



## **Public Policy Forum**

### **Who Should Redraw**

### **the Political Map?**

### **Redistricting in New York**

**Presented by**

**Roman Hedges and**

**Blair Horner**

*May 19, 2006*

*Brian T. Stenson:*

Good morning and welcome to our Public Policy Forum series. I'm Brian Stenson, Deputy Director of the Rockefeller Institute. Dick Nathan could not be here today; he's away on business in Mississippi and he extends his apologies. He really wanted to be able to participate in this session, and he just wasn't able to do so.

The past few years has seen a real increase in the number of governmental reform proposals and it appears that the public is starting to pay attention to at least some of them. Eliot Spitzer, Alan Hevesi, Assemblyman Brodsky, and probably other elected officials have each advanced broad agendas with many specific proposals. Any number of advocacy groups, research institutes, and generally smart people have also advanced proposals to change the way things are done here in Albany. These proposals will change the budget process, state borrowing, campaign finance, redistricting, and many other aspects of government. The Institute has held a number of sessions dealing with these governmental reforms.

Many reform agendas have common elements, and one of them is the subject of today's forum. We've titled it, "Who Should Redraw the Political Map? Redistricting in New York State." In fact, many observers view legislative redistricting, along with campaign finance reform, as two necessary cornerstones of any effort to fundamentally reform New York State government.

Most if not all of these proposals advocate some form of nonpartisan or an independent commission to draw district lines. Our two speakers are well qualified to address this issue from quite different perspectives.

Roman Hedges will speak first from his vantage point as an insider in the process. Roman is not only Deputy Secretary of the Assembly Ways & Means Committee, but also a member of the New York State Legislative Task Force on Demographic Research and Reapportionment. Roman is a veteran legislative aide and has participated extensively in several reapportionment exercises. If anyone can effectively represent the status quo, Roman Hedges is certainly the person able to do so.

And after Roman's remarks, we will hear from Blair Horner, who is the legislative director of the New York Public Interest Research Group (NYPIRG). Blair coauthored a report, "Unfair Advantage: New York State's Redistricting Process," which is endorsed by a number of public interest advocacy groups. I won't summarize that report, as Blair can do so far better than I can.

After Blair concludes, Roman and Blair will have an opportunity to comment on each other's remarks and then will entertain questions from the group.

*Roman Hedges:*

There are a couple of fundamental arguments that are made about redistricting. One of the underlying observations in the remarks that are critical of the current process is a turnover argument. There's not enough turnover, there's not enough responsiveness to the changing electorate. A second observation is that because of the self-interest of

incumbents, they ought not to be part of the process. I want to try to address both of those arguments. Blair may make some additional observations, but I think those are the core arguments that are against the current process that is used in New York.

So, let me start first with the turnover argument. There are 105 elected Democrats in the State Assembly today, 58 of those people were elected during the incumbency of the current speaker, the rest were not; they were elected in prior years. But more than half of the incumbent Democrats were elected in the last 12 years. Wow, that's a whole lot of turnover. In most organizations that would be unacceptable.

And if I go to the Republican side of the ledger and ask the same question, 38 of the 45 were elected in the last 12 years. There are only two people, who were elected when Stanley Fink was Speaker — wow — and nobody from before that.

Turnover is the norm; it happens for a lot of reasons, but elections, in a direct sense, aren't typically amongst them. They don't lose in a general election, they quit, they move on, they do other things. My understanding is that, at least, a couple of people within the last 24 hours are leaving the Assembly. One of them resigned and the other is about to take a job elsewhere. Turnover is the norm; it's not unusual. So, if turnover is the point, it misses the point to focus on redistricting.

I want to come back on the second question as I move along, because I think it's important to tell a little bit of the story about how thoroughly constrained the redistricting process is. It starts out with an equal population requirement that was decided in the 1960s. It's been refined over the years as it relates to legislative districts, Senate and Assembly. The standard is plus or minus five percent, and that plus or minus five percent actually is translated a little bit less literally, a total deviation of ten. Some could be more than five, some could be less than five, but in the end, the biggest and the smallest must be within ten.

On the Congressional level, the standard is much stricter and the reason is that there are thought to be rational state purposes for why there is population deviation. I'll

come back to that in a second, as well; but, to get to the congressional point, plus or minus one person is the standard. In New York, the biggest district and the smallest district are literally one person apart. That creates all sorts of bizarre things, you know, local situations; but it is a really strict standard. And since a decision in the early 1990s, *Karcher vs. Daggett*, no one feels comfortable deviating further than one person.

A second constraint, in addition to the equal population requirement, is the Voting Rights Act. The Voting Rights Act is designed around the concept that this country has a history of doing bad things with respect to minorities. And those bad things sometimes are so bad that we say, as a matter of law, that, you know, “We don’t trust anything you do. I want to review that before I allow whatever you want to propose in the way of changing of the election machinery and that we want to allow, it’s got to be either the Justice Department or the District Court in Washington, D.C.”

The Voting Rights Act has two fundamental different sections of law. One of them is section five and one of them is section two. Section five says: “You’re a bad actor. You’ve got a history. You’ve done bad things, and it’s had a consequence. Therefore, anything that you do, any proposal that you make, before it goes into effect, has got to be reviewed by either the court in Washington or the Justice Department.” And that section, Section 5, says: “My standard here is you can’t propose to do anything that has the effect of making minority communities less able to elect candidates of their choice.” Rough translation: You’d better not disenfranchise any Black incumbent, or any Hispanic incumbent, or any Asian incumbent. They are specifically protected in Section 5 of the Voting Rights Act.

Section 2 says, “You know, minority communities ought to have the opportunity to elect candidates of their choice, and so, let’s make sure that’s true.” Section 2, then, doesn’t explicitly go to the question of, “you’ve got a history, you’re a bad actor,” it goes to the opportunity to elect candidates of choice. And in New York, there are three counties that are covered under Section 5: the Bronx, Manhattan, and Brooklyn. In those three counties, you can’t even propose to move a polling place without getting Justice Department approval.



In the rest of the state, like the rest of the country, if you do something that's got the effect of making it so minority communities don't have an opportunity to elect a candidate of choice — and there are standards for that, and I'll get to them in a second — you can't do it. And if you do it, we're going to get you.

We're going to create a process that says, "Here's the appeal, here's the opportunity to complain about the outcome."

The standards under Section 2 are pretty simple at one level and very complicated at another. The standard is: Does this minority community vote cohesively? Does the white community that might be involved vote to thwart the cohesive minority community? And are there a sufficient number of minority community members to think that they could prevail in a specific district? That numerosity test, that voting cohesion test, that white voters vote to thwart their community interests, are all required and I'll come back on that in a minute, as well.

So, my point there is, there are a whole lot of constraints on the process and the constraints are important to understand. They are related to community, they are related to cohesion, they are related to political wherewithall, they are related to numerosity. And all of them end up, I think, providing really important constraints on whatever process you propose to have.

So let me go on and talk about another set of constraints. They come from the State Constitution and the State Constitution explicitly as it relates to redistricting is from the 1890s. There was a constitutional convention, there was a debate, it was incredibly antiurban, incredibly antiethnic — I'll provide a quote in a minute — but the gist of it is this: "I don't want them voting in my election," and that's a direct observation on the floor of the convention. It's at a time when the country was starting to think in terms of

antiurban, antiethnic, nonpartisan elections are a part of that agenda. Most of the rest of the country has nonpartisan elections at the municipal level. Most of the rest of the country has incredible restrictions that only got wiped out in the 1990s related to “Who is qualified to be a voter?” It is very reminiscent of the current debate about closing the Mexican border. To me, that’s abhorrent. And all of those reforms, and they were all touted as “reforms,” are incredibly undemocratic and incredibly un-American, but it is part of our history.

So let me get to the specifics of the State Constitution. There’s a community standard in the State Constitution: Towns cannot be divided. “Town” is a specific word in New York. It means Bethlehem and not Albany. Towns cannot be divided, cities can. There’s an equal population requirement in the State Constitution. It’s an incredibly powerful provision. Oh, and by the way, city blocks can’t be divided. Since towns can’t be divided, let’s look on the common border of two adjacent districts, whether they be Senate or Assembly. At the time they thought of Congress (the U.S. Supreme Court has decided otherwise on the Congress), let’s make this equal population provision apply.

On the common border of two districts that have towns as their composition, is there a town that could be moved to the other district to make them more equal in population? If so, you must do it. The same rule applies in cities with respect to blocks. If there’s a block on the common border of two districts and it could make the population be more equal, move it.

I spent a good two weeks 25 years ago trying to figure out how to deal with the fact that the Census reported that there was one person living in the Empire State Plaza. That one person kept moving back and forth. I don’t know that there was one person there, I don’t know that there were 10 people there, but that’s what the Census said, and the Constitution required me to figure that out. And every time a different adjustment in the population blocks got moved, that one person came back in play. And as I said, it was about two weeks before we figured it out. It’s an incredibly powerful population requirement.

Underlying it is going to be a political theory that I'll talk about in a minute that was designed to be Republican, and it's survived since 1894, designed to be Republican. Seemingly neutral rules have parts and effects and they've been very effective.

So, that is a backdrop. How does New York do redistricting today? In the 1970s, with a newly elected Democratic majority in the Assembly and a somewhat skittish Republican majority in the Senate, there was a conclusion made to create a "partisan but not one party in control with citizen involvement" redistricting process. And what was created was a legislative advisory task force on redistricting, and that task force is a place that I currently have a speaker's appointment to. But it has as its composition, by design, four elected and two nonelected people. The four elected are, respectively, appointed by the Majority Leader of the Senate, by the Speaker of the Assembly, the minority leaders of both houses — each have an appointment — and the Speaker and Majority Leader of the Senate each have a nonelected citizen appointment.

So we have a bipartisan commission whose purpose is to advise the Legislature on redistricting matters. As a practical matter, in this last part on redistricting, they hold 25 hearings — 12 before the lines were drawn, 13 after line proposals were made and made public and published throughout the state. The purpose was to hear what people had to say about what the process should look like and what the lines should look like.

The data related to the various proposals were available on a web site. They were available by writing in. There were \$20,000 worth of public ads in newspapers trying to publicize the hearings, trying to publicize the events, trying to publicize the lines to get people to comment.

The lines were changed significantly from first proposal to final proposal. They were based, in part, on the hearings. They were based, in part, on a lot of other things, as well. The equal population standards the federal courts have set, which is that 5 percent that I've mentioned; the biggest district in the Assembly is 5.2 percent above the average, the smallest district is 4.3 percent below the average and both are represented by

Democrats. In the senate, the largest district is 4.1 percent bigger than average, and the smallest is 5 percent lower than the average, and both are represented by Republicans.

So, on its face, there's no particular reason to think party advantage is involved here, although party advantage is certainly a piece of the puzzle. There was in the last round of redistricting no litigation related to the Assembly lines. There was litigation related to the Congressional lines. The main case is *Rodriguez vs. Pataki*, and the gist of that case and of other cases in New York has been: Before lines are drawn, why don't we remind the Legislature, who ultimately is responsible for drawing lines, that they can't go with the current lines? The current lines are not going to be okay equal population-wise, and in those cases that was the underlying argument.

The Legislature in the case of the Congress could not come together. We were not able to resolve anything, and the translation to that is the court ultimately said, in what are very unusual proceedings in federal courts where they combine the appellate division level of the court and the district level version of the court in a combined proceeding and no jury, "Elections are way too important to let this pass. Let's consolidate the process, let's make it all happen but let's make sure that we've got the right kind of talent to evaluate what it is that's in front of us."

The court was headed by President Bush's cousin, and the court said, "You guys are not getting it right. You've got to get this done. You've got to do it quickly. And since you aren't doing it quickly enough, we're going to hire some people put them in charge. The people we are going to hire are going to be experts in this business." And the person they hired was a former Judge Patterson. He in turn hired several experts, including Bernie Grofman, who is the most renowned social scientist in the history of court decisions on voting issues, and a good friend of mine. Bernie's conclusion was that what I — me — did in the City of New York as it relates to voting rights was perfect. We didn't change a block.

He concluded also that what the Republicans did on Long Island was perfect and he didn't change a block. And the ideas that I offered in upstate New York with the



exception of the lower Hudson Valley were pretty good and he adopted them, as well. And he adopted what the Republicans had to say in court in the Hudson Valley.

The translation of all of that is: Nobody was happy. And that forced people to come to a conclusion that they needed to negotiate an outcome that took care of the major issues that the court had identified and took care of the other issues in a way that was politically acceptable. And that's what happened.

We ended up adopting the Long Island portion and the city portion block-for-block as drawn and were presented to the court on the theory that if you changed it, you were in trouble. You were going to have to explain to somebody, some time, at some point, that you'd done wrong because you changed what the court said.

And in the upstate region what the court said was not as clean and conspicuous, and detailed, and so there was room to negotiate. We negotiated an outcome I think that everybody was comfortable with. It reflected a variety of things. It reflected what we learned from the Congressional people who we talked with. It reflected what we had learned in hearings. It reflected what we had thought communities wanted us to do and in the end the outcome was accepted. The incumbents involved were not all happy because some of them were pitted against one another, but the outcome ultimately was something the electorate supported.

So, all that having been said, what do I take away from this? I take away from this that turnover happens. You don't need to force it. I take away from it that communities matter and the best people I know to find out about communities are the people who are elected from those communities. And I spend a great deal of time talking with them and trying to understand the boundaries of their communities. And I note in passing that competitiveness, in and of itself, isn't a particularly good criteria.

I would use this local example as the best way to illustrate it: In the 200 years that there has been a Republican party, there have been three occasions in the town of

Bethlehem, where I live, where a Democrat was elected. One was a husband and wife, who got elected in consecutive years. They divorced and they both moved out of town.

Currently, there are a couple of Democrats in the town of Bethlehem, including the council president. That's about things that are not competitiveness. It's about neighborhood, it's about community, it's about who are your neighbors? And there isn't a scattered approach to where Democrats, Republicans, Liberals, and Conservatives live. They live in segregated neighborhoods. Blacks and whites live in segregated neighborhoods. Those communities shouldn't be at war. Those community interests shouldn't be at war.

In the City of New York in the Assembly, there are two Republicans out of 65. Why is that? Because they live in a different neighborhood. Yeah, there's something to be said for, "I can jiggle the lines, and make it come out that somebody is advantaged and somebody else is disadvantaged," but ultimately I can't do that. It doesn't matter how hard I try.

I can make an argument that jiggling the lines to make it so that a district is homogeneous makes more people happy than to make it consciously the case that districts are scattered. Let me use this specific example. If I think of a society that's divided — and my little society is 200 people — I can create a situation where I've got four districts — and we'll use four again as an arbitrary number — where each district is competitive, 26 to 24 in every district, two of them Republican, two of the Democrat, if I translate directly that each person's vote always is guaranteed to go for the party that they prefer.

If I divide that same society up, 35/15 in two districts, zero and 50 in one district, and 30 and 20 in another district, I can show you that that second lopsided, anti-Republican configuration has more people happier with their representative, because in that 26/24, 96 of that 200 are unhappy with the outcome. Which of those is better? Does it matter if they are ugly to get to that place or neat to get to that place? I'm not sure I know.

I think I know that I'm a Democrat, and I'm partisan. I think I know that I'll do whatever it takes. I think I know that in New York that's translated to an incredibly lopsided majority for Democrats. I think that's a good thing. I'm not hesitant about that. The rules matter. The rules matter every day, and use them as best you can to advance your interest. I think that's the right conclusion.

I understand that there are people who disagree with me, but I also understand that at the end of the day that's about my knowledge about a community. It's about my knowledge about why people get elected in the first place. They get elected following self-interest. They stay elected following self-interest. They are the most attuned people I know about the community. Use it, take advantage of it. Don't walk away from it. It's actually what the whole point of a democratic society is.

There's no question in my mind that a central tenet of the discipline that I was educated in, which is political science, is that they know that self-interest is involved. They accept that self-interest is involved. They not only accept it but they embrace it. That's the whole point of an election. Hold people accountable for what it is that they say. And I think the same thing applies in redistricting. I don't think it's otherwise.

There's no question that people can abuse the system. There's no question that people can do the wrong thing. It's not about that. It's about when you have the opportunity, take advantage of that self-interest and use it to the best of your ability. In my mind, rule making is the ultimate place where self-interest plays a role and redistricting is rule making.

*Blair Horner:*

Good morning. I thank you to the Rockefeller Institute for having me today, and to Roman as well. I have a short amount of time and a lot to cover so let me just get right into it.

## Basic political demographics

- 11.6 million registered voters.
- 5.5 million registered Democrats.
- 3.1 million registered Republicans.
- 3 million minor party registered voters or voters not registered in any party (2.3 million).

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First, a few basic political demographics. As you can see, the State of New York has 11.2 million registered voters. We always hear about how New York State is a Democratic state and it certainly has an enrollment advantage, but 6 million-plus of the voters in New York are not, in fact, Democrats. Republicans and Democrats get a lot of the seat at the table on redistricting. That last category does not, and I will talk a little bit about that as I go along.

## Redistricting

- Conducted each decade, the next redistricting will be in place for the 2012 elections.
- Must meet federal standards.
- To the greatest extent practicable, must be “compact” and “contiguous.”

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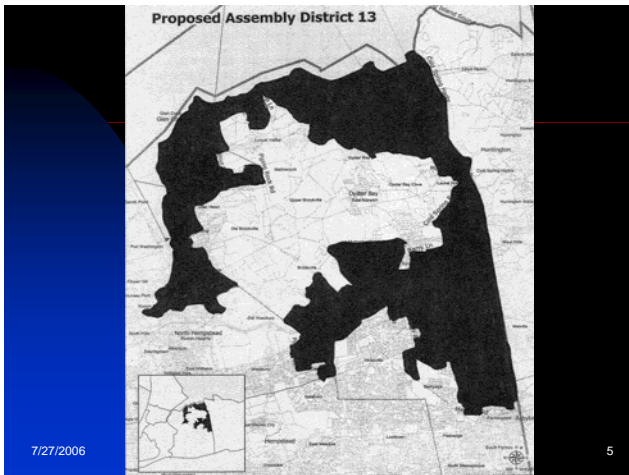
Okay. Basic redistricting, I don't really have to go through this in too much detail, Roman went over it. Please remember that the compact and contiguous requirements that are required in the State Constitution, because we'll have some fun with that in a second.

This is my critique: The current redistricting system lacks standards, and this lack of standards results in the famous crazy-looking districts. We think the system also undermines the goal of “one person, one vote.” It protects incumbents and legislative majorities, and combined with the disgraceful system of campaign finance, results in leaving the vast majority of New Yorkers without meaningful general elections. I could keep going on and on about this, but it's just not right to discuss this without looking at the maps themselves and having some fun.

## Critique:

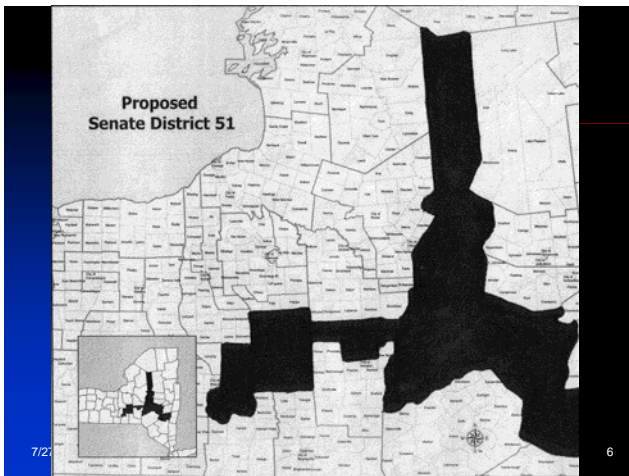
- Lax standards allow bizarre shaped districts.
- Lax standards undermine “one person, one vote.”
- Partisan mapmakers protect incumbents and legislative majorities.
- When combined with a disgraceful system of campaign financing, New Yorkers are left without meaningful elections.

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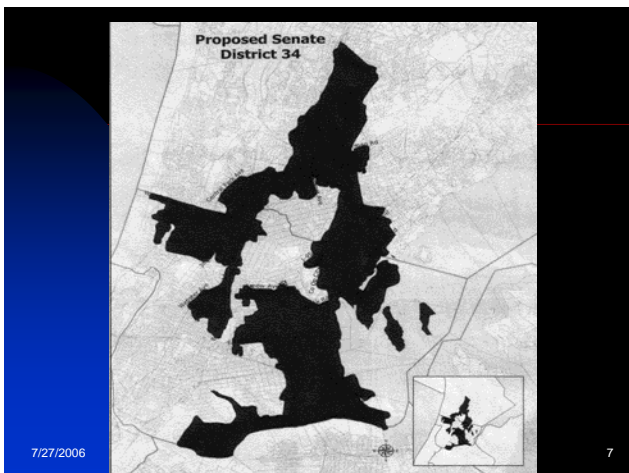
The last time New York redistricted, NYPIRG had a “Salvador Dali Pablo Picasso” award for the three most artistically drawn districts, and those three districts are the ones I want to start with.

In third place: “The Claw.” This was in northeast Nassau County. I love it, it’s perfect, the claw being on Long Island.



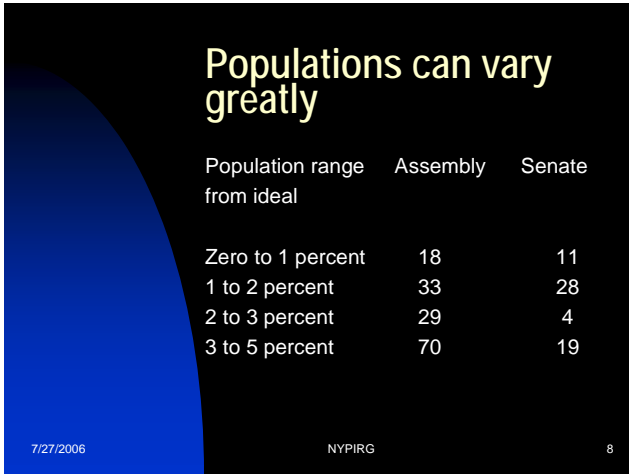
Next district: “Abraham Lincoln on a Vacuum Cleaner.” Abe’s stove pipe hat goes all the way deep into the heart of the Adirondacks, the bag of his vacuum cleaner is around Ithaca, and his feet where he rides the vacuum cleaner are in the Hudson Valley.

Now, you know, this some of you may view this as some kind of psychological test, so if there are any psychiatrists in the room, please don’t analyze. These are not just my interpretations of the districts; they were decided by a group.

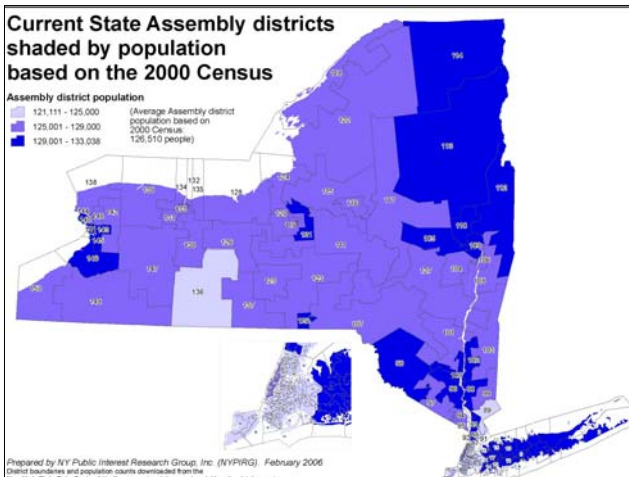


And number one, the winner of the Salvador Dali Pablo Picasso award was: “Oops, I Spilled the Coffee on the Map,” or “Bug on the Windshield.” This is a supposedly “compact and contiguous district” that was designed to protect Senate Republican Guy Veleva, and as you can see, of course, it’s neither compact nor contiguous. We’ll come

back to Guy Velella later on. But this district was designed to, as best the mapmakers could, to protect the incumbent.

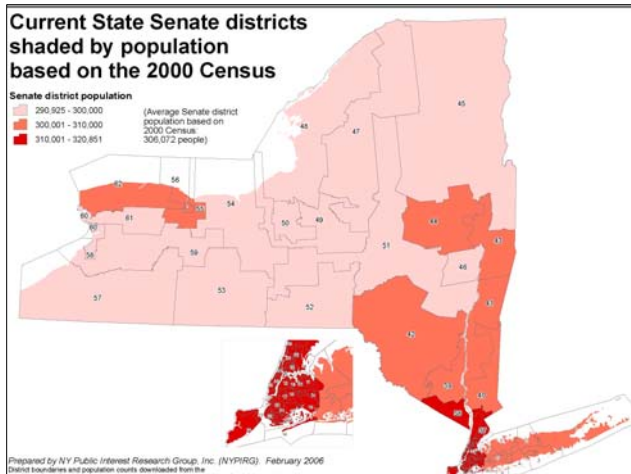


Anybody who's looked at this issue before, of course, has seen crazy maps, right? And the problem is more than just crazy maps, but I wanted to kind of get you in the mood. Let me go into the next critique, which is — and Roman touched on this already — in a democracy, a representative democracy, a key component is one person, one vote. In a representative democracy, the districts are supposed to be more or less the same size. As Roman mentioned earlier, New York has allowed large variations in the populations of legislative districts.



Here are the Assembly districts. The lighter the blue, the smaller the populations to the Assembly. The darker the blue, the larger the population. So what the Assembly Democrats were doing — what Roman was doing — as you can see, is to cluster as many small population Assembly districts in the City of New York as possible to maximize the number of seats, since this is a Democratic stronghold.

And in upstate New York, where there are often more cows than Democrats, the idea was to have districts with as big a population as possible, and so that's what they did. On Long Island, interestingly — we may talk about that later — they didn't do that, and as you can see, those districts are high population districts, as well.

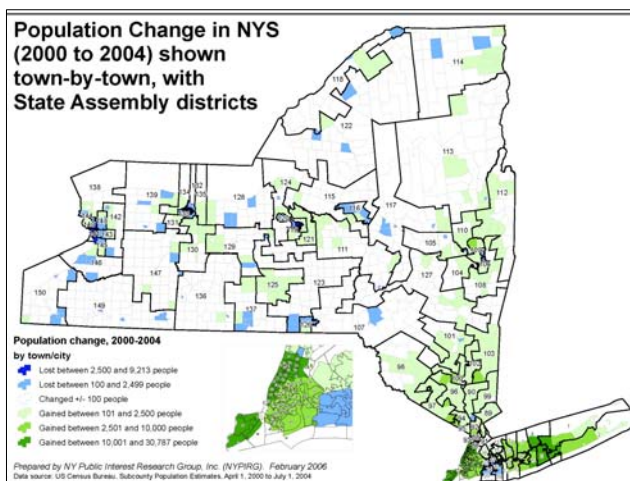


Okay, so that's the Assembly. The Assembly was trying to maximize the number of districts in New York, minimize the number of districts in upstate, typically Republican areas, and that's what they did. Now let's look at what the Republicans did. They did the opposite. On this map, the lighter the red, the smaller the population, the darker the red, the larger the

population. Look at New York City: In New York City, the Republicans minimized the number of districts in the City of New York — a Democratic stronghold — and in upstate they maximized the numbers. The Republicans wanted to have more districts and fewer people in them in order to maximize their regional strength.

Now Long Island is not as dark red as you can see clustered around New York City and in the upper/lower Hudson Valley areas.

Now the next two maps are going to be harder to visualize, so try to remember the basic points. The Assembly maximized the number of districts in New York City, minimized upstate; the opposite occurred in the Senate.



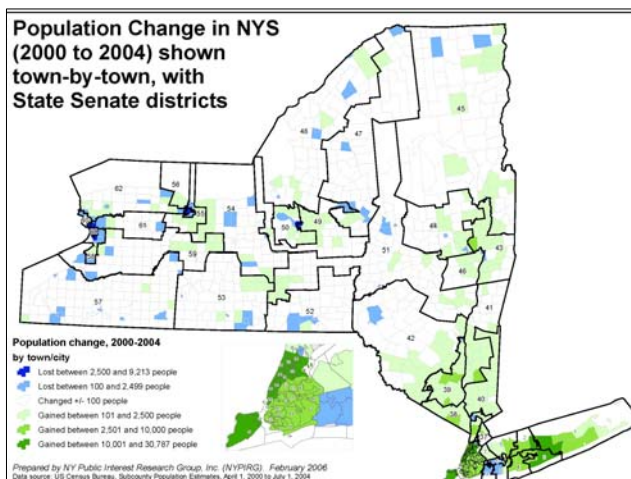
These lines were drawn using data from the 2000 Census. In 2004, the Census put out estimated town population changes and when that data are mapped you can see the impact. First, look at the Assembly. The black lines are the boundaries of the current Assembly districts. Remember, I said before that in New York City, the populations were smaller, and upstate the populations were

bigger, and I said Long Island was a unique thing. And you can see now as the population changes, the Assembly largely got it right, as it turns out.



From 2000 to 2004, the state's population growth is in New York City. The districts that had the smallest populations are now adding people. The upstate districts, which had larger populations are either stagnating or shrinking in terms of population, except on Long Island. Long Island was an area where, as I mentioned before, there were big population districts and yet it has had big population growth.

So, my guess is that the population range within Assembly districts is now well beyond the 10 percent from largest to smallest. Although you never know for sure, you'd have to do a census to figure that out, but I think I'm right. So there have been big changes in Long Island, even though the Democrats are doing very well recently in elections out there. In terms of enrollment, it's a Republican area. And so they have larger population districts, but those districts are also gaining population and are now likely among the largest districts in the Assembly.



Okay, in the Senate, though, the opposite happens. The Senate upstate districts had the smallest populations when the lines were drawn and now they are losing or stagnating population. However, New York City is gaining population. So, the Senate maps did the opposite. They are actually cramming as many Democrats into as few districts as possible in New York City, the place

where the population growth now is expanding.

These trends raise an important question. Is it right to draw districts in the Assembly where there's a 12,000 difference in population, while the population range in Congressional districts is one person?

And in the Senate the population differences are 30,000 people — 30,000 people in which that population range will expand as well. Our critique is: In a representative system of democracy, a system of one person/one vote, it is bad policy to have large population variances.



## Too Much Nesting

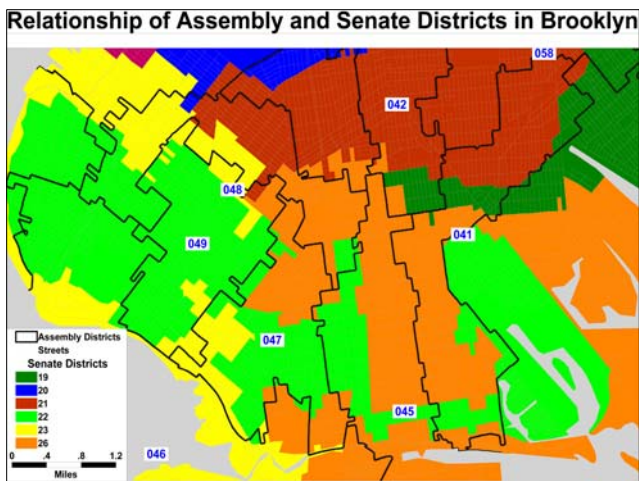
- Result—Pieces of as many as
  - ◆ 9 Assembly districts in a single Senate district
  - ◆ 4 Senate districts in a single Assembly district
- Effects—Divides neighborhoods
  - ◆ Confused and disenfranchised constituents
  - ◆ Conflicted and unaccountable legislators

Analysis by Citizens Union  
NYPIRG

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All right, more maps. As you know, the Assembly districts are drawn by the Democrats and the Senate district lines are drawn by the Republicans. During that mapping process they don't really talk to each other much about what they are doing to their own houses. So what does it look like when you put the maps together? You can see here in this map of New York City conducted by the civic group Citizens Union. In the

districts that they looked at in New York City, they found nine Assembly districts in a single Senate district in one area, while they found four Senate districts in a single Assembly district. So, instead of keeping communities together, the redistricting practice can lead to real confusion and can lead to people in the same neighborhood living across the street from each other being represented by a different senator or a vice versa in terms of the Assembly.



Here's one example of what that map looks like. The colored areas are the Senate districts, the black lines are the Assembly districts, and you can see it's all chopped up. So if you're in a community in any of these overlaps, it's hard to know who your elected officials are. And so, the disjointed way that the maps are drawn actually leads, I think, to voter confusion. Another issue is

incumbency protection. Remember the famous "Oops, I Spilled the Coffee on the Map" district. In that case, the district was designed for Senator Guy Veleva. What they tried to do in 2002 is to draw that district to help protect him by trying to figure out how to get rid of his previous opponent. In the 2000 election, Veleva's opponent got 46 percent of the vote. Her name is Lorraine Coyle-Koppell.

## Incumbency Protection

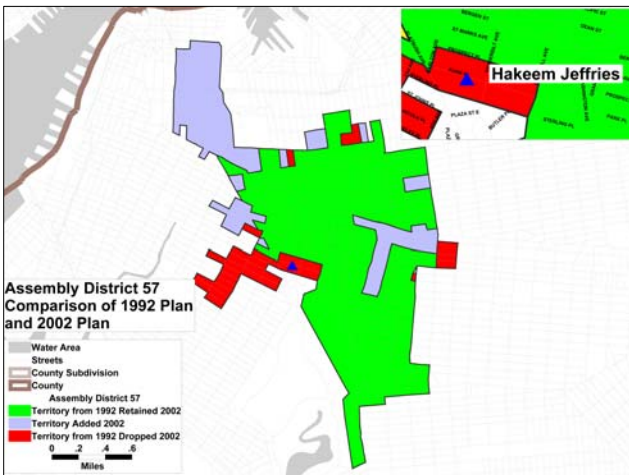
- To preserve Republican Senator Guy Velella (Senate District 34) in 2002:
  - ◆ Added Eastchester
  - ◆ Captured territory from Senator Spano's
  - ◆ Avoided Riverdale
  - ◆ Cut out potential challenger Lorraine Coyle Koppell
    - 46% of vote in 2000
  - ◆ Held onto Rikers Island

*Analysis by Citizens Union*

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Here is how the population changed. The blue on top is part of the district that was taken from Senator Spano's district as a way to bolster Senator Velella by adding more conservative voters. And it had also coincidentally left Mrs. Koppell out of the district. Now in hindsight, of course, it backfired because Senator Velella got indicted and went to jail. It not only

backfired because the Democrats ultimately took the seat, but it almost cost Senator Spano his seat by taking those more conservative voters away from him. So, even when mapmakers try to game the system, it doesn't always work.



Here is an example on the Assembly side, the district of Roger Green. In 2000, Hakim Jefferies got 41 percent of the vote. Let's look at the 2002 map. That little triangle in the top is the home of Jeffries. The little red box represents Roger Green's district. In 2002, Jeffries is cut out of Green's district. In 2004, Assemblyman Green runs into problems and resigns his seat.

Yet in 2004, Jefferies can't run since he doesn't live in the district. Green wins re-election.

## Squashing Competition

- 2004, Roger Green petty larceny charges.
- With misdemeanor convictions, forced to resign from the Assembly.
- Jeffries resided outside of district and could not enter race.
- Green won an unopposed primary and is back in office.

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## Result: Uncompetitive districts

- Out of 62 districts, only 13 Senate districts have close enrollments (within 13,000) between the number of Democrats and the number of Republicans.
- Out of 150 districts, only 12 Assembly districts have close enrollments (within 5,000).

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This chart represents the partisan enrollments of the districts. These are the enrollment differences between Democrats and Republicans in the Senate and Assembly. Of the 212 legislative districts, only 25 have enrollments that are close. Now there's no doubt, as I mentioned before, that in parts of upstate New York, there are more cows than Democrats, and there is no doubt in parts of New York City, there are more

telephone polls than Republicans. But I find it hard to believe that you can only come up with 25 districts with close enrollments out of 212 in a state that's 5:3 — almost three — in terms of enrollment population. Another result? Very few incumbents lose.

## Result: Few incumbents lose

- Between 1982 and 2004, roughly 2,500 general elections for state legislature.
- 34 incumbents beaten in those general elections.

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As Roman mentioned before, we don't see turnover through elections in New York. Well that's where turnover is supposed to happen. Yet turnover does not happen, here are the numbers: There have been roughly 2,500 general elections over the last 24 years, yet only 34 incumbents beat.

## Result: "Permanent" majorities

- In 1984, there were 35 Senate Republicans and 96 Assembly Democrats.
- 1994, there were 36 Senate Republicans and 94 Assembly Democrats.
- In 2004, there were 35 Senate Republicans and 104 Assembly Democrats.

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As you can see, there's been very little change in the legislative majorities, except for, of course, the Assembly keeps getting bigger in terms of this majority. But New York State has experienced pretty permanent majorities in both houses, in addition to the fact that virtually no one loses.

**Issues:**

- Is it right for there to be significant differences in population?
- Is it right to maximize incumbency protection and majority preservation?
- Is it right to cut opponents out of districts?
- Is it right for politicians to draw their own district lines?

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Okay, so I'm not here to advance that we game the system one way or the other. I think you start with the fundamental questions: Is it right in a representative democracy that there are 30,000 more people in one district than another? Is it right to maximize incumbency protection and majority preservation? Is it right to cut the opponent's out of districts? Is it right for

the politicians to choose the voters as compared to the voters choosing them? We think the answers are "no." This is our agenda of what we would like to see happen.

**An Agenda for Reform:**

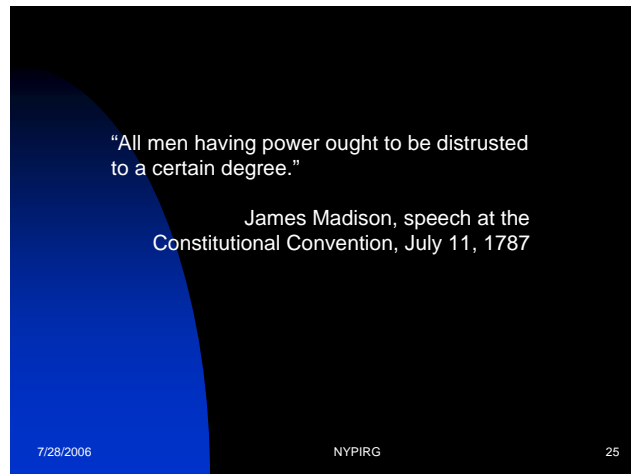
- Independent Redistricting Commission
- Maximize "competitive" legislative districts.
- Keep district populations within 1 percent of the "ideal" sized district.
- Ignore partisan and incumbency issues when drafting lines.

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Now there is no magic bullet. I'm not going to argue to you that if you create an independent commission magically things will change in elections; that's not the point. The point is what's the right way to do it? We believe that since the drawing of district lines and the Census are about what is best for voters participating in a representative democracy, not just Republicans and

Democrats, it should be the public that should be drawing the lines. And so we want to have an independent commission with strict standards that maximize the number of competitive districts, that keep district populations more or less the same size — admitting though, as Roman mentioned before and we agree, that obviously State Constitutional issues mean you can't have them exactly the same size — but we would like to see it closer than it is now. And that the issues of partisan incumbency are ignored by mapmakers when the lines are drawn.

It's about, in fact, what's best for the communities. It's about, in fact, what's best for democracy. These changes will help make sense. An independent commission drawing the lines is, we believe, the right way to go and deals with some of the ills that I pointed out.



*Blair Horner:*

Now, which map should I leave up here? We'll go with the majority rule and leave former Senator Velella's district up there. The irony, of course, is they put Rikers Island in his district because prisoners are considered to be living in the district that they are imprisoned in but, of course, they can't vote. And it certainly helps because of the kind of scandalous way that our corrections system works. It helps in terms of the Voting Rights Act, as well. And Senator Velella, of course, after his conviction got to trim hedges or whatever he was doing at Rikers Island for that period of time that he was there. And so he got to stay in the district, ironically, in the end. So with that I'll stop now.

*Brian Stenson:*

Before we turn it over to questions, I'll give Roman an opportunity to respond to Blair and then Blair can respond to Roman's response.

*Roman Hedges:*

There is on the face of it an argument to be made that says, "Take this out before it closes." Try to figure out how to do that. My fundamental observation is give it to somebody else doesn't change anything, the rules matter. Having somebody who doesn't know what they are doing making the decision isn't a good outcome in my mind. I understand why there is suspicion of political actors. It is a very deep-seated portion of the American culture but it is ultimately wrong-headed.

Somebody is going to make a decision. It's going to have a political outcome that's altered by that decision. Put it in the hands of the politicians, that's what they do, that's what they know, that's who we have elected. To make it be a nonelected position is to guarantee that the community's interests are not taken into consideration.

I'm not confident that in American politics, we're in a place where we can say minority interests are taken into full consideration. But I am confident that through the political process, we made it much more the case in New York that minority communities are involved. If I go back to the districting lines that were last drawn by Republicans in 1972, there were almost no minorities being elected in the State Legislature.

If I go the legislator that happened to get elected in 1974, Watergate was going on, incumbents-to-be had spent two years before running for election. The best example I've got of the dramatic transformation is Danny Walsh, who is the head of the Business Council. Danny was a star basketball player in a local university. He spent two years going door-to-door visiting everyone in a Republican district and got elected as a Democrat. In that 1974 election, we changed the way you looked at business. It was unambiguous in my mind that the views of the Democratic Party got put on the table in a way they'd never been put on the table before. It's very clear to me that the Democrats who were elected in 1974 fundamentally accepted the districts that were drawn by Republicans in 1972. They accepted them, embraced them, and endorsed them.

In 1982, when we did the lines and Democrats had a say at the table, we didn't change them. Fundamentally the decision that was made, which was based in the State Constitution, designed to be Republican, the facts on the ground had changed and people changed with it and Democrats endorsed those lines.

And here's an easy kind of example of that: I mentioned that towns cannot be divided, I mentioned that cities can. I mentioned that there's an equal population requirement with respect to blocks in cities and towns in noncity areas. Rochester, at that point in time, had four Assembly districts. Four, each of them tied to the suburbs. The design was because the suburbs were overwhelmingly Republican, it's going to elect a Republican. It's going to waste the Democrat's votes.

But in 1974 that's not what happened. In 1974, three of the four were Democrats and, subsequently, four of the four were Democrats. Why? The suburbs had changed a little bit. They were no longer overwhelmingly Republican.

The cities were still overwhelmingly Democrat but now the suburbs were not. And that splitting out of the pie didn't produce Republican victories everywhere. Well, you know what? We're now down to three Assembly seats that have a portion of the City of Rochester. Why? Because the City of Rochester was in decline at the time, by a lot, the same plan. Tie the Democratic city to the not-so-Republican town, and we elect Democrats. Is that a bad thing from the community point of view? Is that a bad thing from a policy point of view? I don't think so. And it's not competitive. It was, but it's not any longer. The communities have changed.

And the communities, as reflected through the members of Rochester and other places in upstate New York are telling me, "This is the right way to think about the community." It works. It is with respect to democratic theory, very responsive. Should we undo that in the name of, "Oh, we'd just like to shuffle the deck. Forget about the community, forget about what the people say, forget about who's elected, forget about the continuity of constituencies. Just shuffle the deck and see what happens." I don't think that's a good plan.

I don't think that what Blair says, and I respect what he says, in the end makes sense. Yeah, the maps are ugly, really ugly. I would hope I would never draw that, but okay. There is a certain sense of these people all have an agreement. They are related to one another and we shouldn't ignore that, We certainly shouldn't ignore that as a matter of public policy without respect to what it is we learned from the community.

Now to go back to what I said earlier, we did 25 hearings. We listened to people and we changed the maps. I did three or four meetings with every member of the Assembly on this topic. I had similar kinds of meetings with people in the Senate. I didn't talk to individual senators but I certainly talked with a whole lot of people as to what should be doing here. There are some very arcane results related to the block on border rule; this block in/that block out kind of thing. But overall, the whole point of emphasis in both houses is, "I want my community to be reflected" and I actually think that's a good thing.

*Blair Horner:*



Just a couple of quick comments. We have a system where the politicians choose their voters. I mean, fundamentally, that's how it works. And Roman knows how to do this, he basically says it's that way. So when he talks about communities he's talking about their voters. We don't think that's the way it should work. We reject the idea that only politicians know what goes

on in their community. We reject the idea that only the legislative majorities in both houses have the technical expertise to draw the maps; that's just not true.

People with demographic backgrounds, urban planning skills, and maps can draw the districts. We think that an independent commission, whose goal is to keep communities together without regard to partisan advantage, can make maps that maximize, to the extent practicable, the number of competitive districts. In fact, that is better for a democracy. So there are people who can do it, it's not a technical expertise issue. I don't think that only the 212 legislators are the only experts on their communities. In fact, all they do, as far as I can tell — the majorities — is choose the voters they want in their community.

We fundamentally believe that increasing the number of competitive districts is a good thing. Lawmakers will be more responsive to the needs of their districts. They won't have to just throw out red meat to a partisan base. And after all, the legislative process is about compromise. To help that process, we think first and foremost, you should keep communities together, you create districts with populations of the same size, you try to have as many competitive districts as possible, all designed within the constraints of the U.S. Constitution and the State Constitution. So, we just think an independent commission would be better. And I guess that's my comment.

*Brian Stenson:*

Okay, thank you. We'll turn it over David.



*David Shaffer:*

David Shaffer, and I work for Dan Walsh at the Business Council, who was elected in 1972. He didn't need Watergate like the rest of you. [Laughter]

*Daniel Walsh:*

I was elected in 1974, but that's okay.

*David Shaffer:*

Blair, to me the whole thing turns on whether your second bullet can actually be achieved which is: Make the districts competitive. A couple of questions about that. Is that actually legal given all the requirements of the Civil Rights Act that seem to turn on ethnic consanguinity, if you will? And can you construct a commission where that mandate on them is enforceable? In other words, if you write it on a piece of paper and say this is what they are supposed to do, is there some way of constructing a process so they actually would be held accountable for doing it?

*Blair Horner:*

The proposal that we're looking at is contained in Assembly Bill 6287a, and has been introduced by Assemblyman Gianaris in the Assembly. Companion legislation has been introduced in the Senate by Senator Spano, with a nearly identical version introduced by Senator Valesky.

Other states have competitiveness requirements, and there's certainly nothing the state can do that can trump federal requirements and the Voting Rights Act. The question then is: After you get past the constitutional questions, what other criteria do you want to have? And the proposal says, "to the extent practicable" you have more competitive districts. There's no guarantee that there would be a number higher than 25, but that would be my guess. So I'm not sure if I'm really answering your question. The best we can do, I think, is put it in the statute. And the best we can do is make those determinations requirements of the commission. And we should do the best we can to make it as independent as possible.

I would argue that even though it's a promise and not a guarantee, the reform is better than what we have now. The system we have now contains a guarantee, which is to minimize the number of competitive elections. So, I think in terms of competitiveness, we can't game the system one way or the other. We can just say in terms of standards by which you put your districts together, it's a community-based standard, it's a population-based standard, it's a competitiveness standard, and those are three things that factor in after the constitutional questions are addressed. I mean, that may not be a great answer, but that's the accurate one, I think.

*Brian Stenson:*

I have a question I'd like to address to Roman, if I may?

*Roman Hedges:*

The model that many have used in talking about this notion of an independent commission is Iowa. And I, about a year ago, spent several hours on the phone with the folks in Iowa. They were proud of the fact that as staff, they didn't know where the members lived. What is the concept behind this? Members know about their community. They are self-interested, that's the design. That's what elections are about. Move to a place that makes you do what your community wants you to do. That's the whole motivation of the election process. And to say, "Let's ignore that, let's just shuffle the cards and see what happens," is a colossal mistake.

*Blair Horner:*

I disagree with you. Should the mapmakers be drawing the lines based on the incumbent's address? Or should they be deciding, "We want to keep this community together and, therefore, we draw the lines?" It's not the politician's address that should be a factor in the lines. We saw when it comes to Jefferies and Koppell it was their addresses that worked to their disadvantage.

*Roman Hedges:*

Twenty years ago I have a very, very vivid recollection of a hearing that took place in Queens. We had divided the Assembly district of Tony Seminerio and cut it up conspicuously. Three

hundred people showed up at the hearing and we were there until 4:00 in the morning with them complaining, saying “You didn’t respect my community.” What choice did they have? That was the right answer. And it was about his community and about his community’s vocal opposition to the plan that we had, and it was a good thing that we changed the map. And Tony is still an incumbent in that district.

*Blair Horner:*

Again I mean, if the independent commission comes up with the lines...

*Roman Hedges:*

No, but it says it doesn’t matter. Talk to Tony, ask him. Be proud of the fact you know where the member lives. Be proud of the fact that you know the community. Be aware of the community from the get-go.

*Blair Horner:*

No, the argument isn’t the community. The argument is: Should the incumbent’s address be a factor in the lines? We think the answer is no. The focus should be on the community, what’s best for the community, and to have as few Assembly districts contained within a few Senate district as possible. And then people understand that their elected...

*Roman Hedges:*

The only person elected from the community is the incumbent. While this certainly...

*Blair Horner:*

Particularly if the opponents are drawn out of the district. So, if you’re making partisan considerations in terms of address, all sorts of games can get played. That shouldn’t be a factor in the issue.

*Brian Stenson:*

Can I jump in with a question?

*Blair Horner:*

Oh, I'm sorry, it's your show... [Laughter]

*Brian Stenson:*

I paid for this match. And I think the question is we always run into: How do you define community? And given the sizes of the districts that we have here, it's obvious that you have to have really disparate, and especially upstate, far-flung districts. I'd submit that a lot of them are not part of the same community. I looked at the website today. I live in the town of Bethlehem, like Roman, and for the life of me, I'm sort of an interested and I hope educated observer. But I couldn't remember the name of my assemblyman for the life of me. So I looked at the website showing the assemblyman's names.

*Blair Horner:*

Pat Casale.

*Brian Stenson:*

That's right. I found Pat Casale's website, so I looked at his district, and I knew the district was sort of unusual — not as unusual as the coffee stains on the white shag carpet. And I knew it was an unusual district and I saw that it included the Town of Schaghticoke, which is in Troy. If you put me in a car with a gun to my head, I couldn't find Schaghticoke without looking on a map, there's no way.

So, it includes Schaghticoke, Postenkill, Chatham, and the Town of Bethlehem. It doesn't include places that, at least in my 20 years living in Bethlehem, are more of our community, which is New Scotland, where we get our water, and the City of Albany, where we also get our water and the water line goes right past my house, and it doesn't include Guilderland.

*David Shaffer:*

You get your water from Glen Cove.

*Brian Stenson:*

Okay, even worse then, another community not heard from in our district, I think. So, there's a strange set of circumstances that really are at play here. And I don't know how you can define community in any view in a partisan political environment whether it's a bipartisan commission or an independent commission.

But, Maurice Hinchey's district in Congress is my other favorite. He's in Saugerties, a district that includes Kingston, Poughkeepsie, and it also has a strip going up through the Catskills to Binghamton and Ithaca, into North Ithaca, and that's an unusual thing. I guarantee you those people don't feel like in the same community in Saugerties as they do in Ithaca, and the Town of Andes in Delaware County. So, I don't know how you square that, but that's my concern and complaint. Is there any way we can try to reflect those commonality interests as opposed to, kind of, sweet little communities?

*Blair Horner:*

That's a good question. Why would Jack not want Bethlehem in this district? Let's really cut to the chase, wouldn't you say? [Laughter] So, you know, I guess that's my point. Who should make that determination? McEneny?

*David Shaffer:*

You didn't see the clear community interest between Albany and the Helderberg...

*Roman Hedges:*

No, the clear community is historical and it's real. And having lived in Westerlo for a dozen years before I moved to Bethlehem, I know it and I know it very thoroughly. It's about the fact that Uncle Dan used to have a cabin in the Helderbergs. And Uncle Dan's cabin in the Helderbergs

translated to unbelievable Democratic support for George McGovern in 1972. It was like 10:1 in the Town of Rensselaerville, wow. And it wasn't even that strong in Albany, the most Democratic city in America.

There was, and is, a long-term partisan affiliation and a sense of community that is undeniable in my mind. You know, who do I hear that from today is not me, I'm not acting independently, I asked Jack McEneny. I asked him because he's elected from those places and he's the person that I can talk with who has a perspective on what is that community, and who do they want to be associated with? And they overwhelmingly support him.

In the town of Bethlehem, as I said a little bit ago, there's no question that it's a Republican place, there's no question. There are three people who've been elected in 200 years as Democrats. That community doesn't want to have Jack McEneny as their representative, and Jack — not surprisingly — probably doesn't want them to be in his district. They disagree. They lose when Jack is their voice, they don't want that. When Pat Casale is their voice, a voice that I don't share, they've got a better shot at getting their voice heard.

*Blair Horner:*

I actually think Roman's making my case. But let me just explain the bill that we're advancing. There's no right answer, by the way, to your question, because you're right. The district's humongous. I remember talking to John Faso when he was in the Assembly. He said the square miles of his district were bigger than Rhode Island.

So here's what have in the bill that you're supporting. To the extent practicable without undermining previous provisions, the lines should be drawn to keep intact within a single district those neighborhoods and communities with established ties of common interest and association with a historical, racial, economic, ethnic, religious, or political nature.

So the idea is that these individual people who are drawing the maps and who have no particular axe to grind in terms of getting somebody elected or keeping some majority in power, would say, "Okay, these are the communities in this area. They have a history of being linked together. To the extent practicable, we will keep them together."

Given that a lot of this stuff you can't write into a bill, that to us makes more sense than leaving it up to Jack, who may for all we know be more worried about Roman Hedges running against him in the Assembly primary. And maybe that was the reason why he didn't want to have a Bethlehem in the district, I don't know.

*Roman Hedges:*

Well it does put Jack in a difficult position if he's trying to think, "Well, maybe Rensselaerville has a lot more to do with Albany than Bethlehem or Guilderland does." And at the same time, he's looking at the numbers and how the numbers...

*Blair Horner:*

Casale had the idea. I think he used a snorkel to make it from one side of his district to the other.

*Sara Currey-Cobb:*

I'm with the office of Assemblywoman Aurelia Greene. I'm a little bit concerned about Blair's position on the independent commission. You sort of ran across the issue of the obligation or the responsibility of that commission and what's going to make them so different in dealing with the address of a member. Everybody brings with them a vested interest and that independent commission then would have to say to me that the 1965 Voting Rights Act was very, very important to certain people in certain communities. And what's the framework by which that group is going to function? That discouraged me.

*Blair Horner:*

Well, you know, again, the theory of this reform is to set up a kind of a "belt and suspenders" approach to making the commission as independent as possible. You're right, everybody has their own affiliation. The process contained in the reform bill starts with the Governor, the other state-elected officials, the chief judge, the legislative leaders — and this is where it gets complicated — who appoint a head of an appointments committee so all the political powers are represented. They then develop 40 names of potential commission members that they all have to agree on. And then from that group, the final eleven commission members are appointed.

So you know, it's not dissimilar from the way the Court of Appeals members are chosen. The idea is that you have everybody in the game picking the committee that will then choose a pool of people from whom are appointed by the legislative leaders.

*Sara Currey-Cobb:*

So it's just a different set of players?

*Blair Horner:*

It would be. Yes, a very different set of players that everyone had to agree on in advance. In terms of the Voting Rights Act, there's nothing the state can do that would somehow subvert the federal decisions. And the bill makes it clear — earlier on in the bill — that it ensures the fair and effective representation of racial and language minority groups covered by the federal Voting Rights Act of 1965. So, there's no intention certainly to monkey around with that. That's not our intention as advocates.

The idea is, how do you come up with people with technical expertise who represent the major political players? And you try to make it as independent as possible. So you may disagree with that, but that is the intention that we are trying to have. How do you take it out of a clearly political process and lump it into something that is less so?

*Mark Leinung:*

I'm with the office of Senator David Paterson. I just wanted to make a couple observations. Roman had mentioned how in 1972 there were a very small number of minorities, and since then, of course, with the changes that the Assembly has done, we've seen a lot of that. And while it's true that the Voting Rights Act has certainly helped in many cases, and, as Blair points out, any commission that is an independent commission would also have to comply by the Voting Rights Act. Even today, though, let's recognize the fact that while the Assembly may be sensitive to minority rights, certainly the Senate is not, and in Long Island, where you have the town of Hempstead, where you have sufficiently large minority population, certainly large enough to create a majority minority district, they've taken that and divided it up in such a way so that you don't have a minority representation on Long Island. So I just wanted to make that observation.



The second thing is a question for both Roman and Blair. The bottom line when you talk about taking redistricting away from legislators and you put in the hands of an independent commission, assuming that they look at this and say, “We’re going to wipe the slate clean,” because currently redistricting does not wipe the slate clean. They look at the existing lines and they jigger. If you do that, of course, in ten years now you are looking at major upheaval in the Legislature, because we wouldn’t have things looking like that if you had an independent commission based upon the criteria that Blair has put forward. You would have some funny-looking things, I think that’s unavoidable. But certainly what you are going to have is cases of many incumbents pitted against each other, or it will have to move or change their communities.

In doing that if every ten years we seek large upheavals and a large number of incumbents, how does that affect the power vis-à-vis the governor and the Legislature? Is that a concern that we might be weakening the institutional power of the Legislature and the governor?

*Roman Hedges:*

There are a couple of different sorts of answers to that question from my institutional perspective and my disciplinary perspective. Legislatures are intended to be a counterbalance force to executives. That’s the point of it. There are a variety of other things that legislatures do, but at the core, the point is to say “no” to the king. It’s to say, “I don’t think so” to the king. “Let’s do it this way instead.”

New York in its budgetary process has been thrown a ringer with the Court of Appeals decision a year-and-a-half ago, *Silver vs. Pataki*. It really says the governor has the upper hand and that’s the plan. And so, I think at one level I just want to resist the whole concept and cite the budgetary side of things.

At another level, my point about community is: at the end of the day, that’s what legislatures are about, a community saying “no” to the king. And I want to make sure that the Legislature has the ability to define itself in opposition to the king. I don’t care about the particulars very much. If you were to throw it over to an independent commission in the Assembly, I think anybody throwing [indiscernible/interference] will elect a majority of Democrats. It’s not about the party to me, it’s about how do we reflect the community? I don’t like setting lines. That to me is partisan. They are doing the best they can to figure out how to stay

in the majority. I would like that not to be the case, okay. But I still really want to respect the community, and I don't know who else to ask other than the incumbents, that's who knows the community. There isn't somebody else that's democratically available to me. And so, as an end list to the process, I think I've got to talk that way. It's to my advantage in the Assembly, to my disadvantage in the Senate. Okay, so it goes.

Talk to somebody who knows something. Listen to what they say. Think about what they do. Yes, they have self-interest, no question about it. Yes, they can say, "Here is my incumbent's address. Can you get him out of the district?" Not a pretty sight, but who else are you going to ask? Are you are going to ask the opposition that lost? Are you going to ask somebody who is not elected? Ask them to put their judgment in place? I don't think that's democratic.

And so, I come back to a very different notion than what Blair does because I actually believe in the election process. It's not perfect, it's not even sometimes good. It's the best we can imagine. And I have to stop there. I'm in the Legislature. I'm not unmindful of all of those other things that go on. But I can't think of a better bottom line. I don't know what that would look like.

When I talk to the people in Iowa and they were proud of the fact that they didn't know where the member lived, that's scary. That's not okay, that's scary. Where the member lives has a lot to do with what they think. It has to do with their community, and that's what legislatures are all about. How would I avoid that? I don't think there's a perfect answer, but I don't think an independent "anybody" is in a better position than the elected community.

*Blair Horner:*

In terms of the power issue, New York has one of the most powerful — if not the most powerful — executive in the country. The State Constitution vests in our governor powers that are unrivaled, other than a handful of states, in fact only three other states. In those few states, the legislatures are extremely limited in their ability to impact on the budget. And in terms of powers beyond that, political scientists generally rank New York as number one.

So, how does this affect the redistricting issue? Well, you know, this proposal does not result in term limits. There will be more turnover would be my guess. But the speaker of the

Assembly, if he or she is a Democrat, will come from New York City and the majority leader, if he is a Republican or she is a Republican, will come from upstate. So some areas of the state are going to elect the same party no matter what you do. I haven't thought about this issue in terms of the debate over the powers between the institutions. However, we don't feel that the state goes out of its way to weaken the legislative power, I don't think, when the executive is so powerful. However, the question comes back to what's the right thing to do?

I was thinking more about Roman's comments. Where Roman and I disagree is Roman defines community as, I think, as the elected official's constituency, meaning the people who vote for him. I don't define community that way. I would define community as people living together, or having powerful connections, or religious, or ethnic, or whatever. It's not that they all vote Democratic and therefore they are a community, or they all vote Republican and therefore they are a community. Therefore, the person who gets elected speaks for them.

So I think that's the difference. And in terms of the power issue, just so you know, it's not like New York governors get knocked out so quickly either. I mean, there's been one governor who was defeated after running for one term, and it was Harriman, I think in the 1950s. Malcolm Wilson doesn't count since he was never elected. But Pataki got three terms, Cuomo got three terms, Carey got two terms, Rockefeller got four, and then you go back to Harriman. I mean, the competitive issue in here, I think is important, but it's no guarantee of correcting all of what ails New York. There's no magic bullet that somehow everyone is going to get knocked out if we change that system.

In fact, in the Senate most of the districts have an enrollment advantage for the Democrats, as it turns out, and the Republicans win those districts because of campaign financing advantages, as far as I can tell. Probably they are good at schmoozing their people.

I can remember in the Velella and Koppell race, Democrats kept coming back complaining about how seniors were happy because they got a new TV. And they got that TV because Guy Velella got the money out of the budget in a member item to buy them new TVs for the senior center. But the problem of member items in the budget is a whole other issue.

So in terms of the institutional powers, I don't think redistricting reform will have a big impact, but I could be wrong. In terms of the community argument, I think community should be

defined in a nonpartisan way, not a partisan way, and I think that's where we differ. And redistricting alone will not fundamentally alter the map, excuse the pun. In New York it may, but it may not too.

*Jo Brill:*

My question isn't really quick. I'd like to ask you about the future of districting. I mean, I think that — to follow up on Brian's question — if you're looking for commonality of interest, what was chosen long ago was geography, you know, a sense of place as being a good proxy for commonality of interest. And we've been represented by geographic districts for a long, long time. I don't even know how long.

I think what the Voting Rights Act said was, basically, this is not a sufficient proxy anymore. And I think that it could be argued that in the information age that the quality of geography as a proxy has degenerated. So, I wonder, and I know about the political feasibility of this question, but I wonder if there's a time when we really move away from geographic districts as the best proxy for commonality of interest? Roman, the argument that you advanced for drawing noncompetitive districts so that your people would be unhappy is one that you still have to support proportional representation. So I just sort of wanted to throw that into the mix.

*Roman Hedges:*

In the one person/one vote decisions of the 1960s, the question of geography was a prominent feature. In *Wesbury vs. Sanders* and in *WMCA vs. Lomenzo*, which was the New York version of the Reynolds decision, the court talked about that at some length. And they concluded without a whole lot of argument that nongeographic was un-American.

They didn't have a whole lot of stuff behind that. It was proportional representation and variations on the theme were just not American and shouldn't be considered. That's certainly a myopic view. It doesn't speak to the underlying question but I think that there's a reason that the court did what they did. And I think that reason was geography is related to community, but it's not perfectly related to community and we don't want it to be perfectly related to community. We want some diversity. We want to accept the competitiveness argument to a degree but we're not sure to what degree. So stay away from proportional representation. Stay away from exact

definition of community, let it be. And the best example I can give you is a phrase from one of the one person/one vote cases, “Pursuant to a rational state purpose there can be population deviation.” What the hell is that? I mean, it is intentionally, “I get your point but I’m not going to answer your question.” And I think that really is where we are. The whole set of questions about representation is, ultimately, fundamentally political. And that’s where I get my comfort from.

The reason I can disagree with Blair and at the same time respect the position that he takes is that there isn’t a good answer here. That’s the whole point. And the whole point of legislatures is this is where the questions that don’t have a right and wrong come from. That’s where we decide these things. That’s what we do. It’s not that the decision that gets made today is a good one or a bad one, it wasn’t right or wrong. It was the decision we made today and let’s live with it until tomorrow.

And I think that’s really what’s underlying all of the ambiguity about districting and representation. I think representation is the right basic thought. Districting is ancillary to that. And there isn’t a right and a wrong, there is ambiguity. We disagree with one another. That’s the whole point. We wouldn’t be talking about this if we agreed. And you’ve got to embrace that thought in order to get to where I get and I think that’s the only reasonable place to go. I don’t think it’s right. I think it’s a reasonable place to go.

*Blair Horner:*

The point of the Census is to set up a representative democracy, that’s where we started in 1790. The idea was we wanted to have representative districts. Otherwise, what is the point of having a Census? Due to the Census, we know how many people are going to live in the state and how many members of Congress are going to come from the state depends on how many people live there.

So in a representative democracy, you are going to have to figure out how you do representation. I don’t think you can easily get to a point where you can elect officials based on Internet compatibility. That’s kind of scary to actually think about it. So I think you have to come up with some sort of geographic determination for districts. I think, though, that one of the reasons why you are seeing over the last 20-30 years a decline in the number of districts that are competitive. That lack of competition correlates with the decline in the ability of government to

do things. And if people are representing one point of view, they don't have to compromise. In fact, if they compromise they may, in fact, alienate an ideologically homogeneous population or something close to that. Then there's no interest in compromising. And, ultimately, the legislative process is about compromise, but the districts undermine the ability to hammer out compromises.

And so, I think the way America does districts is problematic. It's not just New York. New York is, in some ways, worse than the national average. But the national average is terrible. I think that the country fundamentally needs to change the way it designs these districts. It's not about the representation or the policymaking after the fact. A new form of redistricting should be done so that mapmakers are going in with as much ideological blinders as possible when putting the maps together. Once that's done, then you let the voters determine who they are going to elect.

But with the system we have now, the elected officials, in terms of communities in which they will run, leads to gridlock and an inability of government to deal with society's larger problems.

*Roman Hedges:*

There are no such things neutral rules. The town rule sounds reasonable, don't divide a town. That's in the New York State Constitution. Don't divide a block because you don't know what the hell is in it. Because that's the way the Census does its work. You can divide cities, that's okay.

Those rules resulted in an observation by Al Smith in the 1920s that New York State is constitutionally Republican. He did not mean in their guts, he meant literally in the Constitution. And it was pursuant to observations made at the Constitutional Convention of 1894 and here's a direct quote: "The average citizen in the rural district is superior in intelligence, superior in morality, superior in self-government to the average citizen of the great cities." Wow, that's the rules that undermine every concept that I have about how things should work. And that was the rationale.

There is another quote that I didn't write down, but the gist of it was, "I don't want them voting in my election" — meaning ethnic new residents of New York City. That was an elected

delegate to the Constitutional Convention in 1894. You have got to undermine that. You have got to work on that and that's politics. It's about who is in charge. And the ethnic groups in New York that were being undermined in 1894 are no longer disavowed. Great, good thing, and districting helped that happen.

*Blair Horner:*

It's not about 1894, unless what the Assembly Democrats would like to do is offer a constitutional amendment. We'd actually all be in support of that. I don't have a problem with trying to eliminate some of these things that Roman's pointed out that are kind of weird in the State Constitution. But the fact of the matter is what's going on today. And today in a modern society, what is the rational way to go about drawing the lines for an election that we all have to vote in? And again, I think that when you see what happened — I mean, that's why I bring the maps. Abstract conversations on this are hard to visualize when we see a Hakim Jefferies got moved out of the district. That was for a reason. When Lorraine Koppell got taken out of that district, there was a reason. It had nothing to do with the public interest. It had nothing to do with community, unless you define community as, "The people that vote against me are not in my community, the people for me are in it." That I don't think is the right way to be going and therefore we should change it. Thank you.

*Brian Stenson:*

This is a really complex issue and you've done a really good job. Thank you.