

NEW **ROOSEVELT INITIATIVE**

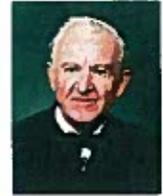
**TESTIMONY BEFORE THE SENATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT**

**BY BILL SAMUELS, CHAIRMAN
NEW ROOSEVELT INITIATIVE**

TUESDAY, DECEMBER 14, 2010

“The gerrymandering practice is very, very harmful to the community at large and I think it tends to accentuate the differences, the strong differences between the political parties.”

Former United States Supreme Court Justice John Paul Stevens



ACKNOWLEDGEMENTS

Good morning, thank you to the New York State Senate Legislative Taskforce on Demographic Research and Reapportionment for holding this hearing prior to the outset of the redistricting process. Thank you Senator Martin Dilan and Dr. John L. Flateau for hearing our testimony today.

ABOUT NEW ROOSEVELT INITIATIVE AND BILL SAMUELS

My name is Bill Samuels, I am the Founder and Chairman of the New Roosevelt Initiative, a political committee devoted to making our legislature the best in the nation. The answer is that in order to do accomplish this simple goal we will need meaningful redistricting reform, where legislators cannot draw their own lines.

We are not only about working to oust corrupt politicians like disgraced Senator Pedro Espada and electing young idealistic insurgent candidates like Senator-elect Gustavo Rivera who will carry the banner of reform to Albany. We are also about working for structural reforms that will restore dignity to the word “politician” so that it can once again be a respected profession.

Prior to this independent effort I served on the New York State Senate’s Democratic Campaign Committee, as Finance Co-Chair in 2006 and Chair in 2008.

OUR INVOLVEMENT WITH REDISTRICTING

Over the last decade redistricting has been a high priority. In 2002, I helped fund the New York State Senate Democrat’s suit over the new Senate lines in *Rodriguez v. Pataki*, which sought to protect the rights of Hispanic voters of Senate District 34 in the Bronx.

This year, I continued my focus on redistricting. In May we held an event to educate the public with a panel on redistricting reform followed by a screening of *Gerrymandering*, a film that had premiered at the *Tribeca Film Festival*. Following this event, we called for a constitutional amendment on redistricting reform as the only meaningful solution to partisan gerrymandering.

In August, we met with and asked Governor Paterson to call a truly “extraordinary session” on reform that would feature independent redistricting.

Drawing the Lines

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

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

In addition to the required principles (a), (b), (c) and (d) above, the principles I will go through next would be followed in the creation of senate, assembly, and congressional districts to the extent practicable. For these criteria, a principle with a lower number shall have precedence over a principle with a higher number. It is important to emphasize that the criteria in S.1614-B is prioritized, meaning that the overarching principles of (a) – (d) would be of foremost importance. For example, in order to meet the requirements of (c) with regard to voting rights, a district may not necessarily be compact as per (v) below.

- (i) the most and least populous senate districts shall not exceed or be lower than the mean population of all senate districts by more than one percent, and the most and least populous assembly districts shall not exceed or be lower than the mean population of all assembly districts by more than one percent. In no event shall the commission advantage any region of the state over any other by creating multiple districts therein exceeding, or lower than, the mean population by more than one percent.
- (ii) counties shall not be divided in the formation of districts, except to create districts wholly within a county. Where such division of counties is unavoidable, more populous counties shall be divided in preference to the division of less populous counties.
- (iii) county subdivisions shall not be divided in the formation of districts, except to create districts wholly within a county subdivision. For the purposes of this article, a county subdivision shall be a city, except the city of New York, a town, or an Indian reservation whose territory is exclusive of the territory of any city or town. County subdivisions with larger populations shall be divided in preference to the division of those with smaller populations.
- (iv) incorporated villages shall not be divided in the formation of districts.
- (v) the senate, assembly, and congressional districts shall be as compact in form as possible.
- (vi) a senate, assembly, or congressional district shall unite communities defined by actual shared interests, taking account of geographic, social, economic, and other factors that indicate commonality of interest, and districts shall be formed so as to promote the orderly and efficient administration of elections.

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

Public Input and Final Legislative Approval

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

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

Under the Valesky legislation, the Legislature has the opportunity to provide feedback on up to two plans submitted by the commission, and can only amend a third plan with amendments that meet the statutory guidelines established. This is consistent with the Legislature's authority under the State Constitution to ultimately approve a redistricting plan. Citizens Union also believes that this preserves an important role for legislators, who have great familiarity with the communities represented in their districts. The first plan would require a vote of the legislature without amendments. If the proposal is rejected, the commission would submit an amended proposal after hearing the reasons given by the legislature regarding the first plan's rejection at a public hearing. The second plan, again, would be voted upon by the legislature without amendments. If the second proposal is also rejected, the commission would submit a third plan following a second public hearing at which the legislature would testify. The third plan would be subject to the normal amendment process, given the legislature's ultimate authority over redistricting under the State Constitution. We believe that holding public hearings regarding the legislature's objections to the plan will allow for a public discussion of these objections, as well as add an important level of transparency to the process.

Size of the Senate

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

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

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Last month, we called on Governor Paterson, Governor-elect Cuomo and Legislative leaders to take on a constitutional amendment on redistricting in a December session so that voters could enact it in time to make a difference in 2012.

The Albany Times Union, recently joined us, taking the position in its opinion editorial of December 6, 2010, "The Time is Now, New York," that permanent redistricting reform could only be accomplished through a Constitutional Amendment passed in December and again in the next legislature. With just two weeks left this has become an unlikely possibility.

THE ANSWER

The best we can do in the short term is to pass independent redistricting legislation so that we can have the hope of fair districts. In the long term we must pass a constitutional amendment on redistricting, even if it won't take effect until 2022, so that our reforms can't simply be ignored or rolled back by the next legislature.

Former United States Supreme Court Justice John Paul Stevens has said, "The gerrymandering practice is very, very harmful to the community at large and I think it tends to accentuate the differences, the strong differences between the political parties."

We caution the legislature against simply passing an independent redistricting bill like Valesky-Gianaris as a "slight of hand" to appear like they are doing the right thing while contemplating and ultimately using its loophole to simply disregard a fair plan in favor of partisan gerrymandering.

In order to have meaningful redistricting for 2012 the Majority and Minority Leaders in the Legislature must commit not only to passing some form of independent redistricting plan. But more than that, to commit ahead of time that they will approve it.

ROADMAP

In order to explain how we came to our answer we will discuss the recent history of redistricting, the importance of a constitutional amendment, the risks of partisan redistricting, and explain our answer in greater detail.

HISTORY

1980

The current gerrymandered Assembly and Senate has its foundation in the 1982 deal made between the Republican Senate Majority Leader Warren Anderson and the Democratic Assembly Speaker Stanley Fink in 1982.¹ That year the two agreed that going forward they would forgo the traditional bi-partisan debate that might traditionally result in more competitive districts. Instead they adopted a system where the majority of each house in the legislature would draw its own lines with the implicit agreement that

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they would just pass each other's districts without challenge or debate. As result of this plan the deviation between the least and most populous Senate Districts would grow to 5.30% from 1.78% under the 1972 redistricting plan.

1990

Ten years later, Governor Mario Cuomo, sought to thwart the continuation of the Anderson-Fink deal when a partisan gerrymandered redistricting plan passed the legislature requiring his signature or veto. While Governor Cuomo, initially fought the plans, he would eventually fold in exchange for election law reforms including campaign finance contribution limitations as well as improvements to voter registration and ballot access.ⁱⁱ However, in signing the redistricting plan he included an unusual signing memorandum:

It seems clear to me - and I believe it will be clear as well to other objective reviewers - that the Republican plan had as its primary concern the protection of incumbents against any real challenge ... In doing so, I believe the Justice Department and the courts will both conclude laws have been violated ... Given the legislature's performance in redistricting thus far, there is more than a serious possibility that a veto would simply allow the legislature to achieve the ultimate in incumbent protection - elections on existing lines.

1990 - Assembly Challenge

Following Governor Cuomo's signature and statement the Assembly, which was strongly gerrymandered in 1992, was challenged. *Fund for Accurate and Informed Representation, Inc. (FAIR) v. Weprin* alleged that the plan adopted by the Assembly: (1) violated the one-person, one-vote requirement of the Fourteenth Amendment; (2) comprised a partisan gerrymander that discriminated against Republican voters; (3) diluted minority voting strength; and (4) violated the Fourteenth Amendment by fragmenting cohesive communities of interest and political subdivisions between Assembly districts.

After a summary trial, the Court concluded that the "*challenges raised in plaintiffs' complaint are without merit.*"

However, during the course of the trial the Department of Justice interposed an objection to two Assembly districts in Manhattan. Since the Legislature was unable to adopt a timely remedy, the Court directed the "Special Master to draw new district lines for them and for such contiguous districts as may thereby be affected, to bring those districts into compliance with the Voting Rights Act. With respect to the remaining districts in the Assembly plan and the entire Senate plan, *we defer to the legislature's plan and adopt its apportionment of those districts.*"ⁱⁱⁱ

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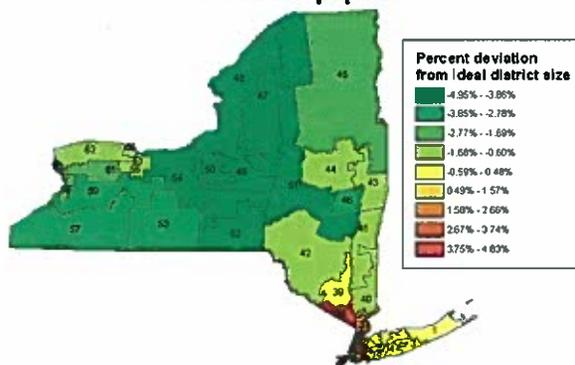
Litigation emanating out of the 1992 redistricting plan would leave the Senate's plan untouched, two Assembly Districts in Manhattan redrawn through intervention by the Department of Justice, and the adoption of a State Court drawn Congressional plan in which the 12th Congressional District would be redrawn years later.

2000

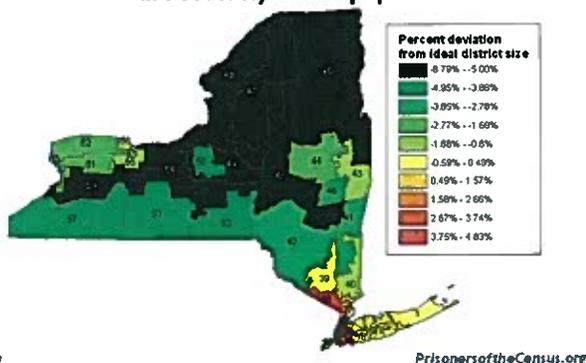
In the new Millennium, only twenty years after the Anderson-Fink deal, the deviation between the least populated and most populated Senate Districts grew to 9.78% from 1.78% in 1972. The Senate's redistricting plan would systematically over-populate downstate districts while under-populating upstate districts, which also used some forty to sixty thousand prisoners in upstate prisons to account for their constituency.



Upstate New York Senate districts are under-populated

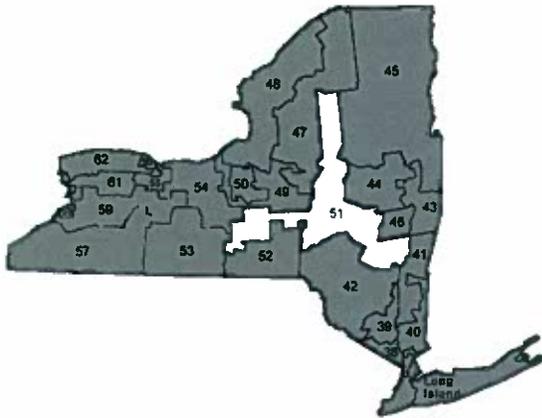


Without prisoners as "population" Upstate New York Senate districts are severely under-populated



The 2000 Senate Redistricting Plan demonstrated some of the most blatant gerrymandered districts in direct violation of the New York State Constitution. We will review three of the many examples.

Case Study #1: “As Compact Form As Practicable”



Nickname: “Abraham Lincoln Riding a Vacuum Cleaner”

Half as tall and one-third the length of the entire state.

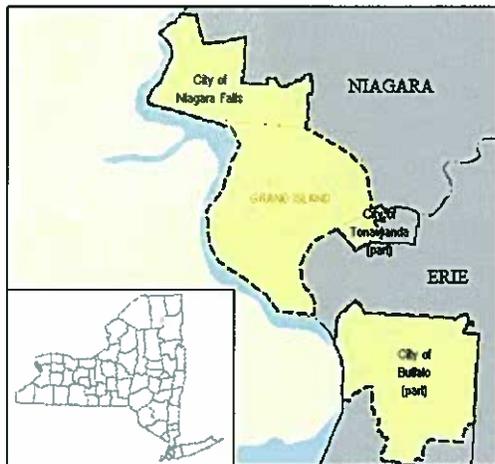
Covers all or part of 7 different counties.

Crosses 6 different Assembly Districts.

Includes 3 different broadcast media markets.

Case study number 1 investigates the constitutional requirement for districts that are “as compact form as practicable.” Our example is Senate District 51, nicknamed “Abraham Lincoln Riding a Vacuum Cleaner.” The District is half as tall and one-third the length of the entire State, covers all or part of 7 different counties, crosses 6 different Assembly Districts and includes 3 different broadcast media markets.

Case Study #2: “Consists of Contiguous Territory”



Nickname: “A District Divided”

Two areas in two counties that are more than a mile apart.

Cuts City of Tonawanda in half.

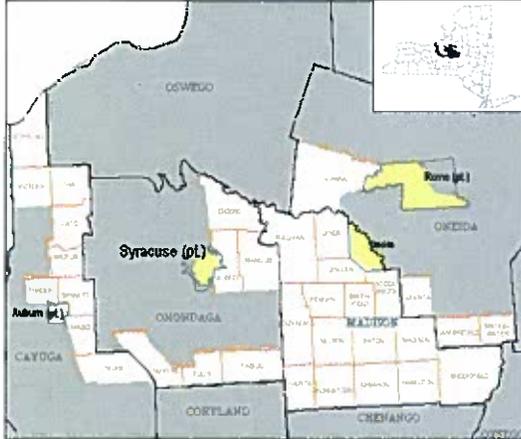
Cuts the City of Buffalo in half.

Protects Republicans in adjoining districts by packing Democrats into a divided district that has a 5:1 Democrat to Republican ratio.

Case study number 2 investigates the constitutional requirement for a district that “consists of contiguous territory.” Our example is Senate District 60, nicknamed “A District Divided.” The District consists of two areas in two counties that are more than a mile apart, cuts the City of Tonawanda in half, cuts the City of Buffalo in half, and protects Republicans in adjoining districts by packing Democrats into a divided district that has a 5:1 Democrat to Republican ratio.

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Case Study #3: “No County Shall Be Divided”



Nickname: “The Long Arm of Legislative Redistricting”

Divides three of four counties.

Divides three cities, each in a different county.

Outer arm is 30 miles long, 40 miles high and includes 12 towns.

Completely wraps around 3 sides of an adjoining Senate District.

Case study number 3 investigates the constitutional requirement that “no county shall be divided.” Our example is Senate District 49, nicknamed “The Long Arm of Legislative Redistricting.” The District divides three of four counties, three cities (each of which is in a different county), with an outer arm that is 30 miles long and 40 miles high including 12 towns and completely wrapping around 3 sides of an adjoining Senate District.

2000 Senate Challenge

Under Governor Pataki, the only debate was related to the Congressional Redistricting plan, with the State Government adopting its own plan in order to avoid having to use a plan provided by a Special Master of the Court.

Multiple lawsuits were brought against the Senate’s gerrymandering, including one I helped fund, *Rodriguez v. Pataki*, that amongst other challenges focused on Senate District 34 in the Bronx where there was an obvious case of racial gerrymandering to create a super-majority white district where Hispanic voters would not be able to elect a candidate of their choice.

The court found that the gerrymandering *could be explained by legitimate consideration, particularly partisan advantage and the incumbent protection* of Republican Senator Guy Veleva.^{iv} It is worth noting that only a few months after the final decision was rendered in 2004, Senator Guy Veleva would resign in a plea deal from a 25 count indictment for bribery and conspiracy.^v That seat is now represented by Democratic Senator Jeffrey Klein.

In another lawsuit, *Allen v. Pataki*, the Senate was challenged on the grounds that it failed to meet equal population requirements with its overall range of 9.78%. They alleged that the new plan was not the product of an honest and good faith effort to achieve population equality, and that the districts favored upstate districts by under-populating them and disfavored downstate districts by over-populating them.

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Ultimately none of the challenges to the 2002 Redistricting Plans would be upheld by the courts.

2010

This year we elected the legislature that will pass the redistricting plan in 2012 that will likely carry on through 2022.

In addition to New Roosevelt Initiative, several groups brought reform to the forefront of the electoral debate. One such group was *New York Uprising* led by former Mayor Ed Koch, who collected 263 legislative pledges to support reforms like independent redistricting. Of these 263, 49 were incumbent Senators, representing a super majority of the New York State Senate, with more than enough votes to pass many of the pledged reforms before the November Elections.



In May, New Roosevelt Initiative held an event to educate the public with a panel on redistricting reform followed by a screening of *Gerrymandering*, a film that had premiered at the *Tribeca Film Festival*. Following this event, we called for the immediate passage of independent redistricting with the acknowledgement that a constitutional amendment on redistricting reform was the only meaningful solution in the long term to partisan gerrymandering.^{vi}

In August, we publicly asked Governor David Paterson to call a truly “extraordinary session” on reform that would include redistricting.^{vii} The impetus behind this session was our belief that a majority of lawmakers had pledged support for redistricting reform and that voters should not have to wait until after the election to see if legislators would keep their word. As you may already know, Paterson never did call that special session, none of our legislators came back to Albany to deliver on their pledge before Election Day, and Governor Paterson will not be leaving a legacy of reform in Albany.

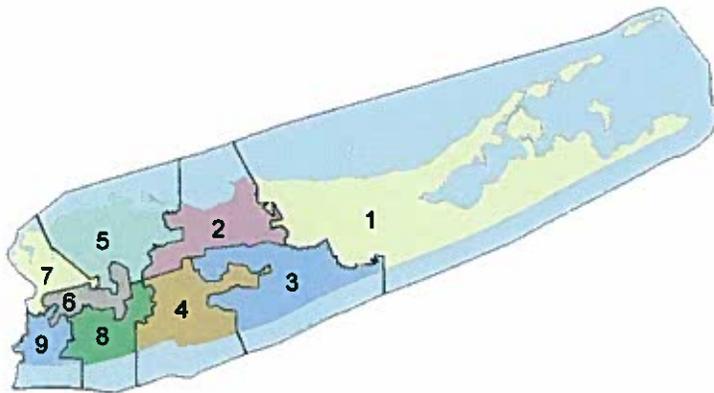
Even with the support of the Albany Times Union, December 31, 2010 quickly approaches without the slightest hint of a constitutional amendment on redistricting in time to have a meaningful impact before 2022.

This leaves the question of what might be in store for redistricting operating under the Anderson-Fink deal for the third decade in a row.

RISKS FOR PARTISAN GERRYMANDERED REDISTRICTING

Without an independent redistricting commission enacted in the short term or a constitutional amendment on redistricting reform in the long term, it is likely that political parties will reach into a familiar bag of tricks that is used for partisan gerrymandering resulting in increased majorities, less competitive districts, and stronger incumbents.

Splitting Communities of Interest



Senator Dean Skelos
District 9 (R)



Senator Charles Fuschillo
District 8 (R)



Senator-elect Jack Martins
District 7 (R)



Senator Kemp Hannon
District 6 (R)

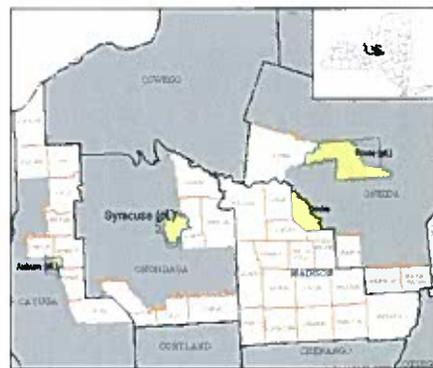
While elected officials should represent specific communities, it has become common place to split communities of interest to weaken the ability of those communities to choose their own representation.

In Nassau County, African American communities may continue to be split, like those in the Hempstead area that are split between Republican Senators Dean Skelos in District 9, Charles Fuschillo in District 8, Jack Martins in District 7 and Kemp Hannon in District 6.

Partisan gerrymandering would see many more communities of interest split, specifically those representing minority populations, in order to protect incumbents that are often Caucasian.

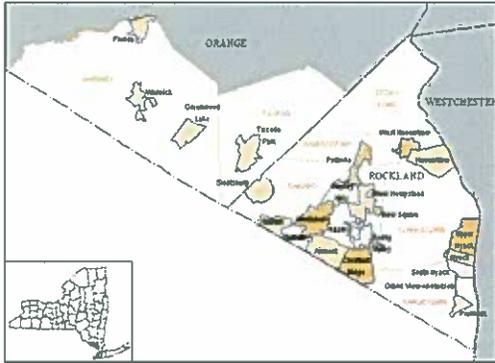
Redefining the Gerrymander

Senate District 49 already serves as a prime example of a partisan gerrymander having earned the nickname, "The Long Arm of Legislative Redistricting." While this District was gerrymandered in order to protect a Republican incumbent, it is now occupied by Democratic Senator David Valesky, who is likely to be redistricted out in order to return the seat to the Republicans. The next District is likely to be even more expansive while having even less of Syracuse, which will need to be split into even more Senate Districts.



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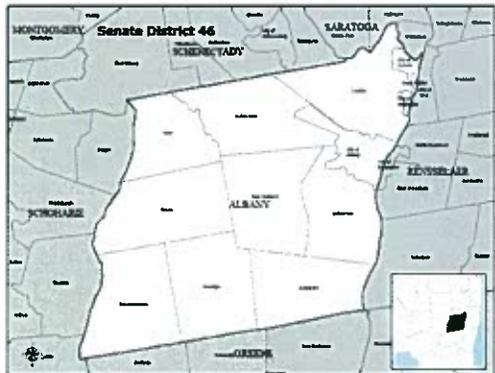
Splitting Up Counties for Fewer Counties Represented by Single Senator



Senate District 38: All of Rockland County and Two Towns in Orange County

This year the Republican Senate lost two seats that had previously been held by Republicans. In Senate District 11, incumbent Senator Frank Padavan lost to former City Council Member Tony Avella. Democratic Senator-elect David Carlucci won Senate District 38 that had previously been a Republican seat in an open election following the death of the incumbent.

Senate District 38 currently contains all of Rockland County and two towns in Orange County. Splitting out the Democratic neighborhood in Rockland County into other Districts and picking up turf in neighboring counties like Westchester and Orange with more Republicans could return the District to Republicans.



Senate District 46: All of Albany County

A similar strategy could be used to retake Senate District 11 from Senator-elect Tony Avella or Senate District 16 from Senator Toby Stavisky by stretching the Districts that are currently nestled in Queens County into Republican areas of Nassau County.

Democratic Senator Neil Breslin, currently represents District 46 that is one of the few Senate Districts that represents a whole county that is not split. Republicans may choose ignore the Constitutional prohibition against splitting Counties in order to cut up the 46th like a personal pan pizza, with the four adjacent Republican Districts (41, 43, 44, and 51) each taking a quarter of Albany leaving Democrats in the area without meaningful representation.

THE ANSWER: SHORT AND LONG TERM

I join all the other good government groups, editorial boards, and a vast majority of the voters in calling for immediate action in the short term with the passage of an independent redistricting commission to draw the lines for 2012.

But in the long term we must pass a constitutional amendment on redistricting during the 2011 – 2012 and 2013 – 2014 General Legislative Sessions in order to have a chance at having meaningful redistricting reform that cannot be rolled back by the 2022 redistricting.

The Short Term Answer: Valesky/Gianaris

The independent redistricting legislation put forth by Senator David Valesky and Assembly Member now Senator-elect Michael Gianaris, S.1614-B/A.5279-B, meets many of the requirements of the New York Uprising pledge, Governor-elect Andrew Cuomo's "New NY Agenda: A Plan for Action," where he voiced his support, and the New Roosevelt Initiative pillars of reform.

The Valesky-Gianaris legislation provides for an independent redistricting commission that is empowered to put forth three redistricting plans. The first two must be voted up or down by the legislature without amendment. However, in order to keep the legislation constitutional, a loophole was included for a third redistricting plan that would be introduced if the first two failed that may be amended as necessary by the legislature. This loop hole would be necessary in any non-constitutional solution.

We support the immediate passage of the Valesky-Gianaris legislation as a short term answer. This is mainly because a constitutional amendment can no longer be passed in time to take effect in time for 2012. Valesky-Gianaris is our best chance at having a fair redistricting plan in 2012 by virtue of a truly independent redistricting commission.

We caution the legislature against simply passing Valesky-Gianaris as a slight of hand to appear like they are doing the right thing while contemplating and ultimately using its loophole to simply disregard a fair plan in favor of partisan gerrymandering.

In order to have meaningful redistricting for 2012 the Majority and Minority Leaders in the Legislature must commit not only to passing some form of independent redistricting plan. But more than that, commit ahead of time that they will approve it.

Whether this legislation is ignored or passed with the loop hole exercised we ask that Governor-elect Andrew Cuomo stay true to his pledge to veto any partisan gerrymandered plan and not make the same mistake of his father Governor Mario Cuomo who traded for his priorities and relied on the Courts do what was right.

The Long Term Answer: Constitutional Amendment on Redistricting Reform

Legislative answers like Valesky-Gianaris will always fall short because Article III of the New York State Constitution vests legislative power in the Senate and Assembly and the final responsibility for redistricting in Sections 2 through 5-a of that Article. Since the legislature's power to set the boundaries of districts through redistricting is constitutional, no relevant statute can seek to diminish that power, circumvent it, or take it away. Therefore, any solution that does not include an accompanying constitutional amendment can be easily ignored or replaced by the legislature.

The process for amending the New York State Constitution is found in Article XIX, where it states that an amendment must be passed by two successive, separately elected legislatures. That means an amendment passed this year during the 2009/2010

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General Session and next year during the 2011/2012 General Session could be on the ballot as early as November 2011. However, since that is no longer an option, the process would now be to pass and amendment during the 2011 – 2012 General Session and again in 2013, meaning that permanent redistricting reform cannot have an effect on redistricting until 2022 at the earliest.

We continue to support the constitutional amendment on redistricting put forward by the Association of the Bar of the City of New York in 2007 as the best long term answer available. To that end we strongly support S.8521, where that amendment has been introduced by Senator Martin Dilan and urge that the legislature pass it immediately if not in the next legislative session.

CONCLUSION

It is time to deal with the issue and rectify the injustices of the gerrymander deals made in the early 1980's which gave the Senate to the Republicans and the Assembly to the Democrats. Until we achieve redistricting reform, other much needed reforms will be impeded and keep the people of New York from having the legislature they deserve.

ⁱ E.J. Dionne, Jr, "Districting Plan Drawn in Albany; Some Incumbents May Lose Seats," New York Times, May 9, 1982.

ⁱⁱ New York Times, "State Oks Election Reforms < Gov. Signs New Map of Legislative Districts," Watertown Daily News, May 5, 1992.

ⁱⁱⁱ *Fund for Accurate and Informed Representation, Inc. v. Weprin*, 796 F. Supp. 662 (N.D. N.Y. 1992) (emphasis added).

^{iv} *Rodriguez v. Pataki*, 308 F.Supp.2d 346 (March 15, 2004)

^v James McKinley, Jr., "State Senator Quits in Deal Over Bribery Indictment," New York Times, May 15, 2004.

^{vi} Liz Benjamin, "Samuels Pushes Redistricting Envelope," State of Politics, May 19, 2010 available at <http://capitaltonight.com/2010/05/samuels-pushes-redistricting-envelope/>

^{vii} Celeste Katz, "Bill Samuels To Gov. Paterson: Haul Lawmakers Back To Albany To Talk Reform," Daily News: The Daily Politics, August 19, 2010 available at <http://www.nydailynews.com/blogs/dailypolitics/2010/08/bill-samuels-to-gov-paterson-h.html>