



Published on *Citizens' Committee for an Effective Constitution* (<http://nyconstitution.org>)

Proposed Constitutional Amendment on Legislative Redistricting: A Report Card

Redistricting
Professor's Piece:

The Proposed Constitutional Amendment on Legislative Redistricting: A Report Card

Gerald Benjamin

March 15, 2012

In late February I outlined in the *Albany Times Union* some criteria that should be followed in the design of an independent, state constitutionally-based redistricting commission for New York. I wrote:

?A constitutional amendment 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.?

Now, in the spirit of the academic season ? I just finished reading midterms ? I grade the constitutional amendment on redistricting that the legislature just passed against these criteria.

Criterion I: 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.?

Criterion II: 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 party, but there remains total domination by the legislative parties ? the parties at interest.

Additionally, 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.

Criterion III: 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.

Criterion IV: 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.

Criterion V: 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.

Criterion VI: 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.

Criterion VII: Decision on districting should default to the state high court, if the commission is not constituted or fails to act in a timely manner

- **Grade = F**

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.

That is, the 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.

Criterion VIII: 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. It does not replace the current state constitutional provision on districting with an entirely new provision, as it should. It does not take out dated language ? Why do we need to keep constitutional

references based upon 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.

Regarding specifics:

VIII-1: 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.

VIII-2: Observance of the integrity of the state's regions (defined by its natural and built environment),

• **Grade = F**

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.

VIII-3: 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.

VIII? 4: Use of data 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 commission consider "the maintenance of the cores of existing districts" along with existing subdivision, constitutionalizing an incumbent protection criterion for districting.

VIII-5: 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-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 Force 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.

Criterion IX: Commission decisions on districts must be final when filed with the Secretary of State by it.

- **Grade = F**

Under the amendment, the legislature retains final say for redistricting.

Criterion X (Extra Credit): 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 my initial summary of criteria, builds a further constitutional basis for visibility and accountability into the redistricting process.

OVERALL GRADE = C-

Some good government groups argue that this is the best we can do, "close enough for government work." I think we can do a lot better. If this amendment actually reaches the ballot I will vote "No." And then I will work in support of calling a constitutional convention, where genuine serious reform of the legislative districting process will be a primary goal.

Source URL: <http://nyconstitution.org/professors-corner/redistricting/proposed-constitutional-amendment-legislative-redistricting-report-0>