

Exhibit E

11 SENATOR GIANARIS: Yes, sir.

12 ACTING PRESIDENT FLANAGAN: I

13 would remind everyone in the chamber that the

14 house being in order and having a sense of

15 decorum is really a good thing for everybody.

16 we've been doing pretty well up until this point,

17 Senator Dilan having set the appropriate tone.

18 I would remind you as well that

19 senator Nozzolio has engaged you and listened to

20 your questions, and he is entitled to answer

21 those questions as he deems fit. If he doesn't

22 answer them to your liking, he is entitled to

23 answer the questions the way he deems

24 appropriate.

25 SENATOR GIANARIS: I don't

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1 believe, Mr. President, that I have taken issue

2 with the way he's answered any of my questions.

3 ACTING PRESIDENT FLANAGAN:

4 Senator Gianaris, you just said you don't want to

5 hear any of his talking points. So I'm just

6 reminding you that if he is going to speak to

7 your questions, he is entitled to answer them the

8 way he deems fit.

9 SENATOR GIANARIS: Point taken,

10 Mr. President.

11 SENATOR NOZZOLIO: Thank you,

12 Mr. President. And I'd like to respond to

13 Senator Gianaris's question directly.

14 Senator Gianaris should know that I

15 am not in any way, shape or form ashamed of this

16 plan. Frankly, the question was insulting.

17 I am very proud of this plan. I am
18 very proud of the fact that we have fully
19 complied with all tenets of the federal voting
20 Rights Act, that we have restored five
21 majority-minority districts in this state and
22 within the covered counties of this state, even
23 though those five districts fell below
24 50 percent.

25 Senator Gianaris's definition of

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1 packing I think is totally inappropriate, totally
2 beyond the formal judicially termed definitions
3 of packing.

4 And that this plan does not engage
5 in such behavior. This plan is totally within
6 the tenets of the federal Voting Rights Act. And
7 I am in fact proud of the job that has been done
8 in establishing minority rights in this State
9 Senate and minority districts in this State
10 Senate.

11 SENATOR GIANARIS: Thank you,
12 Senator Nozzolio.

13 If the sponsor would continue to
14 yield.

15 ACTING PRESIDENT FLANAGAN:
16 Senator Nozzolio, will you continue to yield?

17 SENATOR NOZZOLIO: Yes,
18 Mr. President.

19 SENATOR GIANARIS: Thank you. I'd
20 like to move on to a different topic now, the
21 question of the 63rd seat.

22 would the sponsor be willing to
23 stipulate that the purpose of the constitutional
24 provision that determines the size of the Senate
25 exists so that when the population of the state

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1 grows in a certain region, that that region does
2 not end up taking a Senator from another part of
3 the state?

4 In other words, was it not a
5 compromise in 1894 to deal with counties that had
6 growing populations so that we wouldn't have
7 Senators shifted, and the idea would be those
8 counties would gain an extra Senator by
9 increasing the size of the Senate and other
10 counties would maintain their position?

11 SENATOR NOZZOLIO: Mr. President,
12 please advise Senator Gianaris that I would in no
13 way stipulate to such a definition.

14 ACTING PRESIDENT FLANAGAN:
15 Senator Gianaris.

16 SENATOR GIANARIS: If the sponsor
17 would continue to yield, Mr. President.

18 ACTING PRESIDENT FLANAGAN:
19 Senator Nozzolio, will you continue to yield?

20 SENATOR NOZZOLIO: Yes,
21 Mr. President.

22 SENATOR GIANARIS: Well,
23 historical records certainly seem to make that
24 point.

25 Regardless of whether the sponsor

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1 stipulates to it or not, I'd ask the question as
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2 a matter of policy. If we are going to make a
3 determination that the senate size should change
4 and grow by one, does it not make sense for that
5 district to be placed in the parts of the state
6 that have experienced the greatest growth in the
7 last decade?

8 SENATOR NOZZOLIO: Mr. President,
9 I believe that it is a decision of this body, as
10 it accepts the establishment of the 63rd seat,
11 that that seat is in fact placed in one of the
12 fastest-growing regions of the state.

13 The Hudson Valley has historically
14 been one of the fastest-growing regions. That
15 this district lines through the Hudson valley and
16 in fact is one of the fastest-growing population
17 centers is this state. That this plan reflects
18 that growth, and that the addition of the Senate
19 seat is a reflection of that growth.

20 SENATOR GIANARIS: If the sponsor
21 would continue to yield, Mr. President.

22 ACTING PRESIDENT FLANAGAN:
23 Senator Nozzolio, will you continue to yield?

24 SENATOR NOZZOLIO: Yes,
25 Mr. President.

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1 ACTING PRESIDENT FLANAGAN:
2 Senator Gianaris.

3 SENATOR GIANARIS: While it may be
4 true that the Hudson Valley has experienced
5 growth, the numbers make clear that it's in the
6 Lower Hudson valley where that growth has been

7 experienced, the counties of Orange and Putnam
8 and Westchester and Rockland.

9 This new district that's being
10 proposed doesn't touch any of those districts.
11 It is in the Capital Region and in the Northern
12 Hudson Valley.

13 So again I ask, would it not make
14 sense to place a new district where the
15 population growth was the greatest?

16 SENATOR NOZZOLIO: Mr. President,
17 I think Senator Gianaris's atlas could use the
18 addition of a few more counties. Saratoga County
19 is by far one of the fastest-growing counties. I
20 believe it is the fastest-growing county in the
21 State of New York.

22 SENATOR GIANARIS: If the sponsor
23 would continue to yield, Mr. President.

24 ACTING PRESIDENT FLANAGAN:
25 Senator Nozzolio, will you continue to yield?

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1 SENATOR NOZZOLIO: Yes,
2 Mr. President.

3 ACTING PRESIDENT FLANAGAN:
4 Senator Gianaris.

5 SENATOR GIANARIS: How much of
6 Saratoga County is located in the new
7 46th District?

8 SENATOR NOZZOLIO: Mr. President,
9 the 46th District, the counties are outlined
10 here. That Saratoga County is not a component of
11 the 63rd senatorial district.

12 SENATOR GIANARIS: If the sponsor
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13 would continue to yield, Mr. President.

14 SENATOR NOZZOLIO: However, if I
15 may, Mr. President.

16 ACTING PRESIDENT FLANAGAN:
17 Senator Nozzolio.

18 SENATOR NOZZOLIO: That no
19 district is created in a vacuum. That each
20 district relies on population centers around it
21 as well as within it, and that the inclusion of
22 this district in the region, extending from the
23 Lower Hudson into the Capital Region, is part of
24 a growth that extends from the Lower Hudson into
25 the Capital Region.

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1 Districts around the 63rd seat are
2 as relevant to its establishment as the growth
3 rate within that 63rd seat.

4 SENATOR GIANARIS: If the sponsor
5 would continue to yield.

6 ACTING PRESIDENT FLANAGAN:
7 Senator Nozzolio, will you continue to yield?

8 SENATOR NOZZOLIO: Yes,
9 Mr. President.

10 ACTING PRESIDENT FLANAGAN:
11 Senator Gianaris.

12 SENATOR GIANARIS: I'd like to
13 move on to an area that's a little bit
14 complicated to discuss. It took me quite a while
15 to grasp it. But I do want to get into this
16 formula in the Constitution for determining
17 whether or not the Senate size should increase.

18 and how it was applied in this plan.

19 Can the sponsor explain briefly how
20 it is that the Constitution provides a formula --
21 what the formula is in the Constitution for
22 determining the size of the Senate?

23 SENATOR NOZZOLIO: I'd refer
24 Senator Gianaris first to Article 3, Section 4 of
25 the State Constitution. Also, I would refer him

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1 to the memo presented on the LATFOR website by
2 counsel. I would also refer to Senator Gianaris
3 the applicable sites cited in counsel's memo for
4 further explanation on those judicial opinions
5 relevant to this issue.

6 SENATOR GIANARIS: If the sponsor
7 would continue to yield, Mr. President.

8 ACTING PRESIDENT FLANAGAN:
9 Senator Nozzolio, will you continue to yield?

10 SENATOR NOZZOLIO: Yes,
11 Mr. President.

12 ACTING PRESIDENT FLANAGAN:
13 Senator Gianaris.

14 SENATOR GIANARIS: I appreciate
15 the sponsor's response to that question, but I
16 think it's important -- because I submit that the
17 formula was misapplied in an unconstitutional
18 manner, so I think it's important that we get
19 into a conversation about what that formula is
20 and how it was applied in this case.

21 Now, as I understand it, we're
22 dealing with a provision in Article 3, Section 4
23 that was written in 1894 and provides that when

24 certain counties that are larger in this state
25 experience growth, there's a formula applied to

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1 determine whether they are entitled to what the
2 Constitution calls an additional share, or an
3 additional Senator for the purposes of this
4 formula.

5 Is that in conformance with what
6 the sponsor believes as well?

7 SENATOR NOZZOLIO: Mr. President,
8 it really was very difficult to follow Senator
9 Gianaris on his trail in trying to frame a
10 question. Not to be critical of Mr. Gianaris,
11 but I believe the Senator tried to ask a
12 question; I really didn't gather one out of that
13 statement. Could he be so kind as to repeat the
14 question or at least rephrase it in the form of a
15 question?

16 SENATOR GIANARIS: I would be
17 happy to. And excuse my lack of articulateness
18 in that question, Senator.

19 would you agree that Article 3,
20 Section 4 provides a formula to determine when
21 certain large counties in this state experience
22 enough growth to justify an additional Senator?

23 SENATOR NOZZOLIO: Mr. President,
24 it's my understanding that the Constitution sets
25 forward in motion the establishment of a process

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1 and that the formula has actually been determined
2 by a number of judicial decisions.

3 Those decisions are part of a
4 counsel's opinion that has been on the LATFOR
5 website for a number of months. I again refer
6 the Senator to that opinion by counsel. One need
7 only go to the LATFOR website to find it.

8 SENATOR GIANARIS: would the
9 sponsor continue to yield, Mr. President.

10 ACTING PRESIDENT FLANAGAN:
11 Senator Nozzolio, will you continue to yield?

12 SENATOR NOZZOLIO: Yes,
13 Mr. President.

14 ACTING PRESIDENT FLANAGAN:
15 Senator Gianaris.

16 SENATOR GIANARIS: with all due
17 respect, is the sponsor aware that his counsel
18 doesn't get a vote in this chamber and we are
19 called upon to apply our judgment to what is
20 proper and improper?

21 And this is an important issue of
22 constitutional interpretation and what the size
23 of our representative government should be in
24 this state. So with respect, it's not sufficient
25 for me for someone to wave a counsel's memo and

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1 say "This is the answer."

2 I would like to engage in a
3 conversation about this formula and how it was
4 applied here.

5 ACTING PRESIDENT FLANAGAN:
6 Senator Gianaris, are you asking -- it seems to
7 me you were commenting and questioning. Can you
8 restate exactly what your question is for Senator

9 Nozzolio?

10 SENATOR GIANARIS: My question is,
11 is the sponsor aware that his counsel is called
12 upon to give advice that would then be
13 interpreted by him and his colleagues, not to
14 actually cast a determinative vote in how we do a
15 redistricting plan?

16 SENATOR NOZZOLIO: Mr. President,
17 of course. That the counsel's advice is just
18 that, it's advice.

19 That that advice was in fact from
20 the identical counsel that provided the advice to
21 the senate 10 years ago. That advice then was
22 upheld by the appropriate courts. The advice has
23 a great deal of credibility, a great deal of
24 success. And that counsel's memo, in recognizing
25 and recommending similar action this year, I

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1 believe is headed towards a similar result, of
2 the courts accepting counsel's analysis of this
3 constitutional required provision.

4 SENATOR GIANARIS: If the sponsor
5 would continue to yield, Mr. President.

6 ACTING PRESIDENT FLANAGAN:
7 Senator Nozzolio, will you continue to yield?

8 SENATOR NOZZOLIO: Yes,
9 Mr. President.

10 ACTING PRESIDENT FLANAGAN:
11 Senator Gianaris.

12 SENATOR GIANARIS: Mr. President,
13 I'd like to ask the sponsor how he knows that the

14 advice given by counsel 10 years ago is the same
15 as the advice he gave this year.

16 SENATOR NOZZOLIO: I think it's a
17 very good question, Mr. President.

18 That the memo provided on the
19 LATFOR website incorporates the memo that the
20 counsel provided 10 years ago. That there were a
21 combination of the advice, through the memo
22 presented 10 years ago with the analysis updated
23 based on the assessments today incorporated with
24 that memo from 10 years ago.

25 SENATOR GIANARIS: If the sponsor

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1 would continue to yield, Mr. President.

2 ACTING PRESIDENT FLANAGAN:
3 Senator Nozzolio, will you continue to yield?

4 SENATOR NOZZOLIO: Yes,
5 Mr. President.

6 ACTING PRESIDENT FLANAGAN:
7 Senator Gianaris.

8 SENATOR GIANARIS: Is the sponsor
9 aware that there were two different methodologies
10 used in two different parts of the state in
11 making the determination that this plan should go
12 to 63 Senators?

13 SENATOR NOZZOLIO: Mr. President,
14 I don't believe that the contention by Senator
15 Gianaris is accurate.

16 SENATOR GIANARIS: If the sponsor
17 would continue to yield.

18 ACTING PRESIDENT FLANAGAN:
19 Senator Nozzolio, will you continue to yield?

20 SENATOR NOZZOLIO: Yes,
21 Mr. President.

22 ACTING PRESIDENT FLANAGAN:
23 Senator Gianaris.

24 SENATOR GIANARIS: Is the sponsor
25 not aware that his own counsel, who he's using as

‡ 1 the authority, readily admits that there were two
2 different methodologies used in two different
3 parts of the state in his plan?

4 SENATOR NOZZOLIO: That -- let me
5 try to clear up Senator Gianaris's confusion,
6 Mr. President, with this response.

7 That counsel's memo provides two
8 alternative paths to basically reach -- that both
9 basically reach the same conclusion, that there
10 are -- the analysis intention is to be
11 comprehensive, and that's why the counsel looked
12 at both alternatives as potentials.

13 And that both alternatives led to
14 the very same conclusion, that a 63rd seat is in
15 fact constitutionally sound and required for this
16 next redistricting.

17 SENATOR GIANARIS: If the sponsor
18 would continue to yield, Mr. President.

19 ACTING PRESIDENT FLANAGAN:
20 Senator Nozzolio, will you continue to yield?

21 SENATOR NOZZOLIO: Yes,
22 Mr. President.

23 ACTING PRESIDENT FLANAGAN:
24 Senator Gianaris.

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25 SENATOR GIANARIS: Is the sponsor

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1 not aware that what actually happened was both of
2 those alternatives were applied simultaneously in
3 the same plan and that is the only way that the
4 formula resulted in 63?

5 SENATOR NOZZOLIO: Mr. President,
6 Senator Gianaris is certainly entitled to his own
7 opinion and his assessment of counsel's memo.

8 I believe I have demonstrated my
9 opinion of counsel's memo. I stand by those
10 previous answers.

11 SENATOR GIANARIS: Mr. President,
12 on the bill, please.

13 ACTING PRESIDENT FLANAGAN:

14 Senator Gianaris on the bill.

15 SENATOR GIANARIS: I find -- it's
16 not a surprise to anyone in this chamber that I
17 find this bill woefully inadequate.

18 And I've heard contentions that --
19 I want to make sure I get the terms right -- it
20 was fair and legal and complies with the State
21 Constitution and the U.S. Constitution and the
22 Voting Rights Act. The fact is, this plan is
23 none of those things. It is not fair, it is not
24 legal, it violates the State Constitution in
25 determining the size of the Senate, it violates

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1 the U.S. Constitution in applying the "one
2 person, one vote" rule, and it violates the
3 Voting Rights Act in numerous counties throughout
4 this state, most notably in Hempstead in

5 Nassau County.

6 Yet we plod on and we use as
7 authority a counsel's memo that no one seems able
8 to explain. Makes me wonder whether the counsel
9 was told "Get us to 63, please. And I don't care
10 how you get there, but get us there, because
11 that's the number that works for us politically."
12 In fact, 10 years ago we have memoranda written
13 by this same majority that said exactly that in
14 your path to get to 62 from 61.

15 So if there's anyone here who would
16 like to get up and have a conversation about how
17 this formula was applied and how you got to 63,
18 I'd love to have it, because I have a pretty good
19 idea of how it was and I'm pretty confident it
20 was applied illegally. Yet there's no one here
21 who seems able to explain it other than referring
22 back to a counsel's memo -- not only a counsel's
23 memo from the previous year, but from 10 years
24 prior.

25 The fact that we're debating such

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1 an important piece of legislation at 11 o'clock
2 at night and can't even have a substantive
3 conversation about it speaks volumes about the
4 depths we've fallen to in this chamber as we're
5 doing something as important as determining the
6 districts under which people get to vote for
7 their representatives.

8 we're sitting here with the highest
9 average deviation in history of this state that