

**Erie County Charter Revision Commission**  
**Committee on Administration and Legislature**  
**Report on Reapportionment**

**Justification**

Consistent with the purpose of the Charter Revision Commission established in its authorizing legislation to “study the operations of the County of Erie in their full scope” and determine whether the County Charter and Code shall be amended to improve its functions, the Administration and Legislature Committee reviewed Section 210 of the Charter, the Advisory Committee on reapportionment.

**Recommendations**

This committee recommends several changes section 210 of the County Charter, which establishes a redistricting commission that would address problems associated with Erie County’s redistricting process:

- The redistricting commission should be include an equal number of members selected by both major political parties, with a tie-breaking member selected by the other members to help guard against the inherent problem of the party in power driving the redistricting process for partisan gains.
- Establish specific standards and detailed procedures of operation would grant the redistricting commission relevance not currently associated with the commission created in Section 210. Models of such standards favored by this committee can be found in the New Jersey, Arizona and Iowa models, however committee members were divided on the question of which specific criteria to include.
- The “good government” goals of partisan fairness, responsiveness, and accountability should be codified in charter language to ensure that competitiveness and a legislature that reflects the true will of the voters are maintained. Other criteria concerning how to draw district lines are largely political ones that may change over time. These judgments should be left for the legislature to amend through local law.

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- While the legislature should retain the power to ultimately approve the redistricting plan, it should only have the power to approve it or reject it rather than amend it. Upon rejection of a plan, the Commission should produce a second and possibly third plan. In the event the Legislature rejects the third plan, a judge should pick among the three plans them according to the criteria established in the law. This should prevent both the kind of protracted process and unusual weighted voted arrangement of the last redistricting process.

### **Advantages and disadvantages of redistricting reform**

This committee believes the aforementioned reforms would address specific charter problems associated with the process of redrawing Erie County's legislative district lines. The above recommendations should prevent the kind of gridlock, and ad-hoc judicial solutions that characterized the last decennial redrawing. While this committee does not believe any charter provision can prevent partisan maneuvering, the above recommendations should reduce the likelihood of one party dominating the process.

The main argument favoring preservation of the existing system is that despite its messiness, it fundamentally "works." Partisan control of the Legislature has switched hands many times over the past twenty years while competitive elections and turnover are relatively common. While the redistricting process of earlier his decade was protracted and ultimately was resolved only after intimate judicial involvement, such is also the case in "reformed" systems such as that used by the State of Arizona for redistricting its state legislature.

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### **Background**

Although much of the available scholarly works concerns the drawing of congressional and statewide districts, the principles and issues that arise are also applicable to local governments. The main issues fall into two categories, 1) procedures for redistricting and, 2) standards for redistricting. A system of proportional representation where legislators are elected either at-large or from multimember districts would virtually eliminate the redistricting question. The Committee was divided on the question of whether such a system is feasible or appropriate, therefore, the committee has decided not to address the proportional representation issue. Rather, the Committee recommends reforming the current charter provision pertaining to redistricting.

### **Current Conditions in Erie County**

The Legislature currently controls the reapportionment process. Section 210 establishes an advisory panel to recommend, “Whether and how the county legislature should be apportioned consistent with federal and state law.” The Legislature’s majority party, which appoints a majority of the panel’s members drives the reapportionment process. Partisan battles characterized the last reapportionment process. The Republican County Executive vetoed the initial reapportionment plan, developed by majority Democrats. Following a period of gridlock, a judge established a weighted voting system that helped establish a functional majority for the Republicans on the Legislature. This functional majority proceeded to design a new plan that included the elimination of two seats held by Democrats, while “protecting” the seats of most members of the functional majority. The plan was criticized for dividing some communities, including Cheektowaga and the Elmwood Village, while minimizing minority representation on the Legislature. Nonetheless voters approved it in 2002. This process spanned more than two years. Perhaps ironically, the districts created from this Republican-dominated process did not, ultimately, guarantee Republican control.

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The most recent reapportionment process highlighted several problems with the current charter arrangement:

- Section 210 proved to be irrelevant to the process.
- The process was dominated by partisan political concerns.
- The representation of some geographic, political and possibly ethnic communities is disproportionate to their populations within Erie County.

Despite these problems, Erie County does not share many of the problems associated with redistricting in several states:

- Despite popular perception, Erie County does not retain entrenched incumbents.
- Partisan control of the Legislature has remained competitive through at least the last two redistricting processes.

No current county legislator has survived two redistricting processes. A majority was not in office prior to the last redistricting process, and of those four who remain two faced highly competitive races since redistricting.<sup>i</sup>

In the years following the 1991 redistricting, which Democrats effectively controlled and the 2002 redistricting which the Republicans ultimately controlled, partisan control of the legislature swung in the opposite direction both times. Moreover, competitive races and turnover are commonplace in Erie County. Famously, only 6 of 15 incumbents returned to the Legislature after the 2005 elections. No legislator elected in 1991, and only one elected in 1993 currently serves.<sup>ii</sup>

The election of 1991 is significant because it followed a redistricting process. That year the Democratic majority shrank from 11-6 to 9-8. Of 17 races, three were won by extremely close margins while two others were considered competitive despite ultimately solid margins of victory for the winners.<sup>iii</sup>

### **Procedures for Redistricting: Who Draws the Lines?**

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Legislatures, independent commissions, or bi-partisan commissions generally draw district lines. The arguments favoring each generally hinge upon the desire and practicality of keeping politics out of the decision making process. Some argue that reapportionment should be a “simple, technical exercise.”<sup>iv</sup> Others believe that there is no way to take politics out of redistricting; therefore, the duly elected representatives are in the best position to represent the interests of the people whom they represent.<sup>v</sup>

### **Legislature**

In the United States the vast majority of states and localities vest their redistricting procedures with their legislatures. This arrangement assumes that the interests of various groups will naturally diverge concerning redistricting as they do on other issues. Therefore, the process of ordering redistricting values should be allowed to emerge politically through the process of negotiation and compromise. An elected legislature is in the best position to reflect the interests of the citizens. One method of preventing majority party dominance under such an arrangement is requiring a two-thirds vote to approve a redistricting plan, usually forcing the majority party to secure some minority party votes.<sup>vi</sup>

### **Nonpartisan Commission**

This model is based on the idea that “redistricting should be made apolitical.”<sup>vii</sup> This approach bans elected officials and party operatives from participating, taking the power from those whom it poses a conflict of interest. The commissioners can be “sealed off” from certain types of data such as most electoral data as well as the addresses of incumbents and other candidates.<sup>viii</sup>

The best example of this type of commission is in Iowa, where a nonpartisan redistricting process is employed that produces “strikingly competitive legislative districts.”<sup>ix</sup> Iowa gives the responsibility for redistricting to a legislative support staff office, the Legislative Services

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Agency, (“LSA”). The LSA comes up with up to three plans based on “four criteria (population equality, contiguity, unity of counties and cities, and compactness) without regard to political affiliation, previous election results, the addresses of incumbents, or any demographic information other than population not otherwise required by law.”<sup>x</sup> The legislature may approve one of the first two plans only making technical changes. If it fails to approve the second plan, it may make substantial changes to the third plan, effectively mapping their own plan.

Critics have pointed out that “Iowa is an outlier among states. Its mix of social and geographical characteristics and close partisan balance naturally support more competitive legislative districts. The absence of racial minorities removes all of the complicated considerations of the Voting Rights Act. Iowa’s strong tradition of progressive nonpartisanship supports the unusual delegation of responsibility to a professional staff (unusual for the U.S., not for other countries accustomed to using civil service boundary commissions) and the legislature’s restraint from using its full authority to control redistricting.”<sup>xi</sup>

### **Bipartisan Commissions**

This model suggests that redistricting is inherently political, “but seeks to minimize unfairness by transferring the redistricting power from legislative bodies — which at any given time may be dominated by one political party — to balanced, bipartisan commissions, where both major parties are ensured an equal number of seats at the bargaining table.”<sup>xii</sup> The advantage of this type of system is that “elected officials, party officers, and even political consultants can serve as highly knowledgeable commissioners and all manner of relevant data can be taken into consideration.”<sup>xiii</sup> Such commissions typically have an odd number of members, with a tiebreaker often chosen by the other members of the commission itself. One criticism of this type of system is that it places too much power and discretion in the hands of the tiebreaker, someone who is virtually unaccountable to the public.

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New Jersey provides a good example of the bipartisan system. The state legislative redistricting process involves the appointment of an evenly divided ten-member commission, with half of the members chosen by each of the state party chairmen.<sup>xiv</sup> If the commission cannot reach an agreement in one month, the Chief Justice of the state's highest court appoints an eleventh member to serve as a tiebreaker. Another bi-partisan alternative is to have the commissioners choose a tiebreaker, as is the case in Arizona and elsewhere.

The New Jersey system produced “a plan that elected in November 2001 a tied State Senate (with 20 Democrats and 20 Republicans) and a narrowly Democratic General Assembly (with 44 Democrats and 36 Republicans) – an accurate reflection of the state wide vote tallies for each party's candidates.<sup>xv</sup> Nearly half the districts (18 of 40) generated competitive contests in 2001, with the winner getting less than 60% of the major party vote in the general election.”<sup>xvi</sup> Advocates of this system believe these results could not have been achieved without taking “political” data into consideration, which is not part of Iowa's process.<sup>xvii</sup>

### **Standards for Redistricting**

The criteria for redistricting have proven to be as important in the redistricting process as the commission membership. Even systems that do not produce a partisan advantage have in recent years produced redistricting schemes ruled to be illegal by courts applying criteria established in redistricting law. For instance, An Arizona judge voided the initial district lines generated following the 2000 census under the new system on the premise that not enough were competitive, a standard established by law.<sup>xviii</sup>

Foremost among criteria is adherence to all Constitutional and Voting Rights Act requirements. Other typical criteria include compactness, contiguity, observance of political subdivisions, preservation of communities of interest, preservation of the cores of prior districts, competitiveness and partisan fairness. New York State's Municipal Home Rule Law Article 2, §10 (13) (a), sets out standards for redistricting in priority order; i) substantially equal weight, ii)

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observance of political subdivisions where possible, iii) preserving fair and effective representation for organized political parties, iv) contiguity and compactness. But counties like Erie, operating under a charter, are not required to follow these standards if they specifically address them on their own.<sup>xix</sup>

### **Constitutional and Voting Rights Act Requirements**

In 1962 the Supreme Court decided that federal courts had jurisdiction to consider constitutional challenges to redistricting.<sup>xx</sup> The following year, Justice Douglas held that “[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.”<sup>xxi</sup> Over the years this concept has been developed to mean nearly exact population equality in congressional districts and only a somewhat more relaxed standard in state and local districts. In general, population deviations of less than ten percent between the largest and smallest districts do not require justification.<sup>xxii</sup>

The Voting Rights Act (“VRA”) passed in 1965 protects the voting rights of racial minorities. Section 2 of the VRA applies to all jurisdictions in the country and it bars practices and procedures that “result in the denial or abridgement of the right of any citizen . . . to vote on account of race or color.” While there is no right to proportional representation, the courts have tried to ensure that geographically compact and politically cohesive minority groups are districted in such a way that it ensures at least a roughly proportional share of seats.<sup>xxiii</sup> The Supreme Court constrained this interpretation of the VRA by holding that traditional districting criteria cannot be subordinated to race for its own sake or as a proxy for party affiliation.<sup>xxiv</sup> The result is that “a plan can be invalidated either because it fails to take race sufficiently into account or because it takes race too much into account.”<sup>xxv</sup>

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### **Compactness, contiguity and preservation of political subdivisions and communities of interest**

The most common modern argument for compactness is that it “facilitates the realization of other good government goals.”<sup>xxvi</sup> For instance it preserves communities of interest, it can prevent city and towns from being split and it can protect minorities from racial gerrymandering.<sup>xxvii</sup> It also creates much more aesthetically pleasing district lines. Where positive associations between compactness and the other criteria exist it should be followed, but where these other criteria are in conflict with compactness it should not obstruct them.<sup>xxviii</sup>

Virtually every state requires that their congressional and legislative districts be contiguous.<sup>xxix</sup> This is important for many of the same reasons as compactness.

The principle of preserving communities of interest has to do with maximizing a community’s influence within a district while limiting the potential for gerrymandering. On the other hand it can deny communities access to multiple representatives and it can create a more fractious legislature whose representatives only stand for a particular set of interests.<sup>xxx</sup> New York State requires towns (but not cities) to be represented in whole within state legislative districts, except in the case where towns exceed the population of such districts.

### **Preserving Cores of Prior Districts**

Some redistricting plans value maintenance of legislative stability. By starting from scratch and ignoring old districts, there is likely to be radical change in the electoral process. It could result in the unnecessary and arbitrary loss of seats by duly elected incumbents. This threat could result in a loss of qualified candidates who will not want to risk running for a seat that may be eliminated after every redistricting. It would also result in the destruction of organizational ties that develop among activists within a particular district.<sup>xxxi</sup> It may also create a disconnect between constituents and their representatives that would result in increased and

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more expensive campaigning to get candidates' names out and voters to the polls. Without a connection to their representative, voters may become apathetic and less engaged.

### **Competitiveness and Partisan Fairness**

There is a tension between these two principle that require a balance between creating districts that are responsive to shifts in public support and treating the major parties fairly. Competitiveness is important because it ensures that shifts in popular opinion will be reflected in the make up of the legislature. Thus taking power out of the hands of the mapmakers and putting it back into the hands of the voters. Partisan fairness ensures that each of the major parties is treated symmetrically. So a 50% vote share should result in a 50% seat share or if Democrats were able to get 60% of the seats with 55% of the vote then Republican should be able to do the same.

Problems arise when there is too much responsiveness or partisanship built into the system. A highly responsive electoral map could create a situation where a very small shift in the opinions of the voters could lead to a one party sweep of every district, leaving nearly half of the electorate without any representation. On the other hand if districts were gerrymandered to give one party 60% of the vote in every district, only a tidal wave of discontent would put any of these seats in play, undermining democratic accountability.<sup>xxxii</sup>

Most partisan gerrymanders are achieved by “packing” the fewest possible districts with a super majority of one party, effectively wasting any votes over 51%. The problem this issue presents is that many times this “packing” occurs naturally. One party may be highly concentrated in a geographic area, so in order to avoid “packing” you must sacrifice other principles such as compactness, respect for political boundaries, or minority voting strength.

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<sup>i</sup> Those who remain are Weinstein, Ranzenhofer, Marinelli, and Holt. Marinelli faced a competitive general election in 2003 and a competitive primary in 2005. Holt faced a competitive primary in 2005.

<sup>ii</sup> that one, George Holt is no stranger to competitive elections, having defeated an incumbent in 1993, and faced very stiff opposition in 2005

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<sup>iii</sup> See, Linstedt, Sharon, “Desmond, Pigeon Lose; Republicans Narrow Democrats' Control Of Legislature To 9-8,” *The Buffalo News*, November 6, 1991

<sup>iv</sup> See Bruce E. Cain, *The Reapportionment Puzzle*, (Berkeley: University of California Press, 1984), pp. 9-31

<sup>v</sup> *Id.*, 181-85.

<sup>vi</sup> Cain, pp. 170-80.

<sup>vii</sup> Redistricting Reform Conference, *The Shape of Representative Democracy*, (Council for Excellence in Government and The Campaign Legal Center, June 2005) (hereinafter “RRC”).

<sup>viii</sup> *Id.*

<sup>ix</sup> Thomas E. Mann, *Redistricting Reform: What is Desirable? Possible?*, (The Brookings Institute, April 2004).

<sup>x</sup> *Id.*

<sup>xi</sup> *Id.*

<sup>xii</sup> RRC.

<sup>xiii</sup> *Id.*

<sup>xiv</sup> Donald E. Stokes, “Is There a Better Way to Redistrict?” in *Race and Redistricting in the 1990s*, Bernard Grofman, ed. (New York: Agathon Press, 1998) 345-66.

<sup>xv</sup> Sam Hirsch, *The United States House of Unrepresentatives: What Went Wrong in the Latest Round of Congressional Redistricting*, 2 ELECT L.J. 179, 214 (2003).

<sup>xvi</sup> *Id.*

<sup>xvii</sup> *Id.*

<sup>xviii</sup> See, Davenport, Paul, *Judge Orders Use of new Arizona Redistricting Maps*, Associated

Press, April 17, 2004,

[http://www.zwire.com/site/news.cfm?newsid=11339115&BRD=1817&PAG=461&dept\\_id=685](http://www.zwire.com/site/news.cfm?newsid=11339115&BRD=1817&PAG=461&dept_id=685)

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<sup>xix</sup> *League of Women Voters v. Westchester*, 218 AD2d 730 (2d Dept. 1995).

<sup>xx</sup> See, *Baker v. Carr*, 369 U.S. 186 (1962)

<sup>xxi</sup> *Gray v. Sanders*, 372 U.S. 368, 381 (1963).

<sup>xxii</sup> RRC

<sup>xxiii</sup> RRC.

<sup>xxiv</sup> RRC.

<sup>xxv</sup> RRC.

<sup>xxvi</sup> Cain, p. 33.

<sup>xxvii</sup> *Id.*

<sup>xxviii</sup> Cain, 33-4.

<sup>xxix</sup> See, [www.aceproject.org](http://www.aceproject.org), *Reapportionment Redistricting in the United States of America*.

<sup>xxx</sup> RRC.

<sup>xxxi</sup> Cain, p. 12.

<sup>xxxii</sup> RRC