SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

HOWARD LEIB, SUSAN LERNER, ERIC WALKER and ELEANOR MORETTA, Petitioners, -against- JAMES A. WALSH, DOUGLAS A. KELLNER, ANDREW J. SPANO and GREGORY P. PETERSON, in their official capacities as COMMISSIONERS OF THE NEW YORK STATE BOARD OF ELECTIONS, and THE NEW YORK STATE BOARD OF ELECTIONS, Respondents.	Index No. _____ **VERIFIED PETITION**

Petitioners Howard Leib, Susan Lerner, Eric Walker and Eleanor Moretta (collectively, "Petitioners"), as taxpayers and registered voters, through their undersigned counsel, for their Verified Petition against Respondents James A. Walsh, Douglas A. Kellner, Andrew J. Spano and Gregory P. Peterson, in their official capacities as Commissioners of the New York State Board of Elections (the "Commissioners") and the New York State Board of Elections (the "Board," and with the Commissioners, "Respondents"), pursuant to Article 78 of the Civil Practice Law and Rules, Section 4-108 of the New York Election Law and Article VII, Section 8(1) of the New York State Constitution, allege as follows:

NATURE OF THIS PROCEEDING

1. This is a special proceeding brought pursuant to Article 78 of the New York Civil Practice Law and Rules to enjoin Respondents from violating New York Election Law and the New York State Constitution. Specifically, the Board adopted and intends to include on the November 4, 2014 ballot an Abstract (the "Abstract") and Prop 1 Language (defined below) for "Proposal

Number One," a proposed amendment to Sections 4 and 5 of, and addition of a new Section 5-b Section to, the New York State Constitution (the "Redistricting Amendment"), that (a) is materially misleading and not a clear and coherent summary of the Redistricting Amendment, (b) constitutes improper dissemination of a supporting position of the Redistricting Amendment at the public's expense, and (c) exceeds the scope of the Board's authority. For each of these reasons, Respondents should be enjoined from including the Abstract and Prop 1 Language as adopted on the November 4, 2014 ballot and from advocating in favor of the Redistricting Amendment at the public's expense.

PARTIES

2. Petitioner Howard Leib is a citizen of the State of New York and resident of Tomkins County. Mr. Leib is over 21 years of age, eligible and registered to vote in all federal, state and local elections in the State of New York, and pays income tax and sales tax to the State of New York.

3. Petitioner Susan Lerner is a citizen of the State of New York and resident of Kings County. Ms. Lerner is over 21 years of age, eligible and registered to vote in all federal, state and local elections in the State of New York, and pays income tax and sales tax to the State of New York.

4. Petitioner Eric Walker is a citizen of the State of New York and resident of Erie County. Mr. Walker is over 21 years of age, eligible and registered to vote in all federal, state and local elections in the State of New York, and pays income tax and sales tax to the State of New York.

5. Petitioner Eleanor Moretta is a citizen of the State of New York and resident of Kings County. Ms. Moretta is over 21 years of age, eligible and registered to vote in all federal, state and local elections in the State of New York, and pays income tax and sales tax to the State of New York

6. Petitioners have standing to bring this action, pursuant to Section 16-104(2) of the Election Law, as voters and taxpayers of the State of New York who are opposed to politically controlled gerrymandering and partisan redistricting. Petitioners intend to vote against the Redistricting Amendment because, far from promoting fair and impartial redistricting for New York State, it would establish a redistricting commission beholden to the leaders of the Legislature whose procedure and authority changes based on political control of the houses of the Legislature.

7. Respondent James A. Walsh is a Co-Chairman of the Board of Elections and is sued in his official capacity as a Commissioner of the Board. Mr. Walsh maintains an office at the Board, 40 North Pearl Street, Suite 5, Albany, New York 12207-2729, and participated in the meetings of the Board that give rise to this proceeding in Albany County.

8. Respondent Douglas A. Kellner is a Co-Chairman of the Board of Elections and is sued in his official capacity as a Commissioner of the Board. Mr. Kellner maintains an office at the Board, 40 North Pearl Street, Suite 5, Albany, New York 12207-2729, and participated in the meetings of the Board that give rise to this proceeding in Albany County.

9. Respondent Andrew J. Spano is a Commissioner of the Board of Elections and is sued in his official capacity as a Commissioner of the Board. Mr. Spano maintains an office at the Board, 40 North Pearl Street, Suite 5, Albany, New York 12207-2729, and participated in the meetings of the Board that give rise to this proceeding in Albany County.

10. Respondent Gregory P. Peterson is a Commissioner of the Board of Elections and is sued in his official capacity as a Commissioner of the Board. Mr. Peterson maintains an office at the Board, 40 North Pearl Street, Suite 5, Albany, New York 12207-2729, and participated in the meetings of the Board that give rise to this proceeding in Albany County.

11. Respondent New York State Board of Elections is an agency of the State of New York vested with the responsibility for administration and enforcement of all laws relating to elections as well as all questions provided by law to be submitted to a statewide vote. The Board conducts its business, including public meetings, in the City and County of Albany.

JURISDICTION AND VENUE

12. This is an Article 78 proceeding, pursuant to Section 7803 of the Civil Practice Law and Rules, to challenge the actions of the Commissioners and the Board in adopting and disseminating the Abstract and Prop 1 Language.

13. This Court has jurisdiction over this proceeding pursuant to Section 16-100(1) of the Election Law.

14. Venue is proper in this district pursuant to Section 506(b) of the Civil Practice Law and Rules because the Board maintains its principal

office in Albany County, and the meetings and actions that give rise to this proceeding occurred in Albany County.

FACTUAL ALLEGATIONS

15. Pursuant to Article XIX, Section 1 of the New York State Constitution, the State Constitution may be amended by joint resolution approved by both houses of the Legislature in two consecutive sessions and then submitted to and approved by voters at the next general election.

16. In March 2012, the Legislature adopted the Redistricting Amendment, which would change the manner in which district apportionment would be carried out starting in 2020. The Redistricting Amendment was part of a broader deal in which the Legislature adopted a set of district maps widely recognized as politically gerrymandered, adopted changes to state pensions, and amended the state constitution to allow the operation of seven (7) gambling casinos. That deal was colloquially known as the "Big Ugly," and was widely criticized, particularly with respect to the Redistricting Amendment. A copy of the Redistricting Amendment is annexed hereto as Exhibit A. Copies of newspaper articles criticizing the deal, particularly the Redistricting Amendment, are annexed hereto as Exhibit B.

17. The Redistricting Amendment was thereafter approved by both houses of the Legislature at the start of the 2013 session, clearing the way for its submission to the voters.

18. Following second passage, the Redistricting Amendment was assigned to be submitted to voters at the November 4, 2014 General Election.

19. The Redistricting Amendment sets up a ten-person commission to establish district lines following each decennial census. Each of the four legislative leaders (the Speaker of the Assembly, Majority Leader of the Senate, Minority Leader of the Assembly, and Minority Leader of the Senate) would appoint two members to the commission, and the eight legislatively appointed members would jointly choose the final two members.

20. To ensure that the redistricting commission would remain beholden to the legislative leaders and not exercise real independence, the Redistricting Amendment provides that the required vote for approval of any proposed redistricting maps changes depending upon political control of the two houses of the Legislature. No other state body or commission has these unique, shifting voting rules.

21. To further assure that the commission cannot adopt a redistricting plan over the wishes of the legislative leaders, the Redistricting Amendment provides that a simple majority vote is required to approve maps submitted by the commission as long as each house of the Legislature is controlled by a different political party, but a two-thirds super-majority vote is required if the two houses of the Legislature are controlled by the same political party. That unprecedented requirement was blatantly designed to perpetuate legislative and political control of the redistricting process. Specifically, subsection (f) of section 5-b of the Redistricting Amendment provides:

> In order to approve any redistricting plan and implementing legislation, the following rules shall apply:
>
> (1) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party,

> approval of a redistricting plan and implementing legislation by the commission for submission to the legislature shall require the vote in support of its approval by at least seven members including at least one member appointed by each of the legislative leaders.
>
> (2) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of a redistricting plan by the commission for submission to the legislature shall require the vote in support of its approval by at least seven members including at least one member appointed by the speaker of the assembly and one member appointed by the temporary president of the senate.

22. The Redistricting Amendment also ensures legislative control over the commission's staff. The Redistricting Amendment requires that there be two co-executive directors, each from a different political party. Here too, different voting requirements apply to appointment of the co-executive directors depending upon political control of the two houses of the Legislature. Subsection (h) (1) of section 5-b of the amendment provides:

> (1) The independent redistricting commission shall appoint two co-executive directors by a majority vote of the commission in accordance with the following procedure:
>
> (i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by the speaker of the assembly and at least one appointee by the temporary president of the senate.
>
> (ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by each of the legislative leaders.

23. And in the event that the commission is unable to agree on the appointment of either or both co-executive directors, then the legislative leaders themselves choose the commission's staff:

(3) In the event that the commission is unable to appoint one or both of the co-executive directors within forty-five days of the establishment of a quorum of seven commissioners, the following procedure shall be followed:

(i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, within ten days the speaker's appointees on the commission shall appoint one co-executive director, and the temporary president's appointees on the commission shall appoint the other co-executive director. Also within ten days the minority leader of the assembly shall select a co-deputy executive director, and the minority leader of the senate shall select the other co-deputy executive director.

(ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, within ten days the speaker's and temporary president's appointees on the commission shall together appoint one co-executive director, and the two minority leaders' appointees on the commission shall together appoint the other co-executive director.

24. Moreover, in the event that the Legislature rejects district maps proposed by the commission, the Legislature is then free to draw and adopt its own district maps. Subsection (b) of Section 4 of the amendment provides:

> If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house shall introduce such implementing legislation with any amendments each house of the legislature deems necessary. All such amendments shall comply with the provisions of this article. If approved by both houses, such legislation shall be presented to the governor for action.

25. Pursuant to Section 4-108 of the Election Law, the New York State Board of Elections determines the language on the ballot by which any constitutional amendment or other question is submitted to the voters.

26. Pursuant to Section 4-108(3) of the Election Law, the Office of the New York Attorney General ("NYAG") is charged with advising the Board on proposed amendments to the Constitution and abstracts and submission for statewide votes.

27. Prior to August 1, 2014, the NYAG forwarded to the Board the proposed abstracts and submission for three propositions to be submitted to the voters, including the Redistricting Amendment.

28. On July 25, 2014, 11 groups, including Common Cause/NY, NYPIRG, Effective New York, the National Resources Defense Council, Riverkeeper, Reinvent Albany (inadvertently omitted from the letter), the Center for Law and Social Justice, Asian American Legal Defense and Education Fund, Make the Road NY, Catskill Citizens for a Clean Environment, and MinKwon Community Center for Action, sent a letter to the NYAG and to all of the Respondents herein urging that the language by which the Redistricting Amendment would be presented to the voters be strictly neutral and unbiased. A copy of that letter is attached hereto as Exhibit C.

29. In the July 25 letter, the groups urged the NYAG and the Board to avoid placing language on the ballot that appears to advocate for either passage or rejection of the Redistricting Amendment. The groups recommended the following neutral, clear and concise description of the proposed amendment to appear on the ballot:

> The proposed amendment to Article 3 of the Constitution would allow New York State's legislative leaders to appoint a bipartisan commission to establish new state legislative and congressional

district lines every ten years pursuant to stated criteria with final approval by the Legislature. Shall the amendment be approved?

30. On July 30, 2014, Respondent Kellner emailed Petitioner Lerner in her capacity as Executive Director of Common Cause/NY, along with the representative of another organization, providing copies of the language proposed by the NYAG for inclusion of the ballot for the Redistricting Amendment and the two other propositions to appear on the November ballot. Kellner later that day emailed Lerner suggested language changes proposed by the other organization. Lerner rejected the changes proposed by the other organization and proposed two changes to the language in an answering email to Kellner the next day.

31. On August 1, 2014, in its regularly scheduled public meeting, the Board took up the forms of submission of all three propositions that will be submitted to the voters in November. Contrary to the Open Meetings Law, Public Officers Law §7-103(e), the Board does not make public, through its website or otherwise, the forms of submissions it will consider in advance of the meeting and does not provide copies as part of the agenda published in advance of its meetings or make the language to be considered available to the public at its meetings.

32. At the August 1 meeting, Commissioner Spano stated that the Board had received proposed ballot language from the NYAG and that one of the Commissioners had reached out to various groups to receive comments and any suggested changes. He then proposed specific changes that he identified as recommended by two groups supporting passage of the

Redistricting Amendment to the form of submission recommended by the NYAG.

33. Most pertinently, the proponents of the Redistricting Amendment objected to the NYAG's recommended inclusion of the description of the Legislature "as the default body if the commission's plan is not legislatively enacted." Instead, the proponents sought to replace that description with one that eliminates the word "default" and includes additional information more likely to persuade voters to vote in favor of the Redistricting Amendment.

34. Acceding to the desires of the proponents of the Redistricting Amendment, Commissioner Spano proposed the following form of submission (additions to the NYAG's version in italics, and deletions in boldface):

> The proposed amendment to sections 4 and 5 and addition of new section 5-b to Article 3 of the State Constitution revises the redistricting procedure for state legislative and congressional districts. The proposed amendment establishes an independent redistricting commission every 10 years beginning in 2020, with *two* members appointed by *each of* the four legislative leaders and two members selected by the eight legislative appointees; *prohibits legislators and other elected officials from serving as commissioners*; establishes principles to be used in creating districts; requires the commission to hold public hearings on proposed redistricting plans; subjects the commission's redistricting plan to legislative enactment; *provides that the legislature may only amend the redistricting plan according to the established principles if the commission's plan is rejected twice by the legislature;* **establishes the Legislature as the default redistricting body if the commission's plan is not legislatively enacted;** provides for expedited court review of a challenged redistricting plan; and provides for funding and bipartisan staff to work for the commission. Shall the proposed amendment be approved?

35. Petitioner Lerner was present at the meeting and objected to the description of the redistricting commission as "independent" because it would

be appointed by, and answerable to, the Legislature; objected to the deletion of the phrase describing the Legislature as the "default body"; and recommended that language be included to inform voters that the procedure necessary to approve maps would change depending upon political control of the two houses of the Legislature. The changes suggested by Petitioner Lerner were necessary for an accurate description of the proposed amendment.

36. Petition Lerner's objections were not discussed by the Board. Rather, Commissioner Spano moved that the language as he had proposed be approved. Upon second of that motion by Commissioner Kellner, the motion passed unanimously. The submission of the Redistricting Amendment was designated Proposition 1 for the November 4, 2014 ballot.

37. In an August 5, 2014 editorial, the Syracuse Post-Standard objected to the form of submission adopted by the Board. The Post-Standard Editorial Board explained that the language adopted by the Board "includes the word 'independent'' to describe the 10-member commission that will be formed to redraw the district lines. The commission will be nothing of the sort." A copy of the August 5, 2014 Post-Standard editorial is annexed as Exhibit D hereto.

38. Also at the August 1 meeting, the Board adopted an Abstract of the Redistricting Amendment (the "Abstract") that must be made available to voters pursuant to the Election Law. The Abstract was adopted without change or amendment from language recommended by the NYAG. The

Abstract also refers to the commission that would be set up as "independent," among other defects. A copy of the Abstract, as appears on the Board of Elections website, is annexed hereto as Exhibit E.

FIRST CLAIM FOR RELIEF

39. Petitioners repeat and reallege paragraphs 1 through 40 above as if fully set forth herein.

40. Section 4-108 of the Election Law governs the procedure for the submission of any constitutional amendment or other question to the voters. Subsection 2 of that section provides:

> The form in which the proposed amendment, proposition or question is to be submitted shall consist of only an abbreviated title indicating generally and briefly, and in a clear and coherent manner using words of common and every-day meanings, the subject matter of the amendment.

41. The form of submission for Proposition 1 on the November 4, 2014 ballot ("Prop 1 Language'), as adopted by the Board, does not satisfy this statutory standard.

42. Specifically, among other defects, the commission that would be established by the proposed amendment would not be independent. To the contrary, both the direct appointment of the commission by the leaders of the Legislature and the extraordinary and singular special voting rules insure that the commission will be subject to the Legislative leaders' influence and control.

43. Further, failing to include in the Prop 1 Language a description of the special voting rules by which the Legislature exercises control over the

commission is a deliberate omission designed to withhold relevant information from voters, in violation of Section 4-108(2) of the Election Law.

44. Finally, replacement of the phrase "establishes the Legislature as the default redistricting body if the commission's plan is not legislatively enacted" with more complicated advocacy language is designed to confuse and mislead the voters as to the content of the provision and the circumstances in which the Legislature can overrule the commission, in contradiction to the Election Law's charge that the language on the ballot be clear and concise.

45. As a result, the Court should enjoin the Board from disseminating the Abstract and the Prop 1 Language or including them on the November 4, 2014 ballot.

SECOND CLAIM FOR RELIEF

46. Petitioners repeat and reallege paragraphs 1 through 45 above as if fully set forth herein.

47. Article VII, Section 8(1) of the New York State Constitution states, in pertinent part, as follows:

> 1. The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking ....

48. The dissemination of the Prop 1 Language to the boards of election of each of the counties in the State of New York, and the direction that the county boards of elections include them on the November 4, 2014 ballot, required and requires the Board to incur costs at the public expense.

49. The Prop 1 Language and the Abstract, as adopted, constitutes statements to induce a positive vote on the Redistricting Amendment.

50. Since the Prop 1 Language seeks an affirmative vote on the Redistricting Amendment, the inclusion and dissemination of the Abstract and the Prop 1 Language violates Art. VII, §8 (1) of the New York State Constitution.

51. As a result, the Court should enjoin the Board from including the Prop 1 Language and the Abstract on the November 4, 2014 ballot and further enjoin the Board from disseminating any further information, at the public's expense, to induce a positive vote on the Redistricting Amendment.

WHEREFORE, Petitioners respectfully request that this Court enter an Order, pursuant to Article 78 of the Civil Practice Law and Rules:

(a) Declaring and determining that the Abstract and the Prop 1 Language are misleading and do not accurately describe the Redistricting Amendment, in violation of Election Law Section 4-108;

(b) Declaring and determining that the Abstract and the Prop 1 Language constitute statements to induce a positive vote on the Redistricting Amendment, in violation of Article VII, Section 8(1) of the New York State Constitution;

(c) Enjoining the Board from disseminating the Abstract and the Prop 1 Language or including them on the November, 2014 ballot;

(d) Awarding Petitioners their costs and disbursements, including reasonable attorneys' fees;

(e) Awarding such other and further relief as this Court deems just and proper.

Dated: New York, New York
August 18, 2014

DECHERT LLP

By: _____

Neil A. Steiner
1095 Avenue of the Americas
New York, New York 10036
neil.steiner@dechert.com
(212) 698-3500
(212) 698-3599 (telecopy)
Attorneys for Petitioners Howard Leib, Susan Lerner, Eric Walker and Eleanor Moretta

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I am one of the Petitioners in this special proceeding. I have read the foregoing Verified Petition and know its contents. The Verified Petition is true to my knowledge, except as to matters alleged on information and belief, and as to those matters, I believe them to be true.

Susan Lerner

Susan Lerner

Sworn to before me this
18th day of August, 2014.

Notary Public

Luis A. Lopez
Notary Public, State of New York
No. 01LO6038747
Qualified in Rockland County
Commission Expires March 20, 2018

Exhibit A

STATE OF NEW YORK

9526

IN ASSEMBLY

March 11, 2012

Introduced by M. of A. SILVER, WEINSTEIN, ENGLEBRIGHT, McENENY, CUSICK -- read once and referred to the Committee on Governmental Operations

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 3 of the constitution, in relation to the establishment of the independent redistricting commission

Section 1. Resolved (if the Senate concur), That sections 4 and 5 of article 3 of the constitution be amended, and a new section 5-b be added to read as follows:

§ 4. *(a)* Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor. The legislature, by law, shall provide for the making and tabulation by state authorities of an enumeration of the inhabitants of the entire state to be used for such purposes, instead of a federal census, if the taking of a federal census in any tenth year from the year nineteen hundred thirty be omitted or if the federal census fails to show the number of aliens or Indians not taxed. If a federal census, though giving the requisite information as to the state at large, fails to give the information as to any civil or territorial divisions which is required to be known for such purposes, the legislature, by law, shall provide for such an enumeration of the inhabitants of such parts of the state only as may be necessary, which shall supersede in part the federal census and be used in connection therewith for such purposes. The legislature, by law, may provide in its discretion for an enumeration by state authorities of the inhabitants of the state, to be used for such purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom, or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session. At the regular

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the senate districts shall be readjusted or altered, but if, in any decade, counting from and including that which begins with the year nineteen hundred thirty-one, such a readjustment or alteration is not made at the time above prescribed, it shall be made at a subsequent session occurring not later than the sixth year of such decade, meaning not later than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen hundred fifty-six, and so on; provided, however, that if such districts shall have been readjusted or altered by law in either of the years nineteen hundred thirty or nineteen hundred thirty-one, they shall remain unaltered until the first regular session after the year nineteen hundred forty. [Such districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade as above defined, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county.] No town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts[; nor shall any]. In the reapportionment of senate districts, no district shall contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

(b) The independent redistricting commission established pursuant to section five-b of this article shall prepare a redistricting plan to establish senate, assembly, and congressional districts every ten years commencing in two thousand twenty-one, and shall submit to the legislature such plan and the implementing legislation therefor on or before January first or as soon as practicable thereafter but no later than January fifteenth in the year ending in two beginning in two thousand twenty-two. The redistricting plans for the assembly and the senate shall be contained in and voted upon by the legislature in a single bill, and the congressional district plan may be included in the same bill if the legislature chooses to do so. The implementing legislation shall be voted upon, without amendment, by the senate or the assembly and if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action.

If either house shall fail to approve the legislation implementing the first redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house or the governor if he or she vetoes it, shall notify the commission that such legislation has been disapproved. Within fifteen days of such notification and in no case later than February twenty-eighth, the redistricting

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commission shall prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan. Such legislation shall be voted upon, without amendment, by the senate or the assembly and, if approved by the first house voting upon it, such legislation shall be delivered to the other house immediately to be voted upon without amendment. If approved by both houses, such legislation shall be presented to the governor for action.

If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, each house shall introduce such implementing legislation with any amendments each house of the legislature deems necessary. All such amendments shall comply with the provisions of this article. If approved by both houses, such legislation shall be presented to the governor for action.

All votes by the senate or assembly on any redistricting plan legislation pursuant to this article shall be conducted in accordance with the following rules:

(1) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of legislation submitted by the independent redistricting commission pursuant to subdivision (f) of section five-b of this article shall require the vote in support of its passage by at least a majority of the members elected to each house.

(2) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of legislation submitted by the independent redistricting commission pursuant to subdivision (g) of section five-b of this article shall require the vote in support of its passage by at least sixty percent of the members elected to each house.

(3) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, approval of legislation submitted by the independent redistricting commission pursuant to subdivision (f) or (g) of section five-b of this article shall require the vote in support of its passage by at least two-thirds of the members elected to each house.

(c) Subject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements, the following principles shall be used in the creation of state senate and state assembly districts and congressional districts:

(1) When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.

(2) To the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants. For each district that deviates from this requirement, the commission shall provide a specific public explanation as to why such deviation exists.

(3) Each district shall consist of contiguous territory.

(4) Each district shall be as compact in form as practicable.

(5) Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties. The commission shall consider the mainte-

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nance of cores of existing districts, of pre-existing political subdivisions, including counties, cities, and towns, and of communities of interest.

(6) In drawing senate districts, towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants. The requirements that senate districts not divide counties or towns, as well as the 'block-on-border' and 'town-on-border' rules, shall remain in effect.

During the preparation of the redistricting plan, the independent redistricting commission shall conduct not less than one public hearing on proposals for the redistricting of congressional and state legislative districts in each of the following (i) cities: Albany, Buffalo, Syracuse, Rochester, and White Plains; and (ii) counties: Bronx, Kings, New York, Queens, Richmond, Nassau, and Suffolk. Notice of all such hearings shall be widely published using the best available means and media a reasonable time before every hearing. At least thirty days prior to the first public hearing and in any event no later than September fifteenth of the year ending in one or as soon as practicable thereafter, the independent redistricting commission shall make widely available to the public, in print form and using the best available technology, its draft redistricting plans, relevant data, and related information. Such plans, data, and information shall be in a form that allows and facilitates their use by the public to review, analyze, and comment upon such plans and to develop alternative redistricting plans for presentation to the commission at the public hearings. The independent redistricting commission shall report the findings of all such hearings to the legislature upon submission of a redistricting plan.

(d) The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

The senate districts, including the present ones, as existing immediately before the enactment of a law readjusting or altering the senate districts, shall continue to be the senate districts of the state until the expirations of the terms of the senators then in office, except for the purpose of an election of senators for full terms beginning at such expirations, and for the formation of assembly districts.

(e) The process for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article shall govern redistricting in this state except to the extent that a court is required to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law.

A reapportionment plan and the districts contained in such plan shall be in force until the effective date of a plan based upon the subsequent federal decennial census taken in a year ending in zero unless modified pursuant to court order.

§ 5. The members of the assembly shall be chosen by single districts and shall be apportioned [by the legislature] pursuant to this section and sections four and five-b of this article at each regular session at which the senate districts are readjusted or altered, and by the same law, among the several counties of the state, as nearly as may be

according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

The assembly districts, including the present ones, as existing immediately before the enactment of a law making an apportionment of members of assembly among the counties, shall continue to be the assembly districts of the state until the expiration of the terms of members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the census or enumeration used as the population basis for the formation of such districts; and such apportionment and districts shall remain unaltered until after the next reapportionment of members of assembly, except that the board of supervisors of any county containing a town having more than a ratio of apportionment and one-half over may alter the assembly districts in a senate district containing such town at any time on or before March first, nineteen hundred forty-six. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. [No town, except a town having more than a ratio of apportionment and one-half over, and no

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block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any districts contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.] Nothing in this section shall prevent the division, at any time, of counties and towns and the erection of new towns by the legislature.

An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same. The court shall render its decision within sixty days after a petition is filed. In any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part. In the event that a court finds such a violation, the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities.

§ 5-b. (a) On or before February first of each year ending with a zero and at any other time a court orders that congressional or state legislative districts be amended, an independent redistricting commission shall be established to determine the district lines for congressional and state legislative offices. The independent redistricting commission shall be composed of ten members, appointed as follows:

(1) two members shall be appointed by the temporary president of the senate;

(2) two members shall be appointed by the speaker of the assembly;

(3) two members shall be appointed by the minority leader of the senate;

(4) two members shall be appointed by the minority leader of the assembly;

(5) two members shall be appointed by the eight members appointed pursuant to paragraphs (1) through (4) of this subdivision by a vote of not less than five members in favor of such appointment, and these two members shall not have been enrolled in the preceding five years in either of the two political parties that contain the largest or second largest number of enrolled voters within the state;

(6) one member shall be designated chair of the commission by a majority of the members appointed pursuant to paragraphs (1) through (5) of this subdivision to convene and preside over each meeting of the commission.

(b) The members of the independent redistricting commission shall be registered voters in this state. No member shall within the last three years:

(1) be or have been a member of the New York state legislature or United States Congress or a statewide elected official;

(2) be or have been a state officer or employee or legislative employee as defined in section seventy-three of the public officers law;

(3) be or have been a registered lobbyist in New York state;

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(4) be or have been a political party chairman, as defined in paragraph (k) of subdivision one of section seventy-three of the public officers law;

(5) be the spouse of a statewide elected official or of any member of the United States Congress, or of the state legislature.

(c) To the extent practicable, the members of the independent redistricting commission shall reflect the diversity of the residents of this state with regard to race, ethnicity, gender, language, and geographic residence and to the extent practicable the appointing authorities shall consult with organizations devoted to protecting the voting rights of minority and other voters concerning potential appointees to the commission.

(d) Vacancies in the membership of the commission shall be filled within thirty days in the manner provided for in the original appointments.

(e) The legislature shall provide by law for the compensation of the members of the independent redistricting commission, including compensation for actual and necessary expenses incurred in the performance of their duties.

(f) A minimum of five members of the independent redistricting commission shall constitute a quorum for the transaction of any business or the exercise of any power of such commission prior to the appointment of the two commission members appointed pursuant to paragraph (5) of subdivision (a) of this section, and a minimum of seven members shall constitute a quorum after such members have been appointed, and no exercise of any power of the independent redistricting commission shall occur without the affirmative vote of at least a majority of the members, provided that, in order to approve any redistricting plan and implementing legislation, the following rules shall apply:

(1) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, approval of a redistricting plan and implementing legislation by the commission for submission to the legislature shall require the vote in support of its approval by at least seven members including at least one member appointed by each of the legislative leaders.

(2) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, approval of a redistricting plan by the commission for submission to the legislature shall require the vote in support of its approval by at least seven members including at least one member appointed by the speaker of the assembly and one member appointed by the temporary president of the senate.

(g) In the event that the commission is unable to obtain seven votes to approve a redistricting plan on or before January first in the year ending in two or as soon as practicable thereafter, the commission shall submit to the legislature that redistricting plan and implementing legislation that garnered the highest number of votes in support of its approval by the commission with a record of the votes taken. In the event that more than one plan received the same number of votes for approval, and such number was higher than that for any other plan, then the commission shall submit all plans that obtained such number of votes. The legislature shall consider and vote upon such implementing legislation in accordance with the voting rules set forth in subdivision (b) of section four of this article.

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(h) (1) The independent redistricting commission shall appoint two co-executive directors by a majority vote of the commission in accordance with the following procedure:

(i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by the speaker of the assembly and at least one appointee by the temporary president of the senate.

(ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, the co-executive directors shall be approved by a majority of the commission that includes at least one appointee by each of the legislative leaders.

(2) One of the co-executive directors shall be enrolled in the political party with the highest number of enrolled members in the state and one shall be enrolled in the political party with the second highest number of enrolled members in the state. The co-executive directors shall appoint such staff as are necessary to perform the commission's duties, except that the commission shall review a staffing plan prepared and provided by the co-executive directors which shall contain a list of the various positions and the duties, qualifications, and salaries associated with each position.

(3) In the event that the commission is unable to appoint one or both of the co-executive directors within forty-five days of the establishment of a quorum of seven commissioners, the following procedure shall be followed:

(i) In the event that the speaker of the assembly and the temporary president of the senate are members of two different political parties, within ten days the speaker's appointees on the commission shall appoint one co-executive director, and the temporary president's appointees on the commission shall appoint the other co-executive director. Also within ten days the minority leader of the assembly shall select a co-deputy executive director, and the minority leader of the senate shall select the other co-deputy executive director.

(ii) In the event that the speaker of the assembly and the temporary president of the senate are members of the same political party, within ten days the speaker's and temporary president's appointees on the commission shall together appoint one co-executive director, and the two minority leaders' appointees on the commission shall together appoint the other co-executive director.

(4) In the event of a vacancy in the offices of co-executive director or co-deputy executive director, the position shall be filled within ten days of its occurrence by the same appointing authority or authorities that appointed his or her predecessor.

(i) The state budget shall include necessary appropriations for the expenses of the independent redistricting commission, provide for compensation and reimbursement of expenses for the members and staff of the commission, assign to the commission any additional duties that the legislature may deem necessary to the performance of the duties stipulated in this article, and require other agencies and officials of the state of New York and its political subdivisions to provide such information and assistance as the commission may require to perform its duties.

§ 2. Resolved (if the Senate concur), That the foregoing amendments be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in

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conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.

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Exhibit B

TIMES UNION

Editorial: Up the ante, Mr. Cuomo

Editorial - Times Union, March 14, 2012

THE BLUFF:

After lying about redistricting reform, the Legislature tries again.

THE CALL:

Make them lay an honest plan on the floor, and vote.

What does a governor do when virtually an entire Legislature breaks a campaign promise, turns a deaf ear to all criticism, and then has the gall to make yet another promise that everyone can be pretty sure it will break?

Here's our advice: Don't fold, governor. Don't do it. Raise the stakes.

There are unsettling signs that Gov. Andrew Cuomo, who says he wants to change the Albany game, may be resigning himself to a deal on redistricting that pretty much gives the Legislature everything it wants.

He shouldn't. This is a fight worth fighting. New Yorkers deserve a system that lets the voters pick their representatives, not the other way around.

This latest exercise in redistricting has been marked by one cynical ploy after another by lawmakers. First, they promised, in writing, during the 2010 election, to support independent, nonpartisan redistricting. But then they didn't do it. Senate Republicans refused to honor their word, and the Assembly Democrats went along.

When a legislative committee produced maps that were so clearly partisan that Mr. Cuomo threatened to veto them, they went back to draw presumably better maps. But then they didn't do that, either. And Senate Republicans, desperate to hold their tenuous majority, now insist on making taxpayers pay for a new 63rd district upstate, created solely to help keep the Senate in GOP hands.

The trade-off, such as it is, would be a constitutional amendment to make the redistricting process marginally more independent and nonpartisan. But the amendment the Legislature has offered to pass would leave it pretty much in control of redistricting. Some reform!

Moreover, such a constitutional amendment requires votes by two consecutive legislatures and then the public. So this Legislature could vote for the amendment, and the next Legislature could kill it. And since most of the lawmakers who broke their 2010 oath will probably be relected this fall, thanks to the gerrymandered maps that they've drawn, why shouldn't we figure they'll go back on their word again? Why trust them now?

What to do?

First, Mr. Cuomo can't settle for these maps. He can veto them and let a court draw new lines. As we saw in the case of congressional districts last week, where a judge stepped in, the courts can do a pretty good, expedient job.

Second, the governor can't accept the Legislature's proposed constitutional amendment. We need a truly independent process.

Third, the governor should insist that a constitutional amendment be accompanied by a statute — which can become law this year — that does everything the amendment would do. That way, independent redistricting would be the law unless the Legislature can convince a governor to overturn it, or muster a veto-proof majority in both chambers, which isn't too likely.

And fourth, the law should provide that the first redistricting under the new independent process be done before the next legislative elections, in 2014, not after the 2020 census. That's what we were promised.

You want to change the game, Mr. Cuomo? Start, as you said you would, by demanding an independent, non-partisan system of drawing legislative and congressional districts in this state. The voters — and all those citizens who don't run for office because they know this game is rigged — can take it from there.

http://www.timesunion.com/opinion/article/Editorial-Up-the-ante-Mr-Cuomo-3404288.php

** Will print automatically! If it doesn't, click here. **

CRAIN'S NEW YORK BUSINESS

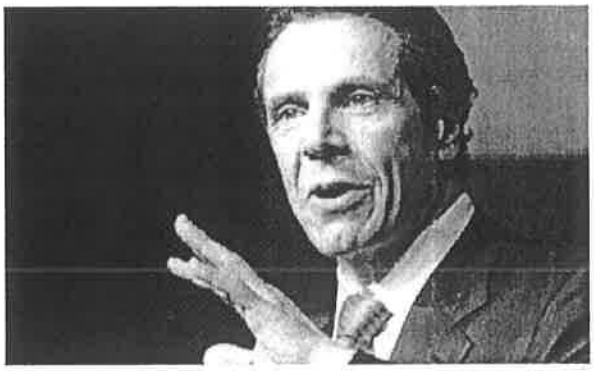
Article can be found at http://www.crainsnewyork.com/article/20120315/POLITICS/120319935/-albanys-big-ugly-deal-resolves-thorny-issues

Albany's 'big ugly' deal resolves thorny issues

Lawmakers agreed on bills for redistricting, pension reform, casino gambling, teacher evaluations and a database for criminals' DNA. All at once.

Jeremy Smerd

Published: March 15, 2012 - 2:55 pm



Newscom

Gov. Andrew Cuomo and the Legislature reached agreements on redistricting, pension reform, casino gambling, teacher evaluations and a database for criminals' DNA.

Albany insiders are calling it "the big ugly." With good reason.

It is expansive: Gov. Andrew Cuomo and the Legislature early Thursday morning concluded an agreement to resolve a spate of otherwise unconnected issues—redistricting, pension reform, casino gambling, teacher evaluations and a database for criminals' DNA.

And the process wasn't pretty: Crafted by Mr. Cuomo and legislative leaders behind closed doors, the bills were passed with only the briefest public showing during the dark of night or just as the sun rose at 7:07 a.m.

But there was enough compromise to allow politicians on both sides of the aisle to claim victory.

"Albany functioned yesterday after many years of dysfunction," a tired but content Mr. Cuomo said on the radio Thursday morning. "So I feel good."

Purists were disappointed.

"In typical Albany fashion, this was voted on in the middle of the night, and nothing was decided until everything was decided," said Dick Dadey, executive director of Citizens Union. And he was a supporter of the redistricting agreement, which is being harshly criticized by other good-government and reform groups.

The state budget, due annually on March 31, is normally the "fly paper" that holds these deals together. This year, however, the decennial requirement to redraw legislative districts played that role. With primary elections for the Legislature scheduled for September, the courts were prepared to step in absent an agreement this week in the Legislature. Those maps would have likely put Senate Republicans in the minority—an existential threat that without a satisfactory resolution gave them little reason to cooperate on other issues.

Now, the redistricting deal gives Republicans a chance to retain their majority in the Senate. It adds a 63rd district and allows the GOP to continue the practice of creating more districts in Republican areas than population numbers would justify. "It's politics as usual under the guise of reform," said Manhattan Assemblyman Micah Kellner.

Both Mr. Cuomo and Republican senators reneged on promises to create an independent commission to draw the lines. Instead a 10-member commission with equal representation from both majority and minority parties in the Legislature plus

two independent representatives will draw the lines when the issue comes up again—10 years from now. Even the two independent members will be chosen by appointees of the Legislature, lamented Mr. Kellner.

"It's hard to put lipstick on this pig," Barbara Bartoletti, legislative director for the League of Women Voters, said of this year's lines. She added that the compromise creating a commission would "make sure this didn't happen again." But Mr. Kellner noted that the Legislature will still have the power to reject the new commission's maps.

Pension reform, meanwhile, was a priority that Mr. Cuomo picked up, largely on behalf of Mayor Michael Bloomberg. The Cuomo administration said the deal would save taxpayers $80 billion over 30 years, including $21 billion for the city. Most new government workers would not start receiving retirement benefits until age 63, up from 62, and would have to pay more of their salary to the pension fund. The bill limits, but does not eliminate, how overtime can be used to pad pensions, which will be calculated by taking the average salary of a workers' final five years, as opposed to three. It also reduces the number of unused sick days that can be used toward calculating one's pension to 100 from 200.

Critics said the changes won't apply to the costliest workers—police and firefighters in New York City. For uniformed workers outside the city, the bill caps at 15% of their final average salary the amount of overtime that can be used toward calculating retiree benefits—an amount that reflects current levels, said E.J. McMahon, director of the conservative Empire Center for New York State Policy.

"The savings are almost entirely from new employee contributions, not a reduction in benefits," he said.

The grand bargain also produced an agreement to amend the state constitution to allow seven privately owned casinos. That limit was imperative for the companies who operate the eight racinos around the state and who fear competition. The public will have to vote on the matter—most likely in November 2013—as will legislators (again) next year.

The big deal may have been ugly, but Mr. Cuomo, sounding like the rock star his 69% approval rating suggests he has become, said: "You don't get everything you want, but you get what you need."

CRAIN'S NEW YORK BUSINESS

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NYDailyNews.com
DAILY NEWS

Gov. Cuomo must veto this bad redistricting deal

To truly fight gerrymandering, send the process to the courts

March 13, 2012, by Bill Hammond

The closer you look at Gov. Cuomo's proposed gerrymandering deal with the Legislature, the worse it gets.

The high-stakes horse trade calls for Cuomo to sign off on blatantly partisan Assembly and Senate districts this year in exchange for the promise of reform beginning in 2022.

It was always going to be an ugly deal — not unlike letting a bank robber pull off one more job if he promises to go straight in the future.

Still, it was worth a shot. Had Cuomo leveraged his veto threat into an ironclad constitutional amendment coupled with tolerably decent maps for 2012, the tradeoff might well have been worthwhile.

But when details began to emerge Sunday night, it became clear that he fell short on both goals. When it came to giving up gerrymandering — a key weapon in Albany's incumbency-protection arsenal — the Legislature did not budge nearly enough to constitute genuine reform.

Cuomo should answer that stonewalling by doing exactly what he promised in the first place: veto the lines.

The best part of the amendment is that it declares, flat out, that districts should not be drawn to advantage or disadvantage incumbents, particular candidates or political parties.

Beyond that, however, the amendment is deeply flawed.

First, it leaves too much control in the hands of legislators.

Their party leaders would directly or indirectly appoint all 10 members of the supposedly independent redistricting commission, and they would have final word on whether its proposed maps become law.

The only real procedural difference from the status quo is that sitting legislators would not directly draw the lines — although their children and business partners would be eligible — and that minority parties would have somewhat more say.

Still, incumbent politicians would rule the roost — and could all too easily gang up against voters for their mutual benefit.

Also, the amendment fails to require that all districts be roughly the same size — a necessity for upholding the principle of one person, one vote.

As things work now, Senate Republicans deliberately underpopulate districts in Republicans areas upstate while overpopulating them in Democrat-heavy New York City — thus giving the GOP a disproportionate share of seats. Democrats do much the same in the Assembly.

The amendment would let that obvious abuse continue, demanding only that mapmakers explain themselves in writing.

The proposal also missed the chance to repeal an arcane and archaic clause that calls for periodically adding new Senate seats — which Republicans have repeatedly exploited for partisan advantage.

Even if you think this loophole-riddled system would work, there's no guarantee it would actually become law. It would have to be passed again next year — by a Legislature with a track record of breaking promises on this issue — and ratified by voters in a referendum.

But the final straw is the maps voters would be saddled with for the next decade. Prodded by Cuomo to make their lines "less hyperpartisan," the Legislature put out revised maps yesterday that failed to meet even that rock-bottom standard.

You still had grotesque shapes like the 29th Senate District, which stretches from the South Bronx, through Harlem and across Central Park to Manhattan's West Side — and looks something like the Starship Enterprise.

And you still had gross population disparities, with most upstate Senate district nearly 5% below the average and downstate districts 3% or 4% on the plus side.

To be sure, this deal — lousy as it is — may be the last chance for gerrymandering reform of any kind for generations to come. Good-government groups are bitterly divided over whether the deal is worth taking — with the Citizens Union and the League of Women Voters in support, and Common Cause and the New York Public Interest Research Group coming down against.

It's sad to see well-intentioned people take shots at one another when the real villain is the reform-allergic Legislature.

Still, the opponents are right. Cuomo cannot sign this mess — not when his veto would throw redistricting into the courts. Not when those courts have already shown — in drawing congressional maps for lack of a plan from the Legislature — that they can do a far better and fairer job than lawmakers ever will.

Cuomo should take that deal — and live to fight for real reform another day.

http://www.nydailynews.com/opinion/gov-cuomo-veto-bad-redistricting-deal-article-1.1037757

Exhibit C

COMMON CAUSE/NY ◦ EFFECTIVE NY ◦ NEW YORK PUBLIC INTEREST RESEARCH GROUP
NATIONAL RESOURCES DEFENSE COUNCIL ◦ CENTER FOR LAW AND SOCIAL JUSTICE ◦ MINKWON
CENTER FOR COMMUNITY ACTION ◦ MAKE THE ROAD NY
PARTNERSHIP FOR THE PUBLIC GOOD ◦ CATSKILL CITIZENS FOR SAFE ENERGY
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND ◦ LA FUENTE ◦ RIVERKEEPER

July 25, 2014

Co-Chair James A. Walsh
Co-Chair Douglas A. Kellner
Commissioner Andrew J. Spano
Commissioner Gregory P. Peterson
New York State Board of Elections
40 North Pearl Street, Suite 5
Albany, NY 12207-2729

Hon. Eric T. Schneiderman
New York State Attorney General
120 Broadway
New York, NY 10271

Honorable Sirs:

We write to urge the Board of Elections to adopt neutral and impartial ballot referenda language for the measures which will be on the General Election ballot this November. Election Law Sections 4-108 (2) and (3) authorize the Board of Elections, with advice from the Attorney General, to determine the form in which a referendum question shall be submitted to the voters.

Section 4-108(2) provides:

> The form in which the proposed amendment, proposition or question is to be submitted shall consist of only an abbreviated title indicating generally and briefly, and in a clear and coherent manner using words with common and every-day meanings, the subject matter of the amendment, proposition or question.

We believe that inherent in this provision is the requirement that a clear and coherent submission is neutral and does not contain language which appears to advocate for the passage or rejection of the measure. Basic fairness, as well as equal protection under the law, also supports such a requirement.

On occasion in the past, the language which was placed on the ballot was widely regarded as biased and the Board was criticized by the press and good government groups. We wish to avoid such a situation this year.

Accordingly, our groups have agreed that the following neutral language satisfies the statutory standard and is a fair and impartial statement of the subject matter of the proposed amendment:

Amendment re Redistricting Commission.
"The proposed amendment to Article 3 of the Constitution would allow New York State's legislative leaders to appoint a bipartisan commission to establish new state legislative and congressional district lines every ten years pursuant to stated criteria with final approval by the Legislature. Shall the amendment be approved?"

We urge you to submit the redistricting amendment to the voters in the form we recommend.

Sincerely,

Susan Lerner, Executive Director
Common Cause/NY

Jesse Laymon, Executive Director
Effective NY

Blair Horner, Legislative Director
New York Public Interest Research Group

Richard Schrader, NY Political Director
National Resources Defense Council

Esmeralda Simmons, Executive Director
Center for Law and Social Justice

James Hong, Director of Civic Engagement
MinKwon Center for Community Action

Phillip Musegas, Hudson Director
Riverkeeper

Javier H Valdes, Co-Executive Director
Make the Road NY

Sam Magavern, Co-Director
Partnership for the Public Good

Bruce Ferguson
Catskill Citizens for Safe Energy

Margaret Fung, Executive Director
Asian American Legal Defense and Education Fund

Lucia Gomez, Executive Director
La Fuente

Cc: Barbara Underwood, Esq., New York State Solicitor General

Exhibit D

syracuse.com

NY redistricting proposal is just more political flim-flammery (Editorial)

Editorial Board By **Editorial Board**
on August 05, 2014 at 6:15 AM, updated August 05, 2014 at 6:24 AM

In November, New York voters will be asked to pass judgment on a constitutional amendment that changes the way legislative and congressional districts are redrawn every 10 years based on the U.S. Census. The **ballot proposition** is wonky and complicated and therefore open to manipulation. And manipulated it was.

The state Board of Elections approved the language of the ballot proposition on Friday. It includes the word "independent" to describe the 10-member commission that will be formed to redraw the district lines. The commission will be nothing of the sort.

Eight of its members will be appointed by the four leaders of the state Legislature -- the people who have a direct stake in preserving the status quo. The remaining two commission members will be chosen by the eight legislative appointees -- one degree of separation from the leaders.

The commission of 10 is almost guaranteed to deadlock. In the event it does, the proposed constitutional amendment puts redistricting in the hands of -- guess who -- the Legislature. And then we're right back where we started, with legislators drawing lines to stack the deck in favor of incumbents. So much for independence.

If it feels like you've seen this movie before, you have. Last November, voters were asked to approve casino gambling. It was described in ballot language **larded with sweetness and light** (or its equivalent in jobs, lower taxes and increased school aid). The gambling proposition passed with 57 percent of the vote.

We'll have more to say on the redistricting amendment as Election Day nears. The wording of the ballot proposition is not a good start.

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Exhibit E

Proposal One - Revising State's Redistricting Procedure

Abstract: The purpose of this proposal is to reform the process of establishing new state legislative and congressional district lines that the Constitution requires every 10 years. If the proposal is approved, an independent redistricting commission will be established to determine lines for legislative and congressional districts, subject to adoption of the commission's plan by the Legislature and approval by the Governor. Under the current provisions of the Constitution, the Legislature is the entity responsible for establishing these lines.

The proposed amendment would amend sections 4 and 5 and add a new section 5-b to Article 3 of the State Constitution. The new section 5-b would establish an independent redistricting commission to determine lines for state legislative and congressional districts. Each decade beginning in 2020, a 10-member independent redistricting commission will be established. Eight members will be appointed by the four state legislative leaders and the remaining two members will be appointed by the eight legislatively-appointed members. These remaining two members cannot, in the preceding five years, have been enrolled in either of the two major political parties in New York State.

The proposed amendment would establish qualifications for the members of the commission. They must be registered to vote in New York. They cannot be the spouse of a statewide elected official, of a member of the United States Congress, or of a member of the State Legislature. They cannot be or have been within the preceding three years a member of the New York State Legislature, United States Congress, or a statewide elected official; a state officer or employee or a legislative employee; a lobbyist registered in New York; or a political party chairman. The proposed amendment would require that, to the extent practicable, appointments to the commission reflect the diversity of the residents of New York and result from consultation with outside groups.

The proposed amendment would establish principles to be applied in creating districts, which must be drawn consistently with the requirements of the federal and state constitutions and federal statutes. These principles include:

- No district lines may result in the prohibited denial or abridgement of racial or language minority voting rights. Districts cannot be drawn to have the purpose of or result in the denial or abridgement of such rights.
- To the extent practicable, districts must contain as nearly as may be an equal number of inhabitants. The commission must provide a specific public explanation for any deviation that exists.
- Each district must consist of contiguous territory and be as compact in form as practicable.
- Districts cannot be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.
- Maintenance of cores of existing districts, of pre-existing political subdivisions, and of communities of interest must be considered.

While preparing its redistricting plan, the commission must hold at least 12 public hearings throughout the state. The public must be notified of the hearings and be able to access and review the commission's draft redistricting plans, relevant data, and related information before the first public hearing. The commission must report the findings of the public hearings to the Legislature when the commission submits its redistricting plan.

The proposed amendment would establish voting requirements for the commission. To send a redistricting plan to the Legislature, seven out of 10 commission members must approve a plan. If the Legislature is controlled by one party, then the seven favorable votes must include that of at least one member appointed by each of the four legislative leaders. If control of the Legislature is split between the two major political parties, then the seven votes must include that of at least one member appointed by the Speaker of the Assembly and one member appointed by the Temporary President of the Senate. If seven members of the commission cannot agree on a redistricting plan, then the commission submits the plan or plans that received the most votes, along with a record of the votes taken.

The commission must submit its redistricting plan for the Assembly and the Senate in one bill and the Legislature must vote upon that single bill without amending it. If the plan does not pass the Legislature and get the Governor's approval or a veto override, the commission must submit another plan. If the second plan does not pass the Legislature and get the Governor's approval or a veto override, the Legislature can amend the second plan as it deems necessary. The Legislature's amended plan must comply with the same principles the commission's plan was subject to. When an amended plan is approved by the Legislature, it is presented to the Governor for action.

The proposed amendment would establish the following voting requirements for the Legislature to approve a redistricting plan:

- If the Speaker of the Assembly and the Temporary President of the Senate belong to different political parties and the required commission members approved the redistricting plan submitted to the Legislature, then at least a majority of the members elected to each house of the Legislature must vote in favor of the plan to approve it.
- If the Speaker of the Assembly and the Temporary President of the Senate belong to different political parties and the required commission members did not approve the redistricting plan or plans submitted to the Legislature, then at least 60% of the members elected to each house of the Legislature must vote in favor of a plan to approve it.
- If the Speaker of the Assembly and the Temporary President of the Senate belong to the same political party, then at least 2/3 of the members elected to each house of the Legislature must vote in favor of a plan to approve it.

The proposed amendment would establish a 60-day deadline by which a court must decide a petition challenging an apportionment plan and would provide the Legislature with an opportunity to correct any legal problems that a court finds with a redistricting plan.

The proposed amendment would create a bi-partisan staff to perform the commission's duties and would provide for appropriations for the commission's expenses.

http://www.elections.ny.gov/ProposedConsAmendments2.html (Accessed 8/17/2014)