

MEMORANDUM IN OPPOSITION S.8833 (Gianaris)/A.10839 (Zebrowski)

SUMMARY

This resolution proposes to amend article 3 of the state constitution to change the redistricting process in the state of New York in significant ways, related to the work of the Independent Redistricting Commission, the special voting rules, and the guidelines for redistricting.

STATEMENT

A fair and open redistricting process is free from political interests, fosters public participation, and guarantees every person's vote has equal value. The proposed constitutional amendment S.8833 (Gianaris)/A.10839 (Zebrowski) takes a step back in ensuring these principles, and risks returning to the same politically controlled process that has existed in New York for decades. In particular, this amendment:

- Would eliminate the minority party from having any effective voice in redistricting;
- Diminish the role of the Independent Redistricting Commission established by the voters in 2014;
- Limit public participation in the redistricting process and create legal uncertainty

Establishing one-party control over the redistricting process

In 2014, New Yorkers approved a constitutional amendment that limited the role of the Legislature in drawing new maps and added protections that ensured that no one political party could dominate the redistricting process.

The proposed amendment eliminates these provisions. It repeals the special legislative voting rules in place in case one party controls both houses, which require plans to be approved by at least two-thirds of the members of each house. Instead, a simple majority will be needed to approve the Commission's plans, or a 60% majority if the Commission is unable to obtain seven votes to approve a redistricting plan on time. Currently, the majority party has more than 60% of Senate members, but less than two-thirds.

It also repeals the requirement for a Commission redistricting plan be approved by at least one Commission member appointed by each of the legislative leaders, including the two minority leaders. Lastly, it takes away the voting rights of minority party-appointed Commission members in appointing the two co-executive directors of the Commission.

In conclusion, the proposed amendment effectively cuts off the minority party from having any influence on the redistricting process. With the Republican and other parties, as well as independent voters, marginalized in this process, the Democrats, with slightly over 50% of total registered voters in the state, will have 100% of the control, free to contort the district lines to the wishes of their legislative leaders, rather than focusing on what is fair to voters.

Reducing the role of the Independent Redistricting Commission

The 2014 revision of the constitution took direct control of map-drawing away from lawmakers, by establishing a separate Independent Redistricting Commission whose task is to gather public input, analyze data, and propose redistricting plans. However, after rejecting two Commission approved maps the Legislature can alter the Commission's plan but must follow the same anti-gerrymandering rules as the Commission.

The proposed amendment significantly reduces the role of the Commission in the entire process. Proposed subdivision (g-1) of section five-b provides that if the Commission does not reach a decision by November 1, 2021, its draft plans will be submitted to the Legislature, who can then (according to proposed changes to section four-b) introduce its own redistricting plans.

It is likely that the Redistricting Commission will not get to a decision by January 1, 2022, the effective date of this proposed amendment. The bipartisan nature of the Commission requires the two parties to work together. With a diminished role in final legislative approval, the minority party may be less inclined to contribute to the process. This would effectively mean the majority party in the Legislature would get the power to draw the maps once again. It is also possible that majority party representatives would work to prevent the Commission from reaching a decision. Practically, the real redistricting process would begin only on January 1, 2022 rubber-stamping legislatively-drawn lines and the work of the Independent Redistricting Commission would become all but meaningless.

Limiting public participation in the process and ensuring legal chaos

The 2014 amendment ensured the public would be heard in the process of drawing the maps, by requiring the Commission to hold 12 hearings across the state. We are concerned that the proposed amendment would create confusion and limit public input in the process.

The earliest that an amendment can take effect is January 1, 2022, well past when the Commission is required to submit its preliminary plan for public comment, and on the same day when it is supposed to present its first plan to the Legislature. The Commission must be able to operate with full knowledge of what criteria it needs to follow. Given the tight timing in 2022, this would greatly limit, if not exclude, public input on revised plans. And if there are pending amendments, we doubt members of the public would be able to provide meaningful input to the process.

The timetable for amending the constitution does not allow the majority of the changes this resolution proposes to have any effect for this redistricting cycle other than creating legal uncertainty and chaos. This may also compound the risk of lawsuits, both during and after the process. We fear all this will delay the process rather than expedite it.

If amendments are placed on the ballot, the Commission will not know until November what constitutional provisions would be in effect. If there is a change in January, the Commission would have to operate with different criteria. It would possibly need to produce new maps, or in case it fails to reach an agreement, the Legislature would produce its own maps.

Changes to redistricting criteria

The proposed amendment would change the redistricting principles detailed in section 4(c). It would eliminate the "block on border" requirement, and require incarcerated individuals to be counted as living in their last place of residence. These changes would be beneficial, and the latter (ban on prison gerrymandering) is already mandated under New York law. However, our groups feel that changes to redistricting criteria should be considered in a more thorough deliberate process

In sum, this proposed constitutional amendment includes major changes to redistricting policy, most notably attempting to bring back redistricting power to incumbent lawmakers and significantly reducing the role of the minority party. Changing redistricting midstream, in a highly rushed timeline and with no room for public input, would be disruptive and potentially damage public confidence in the process. Shifting procedural rules and change standards based on election results set a dangerous and destructive precedent. It would be counter to the goal of ensuring that no one political party can dominate the redistricting process. We urge the legislature not to pass this resolution.