

1 BEFORE THE NEW YORK STATE SENATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
2 RESEARCH AND REAPPORTIONMENT

3 -----

4 New York State Senate
Public Hearing on
5 Legislative Redistricting
Goals, Criteria and Reforms

6 -----

7 Hearing Room A
Legislative Office Bldg.
8 Albany, NY

9 December 16, 2010
12:03 p.m.

10

11 PRESIDING:

12 Senator Martin Malave Dilan
Co-Chair
13 Legislative Task Force on
Demographic Research and Reapportionment

14

15 PRESENT:

16 Dr. John Flateau, Task Force Member

17 Jeffrey M. Wice, Counsel

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1 LIST OF PARTICIPANTS

2 TESTIMONY

3	Blair Horner	
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4	New York Public Interest Research Group	
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5	Barbara Bartoletti	
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1 CHAIRMAN DILAN: Good afternoon. I
2 am State Senator Martin Malave Dilan, and
3 I'm the co-chair to the Legislative Task on
4 Demographic Research and Reapportionment.
5 And I am also joined by Dr. Flateau, a task
6 force member, and our legal counsel, Jeffrey
7 M. Wice. And also, representing Senator
8 Ruth Hassell-Thompson, we have Gerard Savage
9 here today.

10 And today's meeting is a continuation
11 of a meeting which was first held this past
12 Monday in New York City, 250 Broadway. And
13 today we hope to continue the conversation
14 that we started at 250 Broadway with all
15 stakeholders. And hopefully we can get as
16 much testimony from those individuals that
17 have submitted to speak. And if there is
18 anyone in the public that would like to
19 speak, we will allow that today.

20 So at this time I'd like to call upon
21 Dr. Flateau.

22 DR. FLATEAU: Thank you, Mr.
23 Chairman, Senator Dilan, for your
24 outstanding leadership as co-chair of the

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1 New York State Legislative Task Force on
2 Demographic Research and Reapportionment,
3 also known as LATFOR.

4 Your early leadership of a series of
5 roundtable discussions with a wide array of
6 stakeholders in the redistricting process,
7 and your present convening of upstate and
8 downstate public meetings on redistricting
9 this early in the process is unprecedented.

10 It demonstrates your commitment and that of
11 the Senate Majority to openness,
12 transparency, public access, and input in
13 New York's congressional and state
14 legislative redistricting.

15 This process will facilitate political
16 representation of the people's voice in
17 New York's democracy and public policymaking
18 arenas, which is a fundamental and critical
19 ingredient in moving us forward in these
20 very challenging times for our Empire State
21 and indeed for our nation.

22 I'm sitting on my third redistricting
23 commission, both legislative and independent
24 bodies, and touching on my sixth

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1 redistricting cycle. Only in America could
2 a descendent of Africans in America, slave
3 and free, help bring successful
4 voting-rights lawsuits against New York City
5 and New York State redistricting bodies to
6 increase minority representation and then be
7 appointed to serve on these bodies.

8 Senator, you and the Majority
9 Conference played a major role to ensure
10 that New Yorkers had an improved
11 participation rate in the 2010 census. And
12 now the results for congressional
13 reapportionment, state populations, the
14 American Community Survey and other
15 important data are being released to guide
16 the redistricting effort.

17 Today we look forward to listening to
18 the people's voice, opinions and expertise
19 on important questions, including: What
20 should be the proposed criteria, along with
21 the U.S. Voting Rights Act and federal and

- 22 state law, to be used in redistricting?
- 23 Second, what are some of New York's
- 24 demographic trends that should be taken into

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1 account and will impact on redistricting?

2 Third, how will New York's pioneering
3 Prisoner Count Law enhance voting rights of
4 minorities, particularly in the Bronx,
5 Manhattan and Brooklyn, counties which are
6 covered by the Voting Rights Act? This law
7 requires preclearance by the U.S. Justice
8 Department.

9 And fourth, and most importantly, what
10 are key recommendations to reform the
11 redistricting process?

12 Thank you, Mr. Chairman, State
13 Senators, and members of the public who have
14 taken time out of your busy schedules to
15 participate in this crucial exercise in our
16 democracy. Let this important public
17 conversation begin.

18 CHAIRMAN DILAN: Thank you very much,
19 Dr. Flateau.

20 I'd just like to note that this public
21 meeting is on the record and is also, I

22 believe, being webcast throughout the Senate
23 and perhaps the State of New York. So I'd
24 like to thank Senate Media Services and our

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1 stenographer, thank you very much, and all
2 the staff that have assisted in putting this
3 meeting together. Also in the audience we
4 have the executive director for the Majority
5 Conference, Matt Drury. Welcome.

6 Okay. So at this time I'd like to call
7 the first individual to testify, Mr. Blair
8 Horner, New York Public Interest Research
9 Group.

10 MR. HORNER: Good morning. My name
11 is Blair Horner. Thank you for this
12 opportunity to testify.

13 I have submitted written testimony. I
14 don't know if you have a copy of it already.
15 If you want, I can hand up -- I have three
16 copies here. Let me just give it to you.

17 I'm not going to read the testimony.
18 That's why I wanted to make sure you had it.

19 CHAIRMAN DILAN: Okay. I was going
20 to let you read it.

21 (Laughter.)

22 MR. HORNER: Again, thank you for
23 this opportunity to testify. And my name is
24 Blair Horner. I'm legislative director with

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1 NYPIRG, New York Public Interest Research
2 Group. NYPIRG's involved in many reform
3 issues, and we've been very interested and
4 involved in redistricting issues, certainly
5 in the 25 years that I've been here working
6 for NYPIRG at the State Capitol.

7 I'd like to start by of course thanking
8 the Senator for holding the hearing and the
9 Commission for holding the hearing. And I
10 would agree that the Senate Majority has
11 been probably the most responsive on the
12 issue of redistricting in the 25-plus years
13 that I've been doing this. You've held
14 hearings and I think it's certainly the
15 first time that I can ever remember, it was
16 the first time a committee actually reported
17 a reform bill on redistricting out of
18 committee. The Assembly did after the fact.
19 So the Senate Majority does -- certainly
20 from our view, we applaud the fact that
21 you've been interested in this issue.

22 I thought I would just start in terms
23 of my testimony to talk about what it is
24 like, and then whatever questions you want

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1 to ask me, feel free to do so.

2 We support Senator Valesky's bill. And
3 the reason that we end up with that bill,
4 let me just take a step back and give you a
5 little sense of it from our perspective. As
6 you know, every 10 years the Census puts out
7 information, new district lines are drawn,
8 New York State figures out how many members
9 of Congress they're going to have. And then
10 lines are drawn by the Legislature.

11 And I was involved in 1992 and 2002 on
12 behalf of NYPIRG in the issue of
13 redistricting. So after the 2002 effort,
14 which I'll come back to in a second, we
15 worked on a bill that eventually became
16 Senator Valesky's bill. It was in 2005.
17 And we put out the bill, and at the time the
18 Senate Majority leaders said: Well, what's
19 the rush? It's only 2005. We've got till
20 2012 before we have to do anything.

21 And so I offer that anecdote to give

22 you a sense as to why we are supporting a
23 statutory change to the way redistricting is
24 done, as compared to a constitutional one.

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1 We simply have never seen any evidence --
2 historically. I can't speak for this
3 year -- up until this year, any evidence
4 that the Legislature was ever interested in
5 passing a reform bill. The closest thing
6 was I guess in 1967, in the Constitutional
7 Convention. But there's never been any
8 evidence that the Legislature was interested
9 in passing a bill.

10 And the whole thing always hinged, our
11 strategy in '92 and in 2002 always hinged on
12 trying to get the Governor to veto the
13 lines. That was the only leverage point we
14 ever saw.

15 But when you get into those kinds of
16 thoughts, it leads you to the fact that a
17 constitutional amendment takes too much
18 time, frankly, in the way that we
19 anticipated that this would play out. The
20 Legislature wouldn't want to do anything,
21 the Governor would rattle his saber, say

22 he's going to veto the lines, and then maybe
23 veto the lines, maybe there would be an
24 agreement. But there would certainly not be

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1 enough time to do a constitutional
2 amendment.

3 We would agree a constitutional change
4 is -- you can deal with a lot of underbrush
5 in the state constitution dealing with
6 district lines, in addition to coming up
7 with what we prefer, which is an independent
8 commission using openness and criteria.

9 So with that in mind, we looked around
10 the country for a model. And the model we
11 found was in the state of Iowa. The State
12 of Iowa has an apolitical commission,
13 staffed by basically technicians, with clear
14 standards and openness in terms of how
15 they're going to operate. The Legislature
16 in Iowa has final authority. And under the
17 Iowa law which went into effect in 1980, the
18 first two versions of a redistricting plan
19 are thumbs up or thumbs down by the
20 legislature, they can't amend it. And if it
21 goes to a third one, which is never done,

22 the legislature then would have the ability

23 to amend the bill.

24 So from our perspective, since the

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1 State Constitution clearly says that the
2 Legislature makes the call on redistricting,
3 our approach was really to put LATFOR out of
4 business and to replace it with an
5 independent commission to fulfill the role
6 that LATFOR currently plays.

7 And so that's where the Valesky bill
8 essentially comes from. It's a product of
9 obviously conversations among the members
10 themselves, Senator Valesky and
11 Assemblymember Gianaris, as well as other
12 groups that are interested in the issue.

13 But that was the construct that we
14 thought made the most sense, and it would be
15 able to apply to the problem as we saw it in
16 the State of New York.

17 By the way, there is nothing that has
18 changed my mind about how this will
19 ultimately play out. Again, while there's
20 far more interest in redistricting reform
21 now, after the 2010 election, than I think

22 there's ever been, there's no guarantee that
23 anything will necessarily happen unless
24 Governor-elect Cuomo sticks to his

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1 commitment that he will veto the lines if it
2 comes out of the same process that it has in
3 the past.

4 So again, we're in the same kind of
5 scenario. We think 2011 is the critical
6 year. We believe, though, that anything
7 that has to be done has to be built around
8 the creation of an independent commission,
9 that even the criteria, which is the focus
10 of your hearing as well as an important
11 component of it, only works if you have an
12 independent commission.

13 And so with -- I think the Valesky bill
14 has criteria issue in it, as you know. It's
15 in a sense bifurcated. There's four items
16 in the bill that are mandated. Three of
17 them are issues that are already covered
18 under U.S. Supreme Court decisions or law,
19 the fourth one in that mandated category
20 being that you can't rig the system to
21 benefit the political parties or incumbents

22 or candidates. And so that was the mandate.

23 And then there's another group of

24 criteria that deal specifically with other

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1 issues -- in terms of compactness, in terms
2 of population variation -- and that those
3 are done to the greatest extent practicable,
4 because frankly how you do some of these
5 things and shoehorning them into the state
6 constitutional requirements is going to be
7 difficult.

8 So that to us made sense. We like the
9 criteria that is laid out in Senator
10 Valesky's bill. We urge you to embrace
11 them.

12 And then I wanted to spend a little bit
13 of time on the issue of population variance,
14 variance in population.

15 On page 4 of my testimony is a chart.
16 And in that it really lays out the number of
17 districts when they were drawn -- as you
18 know, the population variance has gotten
19 bigger over time, but when they were
20 originally drawn within the 10 percent
21 range, you can see that 70 of the 150

22 Assembly districts have a very large
23 variation in population, and 19 of the
24 Senate districts.

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1 But even that number doesn't tell the
2 story. What really tells the story is the
3 last page of the testimony. And you should
4 have two maps in front of you. Both of
5 those show how population variances were
6 used by the majorities in both houses to rig
7 it, the outcome, to their partisan and
8 incumbent protection concerns.

9 On the first one, the map is a blue
10 map. The darker the blue, the larger the
11 population. And these are Assembly
12 districts. As you can see, when the
13 Assembly Democrats drew the lines, the areas
14 basically in the City of New York have the
15 smallest-population Assembly districts.

16 Well, why would they do that? They want to
17 have the largest number of districts in the
18 City of New York. Why? Because they have
19 an overwhelming enrollment advantage in the
20 City of New York.

21 If you take the City of New York out of

22 the enrollment population, the rest of the
23 state is sort of purple. It's really the
24 city has an overwhelming Democratic

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1 enrollment advantage. So the Democrats
2 controlled the Assembly in 2002. They drew
3 the lines. They did it in a way to maximize
4 the number of districts that they would get
5 by using the variance, the 10 percent range,
6 to do it.

7 The map below that shows what the
8 Senate Republican majority at the time did
9 when they drew the lines. They did the
10 exact opposite. The Senate districts in
11 upstate New York have the smallest
12 populations. The City of New York has the
13 districts with the largest populations. Why
14 do they do that? Well, they're Republicans.
15 The way to deal with minimizing the number
16 of Senate Democratic districts is by having
17 the largest districts in the City of New
18 York.

19 So that 10 percent range is an example
20 of how criteria matter. And we think it
21 actually happens to be a very important

22 criteria. The Valesky bill talks about,
23 again, to the greatest extent practicable, a
24 1 percent range from the mean. Basically,

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1 you'd have a 2 percent range, then, from
2 largest to smallest districts. We think
3 that makes the most sense. The smaller the
4 range, certainly, the better. And it makes
5 it harder to do the things that I think the
6 map illustrates.

7 So combining that with the mandated
8 section in the Valesky bill that you can't
9 use redistricting to increase the partisan
10 advantage, a political party's partisan
11 advantage or to protect incumbents, we think
12 that those two criteria are important, and
13 we would urge that you include them in any
14 recommendations that the commission
15 ultimately makes.

16 With that, I'm done.

17 CHAIRMAN DILAN: I'm going to ask,
18 with respect to the size of the Senate, do
19 you have any opinion on that?

20 MR. HORNER: NYPIRG has no position
21 on what the numbers should be. You know, I

22 saw that in the list. Smaller makes more
23 sense to me, the smaller number of Senate
24 districts, whether or not they be odd or

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1 even. I notice -- certainly in the last few
2 years we've noticed that when you have a
3 32-30 majority, and the possibility of 31-31
4 stalemate, that odd has appeal. But that
5 really has more a function to do, I think,
6 with the relative strength of the political
7 parties. It's never really been an issue in
8 the Assembly. So NYPIRG doesn't have a
9 position on it. But again, generally
10 speaking, our view would be smaller is
11 better.

12 CHAIRMAN DILAN: Dr. Flateau?

13 DR. FLATEAU: I'm going to defer to
14 counsel before me.

15 MR. WICE: Okay, I have a few
16 questions. Good afternoon, Mr. Horner.

17 MR. HORNER: Hi.

18 MR. WICE: Just a few questions on
19 your testimony.

20 I notice that you're looking at Senator
21 Valesky's bill and a population deviation

22 range of 2 percent overall from the size of
23 the smallest to largest. I know some people
24 had interpreted that earlier as being a

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1 1 percent maximum from smallest to

2 largest --

3 MR. HORNER: From the mean.

4 MR. WICE: -- but 2 percent I think

5 is a different picture.

6 Would you have a problem, though, since

7 federal law supersedes state law, that in

8 order to comply with Section 5 of the Voting

9 Rights Act, to maintain the number of

10 effective minority districts or, need be, to

11 increase the number of minority districts,

12 if there could be some variance to that?

13 Also given that the federal Voting Rights

14 Act would supersede or trump the state law,

15 but only in that instance?

16 MR. HORNER: I mean, let me just be

17 clear, the state can't do anything to erode

18 the protections of the Voting Rights Act.

19 We are fully supportive of the Voting Rights

20 Act, and we think that obviously you have to

21 comply with that.

22 And I think Valesky's bill anticipated
23 that by saying to the greatest extent
24 practicable -- he has in fact language in

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1 there that makes it crystal-clear that he
2 believes that the state should follow at
3 least, if not better, the Voting Rights Act
4 restrictions.

5 So the short answer is we would agree
6 that -- if that's the reason why you had to
7 go beyond the 1 percent from the mean, a
8 total of 2 percent, that that's the reason,
9 of course, then that would be one of the
10 issues that you'd have to agree to.

11 MR. WICE: Okay. I'd also like to
12 ask about the creation of a commission.
13 Senator Dilan had a bill introduced as
14 recently as a week or two ago. Senator
15 Skelos, in an interview in a Long Island
16 paper, said last week that he favored
17 nonpartisan redistricting at this point as
18 well. So obviously it's going to continue
19 into next year.

20 Senator Valesky's bill, S1614A, at this
21 point, had it been enacted already, has a

22 calendering that would have already kicked

23 in.

24 MR. HORNER: Right.

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1 MR. WICE: So in a practical sense,
2 and whether the bill needs to be amended or
3 a different approach taken, when do you
4 think the Legislature will need to have
5 acted so that if you have the
6 Valesky-Gianaris approach, which is to have
7 a nominations pool followed by an actual
8 commission, then to hold hearings --
9 ideally, hearings before, during and after
10 each step of the process -- what would be
11 the latest that things really need to happen
12 in the Legislature for this to move forward?
13 Have you given that thought, or can you
14 maybe follow up with us later?

15 MR. HORNER: I guess the answer would
16 be yesterday, right? I mean, I think that
17 the most truncated way, if you took the
18 Gianaris-Valesky language and applied it to
19 a timetable that led to final passage of a
20 plan in June of 2012, I think you could get
21 away with as late as May 15th of 2011. I've

22 sort of tried to game it out as much as we
23 could. But I think you're really looking at
24 this session. This session has to be when

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1 the issue gets addressed, and a commission
2 will basically have to be up and running by
3 May 15th, which probably is --

4 MR. WICE: Of 2011?

5 MR. HORNER: 2011.

6 MR. WICE: Right. Also, just be
7 cognizant in the 2012 calendar that enough
8 time needs to be worked into the calendar
9 for either the federal district court in
10 Washington or the Justice Department to
11 review. So we're probably looking at a
12 March deadline just to move things along
13 properly.

14 MR. HORNER: Yeah. Well, that's why
15 my first answer was yesterday. But I think
16 if you game it back with, again, a sort of
17 timetable of playing it out in the spring of
18 2012, I think you can get away with as late
19 as the middle of May of this year.

20 But again, I mean, sooner is better.

21 And we'll be urging the Governor and the

22 legislative leaders in January to try to
23 tackle this issue quickly. I mean, the
24 LATFOR funding in the budget, even though

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1 it's a legislative item, does provide, I
2 think, a platform upon which to have a
3 conversation about whether or not you can
4 replace the existing LATFOR structure with
5 something new.

6 MR. WICE: In the work you've done,
7 the research over the last 20 years, can you
8 point to examples of how commissions have
9 actually worked well? You know, that we've
10 had recent experience in Arizona;
11 California's commission, as of I think a day
12 or two ago, is now in place; and Florida
13 recently passed some reforms to improve
14 their process. Anything gleaned from those
15 states that might help us in New York?

16 MR. HORNER: Well, again, given -- I
17 think there are lots of interesting models
18 that have developed. I mean, we've begun to
19 look at some of these issues in other states
20 even though we're a New York State-based
21 group.

22 I just think that given the
23 restrictions that you face, which is you
24 can't do a constitutional amendment in time

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1 unless you're going to do something in the
2 next two weeks, which isn't going to happen,
3 that as a -- and even then it would be too
4 late. But as a practical matter, you're
5 dealing with statutory regimens. So my
6 strongest recommendation is to look at Iowa.
7 It's been there a long time. They've had to
8 work out the kinks. It's a similar kind of
9 situation as you would now face in the State
10 of New York. That that would be -- and it
11 appears to be empirically -- again, Iowa is
12 not New York, right? I mean it's a totally
13 different population, you have different
14 kind of enrollment patterns. But I think in
15 terms of a structure and a process, New York
16 can learn a lot from that. It has a 30-year
17 history. And that would be where I urge the
18 focus of changes.

19 MR. WICE: My last question, has
20 NYPIRG taken a position on the recently
21 enacted state law to reallocate prisoners to

22 their home of record before incarceration?

23 MR. HORNER: We did not take a

24 position on it. It's certainly a reasonable

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1 thing, what the Legislature passed. And,
2 you know, you have to count people
3 somewhere, so it makes sense to us. But we
4 were not involved in the lobbying or
5 advocacy on that issue.

6 MR. WICE: I have no other questions.

7 CHAIRMAN DILAN: Doctor?

8 DR. FLATEAU: I have a question on
9 the concept of regionalism. You pointed out
10 in your remarks how a deft combination of
11 regionalism and population deviation was
12 used by both houses in the last round to
13 politically -- I guess in your
14 interpretation, politically advantage
15 themselves by drawing smaller Assembly
16 districts, I think you said, in the city
17 favoring the Democratic Assembly and then
18 the Republican majority Senate drawing
19 smaller districts primarily upstate.

20 In the Valesky-Gianaris they mention
21 regionalism as one of those diversity

22 criteria, but I'm not sure it shakes out in
23 terms of the final commission. So is that
24 sort of serendipitous, or are you talking

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1 about formalized regional representation on
2 the redistricting commission?

3 MR. HORNER: I think the idea is to
4 get both racial, ethnic and geographic
5 diversity in the representation of the
6 members of the commission itself. As I
7 recall in the bill, that language -- I
8 believe, anyway -- applies to the
9 development of the nominations pool, and
10 that you're looking for the individuals that
11 are diverse so it's not just from one region
12 of the state.

13 Certainly in terms of the lines being
14 drawn, I think that the strategy should be
15 really focused on the data, not trying to
16 benefit one region over another. If that's
17 where you're going with the question.

18 DR. FLATEAU: Again, back to the
19 represent -- of the 11 members on the
20 commission, should all regions of the state
21 be represented or just sort of a general

22 effort --

23 MR. HORNER: I think it would be more

24 general. I mean, at a certain it would be

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1 very difficult because some people believe
2 that upstate New York starts at the northern
3 border of the Bronx. You talk to some
4 people upstate, and it's really the western
5 border of Albany County. Right? So
6 there's, you know, different interpretations
7 of that.

8 So I think the goal certainly, as I
9 understand it from talking to the Senate and
10 the Assembly members, is to ensure that the
11 nominations commission has the geographic
12 diversity so that no part of the state feels
13 like they're being left out. There is a, as
14 you know, an intense issue between upstate
15 and downstate. And so I think I think
16 development of a redistricting commission
17 should be cognizant of that and be sensitive
18 to that.

19 DR. FLATEAU: Now the Part 2, still
20 relating to regionalism. To what extent do
21 you have any thoughts that redistricting

- 22 should use sort of a regional frame in
- 23 perhaps ensuring diversity? In other words,
- 24 depending on which agency you use, some say

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1 there are eight regions to the state -- you
2 know, Western New York, Finger Lakes,
3 Central New York, North Country, et cetera,
4 out to Long Island. To what extent do you
5 have any thoughts that that might be a frame
6 for drawing legislative districts?

7 MR. HORNER: Drawing the districts.

8 DR. FLATEAU: Yes.

9 MR. HORNER: Well, again, in terms of
10 drawing the districts, the Valesky bill has
11 sort of criteria that, you know, as much as
12 possible try to work within the existing
13 political borders of counties and towns and
14 things like that. You still have to deal
15 with the state constitutional issues. And
16 that's why he says all these things as to
17 the greatest extent practicable that you
18 want to comply with the restrictions of the
19 state constitution in the bill.

20 But in terms of just generally speaking
21 of the regions, I think it's a data-driven

22 decision. I know that there are some people

23 upstate that are nervous that if you just

24 follow the numbers, we know where the

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1 population losses are -- Western New York,
2 the Southern Tier, the Mohawk Valley. I
3 mean, those areas have lost population in
4 the state. Hudson Valley and New York City
5 and to some extent Long Island have gained.

6 DR. FLATEAU: But if I could, let's
7 stay with, say, Western New York and then
8 the next region over is the Finger Lakes
9 region. If the data shows that there, for
10 example, are enough people in the Finger
11 Lakes region to hold three Senate districts,
12 is that a process that should be used?

13 And by the way, you can look now at a
14 map of Senate districts and even
15 particularly congressional districts and
16 clearly see that they traverse regions of
17 the state. They go far beyond a compact
18 region of the state.

19 MR. HORNER: Right.

20 DR. FLATEAU: So I'm just trying to
21 get a sense of what the value --

22 MR. HORNER: Well, I may not be
23 giving you a clear answer because I think to
24 some extent, you know, it's a domino effect.

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1 Right? Once you start making decisions on
2 where the district lines are going to be
3 drawn, it impacts districts in other places,
4 Congress being different than the
5 legislature. Right? So the congressional
6 issue is a little bit different because
7 you're actually losing seats.

8 In 2002, just to give you an idea of
9 how the process -- as I was watching the
10 process, Amo Houghton, congressman from the
11 Southern Tier, created the largest political
12 action committee in the state to funnel
13 campaign contributions to the Senate
14 Republican majority to protect his district.
15 He had people wearing T-shirts showing up at
16 hearings to save the district.

17 So, I mean, I think there are regional
18 issues, clearly, in terms of trying to
19 ensure representation. I'm giving less --
20 maybe less clear answers on this because I
21 think it's a complicated issue where you're

22 pulling on one thread that may impact
23 somewhere else.
24 So I think just my general reactions

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1 are there are state constitutional issues
2 which we can't get rid around. There are
3 voting rights issues which we can't get
4 around. We shouldn't. There are standards
5 within the Valesky bill that shall be
6 followed, and some to the greatest extent
7 practicable shall be followed.

8 And I think this issue that we're
9 discussing is one of those where you want to
10 just deal with it to the extent that's
11 reasonable in terms of all of the other
12 competing demands. As you know, this isn't
13 the one item. Right? So there's a million
14 other things that the mapmakers have to
15 think through in putting these districts
16 together.

17 Generally speaking, I think the people
18 should take into consideration regional
19 issues. Generally speaking, the district
20 lines should follow political boundaries to
21 the greatest extent possible. Generally

22 speaking, you should follow the data as to
23 where those lines are drawn based on as
24 close a number of people in the district --

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1 within 1 percent of the mean, or 2 percent
2 from top to bottom -- as you can.

3 So again, I can't really go beyond that
4 because there's a whole series of issues
5 that are all entwined in that, and it's hard
6 to tease one of them out.

7 DR. FLATEAU: Okay, I have one last
8 question.

9 Are you familiar with the concept of
10 nesting?

11 MR. HORNER: Yes.

12 DR. FLATEAU: Do you have a position,
13 does NYPIRG have a position on to what
14 extent that criteria might --

15 MR. HORNER: This actually flows back
16 to the previous conversation. I mean, to
17 the extent that you try to -- I mean you're
18 trying to make it as easy -- the point of
19 all this is to try to make it as easy for
20 the voters as possible to know whose
21 districts they're in. Right? And so to the

22 extent that you can ensure that there are as
23 few Assembly districts in a Senate district
24 as possible, to the greatest extent

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1 practicable, then I think that that makes
2 sense. I think that would be the way that
3 you would try to do that.

4 Historically, since the Assembly
5 Democrats drew the lines for the Assembly
6 and the Senate Republicans drew the lines
7 for the Senate and they're in this sort of
8 mutually assured destruction mode, there's
9 no conversation going on between the two
10 houses in terms of what they're doing other
11 than to say I will not mess with your lines
12 if you don't mess with mine.

13 And if you have an independent
14 commission, you might be able to have a more
15 coherent look at the plan to say things
16 like, well, you know, there's roughly
17 two-plus Assembly districts per Senate
18 district, and we're going to try to the
19 greatest extent practicable to try to keep
20 them together.

21 But you have the Voting Rights Act, you

22 have the state constitutional issues,
23 there's regional issues that we just
24 discussed. And so it's hard to say exactly

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1 how that should look. But I think generally
2 speaking a goal of the mapmakers is to try,
3 to the greatest extent possible, to keep as
4 few Assembly districts per Senate district
5 as they can.

6 CHAIRMAN DILAN: Mr. Wice.

7 MR. WICE: I know we're running short
8 on time, but just one quick question.

9 MR. HORNER: I'm not.

10 MR. WICE: We had a pretty good list
11 of witnesses for the rest of the afternoon.

12 But if I recall, you spent some time
13 working for the Attorney General --

14 MR. HORNER: That's correct.

15 MR. WICE: -- and developed a website
16 there to open up government more. And I was
17 just wondering what kinds of data, whether
18 we have a commission or the Legislature,
19 whoever redistricts, what kind of data
20 should be made available and posted and what
21 kind of access should New Yorkers have to

22 submit plans or view things online or in the

23 media?

24 MR. HORNER: Well, I mean, there's --

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1 it's true I worked with the Attorney General
2 on the development of the Sunlight website,
3 and -- sunlightNY.com, if anybody wants to
4 take look at it. But I am 56 years old, and
5 I don't pretend to be a
6 media-tech-savvy-type person. But my sense
7 is that I think what you want is you want to
8 do things that draw people in. And my guess
9 is that the technology probably exists where
10 people could, online, use the existing data
11 to draw their own maps. I think that would
12 be kind of a cool thing and people would be
13 very excited to participate in that.

14 Now, to be perfectly honest, I'm not
15 exactly sure how helpful that would be to --

16 MR. WICE: Well, let's make it
17 simple. What kinds of databases would you
18 want made public? You know, you will get
19 the basic census-driven data.

20 MR. HORNER: Oh, I see what you're
21 saying.

22 MR. WICE: What other kind of kinds

23 of data should be made available?

24 MR. HORNER: Well, certainly the

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1 census information. Certainly voter
2 enrollment information. I think that for
3 the public they should have access to the
4 addresses of the incumbents so that they
5 know where they live. It's all public
6 information anyway. And to the extent
7 that -- I mean the census information, as
8 you know, is a rich treasure trove of data,
9 you know, I think that would be very
10 helpful. I think that would be -- you know,
11 off the top of my head, those would be some
12 of the things that public would want to have
13 access to.

14 But having access to the data doesn't
15 draw people in. That's for guys like me. I
16 mean, we made maps last time because we got
17 the data, and we made little maps of our
18 own. We didn't draw lines, but we analyzed
19 what was going on. And that's where in fact
20 the two maps at the back of my testimony
21 come from.

22 But to draw the public in I think it
23 has to be some sort of interactive thing
24 where people can sort of play with it. And

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1 it's the kind of thing that educators can
2 use in classrooms. You'd have a much more
3 robust civic conversation if whatever is
4 ultimately designed draws people to it in a
5 state-of-the-art way. That being said, I'm
6 not the state-of-the-art guy on technology,
7 and so I couldn't necessarily tell you how
8 that would be done. But I think it can be.

9 MR. WICE: I think we're a little bit
10 older than you are, so we get the message.
11 Thank you very much.

12 MR. HORNER: (Laughing.) You don't
13 look it, though.

14 MR. WICE: The older we get, the
15 younger we stay.

16 MR. HORNER: Right.

17 Again, though, my only parting comment
18 is I know that this is to some extent
19 uncomfortable for you as members of the
20 commission. I mean, my message is we urge
21 you to put yourself out of business. I mean

22 that is the point. Put yourself out of
23 business, replace yourself with something
24 that we think would have widespread public

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1 support, would change forever the dynamic
2 within the State of New York and, if
3 accomplished, would create the preliminary
4 dialogue that would lead to the
5 constitutional amendment, which actually
6 ultimately has to be done.

7 CHAIRMAN DILAN: Thank you very much.

8 DR. FLATEAU: The ultimate role of an
9 organizer: Put yourself out of business.

10 CHAIRMAN DILAN: Thank you very much,
11 Mr. Horner, for your participation this
12 afternoon.

13 MR. HORNER: Thank you for having me.

14 DR. FLATEAU: Mr. Chair, we would
15 also like to acknowledge the presence of
16 Dr. Roman Hedges, who is also a member of
17 the Legislative Task Force on Redistricting
18 and Reapportionment, from the Assembly.

19 CHAIRMAN DILAN: Thank you for being
20 here, sir.

21 The next person testifying will be

22 Barbara Bartoletti, New York League of Women

23 Voters.

24 Welcome.

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1 MS. BARTOLETTI: Good morning,
2 Senator Dilan. Or maybe good early
3 afternoon, perhaps. And Mr. Wice and Dr.
4 Flateau, who I don't think we've had the
5 pleasure of meeting and working with, but we
6 probably will.

7 Thank you. My name is Barbara
8 Bartoletti. I'm legislative director for
9 the League of Women Voters of New York
10 State. The League is a nonpartisan
11 political organization which strives to
12 improve citizen and voter participation in
13 our political process. We strive to do that
14 through education and advocacy.

15 And I will tell you that I sit before
16 you today having had long experience of my
17 own; however, the League has been in the
18 forefront of this issue since 1966. I will
19 also further tell you that Mr. Horner
20 mentioned the state of Iowa. It was the
21 League of Women Voters of Iowa which brought

22 the lawsuit back in 1967 that eventually led
23 to that state's implementation of their
24 nonpartisan commission.

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1 I will also tell you that I have spoken
2 over several decades with the past and
3 current presidents of Iowa, and they tell me
4 that this is not even an issue in Iowa for
5 the past 30 years. It is now done pro forma
6 by, as Blair noted, by technicians. There
7 is no controversy. The Legislature just
8 assumes that these lines will be drawn
9 appropriately, nonpartisanly, without
10 benefit to either party. And indeed, it
11 works as it was proposed.

12 As you know, Arizona recently has gone
13 through one series of that, and had a little
14 bit more deviation because they have federal
15 lands, Indian lands that they have to move
16 around. We look forward, actually, to
17 seeing what California and what some of the
18 other states that are now in the process of
19 doing that happens in this series.

20 However, it does not diminish at all
21 our forceful, our in fact very forceful

22 assurances that a nonpartisan redistricting
23 commission is the way to go here in New
24 York. We believe that in addition to

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1 improving goals and criteria for the
2 redistricting process, this series is an
3 opportunity to fundamentally change
4 elections in New York State by removing the
5 process from partisan influences.

6 The most important point we wish to
7 make today before you is that the drawing of
8 district lines for legislative and
9 congressional district lines should not --
10 in all deference, should not be done by
11 legislators.

12 The current process allows elected
13 officials to choose their voters before the
14 voters ever get an opportunity to choose
15 them. It is in the self-interest of
16 legislators and legislative leaders to
17 preserve both the careers of individual
18 legislators and the dominance of their
19 political party. The resulting partisan
20 gerrymandering has significantly reduced the
21 rights of New Yorkers to be fairly

22 represented and has resulted in the highest
23 rate of incumbency and legislators being
24 reelected in the country.

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1 I call your attention to some recent
2 statistics from our last, most recent 2010
3 gubernatorial election, where as you all
4 know -- unless you've been living under a
5 rock, and I know Mr. Dilan has not been,
6 he's been here working sometimes -- that
7 this was an anti-incumbent year. And all
8 over the country we saw legislators being
9 unelected, except here in New York State,
10 where currently in our State Assembly I
11 believe, for the general Assembly, the
12 number -- and I want to make sure I have
13 these numbers exactly right -- the
14 incumbency return rate in the Assembly was
15 86.89 percent, and in the Senate it was
16 92.59.

17 So clearly we didn't have -- either
18 we're doing an extraordinarily good job or
19 we have an incumbency protection plan. And
20 unfortunately for those of you who must get
21 reelected, most advocates feel that it is

22 indeed that we have a very strong incumbency

23 protection plan and indeed part of that

24 protection plan is the way we redistrict our

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1 lines. You can add campaign financing and
2 the need for reform to that also. And there
3 are other variables. But certainly we
4 believe that redistricting is a major factor
5 in reelection of incumbents.

6 We believe that an independent
7 commission to draw the lines for legislative
8 and congressional districts can operate
9 under existing state constitutional
10 requirements. And as Blair said -- and
11 Blair and I have done this for so long
12 together that we kind of can finish one
13 another's sentences, plainly. But certainly
14 when you talk about the need for a
15 constitutional amendment, we have actually
16 believed that from the very beginning.

17 And I have lobbied this every decade.
18 And in the middle of the decade my board
19 says, Okay, now we must start educating
20 legislators and the public about the need
21 for independent redistricting lines. The

22 public we can get to. We have over fifty
23 leagues throughout New York State. We have
24 right now an ongoing public education

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1 program that is being done across our
2 leagues involving other civic organizations
3 in the community, at which I will tell you
4 we have had very good attendance.

5 I think that may very well be reflected
6 in a recent Quinnipiac poll that did show
7 that 69 percent of respondents believe that
8 New Yorkers favor an independent nonpartisan
9 commission to draw the lines and that
10 71 percent of respondents in New York State
11 felt that more competitive elections were
12 needed.

13 So we have done our part. I will tell
14 you, in all of the time I have lobbied this
15 issue, we have not felt that there has been
16 the political will to deal with a
17 constitutional amendment.

18 So therefore, the Valesky bill, which
19 we do support, is doing what -- legislators
20 often are like a group of college students.
21 They wait until the exact deadline before

22 they ever get their term papers done. And
23 we are up against a deadline; the
24 constitutional amendment cannot be done. So

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1 the statutory solution that Mr. Valesky's
2 bill represents is certainly one that we
3 think must be done for this. And then we
4 will go back, certainly, to advocating for
5 constitutional changes.

6 The members of the commission would be
7 fairly chosen, nonpartisan, and reflect the
8 diversity of the state. The lines should be
9 drawn in a manner that does not favor any
10 incumbent or political party, and under
11 guidelines that provide for fair and
12 effective representation of racial and
13 language minorities. The process should be
14 transparent and open to public input.
15 Finally, there should be an effective
16 mechanism for legislative approval of the
17 commission's plans.

18 We believe that Senator Valesky's bill,
19 S1614B, accomplishes all of these things and
20 strongly support its passage as soon as
21 possible to draw the lines for the next

22 decade.

23 We urge that the following criteria and

24 guidelines for redistricting, which are to a

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1 large extent listed and prioritized in the
2 Valesky bill, be adopted. Districts should
3 be of contiguous territory and with the
4 smallest parameter possible. Areas divided
5 by water should not be included in the same
6 district except if connected by bridge or
7 tunnel. Districts should be drawn to
8 protect the Voting Rights Act and the rights
9 of racial and language minorities.

10 Districts should not be drawn to favor or
11 disfavor any candidate or political party.

12 The League, I will add here, has been a
13 strong supporter of the Voting Rights Act
14 since its inception, and we continue to
15 think that it is a vitally important part
16 when we consider redistricting.

17 Subject to the above guidelines, state
18 legislative districts should be drawn with
19 no more than a 1 percent deviation -- and I
20 do recognize the fact that the Valesky bill,
21 in legislation there is always some

22 compromise -- from the mean population of
23 districts within that house. Counties and
24 county subdivisions should not be divided

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1 except when necessary to comply with the
2 requirements described above. And in that
3 case, more populous counties or subdivisions
4 should be divided before those with smaller
5 populations. Villages should not be
6 divided.

7 Again, subject to the first set of
8 guidelines, districts should be as compact
9 as possible and legislative districts should
10 be drawn to keep communities of interest
11 together. And that's an issue I will tell
12 you that early on in our League consensus
13 and study was not as prominent, certainly --
14 and we've been doing this, as I said, since
15 1966. It has become far more prominent as
16 far as communities of interest.

17 And when I talk about communities of
18 interest, we mean everything from rural
19 communities of interest to urban communities
20 of interest to racial and minority/majority
21 districts. So we are including many

22 different communities of interest. But we
23 do feel strongly that they are a large
24 consideration.

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1 Open-source software designed by social
2 scientists and computer programmers has been
3 developed recently to make the process more
4 transparent. We believe that the process
5 should be transparent in all aspects, both
6 through multiple public hearings throughout
7 the state and by using technology to have
8 citizens participate at all stages of the
9 process.

10 All data on which the commission relies
11 should be available to the public, both in
12 writing and electronically through the
13 commission's website, including all draft
14 and proposed final maps of districts,
15 criteria used to generate each draft, and
16 proposed final maps of districts, software
17 used to generate each draft, and a final
18 proposed map of districts and proposed
19 plans.

20 In all of its 90-plus years of history,
21 the League has stood for fair and equitable

22 representation for the people of our state.
23 We believe that the overriding concern in
24 drawing new districts is to provide all

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1 New York residents fair representation in
2 Congress and the Legislature. To do
3 otherwise discourages participation in the
4 political process and increases voter
5 cynicism.

6 Ten years ago we went before this body
7 during similar hearings on the last round of
8 redistricting and lamented the fact that
9 New Yorkers had a voter turnout of
10 49 percent. I will add that that was a
11 presidential year. This year, our voter
12 turnout here in New York in a gubernatorial
13 election, in an anti-incumbency environment
14 but with that incumbency protection plan,
15 our voter turnout was 31 to 32 percent, the
16 lowest in the United States.

17 There are many reasons for that low
18 voter turnout, and at some other hearing on
19 other reform issues we can certainly get
20 into that. But we had the lowest turnout in
21 the country this year.

22 The League believes it is imperative
23 that an independent redistricting process be
24 adopted so that people, not parties, are

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1 protected. We hope that this series of
2 public hearings is in fact the beginning of
3 a fair, transparent and objective
4 redistricting process.

5 Thank you very much, and I'll take any
6 questions you have.

7 CHAIRMAN DILAN: We're going to have
8 Mr. Wice ask a question.

9 But I think this year, in this year's
10 election, we lost I think about slightly
11 over 10 percent of the incumbent senators.
12 Is that correct?

13 MS. BARTOLETTI: Yes. The figures I
14 cite come from the Brennan Center, that it
15 was still --

16 CHAIRMAN DILAN: But the real number
17 is over 10 percent.

18 MS. BARTOLETTI: The real number, I'm
19 sorry?

20 CHAIRMAN DILAN: Of senators that we
21 lost, incumbent senators. Brennan numbers

22 maybe one thing, but I believe we lost about
23 10 percent of the incumbent senators.
24 MS. BARTOLETTI: Yes. Yes, you did.

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1 Which is certainly higher, but given --

2 CHAIRMAN DILAN: I just wanted to
3 clear that up for the record.

4 MS. BARTOLETTI: And I certainly
5 don't want to go where I think this is going
6 to go, but --

7 CHAIRMAN DILAN: No, I'm not going
8 anywhere with it. I just want to state the
9 facts.

10 MS. BARTOLETTI: For the reasons why
11 we lost as many as we did. Yes. Yes. Yes.

12 CHAIRMAN DILAN: I just wanted to
13 state the facts, that's all. Thank you.

14 DR. FLATEAU: I would also, for
15 information purposes, indicate that I think
16 there's debate about that turnout number.

17 If you look at the active registration for
18 the State of New York, turnout in this last
19 election I think was closer to 40 percent.

20 There's an organization, I think
21 Professor McDonald and his organization are

22 using a broader number. They're talking
23 about eligible voters, which isn't actual
24 registered voters who are actively able to

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1 vote.

2 So it's somewhere between -- depending
3 on which set of data you use, it's either
4 around 33 percent -- but if you use cold
5 registration numbers from the New York State
6 Board of Elections, it's a little over
7 40 percent. Which is about average for a
8 gubernatorial year in New York State over
9 the last few election cycles.

10 MS. BARTOLETTI: Yes. And we can
11 slice numbers all ways. But I think it's
12 generally agreed, from everyone from the
13 Washington Post that I think reported this
14 to the New York Times, that our voter
15 turnout was down.

16 Now, as I said, there are many
17 variables that you could quote as to the
18 reasons why our voter turnout was down. But
19 certainly we have believed since we started
20 doing this that the fact that New York has
21 such an incumbency protection plan,

22 including, as I said, campaign finance and
23 the way those laws are as lax as they are,
24 and the fact that the redistricting is done

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1 to protect incumbents, is a major reason why
2 we have this incumbency return rate.

3 We can argue the numbers and which way
4 we slice them, but I don't think there's any
5 argument about the fact that this is the way
6 it is in New York. And Senator Dilan and I
7 have talked about this.

8 CHAIRMAN DILAN: I agree that that's
9 the way it's been done in New York for a
10 long time. Hopefully it will change.

11 MS. BARTOLETTI: Yes. We certainly
12 hope so. And we hope -- actually, we
13 released a summary today of a survey that we
14 conducted across the state on voting
15 machines and how people interfaced with
16 that, because this was the first election
17 where we used the machines, and certainly we
18 have recommendations coming out of that.

19 But we have always, the League of Women
20 Voters, we have always been concerned about
21 how voters are able to vote and that voting

22 is done in the most secure and accurate way.

23 And certainly all of the reform issues we

24 talk about is so that voters can participate

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1 more actively in their democracy.

2 MR. WICE: Just one question. Thirty
3 years ago when the Legislature created the
4 redistricting task force known as LATFOR, we
5 were seen as the cutting edge in
6 redistricting technology, law and practice.
7 We fast-forward the 1990 process, the 2000
8 process, there was hope that a governor
9 might step in, veto a plan by some. That
10 didn't happen. I haven't seen a bigger
11 movement for reform in this arcane area than
12 in the last two, three years.

13 We're now at the last month of 2010
14 about to enter the line-drawing years. Is
15 there anything that gives you hope that it
16 would in fact be a different decade than we
17 had seen before, when there might have been
18 a smaller group calling for reform, but the
19 past year has been so intense -- New York
20 Uprising, No Labels, other groups have come
21 forward. Something holding out hope that we

22 could see something different?

23 MS. BARTOLETTI: Yeah. I don't think

24 I would still be doing this after 33 years

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1 if I wasn't an optimist. And I do think
2 that this is different. We've seen this
3 difference around the state. As I said, we
4 have we conducted all of these hearings in
5 our own communities that the League has
6 spearheaded with other organizations.
7 People are beginning to really get it. They
8 now understand the importance of
9 redistricting. I think that also goes into
10 the Quinnipiac study.

11 Whether it is because we have new
12 technology and people are reading blogs all
13 of the time, or whether it is because we
14 have -- certainly the press has been helpful
15 in making sure -- and certainly I want to
16 come back to that, but certainly the
17 dysfunction that has shown over the past two
18 years has begun to have an effect on people
19 looking more closely at how their
20 legislative process works. And I think that
21 has made it easier on some of us reform

22 groups who have been batting our heads
23 against a wall for 30-some years. It has
24 really helped bring this to the forefront,

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1 and people are beginning to say, Oh, I get
2 it. And unless we do this, we aren't going
3 to get to where we want with an efficient
4 and effective government.

5 So certainly, as Blair said, we have
6 gone to the governor, we went to every
7 candidate, we asked all of our elected
8 officials, as they were up for reelection
9 this past year, how they felt about
10 nonpartisan redistricting. And what we will
11 do, of course, as we do with other issues,
12 is we will hold legislators accountable for
13 the pledges they made and for the statements
14 they made.

15 And I believe almost all of your
16 conference, Mr. Dilan, is -- maybe a few,
17 but are on record -- perhaps not yourself; I
18 know you have some bills out there that you
19 prefer. But certainly Mr. Sampson is now on
20 the record. Everyone, I believe, but
21 Mr. Silver, the Speaker of the Assembly. I

22 don't think he has actually come out. But
23 we do think that this governor is going to
24 push hard on this issue, and so we do have

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1 more optimism that people will not only
2 participate but that they will look at their
3 legislators and hold them accountable also.

4 MR. WICE: Thank you.

5 CHAIRMAN DILAN: I just want to say
6 that yes, I'm on the record that there
7 should be reform.

8 MS. BARTOLETTI: Yes.

9 CHAIRMAN DILAN: However, I did not
10 sign the pledge because it's my policy not
11 to sign pledges. As an elected official, I
12 feel that I should hear both sides before I
13 make a commitment.

14 But I do agree that there needs to be a
15 change in this process. And I hope that as
16 we move forward that that does happen,
17 whether it be the Valesky bill, the Dilan
18 bill or someone else's bill. Or whatever
19 evolves, hopefully it's a positive result.

20 MS. BARTOLETTI: Yes, I would agree
21 with you there many legislators who do not

22 like signing pledges because they'd like to
23 hear what the voters are saying out there.
24 And certainly I can't disagree with you

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1 there.

2 Thank you very much.

3 CHAIRMAN DILAN: Okay, thank you.

4 Thank you very much.

5 The next individual testifying will be

6 Dr. Jose Cruz, from SUNY Albany.

7 And as he's moving forward, I'd just

8 like to indicate that the Senate Majority

9 does have a redistricting website. For

10 anyone interested in going to that website,

11 it is RedistrictingNYSenate.gov, where you

12 would be able to find the testimony, for

13 example, of this meeting today, the one that

14 occurred on Monday, and there are listings

15 of all the redistricting reform proposals.

16 And so hopefully we can have an interactive

17 website as we move forward.

18 And also I'd just like to acknowledge

19 that also in the audience we have

20 Assemblymember-elect Sam Roberts of

21 Syracuse. Welcome.

22 Doctor, how are you? You may proceed.

23 DR. CRUZ: Thank you. Good

24 afternoon. And thank you for the

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1 opportunity.

2 I would like, before I present my
3 remarks, to apologize for not remaining for
4 the duration of the hearings after my
5 participation. Although I would like to do
6 that, the semester is not over and I have
7 teaching responsibilities that I have to get
8 back to this afternoon.

9 I did submit my testimony in writing
10 for all of you. And I will just read some
11 parts of it, the highlights of the points
12 that are made there.

13 CHAIRMAN DILAN: I appreciate that.
14 And I will make sure that all testimonies
15 are included in the record in its entirety.
16 Thank you.

17 DR. CRUZ: Thank you.

18 First of all, I would like to also note
19 that I am here as director of the New York
20 Latino Research and Resources Network. And
21 the comments that I would like to offer are

22 presented from the perspective of some of
23 the research that has been carried out on
24 the question of redistricting. That would

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1 be kind of like the emphasis that I would
2 like to note. And also from the perspective
3 of the goals that we think that the
4 redistricting process should emphasize.

5 For the most part, the research on
6 redistricting historically has focused on
7 the issues of gerrymandering and
8 malapportionment. More recently, scholars
9 have explored the consequences of minority
10 concentration in majority/minority districts
11 for presidential politics, for the parties
12 and balance of power in Congress, for the
13 substantive representation of minority
14 interests, and for the political behavior of
15 ethnic minorities.

16 What we would like to suggest today is
17 that the redistricting process is an
18 important tool for minority representation,
19 and in that sense it is important that the
20 State Legislature use the opportunity to
21 revise district lines wisely, taking into

22 consideration criteria beyond the
23 restoration of incumbent advantages, however
24 appropriate and legal that may be.

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1 We believe that the redistricting
2 process should pay special attention to the
3 need for minority representation, and in
4 keeping with the mission of NYLARNet, of the
5 New York Latino Research and Resources
6 Network, we wish to highlight the needs of
7 Latinos in the state in this regard.

8 I would like to jump ahead to 1964, the
9 part of my testimony that looks at arguments
10 heard by the Supreme Court in 1964 in a
11 consolidated case involving six states, the
12 states of Alabama, Colorado, Delaware,
13 Maine, New York and Virginia. The outcome
14 of that case required that districts drawn
15 for state legislatures had to meet the "one
16 person, one vote" standard. And the courts
17 have measured one person, one vote at the
18 district level as a population differential
19 of less than 15 percent. The margin for
20 deviation, the legal margin is quite high.
21 However, plans with differences between 10

22 and 15 percent have had difficulty passing
23 judicial scrutiny without significant
24 evidence supporting the plan; hence, the

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1 emphasis on the smallest possible margin.

2 Eight other legal standards have been
3 established through lawsuits. Number one,
4 the standard of minority/racial fairness;
5 number two, political/partisan fairness;
6 contiguity; compactness; preservation of
7 communities of interest; continuity of
8 representation -- it's important; avoidance
9 of pairing; and respect for political
10 boundaries and topographical features.

11 While these standards have helped
12 identify the factors state legislatures
13 should consider when redistricting, it
14 remains unclear the importance that should
15 be given to each factor. Racial fairness
16 has been the biggest factor addressed by the
17 U.S. Supreme Court, and therefore has had
18 the most influence in shaping redistricting
19 law. And for this reason, and for the fact
20 that we are interested in minority
21 representation, Latino representation in

22 particular, we wish to highlight and

23 emphasize that.

24 For better or for worse, since the U.S.

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1 Supreme Court decisions in Shaw v. Reno and
2 Miller v. Johnson, racial fairness has come
3 to mean either the end of racial
4 gerrymandering or the use of race in the
5 drawing of district lines only if a
6 compelling state interest is served.

7 As my colleague Roberto Brischetto has
8 argued, ever since Shaw v. Reno the court's
9 application of equal protection in the
10 redistricting cases views the use of
11 racially motivated redistricting as harmful
12 in itself even when it has neither the
13 intent nor the effect of minority vote
14 dilution.

15 This places state legislatures in a
16 very difficult situation. They must take
17 race and ethnicity into account in order to
18 ensure racial fairness, but must avoid
19 relying on racial and ethnic criteria if
20 doing so may lead to wrongful-districting
21 litigation. The essence of this dilemma

22 lies in the tension between the notion that
23 race and ethnicity should not matter and the
24 reality that they do matter. As Brischetto

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1 has noted, the solution to this dilemma has
2 been intimated by the Miller court itself by
3 indicating that "a state could treat racial
4 groups as communities for the purpose of
5 drawing 'provided its action is directed
6 toward some common thread of relevant
7 interests."

8 In order for the state legislature to
9 do this, however, racial and ethnic data is
10 indispensable. Color-blindness in the
11 abstract cannot substitute for empirical
12 research that describes the social, economic
13 and political characteristics of racial and
14 ethnic groups in specific jurisdictions to
15 provide "substantive data about which
16 residents share common political and social
17 characteristics."

18 Now, what kind of group characteristics
19 should the New York State Legislature be
20 looking for in order to draw racially and
21 ethnically fair districts in 2011? Size and

22 concentration are two important features.
23 In the case of Latinos, the evidence of
24 demographic growth is abundant. Nationally

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1 their numbers increased almost twofold
2 between 1990 and 2000, from 9 percent to 15
3 percent of the total population. In New
4 York State during that period their numbers
5 increased by 29 percent.

6 A recent analysis of 2009 census
7 estimates suggests that at the national
8 level Latinos experience greater residential
9 segregation than African-Americans.

10 According to a report in the Daily News, the
11 average white person now lives in a
12 neighborhood that is 79 percent white,
13 compared to 81 percent in 2000. The average
14 black person lives in a 46 percent black
15 neighborhood, down from 49 percent. But for
16 Hispanics, their average neighborhood last
17 year was 45 percent Hispanic, up slightly
18 from 44 percent.

19 Perhaps the most important criterion to
20 take into account is community of interest.
21 Minority communities are no doubt diverse,

22 but common interests do join them. Latinos
23 are no exception to this pattern, and the
24 degree of care to which common interest

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1 exists among them can be estimated by
2 looking at sociological and demographic data
3 as well as partisan identification, voting
4 patterns, public opinion data, and group
5 affiliations.

6 We believe, for example, that the fact
7 that Latinos are the youngest population
8 group in New York State, the group with the
9 largest average household size, and the
10 group with the lowest number of high school
11 diplomas, just to name a few
12 characteristics, makes them distinctive as a
13 community and creates a context of
14 commonality that can be the basis for a
15 coherent program of interest representation
16 in politics and policy making, a program of
17 interest representation that in large part
18 is dependent on how the redistricting
19 process unfolds.

20 To conclude, the increasing number of
21 Latinos in New York is part of a national

22 pattern of growth that promises to continue
23 well into the future. Latinos are now the
24 largest minority in the United States. They

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1 represent 51 percent of population growth in
2 the country as a whole since 2000. States
3 that are bound to lose congressional
4 representation would have fared worse had
5 Latinos not moved here in record numbers,
6 and New York State is a prime example of
7 this.

8 Latinos represent 77 percent of
9 population growth in the 11 states projected
10 to lose a House seat. Studies also show
11 that Latinos vote in higher percentages when
12 living in majority Latino districts, and in
13 even higher percentages when in overlapping
14 majority/minority districts. So
15 redistricting can be an incumbent protection
16 plan, but it also can be a strategy that can
17 be used to increase political participation.

18 Research also suggests that effective
19 descriptive representation can offset
20 negative responses to growing minority
21 populations, and that it encourages

22 political activity.

23 It is important to emphasize this,

24 given the negative light that had been

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1 recently shined upon the idea of descriptive
2 representation as the result of the behavior
3 of a few minority elected officials. The
4 solution to this problem is not less but
5 more and better descriptive representation,
6 and redistricting is a tool that can help
7 accomplish this objective.

8 The State Legislature should be aware
9 that in some cases, outside of areas with
10 highly concentrated Latino populations,
11 substantive representation may be best
12 served by distributing minority voters
13 equally across districts as opposed to
14 concentrating them. Also, it is always
15 possible that the creation of districts that
16 make optimal descriptive representation
17 possible can also bring about more polarized
18 neighboring districts. In such cases,
19 minority representatives may be outnumbered
20 by representatives that are against
21 pro-minority policies.

22 This unfortunately can apply to
23 interminority residents as well. And in
24 this case the pertinent question is whether

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1 the creation of a Latino district is a
2 worthwhile enterprise if an existing
3 minority representative represents them well
4 and/or if the new district may impede a
5 needed interminority alliance.

6 There is no easy way to address these
7 issues, but it is best to do so based on
8 intensely local analyses, as the literature
9 refers to this strategy of relying on
10 research and data, rather than on the simple
11 criterion of incumbency advantage.

12 Systematic research on the socioeconomic,
13 demographic and political characteristics of
14 minority communities in the state must be
15 the necessary prelude to the technical
16 process of drawing new district lines in the
17 state.

18 Thank you very much.

19 CHAIRMAN DILAN: Thank you very much.

20 DR. FLATEAU: Yes, thank you, Dr.

21 Cruz.

22 Using your concept you mentioned of
23 racial fairness, and another concept,
24 proportionality -- you talked about the

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1 growth of Latino populations not only
2 nationally but right here in New York -- do
3 you have any specific assessment of the
4 current Latino representation in, say, the
5 Assembly, the Senate and the Congress versus
6 where you think the trend might go vis-a-vis
7 the growth in Latino population in New York
8 State, with reference to special locales?
9 You mentioned local analysis as well. I'm
10 interested in any information you might have
11 on that.

12 DR. CRUZ: In 2009, NYLARNet produced
13 a report called "Latinos in New York State:
14 Demographic Status and Political
15 Representation" that suggested that there
16 was a ways to go in terms of achieving
17 parity in representation for Latinos in this
18 state, parity being defined as the
19 relationship between the Latino proportion
20 of the population and the Latino proportion
21 of elected officials.

22 In New York City the situation at the
23 time of the writing of the report was
24 positive and encouraging, but that was not

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1 the case throughout the state. There are
2 disparities in terms of how much Latinos'
3 numbers have grown vis-a-vis the level of
4 descriptive representation of Latinos in the
5 state.

6 That's a report that came out in 2009
7 based on data up to the year 2000. We
8 estimate that, given the astonishing level
9 of growth, demographic growth that Latinos
10 have experienced since 2000, that that gap
11 in representation, in terms of parity, has
12 increased.

13 We've seen some gains in terms of
14 representation in the last few years. Most
15 recently, the number of Latino elected
16 officials in the State Senate increased as
17 well. But it is likely that the gap that we
18 identified in 2009 is not only still there
19 but that it has grown. We are not prepared
20 at this point to specify, you know, the
21 nature of that gap. And what we would like

22 to do is just wait until the actual census
23 count comes out to revisit that analysis and
24 to have a clearer picture in that regard.

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1 CHAIRMAN DILAN: I just want a quick
2 follow-up with respect to this same issue.

3 I know that many of us know the
4 situation when it comes to New York City and
5 perhaps even Nassau, Suffolk County when it
6 comes to Latino representation. And I
7 believe that all the representation that we
8 do have here in the State Legislature now
9 perhaps may be 100 percent from the
10 downstate area. Are you suggesting that
11 there are areas in upstate New York, maybe
12 here in Albany, Buffalo, anywhere else, that
13 there could be the possibility of a Latino
14 district?

15 DR. CRUZ: I'm not prepared to say
16 that at this point based on the data that we
17 have.

18 CHAIRMAN DILAN: That's why I used
19 the word "suggested."

20 DR. CRUZ: Right. Right. We would
21 need to wait until the official census count

22 comes out to do that analysis.

23 We do know that at the local level

24 there are areas such as in Rochester,

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1 Buffalo, Syracuse, Westchester County, where
2 the numbers are such that the possibilities
3 for increased representation at the local
4 level is greater than 10 years ago.

5 CHAIRMAN DILAN: Thank you.

6 MR. WICE: Just to follow up on that,
7 on Senator Dilan's question, are you
8 familiar with the U.S. Supreme Court
9 decision last year called Bartlett v.
10 Strickland? It's a case where the Supreme
11 Court held that where you are arguing a
12 Voting Rights Act violation and are trying
13 to create an effective minority district,
14 that there is bright line 50 percent minimum
15 population, which was discouraging to
16 others. But that's where you have a Voting
17 Rights Act violation.

18 If the new census data shows us that
19 you've got Latino populations that are in a
20 compact, contiguous community -- in other
21 words, you're not connecting dots, which is

22 what the Supreme Court warns against -- but,
23 you know, looking at Nassau County, Suffolk
24 County, where there's a compact area with

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1 smaller portions of an emerging Latino
2 population that would not violate what the
3 court has said, that you're not purposefully
4 drawing different Latino pockets but it
5 makes sense to put them into one district --

6 DR. CRUZ: Right.

7 MR. WICE: And it wouldn't be a
8 majority, maybe 20 percent, 30 percent. And
9 the differing communities are cohesive, that
10 you've got like-minded voting patterns, that
11 you would advocate putting them into a new
12 district or shaping a district in the new
13 lines that reflects that?

14 DR. CRUZ: Right.

15 MR. WICE: Okay. Wanted to make
16 sure.

17 And the other question, are you
18 familiar with the new state law -- I asked
19 this question earlier -- about where to
20 count incarcerated persons in state prisons,
21 reassigning them to their homes of record?

22 Do you have any opinion on that?
23 DR. CRUZ: NYLARNet does not have a
24 position on that issue.

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1 Personally, from my own perspective as
2 a political scientist and someone who has
3 done some work on the question of felon
4 disenfranchisement, even though I have not
5 systematically, you know, thought about this
6 particular question, intuitively it makes
7 sense to me.

8 MR. WICE: Okay, thank you.

9 CHAIRMAN DILAN: Thank you very much
10 for your testimony.

11 DR. CRUZ: Thank you.

12 CHAIRMAN DILAN: Our next witness is
13 Aaron Mair, Arbor Hill Environmental
14 Justice.

15 MR. MAIR: Good afternoon, gentlemen.
16 Thank you for your time.

17 CHAIRMAN DILAN: Good afternoon.
18 Thank you.

19 MR. MAIR: I wish to say and come at
20 this from a different perspective, in that,
21 you know, we had the previous testimony

22 talking about the process. But our point of
23 view is not only is reapportionment
24 important, it's also about outcomes.

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1 One of the regularly cited cases,
2 recent cases in the Capital Region is Arbor
3 Hill Concerned Citizens, which was our
4 neighborhood association, v. Albany County.
5 And one of the critical points was or the
6 burden on the community was that we had to
7 show harm, harm in outcomes. And we did an
8 analysis of employment, hiring, distribution
9 of services, allocation of amenities, zoning
10 decisions.

11 And what we found is that not only
12 with, you know, political disempowerment,
13 there was also a high correlation between
14 negative outcomes or discretionary decisions
15 or political decision-making, which is why
16 you have an elected legislative body. So
17 with malapportionment comes, as they say,
18 poor allocation of resources and delivery of
19 resources to communities. And from that
20 point of view we were able to develop
21 standing.

22 And what was also unique about our case
23 that we had to file is that the initial plan
24 or discussion or conversation was actually

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1 signed off by the NAACP. And the
2 neighborhood association actually had to
3 pass the hat, and we had to go down to
4 Washington, D.C., and link up with the
5 national NAACP and the Lawyers Committee for
6 Civil Rights. And we showed them what the
7 population data and what the plans were that
8 Albany County had proposed with regards to
9 reapportionment.

10 And again, the connection to the state
11 is that the state, by doing these hearings
12 and this process, is very instructive for
13 counties and local levels. They actually
14 take their plans and they take their process
15 from what the state is doing. So this
16 process, the hearings and the calling for a
17 nonpartisan commission is very instructive
18 to submunicipalities and minor civil
19 divisions, you know, when they come to
20 reapportion the counties and the localities.
21 So this process is extremely important.

22 And one of the deficiencies in their
23 process in defining minorities -- because,
24 again, when we talk about majority/minority,

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1 folks don't realize, the common citizen --
2 but you do -- is that there are various
3 stratifications and slicings and dicings of
4 ethnic minority populations. And creative
5 majorities do a couple of things.

6 In the case of Albany County, when they
7 talk about a minority district, they took
8 for those folks that only identified
9 themselves racially as black or black
10 one-race-only. So all other blacks, any
11 other way defined, if you are a multiethnic
12 black such as myself, we weren't counted.

13 So taking an extreme narrow position is
14 one of the tools and techniques that
15 redistricting or redistricting masters
16 usually include, as they say, to again
17 continually empower the incumbent or the
18 majority at the expense of ethnic
19 minorities. And, also, as they say, is the
20 allocation of favors. Because then, again,
21 it's not a just clear black and white or

22 minorities versus the majority. We will
23 have, in many cases, people of color brought
24 in through favors or what have you and they

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1 are pitted against a population that's
2 advocating for its "one person, one vote"
3 representation within the reapportionment
4 process.

5 So when we brought all these factors
6 before the Lawyers Committee for Civil
7 Rights and the national NAACP, they ordered
8 the local NAACP to more or less reexamine
9 our data again, and they also backed us with
10 the resources to file the lawsuit, which led
11 to the creation of four majority/minority
12 legislative districts at the county level.

13 Unfortunately, we pressed for that at
14 the city level and, again, resources -- and
15 that's one of the biggest things --
16 resources were not available for us to push
17 for much more successful action at the
18 municipal level.

19 But the civic exercise that we engaged
20 in exposed a number of things. And when you
21 talk about technical resources or what's

22 needed by a community, absolute access to
23 data and technology. I think that, number
24 one, one of the resources that you can

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1 provide, I think it was mentioned, open
2 source GIS systems.

3 I think to the extent that this body
4 would begin the process of even networking
5 with Google and trying to see if they can
6 come up with an application for using their
7 KML files for people to use Google
8 transparently to basically create samples
9 or, as they say, reapportionment plans that
10 they can submit, I think that that is a
11 platform that's universal and that's readily
12 accessible by any citizen in any library.

13 The other issue is making available a
14 geo-coded, again, down to the census block
15 level of your state voter file. You don't
16 have to put the names, but do the counts,
17 aggregate them or geo-code them to a block
18 so you have the polygons with the voting
19 population. Because having that as a
20 variable is very important. We talk about
21 ethnic minorities, we talk about communities

22 of interest. But it gets to the core of
23 what really drives these lines. And it
24 really exposes whether or not you have a

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1 plan that's really being driven by
2 bipartisan interests and then using
3 minorities to facilitate partisan interests.

4 And I think that what you start to look
5 at is that areas that have, you know, again,
6 registered voters -- I mean, one of the
7 issues that we came across in the Albany
8 County fight was that even the
9 majority/minority districts that they
10 proposed were kind of disingenuous. Because
11 we did an additional analysis of the voter
12 file and not only -- well, we found two
13 problems.

14 The voter file was not regularly
15 updated, so it deflated the number of
16 minorities, number one. And number two,
17 those that were there, if you were to take
18 that portion and look at past voter
19 tabulation data for turnout, we found that
20 they had like a 12 percent turnout rate. So
21 even though you would have a district that

22 was 56 percent minority with a 12 percent
23 turnout rate, and then you paired that with
24 a so-called community of interest where the

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1 median income is more than double -- in one
2 case they were putting West Albany and
3 linking it with Loudonville. And so the
4 Bishop Gates area, which is over Shaker
5 Ridge, many of you who are familiar with the
6 Capital Region. West Albany has a median
7 income of about \$25,000 to \$35,000.
8 Loudonville is about \$75,000 to \$100,000
9 median income, heavily Republican voting.

10 And more importantly, it also included
11 the working-class area of Shaker Ridge. And
12 one of the things that we found is that
13 whites, even though they are different
14 parties -- so they mixed a group of whites,
15 Democrats and Republicans -- they do vote
16 strategically. So if there's a minority
17 candidate, they will link together and vote
18 not necessarily for a Republican, but they
19 will vote for a white candidate. So we had
20 to do an analysis and show that there is a
21 preference for a white candidate over a

22 minority candidate.

23 And when you couple a 40 to 50 percent

24 turnout rate amongst that economic milieu,

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1 with a 12 percent turnout rate, even though
2 it's a majority/minority district, that
3 gamesmanship actually plays in their favor.
4 So they can absolutely have lower numbers,
5 but using income as a proxy criteria and
6 communities of interest amongst whites and
7 their preference, we were able to show that
8 you can absolutely have a majority/minority
9 district but unfortunately, through voter
10 turnout and other factors, you can actually
11 end up with a white -- in this particular
12 case, the candidate, the incumbent was
13 Virginia Maffia-Tobler. And she still is an
14 elected official.

15 And what was really important about
16 relating that particular incident is because
17 it wasn't until we had the redistricting
18 master upon the stand that our attorneys
19 asked him to turn over a notepad that he was
20 reading as he was referencing the data of
21 how he drew the lines for that area. And

22 one of the things that he had in that
23 notepad was a meeting with her in which she
24 was specifically saying "I do not want these

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1 particular areas." And those areas happened
2 to be areas of high minority concentration.

3 So even though they were professing
4 that they were drawing a plan that was
5 sensitive to the Voter Rights Act, within
6 the redistricting master's notes we had
7 clear evidence of a legislator saying that
8 they did not want minorities in their
9 district, or trying to draw a district that
10 would at least be as biased to her interests
11 as much as possible.

12 So these type of tricks can occur. So
13 I think that when you look at the process
14 and look at the process relative to the
15 Voter Rights Act and then you look at the
16 state constitutional requirements, in that
17 gap problems can be created that would end
18 up diluting the choice and the preference of
19 minority communities of interest. And I
20 think that great sensitivity should be to
21 that.

22 And to that end, to your point one --
23 and I think it's the point of Senator
24 Valesky's bill. And I think that population

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1 variance is something that's very important
2 and I think that that should be, as they
3 say, a model given the constraint in time
4 that we would face of trying to get
5 something that would make, as they say, a
6 much more fair, just and equitable process.

7 Per your question on prisons and
8 institutional facilities where you have
9 populations, though they serve to fill and
10 meet the number of count with regards to
11 assigning an reapportionment, but the
12 question is how do you reference them
13 accurately to where they actually come from.
14 You know, is a person to be counted from
15 where they sleep or where they come from?

16 Well, I think that the question there
17 is choice. If the choice is due to medical
18 condition, physical disability or legal
19 status, meaning something that's beyond
20 their choice or control that puts them in a
21 facility that was placed there by, say, the

22 Legislature, you know, wherever we decide to
23 build or allocate facilities, I think it
24 makes sound sense, fair sense that they

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1 should be apportioned to the community from
2 whence they came.

3 We do that with welfare. We talk about
4 counties of fiscal responsibility for
5 welfare recipients. We make sure that to
6 lessen the burden on any other county we
7 assign them back to the counties where they
8 come from when we talk about covering their
9 Medicaid coverage, et cetera. That should
10 also -- you cannot have it both ways. You
11 cannot not want them to the point that
12 they're an economic burden or a drain, but
13 yet when it comes to the importance of, as
14 they say, increasing one's political power
15 vis-a-vis other areas, then use them at
16 their head count for, as they say, for your
17 political partisan purposes.

18 So to that end, it just makes sound
19 legal sense to have them apportioned to the
20 neighborhoods or the communities from whence
21 they came. And, more importantly, it

22 eliminates another inequity whereby a
23 legislator from upstate New York is able to
24 have, as they say, 50,000 to 100,000 less

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1 folks that he really doesn't have to really
2 respond to and yet be law-and-order in the
3 case of prisons or incarcerated populations.

4 So, you know, that is, you know, a huge
5 issue.

6 The other point that I wish to look at
7 is, again, the concept of interracial
8 minorities and the definition of minorities
9 and how they are allocated. Again, the
10 bigger picture is to try to be as inclusive
11 as possible but also not come up with a
12 constraint that would pit minority
13 communities against one another but also, by
14 the same token, for the purposes of counting
15 and defining majority black or majority
16 Hispanic or majority Asian, come up with
17 criteria that are so porous so as to weaken
18 populations and counts when they're trying
19 to develop plans. So that's where the case
20 or the issue of communities of interest,
21 compactness, contiguousness, to the extent

22 that they live together, I think that
23 looking at that choice and then looking at
24 socio-demographic variables that, as they

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1 say, tease out an understanding of how they
2 choose and they interact as a community, I
3 think that these things are important.

4 And the other issue I think that is
5 really important, I think that, again,
6 looking at the border constitutional issues.

7 To the extent that the New York State
8 Constitution runs afoul of the Voter Rights
9 Act, and to the extent that the New York
10 State Constitution makes complying with the
11 Voter Rights Act difficult, I think that
12 again, you know, we would want to push for a
13 broader conversation on making the State
14 Constitution more compliant and amenable so
15 that it does not trump and it politically
16 cannot be used to trump the Voter Rights Act
17 so as to defeat plans that would increase
18 majority/minority choice and preference.

19 With that, I thank you for your time.

20 CHAIRMAN DILAN: Thank you very much.

21 Doctor?

22 DR. FLATEAU: I have two questions.

23 You mentioned early on in your

24 testimony that -- I believe it was in

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1 relation to the Albany County

2 redistricting --

3 MR. MAIR: Correct.

4 DR. FLATEAU: -- that there was too

5 narrow a definition of black?

6 MR. MAIR: Yes.

7 DR. FLATEAU: Could you elaborate on

8 what was missing from that definition or how

9 you would make it more robust?

10 MR. MAIR: Yes. If you in fact, when

11 drawing the lines and by taking out blacks

12 of more than one race or black multiethnic,

13 you were able to then start packing a

14 district. So if your definition is the

15 black-only category as you're building your

16 counts of your district, say, you know, to

17 60 or 70 percent and you start to get a

18 target, by narrowing the definition you're

19 enabling the drafter of a reapportionment

20 plan to pack, which is a clear violation of

21 the Voter Rights Act.

22 And one of the tools that they've been
23 using nationwide to pack districts has been
24 relying exclusively upon the substrata by

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1 categories of black or black plus one,
2 et cetera. And then you start playing the
3 game of arguing when is a black person not a
4 black person, you know, which is really an
5 absurd game and an insulting game. But
6 unfortunately, it's a game that has been
7 played by, you know, reapportionment
8 specialists who are seeking to
9 disenfranchise communities of color. And
10 it's not only just for blacks; they will
11 probably do it in California or -- you know,
12 for Asian or Latin American categories as
13 well.

14 DR. FLATEAU: So you're suggesting
15 the category "black" alone, or in
16 combination, that one which is more
17 inclusive?

18 MR. MAIR: Right.

19 I think when you're defining black
20 districts or when you're starting to build
21 that -- because you start -- say that a

22 certain whole number gives you your 10, 12
23 or your 51 or 52 percent. If you start to
24 put those things outside of it, you know,

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1 you may have a district that may be
2 51 percent black only, but if the other, as
3 they say, 45 percent is black plus other
4 race, but you don't count them as black, you
5 actually have a district of 95 or 96 percent
6 black. And that's what the County of Albany
7 was engaging in. It was another way of
8 packing.

9 DR. FLATEAU: You also mentioned the
10 term ethnicity. Is there some way -- and
11 there are black ethnicities. For example,
12 the Census Bureau uses a category called
13 sub-Saharan African. They have another
14 category called West Indian. Is there any
15 way that you would see those categories
16 coming into play?

17 MR. MAIR: Well, if they are
18 quantifiable and aggregatable categories and
19 you're defining, as they say -- you know,
20 again -- and let me just take a big step
21 back. I go to the principle of when my

22 ancestors were counted as three-fifths of a
23 human being. And so you now go to a whole
24 human being, and then now you're coming up

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1 with a census that now is parsing the other
2 parts of, as they say, of your racial
3 admixture to make you something other than
4 that. And then now you can be counted as
5 part of the majority rather than the
6 statutory population that your Voter Rights
7 Act speaks to.

8 A person looking at me would not know
9 what percent white, Hispanic or Hindu that I
10 may be because of my Caribbean ancestry.
11 They just see an African-American male. But
12 for the purposes of Albany County, because I
13 checked "black plus other race," I was
14 viewed as part of the majority population.

15 So when they were apportioning trying
16 to be sensitive to the Voter Rights Act and
17 to quote, unquote, comply with the Voter
18 Rights Act, they used the 100 percent or
19 African-American only as their criteria of
20 defining black when, as they say,
21 calculating their districts. The other

22 parts they did not count. So therefore,
23 when they were creating their
24 majority/minority districts, they were

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1 disingenuously packing the district. And so
2 here I had to give testimony of arguing, you
3 know, the objective fact, in front of a
4 bunch of whites at the county legislature,
5 am I not black.

6 DR. FLATEAU: Okay. One other
7 question. In your remarks you used a phrase
8 "to the extent that the New York State
9 constitution runs afoul of the Voting Rights
10 Act."

11 MR. MAIR: Right.

12 DR. FLATEAU: Can you elaborate on
13 that statement, where you see that instance
14 might occur?

15 MR. MAIR: Well, I think looking at
16 the lower part of the state when they're
17 going to start to deal with Senate and
18 Assembly districts. And if you have to take
19 in whole townships and whole counties and
20 you have to be sensitive to that as you're
21 drawing districts down there, you're now --

22 in my opinion, you're hindering them
23 reaching, say, into Long Island and, as they
24 say, creating new majority/minority

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1 districts in parts of Westchester.

2 And I think that what ends up happening
3 is that it does not give the task force the
4 broader latitude it needs to draw
5 majority/minority districts in any given
6 direction that they want. I think that the
7 Voting Rights Act redresses the real and
8 current harm that is done by creating
9 political subdivisions of choice and then
10 the long-term outcome, resources that come
11 from the process that comes from that, ends
12 up adversely affecting these populations.

13 And I think that having the ability to
14 draw the lines freely I think is important.
15 I mean, again, not getting afoul of the
16 issue of reaching out just to find a
17 minority. But if communities start to
18 cluster around a particular area, and they
19 may overlap a township and they're
20 geographically compact within an area, I
21 think it would make sense not to be

22 constrained, you know, by a technical
23 political subdivision line.
24 I think that, you know, there is -- you

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1 know, the issue of compactness can reach to
2 address the issue of reaching too far. But
3 I don't think that the technical provision
4 of a town line should be used, you know, to
5 deny the full and robust application of the
6 Voting Rights Act.

7 CHAIRMAN DILAN: Thank you very much
8 for your testimony today.

9 At this time we do have several
10 individuals on the list to also testify
11 representing various organizations.
12 However, they have not come forward. If
13 they are here, would you like to do so now?
14 And if they are not here, anyone who is
15 present from the public that would like to
16 make any comments can do so right now.
17 Anyone interested? I guess not.

18 Well, what I'll do in regard to those
19 individuals that had reserved the slot to
20 speak today, what I'll do is I will leave
21 the record open for them until the end of

22 business, 5:00 p.m. today, to submit any
23 written testimony that they may have. So
24 that way hopefully their comments will get

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1 into the record also.

2 So in view of the fact that they are
3 not here and there is no one from the public
4 that would like to testify, first I'd like
5 to thank the staff who assisted in putting
6 these public meetings together, my staff and
7 also others that helped. I'd like to
8 especially thank our legal counsel, Jeff
9 Wice, and of course Dr. Flateau, Andres
10 Ledesma, and Lindsay Godt.

11 Anyone else I'm forgetting here? I
12 think I have everyone.

13 But thank you all for participating in
14 these meetings. And hopefully the fact that
15 we set this precedent, it can continue the
16 conversation with everyone in New York
17 State, that the conversation can continue
18 once 2011 begins.

19 So thank you very much.

20 DR. FLATEAU: Mr. Chair, if I could,
21 I just wanted to acknowledge, we should

22 acknowledge the presence of Ms. Tunisha
23 Walker, who's here representing the Council
24 of Black State Senators.

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1 CHAIRMAN DILAN: Thank you. And also
2 I'd just also like to acknowledge and thank
3 Senator Ruth Hassell-Thompson, who has shown
4 a tremendous interest in our work. She was
5 at the Monday meeting, and she would have
6 been here today, but there are other issues
7 going on, and she does have a representative
8 here today. So thank you very much, Senator
9 Ruth Hassell-Thompson.

10 And with that said, have a good
11 afternoon, everyone. Thank you. Happy
12 holidays.

13 - - -

14 (Whereupon, the public hearing
15 concluded at 1:36 p.m.)

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17 TESTIMONY CLOSED

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