Exhibit B
NEW YORK STATE LEGISLATIVE TASK FORCE
ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT

PUBLIC HEARING

CONGRESSIONAL AND STATE LEGISLATIVE REDISTRICTING

Hamilton Hearing Room B
Legislative Office Building, 2nd Floor
Albany, New York
Thursday, August 4, 2011
10:00 a.m.
suggestions that certainly it's--I took notes and appreciate the input. I also appreciate your sense of urgency, and I share that sense of urgency. The clock is ticking and that these issues have to be resolved quickly. On the issue of the number of the Senate, I depart as somewhat from my colleague who's asking for a determination by the Task Force or the Senate. We're asking for input from the public. Some would like to eliminate the entire legislature, some would like to decrease the number, but in terms of these hearings, that's the point, and that the point is to have public input. And certainly we're taking that input and asking from time to time in trying to put it before people in terms of their concerns and what they would like to see in terms of the size of the State Senate. But your suggestions were very well taken, and thank you for making them.

MS. SIMMONS: Thank you very much.

MR. MCENENY: Thank you very much. Pete Healey is next, and I see in the audience we've been joined by Assemblywoman Amy Paulen. Thank
updatedness. I hope I was able to help you a little bit from the disability point of view.

MR. MCENENY: Senator Dilan?

MR. DILAN: Yes, I would just like the clarify the record with respect to the number of the Senate. I never suggested that we go to 63, so first I would like to make that clear. What I did indicate is that the numbers that we do have from the census, the numbers indicate, and based on the formula that's in the State Constitution, that we stay at 62. The numbers—I don't decide the numbers. The numbers are based by the State population, which is 19.3. You divide that by 62, you get 312,550. But based on the formula that we have in the State Constitution, that number would seem to indicate 62. I, too, prefer an odd number, so we could prevent things like what happened during 2009. But the formula is there and we have to go based on numbers. If we had to go with an odd number, if we had too, I would prefer the lesser number.

MR. PLANCK: The one question I wanted to follow up on that is that if the State
NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT

PUBLIC HEARING

CONGRESSIONAL AND STATE LEGISLATIVE REDISTRICTING

Westchester County Board of Legislator's Committee Room
900 Michaelian Office Bldg., 8th Floor
148 Martine Ave
White Plains, New York

Wednesday, August 10, 2011

10:00 a.m. to 2:00 p.m.
NYS Legislative Task Force on Demographic Research and Reapportionment, 8-10-2011
select the number, 63? Do you think it, it
should maybe go to 61?

MR. COLETY: Well, you know, we're not
looking to gerrymander, you know, sitting
legislatures out of their districts or cut the
size to increase the amount of people that each
Senator has to represent.

There will be a slight adjustment, but
we feel A, that not taking a sitting Senator out
of the district, or un-electing a sitting,
sitting Senator, or putting all of the Senators
in a position where they have to fight for a
district that they have to keep.

SENATOR DILAN: But, the, the point is,
what will be the justification of increasing the
size of the Senate? Ten years ago we increased
it from 61 to 62. So, I, I would think that
there would need to be justification. I believe
that the formula that's in the constitution of
the state of New York right now, and the way that
the census numbers come out, really call for--
perhaps maybe the number is staying at 62. But
if we wanted to change to an odd number, there
NEW YORK STATE

LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT

PUBLIC HEARING

CONGRESSIONAL AND STATE LEGISLATIVE REDISTRICTING

Wednesday, September 21, 2011
Assembly Hearing Room
250 Broadway
Room 1923, 19th Floor
Manhattan, New York
10:00 a.m.
time pieces. Senator Dilan?

SENATOR DILAN: Yes. As you may recall,

I believe I asked these very same questions at
our first hearing, and I think I repeated these
questions maybe during the second, third and
fourth hearings, and I also believe that I sent
an initial letter to the co-chairs with respect
to some of these. I'm still waiting for a
response myself, and currently I am drafting
another letter asking the very same questions
with respect to the size of the Senate, with
respect to what date will we be seeing a database
regarding the prisoners so the public will know
what size the Senate will be and the actual data
so they could have accurate replications of
districts that you may submit to us. Also, both
co-chairs have said that we're waiting for--we're
listening to you with respect to the size of the
Senate, you know what, the way it works is by the
Constitution of the State of New York. I think I
heard a professor testify yesterday that that is
in Article 3, Section 4, and if you take that
formula, the Senate will be size 62. I know that
advocates of reform propose to prevent such
regional discrimination by limiting the range
between the most and least populace districts to
2%. But it is possible to use a larger deviation
for the constitutionally required purpose of
keeping counties and town intact while
apportioning districts fairly among the regions
of the state if the governor refuses to sign any
redistricting bill that fails to honor both
principles. A 2% rule, however, will provide an
excuse to ignore entirely the constitutional
requirement to keep counties and towns intact,
which is itself an important constraint on
gerrymandering. If in addition to being given
license for the promiscuous division of counties,
the Senate majority is also allowed to ignore
Constitutional precedence, which on the basis of
the 2010 census count would dictate the creation
of 62 Senate Districts and to create any number
of districts they choose, then they will be amply
compensated for the loss of malapportionment as a
gerrymandering tool. The July 20th, 2001,
internal senate majority memo about the size of
the Senate says, "the only reason to go to 63 is to strengthen the Long Island delegation by combining politically undesirable areas in the extra district." The next paragraph makes it clear that the politically undesirable areas are those with large Black and Latino populations and specifically mentions Elmont as one such area to be considered for "carving out" so as to "strength all nine members." The Nassau County Legislature was recently prevented by the Court of Appeals from going ahead with a redistricting plan that was designed to neutralize politically undesirable Elmont.

In the context of the constitutionally required 62 districts, each of 9 Long Island districts would have a population about 1% above the average, and there would be no excuse to draw a Nassau Queens District, but with a larger senate and a 2% total deviation rule that is not required by the federal or the State Constitution, it will be easy to attach politically undesirable Elmont and its environs to Queens Village and Cambria Heights. For four
decades, the Black and Latino communities in Nassau County have been systematically split by Senate District boundaries. That pattern should not be perpetuated for a full half century with the excuse that a reformed process requires it. What you should do is clear. Apportion the districts fairly in proportion to population. Use reasonable population deviations for the Constitutionally required purpose of keeping counties and towns intact, not to repeat the rationally discriminatory malapportionment of 2002, create 62 Senate Districts as Constitutional precedent requires given the 2010 census counts, and do not continue through a half half-century the systematic splitting of Black and Latino communities of Long Island.

SENATOR OAKS: Actually, I have a question, Mr. Breitbart. Did you do any similar analysis of the 2002 Assembly Districts?

MR. BREITBART: Yes, in fact, I did because I was a consultant not as meticulously because of course I was professionally involved with the Senate redistricting in 2002 and had all
I could do every hour I could manage to deal with that, but I was a consultant to the Election Law Committee of the Bar Association of the City of New York in the drafting of their report in 2007, a report on the reform of the redistricting process. I was the principle drafter of the text of that report, but before I go further in referring to it, I should make it clear that I never was and I am not now a spokesman for that Committee or the Association. And I am not in fact a lawyer. Appendix D of the report suggests a numerical formula that could be used to determine whether a total deviation even up to 10% is being used for the legitimate purposes of keeping counties and towns intact or whether it is being used in a way that produces a regional malapportionment. And in fact that formula could be applied, and I hope it will be applied by the governor consistently with the existing Constitution, and in that appendix, which I drafted and I should explain by the way that the Election Law Committee of the Bar Association did not choose to include that formula in their
finally be used?

MR. BREITBART: There is some ambiguity in the interpretation of the Constitutional formula because it depends on comparing counties with their populations in 1894 and there have been some changes in county boundaries. Queens County was created for the first time in--I beg your pardon, Nassau County was created in 1899. Bronx County was created out of parts of New York and Westchester County in 1914. And for reasons that I don't think you want me to take the time to explain now in 1894 Staten Island and Suffolk County were a single Senate District and for the purposes of applying this formula according to the rulings by the Court of Appeals have to be considered as a unit.

So there is some question about how they should be combined. There have been only two interpretations that have been used. The one that was applied in the 1972 redistricting, upheld by the Court of Appeals in the case of Schneider v. Rockefeller in 1972 applied without question in 1982 and 1992, not only by the
Demographic Research and Reapportionment, 9-21-2011

legislature but also by the special master who
was appointed in 1982 by the three-judge federal
court in the case of Plato [phonetic] v.
Anderson. There is another formula that was
substituted in 2002 in order to justify
increasing the size of the Senate to 62, which
happens to be exactly the same formula that was
propounded by the unsuccessful plaintiffs in
Schneider v. Rockefeller in 1972. Both of these
formulas, both of these interpretations if
applied to the 2010 census data would yield a
Senate of 62 districts, and so when--I'm sorry
he's not here at he moment so that I can address
him about this directly but when Senator Nozzolio
says that the decision has not yet been made as
to what the number of Senate Districts means what
that really means is the decision has not yet
been made to comply with Constitutional precedent
or to find some pretext for drawing what seems to
be a more convenient number.

ASSEMBLY MEMBER MCENENY: Thank you very
much. Kellia Jamaramo [phonetic]. Kellia
Jamaramo. Phillipe Feblez [phonetic]. Phillipe