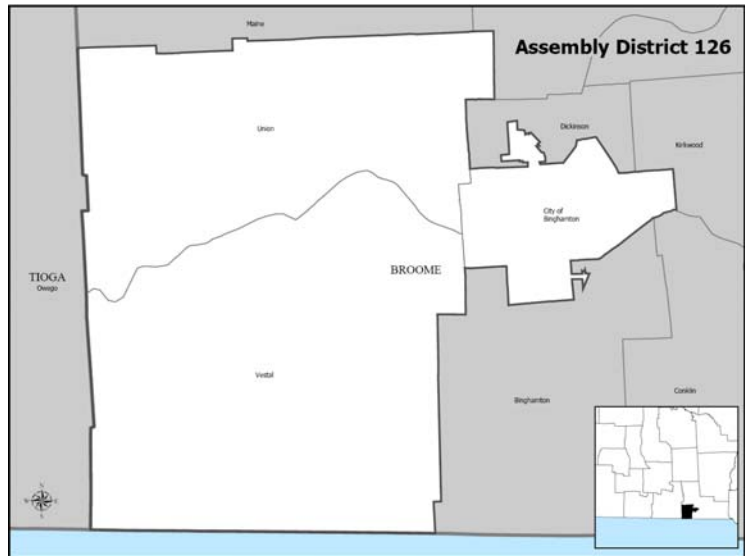
**Illustration 16: Assembly District 123
After 2002 Redistricting**



**Illustration 17: Assembly District 126
Prior to 2002 Redistricting**



**Illustration 18: Assembly District 126
After 2002 Redistricting**

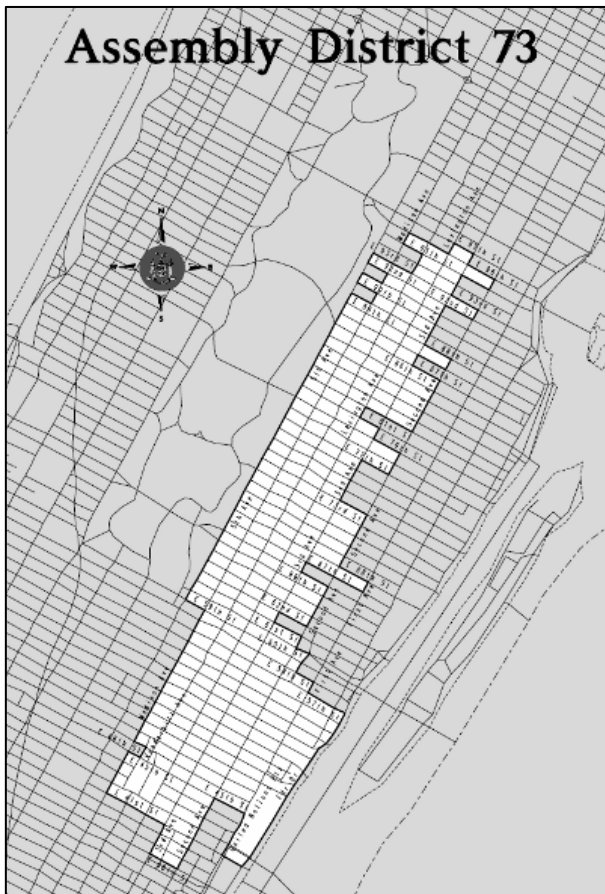


CASE STUDY: MANHATTAN

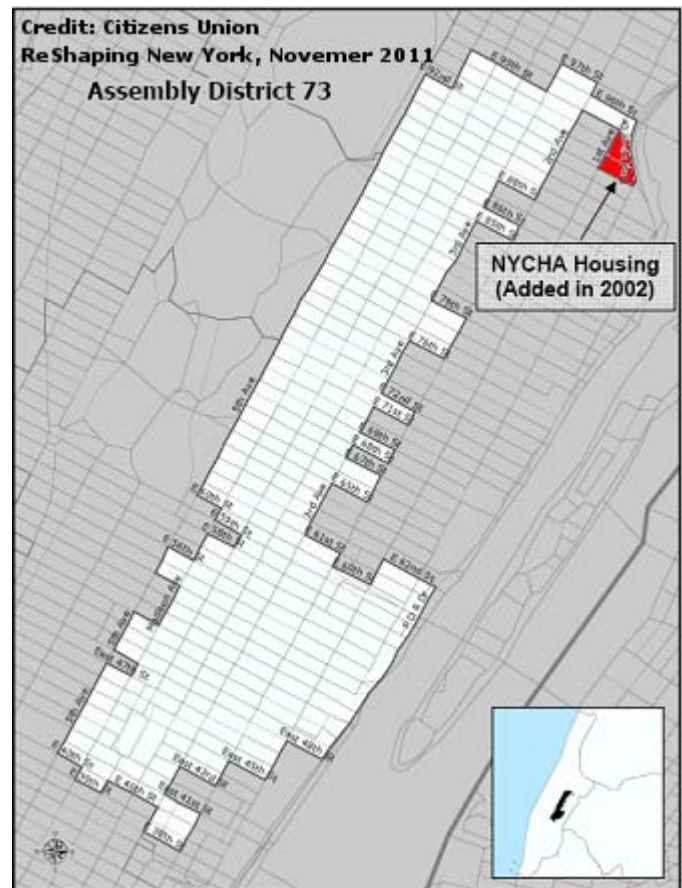
Reducing Minority Party Influence

Assembly District 73 on the Upper East Side of Manhattan was formerly held by a Republican member of the Assembly, John Ravitz, from 1991 to 2002, and was a Republican stronghold for decades. After the 2002 redistricting cycle, District 73 was changed so as to add more Democratic voters from adjacent Assembly District 68, specifically from two New York City Housing Authority (NYCHA) public housing development sites, the Isaac and Holmes Towers from 92nd Street to 96th Street near FDR Drive. The Towers contain approximately 1,335 people.⁶⁰ Ravitz chose to not run for reelection to his Assembly seat, believing that he would not be able to win with the new demographics of the district. Jonathan Bing, a Democrat, won the seat in the 2002 election against Republican candidate Gail Hilson.

**Illustration 19: Assembly District 73
Before 2002 Redistricting**



**Illustration 20: Assembly District 73
After 2002 Redistricting**



⁶⁰ New York City Housing Authority. NYCHA Housing Developments. Available at: <http://www.nyc.gov/html/nycha/html/developments/manissacs.shtml>

5

THE HARMFUL EFFECTS OF GERRYMANDERING

Partisan gerrymandering in New York State has had a negative impact on our elections and public policy making, putting at risk the public's trust and confidence in the democratic process. While redistricting occurs only once every decade, it has lasting effects that have proved to be damaging to the health of our democracy in New York State. Specifically, it has contributed to:

- making our elections less competitive;
- advantaging incumbents at the expense of creating opportunities for more diverse representation among elected officials;
- preservation of partisan advantage at the expense of the minority party in each house;
- long-term incumbency;
- increasing policy inaction; and
- voter dissatisfaction and declining voter participation.

A discussion of the increasing damage inflicted in each of these areas by New York's redistricting process follows. The harmful effects of gerrymandering point to the need for an immediate remedy through the creation of an independent commission and fair and sensible criteria for it to follow in drawing district lines.

A. NEW YORK'S LESS THAN COMPETITIVE ELECTIONS

The notion of competitive elections in which voters have a real and meaningful choice among candidates is at the heart of America's democratic process. Competition among a variety of candidates for public office helps to ensure that voters' interests have an equal chance of being represented, and meaningful contests ensure that elected officials remain accountable to the people they represent. The redistricting process has too often become a means for stifling competition, either by directly drawing candidates out of districts, dividing natural communities and political jurisdictions, or by creating districts that are so polarized that one party is dominant. While the redistricting process need not directly create competition, it is inherently unfair for districts to be drawn to deliberately stifle competition.

While governing authority is derived from the consent of the governed, candidates for the New York State Legislature—especially incumbents—have increasingly faced little or no opposition at the polls as New York's elections provide voters with fewer real candidate choices. In fact, incumbents in New York State have become so insulated from competition, often through the manipulation of legislative districts, that opportunities for challengers to have a fair chance of campaigning on competing ideas and policy solutions is increasing nonexistent.

This lack of competition has led to a legislature that historically fails more times than not to address major voter concerns. Without the threat of a credible challenge for office, incumbents are less concerned with accountability and results, and are more apt to stake out ideological positions and pander to their base of voters, rather than the broad public interest needs of the state.

In examining New York City and State election results over the past several decades, this very pronounced lack of competitive elections becomes readily apparent. Across the state and in the city, elections are seldom close.

These findings hold true and are more disconcerting for special elections, where party candidates are nominated in a closed door process before the special election—a process that circumvents democracy by eliminating the ability of rank-and-file voters to choose their party's nominee. The ability of the party leadership to choose their party's nominee for these special elections further cements the party's hold on power in the legislature.

Through a thorough examination of New York State and City elections over several decades Citizens Union Foundation found the following:

- Incumbents on average experienced a 96 percent re-election rate from 2002 to 2010.
- Between 1968 and 2010, competition in New York State legislative general election contests diminished, with the average margin of victory increasing from 33 percent to 51 percent during the time period. An all-time low in competitiveness was reached in 2004, with the average margin of victory at 63 percent.
- 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 races in 2010.

i. Measuring Competitiveness

To measure the level of competitiveness of state legislative elections, Citizens Union Foundation analyzed state legislative General Election returns from over the course of 32 years from 1968 to 2010⁶⁰. It looked at the margin of victory and the rate at which the major parties in both houses are uncontested. We have also analyzed the general election returns from New York City from 1992-2010, and statewide from 2002 to 2010 with a focus on the margins of victory in these races and the success rates of incumbents, in particular.

A “competitiveness scale” has been established to assess the overall level of closeness of election events during the time periods. In general, to be considered “competitive,” an election must have a margin of victory of less than 10 percent. Those races with greater than a 10 percent margin of victory have been classified as “noncompetitive.” Those races in which there were no major party challengers or with no opponent are classified as “uncontested.”

⁶⁰ Data updated by Citizens Union Foundation from original data contained in “State Legislative Election Returns, 1967-2003,” Thomas M. Carsey, William D. Berry, Richard G. Niemi, Lynda W. Powell, and James M Snyder, Release Version 1.

The election outcomes are further broken down into subcategories (tight, close, comfortable, safe, landslide) to provide a greater level of analysis of the results.

Table 3: Competitiveness Scale

Competitive Scale	Degree of Competition	Definition
COMPETITIVE	Tight	Margin of victory of less than 5%
	Close	Margin of victory between 5 and 10%
NONCOMPETITIVE	Comfortable	Margin of victory between 10 and 20%
	Safe	Margin of victory between 20 and 40%
	Landslide	Margin of victory of 40% or above
UNCONTESTED	Uncontested	A race with no major party challenger or with no opponent

ii. New York State Legislative General Elections, 1968 to 2010

Voters seldom encounter contentious electoral contests for New York State legislative general election contests. Over the past four decades, these legislative elections have become less and less competitive.

- In 1968, almost 13 percent of New York State general elections were tight or close with a margin of victory of less than 10 percent.
- Today in the most recent election in 2010, only 8.7 percent were that close.
- In total, only 8.3 percent of general elections in New York State since 1968 have had margins of victory of less of than 10 percent.

The following is a summary of the 4,625 New York State general elections that have taken place from 1968 to 2010. As is evidenced in the above below, during the past four decades over 18 percent of races have been uncontested.

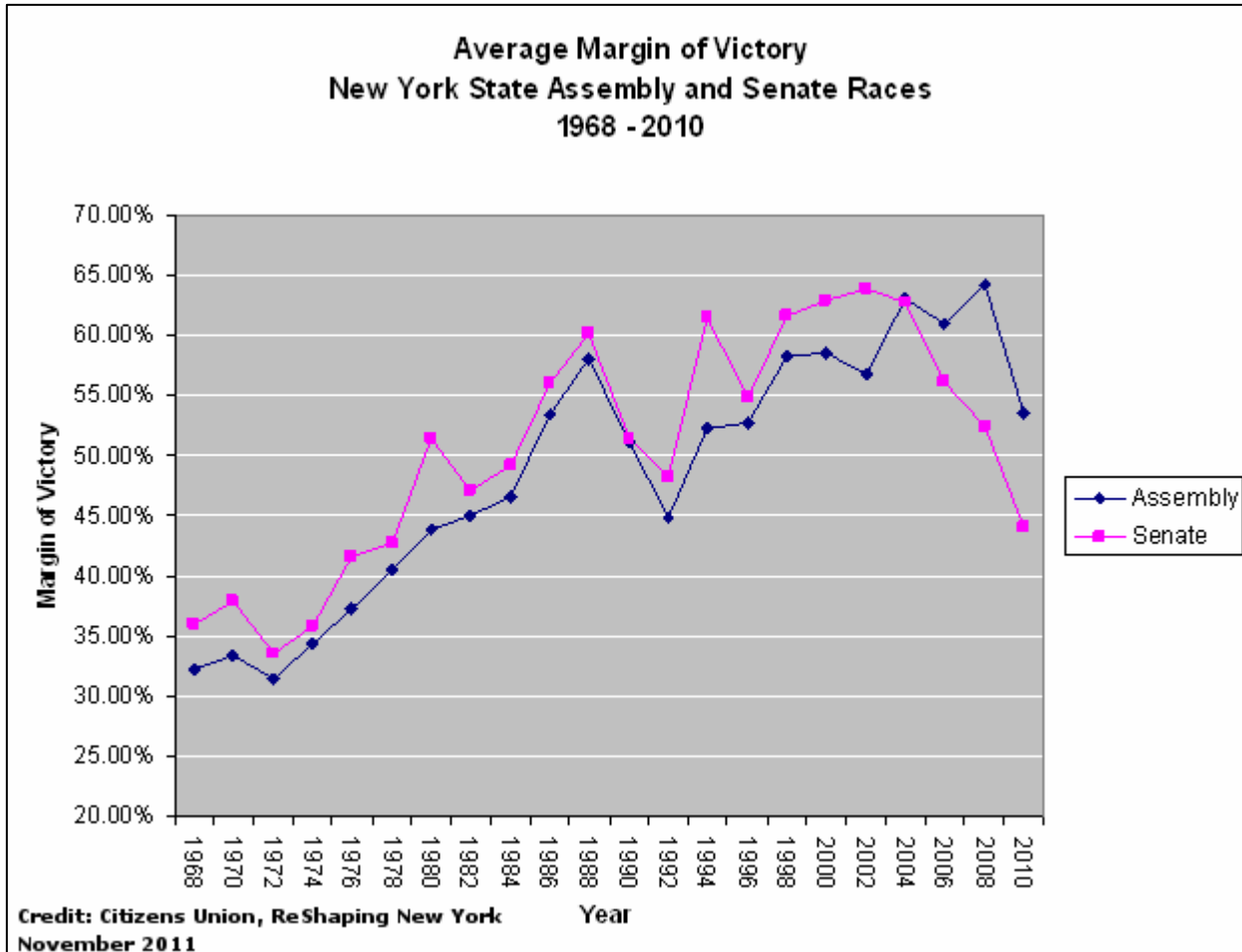
Table 4: New York State General Elections (1968 to 2010⁶²)

Competitive Scale	Degree of Competition	Number of Races	Percent of Total	Category Total
COMPETITIVE	Tight (< 5%)	198	4.28%	8.35%
	Close (5-10%)	188	4.06%	
NONCOMPETITIVE	Comfortable (10-20%)	503	10.88%	73.51%
	Safe (20-40%)	1245	26.92%	
	Landslide (>40%)	1652	35.72%	
UNCONTESTED	No Major Party Challenger	373	8.06%	18.46%
	No Opponent	481	10.40%	
<i>Total:</i>		<i>4,625</i>	<i>100%</i>	<i>100%</i>

⁶² Data from “State Legislative Election Returns, 1967-2003,” and updated with election results obtained from the New York State Board of Elections, available at: <http://www.elections.state.ny.us/2010ElectionResults.html>

The lack of competition has also increased greatly over time. The following graph illustrates the increasing margin of victory in elections from 1968 to 2010.

Illustration 21: Average Margin of Victory Over time, NYS Assembly and Senate General Election Races, 1968 - 2010



The average margin of victory has been steadily increasing over the last four decades. In the Assembly, the average margin of victory hit a high in 2008 at 64 percent.

With the last election in 2010, there was an increase in competitiveness with an average margin of victory at nearly 54 percent, largely as a result of more Republicans challenging incumbent Democrats, perhaps riding the wave of support seen for Republican congressional candidates.

Nonetheless, the average margin of victory in 2010 is still well above that of 1968 when it was 32 percent. The Senate has seen a recent increase in competition from 2006 to 2010, though 2010's average margin of victory of almost 44 percent is well above the 36 percent average margin from 1968. The increase in competition in the Senate is likely due to changes in voter enrollment, which have given Democrats a stronger base with which to challenge incumbent Republican Senators.

a. Partisan Advantage

As previously discussed, from 1980 to 2008, the legislature was split, with the Assembly under Democratic control and the Senate under Republican control. The ramifications of this split in control can be seen clearly when examining which party has the most uncontested races. Though in aggregate the 62 members of the Senate and 150 members of the Assembly represent the same number of Democratic and Republican voters, we have seen an Assembly in which Democrats are more frequently uncontested and a Senate in which Republicans are more frequently without challengers in general elections, all in a state with an enrollment advantage for Democrats. Only with legislative districts drawn to weed out competition does one see such an advantage for the party in power in each house.

In the Assembly, 340 Democrats had no major party opponent or were wholly unopposed from 1968 to 2010, whereas Republicans were unopposed in only 243 races. In the Senate, the reserve breakdown occurs – 165 Republicans saw no such opposition from 1968 to 2010, while Democrats were unopposed in only 129 races. The chart below and on the following page show the number of uncontested races (where there is either no major party opponent or no opponent at all) in each house from 1968 to 2010.

Illustration 22: Uncontested General Elections in the New York State Assembly, 1968 – 2010

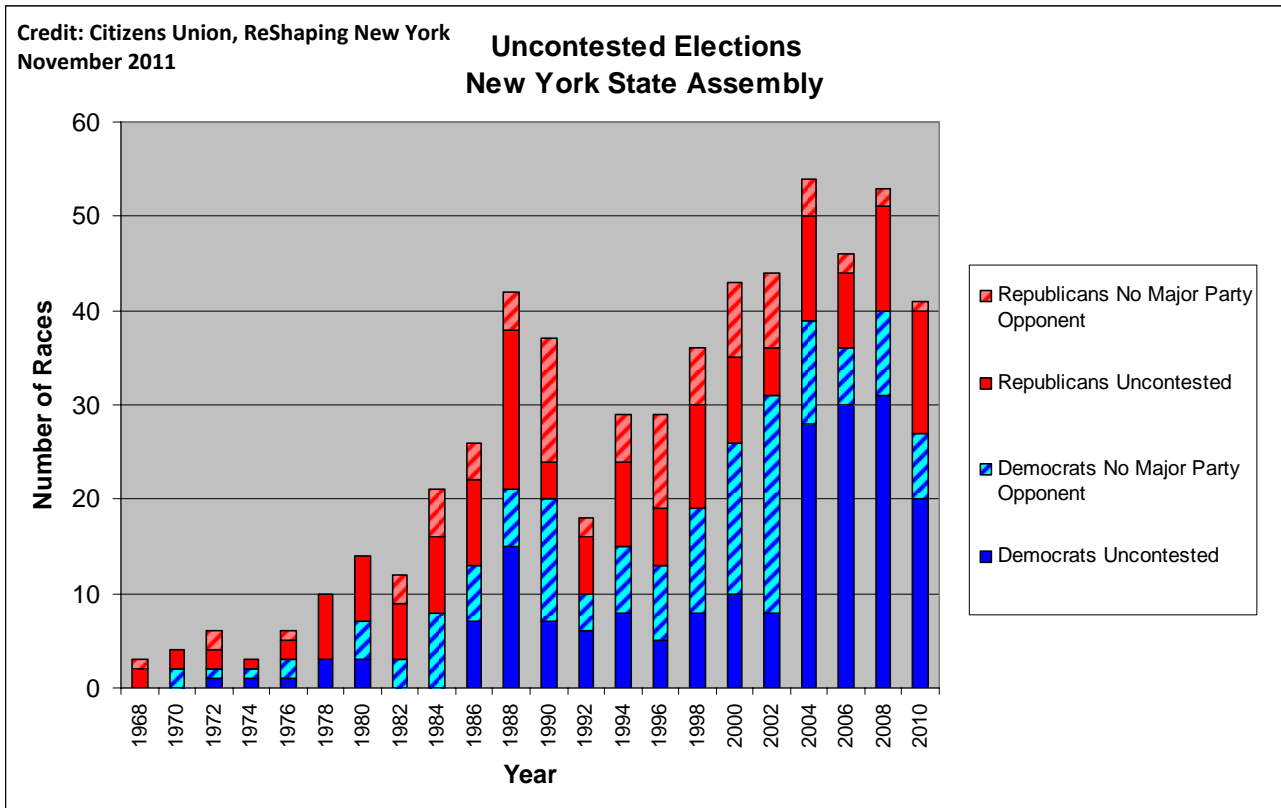
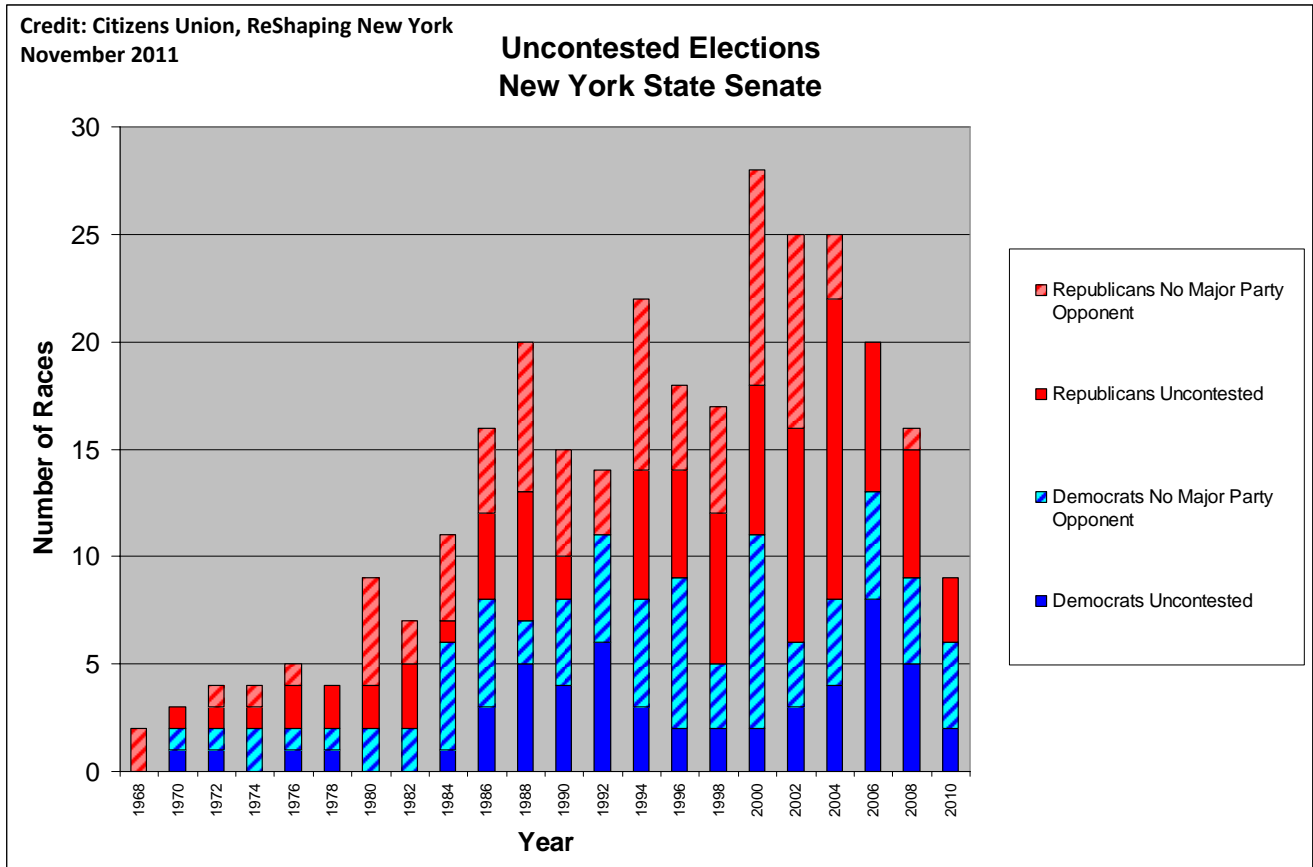


Illustration 23: Uncontested General Elections in the New York State Senate, 1968 – 2010



b. Incumbent Advantage – Legislative General Elections 2002 – 2010

Citizens Union Foundation has examined the election results for General Elections from 2002 – 2010 with a particular focus on the re-election rates and margins of victory for incumbents. When one examines the level of competitiveness in races where there is an incumbent in the race (as opposed to an open seat election) the lack of competition becomes even more pronounced. This has to do with many factors, including name recognition of the current officeholder, the ability of incumbents to raise money, other advantages including the ability to mail directly to district residents with office funds, and in general, fewer competitors stepping forward to try and unseat an officeholder. Add the manipulation of district lines every ten years to insulate incumbents from challenges to these factors and the task of toppling an incumbent is quite daunting.

In stark contrast to candidates winning elections for open seats, incumbents usually win by large margins. Between 2002 and 2010, 93 percent of incumbents either won by margins of 10 percent or more, the average nearing 61 percent, or had no major party challenger. In open races, which accounted for 35 percent of all races during that time period, the average margin of victory was about 42 percent. The table below shows the breakdown in each house with regard to the average margin of victory in incumbent and open races.

Table 5: Average Margin of Victory, State Legislative General Elections, 2002 – 2010

	Senate	Assembly	Total Legislature
Incumbent Average Margin of Victory	58.36%	62.77%	61.49%
Challenger Average Margin of Victory	17.02%	19.45%	18.34%
Open Seat Average Margin of Victory	50.94%	38.53%	41.67%

When comparing the average margins of victories in the categories above between each house, it is interesting to note that the average margin of victory for Senate open seats is much larger than that of the Assembly – nearly 13 percentage points higher. This could be in part attributed to the large number of assemblymembers who bring name recognition and a public record when seeking higher office in the Senate – while the seat is “open” by not having an incumbent senator on the ballot, the race still has an incumbent from a different house. For example in 2010, assemblymembers sought higher office in the Senate in several races – Senate District 12 saw the election of Assemblymember Michael Gianaris with a margin of victory of 63 percent and Senate District 31 saw the election of Assemblymember Adriano Espaillat with a margin of victory of 73 percent. The overall margin of victory for open seats, however, is still well below that of races in which incumbents are victorious by about 20 percentage points.

Even when a challenger is successful, the margin of victory is well below that of successful incumbents. In the 4 percent of races lost by incumbents between 2002 and 2010, the average margin of victory for challengers to incumbents was 18 percent, well below the average margin of victory when incumbents win re-election (61 percent, as previously noted).

Overall, incumbents won by large margins, as demonstrated by the table below and the tables on the following page. What should be noted is the large number of races where incumbents faced no major party challenger or were wholly unopposed – nearly a third (32 percent) of incumbent races.

Table 6: Incumbent Races – NYS Assembly General Elections, 2002 – 2010

Competitive Scale	Degree of Competition	Number of Races	Percent of Total	Category Total
Defeat	Lost Election	18	2.62%	2.62%
Competitive	Tight (< 5%)	9	1.31%	3.64%
	Competitive (5-10%)	16	2.33%	
Noncompetitive	Comfortable (10-20%)	48	7.00%	61.08%
	Safe (20-40%)	151	22.01%	
	Landslide (40+%)	220	32.07%	
Uncontested	No Major Party Challenger	65	9.48%	32.65%
	Uncontested (100%)	159	23.18%	
	<i>Total Incumbent Races:</i>	<i>686</i>	<i>100.00%</i>	<i>100.00%</i>

Table 7: Incumbent Races – NYS Senate General Elections, 2002 – 2010

Competitive Scale	Degree of Competition	Number of Races	Percent of Total	Category Total
Defeat	Lost Election	15	5.21%	5.21%
Competitive	Tight (< 5%)	6	2.08%	3.82%
	Competitive (5-10%)	5	1.74%	
Noncompetitive	Comfortable (10-20%)	31	10.76%	60.76%
	Safe (20-40%)	69	23.96%	
	Landslide (40+%)	75	26.04%	
Uncontested	No Major Party Challenger	27	9.37%	30.21%
	Uncontested (100%)	60	20.83%	
<i>Total Incumbent Races:</i>		288	100.00%	100.00%

Table 8: Incumbent Races – NYS Senate and Assembly, General Elections, 2002 – 2010

Competitive Scale	Degree of Competition	Number of Races	Percent of Total	Category Total
Defeat	Lost Election	33	3.39%	3.39%
Competitive	Tight (< 5%)	15	1.54%	3.70%
	Competitive (5-10%)	21	2.16%	
Noncompetitive	Comfortable (10-20%)	79	8.11%	60.99%
	Safe (20-40%)	220	22.59%	
	Landslide (40+%)	295	30.29%	
Uncontested	No Major Party Challenger	92	9.45%	31.93%
	Uncontested (100%)	219	22.48%	
<i>Total Incumbent Races:</i>		974	100.00%	100.00%

iii. The Incumbent Reelection Rate 2002 – 2010

Taking together the results of the primary and general elections, incumbents are re-elected in large numbers. Of those incumbents who seek re-election, 96 percent were successful from 2002 – 2010, with only 3.8 percent of challengers being successful in their bids to oust incumbents, or a total of 33 of 970 races. This extremely high rate not only discourages challengers, but also voter participation, as the results of the election seem preordained.

Table 9: State Legislative Incumbent ReElection Rates - Assembly and Senate 2002-2010, Primary and General Elections

Result for Incumbent	Number of Wins/Losses	Percentage of Incumbent Races
Won Seat	941	96.12%
Total Losses	38	3.88%
<i>Total</i>	978	100.00%

iv. New York City General Elections for State Legislature

Like the rest of the state, New York City has experienced similar declines in the level of competitiveness of state legislative elections. The lack of competition in New York City’s general elections is in large part due to the fact that of all registered voters, 68 percent are registered with the Democratic Party and only 11 percent are registered with the Republican Party.⁶³ However, most New York City assembly districts are also drawn in such a manner that the Republican vote is marginalized.

Using data available from the New York State Board of Elections and borrowing from the statewide dataset, Citizens Union Foundation’s analysis of New York City general elections between 1992 and 2010 reveal that during this time period, a staggering 95 percent of state legislative general election races within New York City were either uncontested or the victor won by a margin of victory of at least 20 percent.

As the data presented below show, less than 2 percent of state legislative elections that occurred in New York City since 1992 were “tight” or “close” with a margin of victory of less than 10 percent. In addition, New York City has led the state in uncontested elections, especially in the Assembly which between 1992 and 2010 experienced nearly a 300 percent growth in uncontested city elections.

Table 10: New York City General Elections from 1992 to 2010

Competitive Scale	Degree of Competition	Number of Races	Percent of Total	Category Total
Competitive	Tight (< 5%)	6	0.68%	1.81%
	Competitive (5-10%)	10	1.13%	
Noncompetitive	Comfortable (10-20%)	23	2.82%	65.88%
	Safe (20-40%)	72	8.02%	
	Landslide (40+%)	488	55.03%	
Uncontested	No Major Party Challenger	135	15.25%	32.32%
	No Opponent	151	17.06%	
<i>Total Races:</i>		885	100.00%	100.00%

a. Incumbent Advantage – New York City General Elections in the State Legislature

While general election races in New York City are less than competitive than the state as a whole in most cases, they are even less so when an incumbent is in the race. The following is a look at the level of competition and the overall success rates of incumbents in general elections for state legislature in New York City from 1992-2010. Overall, New York City sees even less competition when compared to the rest of the state, due in part of course to the party registration advantage for the Democrats, but also in the way districts are drawn for partisan advantage.

⁶³ New York State Board of Elections enrollment information for November 2011. Available at: http://www.elections.state.ny.us/NYSBOE/enrollment/county/county_nov11.pdf

In stark contrast to the few elections for open seats in which no incumbent is running, races with incumbents are usually won by large margins. Between 1992 and 2010, nearly 96 percent of New York City incumbents either won by margins of 10 percent or more or had no major party challenger. City incumbents lost only 2.8 percent of races, and their average margin of victory was just over 74 percent, 12.5 percentage points higher than the average for incumbents statewide. In open races, representing a mere 7.8 percent of all New York City races, the average margin of victory was 65.5 percent. Open races were less competitive than those in which incumbents were defeated (though incumbents were defeated only in 2.6 percent of all races).

Table 11: Average Margin of Victory, NYC State Legislative General Elections, 1992 – 2010

	Senate	Assembly	Total Legislature
Incumbent Average Margin of Victory	75.90%	73.87%	74.43%
Challenger Average Margin of Victory	42.68%	47.85%	45.60%
Open Seat Average Margin of Victory	72.10%	61.97%	65.64%

Table 12: NYC Assembly Incumbent Races from 1992 to 2010 in General Elections

Race Category	Threat to Incumbent	Number of Races	Percent of Total	Category Total
Defeat	Lost Election	13	2.21%	2.21%
Competitive	Tight (< 5%)	1	0.17%	0.85%
	Competitive (5-10%)	4	0.68%	
Noncompetitive	Comfortable (10-20%)	7	1.19%	67.69%
	Safe (20-40%)	48	8.16%	
	Landslide (40+%)	343	58.33%	
Uncontested	No Major Party Challenger	73	12.41%	29.25%
	No Opponent	99	16.84%	
	<i>Total Incumbent Races:</i>	588	100.00%	100.00%

Table 13: NYC Senate Incumbent Races from 1992 to 2010 in General Elections

Race Category	Threat to Incumbent	Number of Races	Percent of Total	Category Total
Defeat	Lost Election	10	4.33%	4.33%
Competitive	Tight (< 5%)	3	1.30%	2.16%
	Competitive (5-10%)	2	0.87%	
Noncompetitive	Comfortable (10-20%)	9	3.90%	58.01%
	Safe (20-40%)	14	6.06%	
	Landslide (40+%)	111	48.05%	
Uncontested	No Major Party Challenger	38	16.45%	35.50%
	No Opponent	44	19.05%	
	<i>Total Incumbent Races:</i>	231	100.00%	100.00%

Table 14: NYC Senate and Assembly Incumbent Races from 1992 to 2010 in General Elections

Race Category	Threat to Incumbent	Number of Races	Percent of Total	Category Total
Defeat	Lost Election	23	2.81%	2.81%
Competitive	Tight (< 5%)	4	0.49%	1.22%
	Competitive (5-10%)	6	0.73%	
Noncompetitive	Comfortable (10-20%)	16	1.95%	64.96%
	Safe (20-40%)	62	7.57%	
	Landslide (40+%)	454	55.43%	
Uncontested	No Major Party Challenger	111	13.55%	31.01%
	No Opponent	143	17.46%	
	<i>Total Incumbent Races:</i>	<i>819</i>	<i>100.00%</i>	<i>100.00%</i>

v. Special Elections

As the trends of declining competitiveness of New York State’s general and primary elections is troubling, so too is the way in which the legislature fills open seats when vacated during the midst of a term.

When a vacancy occurs in the state legislature due to retirement or other circumstances, the governor has the power to call for a Special Election to fill it. Each party’s leadership selects its candidate according to its own set of rules. Long before the public gets to the voting booth, the party committees vote for their nominee. Rank-and-file voters are left out of the party nominee selection process entirely. This process has allowed the majority party leadership to hand select those candidates they want to fill open seats that occur in between election cycles, further strengthening the grip they have on power in their house.

Citizens Union Foundation released in April 2007 its first briefing paper on special elections and vacancies in New York State, finding that an astonishing number of state legislators were first elected in a special election – nearly a third or 31 percent of legislators. CUF released an updated report earlier this year, finding that 26 percent of the legislature taking office on January 1, 2011 was first elected in a special election, but with the possibility of 10 special elections, the rate could jump to 30 percent.⁶⁴

The process leaves little but the ceremony of a special election—when voter turnout is abysmally low— with choices between hand-picked party nominees who will likely become long-term incumbents, given the general lack of competitiveness in state legislative elections. In many cases, those that get the dominant party nod are party loyalists or staff members for the outgoing legislator. This form of nepotism has helped the parties maintain their control of the legislative body.

⁶⁴ Citizens Union. “Circumventing Democracy: The Flawed Process for Filling Vacancies in State Government, 2011 Update.” June 2011. Available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CU_CircumventingDemocracyReport_June2011.pdf

CASE STUDY: MANHATTAN ***The Special 67th***

Former State Assembly Member Jerrold Nadler represented the 67th Assembly District of Manhattan from 1977-1992. In 1992, Congressman Ted Weiss died a day before the primary election and Nadler was nominated to replace Weiss to represent the 8th congressional district. He was elected easily that November, winning the seat in his own right as well as a special election to serve the rest of Weiss' term.

Nadler's move to higher office created a vacancy that was to be filled through the special election process that November.

Long-time legislative aide and campaign manager to Nadler, Scott Stringer won the Democratic party nod in a closed-door and disputed nomination process and went on to win the special election weeks later.

After 13 years in office, Stringer won a bid for Manhattan Borough President in 2005 creating another mid-term vacancy in the 67th. Despite his admission that the process was "ridiculous,"¹ Stringer backed another of Nadler's long-time aides, Linda Rosenthal, to succeed him.

Rosenthal had served for 13 years as the Manhattan District Director and Director of Special Projects for Congressman Nadler. As expected, she won the Democratic nod in the closed door nomination process and won the seat handily with well over twice the votes of her next competitor.

¹ Berkey-Gerard, Michael and Joshua Brustein. "Not-So-Special Elections," Gotham Gazette. 2/17/2006 Available at:

<http://www.gothamgazette.com/article/iotw/20060217/200/1765>

The selection process for filling vacancies in the state legislature involves the nomination of candidates by party committees followed by a special general election scheduled at a date set by the governor. A candidate may also petition to get on the ballot as an independent candidate under a newly created party label to compete with the party-backed candidates. Candidates who run independently of the major parties need to collect 1,500 signatures to appear under a party name that they create.⁶⁵

The party nomination process replaces the usual public primary election with a few hundred party members who narrow the field of aspiring candidates down to one for each party line without any direct input from rank-and-file voters. Voters are given the opportunity to choose from these candidates at the special election, but with so many legislative districts dominated by a single political party in this state (due in part to the way in which legislative districts are gerrymandered to favor majority party incumbents), a candidate who wins the dominant party nod rarely faces challenging competition at the polls. These special elections provide voters with little real choice.

Additionally, very few people turn out to the polls to vote in these contests. In last year's legislative special elections, two of the seven Assembly races had turnouts of less than 4 percent of registered voters. Even in the special election with the highest turnout, just 12 percent of registered voters went to the polls, which is less than a quarter of the turnout the district received a few months later at the general election.

⁶⁵ "How Candidates Get on the Ballot for a Special Election," Gotham Gazette, February 17, 2006, <http://www.gothamgazette.com/article/issueoftheweek/20060217/200/1764>.

The special election process raises additional concerns considering the 97 percent reelection rate of incumbent legislators in New York State. Due to the powers of incumbency among other factors, dominant major party candidates that win the party's nod are practically assured a lifetime position in the state legislature should they seek it. Even though they may have just a few months of incumbency by the fall general election, these officials are already entrenched and rarely face viable opponents.

B. INCUMBENT INTERESTS OVER DIVERSE REPRESENTATION

One of the goals of a representative democracy is to ensure that the citizens of the country have fair representation in government, specifically in elected office. A comparison of the state's demographics and the makeup of the state legislature reveals that the body is not nearly as diverse as the state as a whole. The redistricting process, in favoring incumbents, ensures that the elected body is slow to reflect to demographic and cultural changes in the state's population.

i. The Voting Rights Act

The Voting Rights Act was passed in 1964, with Section 2 and 5 relating to the possible diluting effect of redistricting on minority votes. Section 2 prohibits state and local governments from adopting practices, procedures, or redistricting plans with a discriminatory effect that results in vote dilution. According to the law, a voting practice is discriminatory if minorities "have less opportunity than other members of the electorate to participate in the political process and elect a member of their choice."⁶⁶ Vote dilution refers to redistricting plans in which minority communities are compressed into a small number of districts (packing), or spread thinly among various districts (cracking), in effect, fracturing their votes, and reducing their representation.

Two United States Supreme Court cases set criteria for what factors constitute violations of Section 2. In *Thornburg v. Gingles* the court determined that for a violation of Section 2 to occur, a minority group's presence within the single member district in question must be large enough to constitute a majority, the group must

Types of Districts For Minority Representation

- 1. Majority-minority districts:** More than 50 percent of the voters in a district are from the same minority racial or language group.
- 2. Minority-coalition districts:** A type of majority-minority district where two or more minority groups form a coalition to elect candidates of their choice.
- 3. Minority crossover districts:** Minority voters might comprise less than 50 percent of the district, and still elect their chosen representatives with support from some "crossover" white voters.
- 4. Minority influence districts:** Minorities constitute a sizable portion of the district's voting age population, but not enough to control the results of an election (less than 50 percent).

⁶⁶ See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1246 (2009).

be politically cohesive, and there must be evidence that the white majority votes together with the specific purpose of defeating the minority group's preferred candidate.⁶⁷

In another case, the Supreme Court's ruling in *Bartlett v. Strickland* affects the population criteria that must be met in order for plaintiffs in lawsuits to demonstrate that vote dilution has occurred under Section 2.⁶⁸ The court ruled that states are not required to draw opportunity to elect districts in which racial minorities make up less than 50% of the population of a particular district (see districts as described in categories 2 through 4 on the table above). The ruling allowed, however, state officials to choose to draw opportunity to elect districts even if the population falls short of the 50% requirement, though as stated above, challenges under Section 2 would not be heard.⁶⁹ *Bartlett* does not however, address whether a Section 2 claim can be brought by multiple minority groups whose numbers would not be enough to meet the 50% alone, but whose interests align, and can collectively elect candidates of their choice.

Section 5, like Section 2, also provides protection for the rights of minority voters. Unlike Section 2, Section 5 is designed to cover only specific jurisdictions: towns, states, or counties with a particularly egregious historical record in diluting minority votes. In some cases, this means an entire state, in others only a city or town. Currently, only three counties in New York State are covered by Section 5 as amended in 1982, all in New York City: Bronx, Kings (commonly known as Brooklyn) and New York (Manhattan). Any voting changes proposed by the state must be reviewed and approved by the United States Department of Justice for pre-clearance before implementation. Under pre-clearance, any legislative changes to the election process from polling place locations and voting methods to boundaries for legislative districts must be submitted to the Department of Justice for approval. A proposed change is denied if it would negatively impact minority group members with respect "to their opportunity to exercise the electoral franchise effectively."⁷⁰ Covered jurisdictions cannot adopt voting changes with a discriminatory purpose or retrogressive effect. A change is retrogressive if it puts minorities in a worse position (in terms of ability to vote for a candidate of their choice) than if the change did not occur.⁷¹ The Department of Justice evaluates each change under these criteria. Community groups and other interested parties are encouraged to write letters and comments to the Department of Justice regarding a particular application for pre-clearance.

⁶⁷ See *Thornburg v. Gingles*, 478 U.S. 30 (1986).

⁶⁸ See *Bartlett v. Strickland*, 129 S. Ct. 1231, 1246 (2009).

⁶⁹ NAACP, *The Impact of Redistricting in Your Community: A Guide to Redistricting*, 18, Available at: www.maldef.org/resources/publications/Redistricting_Manual.pdf

⁷⁰ Section 5 of the Voting Rights Act requires state and local governments "covered" by formulas specified in the act to obtain approval from the Attorney General or a judicial panel before implementing any change in a "standard, practice or procedure with respect to voting." The Act was amended in 1970 to include jurisdictions that had literacy tests as of November 1, 1968 and where less than 50 percent of the voting age population was registered on that date or voted in the 1968 presidential election. In July 1970, the Attorney General filed a determination that New York State maintained a literacy test enacted in 1922 that adversely affected minority voting participation and in March 1971, the U.S. Census Bureau found that fewer than 50 percent of voting age residents were registered in the three counties of the Bronx, Kings, and New York. These determinations required the Bronx, Brooklyn, and Manhattan to be covered by the act and subject to pre-clearance by the Department of Justice.

For more information, see Doug Muzzio, "Voting Rights Act," *Gotham Gazette*, June 2003, available at <http://www.gothamgazette.com/article//20030610/17/420>

⁷¹ NAACP, 17.

Some states and municipalities have amended redistricting rules for their own elections related to minority voting rights, including California which passed a state voting rights act in 2002. The bill, which amends California Elections Code Section 14025-14032⁷², expands on voting rights granted under the federal Voting Rights Act by, among other things, granting standing to groups who are too geographically dispersed to elect their candidate of choice from a single member district. This eases the path for proportional voting systems to be used as remedies for minority vote dilution. In 2008, a ballot initiative was passed in California that created an independent redistricting commission. California's new system is discussed further on page 93.

Illinois recently adopted legislation, the 2011 Illinois Voting Rights Act, aimed at preventing vote dilution. Illinois has a hybrid system of redistricting with a combination of input from the legislature and an independent redistricting commission.⁷³ The Act states that new legislative districts, reflecting the 2010 census, can be drawn to create crossover districts, coalition districts, or influence districts to the benefit of racial and language minorities. The bill was introduced at the urging of advocacy groups from Chicago's Chinatown, which had been divided into three state Senate districts, four state House districts, and three congressional districts following the 2000 census. Leaders believed these divisions diluted and divided the voting power of the neighborhood's residents. Opponents of the bill objected to the drawing of districts

CASE STUDY: QUEENS

The Division of Minority Communities

At a hearing held before the Senate Democratic Majority Task Force on Reapportionment in December 2010, members of several groups representing minority communities testified as to their lack of representation in the borough of Queens.

The Richmond Hill community testified as to the division of Richmond Hill's Indo-Caribbean community into five separate assembly districts – AD 23, 25, 31, 32 and 38 – thus not allowing them to elect a single candidate who represents their interests or a candidate who is Indo Caribbean. According to the testimony of one group, the Rajkumari Center for Indo-Caribbean Arts & Culture, the community is reported to have over 500,000 individuals, which is well above the average number of constituents in a state senate district – 306,000.

Other organizations spoke to the lack of Asian-American representation in the state legislature in spite of Eastern Queens being home to one of the largest and most concentrated Asian populations in the United States. According to Asian Americans for Equality, their population in Queens has increased dramatically, yet there is only one Asian-American state legislator.

Both groups noted that redistricting caused the division of their communities in spite of their growing numbers, and urged the state to keep their communities intact to allow them to elect candidates who best represent them.

⁷² Available at: <http://archive.fairvote.org/?page=1307>

⁷³ Illinois law gives legislators the first opportunity to draw the district maps. If they fail to meet the deadline, a back-up commission is used.⁷³ The members of the commission are selected by the President of the state senate, the Speaker of the state house, the House Minority Leader, and the Senate Minority Leader. Each selects two members.

under what they saw as the behest of a specific minority group, and not the general needs of all Illinois voters. It passed, however, with a 54-3 majority.⁷⁴

ii. **Minority Representation**

While effective representation does not require the elected legislator for a particular community be an individual of that particular racial or ethnic group, the persistent gap between minorities in New York and minorities in elected office is notable. For the purposes of this analysis, we use population data from the 2010 U.S. Census.⁷⁵

In New York, minority representation in the State Legislature considering those taking office in January 2011 is 25 percent, which is well under the nearly 42 percent of minorities that made up the state's population in 2010. It should be noted that percentages of population do not always indicate that an equivalent number of seats should be held, as minority populations may be spread throughout the state, in some places too thinly to hold a seat.

Latino representation in the State Legislature is very disproportionate, with Hispanics and Latinos making up 17.6 percent of the state population as of 2010, yet only holding about 9 percent, or 19, of the state legislative seats in 2011. While nearly 32 percent of New York's Latino population lives outside of New York City, 18 of those Latino legislators represented parts of Manhattan, Brooklyn, Queens or the Bronx. The only Latino Republican legislator, Peter Lopez, was elected in 2007 and represents Schoharie and Greene County.⁷⁶

Asian Americans are very under represented as well. Asians Americans make up over 7 percent of the state's population, yet they hold only one seat in the state legislature, or 0.47 percent of all seats. Grace Meng was elected to that seat in Assembly District 22 in 2008 and succeeded Ellen Young, who was previously the second Asian-American legislator to hold that seat. It should be noted that Assembly District 22, covering the neighborhood of Flushing, Queens is the only legislative seat that Asian-American legislators have ever held in New York State.

As part of Citizens Union's ReShapeNY campaign, a coalition of Asian American groups, including MinKwon Center for Community Action, the Korean American Voters Council, and the Korean American League for Civic Action, among others, joined with Citizens Union in releasing data showing that a number of districts in New York City have substantial Asian-American populations. Fifteen assembly districts, ten of which are adjacent to each other and another five of which are clustered together, have Asian American populations of at least 20 percent according to 2010 census data.⁷⁷ Similarly, six state senate districts, three of which are next to each other in eastern Queens and another two adjacent in southern Brooklyn, also have populations exceeding 20 percent. The Asian American groups announced support for independent redistricting, believing

⁷⁴ Byrne, Dennis. "Illinois' Wacky Way of Redistricting," *The Chicago Tribune*, March 14, 2011. Available at: http://articles.chicagotribune.com/2011-03-14/news/ct-oped-0315-byrne-20110314_1_influence-districts-election-law-minority

⁷⁵ U.S. Census Department, Available at: <http://factfinder2.census.gov> Survey, available at: http://factfinder.census.gov/home/saff/main.html?_lang=en

⁷⁶ National Association of Latino Elected Officials, http://www.naleo.org/downloads/3_NALEORacestoWatch_fin_10-06.pdf

⁷⁷ The full report is available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CU_Asian-American_Representation_StateLegislature_May2011.pdf

that a fairer and more independent redistricting process would better take into account the rapid growth of the Asian-American population in New York and the need to draw districts that allow for opportunities to possibly elect more Asian Americans to political office instead of simply protecting current incumbents.

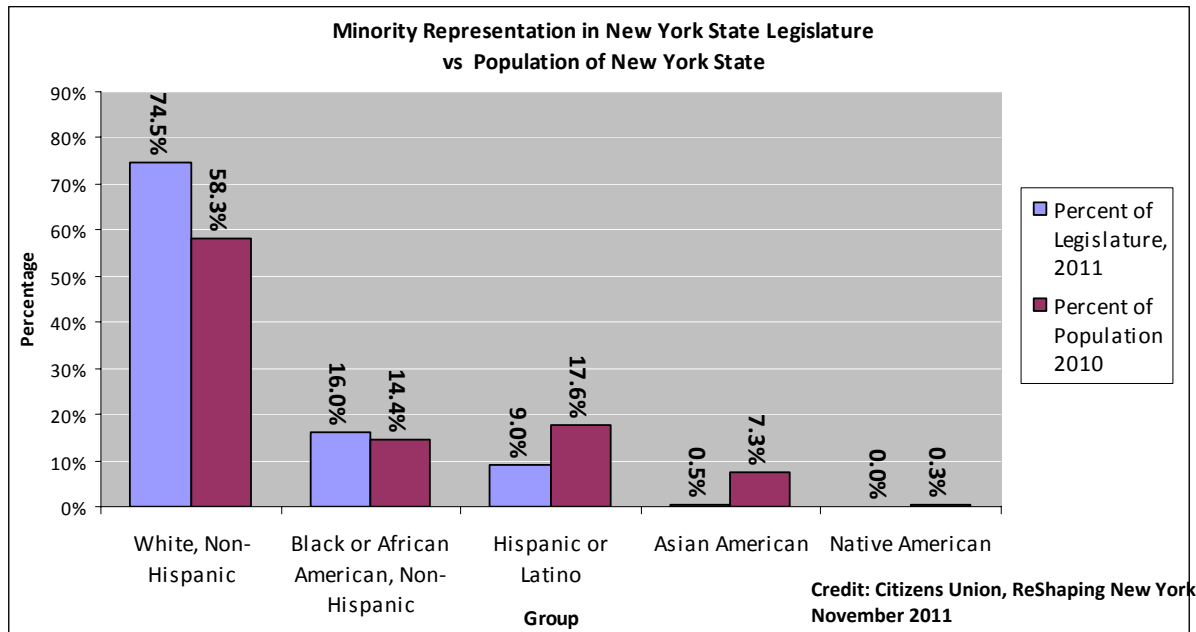
African Americans have fared better in the state legislature, having a slightly higher level of representation than the general population of African Americans in the state, with African Americans making up 16 percent of the legislature and 14.4 percent of the population in 2010.

The table and chart below show the breakdown of minority representation as a percentage of the state’s population and within the state legislature.

Table 15: Ethnic/Racial Composition of the New York State Legislature, 2011⁷⁸

Group	Legislators	Percent of Legislature	Percent of Population	Percent Difference
White, Non-Hispanic	158	74.53%	58.3%	+16.70%
Black or African American, Non-Hispanic	34	16.04%	14.4%	+1.64%
Hispanic or Latino	19	8.96%	17.6%	-9.11%
Asian American	1	0.47%	7.3%	-6.83%
Native American	0	0.00%	0.3%	-0.30%

Illustration 24: 2011 Minority Representation



⁷⁸ All population data based on U.S. Census Bureau American 2010 Census. Data on minority elected officials based on Citizens Union’s compilation of data from the National Conference of State Legislators (Legislator Demographics); review of Asian-American legislative succession; and the review of races watched by the National Association of Latino Elected Officials (NALEO).

As a means of comparison, minority representation in state houses across the country shows a similar pattern with 824 of the 6,399 legislators of a racial or ethnic minority, comprising 12.8 percent in 2004, while U.S. Census data from 2000 show that 30.9 percent of the U.S. population was African American, Latino, Asian Pacific, or Native American.⁷⁹

According to a report analyzing the 2003 New York State legislature, minority legislators were overwhelmingly Democrats (94 percent), whereas whites were only 44 percent Democratic and 55 percent Republican. Minority legislators were also more likely to be incumbents than were white legislators (78 percent compared to 70 percent) and were also less likely to be challengers or run for open seats (22 percent compared to 30 percent). However, a greater percentage, 37 percent of minority legislators, ran unopposed, compared to 25 percent of whites.⁸⁰

What is also interesting to note is that access to money is not the same for all candidates or for all incumbents either. In New York, white Assembly winners raised 61 percent more than African Americans and 19 percent more than Latinos in the 2004 election.⁸¹

iii. Representation of Women

The representation of women in legislative office has a slightly more elusive connection to redistricting, given the nearly equal populations of women across districts. It is clear, however, that the proportion of female legislators in state legislatures nationwide does not match the respective proportions of the population. Because redistricting favors incumbents who have historically been mostly white males, it is one more obstacle facing women in their efforts to hold office, as men have long held a disproportionate number of seats in state legislatures across the country.

In January 2011, women made up 22.6 percent of legislators in New York State, with 37 in the Assembly and 11 in the Senate. As a result of the 2010 elections, women did not succeed in picking up any seats in the Senate, despite a concerted effort by the Senate Democrats to run women against male Republican incumbents. In the Assembly, women lost seats, with one defeat in the 2010 primary election (Ginny Fields) and three other female legislators retiring who were all succeeded by men. In only two races was a seat previously held by a male legislator won by a new female legislator – Claudia Tenney, who succeeded David Townsend, who ran for County Sheriff, and Aravella Simotas, who succeeded Michael Gianaris, who is now a state senator. The national average for the proportion of state legislative seats held by women is 23.4 percent, meaning that New York ranks 31st in the nation in terms of the representation of women in its legislature.⁸² Women now hold even fewer seats now, with special elections this fall filling the vacancies of three seats previously held by women now by men.⁸³

⁷⁹ Megan Moore, "Money and Diversity: 2004 State Legislative Elections." The Institute on Money in State Politics, March 2006. Available at: <http://www.followthemoney.org/press/Reports/200603292.pdf>

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² The National Conference of State Legislators, <http://www.ncsl.org/LegislaturesElections/WomensNetwork/WomeninStateLegislatures2011/tabid/21606/Default.aspx> and Citizens Union's analysis of current female legislators in New York.

⁸³ Assemblymembers RoAnn Destito, Audrey Pheffer and Nettie Mayersohn have all left office since January 2011.

Incumbency and the subsequent lack of competition are considered to be the largest barriers for women as they seek election to Congress.⁸⁴ In addition, women have been found to be more likely to run in open-seat elections, when a seat becomes open due to redistricting or other factors such as resignation or death.⁸⁵ Women have been found to be as competitive as or more competitive than men in Congressional special elections, giving further credence to the argument that more open seats will lead to more women representatives.⁸⁶ Indeed, in 1992, women made gains in Congress in part due to the increased number of open seat elections caused by redistricting.⁸⁷ Dubbed the “year of the woman”, 1992 was marked by the influx of women in Congress, in part due to increased competition.

C. PROTECTING PARTISAN ADVANTAGE

Republicans have controlled the New York State Senate and Democrats have controlled the New York State Assembly for over thirty years without interruption since 1974, with the exception of just two years in the State Senate from 2009 to 2010. This entrenched gulf between the two houses has contributed to historic state legislative gridlock and is a key factor in discouraging bi-partisan policy-making and a dynamic joint legislative deliberative process. This partisanship pervades today, and history dictates that votes will likely continue to be cast according to party lines.

One consequence of New York’s long-divided legislature is the ongoing marginalization of the minority party in each house. Because in the New York State Legislature the minority and majority powers were fixed for so long, the level of partisanship increased over time and legislative proposals proposed by the minority party were almost never enacted into legislation. In fact, institutional structures prevented minority party members from considering or voting on legislation they supported, though reforms have been put in place to allow sponsors to force action on legislation in committee.

This high level of partisanship led to lack of interest on both sides to reach compromise legislation and resulted in an overwhelming number of one-house bills that are introduced each year only to languish in committee. In fact, there are more bills introduced in the New York State Legislature than in any other state, and yet New York has the third lowest enactment rate in the country. Between 1997 and 2001, of the 77,154 bills introduced in the Assembly and Senate, only 3,552 bills, less than 5 percent, were passed by both chambers.⁸⁸ The State Legislature in 2008

⁸⁴ Palmer, Barbara and Simon, Dennis. “The Political Glass Ceiling: Gender, Strategy and Incumbency in U.S. House Elections, 1978 – 1998.” *Women & Politics*. Vol. 23, No. ½, 2001, Page 59.

⁸⁵ *Ibid.*

⁸⁶ Gaddie, Ronald and Bullock, Charles. “Structural and Elite Features in Open Seat and Special U.S. House Elections: Is there a sexual bias?” *Political Research Quarterly*. Vol. 520, No. 2. 1997.

⁸⁷ Palley, Mirian. “Elections 1992 and the Thomas Appointment.” *Political Science & Politics*. Vol. 6, No. 1, 1993.

⁸⁸ Brennan Center for Justice at NYU School of Law, *The New York State Legislative Process: An Evaluation and Blueprint for Reform*, 2004, page 36. Available at: http://www.brennancenter.org/content/resource/the_new_york_state_legislative_process_an_evaluation_and_blueprint_for_refo

introduced 18,239 bills, and only 1,634 were passed, representing an enactment rate of 9 percent.⁸⁹

As a comparison, the State Legislature in 2009 introduced 15,367 bills, and passed only 1,882, representing an enactment rate of 12 percent.⁹⁰ While an improvement over past years, it appears that the new party break-down of both houses of the legislature has not led to significantly more efficient law-making. In fact, votes are still cast in the State Senate according to party lines. The final pieces of the state budget in 2010 were passed in the Senate according to party-line votes, as well as other significant pieces of legislation such the Metropolitan Transportation Authority (MTA) funding package to prevent serious fare hikes and service cuts in 2009.

The low enactment rate demonstrated in previous years holds true for the 2011 legislative session. From the beginning of 2011 to June 24th, a total of 8,500 bills were introduced in the Assembly and 5,836 were introduced in the Senate. Only 677 bills passed both houses, thus only about 9.4% of the 14,336 bills introduced will reach the governor. Voting with party leadership also persisted through the 2011 legislative session. The average Democratic member of the Assembly voted with Speaker Silver 97.41% of the time, while assembly Republicans voted most independently of the Speaker, voting the same as Minority Leader Kolb 90.94% of the time. In the Senate, Republicans voted with Majority Leader Skelos 98.87% of the time and Senate Democrats voted with Minority Leader Sampson 95.22% of the time. Independent Democrats voted most independently of the Majority and Minority leader, instead voting in lockstep with their caucus leader Senator Klein 99.26% of the time.⁹¹

The Partisan Makeup of the New York State Legislature

An examination of the makeup of legislatures across the country since 1974 reveals that of the states with bicameral legislatures, New York had the longest-running political party split since that time, with the Senate under Republican control and the Assembly under Democratic control for decades until January 2009 when the legislature was sworn in and Democrats controlled both houses. As a result of the 2010 General Election, there was a return to Republican control in the Senate, meaning that there is again a split in control of the State Legislature between the Democrats in the Assembly and Republicans in the Senate. 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.

⁸⁹ Brennan Center for Justice at NYU School of Law, *Still Broken: New York State Legislative Reform, 2008 Update*, 2008, page 25. Available at:

http://www.brennancenter.org/content/resource/still_broken_new_york_state_legislative_reform_2008_update/

⁹⁰ New York Public Interest Research Group, "Review of Legislative Action – 2009 Session." Percentages calculated by Citizens Union.

⁹¹ New York Public Interest Research Group, "Review of Legislative Action – 2011 Session." Available at:

http://nypirg.org/pubs/goodgov/2011.06.28_NYPIRG_2011_Session_Analysis.pdf Percentage calculated by Citizens Union.

Of the other states with legislatures that have houses split between the two parties, most have undergone changes in power in recent years. Of the other states with well-staffed legislatures and longer session terms, only Massachusetts, where both houses have been consistently controlled by Democrats, has experienced a similar lack of change in power (it does not currently have a split between the parties in its legislative houses).

From 1975 – 2008, Democrats controlled the State Assembly and Republicans controlled the State Senate in New York. The table below shows the partisan split in both houses since 1980.

Table 15: Overview of States with Split Legislatures, Current and Recent⁹²

State	Current Makeup	Prior Makeup	Election Year when Change Occurred
Alaska	Split: Republican House Tied Senate	Republican House Republican Senate	2008
Colorado	Split: Republican House Democratic Senate	Democratic House Democratic Senate	2010
Delaware	Single Party: Democratic House Democratic Senate	Republican House, Democratic Senate	2008 (previously split from 1985 – 2008)
Iowa	Split: Republican House Democratic Senate	Democratic House Democratic Senate	2010
Kentucky	Split: Democratic House Republican Senate	Democratic House Democratic Senate	1998
Louisiana	Split: Republican House Democratic Senate	Democratic House Democratic Senate	2010
Nevada	Single-Party: Democratic House Democratic Senate	Democratic House Republican Senate	2008 (previously split from 1993 – 2008)
New York	Split: Democratic House Republican Senate	Democratic House Democratic Senate	2010 (also previously split from 1975 -2008)
Oklahoma	Single-Party: Republican House Republican Senate	Republican House Tied Senate	2008 (previously split from 2003-2006)
Oregon	Split: Tied House Republican Senate	Democratic House Democratic Senate	2010 (also previously split from 2005-2006)
Virginia	Split: Republican House Democratic Senate	Republican House Republican Senate	2007

⁹² Information on partisan composition of state legislatures compiled from the National Conference of State Legislatures. <http://www.ncsl.org/>. For the 2011 partisan composition of state legislatures, see http://www.ncsl.org/documents/statevote/2011_Legis_and_State.pdf. For post 2010 election partisan composition of state legislatures see <http://www.ncsl.org/tabid/21253/default.aspx>.

Until 2008, in spite of declining enrollment in the Republican Party, Republicans maintained a majority in the State Senate. Redistricting for the Republican Majority, therefore, has been more about maintenance and preservation, rather than bolstering the majority. After the 2002 redistricting, Republicans gained two seats in spite of this decreasing enrollment as a result of partisan gerrymandering. In 2008 Democrats briefly gained control of the Senate by two seats but Republicans soon seized back control in 2010 with the defeat of 3 incumbent Democratic legislators, and now have a majority of 32 members. This recent win, coupled with their control of the Senate until 2008 despite declining enrollment, demonstrates the powerful effect of partisan gerrymandering.

Over the course of the last three decades, Democrats have managed to continually increase their numbers in the Assembly. In the past three redistricting cycles, Democrats gained ten seats in 1982, six seats in 1992 and four seats in 2002. Democrats have especially made gains in the Assembly in New York City, where Democratic enrollment outnumbers Republican enrollment by a factor of greater than 5 to 1 and the Republican Party is often criticized for failing to provide leadership and a develop an effective “farm system” to groom candidates for office.

With the effects of the 2002 redistricting potentially fading, the Assembly saw a loss of Democratic seats in the 2010 General Election, and Democrats now have a 99-51 majority, which can no longer overturn a veto without obtaining votes from a Republican member. This gain could also be attributed in part to the groundswell of support seen for Republicans in Congressional elections, in which five seats held by Democrats were lost to Republicans in New York.

Overall, from 1996 to 2011, New York experienced a 19 percent increase in Democratic Party enrollment and nearly 6 percent decrease in the number of Republican Party registered voters (it should be noted that the state’s population increased during that time from 18.6 million to 19.4 million – a 4 percent increase).⁹⁴ Additionally, enrollment in the Republican-leaning Conservative Party decreased from 1.57 percent in 1996 to 1.28 percent in 2011 of all registered voters. Conversely, the state is experiencing a growth in the Democratic-leaning Working Families Party enrollment, with enrollment currently standing at 42,682 members in 2011, up from 34,289 in

**Table 16:
 Resulting Party Makeup of
 New York State Legislature,
 by Election Year
 (1980-2010)⁹³
 (Bolding indicates redistricting years)**

Year	Senate Rep-Dem	Assembly Dem-Rep
1980	35-25	88-62
1982	35-26	98-52
1984	35-26	96-54
1986	35-26	94-56
1988	34-27	92-58
1990	35-26	95-55
1992	35-26	101-49
1994	36-25	94-56
1996	35-26	97-53
1998	36-25	98-52
2000	36-25	99-51
2002	38-24	103-47
2004	35-27	104-46
2006	34-28	105-45
2008	30-32	109-41
2010	32-30	99-51

⁹³ Ibid.

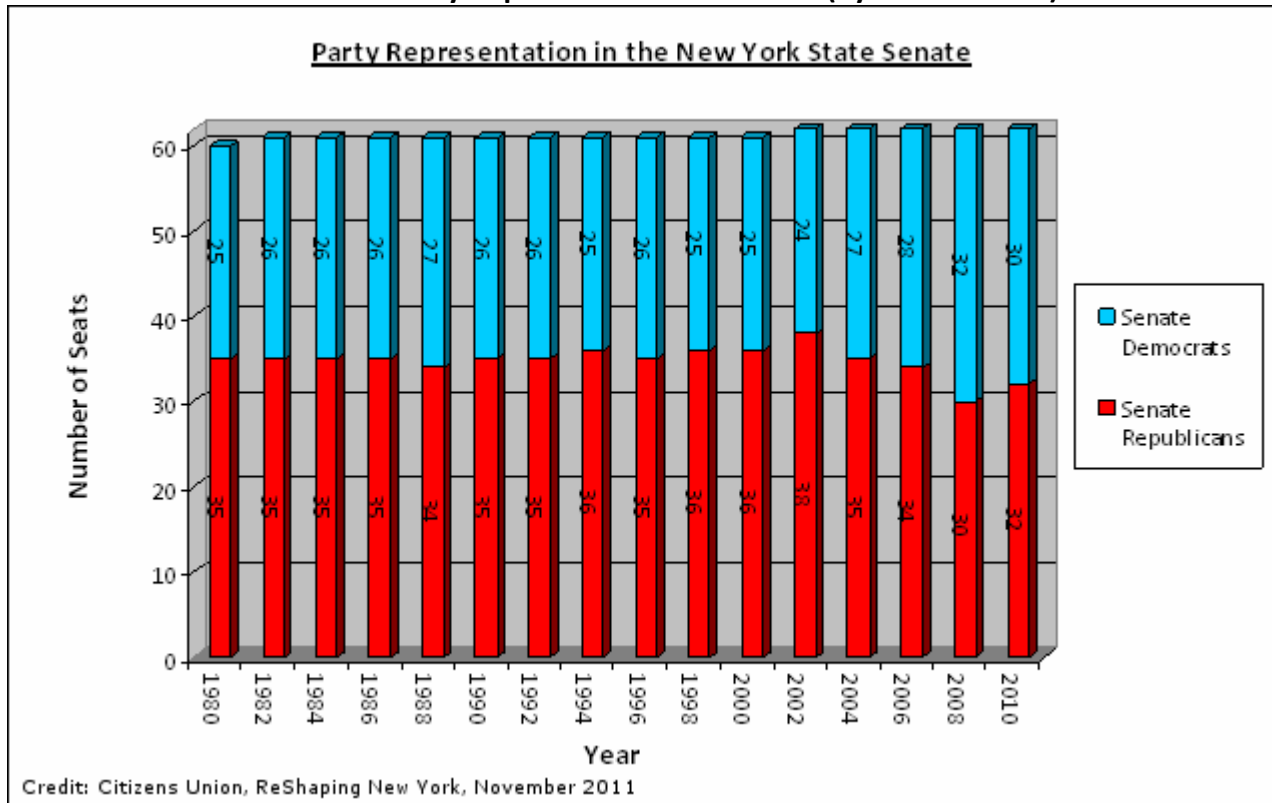
⁹⁴ Enrollment data obtained from the New York State Board of Elections, available at: <http://www.elections.state.ny.us/EnrollmentCounty.html>. Population data obtained U.S. Census Bureau, 2010 data.

2006. The Independence Party had perhaps the largest gain, increasing from 70,114 in 1996 to 425,891 in 2011. It should be noted that unaffiliated voters continue to represent a large segment of all voters, at a steady 20 percent over the last 14 years, currently at 2,288,512 in 2011.⁹⁵

Table 17: New York State Party Enrollments, 1996 – 2011⁹⁶

Registered Voters	Republican Party	Republican Percent of Total	Democratic Party	Democratic Percent of Total	Unaffiliated Voters	Unaffiliated Percent of Total	Total Registered
Nov. 1996	2,998,511	29.51%	4,738,254	46.63%	2,052,021	20.19%	10,162,156
Nov. 2006	3,130,122	26.82%	5,507,928	47.20%	2,350,073	20.14%	11,669,573
Nov. 2010	2,920,366	24.73%	5,853,921	49.58%	2,390,178	20.24%	11,806,744
Nov. 2011	2,824,680	24.64%	5,660,246	49.38%	2,326,786	20.30%	11,461,679

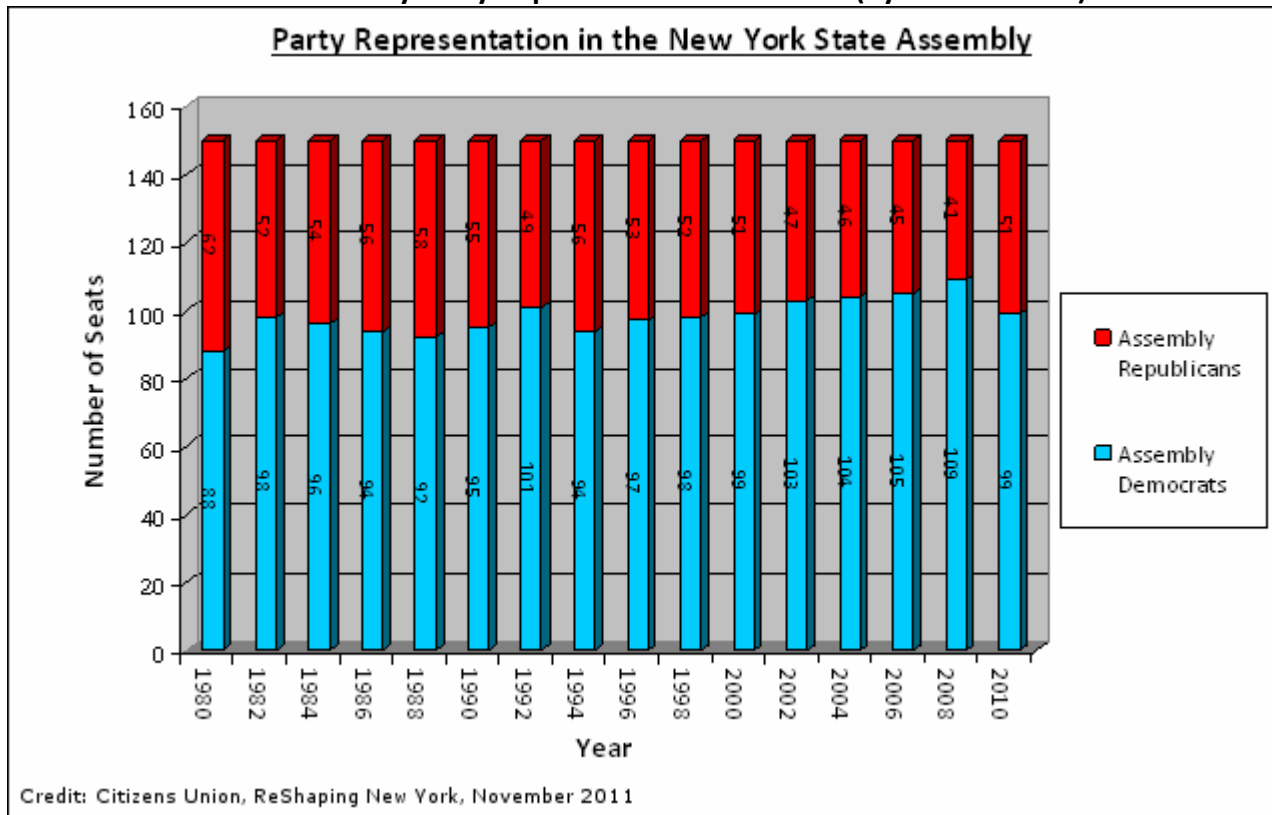
Illustration 25: State Senate Party Representation Over Time (by Election Year)



⁹⁵ New York State Board of Elections. Enrollment Information available at: <http://www.elections.state.ny.us/EnrollmentCounty.html>

⁹⁶ Ibid.

Illustration 26: State Assembly Party Representation Over Time (by Election Year)



D. LONG-TERM INCUMBENCY

In addition to the longest partisan divide in the nation, the New York State legislature has one of the highest rates of incumbent re-election in the nation, in part due to the protection of incumbents in the redistricting process, as noted in Section 4 of this report.

Across the country in the 1930s, over half of all state senators and state assembly members cycled out of office with each election. By the 1990s, however, legislators were serving for longer terms and only 23 percent of state senators and 25 percent of state assembly members turned over with each election. New York’s legislature is consistently among the top ten states with the lowest turnover rates.⁹⁷ Citizens Union Foundation has quantified the level of turnover in New York from 1999 to 2011, finding that turnover hit its peak with 22 percent of seats turning over during the most recent 2009/2010 legislative session, and a low of 9 percent during the 2007-2008 session.⁹⁸ Overall, the re-election rate for the New York State legislature has averaged 97 percent from 1998 to 2010. The main cause of turnover, however, is not electoral defeat.

⁹⁷ Benjamin, Gerald. “Reform in New York: The Budget, The Legislature, and the Governance Process.” *Citizens Budget Commission*. “Conference on Fixing New York State’s Fiscal Practices.” Nov. 13-14, 2003, p 7. Available at: http://www.cbcny.org/sites/default/files/report_reformnys_11102003.pdf

⁹⁸ Citizens Union. “Examining Turnover in the New York State Legislature: 2009-2010 Update,” February 2011. Available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CU_ExaminingTurnover_Update_Feb2011.pdf

When incumbents do leave office, it is most often *not* due to voters' choices at the polls. While voters' decisions on candidates are limited to those who make it on the ballot, elected officials' choice of whether to stay in office, seek other office, or retire is much less restricted, and thus turnover is subject to many factors. The reasons why elected officials choose to stay in office or pursue particular paths may seem personal, but in many cases, decisions are made due to political considerations. Losing a primary or general election is only the third most common cause of turnover, at about 21 percent of all cases of turnover, with the most common causes of turnover being legislators seeking election to another office, or retiring from public life.⁹⁹

This data highlights the slow and steady move away from the notion of a citizen-legislator serving the public for several years and then going back to their established profession. In fact, what we are seeing in more states across the country is a "professionalization of the legislature."¹⁰⁰

As legislators have stayed in office longer, they also began to identify themselves professionally as legislators, rather than lawyers, consultants or their other prior professions. In 1964, not one New York State legislator identified his or her occupation as such, but by 1988, two thirds of the Assembly and half of the Senate described themselves as legislators.¹⁰¹

i. Other Contributors to Long-Term Incumbency

Incumbents gain many benefits while in office that help them stay there beyond the redistricting process. These include the ability to establish and maintain contact with voters, the use of government resources to do so through taxpayer-funded mailers and support staff, and fringe benefits like covering all appropriate travel expenses. Incumbents typically enjoy increased name recognition from earned media and other publicity and tend to have stronger ties with party organizations. This inevitably means that incumbents find it much easier to solicit contributions and raise campaign funds. In New York especially, incumbents can tap party resources to deal with the complicated ballot access requirements which often prevents challengers from running for office. Other contributors to the high incumbent re-election rate are provided below, which point to the need for further reforms to the election process.

Campaign Finance

One of the main benefits of incumbency is the ability to raise funds, which is well documented and plays a major role in who gets elected each election season. According to a report by the Institute for the Study on Money in State Politics, the success rate of incumbents running for state legislative office nationwide has been gradually increasing since the 2001–2002 elections, when 89 percent of incumbents won. In 2003–2004 and 2005–2006 elections, 92 percent of incumbents won. In 2007–2008, incumbents enjoyed an even higher win rate of 94 percent.¹⁰² In New York,

⁹⁹ Citizens Union. "Examining Turnover in the New York State Legislature: 2009-2010 Update."

¹⁰⁰ Benjamin, p. 7.

¹⁰¹ Ibid.

¹⁰² National Institute on Money in State Politics. "The Role of Money & Incumbency in 2007-2008 State Elections: 2007–2008 Compared to Previous Cycles," <http://www.followthemoney.org/press/ReportView.phtml?r=423&ext=4>

from 2007-2008, in 91 percent of legislative races, incumbents raised more money than challengers, and 99 percent of those incumbents won re-election.¹⁰³

In New York, individuals can directly donate up to \$16,800 to a State Senate candidate, \$8,200 to a State Assembly candidate and \$60,700 to a statewide candidate. Additionally, New Yorkers have several other options to support their preferred candidates financially, such as by donating to Political Action Committees (up to \$150,000), political parties (up to \$102,300 for election purposes) or party housekeeping accounts (unlimited).¹⁰⁴

New York's geographical size and expensive media markets require well-funded campaigns, putting pressure on candidates to raise large sums of money, and laws that permit large contributions allow those who have the support from the right networks to get ahead. According to a 2006 report by Common Cause/New York, 55 percent of contributions to state candidates exceeded the \$2,100 allowable amount for donations to federal candidates.¹⁰⁵ Campaign coffers are large, and so are the contributions that fill them.

Needless to say, incumbents with name recognition, party networks, and other advantages have a much easier time of raising campaign dollars than newcomers.

Ballot Access

Candidates running for the New York State legislature have to contend with some of the most complicated ballot requirements in the country. This has prevented candidates from running for office and has led to the disqualification of candidates attempting to challenge incumbents for elected office.

The technical aspects of filing petitions can be cumbersome, leading to frequent mistakes that may not be easily detected by the candidates. For instance, election law has very specific requirements about the numbering and paper for petitions.

To run for the State Legislature, a candidate must collect signatures from individuals eligible to vote in that race, based on 5 percent of that party's enrollment in the district or subdivision. Party candidates must collect 1,000 signatures for the State Senate and 500 for the State Assembly.

¹⁰³ National Institute on Money in State Politics. "The Role of Money & Incumbency in 2007-2008 State Elections, Appendix B" available at <http://www.followthemoney.org/press/ReportView.phtml?r=423&ext=12>

¹⁰⁴ Citizens Union. "Issue Brief and Position Statement: State Campaign Finance Reform with Public Matching Funds," May, 2008, available at http://www.citizensunion.org/www/cu/site/hosting/IssueBriefs/2008IB_CampaignFinance.PDF. See also 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>

¹⁰⁵ Common Cause/NY. The \$2,100 Club: What New York State Political Campaigns Cost, How Much Those Costs are Rising and Who's Footing the Bill, March 2006, p. 3. <http://www.docstoc.com/docs/37337544/What-New-York-State-Political-Campaigns-Cost-How-Much>

Candidates running independently of the political parties must collect twice as many signatures as their competitors.¹⁰⁶

The petitioning process period for the state legislature lasts 37 days (41 days for independent candidates), while other states and localities allow a longer period of time.¹⁰⁷ In New York, petition-signers may sign only one petition for each office per election and after submitting petitions, candidates currently have three business days to correct any errors with the Board of Elections. In practice, this race to accumulate signatures is more of a test of campaign resources than of a candidate's popularity.

A candidate for state legislative office must reside in the district for at least 12 months prior to the election, with dispensation given immediately following redistricting years where district boundaries may change. A candidate's residency may also be subjected to challenges, which can lead to court battles as well.

Petition challenges are a common practice in New York State. While objections can be made by any registered voter, they are mostly levied by establishment and party backed candidates against insurgents with less resources and campaign savvy in an attempt to get them either kicked off the ballot or as a means to force challengers to squander precious time and resources defending their petitions at the Board of Elections or in the courtroom.¹⁰⁸ The main objections filed against candidates challenge the number of signatures on a candidate's petition or challenge the residencies of the voters and witnesses who signed the petitions. To protect against such challenges, candidates usually obtain two to three times the required amount of signatures. Objections to petitions have to be specific and in writing, and they have to be made within three days after the petition is filed, and not on the last day to file a petition. Unfortunately, instead of a public campaign, many state legislative races end up being decided before party-appointed commissioners at the boards of elections or in the courtroom where candidates are bumped off the ballot or forced to fight claims against them.

E. RISING POLARIZATION AND POLICY PARALYSIS

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.

¹⁰⁶ For more information, see "Understanding the Labyrinth: New York's Ballot Access Laws," DeNora Getachew and Andrea Senteno, *Gotham Gazette*. June 2009. Available at:

<http://www.gothamgazette.com/article/governing/20090629/17/2954>

¹⁰⁷ Kane, Alex. "Getting on the Ballot in Other Cities." *Gotham Gazette*. June 2009. Available at:

<http://www.gothamgazette.com/article/Voting/20090630/17/2962>

¹⁰⁸ Israel, Doug and Matthew Gertz. "Ballot-Bumping, NYC's Bloodsport," *Gotham Gazette*, July 2005,

<http://www.gothamgazette.com/article/voting/20050727/17/1492>

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 concerned the long-term failure to address high property taxes, local government and school district consolidation, affordable housing, and mandate relief for localities. Social issues such as Rockefeller Drug Law Reform also took decades to resolve in spite of broad public support.

The lack of action on these important issues can be attributed to in part the increased polarization of districts and the creation of “safe” seats in which legislators do not face much competition at the polls, a result of partisan gerrymandering. 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.¹⁰⁹

In an influential report issued in 2004 by the Brennan Center for Justice crystallized what many citizens across the state of New York had sensed for years—that New York State’s legislative process was broken.¹¹⁰ Through an analysis of the legislative process, including a look at voting procedures, introduction and passage of bills, and the roles of committees in the process, the report generated statewide attention and led to the dubbing of the New York State legislature as the “most dysfunctional legislature in the nation.” While the report focused on the rules used by both houses regarding legislation and chamber operations, it exposed the negative aspects of a leadership-driven system, which is shared in the redistricting process.

It can be argued that legislative bodies need leaders and that party discipline can play a constructive role in the passage of legislation. When the rank-and-file legislators are almost guaranteed re-election every year when they abide by the wishes of leadership, however, there is less incentive to rock the boat and fight the good fight on behalf of the issues voters care about. In return for going along with the system as it has operated, legislators receive committee chair posts, stipends, member items for their districts, financial support for campaigns from party coffers controlled by the leaders, and district lines that are drawn to minimize competition and favor their return to office. In exchange for these protections and political perks, the two legislative leaders have been afforded a great deal of power and authority over the legislative process.

Those legislators who seek to reform the current process face numerous institutional obstacles to advancing bills that would disrupt the power balance, which are often the very focus of the bills. These obstacles leave reform in the lurch, as legislators may fear political retribution. Major reforms often only occur in response to scandals or piqued public interest that resonates to a level where legislators feel vulnerable at the polls, such as what recently occurred with the passage of ethics legislation in 2011. Yet even as the public is increasingly disenchanted with Albany, this

¹⁰⁹ 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.

¹¹⁰ Brennan Center for Justice at NYU School of Law, *The New York State Legislative Process: An Evaluation and Blueprint for Reform*, 2004, pg 1.
http://www.brennancenter.org/content/resource/the_new_york_state_legislative_process_an_evaluation_and_blueprint_for_refo/

dissatisfaction unfortunately often results in a lack of participation on the part of the public, rather than a concerted push for reform with real legislative results.

Policy Inaction

As legislators have largely become insulated from competition at the polls, both from outside and within their parties, they have avoided the accountability which comes with facing serious electoral challenges. This insularity from competitive elections, and accountability to the public, has created a stagnant political process and system that is more prone to pandering to political bases than it is to solving the state's most pressing problems.

The level of partisan bickering and inaction reached a new low when the New York State Senate in the summer of 2009 entered into a month-long deadlock. With a tenuous hold on the majority (32-30), the Senate Democrats lost control of the house. A motion was introduced on June 8, 2009 that elected Pedro Espada (D-Bronx) to the position of temporary president of the Senate and Dean Skelos (R-Nassau) as majority leader, essentially giving the Republicans a majority. It should be noted that the origins of the deadlocked Senate began with the 2002 redistricting, when an additional seat was created in the Senate to create a total of 62 seats, making it an even-numbered body and thus more prone to gridlock. Because of a population shift recorded in the 2002 census, the then Republican majority was concerned that a Senate district would need to be created in New York City, thus resulting in the loss of a Republican-leaning district in upstate New York. This loss was avoided when the Senate increased its size by one seat, successfully using the ambiguity in the State Constitution regarding the number of Senate Seats to allow them to create an additional seat.¹¹¹

Due to the state legislature's consistent lack of acting in a bi-partisan or nonpartisan manner to address some of the state's most pressing concerns, there has been a high level of paralysis on many key issues that most legislators would agree need to be addressed. To be sure, there have been strides made in recent years, particularly in 2011, and the legislature is not without its significant contributions to state policy-making. Even with the success of 2011, there were concerns that deals were hammered out behind closed doors, and without sufficient input from rank-and-file members of the legislature.¹¹² There is a consistent pattern of issues not being addressed at all, or not being addressed in a timely manner. Timely issues left unresolved by the legislature in 2011 include the following:

- Under the federal Affordable Care Act, each state must have a health care exchange in place by 2014. New York has opted to create its own, but has not yet come to an agreement as to its structure. Advocates have claimed that the delay may result in New York's loss of federal dollars for implementation.¹¹³

¹¹¹ Dadey, Dick. "Stop gerrymandering safe seats, so incumbents engage." July 26, 2009. Crain's New York Business.

¹¹² Spector, Joseph. "What Ever Happened to Transparency?" Politics on the Hudson. June 24, 2011. Available at:

<http://statepolitics.lohudblogs.com/2011/06/24/what-ever-happened-to-transparency/>

¹¹³ Citizens Action of New York, News Advisory. <http://citizenactionny.org/2011/06/advisory-health-advocates-call-on-leaders-to-pass-health-exchange-law/6091>

- 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.¹¹⁴ 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.
- New York remains out of compliance with the federal Military and Overseas Voters Empowerment Act, or MOVE Act, which requires the state to send military and overseas voters their ballots at least 45 days before the election. Given the proximity between the primary and general elections under the current schedule with primaries in September and the general election in November, there is not currently enough time for ballots to be mailed by this deadline. The state legislature thus may need to move the primary date earlier in the year. The Assembly has put forward legislation in favor of a June primary, while the Senate favors an August primary. The lack of action thus far complicates the election schedule for 2012, as redistricting must take place before candidates can petition on the ballot.¹¹⁵

Even when progress is made and policy issues are addressed, they are often addressed late, often putting New York State dead last in addressing national trends. One recent example is the legislature's enacting of no-fault divorce after years of inaction. New York was the last state in the nation to enact reforms to remove a requirement that spouses prove the other committed an act such as cruelty, adultery or abandonment in order to divorce. This resulted in costly trials over who was to blame for the dissolution of a marriage, and, in some cases, false claims to make allegations fit the requirements of the law.¹¹⁶

A perennially late item to be addressed by the legislature is the state budget. While budget reforms were enacted in 2007 which required the formation of joint conference committees to hash out differences between each house's budget and create a deadline for revenue consensus, the process remains less than ideal and takes place largely behind closed doors.

The budget negotiations in 2009 and 2010 largely did not adhere to the 2007 reforms, with no conference committees being formed, meaning the only avenue for deliberation on the budget

¹¹⁴ 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>

¹¹⁵ For more information see Fauss, Rachael. "Summer in the City: Beaches, Barbecues -- and Ballots?," June 2011. Gotham Gazette. Available at: <http://gothamgazette.com/article/governing/20110628/17/3552>

¹¹⁶ Kolker, Carolyn and Hurtado, Patricia. "Divorce Easier as New York Law Ends Need to Lie," Bloomberg News. August 16, 2010. Available at: <http://www.bloomberg.com/news/2010-08-16/breaking-up-not-so-hard-to-do-as-new-york-s-divorce-law-ends-need-to-lie.html>

was on the floor prior to the final vote. Public disappointment in the budget process is palpable, with the main target of frustration being the legislature – the Siena Research Institute in a July 2010 poll found that nearly half of New Yorkers give the State Legislature an “F” for its work on the state budget that year, while about one-quarter say Governor David Paterson deserved a failing grade.¹¹⁷ The state budget in 2010 was also not finalized until August 3rd – 125 days late.¹¹⁸ While in 2011 the state budget was passed on time and conference committees were formed, the process was rushed, with messages of necessity issued to allow votes on bills that legislators had only first seen a few hours before. Legislators were also limited in the amount of time they could speak on the arguably the most significant piece of legislation passed each year.

A particular issue related to the state budget that has seen a lack of action and delays is the fulfillment of a court-ordered mandate to provide New York City’s public schools with adequate resources to provide a “sound, basic

¹¹⁷ Siena Research Institute. “Available at:

http://www.siena.edu/uploadedfiles/home/parents_and_community/community_page/sri/sny_poll/10%20July%20NY%20Poll%20Release%20--%20Final.pdf

¹¹⁸ Hakim, Danny. “125 Days Late, a State Budget With New Taxes.” The New York Times. August 3, 2010. Available at: <http://www.nytimes.com/2010/08/04/nyregion/04albany.html?src=mv>

CASE STUDY: Rockefeller Drug Law Reform

One high profile example of legislative stagnation revolved around efforts to reform the state’s archaic Rockefeller Drug Laws. Enacted in 1973, the Rockefeller Drug Laws made New York State’s minimum sentences for first-time drug offenders some of the strictest in the country. The Rockefeller Drug Laws tied judges’ hands by requiring a “one size fits all” policy for drug offenders that has led to a ballooning prison population, and was criticized as being discriminatory. In 1980, 11 percent of prisoners were incarcerated for drug felonies, and by 2003, that number rose to 38 percent. While African American and Latinos constitute less than a quarter of New York’s population, 93 percent for those currently incarcerated for drug offenses belong to those two minority groups, according to the Drug Policy Alliance.

Strong opposition formed to the Rockefeller Drug Laws from both average New Yorkers and politicians alike. In 2004, over 80 percent of New Yorkers supported reforming the thirty-three-year-old law. In 2006, a poll by Zogby International found that 77 percent of those polled thought treatment should be a priority over jail time for drug offenders. Similar sentiments were expressed by a variety of organizations. The conservative-leaning Manhattan Institute called for the repeal of the mandatory minimum sentences and supported releasing those found guilty of drug crimes only.

While support for reform grew in many corners, the legislature did not act until 2004 when they passed the Drug Law Reform Act, signed into law by Governor Pataki. The law reduced the mandatory sentencing from indeterminate sentences of 15 to 25 years to life with determinate sentences ranging from 8 to 20 years, and proposed treatment as a sentencing option, among other reforms. Since its inception in 2004, however, only 142 prisoners were freed, and many opponents of the law claimed the reforms did not go far enough. Only in 2009 did further reforms get enacted as part of the 2009-10 budget.

For more information, see:

“Drug Policy News.” *Drug Policy Alliance*. 13 July 2006 and 19 Aug. 2005, <http://www.drugpolicy.org/news/pressroom/pressrelease/pr081905.cfm> .

Criminal Justice Transition Alliance, Available at:

http://2009transition.org/criminaljustice/index.php?option=com_content&view=article&id=49&Itemid=102

The Manhattan Institute. “Right-Sizing Justice: A Cost-Benefit Analysis of Imprisonment in Three States.” *Center for Civic Innovation*. Sept. 1999.

Available at: http://www.manhattan-institute.org/html/cr_8.htm

education” according to the *Campaign for Fiscal Equity* decision. The issue languished in the legislature for years as former Governor Pataki sought to avoid addressing it by filing appeals in court and providing little if any leadership to break the impasse that existed. While the legislature under Governor Spitzer developed a plan to implement increased funding over a multi-year period, the plan was only fully funded for one year and disparities remain in education funding.¹¹⁹

Delays have run the gamut of policy issues, with mental health policy also failing to be updated to address growing needs. The legislature failed for five years to pass a bill known as the Mental Health Insurance Parity bill or “Timothy’s Law.” This bill was named for a 12-year-old boy Timothy who committed suicide in 2001. His insurance did not cover the mental health treatment that may have prevented his death. This law now requires New York State health insurers to cover treatment for substance abuse and mental illness. The bill was finally passed in December of 2006, five years after a large coalition of groups including hospitals, and teacher and school employee unions started advocating for the bill to be passed.¹²⁰

Another example of legislation that was severely delayed and put off by the legislature is the Sexual Orientation Non-Discrimination Act (SONDA). SONDA was put forward to amend New York State’s human rights laws. SONDA would forbid discrimination based on sexual orientation in employment, public accommodations, housing, education, and credit. The bill was originally introduced into the Assembly in 1971. Every year from 1993 until 2002 the bill received more and more support in the Assembly. The bill also had support from the majority of senators. The bill however was continually stalled in committee and never reached the senate floor. Finally in 2004, reportedly because Governor Pataki sought the support of a leading gay rights organization in his next re-election campaign the bill was finally sent to the senate and passed in 2004.

Due to the perception that the democratic process is broken, and the subsequent lack of outcomes on major policy issues—not to mention continuing ethical scandals—the level of satisfaction and public confidence in the state legislature has diminished over time. While this could be said of attitudes towards legislative bodies nationwide, public dissatisfaction with New York State’s legislature is coupled with a voter turnout that is dismal compared to other states.

While it is true that voters are re-electing incumbents each election season, a small percentage of the eligible electorate is showing up to the polls to do so, and their choices are being narrowed before they get to the polls. Data shows that incumbents rarely face competitive challenges in either primary or general election contests. The strength of incumbents, coupled with what was the longest streak of partisan divide of the two houses of a state legislature in the nation, has produced a system that is both gridlocked and insular.

¹¹⁹ Campaign for Fiscal Equity. “NY Ranked Fourth from Last in Fair Distribution of Education Funds.” October 12, 2010. Available at: http://www.cfequity.org/home/ny_ranked_fourth_from_last_in_fair_distribution_of_education.php

¹²⁰ For more information, see: <http://www.timothyslaw.org/supporters.htm>

F. DISSATISFACTION AND DECLINING VOTER PARTICIPATION

The growing sense of partisanship, ethical lapses, and of a broken system of state governance lacking the ability to address key issues has contributed to the public's dissatisfaction with the performance of their elected officials.

Voters 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.¹²¹ The poll also showed tremendous public support for independent redistricting: 76 percent of voters supported an independent commission to draw district lines. Voters also agreed that Governor Cuomo should veto lines that are not drawn by an independent commission, with 45 percent of those polled in agreement and 35 percent disagreeing. The legislature's lack of action thus far on redistricting reform – a chief campaign promise from the 2010 elections – in a September survey led to 48 percent of those polled saying they would feel betrayed if the legislature were to approve district lines the same old way and not put in place an independent commission for 2012.¹²² At a time when satisfaction is so low, voters have clearly connected the issue of redistricting with the performance of state government.

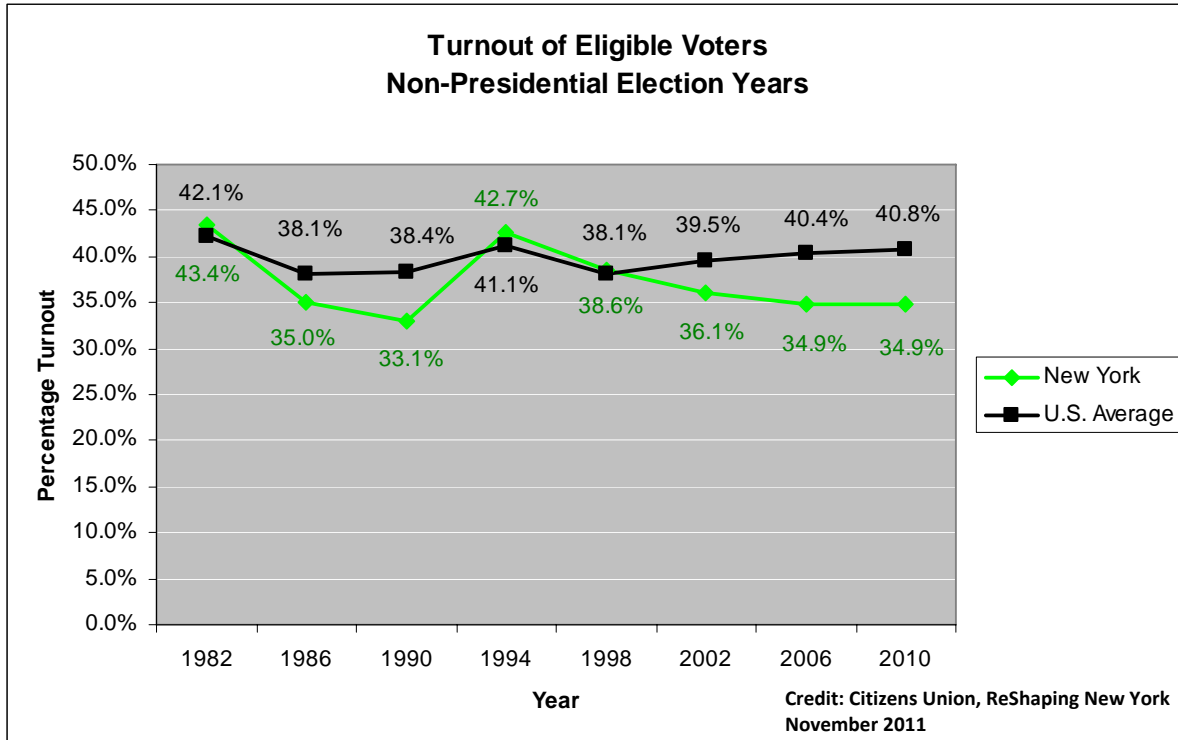
The low opinion of state government contributes to the disenchantment of voters who would turn out to the polls on Election Day. Since 1980 for statewide election years (also know as the midterm period), only in 1994 did New York State have an above average turnout. By 2006, New York dropped to nearly 6 percent below the nation's average turnout. In 2010 New York had the fourth worst voter turnout in the nation, with only 34.9 percent of eligible voters voting for their governor, the state's highest office.¹²³ See the graph on the next page for New York's rate of turnout compared to the national average.

¹²¹ 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.

¹²² 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.

¹²³ All turnout data from Michael McDonald, United States Elections Project, available at http://elections.gmu.edu/voter_turnout.htm

Illustration 27: New York State Turnout Trends – Non-Presidential Election Years¹²⁴



While dissatisfaction with elected officials and politics is sure to top the list of why voters stay at home on Election Day, many are not going to the polls because voters rarely have an opportunity to choose between two viable candidates, especially in party primaries, which are tantamount to election in a large portion of New York’s districts. Incumbents will line up support and use the advantages afforded to them by virtue of their office – like partisan gerrymandering – to help ensure they are re-elected every other November. With contests decided before votes are cast, voters choose not to cast their ballots.

To increase voter turnout, it is essential that elections offer voters meaningful opportunities to select their representatives, which would be made more likely through a more independent redistricting process. While interpretation of findings on the subject are a topic for discussion,¹²⁵ in an analysis of 2006 competitive congressional elections, competitive races were shown to be the key factor in drawing voters to the polls, even more so than the presence of higher profile offices on the ballot. An author of one of the reports, Michael McDonald of George Mason University, concluded that the expected benefit of voting has a direct influence on the results of the election, as well as the level of turnout. Rather than being apathetic, McDonald postulates that voters are making a strategic decision not to bother voting when they recognize the lack of

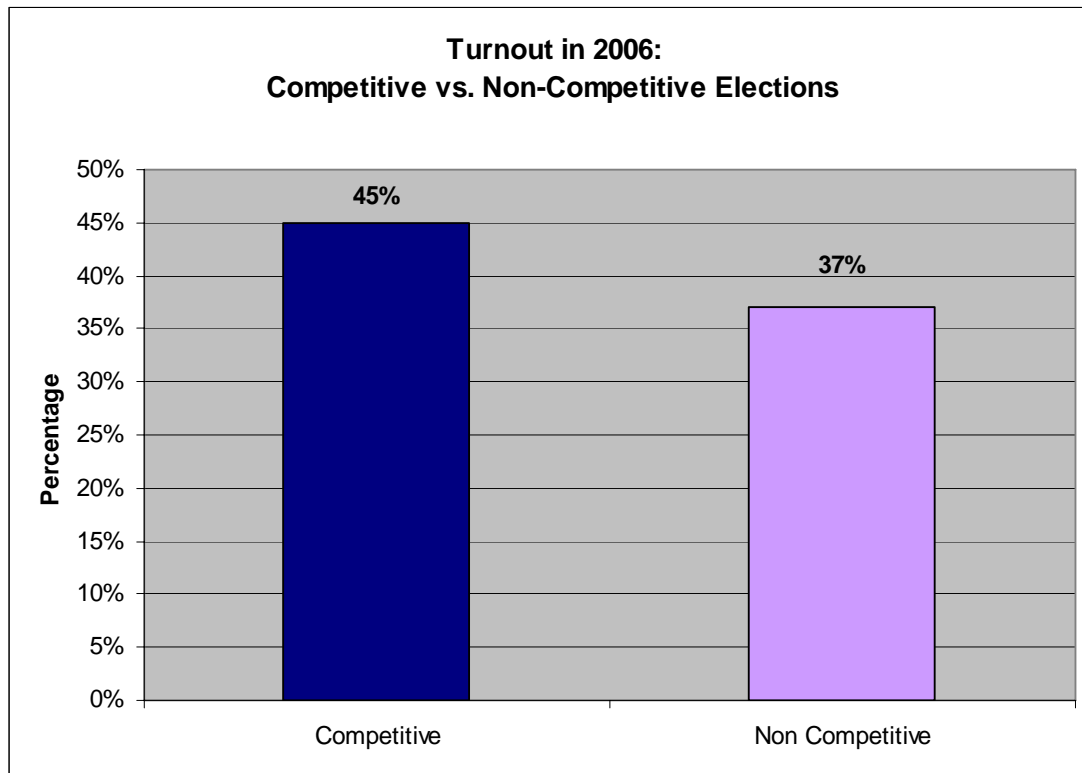
¹²⁴ Data obtained from United States Elections Project. Turnout is measured by the rate at which the voting eligible population voted for the highest office on the ballot.

¹²⁵ Matsusaka, John G. "Election Closeness and Voter Turnout: Evidence From California Ballot Propositions." Public Choice 76 (1993). Springer Link. 26 July 2007 Available at: <http://www.springerlink.com/content/gr67358r4j1q2w2r/>

impact that their votes have on most races. He suggests that “patterns of competition and voting suggest that many people can overcome voting impediments if they see a reason to do so.”¹²⁶

The Nonprofit Voter Engagement Network has also found that more competition and fewer barriers to voting translate into higher voter turnout.¹²⁷ They found that states with competitive elections for Congress or Governor saw as much as 40 percent growth in turnout in 2006 over 2002, versus only 16 percent for states with noncompetitive elections that year, as shown in the graph below. The Network updated some of their findings for 2010 election as well, stating that “generally voter turnout goes up in most states that have greater electoral competition,” and noting that the presence of statewide elections also plays a role in turnout. Even with a statewide election, New York was deemed an extreme case of uncompetitive elections, with landslides in races for governor and senate.¹²⁸ As previously noted in this report, uncompetitive state legislative elections are also all too prevalent.

Illustration 28: Average Turnout for States with Competitive Elections, 2006¹²⁹



¹²⁶ McDonald, Michael. “Rocking the House: Competition and Turnout in the 2006 Midterm Election,” *The Forum*, The Berkeley Electronic Press, 2006, p. 6.

¹²⁷ Pillsbury, George, Julian Johannesen, and Jeff Arp. “America Goes to the Polls: a Report on Voter Turnout in the 2006 Election.” Nonprofit Voter Engagement Network. 25 July 2007 Available at <http://www.nonprofitvote.org/wp-content/uploads/AGtTP.pdf>.

¹²⁸ NonProfit VOTE. “America Goes to the Polls 2010: A Report on Voter Turnout in the 2010 Election.” Available at: <http://www.nonprofitvote.org/voter-turnout.html>

¹²⁹ Data in chart obtained from NonProfit VOTE. “America Goes to the Polls 2010: A Report on Voter Turnout in the 2010 Election.”

6

SOLUTIONS TO GERRYMANDERING

A. OPTIONS FOR A BETTER REDISTRICTING PROCESS

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. Public outcry for reform, combined with the recent strides some 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, how they are drawn in terms of criteria and rules, the amount of public input and the approval process are all important factors in considering a new independent redistricting system for New York. While several models exist for each of these factors, it is clear that a more independent process is needed in New York.

One legislative proposal, sponsored by 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 put forth a program bill for redistricting reform that incorporates many of the elements of the Gianaris legislation, sponsored by Speaker Sheldon Silver in the Assembly and put into the Rules Committee in the Senate. While the measure has secured overwhelming support in the Assembly, with 96 co-sponsors, its introduction into the Rules Committee in the Senate, where it cannot be co-sponsored, has allowed the Senate majority to effectively stall its movement.

Overall, all of the measures recognize that the legislature has used the current system to promote partisan and incumbent interests that have not served the best interests of New Yorkers, and seek to reform the process by removing responsibility from the legislature in drawing district lines. While each of the proposals has its strengths and its weaknesses, there are many worthy measures contained in each, and all should be seen as starting points for discussions on a complex issue and not as final pieces of legislation. This section will outline some of the key considerations and proposals that are part of that discussion.

i. The Pathway to Reform

Notwithstanding the measures that will make up a reform proposal, there are several ways that reform to the redistricting process can unfold procedurally: through statute, through a constitutional amendment, or through a constitutional convention.

Through Statute

In many ways the passage of legislation through the typical legislative process is the path of least resistance for accomplishing redistricting reform. The proposals by Senators Michael Gianaris and David Valesky and Assemblymember Hakeem Jeffries, as well as Governor Cuomo's program bill would attempt to create reform through this mechanism. This process would require the introduction of a reform bill in both chambers to change the redistricting process. The legislation would then need to move through relevant committees in each house and to the floor for a vote. Should both houses not pass identical legislation, the houses would have to conference to create a bill acceptable to both that would then be forwarded to the Governor for approval. While this is the least cumbersome method of achieving reform, it is not without its shortcomings. Specifically, legislation could not take the power away from the legislature to have final approval over redistricting, as this power is delineated in the State Constitution.

Through Constitutional Amendment

A constitutional amendment approach is favored by many as the most far-reaching and permanent means to reform the redistricting process; however, the window of opportunity for changing the State Constitution before the 2012 elections has closed. By amending the State Constitution, final approval could be placed with a non-legislative commission, and would not have to be subject to a vote of the legislature. Also, if new redistricting procedures were enumerated in the state constitution the legislature would not as easily be able to tweak the law should they not be pleased with the outcome. This cuts both ways, however, as should there be unexpected consequences of the reforms, it would be much more burdensome to tinker. The process would require that a reform bill pass two consecutive legislatures and be signed by the Governor and then be forwarded to the voters in the form of a ballot question. Voters would hold ultimate responsibility for its passage. It is no longer possible for constitutional reforms to be enacted for the 2012 redistricting cycle, however, as the legislature must pass amendments in two consecutive years and the voters must subsequently approve the measure.

The Senate Republican Conference supported in the 2011 legislative session a constitutional amendment sponsored by Senator John Bonacic (R) that would make changes to the redistricting process, notably creating a more bipartisan structure.¹³⁰ The legislation, however, could not take effect until 2022, as it would need to first be passed by the Assembly, and then passed again in 2013 or 2014 by the legislature, signed by the Governor and then approved by the voters. Though the Senate Republican Conference maintained that this fulfilled their campaign pledges to reform the redistricting process, reform advocates decried the measure as false reform and mere posturing.¹³¹

¹³⁰ S.3331 of 2011, available at: <http://open.nysenate.gov/legislation/bill/S3331-2011>

¹³¹ Benjamin, Liz. "Koch to Senate GOP: Constitutional Amendment Not Cutting It." March 14, 2011. Capitol Tonight. Available at: <http://www.capitaltonight.com/2011/03/koch-to-senate-gop-constitutional-amendment-not-cutting-it/>

Through Constitutional Convention

A third, and perhaps most onerous, method for reforming the redistricting process could occur through the passage of a proposal that is brought through a state process called a Constitutional Convention. According to Article XIX, Section 2 of the New York State Constitution, every twenty years voters are allowed the opportunity to vote for a constitutional convention. The last opportunity was in 1997, when it was rejected by voters. The next such opportunity for voters will be in 2017, which will be after the 2012 redistricting cycle. The Constitution also allows for the legislature to vote for a constitutional convention, though it is unlikely that they will do so, as it can be an unpredictable process and might leave the legislature with less power. At constitutional conventions, three delegates are elected from each Senate district – thereby favoring legislators and other politicians already representing such districts should they seek to become delegates and reducing the likelihood of reform – and fifteen delegates are elected at-large (by voters statewide). Proposed changes to the constitution adopted by the convention must then be approved by voters. The last convention was held in 1967, which resulted in the recommendation to reassign the task of redistricting from the legislature to a bipartisan commission.¹³² This proposal was rejected by voters.

It should be noted that reform of the constitutional convention process is supported by a wide range of good government groups, including Citizens Union, as well as the New York City Bar Association. The groups urge that changes be made to not allow for legislatures to serve as delegates, as it allows for “double dipping,” and for reform of the delegate selection process.¹³³

ii. The Elements of Reform

Whatever method is undertaken to change the state’s redistricting process, reform will ultimately require New York’s elected leaders and the public to address three main points: (a) who draws the lines; (b) how the lines are drawn; and (c) what the process is for approval of draft plans.

1. Who Draws the Lines

Many of the proposals advanced in New York State call for a new commission that would be invested with the power to draw the district boundaries. While the appointing authorities vary, many proposals share a prohibition for legislators serving on the commission.

The most far-reaching of the bills in this respect, the Gianaris/Jeffries, Valesky and Cuomo legislation, would create an 8 person committee to select 40 nominees who would be eligible to serve on the redistricting commission. Two members of the commission would then be selected from this pool by each of the 4 legislative leaders and these 8 members would then select 3 additional members to complete the 11 member redistricting commission. There would also be strict limits on who could be nominated to the pool of nominees and who could serve on the commission. As is required by the State Constitution, the bills leave final approval of the plans in the hands of the legislature.

¹³² For more information, see the Report of the Task Force on the New York State Constitutional Convention, NYC Bar, available at: <http://www.nycbar.org/pdf/report/uploads/603--ReportoftheTaskForceontheNYSConstitutionalConvention.pdf>

¹³³ Report of the Task Force on the New York State Constitutional Convention, NYC Bar

The other bills that have been introduced provide for commissions to be appointed in several different manners, most through power of the four legislative leaders. In the development of models for the creation of a new commission, there are several key considerations, such as the number of members, whether to use a “nominations pool,” who the appointing authorities are, and prohibitions or criteria for membership on a nominating body and the redistricting commission.

CONSIDERATIONS FOR CREATION OF A REDISTRICTING COMMISSION

Number of Members

Most redistricting reform proposals require an odd number of members to ensure there is a tie breaking vote. Numbers of members on commissions vary and are often arrived at by taking into consideration who will be doing the appointing and what level of agreement is preferred to advance the plans (simple majority, majority plus one, etc.).

Nominations Pools

Some proposals call for potential members of the commission to first be submitted to a nominations pool to be selected

by various elected officials. The nominations pool in the Gianaris/Jeffries and Cuomo model potentially allows a large array of elected officials, including non-legislative statewide officials, to select members for the pool, with the intent of providing a bit more independence from those making the final appointment, and also places regional requirements on the candidates that are submitted to the poll, increasing the odds that the commission itself will reflect regional and even ethnic or racial diversity. Arizona uses a nominations pool, as is described in the case study at left. Many models bypass this step entirely and allow appointing authorities to select from the population at large, with certain restrictions.

CASE STUDY: ARIZONA

The Arizona Independent Redistricting Commission and Nominations Pool

In 2000, the voters of Arizona passed Proposition 106 with 54% of the vote, allowing the creation of the Arizona Independent Redistricting Commission.¹ The commission is made up of five members, and may consist of no more than two people of the same political party serving on the commission at any one time. Arizona’s Commission for Appellate Court Appointments nominates twenty-five persons for consideration to sit on the independent commission. Ten nominees must be registered from each of the two largest political parties in the state, and five must be registered to other parties or be unaffiliated. Candidates for the commission must have been either registered with a party for three consecutive years prior to nomination or unaffiliated for this length of time. During that time, they cannot have been elected to any public office, excluding school board, cannot have been paid as campaign staff, and cannot have registered as a paid lobbyist. From the list of twenty-five nominees, each of the four legislative leaders appoints one member. These four appointees then select a fifth member from the nominees pool from a political party not yet represented on the commission.

¹ Proposition 106 text available at:

<http://www.azredistricting.org/?page=prop106>

Appointing Authority

Appointing authorities under most models include the Governor, each of the four legislative leaders (the Speaker and Minority Leader of the Assembly and the Majority and Minority Leader of the Senate) with a final member being selected by those already appointed, typically to create an odd-numbered body. Each leader is typically given the authority to appoint either one or several members, with all legislative leaders having an equal number of appointees. Allowing all four leaders equal appointment power ensures that both major parties will be represented, but also that the minority party of each house is represented and not marginalized.

Who Could Serve

Reform efforts have also focused on establishing a set of criteria, or a list of disqualifications, for who can serve on commissions with the intent of minimizing conflicts of interest and commissioners that are beholden to parties or special interests.

As mentioned earlier, many of the proposals for reform in New York State seek to strictly prohibit elected officials from serving on the commission.

CASE STUDY: PROPOSITION 11

California's Citizens Redistricting Commission

California Proposition 11, also known as the Voters First Act, appeared on the November 4, 2008 ballot in California as a proposed amendment to the California Constitution through initiative. Proposition 11 was approved by a slim margin of 50.9% of the vote. Proposition 11 changes the process that is undertaken once every ten years of drawing the state's 120 legislative districts and four Board of Equalization districts by removing the responsibility for drawing state lines from the state legislature and giving it to a new 14-member commission composed of public members.

Proposition 11 enacted the following provisions to create a citizens redistricting commission:

- Changes the authority for establishing the district boundaries of the California State Legislature and Board of Equalization from elected representatives to a 14-member commission.
- Government auditors are to select 60 registered voters from an applicant pool. Legislative leaders (Republican and Democrat leaders in the state senate and state assembly) can reduce the pool; the auditors then are to pick eight commission members by lottery, and those commissioners pick six additional members for 14 total.
- Requires that the commission must include five Democrats, five Republicans and four members of neither party.
- For approval, district boundaries need votes from three Democratic commissioners, three Republican commissioners and three commissioners from neither party for a total of 9 of 14 members

In order to serve on the commission envisioned by Proposition 11, commission applicants must:

- Be registered voters
- Show consistent voter registration for the previous five years.
- Have voted in two of the last three general elections.
- In the last 10 years, the applicant or a close relative cannot have been a federal or state political candidate, lobbyist or donor of \$2,000 or more to a candidate.

The following are several requirements that have been outlined in the current reform proposals regarding who may serve on the commission:

- Commissioners should be registered voters of the State of New York;
- Commissioners cannot hold, or have held, an elective office or party position, have been appointed to a partisan position, or been employed as a lobbyist within a specified amount of time before appointment (often two years), or be the spouse of an elected official in the state legislative, judicial, executive branch or the U.S. Congress;
- Commissioners should represent multiple political parties with no more than a specified amount from one political party. For example, the Gianaris/Jeffries and Cuomo proposals state the nominations pool should include fifteen Democrats, fifteen Republicans, and ten candidates not enrolled as a Democrat or Republican. The Arizona independent redistricting commission consists of five members with the fifth and final member of the commission, appointed by the other four and of a party not already represented on the commission.
- Commissioners should reflect the diversity of the state geographically, racially, ethnically, and by gender. The proposals by Gianaris/Jeffries and Cuomo includes a strict requirement of geographic diversity for the selection to the nominations pool, but a more advisory position for the final commission stating that “to the extent practicable, the members of the redistricting commission shall reflect the diversity of the residents of the state with regard to race, ethnicity, gender and geographic residence.”

Approval by Commission

How the commission advances a plan to the final approval authority has been the subject of deliberation as well. Most discussions center on what percentage of the commission should be required to vote in support of a plan for it to advance. The higher the threshold, the more consensus has to be reached within the commission. A simple majority is often thought to be too low of a threshold as a majority party’s appointments would simply need to swing a chair appointed by the body in their direction to control the process. A simple majority plus one ensures that at least one member from each of the two major parties has to agree to support the plan put forward, and that at least one member of one of the two minority parties has to support the plan. As the number of members on the commission increases, there could be consideration given to increasing the threshold to majority plus two, three, etc. Models have also been advanced that require that the chair vote in favor of any plan before it is advanced.

2. How the Lines are Drawn

As important as who develops the redistricting plans are the guidelines to which those commissions adhere in the drawing of district lines. The current slate of proposals for reform do not throw the entire list of current guidelines out the window, but rather build upon, give more importance to, or add additional measures to ensure that lines are drawn in the best interests of the voters and the state of New York.

CONSIDERATIONS FOR THE DEVELOPMENT OF REDISTRICTING GUIDELINES

The following topics of consideration are common when discussing what guidelines commissions should follow in the drawing of district lines:

- **Incumbent- and Partisan-Blind Redistricting:** Incumbent and partisan blind redistricting criteria seek to reduce or minimize political considerations from the redistricting process. Several reform experts have called for an incumbent-blind redistricting process whereby the location of incumbents' homes cannot be revealed to those drawing the maps. Other measures specify that district boundaries cannot be drawn to favor or oppose any candidate or presumed candidate running for office. Partisan-blind redistricting is similar in that it is either accomplished through limiting the use of election information in the course of redistricting or through language that states that redistricting should not be used to favor one party over another.
- **Minority Voting Rights:** Preserving the ability for minorities to elect representatives of their choice is an important component of any redistricting and is required by federal law. In fact, under certain circumstances (when a minority population is large enough to comprise a district and racially polarized voting patterns exist) the drawing of special majority-minority districts is required under the Voting

CASE STUDY: FLORIDA *Amendments 5 and 6*

On November 2, 2010, the voters of Florida approved two measures to enact redistricting reforms in the state – Amendments 5 and 6. The amendments set forth stringent criteria for the drawing of district lines, with Amendment 5 relating to state legislative lines, and amendment 6 relating to congressional district lines. District lines drawn in Florida must now adhere to the following requirements:

- No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent;
- Districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice;
- Districts shall consist of contiguous territory.
- Districts shall be as nearly equal in population as is practicable; districts shall be compact; and
- Districts shall, where feasible, utilize existing political and geographical boundaries

The state legislature will still be responsible for drawing and approving district lines, but now will be required to follow criteria that will eliminate many of the tactics used in partisan gerrymandering. Though Florida has more registered Democrats than Republicans, 20 out of 25, Florida congressional seats were in Republican hands, and the party break-down in the state legislature was similar due to the packing of Democrats into a small number of districts.¹

Supporters of the amendments included the League of Women Voters, AARP, NAACP, Democracia Ahora, Florida League of Cities, Florida Association of Counties, and Florida School Boards Association, among other groups. One of the most visible opponents, Representative Mario Diaz-Balart (R) headed the state's redistricting process in 2002, allegedly creating a congressional district that he later won which "runs from heavily Republican suburban Miami, across the uninhabited Everglades, to heavily Republican Southwest Florida."²

¹ Fein, Alan. "Redistricting Reform in Florida." The Huffington Post. November 8, 2010. Available at: http://www.huffingtonpost.com/alan-fein/redistricting-reform-in-f_b_779713.html

² Editorial. "Gaetz's Juggling Act." The News Herald. November 14, 2010. Available at: <http://www.newsherald.com/articles/gaetz-88568-editorial-republican.html>

Rights Act. Additionally, in New York City as previously discussed, redistricting plans must receive pre-clearance from the Justice Department, as three counties receive special protection under Section 5 of the Voting Rights Act that have historically been districts with voting rights violations: Bronx, New York and Kings (more commonly known as Brooklyn). While districts in many ways have been drawn to increase minority voting representation there have also been efforts to the contrary. “Packing” (putting the bulk of minority voters into a small number of districts) and “cracking” (diluting minority voters across many districts) are tools used to dilute the minority vote.

- **Population Equality:** Under federal case precedent¹³⁴, legislative districts must be drawn within 5 percent of the mean Senate or Assembly district size. A smaller margin of deviation has been proposed to make districts more equal in population so that they can more fully realize the principle of one person, one vote. This stricter standard would also reduce the legislature’s ability to strategically over-populate or under-populate districts to maximize their power.
- **Compactness:** Compactness is a generally accepted criterion that holds that districts should be composed of a tightly defined area so that representatives may be able to more efficiently communicate with and provide casework services to their constituents, and so that constituents reside in relative close proximity to one another, therefore potentially having interests, issues and a general sphere of reference in common. However, compactness has been defined in different ways: the length of the district boundary, how well a district fits inside a square or circle, and the weighted average of the center of population of a district. A district that fares well under one standard may fare poorly under another. Bizarrely shaped districts are often an indicator that political or other interests have trumped this measure. The creation of majority-minority districts as required under the Voting Rights Act, however, often requires contorted boundaries in order to group minority communities into a single district.
- **Contiguity:** Contiguity is a currently required criterion in New York State and, in fact, is required in nearly every state’s constitution.¹³⁵ Simply put, contiguity requires that all parts of a district be connected. However, some portions of districts are often connected to the core by a river with no bridge, a stretch of highway or other such means. Some jurisdictions have opted to apply a stricter set of guidelines related to natural and man-made barriers such as highways, waterways and islands.
- **Keeping Geographic and Political Boundaries Intact:** A measure calling for geographic and political boundaries intact would maintain that district boundaries shall conform to the existing geographic boundaries of a city and county or other jurisdiction, and shall preserve identifiable communities of interest to the greatest extent possible. Some proponents have called for redistricting plans to provide for the most whole counties and the fewest county fragments possible, and the most whole cities and fewest city fragments possible. The New York State Constitution requires that district boundaries not divide towns or, within cities, blocks. It also requires that counties remain intact unless its population requires division

¹³⁴ *Wesberry v. Sanders*, 376 U.S. 1, 7-8, (1964).

¹³⁵ “All About Redistricting.” Loyola Law School, Professor Justin Levitt. Available at: <http://redistricting.lls.edu/where-state.php>

between multiple districts for the state senate.¹³⁶ New York City's redistricting process for city council requires that if any district includes territory in two boroughs (the same as counties), then no other district may also include territory from the same two boroughs.¹³⁷

- **Preserving Communities of Interest:** For the purposes of redistricting, communities of interest can be defined by similarities in social, cultural, ethnic, and economic interest, school districts, and other formal relationships between municipalities. However, respecting existing boundaries and communities can often come into conflict as efforts to keep one community of interest or political subdivision intact can sometimes unintentionally result in the division of another community.
- **Nested Districts:** Currently, Senate and Assembly districting plans are not coordinated with one another in their design. As a result, the district boundaries on the two sets of maps are somewhat alien to one another and the Senate and Assembly districts overlap more than they match up. Criterion limiting the number of Assembly districts that can be in a Senate district and vice-versa seek to bring about a more coherent representation for communities that are divided among an array of Senate and Assembly districts.
- **Competitiveness:** To increase the level of competition in electoral contests, two states, Arizona and Washington, have opted to include a "competitiveness clause" for the drawing of district lines. However, these clauses are subordinate to other criteria, such as equal population, adherence to the Voting Rights Act and respect for communities of interest. Competitiveness clauses require that districts be drawn in such a manner as to increase competition in the districts. This approach has been often criticized as overly vague and potentially in conflict with more desirable measures that could limit the ability of parties and legislators to draw districts in a non-competitive manner. Arizona's competitiveness clause requires that "to the extent practicable, competitive districts should be favored where to do so would create no significant detriment to the other goals." The Superior Court in Arizona recently upheld a challenge to the state's 2002 lines on the grounds that they did not live up to the competitiveness standard enumerated in their guidelines. Competitiveness is often seen as being to the benefit of the minority statewide political party as creating more competitive districts would make incumbents more vulnerable and increase the probability that a minority party member would win election.

It should be noted that Citizens Union does not support explicitly requiring a competition criterion in a new redistricting model, but rather that competition should not be discouraged, as has occurred under the current redistricting process. This is why we support that a criterion that would state that districts should not be created to discourage competition, or for the purpose of favoring or opposing any party, incumbent or candidate for office.

¹³⁶ New York State Constitution Article III, Section 4, "No town, except a town having more than a ratio of apportionment and one-half over, and no block in a city enclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any districts contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants..."

¹³⁷ New York City Charter, Chapter 2-A, §52.

- **Mid-Decade Redistricting:** Growing out of a mid-decade congressional reapportionment that took place in 2003 in Texas that redrew the state's 32 congressional districts, some states are making efforts to either encourage or prevent similar maneuverings between the 10-year redistricting cycles that occur immediately following the release of U.S. Census Data.

3. Public Involvement/Access to Information

Fostering public involvement in the political process is vital to a well-functioning democracy. Because the drawing of district lines is conducted by a small few, allowing the individuals it affects to have a chance to review the proposals and the data that informs the process is essential to garner public support and ensure a fairer process. Providing for public hearings and comment periods, providing access to software, data and other technical information are key aspects of this component.

Public Hearings

Before the last sets of lines were drafted in New York State in 2002, LATFOR held eleven public hearings and an additional eight were held after the plans were drafted but before they were submitted to the legislature for approval. Transcripts of these hearings were made available on the Task Force website¹³⁸ and the Task Force also maintained a log of the testimony of participants, which is part of the record that was submitted to the Department of Justice. The submissions are public record and are made available for inspection, as required by the Department of Justice rules, when the State submits the legislation for pre-clearance under Section 5 of the Voting Rights Act. Copies of the submissions are also made available to the Task Force members as they are received.

Public hearings are underway in New York for the 2012 redistricting cycle, and will be held in a total of fourteen locations by November 2nd. These hearings are being held prior to the release of draft redistricting plans, to “to gather public input regarding congressional and state legislative districts following the Census of 2010.”¹³⁹ Transcripts and video of hearings have been made available on the LATFOR website. LATFOR members have stated at the hearings that they plan to hold hearing throughout the state after plans have been drafted to elicit specific comments on the maps.

Some of the reform proposals in New York require that hearings be held throughout the state, which is not currently required under state law. The Gianaris/Jeffries, Valesky and Cuomo legislation would require hearings in designated locations throughout the state, and the Cuomo legislation further stipulates that hearings are to be webcast, if practicable.

¹³⁸ New York State Task Force on Demographic Research and Reapportionment. July 2007

<http://www.latfor.state.ny.us>

¹³⁹ New York State Task Force on Demographic Research and Reapportionment. Notice of Public Hearing. June 2011.

Available at: <http://www.latfor.state.ny.us/hearings/20110627/>

Access to Information

Currently, the Task Force holds hearings, accepts public submissions of plans, and makes data and maps available in electronic and print formats. The Task Force launched the website www.latfor.state.ny.us in 2001 to improve outreach and communication with the public. As previously mentioned, transcripts and video of hearings are available on the website, as well as maps for the 1992 and 2002 redistricting cycles and 2010 census data.¹⁴⁰

The Brookings Institution in July of 2010 released a set of principles for transparency and public participation in redistricting, believing that increasing transparency can “empower the public to shape the representation of their communities, promote public commentary...and educate the public about the electoral process.”¹⁴¹ Regarding their specific principles, they believe that redistricting plans should be available in non-proprietary formats and that the data and software necessary to create redistricting plans and define community boundaries be publicly available online. Other recommendations for greater transparency include requiring public maps be made available on the redistricting body’s website, and that the commission consider public maps in the drawing of district lines.

4. The Approval Process

While guidelines for redistricting are often enumerated in state law or in states’ constitutions, those with the power to draw the lines often manipulate the process to protect incumbents or maximize one party’s advantage at the polls. After lines are drawn, they typically either are approved by the legislature or the commission that is also charged with developing the lines, and in many cases if no plan is approved, the courts are authorized to get involved. As such, the final approval of a commission’s redistricting plan is an extremely crucial step in how the redistricting process is carried out and is vital to the final product.

Approval Authority and Dispute Resolution

The approval authority for redistricting plans differs among states. Currently in New York State, redistricting plans from the Legislative Task Force on Reapportionment and Demographic Research are submitted as bills and can be amended and altered before a vote by both houses of the legislature and submission to the Governor for final approval. The plan must then be submitted to the U.S. Department of Justice for approval under Section 5 of the Voting Rights Act.

In Arizona, the independent redistricting commission has responsibility for drawing and approving district lines. While the legislature does not have a say in the final approval, the lines have to be certified by the Secretary of the State. The U.S. Department of Justice must also approve the plan. Should they disapprove the plan, the Commission has to redesign the map until final approval.

In Iowa, while the nonpartisan Legislative Services Bureau is charged with drawing state and congressional district boundaries, the legislature has the final responsibility for enacting both congressional and state legislative district plans. The Bureau must develop up to three plans that

¹⁴⁰ See the LATFOR website at: <http://www.latfor.state.ny.us/>

¹⁴¹ The Brookings Institution. “Principles for Transparency and Public Participation in Redistricting.” July 12, 2010. Available at: http://www.brookings.edu/opinions/2010/0617_redistricting_statement.aspx

can be accepted or rejected by the legislature by a majority vote. If the legislature does not approve the first three plans by the Bureau, it must itself approve a plan by September 1st, or the state Supreme Court will take responsibility for the state districts and must adopt a valid redistricting plan within 90 days. The Governor has veto power over plans, regardless of how they are developed.

New Jersey is much like Arizona where neither the legislature nor the governor has any veto or amending authority and the approval is left up to the commission. However, if the commission does not develop a plan in the allotted time, the state Supreme Court appoints another member to the commission, and the commission will then attempt to reach a decision. If the commission still cannot reach a decision, the body will vote on their proposed plans and submit the two plans with the most votes to the State Supreme Court, which will choose one of those plans.

Lastly, it should be noted that the public can, and often does, file lawsuits challenging district lines. In such a case, implementation is delayed until the legal challenges are exhausted and the courts have issued a ruling.

B. CITIZENS UNION'S RECOMMENDATIONS FOR AN INDEPENDENT REDISTRICTING PROCESS

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.

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 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. Creating a 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. Selecting a Nomination 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. Forming 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 as 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 essential 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.

C. 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. Giving Greater Opportunity 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. Ensuring that Upstate New York's Cities Are Not 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.

D. 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 a polarized and dysfunctional state legislature that is unable to meet the needs of the public, and 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 to create an independent commission as well as clear and consistent rules for the drawing of lines.

i. The Future of Redistricting

The legislature must return in a special legislative session to respond to the increasing public pressure to create a more independent system of redistricting. In spite of one of the most successful legislative sessions in recent memory, the legislature failed to pass redistricting reform legislation – something that 184 of the 212 members of the legislature supported by co-sponsoring legislation or pledging their support during the 2010 campaign season, through the efforts of Citizens Union and other reform groups as described below. Should the legislature fail to act before the lines are drawn for 2012, they face a veto by Governor Andrew Cuomo who has repeatedly pledged that he will veto lines that are not independent or that are partisan, and has voiced his belief that the current body responsible for drawing lines – the Legislative Task Force for Demographic Research and Reapportionment (LATFOR) cannot act in a nonpartisan manner. If LATFOR continues on its course of drawing lines and the legislature fails to hand over its work to an independent commission, the lines will be vetoed and the legislature will not have sufficient numbers to override a veto. The courts will then decide the redistricting plans, possibly appointing a special master to draw new plans.

New Yorkers deserve districts that adequately represent them, and legislators who are responsive to their needs. Under the current system of redistricting, incumbents face little opposition at the polls, and thus often do not need to keep the concerns of their constituents in mind when making important policy decisions. Fortunately, legislators have responded to the mounting public pressure for reform, and many have made public commitments to create an independent redistricting process.

ii. Common Ground for Reform

While the legislature has yet to come to consensus around the details of redistricting reform, 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. 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)

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.

iii. Historic Support for 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 and has the bully pulpit to push the legislature. There is unprecedented and historic support for creating an independent commission to draw district lines, with the majority of legislators in both houses supporting such a change.

Citizens Union has played a crucial role in securing the support of legislators for redistricting reform. As part of its candidate evaluation process, Citizens Union has for the last several election cycles asked candidates their position on establishing an independent redistricting commission in its candidate questionnaire. For the election in 2010, candidates' positions on this issue were a key criterion in Citizens Union's support for candidates. Citizens Union also in 2010 asked candidates their positions on establishing stricter rules for the drawing of lines, such as requirement a maximum of a 1 percent deviation in the size of districts.

Legislators also signed pledges during the 2010 campaign season from NY Uprising, a PAC formed by former New York City Mayor Ed Koch that aimed to get legislators on the record for reform in Albany. While not an official member of NY Uprising, Citizens Union has served in an advisory role, providing policy guidance and strategic support to the group. Pledges were secured from 53 of the 62 members in the Senate in support of the creation of an independent commission. In the State Assembly, 84 of the 150 members made such a pledge.

Once the legislature convened in January 2011, many legislators signed on to legislation that would create an independent redistricting commission, either Governor Cuomo's redistricting reform bill, A.5388, in the Assembly (no sponsors can sign on in the Senate due to its previously mentioned introduction into the Rules Committee), or the Gianaris/Jeffries legislation, S.2543/A.3432. Citizens Union through its ReShapeNY campaign sought to hold legislators accountable for their campaign pledges, releasing tallies of legislator support to the press, providing an updated listing of legislators support on the ReShapeNY website, reshapeny.org, and coordinating and sharing information with coalition members. Through these efforts, 184 of the 212 members of the State Legislature have either co-sponsored or have pledged to support the creation of an independent redistricting commission.

Regarding Governor Cuomo's program bill and other reform legislation, support is strong in the Assembly. A majority of assemblymembers during the legislative session – 97 in total – supported Governor Cuomo's redistricting reform bill as co-sponsors. The support is also bipartisan: a majority of Democrats (62 of 99) and a majority of Republicans (32 of 51) in the Assembly support as co-sponsors Governor Cuomo's legislation to create an independent redistricting commission. The legislation would first be debated in the Governmental Operations Committee, where 8 of 11 committee members are co-sponsors of the legislation. When combining support for Governor Cuomo's legislation and Assemblymember Jeffries' bill, 105 assemblymembers have co-sponsored legislation to create an independent redistricting commission. The tables on the next page show the breakdown in support in the Assembly, and Appendix 2 shows a full list of legislator's public pledges and co-sponsorship of redistricting reform legislation.

Table 18: Assembly Co-Sponsors of Independent Redistricting Legislation

ASSEMBLY		
Support for Independent Redistricting Legislation During 2011 Legislative Session: Co-Sponsors		
<u>Support</u>	Cuomo/Silver Legislation (A.5388)	Jeffries Legislation (A.3432)
Total Sponsors Signed On	97	79
<u>Conference Support</u>		
Democrats	64	51
Republicans	32	27
Independents	1	1
Total	97	79

Table 19: Assembly Overlapping Support for Legislation Creating Independent Commission

ASSEMBLY			
Conference Support for Independent Redistricting Legislation During 2011 Legislative Session			
<u>Support for Legislation</u>	Dem	Rep	Ind
Sponsors Only Cuomo/Silver Legislation (A.5388)	15	11	0
Sponsors Only Jeffries Legislation (A.3432)	2	6	0
Sponsors Both Cuomo/Silver and Jeffries Legislation	49	21	1
Conference Total	66	38	1
Total Assembly Support	105		

In the Senate, similar legislation has been introduced by Senators Michael Gianaris and David Valesky, though as previously noted, Governor Cuomo’s reform legislation is not able to have co-sponsors. On the next page are tables showing support in the Senate for the reform bills.

Table 20: Senate Co-Sponsors of Independent Redistricting Legislation

SENATE		
Support for Independent Redistricting Legislation: Co-Sponsors During 2011 Legislative Session		
<u>Support</u>	Gianaris Legislation (S.2543)	Valesky Legislation (S.660)
Total Sponsors Signed On	22	16
<u>Conference Support</u>		
Democrats	22	15
Republicans	0	1
<i>Total</i>	22	16

Table 21: Assembly Overlapping Support for Legislation Creating Independent Commission

SENATE		
Conference Support for Independent Redistricting Legislation During 2011 Legislative Session		
<u>Support for Legislation</u>	Dem	Rep
Sponsors Only Gianaris Legislation (S.2543)	11	0
Sponsors Only Valesky Legislation (S.660)	4	1
Sponsors Both Gianaris and Valesky Legislation	11	0
Conference Total	26	1
<i>Total Senate Support</i>	27	

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, as noted previously. The voters also agree that Governor Cuomo should veto lines that aren't drawn by an independent commission.¹⁴²

At LATFOR's public hearings held throughout the state this summer and fall, the public continually testified in support of independent redistricting. Others favored the use of sensible criteria for drawing lines, such as not splitting communities and conforming to existing political boundaries such as cities. Both independent redistricting and defined and objective criteria are fundamental elements of the major redistricting proposals supported by the legislature. 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.

¹⁴² 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."

Pressure has also been mounting in the media, with a new editorial every month this year from news outlets throughout the state asking for an independent process to be put in place before 2012 as LATFOR continues its roadshow 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. They and we refuse to accept postponing reform for yet another ten years.