

FOR: SENATE JUDICIARY COMMITTEE
CITIZENS UNION OF THE CITY OF NEW YORK
COMMON CAUSE/NY
LEAGUE OF WOMEN VOTERS IN N.Y.S.
NEW YORK PUBLIC INTEREST RESEARCH GROUP

MEMORANDUM IN OPPOSITION
S.3331/A.5271

IN SENATE, INTRODUCED BY SENATOR BONACIC

AN ACT TO PROPOSE A CONSTITUTIONAL AMENDMENT TO CREATE A NON-PARTISAN APPORTIONMENT COMMISSION

SUMMARY OF PROVISIONS:

This bill proposes a constitutional amendment to eliminate the existing reapportionment and redistricting commission and replace it with a commission still controlled by the legislature, through four directly chosen appointments and one indirect appointment. Because this change is accomplished through a constitutional amendment, it will not be effective in time for the redistricting that takes place before the 2012 election, and thus all district lines created for all elections before 2022 will be drawn under the existing politicized system. **This ten-year delay in effecting long overdue and necessary redistricting reform is totally unacceptable.** This bill also establishes standards for the drawing of the new district lines that are insufficient to ensure that districts will be drawn fairly and objectively. S.3331 does not accomplish the immediate and significant reform to the redistricting process that the public demands. Our specific concerns are detailed below:

- **Reforming the redistricting process through a constitutional amendment will not be effective until 2022.** Because this proposal would change redistricting through a constitutional amendment rather than legislation, it must be passed by two successively elected legislatures and then approved by the people. Therefore it cannot be effective in reforming the process until the lines are drawn following the 2020 Census. The earliest that the measure would be able to appear on the ballot would be 2013.
- **S.3331 does not create an apportionment commission sufficiently independent for the drawing of fair and objective district lines.** S.3331 prohibits past or present office holders or party officials from serving as commission members, but the majority and minority leaders of each house directly choose four of the five members. These appointees would lack sufficient independence and would be susceptible to drawing district lines to benefit their appointers. This selection process stands in sharp contrast to the S.3419/A.5388 (Cuomo) and S.2543/A.3432 (Gianaris/Jeffries) redistricting bills in which a nominating pool provides an additional layer of separation between legislators and those who draw their district lines. These bills also require diversity in membership, with respect to ethnicity, geography, race and gender, for individuals in the nominations pool. There is no similar requirement for appointees to the commission in S.3331. S.3331 also allows for lobbyists, legislators' staff, or relatives of elected or public officials to serve on the commission, further failing to ensure the independence of the commission.
- **Criteria for drawing district lines in S.3331 allow for the continued drawing of unfair districts and may also result in districts that don't adequately ensure minority voting rights.** By continuing the current process of allowing for the possibility of up to a five percent deviation for a single district from the average population of all districts, S.3331 allows enough room to politically manipulate the lines and carve gerrymandered districts. Only 29 of 212 legislative districts (14 percent) were within one percent of the "ideal population size" when drawn in 2002. Those districts with greater population are denied the same level of representation as those with fewer residents. The Cuomo and Gianaris/Jeffries bills only allow for a one percent deviation, ensuring equal representation and the "one person, one vote"

principle of American democracy. While the ban on the drawing of lines to favor or oppose any political party or incumbent legislator in S.3331 is necessary, the same ban as applied to any “group” may make it more difficult to draw districts that provide fair representation for communities of interest, including minority voters. Moreover, the ban on the use of political affiliations and previous election results could hinder efforts to give communities of interest, including minority voting groups an effective voting majority.

- **S3331 does not provide for clear standards to foster compact districts.** The language added referring to the variance of cumulative boundaries does not adequately address the factors that contribute to compact districts.
- **S3331B seeks to repeal the current law’s ban on prison-based gerrymandering without clearly identifying that proposed change in the law.** The proposed language barring using any data other than population head counts is unacceptable for that reason.
- **S.3331 does not ensure adequate public understanding and participation in the redistricting process.** S.3331 has no requirement for public hearings throughout the state, as is done in the Cuomo bill (one set) and the Gianaris/Jeffries bill (two sets). Public hearings are essential not only to institute a transparent and open process but also to allow communities to assist the commission in identifying relevant geographic, social, economic and other factors that indicate communities of interest across the state. S.3331 also makes no provision for public access to data, maps, criteria, software used, and proposed plans.

For these reasons, our groups strongly urge you to oppose S.3331.