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THE LEAGUE OF WOMEN VOTERS *of New York State*

JOINT PUBLIC HEARING: EVALUATING CONSTITUTIONAL PROVISIONS IMPACTING REDISTRICTING IN 2022

**HELD VIRTUALLY
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Thank you for the opportunity to testify on the 2022 redistricting process. As you probably remember, the League was a strong advocate in favor of the 2014 constitutional amendment that created a new redistricting commission to draft legislative lines independent of the legislature. We supported the new process in the belief that it was a significant improvement on the redistricting status quo that could fundamentally change elections in New York State, a rare accomplishment in a state that does not have initiative and referendum. The new process also emphasized the importance of ample public input.

Our overwhelming interest here is that the process the people supported be given a chance to work in the most transparent and inclusive manner possible. Of immediate concern as the last two commission members remain to be appointed is the lack of gender diversity and Latinx representation of currently nominated commission members. We support commission meetings and operations allowing for the greatest possible public participation. The commission may also benefit from early operational support of either a state agency or the legislature, and its funding should be better defined so that the commission can begin hiring its own independent staff. Without addressing these issues, the commission may be hindered in successfully completing its mission, similar to commissions formed in prior years.

In addition to procedural concerns, the League recognizes that there is a timing issue with respect to the June primary. The outside constitutional timeline for release of proposed maps is too late for state and congressional candidates petitioning for a June primary. We believe that the legislature should consider a statutory fix shortening the time for the commission and legislature to do their respective roles in the process as a possible solution given that a constitutional amendment changing the timeline would not be effective until January 1, 2022.

Representation

The 2014 amendment made clear the need for diverse representation on the commission. Recently the League sent a letter to legislators and sitting redistricting commission members urging them to consider greater gender and racial diversity when appointing the final two commission members. The League supported NALGO Education Fund and the Latino Justice PRLDEF in their call for Latinx representation on the commission.

Currently, only one woman has been appointed to serve on the commission. New York State's population is comprised of more than 50% women. The League feels that more women must be appointed to the commission to meet the constitutional mandate that commission members "shall represent the diversity of residents of this state with regard to race, ethnicity, gender, language, and geographic reference." Without appropriate representation of women and Latinx individuals, the Commission will fail to meet this basic requirement.

Transparency and Accountability

In addition to funding concerns, the League remains committed to ensuring transparency and accountability in the redistricting process. Although the constitution allows the commission to create its own operational rules, it does not specify whether the commission must adhere to state public meetings laws. The Department of State Committee on Open Governments states that under open meetings law, any official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body, shall be open to the general public.

A public body includes entities consisting of two or more people that conduct public business and perform a governmental function for New York State, for an agency of the state, or for public corporations, such as cities, counties, towns, villages and school districts. Committees and subcommittees of these entities are also included within the definition. Given this definition, the commission would qualify as an entity accountable to public meetings laws and it should keep all its proceedings open to the public.

Operational Support

In late 2019 and early 2020, there were two similarly situated commissions operating with limited assistance from state agencies or the legislature. The New York State Complete Count Commission and New York State Public Campaign Financing Commission were created to address very specific goals. Both commissions were highly dysfunctional, and barely fulfilled their intended purpose due in part to a lack of defined rules and support.

The New York State Complete Count Commission was formed nearly a year later than anticipated and was vastly underfunded and understaffed. The commission's final report was lacking in substance and direction on how to distribute funds to help reach hard to count areas resulting in the further delay of critical funding for community groups. The Public Campaign Financing Commission did ultimately propose a plan for public campaign financing in New York State, but not before diverting from their intended purpose to consider abolishing fusion voting. The debate over fusion voting became a serious distraction from the actual work the commission was entrusted to do and resulted in a listless public campaign finance proposal that failed to address many of the concerns raised by good government reform groups yet was eventually passed into law by the legislature.

The independent redistricting commission would benefit from operational support from the legislature or another agency until it is fully established. California's redistricting commission amendment provides additional support for the commission by designating meeting space and staffing support from the Secretary of State until the commission's staff and office are fully functional¹. New York's commission may benefit from similar support.

Funding

In February of 2020, the League submitted testimony advocating for funding for the commission to accomplish its intended goals. We highlighted the cost factors associated with the new commission including staff, mapping software, and travel for the commissioners and their executives. We were pleased to see \$750,000 appropriated to the commission in the FY 2020-2021 budget included in the Department of State budget.

The commission is set to function alongside the legislature with no input or oversight from the executive. The commission must hire its own staff including a minimum of two co-executive directors and two assistants to these directors. The commission may also hire additional staff to assist in their work. The

¹ Citizens Redistricting Commission” https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2011/04/voters_first_act.pdf

constitution states that the legislature shall provide by law for the compensation of the members of the commission, including compensation for actual and necessary expenses incurred in the performance of their duties.

We would like to see clarification of how appropriations for the commission will be made through an executive agency rather than the legislature. Funding through the Department of State could benefit the commission if the Department of State makes arrangements for hosting the commission and providing early support while the commission begins its staffing process. Using an executive agency rather than the legislature could possibly help the commission maintain some of its independence from the legislature.

Timing

Since the redistricting amendment was approved, we have had a change to our state and congressional primary dates as well as a one-time delay in final census counts caused by a global pandemic. Under the current timetable, the commission must submit its proposed maps to the legislature on or before January 1, 2022, or as soon as practicable but no later than January 15, 2022. If the plan is rejected by the legislature or governor, the commission must submit a second plan to the legislature no later than February 28, 2022. The maps would need to be approved by the legislature and implemented by March 2022.

At the time of enactment, this schedule allowed ample time for maps to be implemented before state and congressional primaries. Because the primary dates have been moved to June, the mapping time table will now interfere with the candidate petitioning process. We believe that the best approach to this issue is to consider a statutory fix since it is too late for a constitutional amendment to meaningfully alter this timetable.

Additionally, the release of census counts has been pushed from April to July 31 in 2021, causing the original mapmaking time frame to be moved later and condensed in time but no constitutional fix can change that reality. The commission is mandated to hold 12 public hearings and proposed maps must be available at least 30 days prior to the first public hearing and “in any event no later than September 15 of the year ending in one or as soon as practicable thereafter. . .” This shortened time frame to develop the maps and hold public hearings is another compelling reason for the timely establishment of a fully-staffed and effective commission.

Conclusion

The success of New York’s first independent redistricting commission hinges upon whether the legislature can provide adequate support and allow sufficient independence for the newly formed commission. Before the commission can begin its important work, we again urge the legislature and seated commission members to prioritize gender and racial diversity when appointing the final two commission members so that all New Yorkers are appropriately represented. Transparency and accountability are the foundation of good government, and we urge the legislature to ensure that the commission follows open meetings laws and allows for ample public input. We are pleased that state funding has been designated for the commission but urge further support for the commission until all members are seated and staff has been hired.

The legislature could not have predicted a global pandemic would delay the final census counts, but regardless of these unforeseen circumstances the release of final proposed maps must be addressed. The League believes that this issue can, if need be, be addressed through statute and does not require any constitutional change. At this late date no constitutional amendment could be passed in time to apply to the process in place to create the proposed 2022 legislative maps. The legislature should focus on ensuring the commission is following the provisions of the new constitutional amendment and maintaining an open process that encourages citizen participation.