



# New York's Redistricting Saga Continues After Midterm Losses (1)

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- Deadlocked panel charged with redrawing Assembly lines
  - Democrats could learn from gerrymander, analyst says
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New York's independent redistricting commission on Thursday released its draft state Assembly map, the last vestige of a process impeded by partisanship that helped Republicans narrowly clinch control of the US House starting in January.

The 10-person panel unanimously elected its new leaders, and moved forward with draft Assembly lines before the court-ordered Dec. 2 deadline.

Though seemingly procedural, the actions show the commission can function after failing to agree on final congressional and state legislative maps earlier in the year.

"I would say that this is a significant moment, maybe even a historical one, in which a single map is being produced by the commission," Charles Nesbitt, the commission's newly elected vice chairman, said at the meeting. "I think that in itself signals an era of cooperation and productive work by this commission that is important for all in the state of New York."

Agreeing on a new chair and vice chair "should be a positive sign," said Jeffrey M. Wice, adjunct professor and senior fellow at the New York Census and Redistricting Institute at the New York Law School ahead of the meeting. "Nobody wants to see a repeat of what happened this year," he said.

New York lost a seat in the US House after the 2020 US Census, because its population grew more slowly than other states between 2010 and 2020. New York redistricting was then closely watched because of its potential impact on control of Congress.

The state's redistricting process, marred by partisan politics, resulted in Democrat-drawn maps. The congressional and state Senate maps were then thrown out by the state's highest court. The final congressional and Senate lines were drawn by a court-appointed special master, who put competitive alternatives in the place of districts heavily weighted to favor Democrats.

The original Assembly maps weren't a point of contention, but they were eventually thrown out after a court deemed the entire process unconstitutional.

The November midterm elections resulted in a net loss of four House seats for Democrats, helping the GOP win a slim majority in the US House. New York Republicans used frustration over rising crime and inflation to help win over toss-up districts.

### 'A Little Too Eager'

"There's a lot of blame to go around," said Na'ilah Amaru, a Democratic strategist and former executive director of the New York City Council's Black, Latino, and Asian Caucus. "Yes, Democrats are to blame. But also, you can't blame them for playing the political game because that's the framework that we're all in."

Democrats got "a little bit too eager" when they drew the maps this year, operating as they did when Republicans controlled the Senate by initially taking as much as they could, Amaru said. But with a supermajority in both chambers, there was no need to negotiate, she said. The result was highly gerrymandered maps that didn't hold up in court.

Democrats also leaned heavily on the fact that they outnumber Republicans in the state. But the advantage shrank when more Republicans were mobilized in the midterms than Democrats, Amaru said.

### A 'Dysfunctional' Body

New York's unfinished business on redistricting stands out. Nationally, redistricting plans for Congress and state legislatures are mostly complete, Wice said. "New York has not had this kind of situation since the 1960s."

This was the first year the independent commission was deployed to compose congressional and state legislative boundaries. A 2014 amendment to the state's Constitution required the creation of the 10-member body, with eight members selected by state legislative majority and minority leaders and the remaining two members selected by the eight appointees. It's currently made up of four Democrats, four Republicans, and two members not enrolled with either party.

The makeup means the commission is predisposed not to reach a consensus—instead deadlocking on either side. "It was deliberately written in 2012 to be dysfunctional and indeed it completely remains dysfunctional," said Susan Lerner, executive director of Common Cause New York, which supports nonpartisan redistricting and successfully sued over the language of the 2014 ballot measure.

Amaru agreed. "If you create a process that's supposed to be neutral, but you allow politics to become core parts of that process, then you've negated any neutrality in the outcome," she said.

The panel was further hampered by a slow start due to delays in state funding. The partisan divide on the panel became immediately apparent when members couldn't agree on their own leadership. They later failed to reach a consensus on draft maps, and eventually sent two sets of maps—one drawn by Republicans and one by Democrats—to the Legislature.

Both were nearly unanimously voted down by a Democratic supermajority in both houses, leading to the Legislature's extremely gerrymandered maps and subsequent successful Republican court challenge.

Thursday's meeting could be seen as a test case for whether the commission can function in a bipartisan manner. New leadership "might bring a breath of fresh air to the commission," Wice said.

Lerner was skeptical, saying she wasn't sure if a change in personnel is "somehow going to pull this dysfunctional body together."

At the meeting, the panel unanimously elected Ken Jenkins as chairman. He is the first African American to hold the position of Westchester County's deputy county executive. Nesbitt, a former Assembly Minority Leader, was elected vice chair.

### **Next Steps**

Public hearings on the draft Assembly lines will be held across the state, starting on Jan. 9 in Buffalo.

The commission then will have until April 28 to send the proposed map to the state Legislature. If rejected, the panel will have to go back to the drawing board. If approved, the map goes to Gov. Kathy Hochul (D) for her consideration. If she approves it, the lines will become final and will be used in the 2024 election.

Legal challenges could further delay the process well into 2023, Wice said.

The US Supreme Court case over North Carolina's maps, *Moore v. Harper*, could decide whether state legislatures, not courts, have the final say over district lines. That decision could further open litigation in New York, Wice said.

The replacement of the top judge on New York State's highest court could also change future redistricting decisions, he said. There's a "series of balls up in the air," he said. "We're in the seventh inning with no score."