

Testimony to the 2018 NYC Charter Revision Commission on Redistricting

July 23, 2018

Good afternoon Chair Perales and members of the Charter Revision Commission. I am Alex Camarda, Senior Policy Advisor for Reinvent Albany. Reinvent Albany advocates for transparency and accountability in State government, and are leading champions for transparency in New York City government, especially strengthening open data and the Freedom of Information Law.

Reinvent Albany has testified previously before this commission on [campaign finance reform](#), [city-affiliated nonprofit regulation](#), and [instant runoff voting](#).

Tonight we will testify on redistricting reform. In the Commission's preliminary report issued last week, the Commission expressed an interest in hearing further comments and proposals on redistricting reform. The Commission's staff recommended in the report, "that the Commission evaluate proposals to alter the structure of the Districting Commission to promote its independence and reduce the influence of elected officials."

During the last city districting process in 2013, many stakeholders believed district maps were largely drawn to favor incumbents. We agree, and Reinvent Albany generally believes: 1) elected officials should have limited influence in drawing district lines; and 2) the criteria for drawing lines needs to be strengthened to stop gerrymandering.

Our redistricting reform recommendations are:

- 1. Task a nonpartisan body like the City Bar Association with creating a pool of eligible candidates for elected officials to choose from to serve on the districting commission.**
- 2. Bar any person from serving on the commission who was an elected official or party officer at any level of government in the state for the last five years, or any of their relatives.**
- 3. Narrow the population deviation between districts to "as nearly as is practicable" as is done for drawing congressional districts.**
- 4. Ban drawing districts with the intent to favor or oppose any elected official, actual or presumed candidate, or political party.**

5. **Prioritize criteria for drawing lines based on geographic boundaries and political subdivisions over communities of interest, which are too often manipulated.**
6. **Bar non-public communications between officeholders, party officials, their employees or anybody advocating on their behalf and the districting commission members regarding the drawing of districts.**

Recommendation #1: Task a nonpartisan body like the City Bar Association with creating a pool of eligible candidates for elected officials to choose from to serve on the districting commission.

Reinvent Albany recommends the Charter Revision Commission change the Charter so the mayor and City Council no longer directly choose appointees of the City Districting Commission. We believe this creates a perceived or actual conflict of interest when commission appointees are drawing the lines influencing the political fate of the very elected officials who appointed them. To reduce the conflict, an independent body not chosen by elected officials should create a pool of qualified applicants that elected officials choose districting appointees from.

New York City is ahead of the curve in that lawmakers do not draw their own district boundaries. According to the National Conference on State Legislatures (NCSL), only thirteen states give commissions the primary responsibility of drawing state legislative lines while six do so for congressional boundaries. An additional 5 states have advisory bodies that assist the legislature in drawing boundaries, and 5 others have backup commissions in the event the legislature can't agree on district maps.¹

However, even when commissions and boards exist to draw districts, lawmakers have great influence through the selection of commission members. Lawmakers in most states either directly pick all or some of the appointees of commissions.

New York City should look to California and Arizona for examples of commissions which are more independent in their composition than most others. California may be the most unique in that serving on the commission is broadly open to the public and 31,000

¹ "Redistricting Commissions. State Legislative Plans," *National Conference on State Legislatures*, January 25, 2018. Available at: <http://www.ncsl.org/research/redistricting/2009-redistricting-commissions-table.aspx>

people applied to serve in 2010.² Fourteen members ultimately serve on the California commission, which is largely chosen randomly from those who apply and are qualified. The qualifications screening and application process is administered by an Applicant Review Panel (ARP), which itself consists of three randomly chosen independent qualified auditors who are employees of the state, and licensed auditors with the California Board of Accountancy.³ The only role lawmakers play in commission selection in California is in narrowing the pool of 60 members to 36 members.

In Arizona, the Commission on Appellate Court Appointments establish a pool of 25 nominees, with the majority and minority leaders in each house of the Arizona legislature choosing one commission member from the pool. The fifth member, who is the chair, is chosen by the four other members. The Commission on Appellate Court Appointments, a standing committee for the selection of judges, is itself appointed by the governor with advice and consent from the state senate for 15 of 16 of its members.⁴

Recommendation #2: Bar any person from serving on the commission who was an elected official or party officer at any level of government in the state for the last five years, or any of their immediate relatives.

Another way to strengthen the independence of the Districting Commission is to place restrictions on those who can serve on it. The City Charter currently bars city officers, city employees, lobbyists and their employees advocating before the city, state or federal government, and political party officers from serving on the commission.⁵

Reinvent Albany believes the Commission should extend its ban to cover individuals who recently were elected officials or any of their relatives. This will help to address the perception or reality that districts are drawn to protect incumbents. During the last redistricting cycle a Queens State Senator who recently departed office was chosen to serve on the commission. There was a perception among certain ethnic groups a Republican district was preserved in eastern Queens, which ran contrary to the interests of the growing Asian communities in the area who were seeking a district that would enable an Asian representative to be elected.

² "California Citizen Redistricting Commission," *Ballotpedia*, Available at: https://ballotpedia.org/California_Citizens_Redistricting_Commission

³ Ibid.

⁴ Commission on Appellate Court Appointments, *azcourts.gov*. Available at: http://www.azcourts.gov/jnc/Constitutional-Provisions#Article_6_Section_36:_Commission_on_appellate_court_appointments_and_terms_appointments_and_vacancies_on_commission and Arizona Commission on Appellate Court Appointments, *Ballotpedia*, Available at:

https://ballotpedia.org/Arizona_Commission_on_Appellate_Court_Appointments

⁵ NYC Charter, Chapter 2-A, section 50, subsection 5.

Recommendation #3: Narrow the population deviation between districts to “as nearly as is practicable” as is done for drawing federal districts.

The City Charter allows for a 10 percent population deviation between the largest and smallest districts from the average district size, consistent with the Supreme Court rulings such as *Brown v. Thomson*.⁶ However, the city can legally and operationally replace this loose standard with the federal standard for drawing congressional districts, which requires districts to be equal in population size “as nearly as is practicable.”⁷

In Reinvent Albany’s view, there is no reason legislative districts can’t be drawn with the same preciseness in population size as congressional districts, both of which require compliance with the Voting Rights Act. We think population deviations from the average district size simply open the door to gerrymandering, which is rationalized by citing the many valid redistricting criteria in law and case law even while not always the intent of the line-drawers.⁸

States held up for more independent redistricting processes follow the federal standard. Iowa’s standard for state legislative districts, for example, aspires to the federal standard of being “as nearly as is practicable to the ideal population” with the ideal population being the number of districts divided by the state’s population.⁹ Under no circumstance may districts vary in population size by more than 5 percent from each other, and the overall deviation of districts cannot be greater than 1 percent.¹⁰

Recommendation #4: Ban drawing districts with the intent to favor or oppose any elected official, actual or presumed candidate, or political party.

⁶ NYC Charter, Chapter 2-A, section 52, subsection a.

⁷ All About Redistricting,” Professor Justin Levitt’s Guide to Drawing the Electoral Lines. Available at: <http://redistricting.ils.edu/where.php>

⁸ See 2010 Redistricting Deviation Table, NCSL. Available at: <http://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx>

⁹ See: Iowa Code, Title II, Subtitle I, Chapter 42(1)(a). “*Senatorial and representative districts, respectively, shall each have a population as nearly equal as practicable to the ideal population for such districts, determined by dividing the number of districts to be established into the population of the state reported in the federal decennial census.*” Available at: <https://www.legis.iowa.gov/publications/search/document?fq=id:870095&pdid=867712&q=redistricting#42.4>

¹⁰ See Iowa Code, Title II, Subtitle I, Chapter 42(1)(a). “*In no case shall the quotient, obtained by dividing the total of the absolute values of the deviations of all district populations from the applicable ideal district population by the number of districts established, exceed one percent of the applicable ideal district population. No senatorial district shall have a population which exceeds that of any other senatorial district by more than five percent, and no representative district shall have a population which exceeds that of any other representative district by more than five percent.*”

New York City's anti-gerrymandering provisions in the Charter are weak. The only provision addressing gerrymandering directly states the following:

Districts shall not be drawn for the purpose of separating geographic concentrations of voters enrolled in the same political party into two or more districts in order to diminish the effective representation of such voters.

The Charter should be strengthened to include language that bars drawing lines to favor or oppose any incumbent, candidate or presumed candidate, or political party. This would, at the very least, prohibit the drawing of lines to include or exclude candidates' residences as was done in the last city districting process. Disgraced Assemblymember Vito Lopez had his residence drawn into a Council district to provide him an opportunity to run for Council. The drawing of that district was later changed at the written request of Council Speaker Christine Quinn, which raised questions about the legality of the districting commission reversing the map it had already drawn and delivered to the Council to vote on.¹¹

In Iowa, which is known for its strict criteria for drawing district lines, the legislative staff responsible for drawing the lines are additionally barred from using data revealing incumbents' addresses, political affiliations of registered voters, and previous election results to ensure lines are not drawn to favor or oppose any incumbent, candidate or presumed candidate, or political party.¹²

Recommendation #5: Prioritize criteria for drawing lines based on geographic boundaries and political subdivisions over communities of interest.

Reinvent Albany believes the best way to limit the possibility of gerrymandering is to re-prioritize the charter's criteria for drawing district lines. More importance should be placed on drawing lines consistent with existing geographical and political subdivision boundaries (like community board districts and neighborhood boundaries) than communities of interest.

¹¹ Barkin, Ross. "What is Going on with the City Council Redistricting: A Primer," *Gotham Gazette*, January 7, 2013. Available at: <http://www.gothamgazette.com/city/129-elections/4169-what-is-going-on-with-city-council-redistricting-a-primer>

¹² Iowa Code 42.4 Redistricting Standards. Available at: <https://www.legis.iowa.gov/docs/code/2016/42.4.pdf>

The Charter's criteria for drawing districts is mostly prioritized, which is a rare and good feature of redistricting laws. However, the Charter prioritizes first a maximum population deviation standard, which opens the door to gerrymandering. The population deviation, as discussed previously, should be narrowed to the federal standard and made subordinate to the Voting Rights Act. The second criterion in the Charter is adherence to the Voting Rights Act, which is required under federal law. The third criterion is communities of interest but the wording is so vague it can be manipulated to gerrymander districts:

District lines shall keep intact neighborhoods and communities with established ties of common interest and association, whether historical, racial, economic, ethnic, religious or other.

Subsequent criteria following the communities of interest provision bound line-drawers to draw districts that:

- are compact and no more than twice as long as they are wide;
- do not cross borough or district boundaries;
- minimize the sum of the length of the boundaries of all the districts in the redistricting plan;
- are contiguous and have connections over waterways; and
- limit cross-borough districts to one district per two boroughs.

The criteria for drawing districts which are contiguous and compact are much more quantifiable than those for drawing communities of interest, and therefore less prone to being exploited for gerrymandering.

Recommendation #6: Bar non-public communications between officeholders, party officials, their employees or lobbyists advocating on their behalf and the districting commission members regarding the drawing of districts.

Reinvent Albany believes any communications between officeholders, party officials, their staffs or lobbyists with the districting commission should be done in public at public hearings or in writing via its website and made available to the public online.

During the last redistricting process, the Districting Commission Chair communicated with elected officials to hear their perspective on proposed districts. He acknowledged incumbency protection and continuity of districts was a criteria in drawing lines, which

is recognized as a valid criterion in federal case law but not listed in the prioritized criteria for drawing lines in the City Charter.

This raises questions as to whether the prioritized criteria in the Charter was followed in the last redistricting when the Commission did not draw districts uniting Asian-American communities in Oakland Gardens and Bayside, for example, or South Asian communities in Richmond Hill, but was perceived as having preserved incumbents' districts in those areas.

Greater transparency of communications with the districting commission will alleviate concerns lawmakers' views unduly influenced the process, and help to prevent undue influence altogether.

Thank you for the opportunity to testify today. I welcome any questions you may have.