

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.

Demographic Research and Reapportionment, 8-4-2011

2 suggestions that certainly it's--I took notes and
3 appreciate the input. I also appreciate your
4 sense of urgency, and I share that sense of
5 urgency. The clock is ticking and that these
6 issues have to be resolved quickly. On the issue
7 of the number of the Senate, I depart as somewhat
8 from my colleague who's asking for a
9 determination by the Task Force or the Senate.
10 We're asking for input from the public. Some
11 would like to eliminate the entire legislature,
12 some would like to decrease the number, but in
13 terms of these hearings, that's the point, and
14 that the point is to have public input. And
15 certainly we're taking that input and asking from
16 time to time in trying to put it before people in
17 terms of their concerns and what they would like
18 to see in terms of the size of the State Senate.
19 But your suggestions were very well taken, and
20 thank you for making them.

21 MS. SIMMONS: Thank you very much.

22 MR. MCENENY: Thank you very much. Pete
23 Healey is next, and I see in the audience we've
24 been joined by Assemblywoman Amy Paulen. Thank

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2 updateness. I hope I was able to help you a
3 little bit from the disability point of view.

4 MR. MCENENY: Senator Dilan?

5 MR. DILAN: Yes, I would just like the
6 clarify the record with respect to the number of
7 the Senate. I never suggested that we go to 63,
8 so first I would like to make that clear. What I
9 did indicate is that the numbers that we do have
10 from the census, the numbers indicate, and based
11 on the formula that's in the State Constitution,
12 that we stay at 62. The numbers--I don't decide
13 the numbers. The numbers are based by the State
14 population, which is 19.3. You divide that by
15 62, you get 312,550. But based on the formula
16 that we have in the State Constitution, that
17 number would seem to indicate 62. I, too, prefer
18 an odd number, so we could prevent things like
19 what happened during 2009. But the formula is
20 there and we have to go based on numbers. If we
21 had to go with an odd number, if we had too, I
22 would prefer the lesser number.

23 MR. PLANCK: The one question I wanted
24 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

800 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.

1 NYS Legislative Task Force on Demographic
2 Research and Reapportionment, 8-10-2011
3 select the number, 63? Do you think it,
4 it
5 should maybe go to 61?

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

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

17 SENATOR DILAN: But, the, the point is,
18 what will be the justification of increasing the
19 size of the Senate? Ten years ago we increased
20 it from 61 to 62. So, I, I would think that
21 there would need to be justification. I believe
22 that the formula that's in the constitution of
23 the state of New York right now, and the way that
24 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.

Demographic Research and Reapportionment, 9-21-2011

2 time pieces. Senator Dilan?

3 SENATOR DILAN: Yes. As you may recall,
4 I believe I asked these very same questions at
5 our first hearing, and I think I repeated these
6 questions maybe during the second, third and
7 fourth hearings, and I also believe that I sent
8 an initial letter to the co-chairs with respect
9 to some of these. I'm still waiting for a
10 response myself, and currently I am drafting
11 another letter asking the very same questions
12 with respect to the size of the Senate, with
13 respect to what date will we be seeing a database
14 regarding the prisoners so the public will know
15 what size the Senate will be and the actual data
16 so they could have accurate replications of
17 districts that you may submit to us. Also, both
18 co-chairs have said that we're waiting for--we're
19 listening to you with respect to the size of the
20 Senate, you know what, the way it works is by the
21 Constitution of the State of New York. I think I
22 heard a professor testify yesterday that that is
23 in Article 3, Section 4, and if you take that
24 formula, the Senate will be size 62. I know that

2 advocates of reform propose to prevent such
3 regional discrimination by limiting the range
4 between the most and least populace districts to
5 2%. But it is possible to use a larger deviation
6 for the constitutionally required purpose of
7 keeping counties and town intact while
8 apportioning districts fairly among the regions
9 of the state if the governor refuses to sign any
10 redistricting bill that fails to honor both
11 principles. A 2% rule, however, will provide an
12 excuse to ignore entirely the constitutional
13 requirement to keep counties and towns intact,
14 which is itself an important constraint on
15 gerrymandering. If in addition to being given
16 license for the promiscuous division of counties,
17 the Senate majority is also allowed to ignore
18 Constitutional precedence, which on the basis of
19 the 2010 census count would dictate the creation
20 of 62 Senate Districts and to create any number
21 of districts they choose, then they will be amply
22 compensated for the loss of malapportionment as a
23 gerrymandering tool. The July 20th, 2001,
24 internal senate majority memo about the size of

2 the Senate says, "the only reason to go to 63 is
3 to strengthen the Long Island delegation by
4 combining politically undesirable areas in the
5 extra district." The next paragraph makes it
6 clear that the politically undesirable areas are
7 those with large Black and Latino populations and
8 specifically mentions Elmont as one such area to
9 be considered for "carving out" so as to
10 "strengthen all nine members." The Nassau County
11 Legislature was recently prevented by the Court
12 of Appeals from going ahead with a redistricting
13 plan that was designed to neutralize politically
14 undesirable Elmont.

15 In the context of the constitutionally
16 required 62 districts, each of 9 Long Island
17 districts would have a population about 1% above
18 the average, and there would be no excuse to draw
19 a Nassau Queens District, but with a larger
20 senate and a 2% total deviation rule that is not
21 required by the federal or the State
22 Constitution, it will be easy to attach
23 politically undesirable Elmont and its environs
24 to Queens Village and Cambria Heights. For four

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2 decades, the Black and Latino communities in
3 Nassau County have been systematically split by
4 Senate District boundaries. That pattern should
5 not be perpetuated for a full half century with
6 the excuse that a reformed process requires it.
7 What you should do is clear. Apportion the
8 districts fairly in proportion to population.
9 Use reasonable population deviations for the
10 Constitutionally required purpose of keeping
11 counties and towns intact, not to repeat the
12 rationally discriminatory malapportionment of
13 2002, create 62 Senate Districts as
14 Constitutional precedent requires given the 2010
15 census counts, and do not continue through a half
16 half-century the systematic splitting of Black
17 and Latino communities of Long Island.

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

21 MR. BREITBART: Yes, in fact, I did
22 because I was a consultant not as meticulously
23 because of course I was professionally involved
24 with the Senate redistricting in 2002 and had all

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2 I could do every hour I could manage to deal with
3 that, but I was a consultant to the Election Law
4 Committee of the Bar Association of the City of
5 New York in the drafting of their report in 2007,
6 a report on the reform of the redistricting
7 process. I was the principle drafter of the text
8 of that report, but before I go further in
9 referring to it, I should make it clear that I
10 never was and I am not now a spokesman for that
11 Committee or the Association. And I am not in
12 fact a lawyer. Appendix D of the report suggests
13 a numerical formula that could be used to
14 determine whether a total deviation even up to
15 10% is being used for the legitimate purposes of
16 keeping counties and towns intact or whether it
17 is being used in a way that produces a regional
18 malapportionment. And in fact that formula could
19 be applied, and I hope it will be applied by the
20 governor consistently with the existing
21 Constitution, and in that appendix, which I
22 drafted and I should explain by the way that the
23 Election Law Committee of the Bar Association did
24 not choose to include that formula in their

2 finally be used?

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

18 So there is some question about how they
19 should be combined. There have been only two
20 interpretations that have been used. The one
21 that was applied in the 1972 redistricting,
22 upheld by the Court of Appeals in the case of
23 Schneider v. Rockefeller in 1972 applied without
24 question in 1982 and 1992, not only by the

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

22 ASSEMBLY MEMBER MCENENY: Thank you very
23 much. Kellia Jamoramo [phonetic]. Kellia
24 Jamoramo. Phillippe Feblez [phonetic]. Phillippe