"CAN THE PLAN"

HOW THE 2012 REDISTRICTING DEAL DENIES
NEW YORKERS FAIR REPRESENTATION

AND THE FUNDAMENTALLY FLAWED
REDISTRICTING "REFORM"

ENDORSED BY:
COMMON CAUSE/NY
EFFECTIVE NY
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Acknowledgements

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Summary

Reformers have long argued that the method by which the state draws legislative districts is undemocratic and in need of reform.

It is well known that an important factor in maintaining New York State's political culture is the practice of allowing the majorities in both houses, the State Assembly and the State Senate, to draw their own district lines every ten years. In effect, this practice allows legislators to choose their voters, rather than the other way around. That deal hinges on the governor, who as long as he or she agrees, ensures that the new district lines are rigged.

In 2012, after decades of redistricting abuse, there was real hope for reform. In 2010, candidate for Governor Andrew Cuomo pledged to enact dramatic changes:

> *"As Governor, Andrew Cuomo will veto any redistricting plan in 2012 that reflects partisan gerrymandering and ensure that the State has set itself on a path to reform the process itself."*[1]

Yet, Governor Cuomo agreed to the lines drawn by the majorities in 2012. Did his actions in 2012 match the promises of 2010?

As you will read in this report, the answer is "no." This report examines the numerous ways in which New York's 2012 redistricting denies New Yorkers fair and equal representation.

As part of the 2012 agreement, the governor and the state's legislative leaders also negotiated constitutional changes to the state's redistricting process and that proposal will go to voters this November. This report will examine that impact of this 2012 agreement and the "reforms" (if any) that the public should expect if these constitutional changes are put into effect.

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[1] Cuomo 2012, "Andrew Cuomo: The New NY Agenda: A Plan for Action," p. 19.

FINDINGS
On the 2012 District Maps:

Finding: Only 29 of 213 legislative districts (14 percent) are within one percent of the average size. In the Senate, district populations vary in population by over 27,000 people between the most and least populous districts, in the Assembly by over 10,000.

Finding: In the governor's agreement with Senate Republicans, upstate Senate districts are systematically underpopulated at a mean deviation of -4.5% from the average size, and downstate districts are overpopulated at a mean deviation of +3.3%. This arrangement effectively creates an additional district upstate (which tends to have higher Republican enrollment) that according to the actual distribution of population should belong in New York City.

Finding: In the Assembly, the reverse is true. The agreement between the governor and Assembly Democrats has resulted in New York City districts that are systematically underpopulated at -2.3% while upstate districts are overpopulated at +2.4%. This scheme effectively relocates a district that should belong in upstate New York into the more favorable political terrain of New York City.

Finding: The ranges in the Senate's districts' populations have grown since the last redistricting period. In 2002, 39 Senate districts had populations of +/- 2 percent of the average. In 2012, only *four* Senate districts were in that range. The Assembly, on the other hand, saw increases in districts with populations that are within +/- 2 percent of the average.

Other states have population differences that would be a huge improvement if enacted in New York. The state of Illinois has *no* population deviation at all. The states of California, Washington and Wisconsin have population differences of less than 1% of the average. Congressional districts, including those in New York, have nearly equal populations.

The reform redistricting plans drawn by Common Cause/NY in 2012 demonstrate how New York legislative districts could be drawn with much greater population equality. In the Common Cause/NY plans, the majority of districts were within +/-1% deviation and over 90% were drawn within +/-2%.

Finding: As part of the governor's redistricting agreement with the Legislature in 2012, districts not only have a wide range in population, but they are bizarrely shaped, despite a state constitutional requirement that districts be "compact" and "contiguous." Districts in both houses zig and zag across the state with often little regard for municipal boundaries and common sense communities of interest.

Using the most common mathematical formula, plans drawn by Common Cause/NY were 56% more compact in the Senate and 26% more compact in the Assembly,[2] demonstrating how the wild shapes of the current plans are the result of political choices, not necessity.

This report identifies five of the most oddly shaped districts. We also have named the winner of our "*Salvador Dali/Pablo Picasso*" award for creativity in Gerrymandering for the most bizarrely shaped district, Senate District 34.

Finding: New York State Senate districts currently divide nineteen upstate New York counties that have small enough populations to fit entirely within a single district.[3] Three such counties, St. Lawrence, Cayuga, and Tompkins, are divided between three Senate districts.

In contrast, the 2012 plans drawn by Common Cause/NY divided only nine such counties and did not divide any into more than two districts, proving that Senate districts could much more accurately follow common-sense political boundaries.

Finding: The resulting unfairness in redistricting – coupled with an equally unfair campaign finance system – has created incumbency protection. Our analysis has identified that only 55 incumbents have lost in the general elections held over the past *thirty* years. Sadly, given the paucity of reforms, there is little evidence to support optimism that the 2014 election cycle will lead to markedly different results.

Finding: State taxpayers continue to foot the bill of $1.8 million this year for the Legislative Task Force on Demographic Research and Reapportionment (LATFOR), a partisan-directed entity that is called upon to do its work for a brief period once every decade. In contrast to other states whose commissions operate only during redistricting periods, New York pays for a full time, year-in-year-out body staffed by political operatives of the legislative majorities, whose on-going work product is not available to the public.

FINDINGS
On the proposed constitutional amendment:

Finding: The amendment will do nothing to reform the problem of unequal representation, or to guarantee the principle of "one person, one vote."

Finding: The Commission it creates is bipartisan, but not independent. If the history of the State Board of Elections is a guide, the Commission will not only be beholden

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[2] Comparison of the "Polsby Popper" measure of compactness – the current Senate plan scores a 0.23 while the 2012 Common Cause/NY reform plan scores a 0.36. In the Assembly, the current plans scores a 0.31 while the Common Cause/NY reform plan scores a 0.39.
[3] These counties include Putnam, Rockland, Dutchess, Delaware, Albany, Saratoga, Washington, Chenango, Herkimer, Oneida, Ontario, Livingston, St. Lawrence, Cayuga, Ulster, Tompkins, Rensselaer, and Schenectady.

to the political parties, but is likely to fail through partisan gridlock as well (a fact exacerbated by the fact that the Commission is created with an even number of members, making tied votes more likely).

Finding: The complicated special voting rules established for the Commission and for the passage of its plans put the interests of politicians and the political parties above those of voters. These difficult-to-understand rules are designed to result in maps that allow for the manipulation of elections. They serve only to protect the current (Republican) Senate majority from redistricting contrary to its interests, and make the standard incumbent-protection maps virtually certain in the future.

Finding: The Legislature will be allowed to reject the Commission's lines if they don't like them, and substitute their own, making a mockery of the entire process and, in the end, allow politicians and the political parties to rig election results.

Finding: The amendment does nothing to foster fair and impartial redistricting by removing sections of the state constitution that are already illegal under Federal rulings.

Finding: Additional failures and shortcomings can be found in the Appendix, including a 15-point review of the amendment.

RECOMMENDATIONS

Recommendation. New York needs real redistricting reform, not the loophole-riddled changes favoring politicians proposed in the constitutional amendment. A fair and impartial redistricting process should result in fair and impartial elections. The cornerstone of protecting the integrity of representative government is ensuring equality of representation, strict additional standards and a truly impartial commission to oversee the redistricting process.

New York's redistricting decisions occur again in 2022, there is time to get it right.

Recommendation: New York State should follow much stricter criteria for population equality in order to prevent political manipulations that keep elections from being fair and impartial and which undermine the principle of "one person, one vote."

Recommendation: A truly impartial and independent redistricting commission is needed to create fair legislative districts in New York State that give voters a fair chance to choose their representatives and which adhere to important principles, such as measures to:

- Protect racial or minority language voting rights;
- District lines shall respect the boundaries of political subdivisions such as counties, towns, cities, villages, and school districts whenever possible
- District lines should keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other
- Each district shall consist of contiguous territory;
- Each district shall be as compact as practicable; and
- There should be no incumbency protection or drawing lines to favor a particular party or candidate.

Recommendation: *Reject the amendment.* New Yorkers should not have to settle for a plan that continues to allow politicians to rig elections through district lines drawn for unfair political advantage. The proposal is too weak and impedes real reform. Send lawmakers back to the drawing board and get it right in time for the 2022 redistricting process.

INTRODUCTION: REAPPORTIONMENT AND REDISTRICTING

> "Legislators represent people,
> not trees or acres.
> Legislators are elected by voters,
> not farms or cities or economic interests."
> *U.S. Supreme Court[4]*

Every ten years since 1790, the U.S. Census identifies the number of Americans. It does so in order to allow for a reapportionment of Congressional districts. The United States is a representative democracy and thus each district in the House of Representatives must have as close to equal populations as possible. The census allows for a once-in-a-decade realignment of those districts in order to ensure equality of representation in the Congress.[5]

The census is also used by states and localities to realign their legislative boundaries to reflect changes in their jurisdictions' populations. In New York, the state constitution has provided that the Legislature drafts those changes.[6] This has resulted in a political process in which the State Senate and State Assembly majority parties draw maps for their respective houses and agree to not interfere with one another's maps.

Since at least the mid-1960s, there has been a debate over whether the Legislature should be allowed to draft their own district lines.[7] The debate has centered on the role that redistricting has played in limiting the electoral options for voters. In short, has redistricting in New York resulted in disenfranchised communities and rigged elections that limit real competition?

That debate came to a head in 2012. In the run-up to the redistricting decisions, Governor Andrew Cuomo and the State Legislature agreed to allow the Legislature to continue to draft its own maps for 2012 while putting forward a redistricting constitutional amendment that would make changes starting with the 2020 census and 2022 redistricting.

This report examines the impact of the 2012 redistricting decisions – both for the immediate legislative district lines as well as the possible impacts on changes in 2022.

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[4] *Reynolds v. Sims* (1964) 337 U.S. 533
[5] United States Constitution, Article 1, Section 2
[6] New York State Constitution, Article III, Sections 4 and 5.
[7] See The Temporary State Commission on the Constitutional Convention (1967), "Report 14: State Government," discussion on the issue of redistricting reform starts on page 58.

The report finds that the changes in 2012 indefensibly rigged elections that deprived New Yorkers of the benefits of "one person, one vote." Moreover, we find that the amendments to make changes starting in 2022 are unlikely to fundamentally change this unfair system.

FINDING: ONLY 29 OF 213 DISTRICTS (14 PERCENT) ARE WITHIN ONE PERCENT OF THE AVERAGE

U.S. Supreme Court rulings have made it clear that legislative districts should be of comparable size. In one case, the Court ruled that "the achieving of fair and effective representation for all citizens is … the basic aim of legislative apportionment" and it was for that reason that the decision insisted on substantial equality of population among districts.[8] Essentially mapmakers' goals are to keep Congressional districts as close to the average population size.[9]

Under the U.S. Supreme Court rulings, state legislative districts, on the other hand, are usually allowed to range within 10 percent from smallest population to largest, plus or minus 5 percent of the average size.[10]

While not illegal, New York has legislative district lines that can be dramatically different in population. Our analysis of district populations created in 2012 finds that State Assembly districts ranged in size by over 10,000 people from 124,223[11] to 134,333.[12] In the State Senate districts ranged in size by over 27,000 people, from 292,081[13] to 319,115.[14] The chart below illustrates the number of State Assembly and Senate districts that deviate from the average district size and by what percentages.

2012 redistricting[15]

Population range	Assembly	Senate
Zero to +/-1 percent	26	3
+/-1 to 2 percent	10	1
+/-2 to 3 percent	44	9
+/-3 to 4 percent	69	27
Over 4 percent	1	23

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[8] U.S. Supreme Court, Reynolds v. Sims, 1964.
[9] Source of Congressional district information obtained from the New York State Legislative Task Force on Demographic Research and Reapportionment, see http://www.latfor.state.ny.us/maps/, we used the population figures from each Congressional district map.
[10] U.S. Supreme Court, Gaffney v. Cummings, 412 U.S. 735 (1973).
[11] Assembly district 47.
[12] Assembly district 150.
[13] Senate district 57
[14] Senate district 13.
[15] Source of district information obtained from the New York State Legislative Task Force on Demographic Research and Reapportionment, see http://www.latfor.state.ny.us/maps/, we used the population figures from each district map.

While these findings clearly underscore the wide range in state legislative district populations, a comparison with the ranges found in the 2002 plan shows that in 2012 Senate mapmakers created *greater* population disparities.

2002 redistricting

Population range	Assembly	Senate
Zero to 1 percent	18	11
1 to 2 percent	33	28
2 to 3 percent	29	4
3 to 5 percent	70[16]	19

As seen above, in 2002 in 39 Senate districts the population range was between zero and two percent. In 2012, on the other hand, only *four* districts had a range within +/- 2 percent.

In the Assembly, on the other hand, there was an increase in the number of districts within +/- 2 percent from 51 in 2002 to 36 in 2012.

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[16] One district exceeded 5 percent.

Variation in district population size serves a clear political goal. The evidence shows that the majorities in both houses used the redistricting process to give themselves a political edge. As seen in the *Appendix*, in the Senate, districts based in heavily Democratic New York City are districts with the largest populations. It is likely that this was an effort by the Senate Republicans to have as few districts in New York City as possible. The strategy of having the smallest population districts in upstate New York allowed mapmakers to increase the number of upstate Senate districts – which are more likely to contain Republican majorities.

In the Assembly, the trend was the opposite. Upstate districts had the largest populations, while New York City-based Assembly districts had the smallest.

The Senate "packed" the largest possible number of Democratic voters in the smallest possible number of districts. In the Assembly, the district lines appear to be drawn with the goal of packing as many New Yorkers as possible in the smallest possible number of districts in areas with traditionally high Republican enrollments.

New York State Assembly Regional Gerrymandering of District Populations

Brian Paul, Common Cause/NY, 02/21/12

Legend
Population Deviation
- Greater than -3%
- -1.5% to -3%
- 0% to -1.5%
- 0% to +1.5%
- +1.5% to +3%
- Greater than +3%

New York City
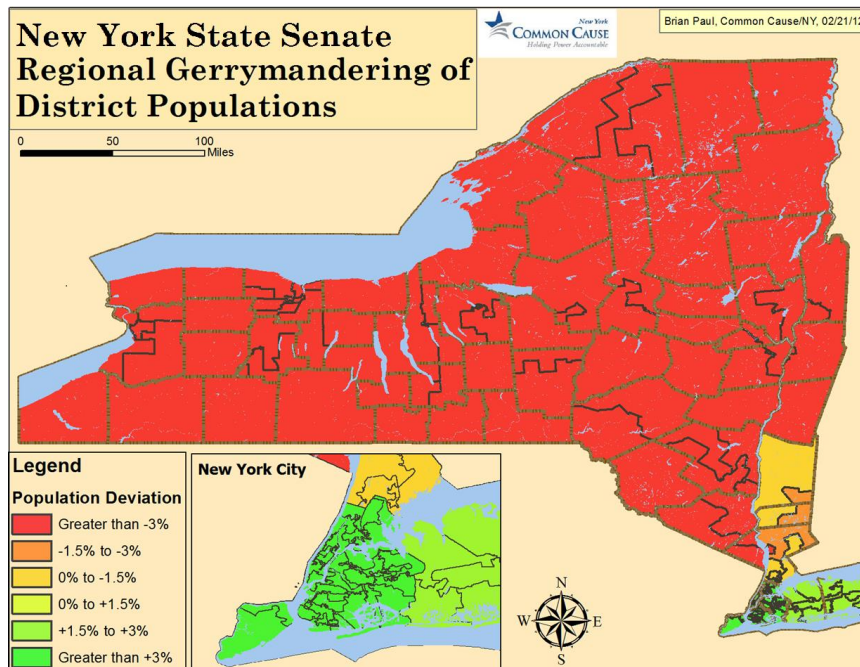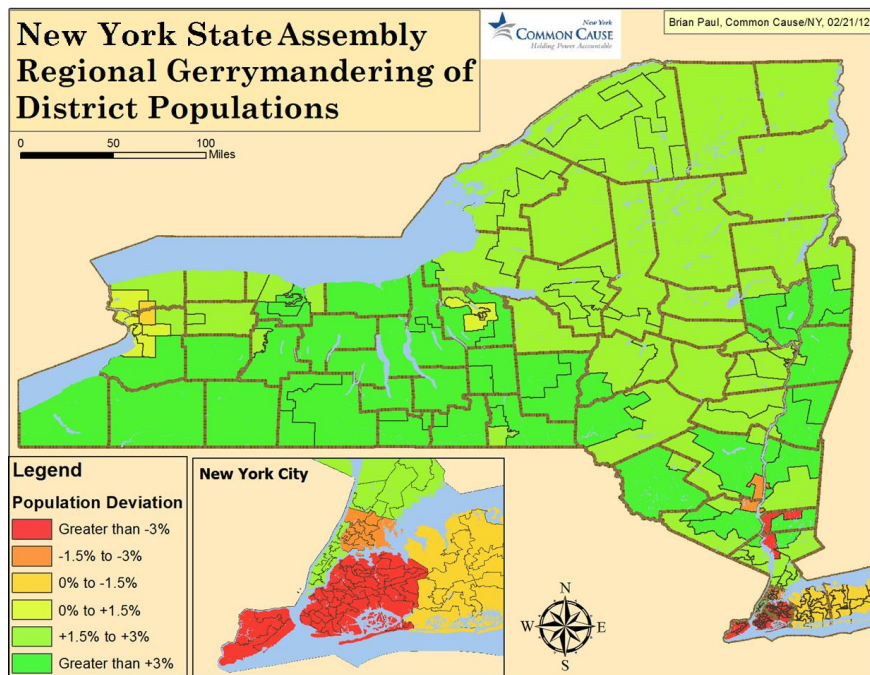
Congressional district populations are extremely close.

When drafting new district lines, policymakers do not have to create districts with such large differences in population. For example, when developing congressional districts, those maps contain populations that are nearly exactly the same. New York's Congressional districts have a population range of only one person from largest to smallest district. While there are constitutional differences in drawing legislative and congressional districts, it is clear from the congressional experience that it is technically possible to have districts of nearly the same size.

Common Cause/NY plans from 2012 provide an example.

For the smaller districts of the State Assembly and State Senate, the Common Cause/NY Reform Plans provide an example of much closer population equality.

In the Common Cause/NY plans, the majority of districts were within +/-1% deviation and over 90% of districts were drawn within +/-2%. These low deviations were achieved while also carefully seeking to keep counties, towns, villages, and communities of interest intact whenever possible.

THE "SALVADOR DALI/PABLO PICASSO" AWARDS FOR THE MOST BIZARRELY SHAPED LEGISLATIVE DISTRICTS

Variations in population size are not the only aspect of New York's districts that undermine voter choice. In addition to "packing' voters into super-sized districts in an effort to allow the majority parties in each of the houses to maintain their advantage, legislators also create uncompetitive districts by skewing boundary lines to group like-minded voters together.

Currently, the New York State Constitution requires that all districts "...be of convenient and contiguous territory in as compact form as practicable..."[17]

However, voting boundaries frequently resemble abstract shapes instead of concentrated areas of land. These disparities of shape are often the result of efforts to protect political power, not keep communities intact.

These bizarre shapes are the result of the "gerrymandering" of state legislative districts. In both houses, the majority party rigs district lines in an effort to maximize incumbency re-election rates and to ensure majority dominance.

Plans drawn by Common Cause/NY in 2012 demonstrate how much more compact districts could easily be achieved in New York if political motives did not interfere.

Comparing Compactness	"Polsby-Popper" Compactness Score[18]
Current NYS Senate	0.23
2012 Common Cause/NY Reform Senate	0.36
	Common Cause/NY plan 56% more compact
Current NYS Assembly	0.31
2012 Common Cause/NY Reform Assembly	0.39
	Common Cause/NY plan 26% more compact

[17] New York State Constitution, Article III, Section 4.
[18] The "Polsby-Popper" compactness score measures the ratio of the area of a district to the area of a perfect circle with the same perimeter as the district. A higher score indicates a more compact district.

We have identified the top five legislative districts that highlight just how far from the concept of "compact" and contiguous" New York State's legislative districts have been drafted.

Senate District 60
One of the smallest population districts in the state Senate is Senate District 60. Senator Grisanti, a Republican, represents this overwhelming Democratic district located in the Buffalo area. Democrats outnumber Republicans in SD 60 by 40,000 voters. However, Senator Grisanti's district prior to 2012 had an even bigger Democratic enrollment advantage for Democrats – roughly 100,000. The 2012 changes made this district more advantageous for the Republican Senator. In doing so, it cobbled together as many Republicans as possible in the area and created one of the five most bizarrely shaped districts in New York.

For its politically strategic bend around most of Buffalo's population, we call it the "Buffalo Bender."
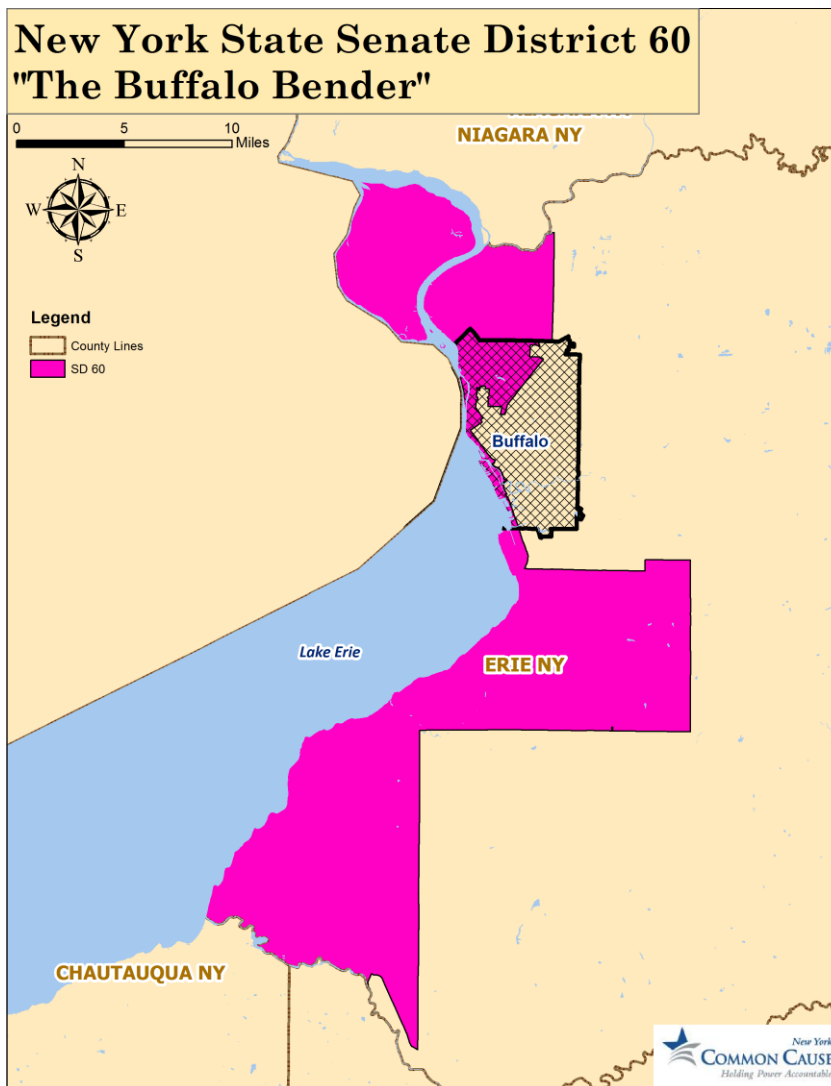
Assembly District 13
This district is located in the northeast corner of Nassau County on Long Island. Also known as the "Long Island Lobster Claw," this district is drawn to maximize the likelihood of a Democrat getting elected. The district unites the Democrat strongholds of Glen Cove, Woodbury, and Jericho while looping around heavily Republican areas.

In a county with a slight Democratic enrollment advantage over Republicans, only one of ten Assembly districts has a competitive enrollment.[19]

New York State Assembly District 13
"The Long Island Lobster Claw"

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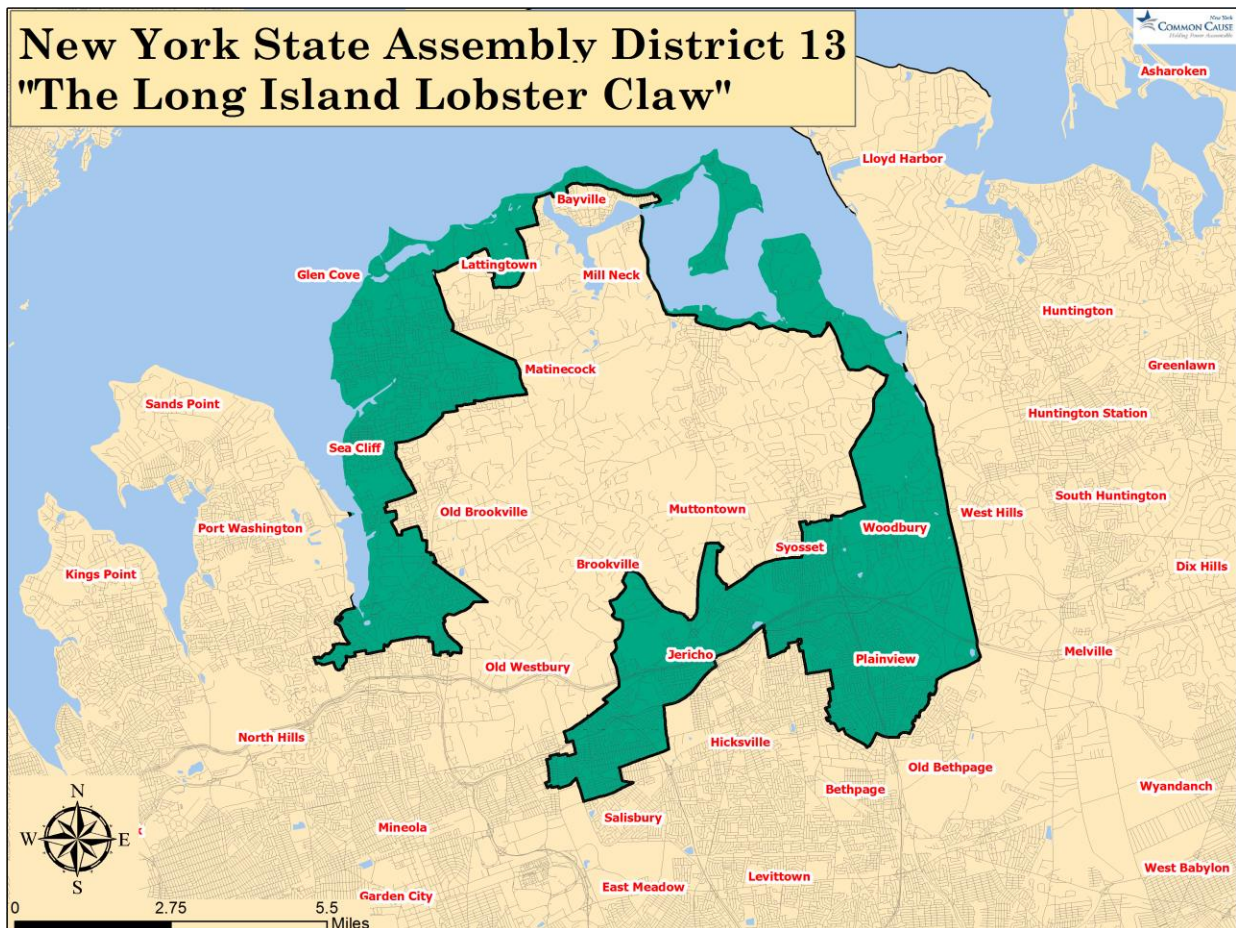
[19] Assembly districts 13 through 22. Only Assembly district 21 has a close enrollment between Democrats and Republicans that reflects the range of the county overall.

Senate District 3

Also on Long Island, this time along the south shore in Suffolk County is Senate District 3 currently held by Senator Zeldin.

Suffolk County also has a close enrollment with Democrats holding a slight edge. In this Senate District, Democrats outnumber Republicans, yet the Senator is a Republican. Perhaps part of the reason is the district's odd shape, with large crocodile jaws forming its western half. The jaws of the "Long Island Crocodile" divide the Hispanic community of Brentwood directly in half.

This pattern of "cracking" minority voting blocs is present throughout all of Long Island in the Senate. Despite Long Island's population being nearly 25% people of color, none of Long Island's Senators are.

New York State Senate District 3 "The Long Island Crocodile"
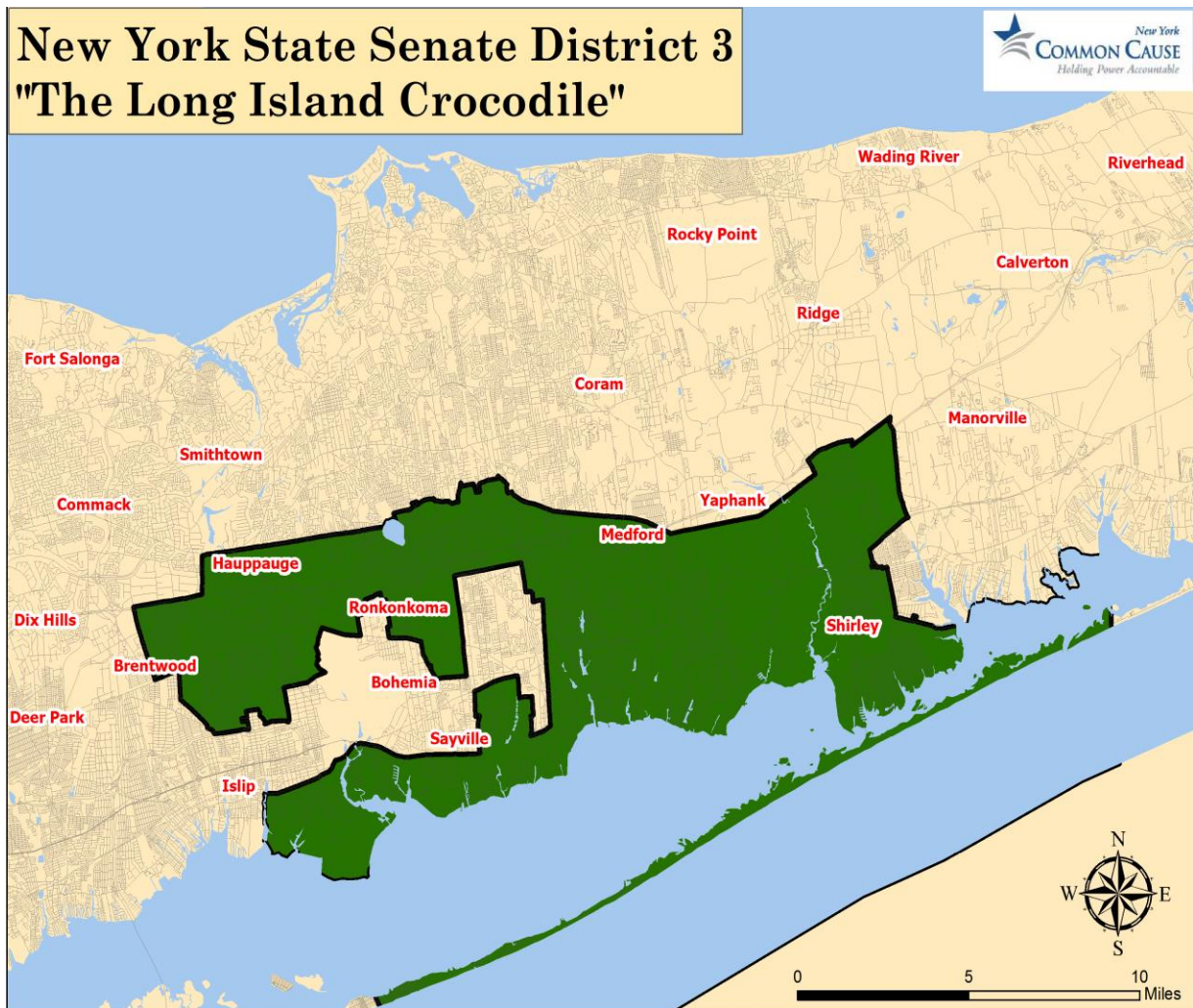
Assembly District 101
This district runs from the foothills of the Adirondack Park and the suburbs of Utica down to the lower Hudson River Valley near the outskirts of Newburgh.

According to Google Maps, it takes over three hours to drive from one end of the district to another. When questioned about the unusual shape of this district, Assembly Democrats described it as consisting of the areas leftover after adjacent districts were drawn.[20] For this reason, we call it the "Leftover Lighting Bolt."

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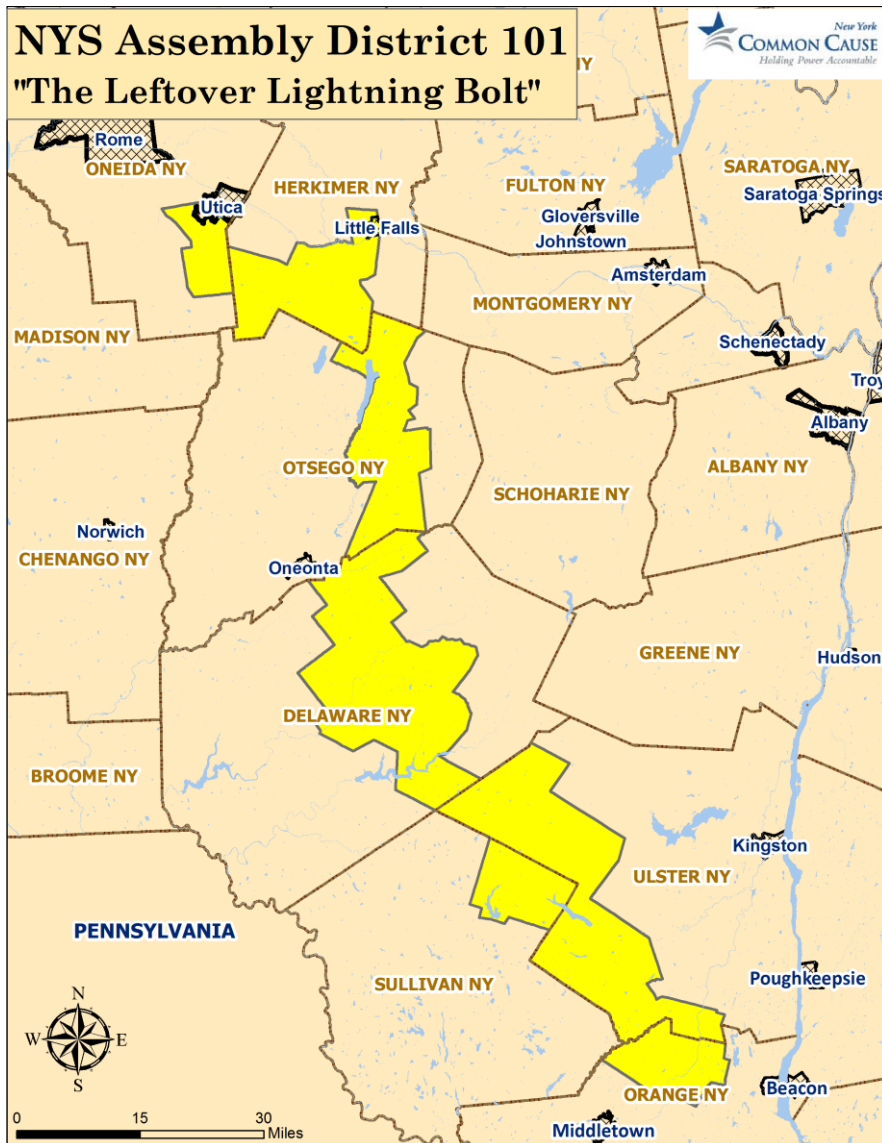
[20]   Times Union, *Capitol Confidential*, "Redistricting's denouement: Senate Democrats walk out," 3/15/12, See:
 http://blog.timesunion.com/capitol/archives/120912/redistrictings-denouement-senate-democrats-walk-out/.

Senate District 34

And the winner of the "Pablo Picasso/Salvador Dali" award for most creatively drawn legislative district is Senate District 34.

This district makes a mockery of the term "compact." The district's boundaries are carved out of the northern areas of the Bronx in New York City and run into Westchester County. SD 34 is a prime example of how partisan redistricting allows politicians to pick their voters rather than the other way around.

Dubbed "The Splattered Bug of the Bronx," SD 34 cannot possibly meet the Webster's dictionary definition of compact.[21]

New York State Senate District 34 "The Splattered Bug of the Bronx"

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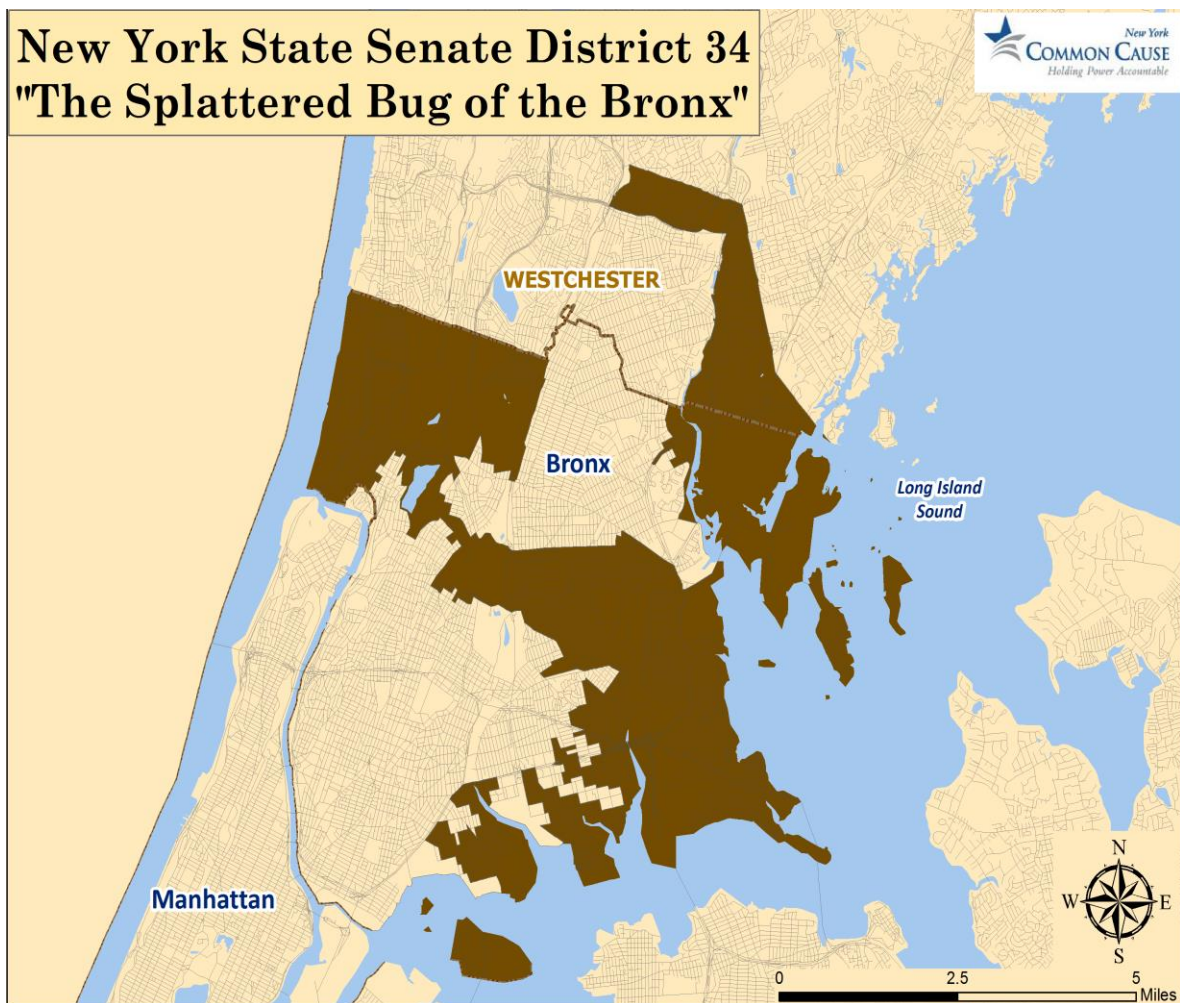
[21] Definition: "occupying a small volume by reason of efficient use of space," see: http://www.merriam-webster.com/dictionary/compact.

FINDING: ONLY 55 INCUMBENT STATE LEGISLATORS HAVE BEEN DEFEATED IN GENERAL ELECTIONS OVER THE PAST 30 YEARS.

One of the remarkable political trends in New York State has been the difficulty political challengers have had in taking on state legislative incumbents. During the past twenty years, few incumbents have been beaten in the state legislature's general elections.

Even though in some cases there were no incumbents on the ballot, and in some cases challengers were able to unseat incumbents in party primaries, very few incumbents were beat in elections open to all New Yorkers. During the period below, over 3,000 state legislative general elections were held, yet in only a tiny fraction of those races were challengers successful in knocking out incumbents.

Number of incumbents who lost re-election in the general election 1982-2012[22]

YEARS	NUMBER OF INCUMBENTS WHO LOST IN THE GENERAL ELECTION
1982	3
1984	6
1986	1
1988	3
1990	3
1992	2
1994	4
1996	2
1998	0
2000	1
2002	5
2004	4
2006	1
2008	3
2010	11
2012	5
Total	**55**

In only 24 of the 213 legislative races were there close races (in which the winner garnered less than 55% of the vote).

In the 2012 election, incumbents overwhelmed challengers, with only five challengers beating incumbents in the general election. The average percentage of the vote for

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[22] Red Book, published by New York State Legislature, and the New York State Board of Elections results, 1980 through 2012.

winners in 2012 was 79 percent in the Senate and 81 percent in the Assembly – meaning that incumbents, on average, won by a whopping 60 percent!

Candidate's percent of the vote – 2012	Senate Republicans	Senate Democrats[23]	Senate IDC[24]	Assembly Democrats	Assembly Republicans[25]
Unopposed[26]	9	11	2	43	12
Over 80%	0	10	0	30	0
60% up to 80%	9	3	2	25	14
55% up to 60%	5	1	0	5	8
Under 55%	7	4	0	3	10

[23] Includes Senator Felder who ran as a Democrat, but sits in the Republican conference. Senators Sampson and Smith are counted in the Democratic Conference.

[24] The Senate Democratic Conference includes Senators Carlucci, Klein, Savino and Valesky. Senator Avella has recently joined the IDC, but was not a member when the lines were drawn. For the purposes of this analysis, his district is contained in the Senate Democrats column.

[25] New York State Board of Elections, categories by NYPIRG.

[26] For the purposes of this report, "unopposed" means that the candidate did not face a challenger from the opposing *major* party. In a few cases, the combined votes of minor parties could be significant. For example, Assemblymember McDonald received about 76% of the vote against two minor party candidates. However, he is counted in the "unopposed" category. Usually, minor party candidates received a very small percentage of the vote.

RECOMMENDATIONS: REQUIRE THAT NEW YORK STATE'S REDISTRICTING PROCESS BE INDEPENDENT OF POLITICAL PRESSURES AND FAIR

It is clear that New Yorkers want a change in who draws district lines. In recent polls during the last debate, New Yorkers overwhelmingly wanted redistricting done independent of the political parties.

- "Cuomo should veto a redistricting plan <u>not</u> created by an independent commission, voters say 47 – 35 percent."[27]
- "By a decisive 56 – 36 percent, New York State voters say keep legislators away from this so-called independent commission."[28]

The question was, and is, how can redistricting be conducted in an "independent" fashion? Usually, two questions are part of such determination: (1) Are there objective standards used to determine district lines; and (2) are the individuals "independent" of the political class?

How well does the proposed redistricting amendment deal with those questions as well as other issues?

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[27] Quinnipiac University Poll Finds; Voters Want Gov To Speak Up On Redistricting," October 20, 2011, see: http://www.quinnipiac.edu/institutes-and-centers/polling-institute/new-york-state/release-detail?ReleaseID=1647.

[28] Quinnipiac University Poll, "New York State Poll Finds; Voters Support Vegas-Style Casinos 2-1," December 21, 2011, see: http://www.quinnipiac.edu/institutes-and-centers/polling-institute/new-york-state/release-detail?ReleaseID=1685.

A REVIEW OF THE REDISTRICTING CONSTITUTIONAL AMENDMENT TO BE VOTED ON IN NOVEMBER, 2014

Governor Cuomo's defense of the amendment

Governor Cuomo was effusive in his praise for the constitutional amendment to change the constitutional process governing redistricting,

> "This agreement will permanently reform the redistricting process in New York to once and for all end self-interested and partisan gerrymandering. With the legislature agreeing to pass this historic constitutional amendment twice by a specified date, and passing a tough statute that mirrors the amendment, we have taken a major step toward finally reforming the state's broken redistricting process. New York is now a leader among the growing number of states that have reformed their redistricting process in an effort to stop such gerrymandering."[29]

How accurate is that praise?

The Proposed Redistricting Commission. The constitutional amendment requires the appointment of a new redistricting Commission to draw the district lines, consisting of ten members:

> (1) two appointees by each of the four legislative leaders; and
> (2) two appointees selected by at least five of those eight members.

Neither of the latter two members shall have been enrolled members of either of the two major political parties in New York State in the last five years and at least one appointee made by either the assembly or senate minority leader must approve those two members.

The amendment further requires that the Commission be diverse, registered New York State voters, and cannot have been an elected official, party chairman or a lobbyist.

Critique: The Commission would be overseen by two partisan co-executive directors (*similar to the structure of the widely criticized State Board of Elections*). The

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[29] Governor Andrew Cuomo, "New Releases," see:
http://www.governor.ny.gov/press/03152012redistrictingamendment.

directors would be appointed by a majority vote of the Commission. One co-executive director shall be a Democrat and the other a Republican.

Obviously, the structure of the Commission can best be described as bipartisan, not independent. And if the history of the State Board of Elections is a guide, the Commission will not only be beholden to the political parties, <u>but likely to fail through partisan gridlock as well</u>.

Special Voting Rules. The proposed Commission has different voting rules depending on whether or not both houses of the Legislature are controlled by one party.

- If majority of both houses are the same party, then the plan must be approved by at least 7 Commission members, including at least 1 appointed by each leader.
- If the Senate and Assembly are controlled by 2 different parties, then the plan must be approved by at least 7 Commission members, including at least 1 appointed by Assembly Speaker and 1 appointed by Senate temporary president.

Similarly, there are separate voting rules for passing the plans through the Legislature once they are approved by the Commission:

- If the same party holds the majority of both the Assembly and the Senate, the redistricting plan must pass both houses by a 2/3rds majority.
- If different parties hold the majorities in each house, then the redistricting plan only requires a regular majority vote.
- If different parties hold the majorities in each house, and the plans put forth are the third versions edited by the Legislature (see below), a 60% majority is required.

Critique: On its surface, this seems like a reasonable arrangement. But due to both the gerrymandering of the districts and the political geography of New York, the Republican Party has virtually zero chance of controlling the State Assembly, currently controlled 2 to 1 by Democrats.

These voting rules provide protection for the minority party if both houses are controlled by another party. In New York, given demographic realities, the only conceivable such situation is control of both houses by Democrats.

But if the Assembly is controlled by Democrats and the Senate remains controlled by Republicans, as has been the case in redistricting cycles going back decades in New York, there is little protection for the minority Assembly Republicans and Senate Democrats, as the plans can be passed by simple majority vote in the Legislature.

Under this arrangement, the bi-partisan gerrymandering compromise of Senate Republicans drawing lines for their house and Assembly Democrats drawing lines for their house that has resulted in politically gerrymandered, incumbent-protecting districts is likely to continue.

Proposed Process for Legislative Approval of Commission Plans. After the Commission's public hearings,

1. The Legislature shall receive and approve or disapprove the Commission's plans without amendment.
2. If the Commission's first plan is rejected, the Commission must submit an amended plan, which must be voted upon by the legislature again without amendments.
3. If the Commission's second plan is also rejected upon such vote, each house *may then amend* that plan prior to approval except that such amendments must comply with the substantive principles, cannot affect more than two percent of the population of any district in the Commission's plan.

Critique: An obvious weakness of the governor's plan is the fact that at the end of the process, the Legislature will be allowed to draw their own lines if they don't like the previous two advanced by the Commission. This clearly provides an incentive for the Legislature to reject the Commission's recommendations in order to draw their own maps. The provision that restricts the Legislature to altering the district lines in a way that affects no more than 2 percent of the population is flawed since there is nothing in the amendment that limits population deviation in the first place. Thus, the most significant weakness of the proposed amendment is what it *ignores*.

The Proposed Redistricting Amendment violates the principle of "one person, one vote."
U.S. Supreme Court rulings have made it clear that legislative districts should be of comparable size. In one case, the Court ruled that "the achieving of fair and effective representation for all citizens is … the basic aim of legislative apportionment" and it was for that reason that the decision insisted on substantial equality of population among districts.[30] Essentially, mapmakers' goals are to keep congressional districts at exactly the same population and within a ten percent range for legislative districts.

While not illegal, New York has legislative district lines that can be dramatically different in size. As mentioned earlier, New York State has dramatically different populations in both Senate and Assembly districts.

Variation in district population size serves a clear political goal. The majorities in both houses used the redistricting process to give themselves a political edge. In the

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[30] U.S. Supreme Court, <u>Reynolds v. Sims</u>, 1964.

Senate, districts based in heavily Democratic New York City are districts with the largest populations. The strategy of having the smallest population districts in upstate New York allowed mapmakers to increase the number of upstate Senate districts – which are more likely to contain Republican majorities.

In the Assembly, the trend was the opposite. Upstate districts had the largest populations, while New York City-based Assembly districts had the smallest. In the Assembly, the district lines appear to be drawn with the goal of packing as many New Yorkers as possible in the smallest possible number of districts in areas with traditionally high Republican enrollments.[31]

Redistricting Amendment "reform": Under the proposed constitutional amendment, the redistricting Commission must evaluate and take into consideration several principles in the creation of new legislative districts.[32] Strikingly, contrary to redistricting best practices, there is no required priority ranking of the criteria.

The proposal's criteria are vague. This approach stands in stark contrast to the New York City redistricting language which reads: "District lines shall keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other."[33]

In a provision that undermines the concept of "one person, one vote," there is no limit on the total population deviation, or preventing the deviations from being manipulated to produce an unfair apportionment of Senate or Assembly districts among the regions of the State.

Cities would also still have to be divided to comply with the block-on-border rule. The block on border rule requires that adjoining Senate districts differ in population by no more than the population of the least populous block on their common boundary. Towns would still not have to be divided to comply with the "block-on-border rule," but cities would, which splinters urban voting populations. There is no rational reason for continuing to protect towns, but not cities, from the effects of the block on border rule.

The Redistricting Amendment does not remove sections of the state constitution that are illegal.
The proposed amendment keeps existing provisions of the Constitution's Article. III, §§4-5, that have been entirely void since New York redistricting in the 1960s found that they discriminated against minorities.

The proposed amendment keeps in place the 19th century formula for determining the size of the New York State Senate. The formula is based on the population sizes of

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[31] NYPIRG analysis.
[32] See Assembly Bill 2086 of 2013.
[33] New York City Law §52: District Criteria, 1c, see:
http://www.nyc.gov/html/charter/downloads/pdf/citycharter2004.pdf .

the 19th century Bronx County, when part of the current Bronx was in Westchester County, and the 19th Century Queens County, which included modern Nassau County. The inconsistencies in this ancient formula leave the size of the Senate open to the political machinations and legal battles that have taken place in recent cycles.

The Redistricting Amendment Sets Up Complicated Politically Determined Voting Rules for the Approval of Maps by both the Commission and the Legislature. The proposed amendment sets up different quorum and voting rules for both the Commission and the Legislature depending on the results of the previous election. Maps have to pass by a simple majority if the two houses of the Legislature are controlled by two different parties. But if the two houses are controlled by the same party, then it takes a super majority to pass the maps. This unusual provision seems designed to give one party veto power over the maps and to make it easier for the Legislature to end up drawing their own districts.

The Proposed Constitutional Amendment on Legislative Redistricting: A Section-by-Section Report Card.[34]

Criteria

A constitutional amendment on redistricting must provide for an independent commission with an odd number of members (5 to 13) appointed by a diversity of authorities exclusively from a pool of interested citizens. Lobbyists, elected officials and those directly or indirectly dependent upon them for employment could not serve. Members would reflect the political and demographic diversity of the state.

They would have a clear timetable and employ clear criteria, including in order of priority: compliance with federal requirements, observance of the integrity of the state's regions — defined by its natural and built environment — and recognition within regions of social and demographic communities of interest.

Use of data reflecting partisanship or incumbent residency in designing districts would be prohibited. Finally, the Commission's decisions would not be subject to revision by the Legislature.

Evaluation
Grades for the constitutional amendment on redistricting passed by the legislature, when assessed against these criteria:

1: Observance of the integrity of the state's regions (defined by its natural and built environment),
<u>Grade = F</u>
Here a real opportunity is missed. The proposed amendment continues references to counties, towns and cities, blocks and borders, the boundaries of which are all rooted in the 19th century. Modern realities are regional; this is recognized, for example, in state economic development policy. Regional categories used for districting would build legislators' collaborative attentiveness to regional agendas. Community interests should be explicitly attended to, and honored. Honoring municipal boundaries and borders should be formally recognized as secondary considerations, as this often must be done to serve other higher priority values.

2. Decision on districting should default to the state high court, if the commission is not constituted or fails to act in a timely manner.
<u>Grade = F</u>

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[34] Based upon and drawn with permission from an opinion essay published in the *Albany Times Union* by Professor Gerald Benjamin, March 15, 2012.

The commission process defaults to the legislature.

The proposed amendment requires the legislature to act up or down on commission recommendations. If it fails to act positively, or if the governor vetoes a redistricting plan that the legislature approves, after two iterations the matter goes back to the legislature for action.

The flawed design of the commission and the rules entrenched for it in the constitution, makes deadlock is likely. And if there is deadlock, the legislature makes its own districts. As Yogi would say: Déjà vu all over again.

And if districting default to the state Supreme Court, the amendment gives the court a deadline, to be sure that the legislature will have time to have the final word.

3: Criteria should be established in the state constitution for redistricting in order of priority.
Grade = F
Here we need to be attentive what the amendment does not do. In does not replace the current state constitutional provision on districting with an entirely new provision, as it should. It does not take eliminate outdated language.

Why do we need to keep constitutional references based upon the 1930 federal census as a starting point?

It leaves in place provisions that have no force:
- Why are we still referencing counties as Senate district building blocks in the constitution, even though at the same time we are on the verge of approving Senate districts that systematically dismember counties to meet federal districting standards.

- It does not remove 19th century provisions used to entrench partisan advantage:

Why, if we are reforming, will we still using 1894 county boundaries to determine the size of the State Senate? All of this is an invitation to confusion, mischief, and litigation.

4: Commission decisions on districts must be final when filed with the Secretary of State.
Grade = F
Under the amendment, the legislature retains the final say for redistricting.

5: The leader of this commission should be chosen by its previously selected members from the available pool.
Grade = D

The leader of the proposed commission will not be an added person, making the total membership an odd number. Rather, he or she will be chosen by the members from among their number, with quorum and decision rules that assure that at least one or more members appointed from each party base agree.

6: Use of date reflecting or based upon partisan data must be excluded
Grade = D
There is no constitutional bar in the amendment to the use of partisan data in redistricting, nor is there an affirmative commitment to redistrict to maximize the competitiveness of elections. Rather the amendment speaks of designing districts so as to "not…discourage competition" nor "favor or disfavor incumbents or other particular candidates or political parties."

Yet at the same time it places in the constitution a directive to the new to commission consider "the maintenance of the cores of existing districts" along with existing subdivision, constitutionalizing an incumbent protection criterion for districting.

7: A sufficiency of trained professional staff and necessary technological resources must be assured
Grade = C
The constitutional change provides for a munificence of staff and resources for redistricting, in fact far more than needed. This is because the bi-still-partisan approach the commission's formation extends to staffing.

Essentially, the proposed constitutional amendment will give a constitutional basis to the parallel Republican and Democrat manner in which the current Legislative Task for on Demographic Research and Redistricting (LATFOR) is now staffed.

That is, the drive for fiscal austerity notwithstanding, when it comes to redistricting New York will employ two persons for every job. We have experience with this. Our constitution now requires bi-partisan election administration, ostensibly to assure fairness and neutrality. It does neither.

8: It must be provided for in the state constitution, placing redistricting beyond the reach of change by the ordinary state legislative process.
Grade = C-
An amendment to the constitution is proposed. But an amendment is a good idea only if it results in a redistricting process that is truly independent. Entrenching a partisan process in the constitution, in the guise of it being "independent," makes a bad situation worse, by placing it beyond the reach of ordinary politics for the foreseeable future. Why? It takes real reform off the table, by giving the legislature a plausible answer to calls for real reform: "Been there, done that."

9: It must be done by a commission of moderate size (5 to 13 members) put in place by multiple appointing authorities, but dominated by no appointing authority or political party.
Grade = C
The proposed commission is within the desirable size range and there are multiple appointing authorities, with two members each selected by the majority and minority conferences of the two major parties in the legislature. The remaining two, neither of whom may be enrolled in one of these parties (but who may be closely allied third party members), must be appointed by the other eight. But the commission will have an even number of members (10), an invitation to deadlock. All appointing authorities are partisan-based. There is no domination by a single political party, but there remains total domination by the legislative parties – the parties at interest.

Finally, new quorum requirements written into the constitution for the commission allow a unified group of partisans to prevent any action simply by not showing up.

Far-fetched? Ask people in Wisconsin.

10: Members of this group must be selected from a pool broadly accessible to interested citizens and reflect the demographic diversity of the state.
Grade = B-
There is a solid commitment to assuring diversity on the commission. There is no effort to recruit and establish a visible, broad-based pool from which members will be selected.

11: Membership should be denied to elected officials and those directly or indirectly dependent upon them for employment.
Grade = B+
The proposed amendment bars from commission membership people who have recently been lobbyists, state employees, party officials, state elected officials and congress members and their spouses, and party chairs, but not local elected officials.

12: Recognition within regions of social and demographic communities of interest
Grade = B+
Communities of interest are recognized in the new amendment, but not within regions.

13: Compliance with federal requirements
Grade = A-
Voting rights act criteria are written into the state constitution. This is important because politics surrounding reauthorization suggested that the federal law might not last forever.
Population equality for districts is assured, but within, not beyond, federal court established standards.

14: Public Hearings and Access to Information
Grade = A
A constitutional requirement to make commission reports and data "widely available" to the public in useable form for review, comment   enhances accountability.

The provision for public hearings across the state, mentioned but not include in the initial summary of criteria, builds a further constitutional basis for visibility and accountability into the redistricting process.

15: Deadlines for commission decision making should be linked to the decennial availability of census data and electoral calendars.
Grade = A
This is done in the proposed amendment.

APPENDIX – DISTRICT POPULATIONS, 2012

ASSEMBLY DISTRICT NUMBER	TOTAL POPULATION
AD 1	128,932
AD 2	128,932
AD 3	128,930
AD 4	128,933
AD 5	128,927
AD 6	128,933
AD 7	128,931
AD 8	128,926
AD 9	128,930
AD 10	128,932
AD 11	128,931
AD 12	128,928
AD 13	128,930
AD 14	128,931
AD 15	128,928
AD 16	128,932
AD 17	128,931
AD 18	128,932
AD 19	128,930
AD 20	128,931
AD 21	128,929
AD 22	128,930
AD 23	124,114
AD 24	124,114
AD 25	124,082
AD 26	124,074
AD 27	124,085
AD 28	124,081
AD 29	124,132
AD 30	124,084
AD 31	124,134
AD 32	124,131
AD 33	124,141
AD 34	124,076
AD 35	124,104

AD 36	124,086
AD 37	124,081
AD 38	124,105
AD 39	124,093
AD 40	124,079
AD 41	124,232
AD 42	124,252
AD 43	124,231
AD 44	124,235
AD 45	124,230
AD 46	124,227
AD 47	124,223
AD 48	124,229
AD 49	124,240
AD 50	124,234
AD 51	124,234
AD 52	124,228
AD 53	124,234
AD 54	124,239
AD 55	124,237
AD 56	124,235
AD 57	124,233
AD 58	124,246
AD 59	124,235
AD 60	124,245
AD 61	124,228
AD 62	124,232
AD 63	124,233
AD 64	124,228
AD 65	132,498
AD 66	132,495
AD 67	132,584
AD 68	132,271
AD 69	132,448
AD 70	132,451
AD 71	132,495
AD 72	132,555
AD 73	132,611
AD 74	132,606
AD 75	132,619

AD 76	132,621
AD 77	126,423
AD 78	126,413
AD 79	126,433
AD 80	126,409
AD 81	126,402
AD 82	126,409
AD 83	126,406
AD 84	126,411
AD 85	126,405
AD 86	126,426
AD 87	126,408
AD 88	131,159
AD 89	132,020
AD 90	132,022
AD 91	131,155
AD 92	132,193
AD 93	131,175
AD 94	133,104
AD 95	124,443
AD 96	132,599
AD 97	132,595
AD 98	132,595
AD 99	133,437
AD 100	133,912
AD 101	132,914
AD 102	132,450
AD 103	134,148
AD 104	125,407
AD 105	132,147
AD 106	132,881
AD 107	133,185
AD 108	133,174
AD 109	133,174
AD 110	131,717
AD 111	131,715
AD 112	133,620
AD 113	133,130
AD 114	132,752
AD 115	131,794

AD 116	132,629
AD 117	132,821
AD 118	132,398
AD 119	131,158
AD 120	133,062
AD 121	133,614
AD 122	133,672
AD 123	132,204
AD 124	133,580
AD 125	133,580
AD 126	133,722
AD 127	134,105
AD 128	130,042
AD 129	130,039
AD 130	134,062
AD 131	133,214
AD 132	133,472
AD 133	133,955
AD 134	131,729
AD 135	131,996
AD 136	133,695
AD 137	133,692
AD 138	133,694
AD 139	131,584
AD 140	130,673
AD 141	130,669
AD 142	130,668
AD 143	129,960
AD 144	133,203
AD 145	130,672
AD 146	128,836
AD 147	133,339
AD 148	133,286
AD 149	130,669
AD 150	134,333

SENATE DISTRICT NUMBER	TOTAL POPULATION
SD 1	315,163
SD 2	315,164
SD 3	315,163
SD 4	315,163
SD 5	315,163
SD 6	315,163
SD 7	315,163
SD 8	315,163
SD 9	315,164
SD 10	319,113
SD 11	319,114
SD 12	319,114
SD 13	319,115
SD 14	319,112
SD 15	319,115
SD 16	319,113
SD 17	318,022
SD 18	318,022
SD 19	318,019
SD 20	318,021
SD 21	318,021
SD 22	318,022
SD 23	318,021
SD 24	318,021
SD 25	318,021
SD 26	318,021
SD 27	318,021
SD 28	318,021
SD 29	318,019
SD 30	318,021
SD 31	318,021
SD 32	318,021
SD 33	318,019
SD 34	318,021
SD 35	307,463
SD 36	318,023
SD 37	307,463
SD 38	296,208

SD 39	293,888
SD 40	302,408
SD 41	306,760
SD 42	292,711
SD 43	292,750
SD 44	292,749
SD 45	293,101
SD 46	292,750
SD 47	293,195
SD 48	292,870
SD 49	292,749
SD 50	292,444
SD 51	292,344
SD 52	292,375
SD 53	292,445
SD 54	292,445
SD 55	292,306
SD 56	292,307
SD 57	292,081
SD 58	292,933
SD 59	292,392
SD 60	292,562
SD 61	292,307
SD 62	292,166
SD 63	292,562

| STATE | 2010 STATE HOUSE PLAN | | 2010 STATE SENATE PLAN | |
	IDEAL	PERCENT	IDEAL	PERCENT OVERALL
Alabama	45,521	1.98	136,564	1.98
Alaska*	17,756	9.04	35,512	8.45
Arizona	213,067	8.78	213,067	8.78
Arkansas	29,159	8.36	83,312	8.2
California	*465,674*	*.449*	*931,349*	*.63*
Colorado	77,372	4.98	143,691	4.99
Connecticut	23,670	5.99	99,280	9.79
Delaware*	21,901	9.93	42,759	10.73
Florida	156,678	3.98	470,033	1.99
Georgia	53,820	1.98	172,994	1.84
Hawaii	24,540	21.57	50,061	44.23
Idaho	44,788	9.7	44,788	9.7
Illinois	***108,734***	***0.0***	***217,468***	***0.0***
Indiana	64,838	1.74	129,676	2.88
Iowa	30,464	1.93	60,927	1.65
Kansas	22,716	2.87	70,986	2.03
Kentucky	43,394	10	114,194	9.84
Louisiana	43,174	9.89	116,240	9.86
Maine	8,797	9.9	37,953	9.51
Maryland**	122,813**	8.87	122,813	8.87
Massachusetts	40,923	9.74	163,691	9.77
Michigan	89,851	9.96	260,096	9.79
Minnesota	79,163	1.42	39,582	1.6
Mississippi	24,322	9.95	57,063	9.77
Missouri	36,742	7.8	176,145	8.5
Montana*	9,894	5.44	19,788	5.26
Nebraska	N/A	N/A	37,272	7.39
Nevada	64,299	1.33	128,598	0.8
New Hampshire	3,291	9.9	54,853	8.83

New Jersey	219.797	5.199	219.797	5.199
New Mexico	29,417	6.68	49,028	8.70
New York	**129,089**	**7.94**	**307,356**	**8.8**
North Carolina	79,462	9.9	190,710	9.74
North Dakota*	14,310	8.86	14,310	8.86
Ohio	116.530	16.44	349.591	9.2
Oklahoma	37,142	1.81	78,153	2.03
Oregon	63.851	3.1	127.702	2.99
Pennsylvania	62,573	7.88	254,048	7.96
Rhode Island	14.034	4.98	27.699	5.01
South Carolina	37,301	4.99	100,551	9.55
South Dakota*	23,262**	9.47	23,262	9.47
Tennessee	192.306	9.17	64.102	9.74
Texas	167.637	9.92	811.147	8.04
Utah	36.852	1.55	95.306	.39
Vermont*	4.172	18.9	20.858	18.2
Virginia	80,010	2.0	200,026	4.0
Washington	*137.236*	*.068*	*137.236*	*.068*
West Virginia	18,530	9.99	109,000	10.00
Wisconsin	*57,444*	*.76*	*172,333*	*.62*
Wyoming*	9.394	9.84	18.788	9.37

SOURCE: National Conference of State Legislatures,
see http://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx.

* State has only one Congressional seat.
** Maryland maintains three state assembly districts within each state senate district. The ideal district size for the two member district is 81,875 with an overall deviation of 9.39. The ideal district size for the single member district is 40,938 with an overall deviation of 8.92.
**South Dakota maintains 4 multimember districts. Those 4 districts have an ideal population of 11,631 with an overall deviation of 4.68.

Italics identify states with state legislative district population ranges of under +/-1%. The State of Illinois has no population deviation.