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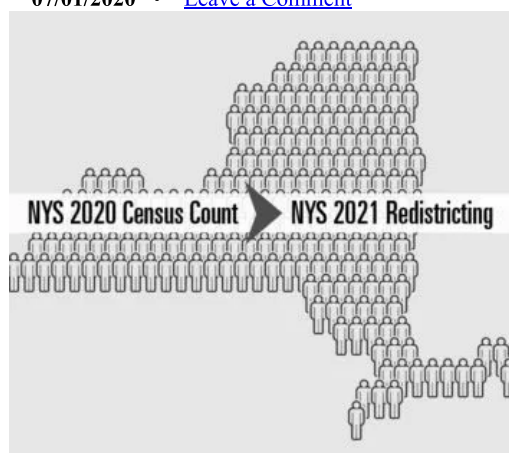
Mapping the New Senate, Assembly & Congressional Districts

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New York State in 2021 must redraw the State's senate, assembly and congressional districts. The process will be different from the process used to draw legislative and congressional district lines in the past. Previously, the State legislature redrew the districts for its own members and for the State's congressional members. After years of efforts to reform a process seen as too self-interested, New York State voters in 2014 approved an amendment to the State constitution that created a new Redistricting Commission that will propose new district lines to the legislature. The legislature still gets the last word, but the commission process opens the redistricting process up, provides an outside entity to act as the initial proposer, and adds guidelines for map design for fairness.

This article provides background on past redistrictings and information on what to expect ahead. It explains the Redistricting Commission's composition and rules, and the role for judicial review. It also identifies anticipated timelines, opportunities for public input, and particular factors that are likely to affect the shape of districts to be used over the next decade.

Past Redistricting

The State Legislature in the past redistricted itself and New York's congressional districts following each decennial census by enacting chapter laws that established the new legislative and congressional districts. The New York system and similar systems in other states were criticized by reformers who argued that legislators drew districts benefitting themselves and their incumbency. A national effort to take redistricting out of the hands of legislatures and to create independent commissions came to New York after California, Arizona and other states enacted redistricting commissions through popular referendums. In New York, reformers looked to amending the state constitution since New York does not provide for constitutional changes through referenda.

The State Legislature in 1978 had created the "Legislative Advisory Task Force on Reapportionment and Demographic Research," known as LATFOR. At that time, LATFOR was seen as a major step towards opening up the redistricting process because LATFOR included two non-legislators who were separately appointed by the Speaker and the Temporary President in addition to members of the legislature appointed by the four legislative leaders (Speaker of the Assembly, Senate Temporary President and the two minority leaders). The appointment of the two non-legislators made the panel semi-public. For the redistricting process following the 1980 census, LATFOR pioneered the use of computer technology to draw maps and developed senate, assembly and congressional redistricting plans to the legislature.

In 2009, with Democrats controlling both legislative chambers, reformers and activists mobilized to advocate further change to the way New York drew its legislative district lines. The reformers advocated for the creation of a redistricting commission independent of the legislature. Former New York City Mayor Ed Koch and several civic organizations advanced a "sign the pledge" campaign effort to enlist State legislators to support an independent commission before the 2011 redistricting process started. Instead, Governor Cuomo and legislative leaders compromised in early 2012 by permitting the legislature to draw its own lines in return for a promise to agree to a constitutional amendment to be submitted to the voters after 2012.

While the legislative debate continued, LATFOR produced new assembly and senate plans for the 2012 election cycle, but only after a series of public meetings, draft plans, litigation and debate. The lengthy process concluded just shy of the time needed for new districts to be in place in time for the 2012 elections. The LATFOR process was criticized for its lack of input from senate democrats who were again in the minority. One minority party legislator complained that “the entire process has been a farce, a sham, has been a waste of money, and I believe that we have not listened to the citizens of the state of New York.” (LATFOR hearing, 3/14/12).

The 2014 Constitutional Amendment

The constitutional amendment that emerged from the 2012 agreement created a Redistricting Commission that would submit to the legislature for approval up to two sets of redistricting plans for congressional, senate and assembly districts. The amendment passed the legislature in 2013 and again in 2014, which sent the amendment to voters for approval. (Constitutional Proposal No. 1, 2014)

The 2012 agreement was seen as a compromise. It permitted the legislature to draw district lines for one more decade and avoided Governor Cuomo’s threat to veto a plan drawn by the legislature. The aim of the compromise was to ensure that in future redistricting cycles both the majority and minority parties would participate, and to create a more transparent, fair and open process.

In 2014, before the ballot question to approve the constitutional amendment was placed before the voters, a State judge removed wording from the question’s ballot information description that described the Redistricting Commission as completely independent of the legislature. Justice Patrick J. McGrath explained that use of the word “independent” could mislead voters because the legislature still maintained control of the redistricting process. *Leib v. Walsh*, No. 4275-14 (Sup. Ct. Albany Cty 2014) Judge McGrath found that “not only can the legislature disapprove the Commission’s decision, but it can do so without giving any reason or instruction for future consideration of these new principles.... [T]he Commission’s plan is little more than a recommendation to the legislature, which can reject it for unstated reasons and draw lines of its own.”

Voters approved the constitutional amendment in November 2014 by a vote of 57.7 percent in favor of the amendment.

The constitutional amendment left intact most provisions of the State’s 1894 constitution and added a new Section 5-b to create the Independent Redistricting Commission. The Redistricting Commission consists of ten members. Eight of the ten members are appointed by the four legislative leaders. Two members each are appointed by the Speaker of the Assembly, Senate Temporary President and the assembly and senate minority leaders, respectively. Those eight commissioners then appoint two additional commission members who cannot have been registered as Democrats or Republicans during the last five years. The commissioners select a chair from amongst themselves. No tie breaking odd number member was included. (Art III, Sec 5b)

To be eligible for Redistricting Commission membership, individuals cannot have served in the last three years as a State legislator, member of congress, statewide elected official, a legislative or state employee, political party chair or lobbyist. Spouses of State legislators, congressional members, and statewide elected officials are also barred from commission membership. (Art III, Sec B)

The amendment provides for two co-executive directors who must be of different political parties. The co-directors are empowered to hire staff pursuant to a plan that the Redistricting Commission must first approve. Since the current State legislature is controlled by the Democratic Party, the co-directors will be appointed by a majority of the Redistricting Commission members in a vote that includes one appointee of each of the four legislative leaders. This year, one registered Democrat and one registered Republican are eligible to serve as a co-director. (Art III, Sec 5-ii)

The FY 2020-21 budget included \$750,000 in funding to operate and staff the Redistricting Commission, which must complete its initial work by January 1, 2022. Members of the Redistricting Commission are entitled to compensation and reimbursement of travel expenses. (Art III, Sec 4-i).

The New Redistricting Commission

The new Redistricting Commission has not yet begun work, but eight of the ten commission members have been appointed:

- Assembly Speaker Carl Heastie appointed **Elaine Frazier** who has worked in the State legislature, Division of the Budget and for the State Comptroller, and **Eugene Bengler**, an attorney at Debevoise & Plimpton.
- Senate Temporary President Andrea Stewart Cousins appointed **Dr. John Fleteau**, a Professor and Chair of the Department of Business Administration at the School of Business, Medgar Evers College, CUNY, and **David Imamura**, also an Attorney at Debevoise & Plimpton).
- Senate Minority Leader John Flanagan appointed **George H. Winner, Jr.**, who served in the State assembly and senate for 32 years, and **Ed Lurie**, a former executive director of the New York Republican State Committee and the New York Senate Republican Committee.
- Assembly Minority Leader William Barclay appointed **Charles Nesbitt**, a former Assembly Minority Leader, and **Keith Wofford**, an attorney and 2018 candidate for State Attorney General.

Under the constitutional amendment, these eight commission members will select the two additional members.

Redistricting Criteria

Under the constitutional amendment the new Redistricting Commission is tasked with developing redistricting plans based on the decennial census for congressional, senate and assembly districts that comply with the federal Voting Rights Act and the federal constitution’s “one person/one vote” population equality requirement. In addition to population equality, the 2014 amendment to the State constitution added for the first time new written criteria for districts:

- Voting rights protections where districts cannot deny or abridge racial minority voting groups;
- An equal population standard where districts must contain equal numbers of people;
- Requirements that all districts consist of contiguous territory and be as compact in form as practicable;
- A prohibition on drawing districts that discourage competition or that favor or disfavor incumbents or partisan candidates; and
- A requirement to consider maintaining the cores of existing districts or pre-existing political subdivisions and to consider “communities of interest.”

The criteria are not ranked in any priority order, leaving it to the Redistricting Commission or the legislature to balance the rules as they deem necessary. (Art 4, Sec 1- 5)

Public Hearings and Outreach

The Redistricting Commission must hold twelve public hearings around the State including the cities of Albany, Buffalo, Syracuse, Rochester, and White Plains; and in the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk. (Art III, Sec 6)

The Redistricting Commission is also required to publicize the hearings well in advance. The Redistricting Commission must make public its draft plans, data and other relevant information public by print and other means at least 30 days before the first public hearing and do this no later than September 15, 2021. The public should be provided enough information to enable for adequate review and to develop alternative plans that can be presented to the commission at the public hearings. (Art 4, Sec 5)

Approval Requirements

The Redistricting Commission must combine the senate and assembly plans in one proposed bill and submit it to the legislature by January 1, 2022, with an allowance to submit as late as January 15, 2022 if necessary. The legislature has the option to consider the congressional redistricting plan in the same bill or to consider it separately. (Art 4, Sec b) The legislature can approve the first proposed plan without amendments and send it to the governor to be enacted as a chapter amendment to State law or reject the plan. The governor has the right to veto the plan.

If the legislature rejects the first plan or the governor vetoes it, the Redistricting Commission must submit a second plan to the legislature no later than February 28, 2022 and, if approved, without amendments, send it to the governor to be enacted as a chapter amendment. The governor can also veto the second plan even if approved by the legislature. (Art III, Sec. 4-b)

If the second plan is rejected by the legislature or vetoed by the Governor, the legislature can amend the second plan “as it deems necessary.” gubernatorial vetoes of the first and second plans can be overridden. While the legislature must follow the same substantive constitutional criteria as the commission does, the legislature would have more leeway to make accommodations. (Art 4, Sec b). Since the constitutional criteria for drawing districts are not ranked in priority order, the legislature can develop plans more in line with the legislative leadership’s goals. A third plan developed by and agreed to by the senate and assembly is also subject to the governor’s approval and a veto can be overridden.

Without minority party support, plans cannot be approved by the legislature, a marked change from the past. Different vote requirements apply depending on party control of the assembly and senate. If the chambers have divided partisan control, at least a majority of the legislators elected to each chamber must vote to approve the plans. If the legislature is under the control of one political party, at least two-thirds of the members of each chamber must approve the plans. If the chambers are under divided control and the Redistricting Commission did not approve a plan, at least 60 percent of the legislators elected to each chamber must vote in favor to approve a plan. The different voting requirements were designed to ensure that the minority party has a participatory, if not deciding, role in the redistricting process and plan approval. (Art III, Sec 1-3)

Court Review

The amendment provides for State Supreme Court review of an approved redistricting plan when challenged by a citizen. The deadline for a decision by the trial court is 60 days after the petition was filed. The legislature is empowered to develop a remedial plan to correct legal issues found in violation of the law. (Art III, Sec 5). While the amendment only addresses the role of the State Supreme Court, it is assumed that appeals can be taken before the appellate division and the court of appeals.

Other Issues

Prisoner Reallocation: The constitutional amendment did not address how the Redistricting Commission was to accommodate the State’s 2010 chapter law requiring that, for State senate and assembly districts, the voting residence for State prisoners be reallocated from their place of incarceration to their permanent home address. Prior to 2010, redistricting plans counted prisoners in the communities where the prisons were located, a system that increased the population in those communities housing large numbers of prisoners. According to the Prison Policy Initiative, “By inflating the apparent size and therefore the political influence of areas with incarceration facilities, prison gerrymandering violates our constitutional right to equal political power based on population size.”

The Redistricting Commission will also have to consider how to make prisoner allocation with respect to congressional districts. The constitutional amendment did not address this issue and the 2010 chapter law did not re-allocate prisoners for congressional redistricting purposes because of legal concerns that it might not have been permissible. The Supreme Court has since determined that re-allocating prisoners for congressional redistricting would be permissible. Fletcher v. Lamone 133 S.Ct. 129 (2012)

Limiting Senate Population Deviations: The 2014 amendment repealed a rule that required assembly districts within each county to be equipopulous (known as the “block on border” rule for cities and the “town on border” rule for counties). This arcane rule was left to still apply to senate districts. This rule was originally designed to restrain gerrymandering by limiting flexibility in drawing districts for incumbent or partisan advantage. (Art 4, sec. a)

Population Deviation: In 2012, the Governor approved a law that prevents the legislature from drawing districts maps that exceed two percent in population deviation among districts if the legislature had rejects the Redistricting Commission’s first two plans and opts to draw another set of maps. This limitation was not included in the constitutional amendment and may generate controversy and legal challenges.

2022 Election Calendar: While the constitutional amendment contemplated a redistricting schedule that could be completed by March 2022, State legislative and congressional primaries are now held in June pursuant to a 2019 State law change rather than September. The legislature and governor will need to consider and reconcile the differences in the 2022 election calendar to work with the constitutional amendment’s schedule, possibly by changing the dates for 2022 primaries.

What to Expect

The COVID-19 pandemic has put the Redistricting Commission’s early organizing stages on hold. While the legislative leaders made their appointments to the Redistricting Commission, the Redistricting Commission has not itself met to choose the remaining two members. Co-directors need to be recruited and a staff hired. With Census 2020 enumeration operations delayed, the US Department of Commerce recently asked congress to

extend the deadlines for congressional reapportionment and delivery of redistricting data to the states, adding further uncertainty to the overall schedule. If congress moves the deadline for the Census Bureau to deliver detailed redistricting data to the State from April 1, 2021 to July 31, 2021, the Redistricting Commission will have five months to analyze the data, hold hearings, and develop a plan to present to the legislature by January, 2022, condensing a process that was expected to take up to nine months. Like every other activity, the State's redistricting process can only move forward once the COVID-19 process abates and activities can resume.

Citizen participation in redistricting. New York Law School created a Census & Redistricting Institute to help New Yorkers understand and participate in federal, State and local redistricting processes and enable the public to have greater impact on how new district lines are drawn. Redistricting has long been considered an arcane and complex process. Partisan and racial gerrymandering in New York and across the nation has drawn considerable media attention and has made redistricting a front burner issue. In addition to conducting an educational program on redistricting, New York Law School's Institute will promote Mapping New York, a public mapping project that will provide the public with the ability to draw and review redistricting maps that can be submitted to the advisory state commission, state legislature, and local governments.

The Institute's first meeting of New York Redistricting Roundtable met in February and will continue to convene major stakeholders, litigators and activist organizations to update on post-2020 congressional and State legislative redistricting planning.

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