



CITIZENS UNION
**2012 Election Analysis: How Gerrymandering Skews Party Representation
and Creates Uncontested Elections**

***Second Passage of Redistricting Reform Amendment
Needed To Prevent Future Gerrymandering***

January 23, 2013

I. OVERVIEW and SUMMARY of FINDINGS

The first election held with new districts drawn after the decennial census presents a good opportunity to evaluate the immediate impacts of legislative gerrymandering on the outcome of individual races and party control of each house in the state legislature.

In spite of promises made by 184 state legislators to enact an independent commission that would create new districts for the 2012 elections and a threat by the Governor to veto legislation creating districts if the lines were drawn under the old system, new district maps were once again drawn by the New York State Legislative Task Force on Demographic Research and Reapportionment (LATFOR) as they have been for the last four decades. The only good to come out of this collapse was the state legislature voting in 2012 to pass a constitutional amendment which would create a non-legislative commission to draw congressional and state legislative district lines according to established criteria. No legislators or individuals with conflicts of interest would serve on the commission, and the drawing of lines for partisan gain would be prohibited. This vote was an important first step to end the decades-long process of legislators drawing their own lines that has historically allowed the majority parties in each house to continue their hold on power.

The 2012 district lines and the resulting representation in the state legislature, as examined in this report, show why it is essential for the redistricting constitutional amendment be passed for the second time before January 31, 2013, and ultimately decided by the voters. The state assembly approved second passage of the bill on January 14th by a vote of 135 to 13 and the senate is scheduled to act on it this week. If the legislature fails to act before this deadline, a back-up statute will take effect that will put these reforms into law; however, a constitutional amendment will ensure that these reforms cannot be easily undone, and will provide voters with the important opportunity to support this vital reform through the ballot box in 2014.

The effect of redistricting on the democratic process is significant. Districting plans are drawn to maximize the majority party's hold on power in each house, and typically in New York State each party has at least solidified or strengthened its hold on the house it controlled after each election.

This is done by creating safe seats where elected officials are often uncontested or serve in districts with little to fear in terms of opposition from the other party. This results in representatives who do not need to reach out beyond their party base and find consensus. Elected officials are less accountable to those they serve when the parties in power choose their own voters rather than draw boundaries that actually reflect communities of interest. Consequently, policy debate becomes more polarized and issues supported by the majority of the public go unaddressed without the intervention of an elected official that reports to all New Yorkers.

As Citizens Union's review of last year's general election results demonstrates, the 2012 district lines were drawn in a partisan manner to benefit the majority party in each house. This report finds the following:

- **The partisan breakdown in each house has largely resulted in a split legislature, with majorities in each house controlled by the two different major political parties, indicating the role of partisan gerrymandering in preserving the majority in each house.** The legislature has been split between the two major parties for all but two years of the past four decades, largely due to the effects of redistricting. The state senate has had Republican leadership for all but two years since 1966 (though it should be noted that the current Republican leadership in the senate is due to a power-sharing agreement with the Independent Democratic Caucus, as Republicans technically hold a minority of seats) while the state assembly has been controlled by the Democrats since 1975. Since 1980, Democrats have held over 60 percent of the assembly's seats with many years being over 65 percent, and Republicans have consistently held the balance with about a third of seats in the assembly.
- **The share of seats for each party versus the share of statewide votes for the major parties does not line up with the number of seats won, showing how partisan gerrymandering has created safe seats for the majorities.**
 - Of the 5.9 million votes cast for assembly candidates of the two major parties, 3.8 million votes, or 65%, were cast for Democratic candidates and 2.0 million, or 35% for Republican candidates, **yet Democrats won a disproportionate number of seats to Republicans in the assembly, 107 (71%) to 43 (29%).** This results in a difference of 9 seats more than the proportionate amount expected for Democrats, with 98 expected for Democrats and 53 expected for Republicans in the assembly.
 - Of the 5.9 million votes cast for senate candidates of the two major parties, 3.3 million votes, or 56% were cast for Democratic candidates and 2.6 million, or 44% for Republican candidates, **yet Republicans won a disproportionate number of seats in the senate, 30 (48%) to the Democrats 33 (52%) against their overall vote total for the major parties.** This results in a difference of two seats more than the proportionate amount expected for Republicans, with 35 seats expected for Democrats and 28 expected for Republicans.

- **The number of uncontested seats in general elections (including no major party challenger) is typically higher for the majority in each house, particularly for the assembly and following redistricting cycles. In the 2012 General Election, a third of seats were uncontested in both houses.** In the state senate, Republicans and Democrats had a similar number of uncontested elections in 2012, with 9 and 10 respectively. In the state assembly, however, ***Democrats won by default in 38 uncontested elections to the Republicans' 12 uncontested races.***
 - **When looking back to 2002, however, the trend of uncontested races is more clear.** Overall, there have been more Republicans uncontested in the state senate, and more Democrats uncontested in the state assembly, owing to their ability to draw lines to maximize their hold on power and minimize opposition from the other political party. The ***number of uncontested Republicans in the state senate dropped from 19 in 2002 to a low of 3 in 2010, and then increased again to 9 in 2012 after redistricting.*** The reverse is true in the state assembly, showing how redistricting has been used by the majorities in each house to maintain their hold on power: ***Democrats have been uncontested in an average of 35 seats in the assembly over the last decade, to the Republicans' 13 races.***

This information is further explained in the following pages, with more detailed data on each point. Together, this data demonstrates how the redistricting process has been used to maximize the representation of the majority in each house and shows why we need permanent reform through immediate passage of the redistricting constitutional amendment.

II. CITIZENS UNION'S FINDINGS

A. *Partisan Breakdown in the Senate and Assembly*

The Legislative Task Force on Demographic Research and Reapportionment, the entity that drew state legislative district lines in 2012, is controlled by the majority parties in each house, who each get two appointments while the minority party in the senate and assembly each get just one appointment. The distribution of appointments essentially assures that the majority parties in each house are able to use this arrangement to create unfair district maps and maximize their ability to elect legislators of their own party.

The number of legislators in each party and house of the state legislature, shown in table 1 on the next page, demonstrates the effect of the current redistricting process on representation. The state legislature has been split over the majority of the past four decades (the chart shows the past thirty years), despite the same voters turning out to vote in state legislative races in each house. The years in bold are elections in redistricting years, which occur every ten years after the U.S. Census is completed.

In the state senate, the breakdown of senators had stayed about the same until 2002 despite declining Republican enrollment, and even increased as a result of the redistricting process when the creation of a new 62nd district led to an increased Republican majority. That currently six senators elected as Democrats have decided not to caucus with the Senate Democrats, but

rather with either the newly formed Independent Democratic Caucus or the Republican Party is not reflected in the table, but rather the party under which the legislator was elected. Though Republicans in the 2012 redistricting process did not succeed in obtaining a majority of seats, as happened in past cycles, a political compromise was reached with the Independent Democratic Caucus that created a power-sharing agreement in the state senate.

In the state assembly, the consequences of redistricting are more plainly clear. Assembly Democrats picked up 10 seats in 1982, a redistricting year, while their majority diminished over the next three elections. Later in 1992, the next redistricting year, they again picked up 6 seats. In the next two redistricting years they gained 4 and then 8 seats. It should be noted, however, that gains nearly equal to the redistricting cycle were made in 2008, largely due to the greater turnout of Democrats for the historic presidential election for Barack Obama and the only time since 1966 that Democrats took control of the state senate. Available voter registration statistics going back to 1996, when the percentage of registered Democrats was only slightly lower than it was in the 2012 election, suggest that the Democratic gains in the assembly do not reflect a change in voter choice, but are rather a result of redistricting. A table of representation since 1980 in each house is on the next page in Figure 1.

Figure 1
Resulting Party Makeup of New York State Legislature from 1980-2012
 (bolding indicates redistricting years, underline indicates the cycle that Democrats controlled the state senate.)

YEAR	STATE SENATE Rep-Dem	STATE ASSEMBLY Dem-Rep
1980	35-25	88-62
1982	35-26	98-52
1984	35-26	96-54
1986	35-26	94-56
1988	34-27	92-58
1990	35-26	95-55
1992	35-26	101-49
1994	36-25	94-56
1996	35-26	97-53
1998	36-25	98-52
2000	36-25	99-51
2002	38-24	103-47
2004	35-27	104-46
2006	34-28	105-45
2008	<u>30-32</u>	109-41
2010	32-30	99-51
2012	30-33	107-43

As Figure 2 below demonstrates, although the same voters participate in state senate and state assembly races, the percentage of legislators of each party in the two houses is not equal. The state senate has consistently had only between 40 and just over 50 percent of the seats held by Democrats, while for the state assembly, Democrats have consistently held well over 60 percent of seats. Despite the same voters turning out to vote in November 2012, the senate and assembly elections had very different results, as Democrats won 107 of the 150 assembly seats (71 percent), but only 33 of the 63 senate seats (52 percent). The changes since 1980 are shown graphically in Figures 2 and 3 on the following page.

Figure 2

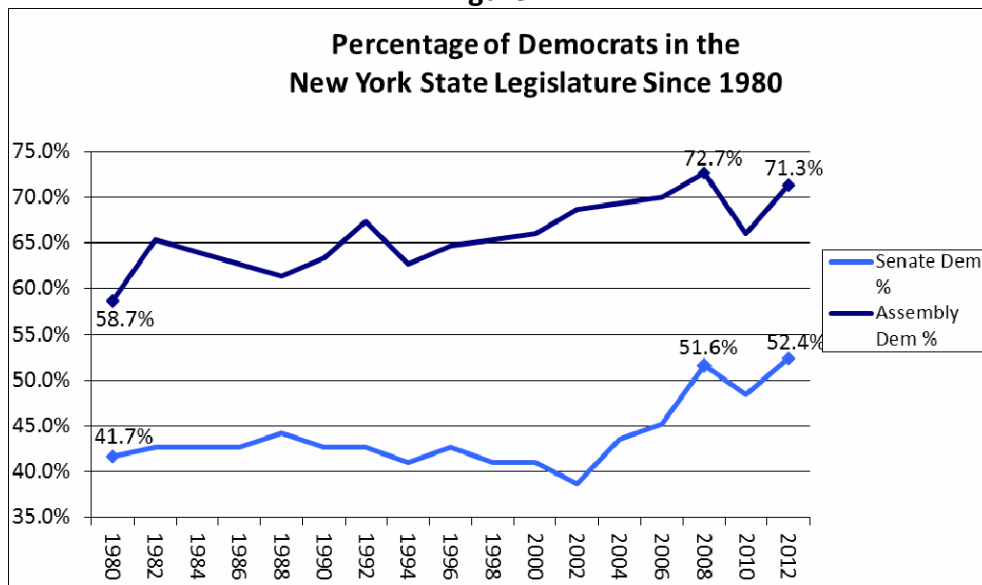
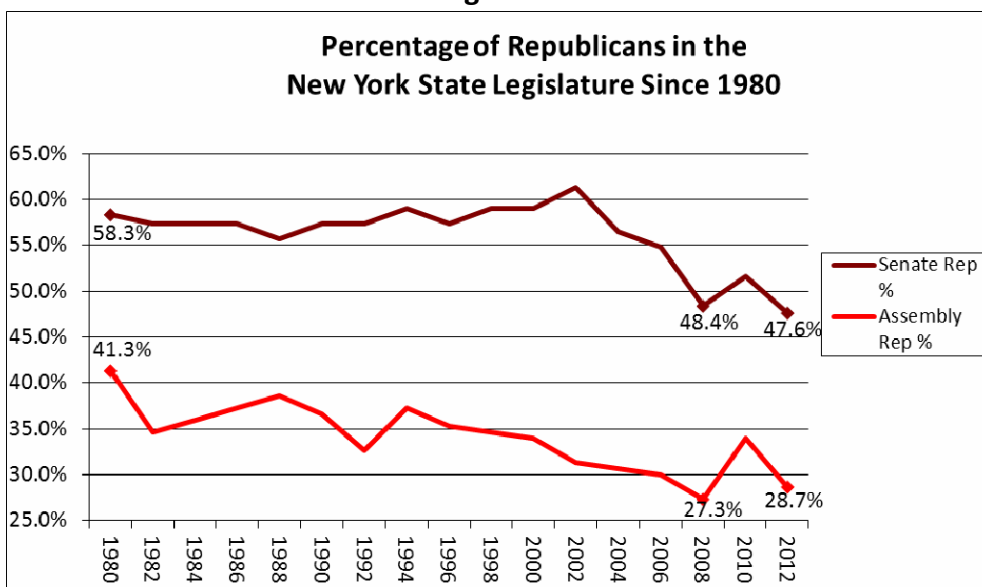


Figure 3



When looking at the enrollment of voters in each party statewide, it is clear that there is an imbalance in both houses of the legislature. Below are the registration statistics as of November 1, 2012.¹

Figure 4

	Democrat	Republican	Independence	Conservative	Working Families	Green	None (Unaffiliated)	Total
Number of Voters	5,913,035	2,873,360	474,011	154,645	46,492	22,955	2,480,766	11,969,192
Percentage	49.4%	24.0%	4.0%	1.3%	.3%	.2%	20.7%	n/a

B. Democratic and Republican Share of Seats Versus Share of Votes

In addition to comparing number of seats for each party in the houses of the legislature over time, comparing vote totals for each party from the 2012 election to the number of seats won by each party also reveals the effect the redistricting process has on the composition of the state legislature. This analysis looks at the total number of votes received by Democratic and Republican candidates for state legislature in each house, tallies them for each party, and then determines the approximate share of seats proportionate to their share of the overall vote total for major party candidates, compared to the number of seats actually gained. These vote choices are perhaps more telling than enrollment of voters in each party, as there are a number of unaffiliated voters in the state, at approximately 21 percent.

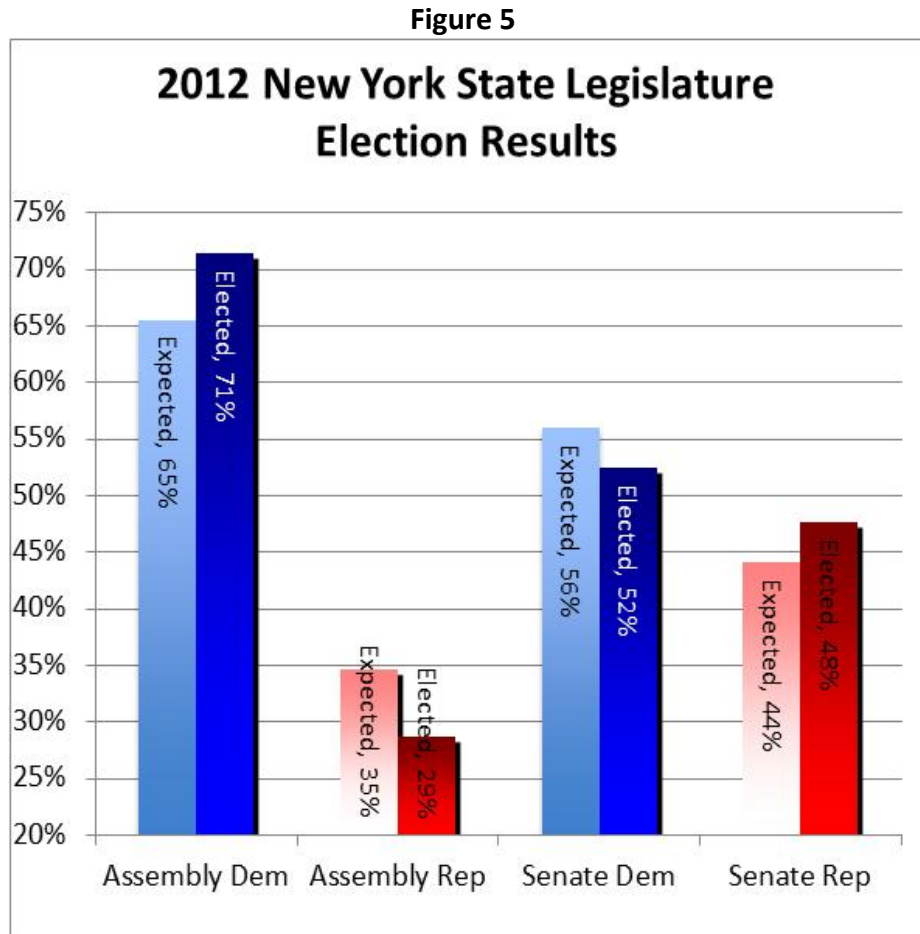
Of the 5.9 million votes cast for assembly candidates of the two major parties, 3.8 million votes, or 65%, were cast for Democratic candidates and 2.0 million, or 35% for Republican candidates, yet Democrats won a disproportionate number of seats to Republicans, 107 (71%) to 43 (29%). This results in a difference of 9 more seats than the proportionate number of seats based simply on proportion of voters casting votes for Democratic candidates, with 98 expected for Democrats and 53 expected for Republicans. Though there are other factors to be considered, such as the number of uncontested races, such a significant disparity between seats held and total votes won shows how partisan gerrymandering can create a stronger advantage for the majority party that goes beyond the simple vote differential.

In the senate, it gets complicated because of the new Independent Democratic Caucus, but of the 5.9 million votes cast for senate candidates of the two major parties, 3.3 million votes, or 56% were cast for Democratic candidates and 2.6 million, or 44% for Republican candidates, yet Republicans won a disproportionate number of seats, 30 (48%) to the Democrats 33 (52%). This results in a difference of two more seats for the Republicans against the proportion of the number based solely on votes for major-party candidates, with 35 seats expected for Democrats and 28 expected for Republicans.

That the percentage of votes won to actual seats held does not match up against party registration is partially not unexpected because of possible wide vote swings in individual

¹ State Board of Elections. Available at:
http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov12.pdf

districts and other factors in play during an election. That there is an uneven outcome in each house for the parties, with the Democrats winning more seats in the assembly and Republicans winning more in the senate, however, shows the distinct effect partisan gerrymandering has on electoral representation, as the majority party in each house has sought to maintain or increase its numbers for decades, as shown in Figure 5 below.



Democrats have tended to win with larger margins of victory in urban districts, increasing their vote total relative to the number of districts they win. In the New York State Senate elections, however, the discrepancy between the vote total and the number of Democratic Seats exceeds that which would be expected as a result of this phenomenon. Voting trends in cities also do not explain why the number of seats relative to the number of votes received is so different between the assembly and the senate. The redistricting process, therefore, is the explanation, as the majority party in each house – which in 2012 was split party, with Republicans in the senate and Democrats in the assembly – has received more seats than the proportionate number of votes they have obtained.

C. Uncontested General Elections (Including Races Having No Major Party Challenger)

Another sign of the influence that redistricting has over the electoral process is looking at the competitiveness of elections, specifically the number of races which are uncontested (including those races having no major party challenger) in general elections. A third of all contests in both the state senate and assembly went uncontested, with 69 of the 213 legislative seats having only one major party candidate running in the 2012 general election. In the state senate, 19 of 63 contests had only one major party candidate running. Republicans and Democrats had a similar number of uncontested senate elections in 2012, with 9 and 10 respectively. In the state assembly, 50 of the 150 seats had only one major party candidate running in the election. ***Democrats in the assembly were given a pass in 38 uncontested elections while the Republicans in the assembly had 12 uncontested races.***

While some of these were races in New York City districts with few Republicans, statewide there were over 450,000 registered Republicans in districts that did not have a Republican candidate for assembly. It is impossible to determine how many of those voters would have voted for a Republican candidate if there were one, but it is likely that the number of Republican votes would have been higher if there were more candidates. The high number of uncontested races suggests that districts are drawn not to be competitive, but rather to maintain party control in each house.

Looking back to 2002, the number of uncontested seats for each party in the senate and assembly continues to show an imbalance owing both to incumbency and redistricting, with redistricting outcomes providing a distinct advantage to incumbents. Overall, there have been more Republicans uncontested in the state senate, and more Democrats uncontested in the state assembly.

Further, the effects of redistricting can be seen to wane over the ten year period between redistricting cycles particularly in the state senate, and increase again once lines are newly drawn. For example, the ***number of uncontested races in the state senate where the only major party candidate was a Republican dropped from 19 in 2002 to a low of 3 in 2010, and then increased again to 9 in 2012.***

The same is not true in the state assembly, which has had a consistently high number of seats held by Democrats that were not contested by Republicans. This shows both the resiliency of the Democratic advantage in line-drawing coupled with the strength of Democratic party registration, allowing the party to maintain an enduringly strong majority in the assembly. ***Democrats have been uncontested in an average of 35 seats in the assembly over the last decade, to the Republicans' 13 races.*** Figures 6 and 7 on the following page show the number of uncontested seats over the last decade in each house for the two major parties.

Figure 6

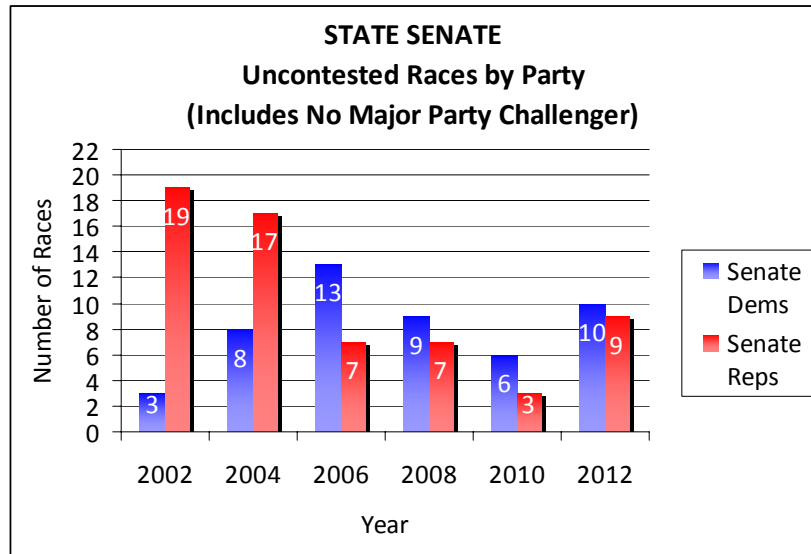
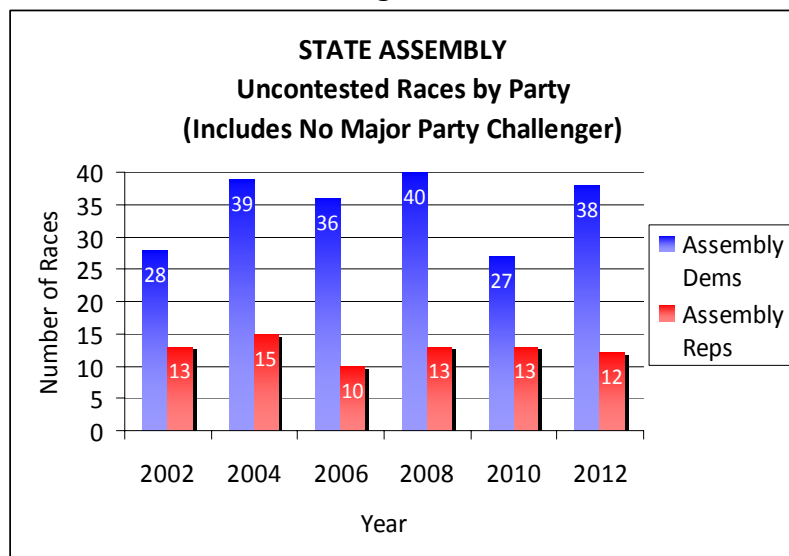


Figure 7



III. REFORM NEEDED: 2nd PASSAGE OF REDISTRICTING REFORM CONSTITUTIONAL AMENDMENT

Citizens Union believes that the results of the 2012 election show the continued need for reform of the state's redistricting process. This should be achieved through second passage of the redistricting reform constitutional amendment first passed last year by both houses of the legislature, and which has already overwhelmingly achieved second passage in 2013 by the state assembly by a vote of 133-15 with two absences. We applaud the assembly for taking this action to ensure that the redistricting process is permanently reformed. We call on the members of the state senate to pass the amendment before the end of January.

A summary of the reform elements of the constitutional amendment, reintroduced as A.2086/S.2107 of 2013², is below.

- **Creation of a non-legislative commission:** The six-member, majority party-controlled LATFOR on which self-interested legislators sit would be replaced by a ten-member commission on which no legislators will sit. The prohibitions on appointment will be similar to the recently formed Joint Commission on Public Ethics. For the first time, majorities and minorities from each house will be equally represented and there will be an additional two members who belong to neither major party.
- **Better criteria for drawing lines that includes:**
 - an anti-gerrymandering provision prohibiting the favoring or disfavoring of incumbents, challengers or political parties;
 - recognizing communities of interest;
 - requiring that any deviation from the mean population in districts will need to be explained; and
 - minority voting rights protections mirroring the current federal law that will be enshrined in our constitution, providing needed protection should there be a pullback at the federal level.
- **Consensus decision-making:** Commission approval of the plan will require a super majority vote of seven of the ten members, ensuring minority party participation in securing the needed votes.
- **Protections against one-party dominance in redistricting:** In order to protect against one-party dominance in the drawing of lines, if one party controls both houses of the state legislature, approval of a plan requires a 2/3 affirmative vote in each house. This forces compromise and consensus when one party holds power.
- **Increased transparency:** Required hearings across the state would ensure public input into line-drawing. It also requires the provision of maps and data to the public in a form that allows for independent analysis and the development of alternative redistricting plans.
- **Limits on amendments by the legislature:** The state legislature must vote twice up or down on the approved commission plan before it can make any amendments. Amendments must adhere to the criteria in the constitutional amendment, including the anti-gerrymandering provision, and the statute will further rein in the state legislature by preventing changes of more than two percent to the population of any district.

IV. LEGISLATOR COMMITMENTS TO REFORM

Through its candidate evaluation process, Citizens Union sends a candidate questionnaire to candidates running for state legislature within New York City, asking them to indicate their support for a number of reform proposals. The first question of Citizens Union's candidate questionnaire for the 2012 election cycle was regarding candidates' support for second passage of the redistricting constitutional amendment which achieved first passage in 2012

² Available at: <http://open.nysenate.gov/legislation/bill/S2107-2013>

(A.9526/S.6698 of 2012, reintroduced as A.2086/S.2107 of 2013). Constitutional amendments must be affirmatively voted upon by two consecutive, separately-elected legislatures. Second passage thus must be achieved in 2013. Further, an accompanying statute was passed (A.9557/S.6736 of 2012) which requires the legislature to act by January 31, 2013, or the statute will go into effect. A permanent change to the State Constitution is preferable, however, as it is not easily undone.

Citizens Union calls upon all members of the state legislature to pass the constitutional amendment prior to the end of January, in particular those legislators who have committed their support through our candidate questionnaires.

We are troubled that Senator Martin Dilan, who voiced his support for the legislation in his 2012 questionnaire, voted against the measure in the Senate Rules Committee on January 14th, and are concerned by Senator Adriano Espaillat's vote to advance the legislation without recommendation since he was unequivocal last summer about his support for the amendment. We in particular call on Senators Dilan and Espaillat not to backtrack on their commitment to reform but vote in favor of the constitutional amendment when it reaches the senate floor.

Below are lists of legislators in each house who completed Citizens Union's 2012 candidate questionnaire³, and the votes that they have taken to date on A.2086/S.2107.

Senate District Number	Legislator Name	Citizens Union 2012 Questionnaire Response: What is your position on second passage of the redistricting constitutional amendment?	Senate Rules Committee 1/14/2013 Vote on A.2086/S.2107 of 2013 (Note: those who are not members of the Rules Committee are labeled N/A)
SD 10	James Sanders, Jr.	Support	N/A
SD 11	Tony Avella	Support	N/A
SD 14	Malcolm Smith	No Response Provided	N/A
SD 15	Joseph Addabbo, Jr.	Support	N/A
SD 16	Toby Ann Stavisky	Oppose (Note that in her interview with Citizens Union, Senator Stavisky stated she would vote in favor of the legislation.)	N/A
SD 18	Martin Dilan	Support	Nay
SD 20	Eric Adams	Support	N/A
SD 22	Martin Golden	Support	N/A
SD 23	Diane Savino	Support	N/A
SD 27	Brad Hoylman	Support	N/A
SD 28	Liz Krueger	Oppose	Nay
SD 29	Jose Serrano	Support	N/A
SD 31	Adriano Espaillat	Support	Aye Without Recommendation
SD 33	J. Gustavo Rivera	Support	N/A
SD34	Jeffrey Klein	Support	N/A
SD 53	David Valesky*	Support	Aye

*Please note that though Senator Valesky is not a representative from New York City, he voluntarily returned the candidate questionnaire.

³ Full responses are available at: http://www.citizensunion.org/site_res_view_template.aspx?id=53b2e36b-c89e-4d02-ad95-152d871d2811

Assembly District Number	Legislator Name	Citizens Union 2012 Questionnaire Response: What is your position on second passage of the redistricting constitutional amendment?	Assembly 1/14/2013 Floor Vote Committee Vote on A.2086/ S.2107
AD 24	David Weprin	Support	Y
AD 25	Nily Rozic	Support	Y
AD 28	Andy Hevesi	Support	Y
AD 33	Barbara Clark	Support	Y
AD 40	Ron Kim	Support	Y
AD 42	Rhoda Jacobs	Support	Y
AD 52	Joan Millman	Support	Y
AD 54	Rafael Espinal	Support	Y
AD 55	William Boyland	Support	Y
AD 57	Walter Mosley	Support	Y
AD 60	Inez Barron	Oppose	Y
AD 62	Joe Borelli	Support	Y
AD 64	Nicole Malliotakis	Support	Y
AD 72	Gabriela Rosa	Support	Y
AD 74	Brian Kavanagh	Support	Y
AD 76	Micah Kellner	Oppose	NO
AD 79	Eric Stevenson	Support	Y
AD 80	Mark Gjonaj	Support	Y
AD 81	Jeffrey Dinowitz	Support	Y
AD 86	Nelson Castro	Support	Y
AD 87	Luis Sepulveda	Support	Y