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STAGGERED TERMS MAKE REAPPORTIONMENT IMPOSSIBLE

by Edwin D. Reilly, Jr.
for the Sunday Gazette

"For all to whom the power's given to sway or to compel, Among themselves apportion Heaven and give [freedom] Hell." –Blary O'Gary

"The distinction between freedom and liberty is not accurately known; naturalists have never been able to find a living specimen of either." –Ambrose Bierce

"Blary O'Gary" is no more real than any of the many others that Ambrose Bierce invented for citation in his "Devil's Dictionary," among them being Oglum P. Boomp, J.H. Bumbleshook, Salder Bupp, Bissel Gip, Bootle P. Gish, Orrin Goof, Hannibal Hunsiker, Halcyon Jones, Mumfrey Mapple, Bugul S. Purvy, J. Milton Sloluck, Naramy Oof, Orm Pludge, and Bartle Quinker. Bierce is the author of both quotations.

I don't know what Bierce would have thought of weighted voting, the current hot issue before the Schenectady County Legislature. Having disappeared in Mexico in 1913, he's not around to ask. But it is reasonably clear from the "O'Gary" quote that he feared that those with the power to apportion anything are prone to self-serving mischief. Let's see if we can find any evidence of that in the case at hand, the resolution of the Schenectady County Legislature of May 10, which, subject to a permissive referendum, would amend the county charter to require weighted voting rather than one legislator, one vote.

Weighted voting systems are reasonably common. In corporate shareholder meetings, votes are weighted by the number of shares that each shareholder owns. And in our Electoral College, the small states' extra electoral votes for their two senators give each of their voters a greater probability of affecting the allocation of their state's electoral vote than is enjoyed by the voters of the large states. Twenty-seven of New York's 62 counties use weighted voting despite the supposed risk that the practice will eventually be declared unconstitutional.

In an April Letter-to-the-Editor of the Gazette, I referred to my Niskayuna Journal article of January 4, 1990 on the subject of county representation. In it, I pointed out that our charter would allow an apportionment of legislators such that the number of people represented by a legislator in one of our four districts as compared to the same measure in another district could vary by as much as 15%. I wrote that since such deviations were "so large as to run the risk of legal challenge, we might also consider a provision that the result of any county resolution that appears to have carried by a one-vote margin be recomputed according to a weighted vote based on the actual number of persons represented by each voting Legislator."

In our county, the remaining two Republican legislators oppose weighted voting. But in Cayuga County, it is a group of Democratic legislators who want to end the practice. In that county, weights are large integers, like 53 or 89. In two cases in the past two years, including that county's 2010 county budget, weighted voting led to resolutions passing the Legislature despite an 8-7 majority of legislators opposed to them.

But when weights are close, weighting voting is quite benign. For our county, the proposed weights are all close to 1, some a tiny bit more, some a tiny bit less. In my Letter of last month regarding the current legislation, I wrote: “The voting weight of each of our 15 Legislators is so close to 1.0 that the sum of the seven largest weights is 7.4052 and the sum of the eight smallest weights is 7.5948. This means that there is no combination of seven legislators whose votes could overrule those of the other eight. The system would be absolutely fair because all results would be the same as if each legislator casts a vote of weight 1.0, as they do now.”

To best consider the alternatives to weighted voting, one should study section 2.04 of www.schenectadycounty.com/content/Charter-Print%20version.pdf, a version that dates back to 2001. (I have recommended to county officials that the latest version of the charter be posted instead; it contains a change to section 2.05 made in 2007, though one not relevant to this essay.)

According to section 2.04 (c) of our charter, an attempt must be made after each decennial census to structure a legislature of 15 members distributed among four districts in such a way that each legislator represents a number of persons within 7.5% percent of the "average population per representative." But then comes a curious and logically questionable provision. When population figures do not permit a 15-member solution, then 14 must be tried, then 13, etc., down to a theoretical minimum of four (since each district is entitled to at least one legislator).

After the 1980 census, 15 members didn't work, nor did 14, but 13 did: three in each of the two City districts, three in the district comprising Rotterdam, Princetown, and Duanesburg, and four in the district that encompasses Niskayuna and Glenville. In 1991, the process began anew, starting with an attempt to form a 15-member Legislature, and that was successful. But what if no number from 15 down to four had met the rule that mandates a maximum deviation of 7.5% from the average number of persons represented per Legislator?

In that event, resort can be made to 2.04 (d), which tries to find a legal fit at successively higher numbers, 16, 17, 18,…to virtual infinity: the current 90,000 registered county voters could each have their own one-person district. Whether they could be coaxed into running for office, however, would be problematic.

For 2010 census data, a legislature of 24 members would work, provided we raise enough in additional county taxes to pay for nine new legislators and their desks and crowd all of this into the legislative chamber. But would even the League of Women Voters claim that this is a reasonable solution? I doubt it.

The next option is to pass a local law, subject to a permissive referendum, that would redistrict the county to form realigned districts, not necessarly four, whose demographics support a legislature of reasonable size. Should the legislature fail to do so (or anything else), or if the associated referendum is held and the redistricting is defeated, then all members must stand for election in the county at large, an expensive can of worms that neither major party would care to fish with.

Now, are we done yet? No! In 1971, as Alice would say, things got "curiouser and curiouser!" In that year, the county amended its charter to provide that only half of our legislators stand for election to 4-year terms in any given biennial election and the other half two years later. But, and here’s the rub, the charter was amended without careful regard to the incompatibility of staggered terms and the provision for a varying number of representatives. What if, in the year following

some census, we find that the only legal apportionment requires 16 Legislators at a time when there are already eight duly elected persons half-way through their 4-year terms? You just can't shoot the horses out from under legislators duly elected to serve a particular constituency for a stated number of years.

My characterization of the situation is linguistically similar to what Churchill said about democracy: Weighted voting is the worst form of reapportionment except for all the others.

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