

## **APPORTIONMENT**

The League of Women Voters of the United States believes that congressional districts and government legislative bodies should be apportioned substantially on population. The League is convinced that this standard, established by the Supreme Court, should be maintained and that the U.S. Constitution should not be amended to allow for consideration of factors other than population in apportionment. Statement of Position on Apportionment, as announced by the National Board, January 1966 and Revised March 1982. (LWVUS *Impact on Issues, 2014-2016*, p. 15)

The apportionment of election districts was a state issue until the 1962 and 1964 Supreme Court rulings, requiring that both houses of state legislatures must be apportioned substantially on population transferred the issue to the national arena. These rulings, which spelled out the basic constitutional right to equal representation, prompted introduction in Congress of constitutional amendments and laws to subvert the Supreme Court's 1954 one-person, one-vote decision. Leagues in 33 states already had positions on the issue when, in 1965, the LWVUS council adopted a study on apportionment. By January 1966, the League had reached national member agreement on a position that both houses of state legislatures must be apportioned substantially on population. The 1972 convention extended the position to cover all voting districts.

In New York, provisions of the state constitution for allocating representation to the people and areas of the state were already being challenged in the federal courts when delegates to the 1963 LWVNYS convention added Apportionment to the program.

By January 1965 the League Membership had agreed on standards for establishing legislative districts and announced the following position:

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**Statement of Position**

**As announced by the State Board, January 1965**

**The League of Women Voters of New York State supports the following standards for establishing legislative districts that conform to federal constitutional requirements for equality:**

- 1) Districts should follow existing political subdivisional boundaries, especially county lines, as far as practicable. Counties are recognizable political units that define some communities of interest. As a unit of party organization, they also affect representation through their function in nominating candidates.**
- 2) Districts should be of contiguous territory with the smallest perimeter possible. Compactness limits opportunities for gerrymandering within political subdivisions, particularly cities.**
- 3) The constitution should prescribe the limits within which the size of the legislature can vary at each redistricting. The size should be flexible enough to allow the other standards to be used in conjunction with population equity.**
- 4) Each Senate and Assembly district should be represented by one legislator with a single vote. Single member districts improve the quality of representation by fixing responsibility. Weighted voting is opposed because it distorts representation.**
- 5) Districts should be based on current census statistics.**
- 6) Districting standards should be established in the state constitution.**

An extra year of study found Leagues unable to agree on what governmental institution should draw the lines; i.e., the legislature, a commission, the governor, etc. Consensus was reached, however, in two additional areas regarding the procedures for redistricting:

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**Statement of Position**

**As announced by the State Board, 1966**

**The constitution should provide for an alternative districting procedure if the responsible agency fails to draw the lines within the limits specified.**

**Whoever is responsible for districting should utilize an impartial commission for drawing the lines.**

## **Recent League Activity**

In November of 2014, New Yorkers voted to approve Proposition 1 which creates a more open and fair redistricting process for state legislative and congressional lines by amending the state constitution. This constitutional amendment was originally voted on and passed by the legislature in 2012 and 2013. Leading up to the vote, the League and Citizen's Union worked together to educate voters on the advantages of the proposal. While not perfect, the League felt that Proposition 1 represented a real improvement over the existing process.

It curbs the power state legislators have over redistricting. Instead of legislators gerrymandering their own districts, a commission of 10 politically balanced members work together to create the district lines. Under the new rules no legislators, lobbyists, or political figures may serve on the commission. Proposition 1 strengthens the process of redistricting by imposing powerful guidelines and clear standards to protect voters. The law does not allow "partisan gerrymandering" by requiring that districts not be drawn to favor or disfavor any incumbents, candidates or parties.

The plan must be approved by a super majority of 7 out of the 10 commission members. Additional controls are in place to require a higher threshold for approval in the legislature should one party control both houses, a further check against lines drawn for political advantage. The amendment also requires that the commission release data, maps and information to the public to allow it to develop alternative proposals, and requires 12 public hearings be held throughout the state.

The State League and Local Leagues worked hard to educate voters on the Proposition. Forums were held throughout the state, letters were sent to major news publications including the New York Times and Albany Times Union, and the League distributed educational material to the public outlining the benefits of the proposed Proposition. The League and Citizen's Union created a Pac called Vote YES for Progress which advocated for passage. The two groups held multiple press conferences discussing the Proposition and why it was so important to change the process that was currently in place. The new process will be in place for the next redistricting after the 2020 federal census.

In 2010, in addition to testifying at LATFOR hearings statewide, the League participated in a broad campaign, ReShapeNY, calling for a better redistricting process for New York. Many Leagues held public forums highlighting the need for reform using the materials the state League provided in the fall of 2010. This followed years of the League advocating for a constitutional amendment setting forth permanent and fair guidelines and establishing an independent commission to draw lines free of partisan gerrymandering. We have long felt that the pen that draws legislative lines needs to be removed from the hands of the legislators, but understandably this was an uphill fight given the inherently political nature of the redistricting process.

The first set of state legislative lines for the 2012 election was released by the Legislature in January 2012 and we criticized those lines as partisan and gerrymandered, as did our good government colleagues and many others, and we called for both improving the lines and implementing lasting structural reform to a fundamentally flawed process. It became obvious

that the redistricting process in New York was broken. The courts again stepped in as they had in past decades of Congressional redistricting.

The League called for the Governor to use his veto threat, and the power it gives him to negotiate with the Legislature, to not only improve the 2012 lines but also to achieve certain and permanent structural reform to the redistricting process. Permanent structural reform can only be achieved through a constitutional amendment but momentum for this has typically diminished greatly in the years following each redistricting battle. The League felt that 2012 was a unique opportunity for reform in light of the unprecedented campaign that has been waged by many different groups, including those allied with us in ReShapeNY, to hold legislators to their pledge to enact redistricting reform and Governor Cuomo's insistence that the status quo could not stand. The League supported the successful first passage of a constitutional amendment in 2012 and an accompanying statute, creating structural reform that permanently takes the redistricting pen away from the legislature and provides the voter with the power to choose their elective representatives. While not perfect, we felt that the constitutional amendment would provide a significant improvement on the LATFOR status quo. Certainty was added to the process by coupling first passage of a constitutional amendment with an accompanying statute, ensuring reform even if the amendment does not achieve the second legislative passage necessary to go on the ballot.

### **Past League Activity**

Since 1966 the League has worked for adoption of a constitutional amendment to set specified, permanent guidelines for the redistricting process.

In 1979, the League as a leading member of the Committee for Fair Representation developed an expanded list of guidelines for redistricting. These guidelines are as follows:

### **Guidelines for Redistricting 1979**

The League's redistricting guidelines are based on four principles - equal population, contiguity, integrity of existing political sub-divisions (to the extent possible) and, finally, geographic compactness. Adherence to the guidelines in their prescribed order would inhibit the temptation to indulge in the practice of equal population gerrymandering.

1. Population Equality - In compliance with the U.S. Supreme court's "one man-one-vote" requirement, population must be apportioned equally among districts. Deviations from this ideal were sharply limited by the Supreme Court in the case of congressional districts; however, the court found deviations of 10% or less in the "overall range" to be acceptable for legislative districts if based on legitimate state policy. The Court found maintaining the integrity of political subdivisions such a policy.
2. Contiguity - Districts should be of contiguous territory with the smallest perimeter possible. They should consist of land parcels adjacent to one another. Areas divided by water should not be included in the same district unless connected by means of a bridge or tunnel with both termini in the district. This provision assures that the land parcels in a district have some physical relationship to each other. No city block shall be sub-divided, since a city block is the smallest parcel for which census data are available.

3. Integrity of political subdivisions - The guidelines are designed to minimize the fractionalization of political subdivisions where fragmentation is necessary to comply with the equal population requirement. Maintaining counties, towns, cities and villages intact, is an important element of redistricting because these subdivisions have reasonably permanent boundaries which are more unlikely to be tampered with for political advantage i.e. gerrymandering, and their populations often have commonality of interests that merit representation by the same member of congress or legislator. Political party machinery is structured along county, town and city lines and its functioning is impaired when these units are periodically divided and recombined. The following guidelines delineate which counties, cities and towns should be divided first when choices must be made and in what manner. These particular provisions limit discretion and the opportunity for manipulation. The most heavily populated units are divided more easily to obtain population equality and can be expected to retain significant political power even when apportioned to two or more districts:
  - a. The number of counties, towns, and cities divided among more than one district shall be as small as possible. If these subdivisions must be divided, they shall be divided among as few districts as possible.
  - b. Counties that are more populous shall be subdivided in preference to less populous counties. Within counties that are divided among districts, more populous cities and towns shall be divided in preference to less populous cities and towns.
  - c. In dividing a county, city or town, as populous as possible a portion of such county, city or town shall be placed in a district or districts wholly within that subdivision and only as small as possible a portion of the subdivision's population shall be separated from the rest.
  - d. Within towns that are divided among districts, no village shall be divided unless necessary to meet equal population requirements.
  - e. Within cities that are divided into wards or similar subdivisions, whose boundaries have remained substantially unaltered for 15 years, the number of such wards or subdivisions divided into more than one district shall be as small as possible.
4. Compactness - Compactness is achieved by comparing the aggregate length of all the district lines in the plan with those of any other proposed plan, which complies as well with the other guidelines. Districts will not be exactly regular in shape because of the requirements for population equality, for preserving counties, etc. But the compactness rule will prevent the arbitrary pushing of a particular boundary line a few blocks in one direction or another to achieve political advantage.

In 2001, the legislature was charged with redistricting state legislative and Congressional districts. The League testified at all The Task Force on Demographic research and reapportionment hearings statewide. In all testimony we stressed the need for ensuring a process that better allows for citizen input and for legislative districts that give all voters a fair and equal voice in our representative democracy. We also lobbied in the legislature for a nonpartisan commission to draw the lines based on the League's criteria; however, because this is the most partisan process undertaken by the legislature and determines the districts in which the

legislators will run for the next decade, this was indeed a heavy lift. In the end not even members of the Task Force had input into the process, as it was done entirely by the majority leadership in each house.

The League continues to advocate for the following to insure that all voters have a fair and equal voice in our representative democracy:

1. A “Transparent” Process - Allow the public to participate in the redistricting process.
2. A non-partisan redistricting system for drawing lines - The League believes that lines should be drawn by a non-partisan advisory commission and then submitted to the legislature for their vote. We believe that the NYS Constitution would permit such a body to be appointed to oversee the process. The League looked to other states for examples and found that Iowa has utilized such a plan since 1980 and Arizona has recently adopted this method. Lines should be drawn by utilizing the criteria previously outlined. The use of incumbent’s home addresses or the party affiliation of voters should not be factors in this process.

Competitive elections are the lifeblood of democracy. Only through the clash of ideas can voters intelligently understand complex public policies and think through the implications of policy alternatives. Competitive elections stimulate voter interest in elections and increase voter turnout.

Historically, New York’s redistricting process has been extremely partisan, done to maintain incumbency protection. The Democrats in the State Assembly and the Republicans in the State Senate each control the district lines in their respective houses. Both houses agree to the other’s plans and the legislation is then sent to the Governor for his signature. By using techniques like “packing,” whereby lines are drawn to concentrate many supporters of political opponents into a few districts, and “cracking,” whereby opponents’ supporters are split among several districts, they dramatically increase their party’s chances of incumbency for the next decade. These “designer districts” literally allow for legislators to choose the voters before the voters have a chance to choose them.

In all of its 80+ years of history, the League has stood for fair and equitable representation for the people of our state. We believe that the overriding concern in drawing new districts is to assure that all New York resident are assured of fair representation in Congress and the Legislature. The League believes it imperative that our guidelines and process be applied so that people, not parties, are protected.

### **The Voting Rights Act of 1965 and its Amendments**

The right to vote is basic to American citizenship. Who possesses that right and the extent to which that right is guaranteed has long been the focus of congressional action and judicial interpretation. In 1870 with the ratification of the Fifteenth Amendment to the Constitution, citizens were promised that the right to vote would not be abridged by the United States or any state because of race, color or previous condition of servitude. In the years following the ratification of the Fifteenth Amendment, states and local governments found ways to circumvent the intent of the law. It was almost a century after the passage and ratification of the Fifteenth

Amendment; Congress passed the Voting Rights Act of 1965. Primarily the Act protected the right to vote as guaranteed by the Fifteenth Amendment.

Since 1965, Congress has reconsidered the Act, passing amendments to it in 1970, 1975, and 1982. The 1970 amendments expanded who is covered by the act and the length of time they are covered. Additionally, the 1970 amendments mandate a nationwide five-year ban on the use of tests and devices as prerequisites to voting.

In 1975 the Act was amended again, extending for the second time the length of time jurisdictions were covered and again expanding who was covered by the provisions of the Act. The scope of Section 5 was expanded beyond race and color to members of language minority groups by requiring pre-clearance procedures in jurisdictions in which more than 5% of the voting age citizens were members of a single language minority and in which printed election materials were available only in the English language. Native Americans, Asian Americans, Alaskan natives, and Hispanics are members of language minority groups.

In 1982, Congress again amended the Voting Rights Act. Two sections that were amended, Sections 2 and 5, affect the redistricting process. Section 2 applies to all jurisdictions. It prohibits any state or political subdivision from imposing a voting practice that results in the denial of the right to vote. Section 5 does not apply to all jurisdictions. It applies only to “covered” jurisdictions; that is, jurisdictions subject to pre-clearance as a result of meeting certain criteria established in the test of Section 5. In New York State, only Manhattan, Queens, and Brooklyn are subject to Section 5. Covered jurisdictions are required to pre-clear all changes in their electoral laws with either the Department of Justice or the U. S. District Court for the District of Columbia. Section 5 also creates a legal cause of action giving citizens the right to turn to the federal courts for protection when a “covered” jurisdiction institutes electoral changes without pre-clearance.

Once a jurisdiction becomes subject to pre-clearance, any change in its electoral process must meet Section 5 pre-clearance requirements. Such changes include, but are not limited to: (1) any change in qualification or eligibility for voting; (2) changes concerning registration; (3) changes involving the use of a language other than English in any aspect of the electoral process; (4) changes in the boundaries of voting precincts or in the location of polling places; (5) changes in the boundaries of a voting unit through redistricting, annexation, de-annexation, incorporation, reapportionment, changing to at-large elections from district elections or changing to district elections from at-large elections; (6) changes in the method of determining the outcome of an election; (7) changes affecting the eligibility of persons to become or remain a candidate; and (8) changes in the eligibility and qualification for independent candidates.

Although the Section 5 pre-clearance procedures were originally temporary in nature, they have been repeatedly extended by Congress. Under the 1982 amendments, pre-clearance procedures will automatically expire in 2007 unless extended by Congress.

### **The 1982 Voting Rights Act Amendment Impact on Redistricting**

In the period following the enactment of the 1965 Voting Rights Act (VRA), officials responsible for reapportionment focused on creating districts of substantially equal population, deciding how much deviation was permissible and for what purposes. The problem was not in

creating equally populated districts but in choosing a plan from the infinite number of ways to draw the district lines. The League and other good government groups devised neutral principles for guiding legislators in drawing boundaries, principles which would go beyond the equal population requirement, principles designed to prevent the practice of equal population gerrymandering (the drawing of district boundaries of equal population but drawn in strange shapes for partisan advantage). However, legislators chose to draw more creative district boundaries, which would serve partisan advantages.

The two sections of the Voting Rights Act amended in 1982 directly affect states in their redistricting efforts. The amendments, designed both to prevent dilution of minority strength and to enhance minority access to the governing process had been given the first consideration in the redistricting process. These amendments and ongoing court decisions interpreting their implementation took precedence over all previous guidelines. However, the Supreme Court decisions of June 1993, June 1995, and subsequent decisions have cast some doubt on the constitutionality of this interpretation enhancing majority minority districts in the redistricting process.

In the 1995 Georgia case, the court struck down Georgia's majority-black 11th District and cast doubt on all such districts, on the grounds that race played a predominant role in the district's creation. Georgia's district was not "bizarrely" shaped to incorporate blacks, like the North Carolina one the courts struck down in 1993. In three cases, the court has upheld the position that race should not be the predominant determining factor in redistricting.

At the heart of the public's discontent over the state of New York's democracy is a feeling that state lawmakers rig the system for their own political gain. Nowhere is this more apparent than in the legislative district lines are drawn.

Currently, the State Senate Republicans and the State Assembly Democrats are allowed to draw the lines for their respective house—ensuring their re-election in the process. This has created a body of legislators that are not responsive to their constituents' concerns. The only check on this system is whether the Governor chooses to allow this practice to continue or use his veto powers to force changes. As in so many areas of reform, this Governor has shown no leadership on this important issue.

We believe that creation of an independent redistricting commission must be a top priority for those interested in reform. Lawmakers should support legislation ensuring that the drawing of legislative district lines is not done by those who stand to directly benefit from how they are drawn.

Following the census of 2000, the LWVNYS and several local Leagues were very active on redistricting issues. The state League testified at the Redistricting Task Force Hearing in Albany on March 19, 2002. The Buffalo and Rochester Leagues paved the way for the Albany hearing by putting pressure on the Task Force during the hearings in both Buffalo and Rochester. Complaints by the League and other good government groups about no Task Force hearing between Rochester and the Bronx finally forced legislators to add an additional hearing date in Albany.



After the statewide Redistricting Task Force Hearings, legislation was crafted by the Democratic controlled Assembly and the Republican controlled Senate to insure that their majority members would be re-elected. Although the League had lobbied vigorously for an independent redistricting commission the legislation was sent to the Governor for his signature. We lobbied the Governor to hold this legislation hostage to accomplish some reform in the area of campaign financing of elections. But, like Governor Cuomo before him, Governor Pataki signed this incumbency protection legislation into law. Senate Democrats sued New York State under the Federal Voting Rights Law, but lost the case in the Federal District Court.

This issue has taken on national importance and will continue to be a state League priority to bring about real reform and elections that are more competitive. This issue will again be of prime importance following the 2010 census.

Following the election of Governor Eliot Spitzer in November 2006, our legislative director, Barbara Bartoletti was asked by Governor-elect Spitzer to sit on the Government Reform Committee of his transition team. Redistricting was an issue prominently discussed by the transition team and recommendations from the Government Reform Committee were made to the Governor-elect.

Once in office Governor Spitzer introduced a program bill with a bi-partisan Redistricting Commission instead of the League supported non-partisan commission. The League was party to several of the Governor's office negotiations on this proposal. At the end of session 2007, the Senate or the Assembly had taken no action on this program bill.