

NEW YORK STATE ASSEMBLY
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT

PUBLIC HEARING
CONGRESSIONAL AND STATE LEGISLATIVE REDISTRICTING

Thursday, August 18, 2011

Common Council Chambers
Buffalo City Hall, 13th Floor
65 Niagara Square, Buffalo, NY

10:00 a.m.

TASK FORCE MEMBERS PRESENT:

SENATOR MICHAEL F. NOZZOLIO, Co-Chair

ASSEMBLY MEMBER JOHN J. MCENENY, Co-Chair

SENATOR MARTIN M. DILAN

ASSEMBLY MEMBER ROBERT OAKS

DEBRA LEVINE

ROMAN HEDGES

WELQUIS LOPEZ

LEWIS HOPPE

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2 (The public hearing commenced at 10:08
3 a.m.)

4 ASSEMBLY MEMBER JOHN J. MCENENY, CO-
5 CHAIR, NEW YORK STATE LEGISLATIVE TASK FORCE ON
6 DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT: Good
7 morning. My name is Jack McEneny. I'm the
8 assemblyman and co-chair of this New York State
9 Legislative Task Force on Demographic Research
10 and Reapportionment, known as LATFOR. I am
11 joined this morning here with Senator Mike
12 Nozzolio of Seneca County, and to my right,
13 beyond the co-chair is Senator Martin Dilan from
14 Kings County Welquis, also known as Ray, Lopez is
15 the citizen membership representing the Senate
16 side, and also we are joined with Debra Levine
17 who's the co-executive director of the task
18 force.

19 To my left is my friend and colleague
20 Bob Oaks, who is the Assemblyman from Wayne
21 County and the area around there. Roman Hedges,
22 who's the citizen representative, and the other
23 co-chair, Lew Hoppe. This public hearing is now
24 called into session. And we would ask that if

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2 you have written testimony, that you provide it.
3 If you do not have written testimony, please
4 follow up with it if you can, and if, for those
5 who will be watching this televised version,
6 since all of this is being recorded, you have
7 additional thoughts people who can't make it to
8 one of the 12 preliminary public hearings, then
9 by all means, send in maps, recommendations,
10 criticisms of what you feel we should know in
11 order to draw proper lines representing people in
12 the State Assembly, the State Senate, and in the
13 United States Congress.

14 This is the halfway point of the first
15 stage of public hearings. We are doing 12 public
16 hearings before we start drawing the lines for
17 you to give us a general idea of how satisfied or
18 dissatisfied you are with current lines, and to
19 make recommendations for the future lines. The
20 last--this will finish upstate. The next six
21 hearings will be downstate in the five boroughs
22 of New York and out on Long Island. The last
23 public hearing taking place on the 5th of
24 October. At that point, LATFOR staff will begin

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2 drawing lines, and hopefully during October, at
3 some point in November, we can start the 12
4 public hearings all over again, most likely at
5 the exact same locations across the state.

6 We will move from the more academic,
7 when we're talking about the existing situation
8 in the future, to something which will, I'm sure,
9 be more controversial, will specific maps,
10 specific lines, specific legislation that we will
11 ask the public to come in and say, does this
12 address your concerns. So without further
13 explanation I would ask my co-chair Mike Nozzolio
14 if he'd like to add to the welcome.

15 SENATOR MICHAEL F. NOZZOLIO, CO-CHAIR,
16 NEW YORK STATE LEGISLATIVE TASK FOR ON
17 DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT: Thank
18 you very much, Assemblyman, and good morning
19 ladies and gentlemen. As Assemblyman McEneny so
20 well stated, this is another of the task force's
21 attempts to take as much public input as we
22 possibly can. This process is open. It's
23 transparent. The proceedings today will be video
24 recorded, and the video will be placed, as our

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2 other hearings have placed this testimony for the
3 public to review on the LATFOR web site. This
4 transparency is important as is upstate
5 representation.

6 My co-chair and good friend, Assemblyman
7 McEneny and I represent upstate regions of New
8 York, as does Assemblyman Bob Oaks a member of
9 this task force. In Western New York, we know
10 there are definite communities of interest. We
11 hope that those communities will be explored and
12 place on the record today, and that we look
13 forward to the testimony presented by those who
14 are willing to testify.

15 Those who may be watching this
16 proceeding we encourage additional input. For
17 instance, if someone would like to provide
18 written testimony, please feel free to do so to
19 the task force. The LATFOR web site can be
20 readily obtained, and that we have all the
21 contact information for the provision of that
22 input. And we hope that those who do not testify
23 here in person will--that are interested in this
24 process will provide additional comment later.

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2 I just want to also say from the outset
3 of the hearing that we are here to hear from the
4 public about their concerns with redistricting.
5 We also have a legal, moral, ethical and
6 especially fiduciary responsibility. as
7 appointees to the task force to begin the process
8 that whatever that process is or you wish it to
9 be we need to focus on what the law is today and
10 in order to comply with a myriad of laws, we hope
11 that through this meeting, we also will entertain
12 a conversation about what types of time periods
13 and what other types of laws need to be followed.

14 With that, I'd like to mention and ask
15 Assemblyman McEneny to mention our legislative
16 colleagues here. I want to recognize Tim Kennedy
17 a colleague of ours in the New York State Senate.
18 Senator Kennedy, it's very nice to see you today,
19 and thank you for your presence here. And that,
20 with that, I'll turn it back to Assemblyman
21 McEneny to announce some of our assembly members
22 who are here today.

23 ASSEMBLY MEMBER MCENENY: I also see out
24 there, and I apologize if I miss anyone,

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2 Assemblyman Joe Giglio and former Assemblywoman
3 Francine DelMonte. And we may very well be
4 joined during the course of the proceedings by
5 other members as, as well, of the State
6 Legislature. Would other members care to make
7 any opening remarks? Senator Dilan.

8 SENATOR MARTIN M. DILAN, NEW YORK STATE
9 LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH
10 AND REAPPORTIONMENT: Yes, good morning,
11 everyone. I, I would just like to say thank you
12 very much for having us here in Buffalo, and I
13 would just like to echo the sentiments of our co-
14 chairs, and I'm really looking forward to hearing
15 from Western New Yorkers in terms of your
16 interests in redistricting, and also I'd like to
17 echo that my comments from previous meetings. I
18 stand by those, and I ask all those present who
19 do watch the previous hearings on our web site,
20 LATFOR. And I just look forward to hearing what
21 you have to say, and I'm also interested in
22 comments with respect to the size of the Senate
23 and also regarding the 2010 prisoner count law.
24 Thank you very much.

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2 ASSEMBLY MEMBER MCENENY: Thank you,
3 Senator. Assemblyman Oaks.

4 ASSEMBLY MEMBER ROBERT OAKS, NEW YORK
5 STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
6 RESEARCH AND REAPPORTIONMENT: Yes, welcome
7 everyone, and thank you for being here today.
8 This has--as been mentioned, our sixth hearing, I
9 believe going throughout and across upstate and a
10 little bit downstate. Look forward to hearing
11 your comments. I would also just, to the--to the
12 co-chairs and the committee in saying as we're
13 kind of ending the upstate portion of this, just
14 kind of a recognition. We--I know we've--some
15 people at our other hearings have testified about
16 the governor's proposed bill, and other reform
17 proposals. And some of us have, have presented
18 proposals as well. And the one that I did
19 actually, it would suggest or require 13 hearings
20 and including the north country of New York. And
21 I, I know on our list right now, we don't have
22 that, but I would just ask the co-chairs and the
23 committee as we continue to go through round one,
24 and as we look at round two of hearings, if we

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2 might consider, and I would hope that we might
3 find an opportunity to as well try to hold one of
4 these hearings in the north country. So I would
5 just put that out on the table for the committee.
6 And again, as we continue this process, I think
7 it's been important to hit all the regions of the
8 state. Thank you.

9 ASSEMBLY MEMBER MCENENY: Thank you,
10 Assemblyman. Any of the other members wish to
11 comment? we remind you that, and as many of you
12 know, and I see some repeat names here who have
13 been kind enough to show up at previous hearings,
14 that we are bound not only by the New York State
15 Constitution, which makes this a mandated,
16 legislative process to be done as soon as
17 practical after the release of census figures,
18 but we are also bound by some of the provisions
19 of that Constitution, which does not allow us to
20 break towns unless they're enormously large,
21 larger than a Senate or an Assembly District. It
22 also means that if you once break a city line for
23 mathematical reasons, then the math has to be
24 block on border. Meaning if a block can be moved

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2 and the math comes out better, even though it
3 destroys a neighborhood, it has to happen.

4 Same thing holds true for towns, for
5 town on border. but the least flexible area of
6 redistricting is on the federal level for the
7 Congress, where it must be exact to one person,
8 if possible, and that often means that lines will
9 be drawn, which will be insensitive to
10 neighborhoods, to municipalities, and to
11 communities in general. So we are bound by that,
12 plus the Voting Rights Act of 1965, which gives
13 special protection for minorities who, in the
14 past, have suffered discrimination. And it goes
15 beyond that. While it effects all districts
16 where we have a caution not to diminish
17 representation that's already there, but also in
18 the counties of Kings, New York and the Bronx, we
19 have a special review that must take place by the
20 Department of Justice, Federal Department of
21 Justice. So we have a lot of constraints on how
22 this is done.

23 We have additionally a constraint we've
24 never had before. The Department of Justice is

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2 concerned that a shockingly-high number of 20% of
3 the absentee ballots of men and women in uniform
4 are not being counted in elections. They're
5 absentee ballots. They're done by mail for
6 various reasons, serving our nation in the far-
7 flung areas of the world. It just hasn't been
8 working.

9 So they want a 45-day window out there
10 to get the absentee ballots out. Now, you all
11 know, and some of you probably don't even
12 remember, but you all know that we have September
13 primaries in this state. They become
14 impractical, and you either hold the primary
15 election in August when the schools are closed,
16 when people are on vacation, or you hold them in
17 July, same story, or you move it back to where it
18 was in the early 1970s, and that means a June
19 primary. As those of you who work with the Board
20 of Elections know, if you put 45 days before that
21 for absentees to go out, you have a period to
22 challenge or to accept petitions that have been
23 circulated, then you have a petition period. You
24 have political conventions designating preferred

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2 candidates, the notice that has to go out before
3 the convention happens. What are we talking
4 about?

5 We're talking about having a finished
6 product in January before the Legislature, that
7 the Legislature can then examine it and vote on
8 it probably in February, but we're talking
9 ideally early February. Governor Cuomo has
10 expressed his displeasure with this being a
11 legislative branch function and wants the
12 governor's office involved in setting up a new, a
13 new LATFOR, if you will. A new group that he
14 would term as independent, which would include
15 essentially nobody from the Legislature who had
16 served there for the past five years or even had
17 a job in a mail room for the last five years,
18 which would be totally independent type of thing,
19 at least as far as a direct connection with the
20 Legislature.

21 He has said on several occasions, though
22 it's been softened a little bit, that he will
23 veto whatever product comes out of this
24 legislative function. It's our hope that he,

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2 like all governors, reads legislation before he
3 vetoes it or before he signs it but that's out
4 there. And if there's a veto, all that
5 complicated timetable I gave you, moving
6 backwards from a June primary, would then need a
7 more, more review period, whether or not a veto
8 gets overridden, whether it falls into the courts
9 by default. so we're, we're under a lot of
10 pressure, which, as Senator Nozzolio pointed out,
11 we decided the fiduciary responsibility is to
12 start just as soon as we could, which we did
13 immediately after, after session.

14 For our first speaker, and by the way,
15 the final thing, we thank you to Mayor Byron
16 Brown, to the council members here, the City of
17 Buffalo for being so gracious as to allow us to
18 use this beautiful room. I would call first
19 Emilio Coloaiacovo.

20 MR. EMILIO COLOAIACOVO: Good morning.
21 For the record, it's Coloaiacovo. It's a
22 difficult name, but you did a pretty good name
23 with it.

24 ASSEMBLY MEMBER MCENENY: Repeat it,

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2 please?

3 MR. COLOAIACOVO: Coloaiacovo.

4 ASSEMBLY MEMBER MCENENY: Coloaiacovo.

5 Thank you.

6 MR. COLOAIACOVO: Well, thank you very
7 much for coming to Buffalo. My name is Emilio
8 Coloaiacovo. I'm an attorney here in Erie County
9 and a resident of Clarence, New York, which is a
10 suburb of Buffalo. I am impressed this morning
11 that this task force is bipartisan, with both
12 parties being equally represented, which I
13 believe is a critical component of any fair
14 redistricting process.

15 I have some experience with
16 redistricting, having just recently served in the
17 Erie County Legislative Bipartisan Citizen
18 Commission on Reapportionment. An even number of
19 individuals sat down to try to draw lines for new
20 legislative districts. However, the bitterness
21 of political division, which does not appear to
22 be present this morning derailed this process,
23 which ultimately led a federal court judge
24 drawing new county legislative districts. It's

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2 important that our State Legislature heed our
3 mistakes and learn from them and develop a
4 process that is fair and impartial so as to avoid
5 a federal judge defining districts that citizens
6 ultimately have to live with, and I think we all
7 agree that it's best for our peoples'
8 representatives to put aside that partisanship so
9 as to avoid a judicial determination.

10 One reason that I'm here today is
11 because I've read in the media that the state
12 legislators and this task force have received
13 criticism for not passing Governor Cuomo's
14 Independent Commission for Redistricting. I wish
15 to suggest that the media coverage has not fully
16 reported this issue and this debate in an
17 objective manner. The committee and Governor
18 Cuomo's legislation that picks the commission has
19 eight appointees. Four by the governor, one by
20 the Senate majority leader, one by the Senate
21 minority leader, one by the Assembly speaker and
22 one by the Assembly minority leader. Therefore,
23 six members are appointed by Democratic elected
24 officials, and only two appointed by Republican

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2 elected officials. This does not strike me as
3 very fair, and as a matter of fact, it's a very
4 political, mechanism that I think destroys the
5 independent process that this committee so far
6 has displayed.

7 I prefer the equal and bipartisan
8 approach that this task force has taken and that
9 was passed by the New York State Senate this past
10 March that was much more easily balanced. Four
11 members, a Democrat and Republican from the
12 Senate and a Democrat and Republican from the
13 Assembly who then work together to pick a fifth
14 independent citizen member. This is exactly what
15 kind of bipartisan process we need.

16 Further, I believe that the Cuomo
17 Independent Commission raises serious state
18 constitutional concerns, and once again, I agree
19 with the approach taken here and that of the
20 Senate majority, which is advocated for and
21 passed legislation to require an amendment to the
22 state Constitution prior to implementing an
23 independent commission to prepare a redistricting
24 plan.

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2 It is important to note, as I will
3 explain, that if redistricting is done pursuant
4 to the passage of the Cuomo Commission, I expect
5 that it will be challenged in court, and the last
6 thing we need is to create another cause of
7 action for additional redistricting litigation.

8 It's my view that the current
9 constitutional provisions governing redistricting
10 need to be upgraded. Certain provisions under
11 certain circumstances may run the risk of
12 violating the Federal Equal Protection Clause.
13 In a case that was decided in 1964, WMCA versus
14 Lamenzo, the consequences of that case was that
15 members of the state Legislature had to run for
16 reelection in 1964, '65 and '66 to keep their
17 seats, and I'm sure no one here wants to do that
18 again. The Constitutional Convention of 1967
19 attempted to amend the state Constitution to meet
20 federal requirements such as the equal protection
21 clause, and to also update the state constitution
22 for redistricting, but this amendment was
23 rejected by the voters. Thus, the current
24 redistricting text runs the risk of a thorough

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2 constitutional violation, and deviation from that
3 task runs a risk from varying from the state
4 Constitution. This conflict should be reviewed
5 and addressed, pursuant to the passage of a
6 Constitutional amendment that addresses changes
7 to redistricting.

8 While there has been a public demand for
9 permanent, nonpartisan redistricting commission,
10 which I am certainly open to, that demand cannot
11 be constitutionally provided by a mere
12 legislative enactment. The state legislature may
13 not, by statute, bind itself regarding future
14 legislation. Instead, the state Legislature
15 cannot merely forego its constitutional assigned
16 powers. It is questionable if any other
17 independent redistricting commission can be
18 created without an amendment, but also an
19 independent commission certainly cannot be
20 created for the purposes beyond its existing
21 session. Our state legislation cannot, in my
22 opinion, cannot change absolute provisions in the
23 state Constitution to its liking or to meet
24 political pressure.

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2 It appears to me that the only means of
3 achieving a proper independent redistricting
4 commission were to do so by an amendment to our
5 state Constitution. As you know, article three,
6 sections three and four would have to be amended
7 where the current method of redistricting is
8 included. In my humble opinion, to change that
9 method and to remove it from the powers of the
10 senate and the assembly under article three,
11 section one of our constitution must be amended
12 to add the redistricting commission and to fully
13 provide its powers authorization and set forth
14 its funding.

15 For it to be truly independent, it has
16 to be separately set up and independent of any
17 existing branch of government. The constitution
18 must also provide what role any commission must
19 play in the inevitable and ensuing litigation
20 over redistricting. Lastly, any independent
21 commission should be comprised of an equal number
22 of members from our two major political parties.

23 In conclusion, I believe that this task
24 force holding this hearing should conduct

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2 redistricting this election cycle as required
3 under the New York State law. I wish to thank
4 the members for coming here today to Buffalo and
5 listening to the members of our community, and I
6 thank the task force for its time, and I wish it
7 the best in its task of redistricting. Thank you
8 very much.

9 ASSEMBLY MEMBER MCENENY: Thank you. If
10 we could just ask a couple of questions here now.
11 Your county legislative districts were drawn by a
12 federal judge. Is that for this fall?

13 MR. COLOAIACOVO: Yes.

14 ASSEMBLY MEMBER MCENENY: This fall's
15 election. And when did you get the final
16 boundaries from that federal judge?

17 MR. COLOAIACOVO: They're still working
18 out the meets and bounds of those legislative
19 districts, but those districts were included, at
20 least the rough shape of them, in the decision
21 which I believe is about two to three weeks old.
22 So now we have a downsized legislature here in
23 Erie County where certain members of the
24 legislature cannot run for reelection without

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2 having to uproot their families and move into
3 specific legislative districts. But it's a
4 process that's being placed on an expedited
5 schedule, where the political parties, not the
6 people, have an opportunity of identifying who
7 those members will be on the ballot in in
8 November.

9 ASSEMBLY MEMBER MCENENY: Is the
10 decision being appealed in the court system?

11 MR. COLOAIACOVO: To my knowledge, no.

12 ASSEMBLY MEMBER MCENENY: How did you
13 handle the petitioning?

14 MR. COLOAIACOVO: What is going to be
15 the process is that the party chairman or their
16 delegated executive committees will nominate
17 certain candidates and those people will appear
18 on the ballot in November. However, the judge in
19 his decisions did allow people not nominated by
20 their respective political parties to circulate
21 independent designating petitions, and they could
22 appear on a separate line in the fall.

23 ASSEMBLY MEMBER MCENENY: So the
24 parties, is there--what do you do about the

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2 primary in September?

3 MR. COLOAIACOVO: There will be no
4 primary for the Erie County Legislature.

5 ASSEMBLY MEMBER MCENENY: So you
6 eliminated the primary, you allowed the, the, the
7 bosses of the party essentially to pick whomever
8 they want to run.

9 MR. COLOAIACOVO: That was what the
10 directive of the decision was, and then by the--

11 ASSEMBLY MEMBER MCENENY: And anybody
12 else has to go out and get petitions?

13 MR. COLOAIACOVO: That is correct.

14 ASSEMBLY MEMBER MCENENY: How long do
15 they have to get their petitions?

16 MR. COLOAIACOVO: I believe they have
17 until sometime in September. The date, I'm not
18 quite aware of, but, I believe it's middle of
19 September.

20 ASSEMBLY MEMBER MCENENY: How has the
21 Board of Elections done with drawing up election
22 districts for people to go and cast their vote
23 in?

24 MR. COLOAIACOVO: Well, as I said,

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2 they're still working out the meets and bounds of
3 those districts, but as you can imagine, there
4 has arisen a certain degree of confusion about
5 that process.

6 ASSEMBLY MEMBER MCENENY: But they do
7 have the meets and bounds of the actual county
8 legislative district?

9 MR. COLOAIACOVO: I, I believe so, yes.
10 Yeah.

11 ASSEMBLY MEMBER MCENENY: Yeah, they
12 would have to. Okay. Senator?

13 SENATOR NOZZOLIO: Thank you very much.
14 Thank you for your insights, and we need to
15 further explore, for the record, exactly what was
16 the experience here in Erie County. As I'm
17 understanding you, that, there was less
18 transparency, less opportunity for citizens to
19 decide on the appropriate candidate of their
20 choice, party decisions in terms of nominations,
21 and as Assemblyman McEneny indicated, there is
22 absolutely no process because of the court
23 directive now to allow parties to decide through
24 an open public process and election what the

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2 individual standard bearer for their particular
3 parties will be. Is that not correct?

4 MR. COLOAIACOVO: Clearly this decision
5 has taken away from the people their ability to
6 have a voice in the redistricting process, and
7 it's something that I hope that this state avoids
8 because I don't believe that anyone here would
9 want a federal judge arbitrarily setting
10 districts that people are going to have to live
11 with for the next ten years and beyond.

12 SENATOR NOZZOLIO: And I'm, for the
13 record, shaking my head because as this is our--
14 we're halfway through the hearing process, and
15 there, I'm sure, will be people testifying today,
16 telling us--as there have been at every hearing,
17 on how they would rather see an independent
18 process established now. Your comments are very
19 telling in that if this was to be done, and you
20 have no objection to this being done at the state
21 level, as I understand it, but that the
22 constitution requires certain changes before that
23 could occur.

24 MR. COLOAIACOVO: Clearly what has been

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2 proposed runs afoul of the Constitution, and to
3 implement it, certain requirements of the
4 Constitution need to be amended, and I'm not
5 quite sure if that can be done properly before
6 the next election.

7 SENATOR NOZZOLIO: The--an inconvenient
8 truth being the Constitution of the State of New
9 York is something that even those with great
10 intentions, and even those who seek reform must
11 understand from my perspective that the
12 Constitution needs to be dealt with in an
13 appropriate way. Let, let me ask some of the
14 results in terms of the process as a commission
15 member. What was your biggest surprise in
16 serving on the commission relative to the product
17 produced by the communication?

18 MR. COLOAIACOVO: I, I think that the
19 people that were selected, had very good
20 intentions in reaching a product that they could
21 present to the legislature and ultimately the
22 county executive. But unfortunately, that
23 process was hijacked by, a few ideological
24 individuals who wanted to, in my opinion, corrupt

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2 the process for a political advantage, whereas I
3 think many of us wanted to do what we could based
4 upon the law. The law is a stubborn thing that
5 we ultimately have to adhere to when creating
6 these districts, but unfortunately I think one of
7 the, the criticisms I have is the political
8 nature that it took from the onset, and it made
9 consensus building almost impossible.

10 SENATOR NOZZOLIO: One of the stories I
11 read about relative to the size of districts,
12 wasn't there one district created by the
13 commission that was over 25% of the land mass of
14 the county?

15 MR. COLOAIACOVO: No. The--what
16 happened was that the plan that was proposed and
17 ultimately ratified by the commission members was
18 not approved by the legislature, but instead a
19 democratic majority of the members of the Erie
20 County Legislature created a district that
21 spanned pretty much the east and southern
22 portions of the county, which defied pretty much
23 all logical expectations that one would have in
24 redistricting. So that was, again, a consequence

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2 of our inability to arrive on a product that
3 everybody could sign on to.

4 SENATOR NOZZOLIO: Well, thank you very
5 much for your testimony. It--I must--I
6 acknowledge the mayor of the City of Buffalo, a
7 former colleague Senator--former--once a Senator,
8 always a Senator. Senator Byron Brown, who's now
9 mayor of this great city. Thank you, Mayor, for
10 stopping by.

11 ASSEMBLY MEMBER MCENENY: Thank you.
12 Other members, any comments or questions? I
13 thank the--as one who got into elected office
14 going against his party in a primary, I'm
15 appalled at the idea that if this is dragged out,
16 it could eliminate a primary entirely.

17 MR. COLOAIACOVO: That's one of the
18 byproducts of this process here in Erie County,
19 yes.

20 ASSEMBLY MEMBER MCENENY: And these
21 party chair chairmen, chairwomen, they just
22 select who's going to be running in which
23 district, or do they have any rules or
24 regulations as to--

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2 MR. COLOAIACOVO: The judge in his
3 decision set forth that it's the chairmen of the-
4 -of the parties, but some of the chairmen are
5 delegating that responsibility to their executive
6 committee to have it as open as you can under
7 these circumstances.

8 ASSEMBLY MEMBER MCENENY: But not
9 necessarily the full committee?

10 MR. COLOAIACOVO: Not to my knowledge,
11 no.

12 ASSEMBLY MEMBER MCENENY: Hm. Other
13 questions? Okay. Thank you. Thank you very
14 much.

15 MR. COLOAIACOVO: Thank you.

16 ASSEMBLY MEMBER MCENENY: could we ask
17 Cheryl Green, Former Erie County Attorney, to
18 come forward? Welcome.

19 MS. CHERYL GREEN, FORMER ERIE COUNTY
20 ATTORNEY: Good morning. My name is Cheryl
21 Green, and I recently served as the Erie County
22 Attorney Chief Legal Officer for the County of
23 Erie until early last September when I left to go
24 back into private practice at Lipus, Mathias,

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2 Wexler and Friedman. I want to thank all of you
3 very much for holding this public hearing this
4 morning, particularly here in Erie County and
5 giving us the opportunity to talk to this task
6 force.

7 This task force's commitment to holding
8 public hearings across the state to ensure that
9 many voices from different regions are heard
10 during the redistricting process is greatly
11 appreciated, and your willingness to hear from
12 the public is particularly noteworthy when we all
13 realize the very tight timeframes that you are
14 facing. With the potential mandate from a
15 federal judge to move New York's primaries to
16 June starting in 2012, you really do have your
17 work cut out for you.

18 Despite the tough timeframe, the task
19 force knows what its obligations are under the
20 law. It is, of course, to begin by concluding
21 this round of hearings, to draft district lines
22 for the entire state legislature and Congress, to
23 hold another round of hearings, and then
24 ultimately to make changes to the district lines

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2 as necessary. All this must take place before
3 the Legislature makes the necessary vote on their
4 proposed redistricting plan to meet the threshold
5 at a late spring primary. I'm not sure how
6 you're going to accomplish all of this. , it's a
7 very tight timeframe, but I do want to let you
8 know that the fact that you've started this
9 process very early tells me that you take this
10 challenge very seriously.

11 As you consider this work, I offer the
12 following comments for consideration. It is my
13 hope and certainly the hope of all of the tax
14 payers in this community and across the state
15 that the task force does its best to ensure that
16 we have competitive districts for the state
17 legislative and congressional seat after
18 redistricting. Next, I believe that the current
19 redistricting environment offers you a chance to
20 fix a quagmire that currently exists, which pegs
21 the size of the state senate at 62 members. I
22 know that this issue has come up in the past, and
23 I know that there are many people in New York
24 State that agree that it should not remain an

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2 even number.

3 Instead, I believe tax payers would
4 certainly be much better served if there were at
5 least 63 seats or an odd number of seats in the
6 state senate, ensuring that the body is never
7 deadlocked again as it was a few years ago. New
8 York's population has increased over the last ten
9 years, and I understand that the state law does
10 allow for the number of seats to be challenged
11 and increased when the population changes.

12 I wish to strongly urge that our state
13 legislature follow state law when it comes to
14 drafting these new district lines for this cycle.
15 This means that the task force should perform the
16 work that it's called to do, and I strongly
17 support a bipartisan redistricting process, and
18 certainly when I look at this particular task
19 force, there is no doubt that bipartisanship is
20 first and foremost in everyone's mind.

21 While I support the concept of
22 independent redistricting, I also believe that
23 the independent commission can only be
24 implemented by a constitutional amendment because

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2 the procedures for redistricting are clearly
3 spelled out in the state constitution. Many,
4 including myself, believe these procedures can
5 only be overturned by changing or amending the
6 state Constitution. Any change without following
7 these constitutional procedures will certainly
8 result in lawsuits, and this will delay the
9 process and leave this process of redistricting
10 to the courts much like it did here in Erie
11 County.

12 Redistricting through litigation is the
13 last thing that any of us should want. We are
14 in--here in Erie County, as Mr. Coloaiacovo
15 indicated, we recently witnessed the failure of
16 the county legislature to draw its own lines, and
17 because of the legislature's unwillingness to
18 negotiate a fair downsizing and redistricting,
19 this was left to a federal district judge to do
20 himself. It's clear the tax payers never win in
21 this particular situation when courts are forced
22 to circumvent this political process because a
23 legislative body is not permitted and allowed to
24 do its job.

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2 Finally, I referenced earlier the
3 potential mandate from the federal court to force
4 New York to move its primary election date up on
5 the, on the calendar. As the former legal
6 counsel here in Erie County, I'm very concerned
7 about this--the effect that this will have on
8 counties and local governments. This change will
9 likely require many new leases, polling places,
10 movements of polling places, the potential
11 increased costs, and many other forced changes,
12 much of which gets lost when people aren't
13 thinking about this process. I urge the members
14 of this honorable task force and your legislative
15 colleagues to take this decision out of a judge's
16 hand and instead make it yourself in consultation
17 with the counties of New York State. This will
18 ensure voters are not unnecessarily
19 inconvenienced, and confusion is capped at a
20 minimum. It is my belief that because of this
21 potential mandate hanging over all of our heads
22 and the time constraints that it creates, that it
23 requires all of us to complete the redistricting
24 process as outlined by the state Constitution

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2 without the changes advocated by others.

3 The plain fact is we simply do not have
4 the time to reinvent the redistricting process if
5 we hope to avoid the cost and uncertainty of
6 litigation. I want to thank you again for your
7 time, and I wish you much success in this
8 challenge that's facing you.

9 ASSEMBLY MEMBER MCENENY: Thank you.
10 Senator Dilan.

11 SENATOR DILAN: Good morning.

12 MS. GREEN: Good morning.

13 SENATOR DILAN: Okay, my colleague in,
14 in, in the Senate refers to the state
15 Constitution as the inconvenient truth. The
16 Constitution of the state I guess inconveniently
17 dictates that the formula for the state senate,
18 indicates that it should be 62 members of the
19 Senate. And I understand the point that of what
20 we went through in 2009 with an even number, and
21 an odd number would be preferable for the Senate.
22 But if the state constitution dictates for 62,
23 shouldn't we follow the Constitution?

24 MS. GREEN: No doubt the state

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2 Constitution needs to be followed by everyone.
3 However, the state Constitution, at least with
4 respect to the Senate, does allow for an
5 alteration in the number, unlike the assembly.
6 So it--very significantly, the Constitution
7 itself does allow for a change from the number 62
8 to an odd number.

9 SENATOR DILAN: But the inconvenient
10 truth is that as the formula is now in the
11 Constitution, it dictates that that number be 62.
12 So based on the number of people we have in the
13 state of New York, based on the census numbers
14 that were released, it dictates that we are 62.
15 So what would justify going to 63? You know,
16 what are you basing that on?

17 MS. GREEN: Article 3, Section 3, the
18 New York State Constitution ensures that the
19 Senate has the ability, unlike the Assembly, to
20 change its--to change its number.

21 SENATOR DILAN: That is correct. I
22 agree with you there. I agree with you.

23 MS. GREEN: It does not--it does not set
24 forth--it does not set for a specific--a very

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2 specific, clear number. So that's why this
3 particular body, the legislative process, has the
4 ability to change this. I would encourage
5 anybody that has any questions about what the New
6 York State constitution says and what it means is
7 to take a look at Professor Gailey's [phonetic]
8 book. This book is the preeminent authority on
9 New York State Constitution.

10 SENATOR DILAN: But the Constitution is
11 the Constitution.

12 MS. GREEN: That is correct.

13 SENATOR DILAN: And if the Constitution
14 dictates that the formula is--would come out to
15 62, then shouldn't we follow the Constitution if
16 that's correct?

17 MS. GREEN: Certainly everyone needs to
18 follow the state Constitution.

19 SENATOR DILAN: [interposing] Thank you.
20 Thank you.

21 MS. GREEN: But given the changes in the
22 state population, you could make the change at
23 this point in time legislatively.

24 SENATOR NOZZOLIO: I think you said it

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2 very well counselor, that the constitution sets
3 forth a framework, a formula, and that that
4 formula then provides flexibility in enhancing
5 numbers as certain other dynamics occur. Is that
6 not correct?

7 MS. GREEN: That is absolutely correct.

8 SENATOR NOZZOLIO: And that-- I'd like to
9 go to part of your testimony as your experienced
10 county attorney. And I know that the county
11 Board of Elections is a separate entity, but as
12 County Attorney, I'm sure you had experience
13 there. And you mentioned it in your testimony.
14 I'm concerned because of the potential chaos that
15 could be created by a process that establishes
16 the lines in wake of a primary date change the
17 chaos of time could be very costly particularly
18 to a, a large county like Erie in meeting the
19 mandate of changing all this process in a very
20 short period of time. Would you elaborate on
21 that part of your testimony?

22 MS. GREEN: Sure. I can tell you that
23 as the county attorney, you're responsible for
24 managing every contract relative to county

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2 government, including the Board of Elections.
3 This includes coordination with many polling
4 places throughout the county. Because Erie
5 County is a very large county, I can tell you,
6 you have, you know, insurance requirements and a
7 tremendous amount of paperwork. The cost that's
8 incurred to do this is tremendous. There's
9 overtime that's paid to employees to try to
10 implement this. There is mass chaos in trying to
11 determine where the polling places will, in fact,
12 be, and as, as I can elaborate on the testimony
13 from my prior colleague, Mr. Coloaiacovo, you
14 know, at this point in time, we really don't even
15 know where the polling places are going to be for
16 this election cycle. So the fact of the matter
17 is that state, local and county government, it
18 will cost us millions of tax payers' dollars if
19 these changes are made very rapidly without a lot
20 of thought given to it. It's just a tremendous
21 amount of work from a contractual standpoint to
22 manage this particular risk.

23 SENATOR NOZZOLIO: Assemblyman McEneny
24 mentioned this earlier the perfect storm of 2012,

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2 with a changed primary date, a changed
3 presidential primary date, all in a redistricting
4 year. Do you have any idea of the potential
5 costs that could occur two a county the size of
6 Erie in doing all this this, this work in a very
7 shortened period of time?

8 MS. GREEN: While I don't have the
9 actual budget numbers in front of me, and I
10 haven't run those calculations for this hearing,
11 I can tell you, it's going to certainly be in
12 excess of \$2 million just for this community
13 alone. This is a poor community for the most
14 part. We really need those resources for our
15 roads and our bridges and our cultural. That is
16 money that is money that is not well spent, in my
17 opinion.

18 SENATOR NOZZOLIO: Thank you very, very
19 much for your testimony.

20 MS. GREEN: Thank you.

21 SENATOR DILAN: I do have--I do have a
22 follow up.

23 ASSEMBLY MEMBER MCENENY: Senator Dilan.

24 SENATOR DILAN: I want to really go back

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2 to the question of the size of the senate. You
3 indicate that there's flexibility, but does
4 flexibility, if that were the case, work either
5 way, where it could be flexible that it could go
6 to 61?

7 MS. GREEN: It most certainly does.
8 There is flexibility either way under the state
9 Constitution with respect to the size of the
10 Senate based on population changes.

11 SENATOR DILAN: And we'll do some more
12 research with respect to the actual formula and
13 what it dictates, okay? Thank you.

14 MS. GREEN: You're welcome.

15 SENATOR DILAN: Thank you.

16 ASSEMBLY MEMBER MCENENY: Thank you very
17 much for your testimony.

18 MS. GREEN: Thank you.

19 ASSEMBLY MEMBER MCENENY: Could we hear
20 from Frederick A. Wolf, Esquire?

21 MR. FREDERICK A. WOLF, ESQ., DAMON

22 MORELY, LLP: I'm not as old as I walk, but I
23 followed one of my kids down the ski slope - -,
24 and put my one knee where God never intended it

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2 to be, so I hobble a little bit until I get it
3 fixed.

4 ASSEMBLY MEMBER MCENENY: Welcome.

5 MR. WOLF: I--you're getting an overdose
6 of lawyers here this morning because you heard
7 from Emilio and then Cheryl Green, and I, too, am
8 an attorney. The one advantage or disadvantage I
9 have is I'm basically a municipal corporate
10 securities lawyer. So I do not have the
11 background of speaking in court every day, so if
12 I babble a little bit, please feel free to
13 interrupt me. I did prepare a written statement,
14 which I have shared with the staff, and I assume
15 is available to each member of the panel. I have
16 practiced law in Western New York for almost 44
17 years. I'm trying to slow down, but my wife told
18 me that she married me forever and not for lunch.
19 So she suggested that I keep going to the office.

20 For a portion of the last most recent
21 six years, I, too, was the Erie County Attorney
22 in Erie County. I had the luxury that Ms. Green
23 doesn't have because financial times are a little
24 better, and I had about twice the staff to do my

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2 work and make me look good than the current
3 county attorney has. I've attached a short form
4 of my bio that only lies a little bit, and I
5 would like to--I would like to make a few
6 comments to the task force, which hopefully will,
7 be something that you will take into
8 consideration, some of which will kind of
9 duplicate the comments that were made by Cheryl
10 Green and Emilio here earlier this morning.

11 First of all, I'd be remiss if I didn't
12 welcome the members of the task force to Erie
13 County, and thank you for giving the opportunity
14 to me and others here at this hearing today to
15 speak on this very important issue. I am here
16 today to ask the task force to draft and approve
17 a fair redistricting plan, one that will lead to
18 competitive political campaigns across the state
19 that will ensure that the voters will have a real
20 choice on Election Day in 2012 for state
21 legislature and congress. I realize that many
22 legislators took part in a pledge last year with
23 the former New York City mayor, Ed Koch, to
24 support an independent redistricting commission.

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2 I believe that the state should move in
3 this direction, but don't believe that they
4 should move so quickly but do it slowly after
5 giving a lot of thought and consideration to the
6 various benefits of that commission.
7 Consequently, I would ask this task force not to
8 rush through the - - or anyone else in the
9 legislature at this late date of new legislation
10 to change an existing process that has already
11 begun. For this current election cycle, I would
12 propose that we keep this task force with its
13 proven past record for doing a job in a manner,
14 which is both fair and honorable for all the good
15 citizens for the State of New York in place. I
16 believe as many do, and as both the prior
17 speakers indicated that an amendment to the New
18 York State Constitution would be required to
19 implement the changes in law necessary to create
20 an independent redistricting communication.
21 Along the lines that were proposed by former New
22 York City mayor Koch. Since the state
23 Constitution contains the actual text for the
24 current redistricting process for New York State.

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2 This past March, the New York State Senate passed
3 a bill to create an independent redistricting
4 commission through an amendment to the New York
5 State Constitution, which I believe is consistent
6 with the legal requirement for creating such a
7 commission.

8 Consequently, I respectfully submit that
9 the accusations by some in the media that the
10 senators who voted for a necessary constitutional
11 amendment to create an independent redistricting
12 commission somehow violated the pledge they made
13 to Mayor Koch are untrue and misleading. Since
14 the passage of this legislation by the senators
15 obviously fully and responsibly complied with
16 that pledge. Further, I believe that the
17 independent redistricting commission as now
18 proposed by Governor Cuomo is not on its face
19 nonpartisan, and as currently structured, has the
20 potential to do tremendous damage over the long
21 run to each--and I emphasize each of the two
22 major political parties because the majorities
23 swing back and forth. So one does not know what
24 the future holds.

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2 The state Constitution has mandated for
3 decades that redistricting should be performed by
4 the state legislature, and the bill now proposed
5 by Governor Cuomo to change that process would be
6 a clear and arguable violation of the checks and
7 balances constitutionally proposed to preserve
8 and perpetuate the existing separation of powers
9 between the legislative and executive branches of
10 our state government.

11 As proposed in Governor Cuomo's bill,
12 the governor would play too large an independent
13 role in the redistricting process, since the
14 governor's bill gives him as many appointees to
15 the key nominating committee for the independent
16 redistricting commission as both houses of the
17 legislature combined. That being said, at least
18 for now, at this very late date, as number of
19 people have suggested at this hearing this
20 morning, the governor's only role in the current
21 redistricting process should continue to be, as
22 it has been for many decades in the past, to
23 either sign or veto the final redistricting plan
24 after it has been passed by our full state

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2 legislature.

3 In short, I support the idea of an
4 independent redistricting commission, carefully
5 created after much thought and input by all
6 interested persons and parties in a manner
7 consistent with our state Constitution, provided
8 that the composition of such a commission is fair
9 to both of our major political parties and the
10 citizens of this fine state, which I believe is
11 also a concept embraced by the members of this
12 task force.

13 That completes my public comments, and I
14 want to thank you for permitting me to address
15 the task force this morning, gentlemen and lady,
16 and I appreciate the fine work that all of you
17 are doing for the citizens for the State of New
18 York.

19 ASSEMBLY MEMBER MCENENY: Thank you very
20 much. I heard at the beginning of your statement
21 the desirability of having competitive districts.
22 And I would point out that some districts will
23 wind up heavily in favor of one party just as
24 some regions of the state are, or another party.

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2 Personally, I've participated in four primaries.
3 Three out of four of them not having the backing
4 of my political party. That competition, if it
5 doesn't show up in the general election, there's
6 a safeguard that it shows up in the primary
7 election. And I was very concerned when I heard,
8 as I agree with you, it's critical that the
9 voters have a choice and that the grassroots can
10 be heard. I was very concerned when I learned
11 that there would be no primary for the Erie
12 County legislature. The primary is one of the
13 great reforms which New York State has had now
14 for about a century.

15 Do you see, as a--as an attorney and
16 former County Attorney, do you see any scenario
17 that if this was dragged out with a veto, a
18 possible override going into the courts, that we
19 could wind up without a primary in New York
20 State?

21 MR. WOLF: I think definitely that might
22 be the case. It appears from the prior testimony
23 that the federal district court judge has already
24 waived the primary. I think you're between a

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2 rock and a hard spot with the time that's
3 involved. There's not time to appeal that to the
4 second circuit, the federal courts in New York
5 City. And probably the parties, as I understand
6 it, at least the major parties, will live with
7 that decision, at least at our end of the state.

8 I concur with your comments. My older
9 brother, who unfortunately passed away at a
10 fairly young age because of some unfortunate
11 health problems was primaried to become the
12 youngest elected Supreme Court judge in New York
13 State at the age of 37 some years back. And the
14 primary is, I think, part of the American Dream.
15 I don't think that politics should be a true
16 indicator of who's going to hold the seat. The
17 political bosses, if you will, and maybe that's a
18 poor choice of words. The political parties.
19 And that anyone who is qualified under the
20 Constitution should have a change to be heard by
21 the voters to decide who in fact would do the
22 best job for their respective interests. So I'm
23 100% behind where you're going, and whatever
24 happens this time, I don't think will happen

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2 again.

3 And you may be forced to just sit back
4 and watch it happen simply because, as you point
5 out, the schedule, the time schedule, is so
6 condensed. To live up to the absentee ballot
7 requirements and everything else of the Justice
8 Department, I'm not sure what would happen if you
9 tried to take this to the next step and appeal
10 the judge's decision or someone did.

11 ASSEMBLY MEMBER MCENENY: Thank you.

12 Senator?

13 SENATOR NOZZOLIO: Thank you,
14 Assemblyman. Thank you very much for your
15 testimony.

16 MR. WOLF: You're quite welcome.

17 SENATOR NOZZOLIO: And I'd like to follow
18 up on a question that I asked, Counselor Green,
19 former county attorney Green, on the issue of the
20 county having to deal with all this at once. By
21 this I mean a moved-up expedited primary process,
22 a presidential primary a redistricting year for
23 congress, New York State senate and New York
24 State assembly. In putting together the

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2 appropriate polling places, the logistics
3 necessary to make the election process happen. ,
4 we understand there will be some cost, but
5 because of the expedited nature and all these
6 layers of, of challenge what is your opinion of
7 the potential chaos that could be created?

8 MR. WOLF: I think I concur with Ms.
9 Green, that not only--just the implementation of
10 a program and a plan that's acceptable at the
11 Board of Elections where there's one Democratic
12 commissioner and one Republican commissioner, and
13 then locating the actual polling places and
14 hiring the people. I could see this costing
15 easily a couple million dollars, and as many of
16 you probably know, this county, until very
17 recently, was a hard control board, the Erie
18 County Fiscal Stability Authority, and through
19 the good services of our count executive and the
20 hard work of people on both sides of the county
21 legislature, the county has managed to come back
22 into the black has created a kind of a model
23 template for other counties, I believe, and now
24 has a surplus. So we're functioning with a soft

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2 control board. But these are still difficult
3 times, as Cheryl Green pointed out. Our
4 unemployment is high. We had a lot of the old
5 rust belt industries here, and a lot of people--
6 young people can't get jobs. I have six sons.
7 My wife and I have six sons, for which I have
8 paid dearly for 40 years of education, which is a
9 good thing. The bad thing is four of the six are
10 out of town, and the fifth is packing his bags.
11 They're in Denver. They're in Virginia, they're
12 in Seattle.

13 We have to collectively, all get on
14 board with the program as part of the
15 redistricting and representations that takes care
16 of all the people of the State of New York. I
17 want to make one quick comment because I may have
18 been misunderstood. I wasn't suggesting that
19 there be competitive. All the races have to be
20 competitive. I just think that the redistricting
21 plan that's ultimately adopted should create a
22 competitive environment across the board. I
23 mean, some, some districts, you know, may be more
24 favoring one side of the aisle and one on the

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2 other side. But you have to have a
3 reapportionment or redistricting plan that will
4 support and give people a fair chance, and, and,
5 and regardless of their political affiliations
6 and their thought process. You can't have it
7 weighted too heavily on part of one political
8 party or the other in each district. That was my
9 comment.

10 SENATOR NOZZOLIO: We appreciate that. I
11 think the, the question I want to come back to,
12 though, is--

13 MR. WOLF: It's chaotic.

14 SENATOR NOZZOLIO: Is the \$2 million
15 estimated unfunded mandate from the state because
16 this process isn't completed in time for the
17 counties to appropriately react. Would you
18 further analyze that for us?

19 MR. WOLF: Well, I mean, the county has
20 a budget as the state does. It's an aligned
21 budget. The Board of Elections has a budget.
22 There are provisions. It's a charter form of
23 government for, for the legislature in
24 cooperation with the county executive to move

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2 money around. But I think in these tight times,
3 I'm sure the budget of the Board of Elections, if
4 you had one of the commissioners here, they would
5 tell you it's pretty tight. And if this was not
6 an anticipated--I'm not sure it is an anticipated
7 act. I sat as County Attorney when they
8 reapportioned the county the last time, you know,
9 in 2000, and we went to the federal courts as
10 well but nobody came up with something that said,
11 we're not going to have a primary. We got out in
12 front of it, and we got a consensus on both side
13 of the legislature of what, what the lines would
14 be.

15 I think \$2 million is not an
16 underestimate, and I think that the money is hard
17 to come by but obviously people will do what has
18 to be done. We do have a surplus, but that
19 doesn't mean we should waste it, and I think
20 logic would dictate that you try to put this
21 thing together and put it to bed and not change
22 past practices and, and--[Laughter]--which I
23 think would be really chaotic to even talk about
24 at this stage of the game. And people are going

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2 to talk about an independent commission later on
3 after this go around or election cycle. Let them
4 talk about it and do it after careful
5 consideration, so--

6 SENATOR NOZZOLIO: Thank you very, very
7 much. Any other questions? Thank you.

8 MR. WOLF: Thank you. Appreciate your
9 time.

10 ASSEMBLY MEMBER MCENENY: Joan Parks?
11 Joan Parks? Monica Miranda? Oh, Joan. Ms.
12 Parks, thank you. Good morning. And welcome,
13 and would you please be so kind as to state your
14 name, where you're from and whatever organization
15 you represent as well?

16 MS. JOAN PARKS, PRESIDENT, LEAGUE OF
17 WOMEN VOTERS - BUFFALO AND NIAGARA: Okay. Good,
18 good morning to all the members of LATFOR. My
19 name is Joan Terry Parks, and I am the president
20 of the League of Women Voters of Buffalo Niagara.
21 The league is a nonpartisan organization which
22 encourages informed and active involvement in
23 government and influences public policy through
24 education and advocacy. We are also members of a

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2 state-wide coalition dedicated to reforming New
3 York's redistricting process, reshape New York,
4 which consists of 35 organizations, including
5 civic groups, issue advocacy groups, unions and
6 business organizations. Let me tell you about
7 our league's experience this year as our county
8 legislature was reapportioned. Our League
9 members attended every meeting and hearing to
10 monitor and evaluate the reapportionment,
11 reapportionment process in Erie County. The
12 process failed when a gerrymandered plan approved
13 by commission members of one political party was
14 defeated by another gerrymandered plan created
15 and approved by the opposing party in the
16 legislature, which in turn was vetoed by the
17 county executive. The veto was not overruled,
18 and as you've been told, a federal judge decided
19 Erie County reapportionment.

20 Representative government and the voters
21 have not been well-served. The task to create
22 new districts is a daunting one, as you know and
23 as has been stated eloquently by people before
24 me. Therefore, we appreciate the opportunity

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2 that today's hearing provides to comment on the
3 redistricting process. We believe New Yorkers
4 want an independent commission, not LATFOR, to
5 draw state legislative and congressional district
6 boundaries according to fair and objective
7 criteria while allowing for public input in the
8 process. An independent commission, drawing
9 impartial district lines, would maintain the
10 legislature's ability to give input in the plan,
11 and ultimately to pass the legislation in
12 accordance with the state constitution. Voters
13 across all parties believe an independent body
14 should draw the lines. The governor has proposed
15 legislation to form an independent commission.

16 In addition, 61 out of 62 senators and
17 123 out of 150 assembly members have either
18 signed on to his legislation or legislation
19 proposed in their respective houses, or otherwise
20 publically supported reforming the redistricting
21 process. We believe that the redistricting
22 process under the new independent commission
23 would be transparent in all respects, both
24 through multiple public hearings throughout the

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2 state, and by using technology to have students
3 participate at all stages of the process. All
4 data on which the commission relies should be
5 available to the public both in writing and
6 electronically, including all draft and proposed
7 final maps of districts, criteria used to
8 generate each draft, and proposed final map of
9 districts, software used to generate each draft,
10 and final proposed map of district and proposed
11 plans.

12 A key element of reforming the
13 redistricting process is limiting the allowable
14 population difference between legislative
15 districts that in the past has created districts
16 in New York State that vary widely in population
17 size thereby favoring one region over another.
18 The current redistricting process has also
19 historically protected incumbents. In the 2010
20 election, New York State had one of the lowest
21 rates of voter participation in the nation,
22 coming in 47th of the states. This is no
23 surprise. Why should people vote if they face no
24 real choice in candidates?

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2 The League believes it imperative that
3 an independent redistricting process be adopted
4 so people, not partisan interests, are protected.
5 Ignoring the public will and continuing with
6 LATFOR proceedings, the only legally-mandated
7 process at this time will end in Governor Cuomo
8 vetoing the very lines it draws, making the
9 entire process a waste of time. Legislators
10 should return to Albany during a--during a
11 special legislative session to end partisan
12 gerrymandering and enact redistricting reform by
13 handing the power to an independent commission to
14 draw--to draw impartial legislative and
15 congressional lines.

16 New Yorkers cannot wait another ten
17 years for reform.

18 SENATOR NOZZOLIO: Thank you very much.
19 Any questions from members of the panel? I have
20 a question. Will the League of Women Voters be
21 submitting any plans of legislative lines for
22 Western New York?

23 MS. PARKS: At this time, we don't have
24 any Western New York plans. We have a committee

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2 that has been working on redistricting and is
3 thinking about the possibility of trying to do
4 such a thing. I can't give you a definitive
5 answer.

6 SENATOR NOZZOLIO: Again, your, your
7 plans and everyone's plans are welcome to the
8 task force, and please extend this invitation to
9 all members of the League that if they have any
10 individual or collective concerns regarding
11 communities of interest or the process in general
12 please contact the task force.

13 MS. PARKS: Thank you very much, and I
14 had made note of that earlier when you said it.
15 I thought--thank you very much, and we will do
16 that.

17 SENATOR NOZZOLIO: Thank you very much.
18 Monica Miranda? Monica Miranda? Fanny Vilerio
19 [phonetic]? Fanny Vilerio? Assemblyman Andrew
20 Goodell? Morning, Assemblyman.

21 ASSEMBLY MEMBER ANDREW GOODELL, 150TH
22 DISTRICT: Good morning. Thank you very much for
23 allowing me to testify in front of you. I do
24 have an interest in how this reapportionment

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2 proceeds, but first and foremost, I wanted to
3 thank each of the members of the task force for a
4 very difficult, challenging and likely thankless
5 task. I am deeply ingreted--indebted to your
6 efforts and deeply thankful that I'm not on your
7 task force. I represent the 150th District. The
8 reapportionment process for the 150th is made
9 easier by the fact that the 150th is bounded on
10 the south by Pennsylvania, the west by
11 Pennsylvania, the north by Lake Erie. I,
12 currently this District is currently about 7,600
13 residents short of the optimal level, which only
14 leaves you one choice in terms of adjusting the
15 size of the district, which is to move toward the
16 east.

17 I have provided you each with a map with
18 my recommendations. You'll be pleased to see
19 that it is one of the cleanest boundaries that
20 you can possibly recommend, and I would want to
21 spend just a moment explaining why I make these
22 recommendations. I recommend that you add to the
23 150th District the towns of Charlotte, Garry and
24 Carroll. Garry and Charlotte, the towns of Garry

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2 and Charlotte are currently right on the main
3 north-south route between our two population
4 centers, Jamison [phonetic] and Dunkirk. And as
5 a result, all the residents in Garry and
6 Charlotte are directly tied into the rest of the
7 district. By contrast, you'll see that I
8 recommend that you leave Villanova, Cherry Creek,
9 Ellington and Poland with 149th. Villanova,
10 Cherry Creek and Ellington are actually more
11 closely tied into Cattaraugus County and their
12 adjoining townships in fact share a common school
13 district. The Pine Valley Central School
14 District crosses the county boundary and includes
15 most of Villanova, Cherry Creek and Ellington
16 along with the neighboring towns of South Dayton,
17 Leon and Conewango.

18 Also, those three townships have a lot
19 more in common with the next largest population
20 center in that area, which is Gwando [phonetic],
21 which is in the 149th. I recommend that you move
22 Carroll into the 150th primarily because Carroll
23 serves, in many respects, as a suburb of
24 Jamestown and is very closely tied in with

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2 Jamestown. It has virtually no connections with
3 its neighboring town of South Valley.

4 I'd love to pick up Poland, but the
5 numbers just don't work. And so you can see my
6 recommendations. I think they're very straight
7 forward, and it might be one of the easier
8 districts to work on because of the geographic
9 limitations on what you can do anyway. One other
10 point that I'd like to make, which is very, very
11 important to Chautauqua County. For many, many
12 decades, Chautauqua County was in the same
13 congressional district as the rest of the
14 southern tier including Cattaraugus, Allegany,
15 Steuben and those counties along the southern
16 tier border. And with good reason.

17 Chautauqua County shares the same type
18 of economy, the same demographics, the same type
19 of income levels. We have a lot of connections.
20 For example, our tourism marketing program is a
21 three-county program involving Chautauqua,
22 Cattaraugus and Allegany. Many of our school
23 districts compete because they are the same size
24 with neighboring school districts in Cattaraugus

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2 and Allegany County. Although we border Erie
3 County, our demographics are dramatically
4 different. Erie County of course is much more
5 urban, which is probably why you decided to have
6 this meeting here rather than in Chautauqua
7 County, although you're always welcome to come
8 down and visit us.

9 We were always part of the southern tier
10 until the last reapportionment ten years ago.
11 While part of the southern tier, we've been ably
12 represented by both Republicans and Democrats.
13 In fact, this was the congressional district in
14 which Stan Lundine represented as a congressman
15 before becoming Lieutenant Governor under
16 Governor Cuomo. So we urge you to consider
17 reconnecting Chautauqua County with the southern
18 tier. The entire southern tier is connected not
19 only on a demographic basis, but on a
20 transportation basis with interstate 86 now
21 making it slightly--well, the time it takes me to
22 get to Buffalo is about the same time it takes me
23 to get past Bath, halfway between Bath and
24 Corning, and that's even going the speed limit.

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2 So when you look at the demographics and the
3 characteristics, I really hope that you put us
4 back in with the southern tier.

5 Again, thank you so much for your work,
6 and I am so thankful that I am not on your
7 committee, and so thankful for the work that
8 you're doing.

9 [Laughter]

10 ASSEMBLY MEMBER MCENENY: Thank you
11 thank you Assemblyman. Sorry I had to meet
12 somebody up there briefly but--

13 ASSEMBLY MEMBER GOODELL: Well,
14 Assemblyman, you can take a look at the map.
15 That's worth 1,000 words.

16 ASSEMBLY MEMBER MCENENY: When you add
17 up those counties along the southern tier, do you
18 go all the way to Binghamton?

19 ASSEMBLY MEMBER GOODELL: No.

20 ASSEMBLY MEMBER MCENENY: You know what
21 the new magic number is for the United States
22 Congress?

23 ASSEMBLY MEMBER GOODELL: I don't.

24 ASSEMBLY MEMBER MCENENY: Well, it used

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2 to be about 650, 660, something like that. New
3 York State grew by 400,000 people, but we didn't
4 grow as fast as other areas of the country. So
5 since the congress hasn't changed its size since
6 1912, it means that the same number of members of
7 congress, 435, have to accommodate a population
8 that is more than double what it was in 1912.
9 And for those who are nitpicking when they put in
10 Alaska and Hawaii, they just put them in for--
11 till the next redistricting and dropped the
12 number back down to that 435 number.

13 So instead of 660,000 people in a
14 congressional district, you're talking 717,707.
15 It's an easy number to remember with all those
16 sevens, but very difficult, especially for
17 constituent services. We wish it were different,
18 but it's not. Of the 29 districts that are
19 currently in the state, there is not one that
20 meets the requirement of having that many, even
21 on Eastern Long Island, which does have quite a
22 bit of growth. There isn't one of them that hit
23 the 717,707. So I think I haven't done it yet.
24 I don't know if other members have here yet, but

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2 when you start adding those counties, you're
3 going to go a lot further east than Bath, New
4 York.

5 ASSEMBLY MEMBER GOODELL: Well, right,
6 right now, the 29th Congressional District
7 includes Chemong and Schuyler, so it takes you to
8 Elmira, basically. And that's the edge. Right
9 now, the 29th Congressional District has 654,
10 residents. Chautauqua County has about 134, I
11 believe, thousand. So if we're add to the
12 southern tier, as I recommend, most likely that
13 would free up some of the northern counties that
14 are currently in the 29th Congressional District,
15 such as you know, right now it includes Ontario
16 and parts of Monroe. So those counties would be
17 freed up and that makes sense because Monroe
18 County and Ontario County, which includes
19 Syracuse and Rochester, again, have a very
20 different demographic characteristics than the
21 rest of the southern tier, which is predominantly
22 rural.

23 And agricultural. So we think it can
24 make that part of the equation easier. , if that

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2 were the case, I would anticipate that the 29th
3 Congressional District would still probably
4 include Chemung, and the distance across the
5 Congressional District from Jamestown to Elmira
6 is, about two-and-a-quarter hours.

7 ASSEMBLY MEMBER MCENENY: Yeah, the
8 problem in these--and these hearings, by the way,
9 have been very useful, very enlightening, I know,
10 to me and to the other members here. What we
11 hear again and again is don't break our city up.
12 And there's one town that has three Congressional
13 Districts, and I said to the town supervisor,
14 isn't it nice to have three voices in Congress?
15 No, just one. It's a lot easier to deal with.

16 But the more we compact urban districts
17 in upstate New York, the more you leave rural
18 districts out in the cold, and then you wind up
19 with these enormous congressional districts that
20 just go on, I'm thinking of the one and for
21 people who like competitive, it went from Sweeny
22 [phonetic] to Gilabran [phonetic] to Murphy to
23 Gibson. So it went Republican, Democrat,
24 Democrat, Republican. And there's other

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2 districts where there's been a lot of competition
3 and change, but that district is almost
4 impossible to work on a constituent point of view
5 because it's ten counties, which goes from Lake
6 Placid in the Adirondacks, wraps around the back
7 of Troy, goes down to Hyde Park, runs over 20
8 miles from Binghamton or closer, and includes the
9 towns next to Cooperstown. It's a big backwards
10 letter C.

11 So one of the things that does--that we
12 do--we've certainly not made any decisions, is
13 when you make nice, neat, compact districts, as
14 we're obliged to do, you wind up with an enormous
15 none of the above, which becomes very difficult
16 in terms of representation. Forget election.
17 It's representation day-to-day.

18 ASSEMBLY MEMBER GOODELL: Well, and if,
19 you follow my recommendation and put Chautauqua
20 County back into the southern tier, and we were
21 in the southern tier for the better part of a
22 century. , those distances because of Interstate
23 86 are much, much more manageable now. And of
24 course I'm personally familiar with it because I

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2 make that trip twice weekly while we're in
3 session.

4 ASSEMBLY MEMBER MCENENY: Yes.

5 ASSEMBLY MEMBER GOODELL: And if you
6 look at the representation that we've
7 historically had in the southern tier, you've had
8 a couple of congressmen from Chautauqua County
9 Stan Lundine and my uncle back in the '60s.
10 You've had Congressman Holton who ably
11 represented us from Corning, and I believe the
12 current congressman is from Corning. And you've
13 had, Congressman Hastings who is from - - in
14 Cattaraugus County. So the district, the
15 components of the district, the counties are
16 relatively comparable size, which opens the
17 entire district to representation throughout the
18 district.

19 And we've had high quality
20 representation with a high quality of visibility
21 from all of our representatives going back 60, 70
22 years. And I'm confident that that proposal
23 would work and would actually be well-received,
24 not only by the residents in Chautauqua, but the

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2 other residents in the southern tier. That also
3 frees up your ability to make a more compact
4 urban district in Monroe or in, - - counties,
5 which of course will be a challenge as you move
6 forward.

7 ASSEMBLY MEMBER MCENENY: Hm. The one
8 map that nobody has given us, which might be
9 helpful, would be a media map, media circulation
10 map because that--you know, we hear a lot about
11 competition, which means entertainment during
12 October, but there's those two years of governing
13 that we want to hear about when you're trying to
14 relate to your constituents to find out their
15 needs, and if you've got ten counties and 17
16 newspapers, as is in the case of Gibson's
17 district, for example, it becomes very difficult
18 to do your job day-to-day. It's tough on the
19 staff. You never have enough offices because
20 we're all cutting down on the cost of, of
21 government.

22 ASSEMBLY MEMBER GOODELL: That's a great
23 point. Right now--

24 ASSEMBLY MEMBER MCENENY: [interposing]

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2 Nobody's--somebody's out there listening. Give
3 us a media map because that's how people
4 communicate, and you mentioned something, Andy,
5 which I appreciated. There's a highway, and that
6 highway brings people together. They go up and
7 down. People with a business, they want to
8 expand, they go further up the same highway, and
9 so you have a true communication and social
10 intercourse going on there for business. And,
11 and social life, political life, if you will.
12 And, sometimes the square on the map may reflect
13 two or three different areas, but the, the one
14 that looks long and skinny actually has a
15 community of interest. We wrestle with it. We
16 don't have the - - .

17 ASSEMBLY MEMBER GOODELL: [interposing]
18 Your point on media, I thought, was also well
19 taken. In the current congressional district,
20 you have Erie and Chautauqua. There's a little
21 bit of overlap in media market in the north part
22 of Chautauqua with the Erie media market, but by
23 and large Chautauqua County is in a separate
24 media market completely from Erie County. The

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2 Buffalo news has a little bit of overlap. The
3 news--the, TV stations out of Buffalo have now
4 been, by and large, relegated to second status in
5 Chautauqua County because of the advent of cable
6 TV and dish network.

7 And don't play the role that they, they
8 once played. The major media outlets in
9 Chautauqua County are very local. Low-powered
10 radio stations and two local newspapers that are
11 jointly owned. That characteristic is common
12 throughout the southern tier. So the southern
13 tier is not really in the Buffalo market, nor in
14 the Syracuse market or really in the Rochester
15 market. They're much more localized, much more
16 cable TV, and much more localized, low-power
17 radio stations.

18 ASSEMBLY MEMBER MCENENY: Well, I don't
19 know how we're going to handle this, Andy, but
20 we'll promise you not to put you in Pennsylvania.

21 ASSEMBLY MEMBER GOODELL: [Laughter]
22 Well, some of my residents might prefer that, but
23 in the meantime I appreciate your consideration
24 for our suggestions.

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2 ASSEMBLY MEMBER MCENENY: All right.

3 Thank you. Let me put in a word for newspapers
4 because I know there's a lot of people who say,
5 who reads newspapers anymore. If you're looking
6 at politics or business, every news director of
7 every TV and radio before he has his cup of
8 coffee, there's a newspaper on his desk. That's
9 where they make up their assignments from, and
10 that's why media market is important if you're
11 trying to communicate with your constituents.
12 And members of the panel, anyone else? Yes, Bob
13 Oaks.

14 ASSEMBLY MEMBER OAKS: Just a couple
15 comments, observations. First of all, thank you
16 very much for being--giving something specific to
17 the task force. We appreciate when people are
18 engaged from that standpoint and make proposals.
19 Obviously as you mentioned, the Assembly one is
20 you are more in a vacuum than the rest because
21 you are bordered in three ways, so you can only
22 go one way pretty much to expand your district,
23 which makes your proposal even more helpful than
24 others. But the thing, I guess, I would say that

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2 I most appreciate is picking out the communities
3 of interest or the school districts to say
4 rationale why these towns are not those towns.
5 To have that on the record and have that a part
6 of it is exactly what we're looking for. And so
7 thank you for doing that.

8 And on the congressional side, just as a
9 note for our challenge in, in response to you. I
10 think if you go from Cattaraugus all the way to
11 Broome my information that I have is that's
12 around 704 or 5,000. It would have to be east of
13 Binghamton to be able to get in a congressional
14 seat. And so the balance we have is making a
15 neat, southern tier district probably isn't going
16 to happen, even if the most you know, genius
17 minds. It's going to have to go north or further
18 east, so there are going to be some people out of
19 media markets, out of common interest. Maybe you
20 could keep it along 86, as you say, but even in
21 the best case scenario, it's going to be
22 difficult to, to draw those seats, and obviously
23 as you know, we're, we're having to shrink the
24 entire delegation by two.

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2 So but again, I just say thank you again
3 for the perspective that you've given, and we
4 hope that others will bring that as well.

5 ASSEMBLY MEMBER GOODELL: Thank you,
6 Assemblyman. I will point out before I came
7 here, I did place a courtesy call to Assemblyman
8 Joe Giglio, whom I have tremendous respect for,
9 who is in the 149th district because my
10 recommendation is that you take three towns from
11 his district and put it in mine. And Assemblyman
12 Giglio was very, very helpful to me in also
13 identifying the commonality of interest in the
14 towns that I recommend stay in the 149th because
15 of the economic and social connections that hold
16 them together.

17 With regard to the congressional
18 district, right now, the 29th Congressional
19 District has 654,000. So it's roughly 53,000
20 short of where you need to be. If you add
21 Chautauqua County, you'll be over that number
22 because Chautauqua County has 134,000, which
23 means that you could keep the easterly bounds of
24 the 29th Congressional District and drop some of

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2 the northerly portions of Yates or Monroe or
3 Anandaigua [phonetic]. So in that regard, you
4 could have a more compact southern tier district,
5 actually, in terms of geographic location and
6 free up some of the counties along the north if
7 that's helpful for you in addressing how to
8 reapportion around Anandaigua, Syracuse and
9 Rochester. So again, thank you so much for
10 allowing me.

11 ASSEMBLY MEMBER MCENENY: Thanks very
12 much. We appreciate that. If you'd submit a map
13 to us at some point, that would be helpful, too.

14 ASSEMBLY MEMBER GOODELL: Thank you.

15 ASSEMBLY MEMBER MCENENY: Thank you.

16 Supervisor Mary Holt? Welcome.

17 MS. MARY HOLT, SUPERVISOR, TOWN OF
18 CHEEKTOWAGA: excuse me, I have a little bit of a
19 bronchial problem that I've had for a couple of
20 weeks, but I'm Mary Holtz. I'm the Town of
21 Cheektowaga's supervisor. I represent one of the
22 largest towns in western New York. I'm not going
23 to read all this. This talks about
24 gerrymandering. I just wanted to talk to you as

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2 a first wing suburb and the importance of our
3 representation in western New York. It's
4 important that we are represented fully and
5 continue our representation, especially our
6 congressional districts. We have three
7 congressional representatives here in Western New
8 York that strongly represent our needs in the
9 Towns of Cheektowaga and the City of Buffalo. So
10 I'm here strongly to advocate to keep our
11 districts and keep our communities in the central
12 locations and the central areas that represent
13 our diversity as well as the needs of the entire
14 Western New York and the, this part of the
15 community's needs and desires.

16 And that's basically what I'm here to
17 represent that and to request that from all of
18 you. I'll keep it short and sweet because I know
19 you have a lot of people.

20 ASSEMBLY MEMBER MCENENY: Well, thank
21 you, and we also have a much larger, more
22 complete statement, and we appreciate your
23 submitting it.

24 MS. HOLT: Yes, but I just wanted to

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2 represent our community and let you know that the
3 suburbs also exist and let you know that we're
4 very much in favor of you working together with
5 us. And I appreciate your time.

6 ASSEMBLY MEMBER MCENENY: Thank you very
7 much. Bill Mahoney of NYPIRG?

8 MR. BILL MAHONEY, NYPIRG: Good morning.

9 ASSEMBLY MEMBER MCENENY: Bill.

10 MR. MAHONEY: My name is--my name is
11 Bill Mahoney with the New York Public Interest
12 Research Group. As you know, we spoke a month
13 ago in Syracuse, and I am here today to address
14 some of the concerns that have been raised about
15 independent redistricting over the course of the
16 past month through the various other hearings
17 you've held upstate. First off, I would like to
18 address the constitutionality of a bill creating
19 an independent commission. A couple people
20 testified earlier today that they were concerned
21 about legal challenges to a bill because this
22 would effectively be the state legislature
23 handing off some of its constitutional authority
24 to a commission.

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2 I would just like to point out that this
3 practice happens all the time. I've heard from
4 one person that there's 15 similar commissions
5 created each year that handle tasks that are
6 assigned by the constitution to the state
7 legislature. Most recently, we've got the
8 mandate relief task force and even the--even
9 LATFOR which you're serving on today is a similar
10 process, even though the government doesn't have
11 appointment to this commission. The state
12 legislature still in the end will need to approve
13 any lines that you recommend, which will be the
14 case with an independent commission.

15 Also, I would like to speak to the issue
16 of timing, which has also come up today. I note--
17 I acknowledge that the deadline for drawing the
18 lines is rapidly approaching, and we would have
19 ideally liked to see a separate commission
20 created several months ago, but as I mentioned
21 during our last hearing, the boondoggle will
22 begin if Governor Cuomo vetoes these lines and
23 leaves it up to the courts to draw them. It will
24 be a lot more of a headache and will make the

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2 process much more rushed than if we take the time
3 this fall to create a commission that will have
4 time to properly draw lines to everybody's
5 satisfaction.

6 One of the other things that has been
7 raised is that--is the claim that it's impossible
8 to draw lines with smaller population deviances
9 due to constitutional limits on splitting up
10 towns and things like that. And we do
11 acknowledge that it can't be perfect right now.
12 You can't do zero deviation in the Senate and
13 Assembly like you do in Congress because of such
14 constitutional limits. But there's no way that
15 it cannot be much better than it is right now.
16 It's a 10% deviation, and we have seen time and
17 again that it is possible to draw lines with
18 smaller deviations than this. What happens now,
19 if I understand it correctly, is that regions are
20 assigned total populations for districts.

21 I use my testimony in Long Island for an
22 example, where every, single senate and assembly
23 district in that--on the island in those two
24 counties has basically a zero population

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2 deviation. I think the largest difference is
3 five total constituents between the largest and
4 smallest district over there, and there's no
5 reason why this can't be expanded throughout the
6 state to wrap--to dramatically decrease the
7 population variances everywhere.

8 The final concern I would like to
9 address today is that of--is a claim that I
10 believe was raised in Binghamton yesterday, that
11 Governor Cuomo's bill removes too many quality
12 appointments to the commission. I've heard it
13 argued that if somebody's qualified, even if they
14 do have a connection to a legislature, they
15 should be able to still serve on the commission.
16 But I did some back of the envelope math this
17 morning, and by my count, the people who this
18 bill occludes, which would include legislators,
19 recent legislators, lobbyists, staffers and some
20 of their immediate family as well as party
21 officials, that would add up to about 40,000
22 people total. That means that 9.38 million
23 people out of--or 19.38 million of the 19.42
24 million New Yorkers are still eligible to serve

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2 on this commission, and I am sure we could find
3 some quality individuals such as college
4 professors, businessmen and other people who are
5 able to handle the modernized mapping technology
6 who are capable of drawing lines that represent
7 the people of New York in the best possible way.

8 That wraps up everything I could say.

9 ASSEMBLY MEMBER MCENENY: Bill, what are
10 the qualifications of the, people that would be
11 added to bring this up to 11? What, what are
12 their qualifications?

13 MR. MAHONEY: The qualifications of the
14 individuals who would serve on the commission?

15 ASSEMBLY MEMBER MCENENY: There's
16 extraordinary--I mean, if you worked in the mail
17 room five years ago and went and got a PhD in
18 demographics, you would not be eligible because
19 that was a senate or assembly mail room. Well,
20 there's a four-year limit, so you would still be
21 eligible under Governor Cuomo's bill. And I--

22 MR. MAHONEY: Well, let's say you had a
23 summer job while you were getting your PhD. You
24 would be ineligible if it was within the four-

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2 year period. And when we get to these new people
3 who are going to bring new blood in after you get
4 rid of the people who had any connection
5 whatsoever with the legislature, including their
6 families, including the former interns, once you
7 did that, is there any indication that they have
8 to have an eighth grade education or more?
9 That's a yes or no.

10 MR. MAHONEY: I do not believe--there,
11 there is nothing in Governor Cuomo's bill.

12 ASSEMBLY MEMBER MCENENY: Nothing.

13 MR. MAHONEY: But as I mentioned,
14 there's still 19.4 million eligible New Yorkers.
15 We could definitely find people in there who
16 don't have direct ties to the process, so--Upton
17 Sinclair once said it is difficult to get a man
18 to understand something when his salary depends
19 on him not understanding it. And I know that
20 most of you guys are trying to do the best
21 possible job and draw the best districts that you
22 can, but what we've seen time and again it
23 doesn't always work out that way. We've seen
24 districts that represent--that try to protect

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2 incumbents than best try to represent the people,
3 and we just--we, we need to start looking at a
4 different way of doing this for the next decade.

5 SENATOR NOZZOLIO: Morning, Bill.

6 MR. MAHONEY: Hi.

7 SENATOR NOZZOLIO: How many hearings have
8 you attended?

9 MR. MAHONEY: This is my second. I've
10 read the--I've looked at the transcripts and
11 testimonies for a few of the others.

12 SENATOR NOZZOLIO: And we appreciate your
13 input, and that, we have six more hearings to go,
14 and then another 12 after that at least. So out
15 of the 18 hearings we hope to see you again. it,
16 --and I think that's part of the point that 18
17 hearings as a minimum for seeking public input is
18 what this task force is dedicated to do. Each,
19 each member, 24 hearings--I'm sorry, 18 more
20 hearings but 24 in total at least that this task
21 force is participating in.

22 I, I think you're overly optimistic
23 about the--about even selecting a commission in
24 time to do this work. Look how long it took to

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2 put together some of the commissions that you
3 even referenced in terms of commissions that had
4 a task forces that were involved with the budget
5 process. Task forces that have been involved in
6 the post-budget process. Pulling that all
7 together is, is going to take a lot of work and
8 time, and we're running out of time.

9 MR. MAHONEY: I understand, but as,
10 Assemblyman McEneny referenced earlier, the
11 voting dates still need to be changed for the
12 primary, which does mean we're on a shorter
13 deadline. But that also does mean that you'll
14 have to come back in the near future, and this is
15 an issue that could be tackled. And we have seen
16 commissions with--who are set up and have great
17 success in just a few months handling equally
18 complicated issues. The, the healthcare
19 commission that was created before the budget
20 process, I believe first met in February. They
21 were done two weeks before the budget was passed
22 on time. Granted, there's a lot more numbers,
23 and there's--

24 SENATOR NOZZOLIO: Well, and like that

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2 bill, that commission was chosen primarily by the
3 governor, just like the commission that you're
4 proposing. The independent redistricting process
5 that you're suggesting is heavily weighted by the
6 chief executive in terms of the amount of
7 appoints. But let's--I'd like to address some of
8 your, your other points. The point about, the
9 issue of qualifications in response to
10 Assemblyman McEneny's question. Does it not
11 bother NYPIRG that major campaign contributors
12 are not barred from serving in on this commission
13 as, as a, an element of, of, of their selection?
14 we seem to bar others but not major campaign
15 contributors. Why isn't NYPIRG concerned about
16 that issue? I've yet to hear you mention.

17 MR. MAHONEY: that would be something
18 that we would definitely consider. I would need
19 to have some other discussion, about where we
20 would stand on that, but I wouldn't rule out
21 supporting such an addendum to the bill. It--
22 there are lots--keep in mind, the number of
23 donors in the state is very small. It's less
24 than the people who have worked for the

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2 legislature or are related to them, and I, I do
3 think that we could still find many qualified
4 individuals who are not campaign donors. It was
5 0.15% of New Yorkers donated even a single dollar
6 to a state--

7 SENATOR NOZZOLIO: [interposing] Are
8 those qualified individuals going to participate
9 in 24 hearings across the state?

10 MR. MAHONEY: You could probably find
11 people who would be dedicated to so.

12 SENATOR NOZZOLIO: To, to doing the 24
13 hearings? I'm sure there are some, but I guess
14 I'm asking you why major campaign contributors
15 are not disqualified from this commission. Does
16 that not bother you?

17 MR. MAHONEY: On the surface, it does
18 raise some concerns. I did not write the bill,
19 so I can't say for sure why they're not, occluded
20 from serving on the communication, but it's
21 something we could look into.

22 SENATOR NOZZOLIO: The, town on border
23 rule, which Assemblyman McEneny discussed in the
24 opening--in his opening comments today is an

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2 issue that requires districts within regions be
3 precise in their, their numbers. Their
4 population allocations. Are you familiar with
5 that rule?

6 MR. MAHONEY: The constitutional
7 language dealing with the town? I have read it,
8 yes.

9 SENATOR NOZZOLIO: Block on border rule
10 and town on border rule.

11 MR. MAHONEY: What's that?

12 SENATOR NOZZOLIO: The block on border
13 rule and the town on border rule.

14 MR. MAHONEY: Yeah.

15 SENATOR NOZZOLIO: That is a, a major
16 reason, in complying with the state constitution
17 requiring towns of certain sizes, and most towns
18 are in this qualification of the state that they
19 not be cut and split. Yet the mathematical
20 allocation people requires in large part on the
21 borders of those districts the size of the towns.
22 And so I think that's something that maybe we
23 could discuss further after you have a chance to
24 look at that particular rule.

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2 MR. MAHONEY: I'm familiar with the
3 rule, but as I have said, we've seen in regions
4 there's almost no population deviation. In Long
5 Island--

6 SENATOR NOZZOLIO: [interposing] But it
7 has to be that--yes, that's exactly right.
8 That's the whole point, that within those
9 regions, because of the town sizes that they--
10 there has to be precise numbers within the
11 regions of the state in terms of allocation of
12 population.

13 MR. MAHONEY: But there's no reason we
14 couldn't expand it throughout a larger--like,
15 even in New York City, for example, where we
16 don't have to deal with splitting up towns or
17 anything like that, there's still in each borough
18 almost exactly the same population for every,
19 single district. There's a variance of just a
20 few voters.

21 SENATOR NOZZOLIO: [interposing] And
22 you're saying that's wrong, that's bad?

23 MR. MAHONEY: No, I'm saying we should
24 just expand that so it's the same on a larger

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2 scale throughout the state so that way, perhaps
3 the districts in New York City and Long Island
4 both have the same numbers of voters rather than
5 having a set number of voters for districts in
6 Queens versus a different one for voters on
7 Suffolk.

8 SENATOR NOZZOLIO: Thank you very much.

9 MR. MAHONEY: Thank you.

10 SENATOR NOZZOLIO: Any further questions
11 of the panel? Thank you.

12 MR. MAHONEY: Thanks.

13 ASSEMBLY MEMBER MCENENY: Do we have
14 Stuart Berger? And while we're waiting for Mr.
15 Berger, I am remiss. My colleague Bob Oaks
16 reminded me that Crystal Peoples-Stokes is here,
17 our Legislator from the New York State Assembly
18 representing Buffalo.

19 MR. STUART BERGER, CITIZENS FOR A BETTER
20 NEW YORK: Good morning. My name is Stuart
21 Berger. I reside at 82 Brittany Circle in
22 Rochester. I am currently a member of the
23 executive committee of the Citizens for a Better
24 New York, CFBNY, and past president of that

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2 organization. CFBNY, as you may recall, is a
3 nonpartisan--excuse me--grassroots organization
4 devoted to state governmental process reform
5 including redistricting. I'm one of the 16
6 steering members--committee members of the state-
7 wide coalition known as Reshape New York.
8 Reshape New York is a coalition of organizations,
9 as stated by one of the previous testifiers, from
10 across New York State dedicated to redistricting,
11 reprocess, reform. To that end, we support
12 Governor Cuomo's proposed legislation, S3419 and
13 A5388, as we have also supported the Gienares-
14 Jefferies [phonetic] Bill, which is quite
15 similar.

16 I'd like to address my remarks to Mr.
17 Nozzolio. During an interchange between Mr.
18 Nozzolio and Mr. Neil in Rochester Mr. Nozzolio
19 indicated that the commission's selection process
20 is more partisan in the governor's legislation
21 than the current process. Am I quoting you
22 correctly? The quote is included in the text.

23 SENATOR NOZZOLIO: I'm not sure of the
24 context of that remark.

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2 MR. BERGER: Pardon me?

3 SENATOR NOZZOLIO: I'm not sure of the
4 context or accuracy of that remark.

5 MR. BERGER: Well, you can--the context
6 is included in the testimony. I would like to
7 pursue this further by summarizing the Cuomo
8 Bill's provisions on selection process. We've
9 heard a little bit about that this morning.
10 Unlike the current process, he bill provides for
11 the formation of a nominating committee with
12 members selected as follows. The governor
13 selects four members, two from each party, and as
14 the governor has stated, he would cede his two
15 Republican nominees to Senator Skallis
16 [phonetic]. It doesn't say anything for the next
17 ten years, but at least for this process.

18 The temporary president of the senate
19 selects one member. The speaker selects one
20 member. The minority of the senate selects one
21 member, and the minority leader of the assembly
22 selects one member. The chosen members would
23 select two co-chairs. The members, as has been
24 indicated, could not serve if they currently hold

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2 or in the past four years have held elected or
3 public office, a position as a lobbyist, a
4 political party position, or a relative or spouse
5 of an elected or public official. The nominating
6 committee then would select a pool of 40
7 potential commissioners who are vetted for
8 conflicts of interest using the same criteria as
9 that for the committee and composed of 15 persons
10 enrolled as Democrats, 15 persons enrolled as
11 Republicans, and ten persons not enrolled as
12 either Democrat or Republican, sometimes known as
13 independence or minority party constituents.

14 The same nominee restrictions apply as
15 the nominating committee. The apportionment
16 commission would be comprised of 11 commissioners
17 selected from the members of the nomination pool.
18 Temporary president of the senate selects two
19 members; minority leader of the senate selects
20 two members, the speaker of the assembly, two
21 members, and the minority leader of the assembly,
22 two members. These eight members would then
23 appoint three additional members, one of whom
24 would serve as chair of the commission, and no

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2 more than four members of the apportionment
3 committee--commission would be enrolled in the
4 same political party, and members would be
5 selected to represent the diversity of the state.

6 The rest of the legislation deals with
7 the requirements of the district subject to state
8 and federal law and the state's Constitution.
9 The legislation bans the responsibility to
10 approve or reject the redistricting plan, and if
11 approved, to send it to the governor for final
12 approval. There is a process for dealing with
13 rejected plans.

14 Having reviewed the governor's proposed
15 legislation, I ask Mr. Nozzolio to explain how
16 this process is more partisan than the current
17 process, and specifically, whether he or his
18 staff have read S3419. I do not mean to impune
19 Mr. Nozzolio.

20 When I was in Albany on June 1st, I
21 interviewed a senior staff member from the
22 Rochester area and a local senator. He also
23 alleged that the Cuomo bill is partisan, but when
24 challenged, he indicated that he needed to go

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2 back and read the bill. Similar are the views
3 with three other Republican senators from across
4 the state or their staff had similar allegations
5 about the partisan nature of the bill. These
6 allegations may be construed as either ignorance
7 of the bill's content, or a willful
8 misrepresentation to the senators and their staff
9 or both. So the people await your response, Mr.
10 Nozzolio.

11 SENATOR NOZZOLIO: Good morning, Mr.
12 Berger. Thank you very much for your testimony.
13 I appreciate you being here again now in our
14 second hearing that you have been able to attend.
15 I'd like, for the record, though, for you to
16 agree that you neither talked to me nor any of
17 the staff people you're discussing in your
18 testimony, are members of my staff, is that
19 correct?

20 MR. BERGER: That is absolutely correct.

21 SENATOR NOZZOLIO: And I thank you very
22 much for your clarification of that. Mr. Berger,
23 since you asked me a question, I will respond in
24 that yes, we did discuss this in hearing format,

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2 back and forth, with you and Mr. Neil and others
3 in Rochester. That my concerns with this process
4 is having a fruit of the poisonous tree in the
5 sense that the roots of this process are flawed.
6 They're flawed by establishing a process that
7 provides six Democrat appointees and two
8 Republican appointees. Six to two, to choose the
9 members of this commission. That is a weighted
10 vote and in spite of taking the personalities out
11 of this, that the governor, according to the
12 statute, whoever the governor is, will have six
13 votes--will have four votes, and when joined by
14 members of his or her party, will have six votes.

15 that to me is a, an inordinate
16 advantage, disadvantage, and that regardless of
17 the current governor's intentions, restructuring
18 a law that will govern all future governors and
19 all future redistricting processes and to have
20 that weighted on one side in such a heavy way to
21 me determines a partisan, a too partisan a
22 process.

23 And that would be true if a Republican
24 was a governor or a Democrat was a governor. And

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2 so I ask you, in response to your question, does
3 it not concern you that the selection process
4 would be governed by eight people, six of whom
5 could be appointed by one political party?

6 MR. BERGER: It would concern me if, in
7 fact, he was required not to select two
8 Republicans and two Democrats so that the makeup
9 of the nominating committee is evenly split
10 between Republicans and Democrats.

11 SENATOR NOZZOLIO: And I appreciate your
12 sincerity, Mr. Berger. I appreciate your
13 sincerity, Mr. Berger but I'd also ask you to
14 just read what's happening in redistricting
15 processes across this country where so-called
16 independents were actually contractors for
17 Democrat political candidates, and in some areas,
18 Republican candidates. The so-called independent
19 enrollment that they carried into the process
20 that they were chosen for as being part of an
21 independent, and the same could be true of a
22 Republican enrollee or a Democratic enrollee. I
23 know Republican enrollees who are contributors to
24 Governor Cuomo's campaign. I know Democrats who

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2 have contributed to past-Governor Pataki's
3 campaigns so that there is a--there is always a
4 manipulation that could occur when you're just
5 saying you have to take so many of a political
6 party. It does not guarantee independence. It
7 does not guarantee a, a, a, particular
8 philosophy, in effect, is - - in effect. I
9 believe impugns the process.

10 Let me go just another step further. We
11 already asked the New York Public Interest
12 Research Group did it not bother them that
13 campaign contributors, in fact maybe major
14 campaign contributors, weren't excluded from
15 participating on this so-called independent
16 committee. Let me further ask you whether you
17 think it's appreciate that union leaders
18 regardless of a public union or a private union
19 who are engaged in very active political
20 activities, why there are no questions about
21 their participation or, or impediments to their
22 participation in this so-called independent
23 process. That's why I think that again, I do not
24 doubt your sincerity at all. As a matter of

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2 fact, I admire it; you're coming here on your
3 time. You're traveling from your home in
4 Rochester to--at least an hour-plus each way, to
5 make your voice heard, and I appreciate that, and
6 I hear your voice. But you asked me these
7 questions.

8 And so I owe it to you to respond
9 sincerely to my concerns as well, and then I
10 thank you for asking, and I hope that answers,
11 --at least addresses some of my concerns that you
12 called me out to address.

13 MR. BERGER: Thank you for your
14 response. You asked me whether I'm concerned
15 about major contributors or union people.
16 They're registered Republican, registered
17 Democrats. They fit within the mold of the
18 selectees, and they're okay, as long--you know,
19 because you're going to balance this with perhaps
20 a contributor--major contributor for the
21 Republican Party, a major contributor from the
22 Democratic Party, but you're also going to select
23 independents. Remember that a third of this
24 state is non-affiliated with either of the major

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2 parties. So--

3 SENATOR NOZZOLIO: But I just mentioned
4 to you--you know, what happened, I believe it was
5 in New Mexico where this so-called independent
6 addition to the independent task force was in
7 fact an operative of one of the other political
8 parties. So I think that finding that total
9 independence, regardless of label, party label,
10 is a task that's very, very difficult.

11 MR. BERGER: I appreciate that, and I
12 agree with you. You can distort anything. So
13 what we're looking for is a process where--and
14 don't take this the wrong way--the chickens are
15 not telling us what the hen house should look
16 like.

17 ASSEMBLY MEMBER MCENENY: Thank you.
18 Any comment on foxes on that one? [Laughter]

19 MR. BERGER: Well, the foxes, I'm
20 keeping out of that. They're a different party.

21 ASSEMBLY MEMBER MCENENY: I believe that
22 you left a category out of people who were banned
23 from serving, and that's employees or past
24 employees of the legislature, and that's what my

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2 earlier comments were. I'm sure the governor is
3 thinking with his legislation, somebody sending
4 in a chief of staff, when in fact the way the
5 bill is drafted, it would include an intern or
6 somebody who was in the mail room. And if, if
7 this bill ever became law, the 1% would have to
8 be clarified to conform with the Constitution,
9 and that's one other thing. Plus, if we're going
10 to be very strict about who can serve, well,
11 what's fair for one side is fair for the other.
12 Anybody else going on that committee would also
13 have some severe restrictions as well.

14 The senator mentioned some of them. I
15 just heard for the first time, though, that the
16 governor had said something about this nominating
17 committee that he would defer to Dean Skellos
18 [phonetic], who was the temporary president of
19 the Senate and majority leader to provide him
20 with names. Is that correct?

21 MR. BERGER: That's correct.

22 ASSEMBLY MEMBER MCENENY: That's news to
23 me. And he'd do the same thing for Shelley
24 Silver, of course?

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2 MR. BERGER: Well, he could. He hasn't
3 done that.

4 ASSEMBLY MEMBER MCENENY: He hasn't said
5 that. I mean, if we're going to be reasonably
6 politically bipartisan and defer to the leader of
7 one house, then I'm assuming out of fairness,
8 you'd defer to the leader of the other house.

9 MR. BERGER: Well, I believe he comes
10 from the same chicken house.

11 ASSEMBLY MEMBER MCENENY: Thank you very
12 much. Members? Thank you very much for coming.
13 We appreciate it. Councilman Richard Fontana?
14 Councilman Fontan here? Councilman David Rivera.
15 Okay. I know they were in attendance here, and
16 we appreciate that. Council President Fronzac
17 [phonetic].

18 MALE VOICE: They were here. They just
19 - - .

20 ASSEMBLY MEMBER MCENENY: Okay.
21 Councilman Darius Pridgeon [phonetic] was also
22 here. And Council Member Michael Kerns
23 [phonetic]. Michael, would you like to speak?
24 What was that?

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2 MALE VOICE: - - .

3 ASSEMBLY MEMBER MCENENY: Okay. Thank
4 you very much. We very much appreciate your
5 input, and if you have comments later that you
6 want to make and submit, they'll be taken under
7 consideration. All right. Moving onto Nicole
8 Jowsey? Welcome Nicole.

9 MS. NICOLE JOWSEY, CITIZEN ACTION -
10 BUFFALO: Good afternoon. My name is Nicole
11 Jowsey. I am the chairperson of the western New
12 York Regional Board of Citizen Action of New
13 York, which I'm sure this committee's familiar
14 with by now. You've heard us testify. Citizen
15 Action is committed to social, racial and
16 economic justice, and our position is one that
17 calls for an independent redistricting
18 commission.

19 And I hope one that has more than just
20 one woman member on it. I have to say as a
21 feminist that there's only one today. I hope
22 there's more. I'm going to talk a little bit
23 about gerrymandering. I have a fuller statement
24 here, but I want to be brief and succinct, so I'm

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2 sure you've heard about gerrymandering as you've
3 gone through this process. I'm sure you're going
4 to continue to hear about it, and gerrymandering
5 really is nothing more than what I consider to be
6 a--and a lot of people consider to be a political
7 tool that incumbents use year after year, at the
8 cost of the constituents and the voters. And it
9 has harmful impacts, and it's not just harmful in
10 the fact that politicians have used it to keep
11 themselves in office, but there are, you know,
12 more, more harmful effects when it comes to
13 separating communities, which not only allows for
14 disproportionate representation, but--and I want
15 to be clear on this point because it seems to be
16 something I haven't heard from a lot of people,
17 it allows for the disenfranchisement of
18 constituents and voters, particularly people of
19 color. I, I often hear when we talk about
20 gerrymandering, some people say, but we're afraid
21 to use this kind of language, and as someone
22 who's committed to racial justice, especially in
23 Western New York, it happens.

24 There's a practice that's been occurring

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2 especially in the Western New York region, where
3 communities have been unfairly chopped up along
4 racial lines. Communities of people of color are
5 displaced. They're divided and conquered, and
6 their voice is suppressed. What should be a
7 scream turns into a whisper while they're divided
8 among electoral lines. Their representation and
9 electoral voice suffers and the only one that
10 seems to benefit are the people so busy trying to
11 keep their job that they forget that they need to
12 do their job. And this practice, which I think
13 is heinous and atrocious, and I think that's the
14 correct way to describe it, needs to end.

15 So where does that happen? And I think
16 that this practice needs to end with you because
17 you are making the recommendations and you can
18 call for the independent redistricting process.
19 And I know that time is a concern and money, but
20 when you're on the right side of the issue, that
21 really should matter more. And maybe I am
22 optimistic like someone who previously testified
23 said, but I don't think optimism or idealism
24 hurts anyone, especially for our younger

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2 generation or else we're all in trouble.

3 An independent commission needs to be
4 formed in order to engage in a process that
5 includes transparency, nonpartisanship. I say
6 nonpartisanship because oftentimes we overlook
7 that there is a third party in New York State,
8 the Working Families Party, and a chance for the
9 public to weigh in along the way. I had to take
10 the day off of work to be here today, so, you
11 know, at times that are maybe a little bit more
12 convenient for the average working class person
13 would help.

14 Independent redistricting is the only
15 way for fair lines to be drawn that's not going
16 to--will not disenfranchise voters economically
17 or racially, and I believe it's the only way for
18 people to have a voice, to be fairly represented.
19 we have to end the corruption, you know? That
20 seems to be a campaign promise, and campaign
21 promises really are just castles in the air, and
22 it's a little disheartening. So I think this is
23 one of the ways for politicians to make good on
24 that promise, and by forming this commission. So

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2 I thank you for your time.

3 ASSEMBLY MEMBER MCENENY: Thank you.

4 The commission shares your concern for, what we
5 call opportunity districts for persons of color
6 who are protected by the Voting Rights Act of
7 1965, and in the case of three counties, have a
8 special civil rights status where the Justice
9 Department must review the Bronx, and New York
10 and Brooklyn. I am familiar with the assembly
11 district here in, in Buffalo, going back to what
12 was drawn following the year 2000, and that is
13 clearly a minority/majority district. Is there a
14 district that you can name here in Western New
15 York that has in fact disenfranchised or
16 deliberately cut down on the opportunities of
17 people of color?

18 MS. JOWSEY: Yes, I can, and it comes
19 along city council districts with the state
20 senate, and it's the Lovejoy District. I know
21 there have people--Councilman Fontana spoke about
22 it. It really is--

23 ASSEMBLY MEMBER MCENENY: We don't do
24 city council districts, okay?

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2 MS. JOWSEY: Right, but it falls into--
3 it cuts the senate district lines between Senator
4 Kennedy's and, and Senator Grisanti's lines. The
5 neighborhoods literally cut in half, but as it's
6 been known, the, the way that it was cut, and it
7 was cut by former Senator Stachowski to include
8 what he was labeled as white Lovejoy versus black
9 Lovejoy. So it's happened. It still exists
10 today. That line is still drawn, and so it's not
11 only separated--

12 ASSEMBLY MEMBER MCENENY: [interposing]
13 So you would like to see the concentration of
14 people of color in the former Stachowski
15 district, and it's Kennedy's now--

16 MS. JOWSEY: Well--

17 ASSEMBLY MEMBER MCENENY: And where
18 would you put them with to get a higher
19 concentration?

20 MS. JOWSEY: I mean, I would, in that
21 particular instance, and I can only speak to
22 that. I mean, I don't have all the statistics,
23 and there are other people who will be providing
24 me with that information in that particular area.

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2 By uniting Lovejoy, you're going to have an equal
3 representation. You're not just going to be
4 displacing, you know, the African-American
5 community, and this way, it's more fair and more
6 equally representative. It makes the races more
7 competitive. - - competitive candidates.

8 ASSEMBLY MEMBER MCENENY: Could you get
9 Citizens Action to provide us with what they
10 would consider a model map? The only thing I can
11 tell you, in all honesty, if it doesn't have the
12 adjoining districts on the map and it's a victim
13 of tunnel vision, we're not going to take it
14 seriously. But if you take a cluster of those
15 senate districts and recommend to us what you
16 would think would be better.

17 Now, if in fact following the past
18 census that there was a deliberate demunitation
19 [phonetic] of the opportunities of people of
20 color in senate or assembly, let me assure you,
21 there would be a successful lawsuit under the
22 Voting Rights Act of 1965. But what has
23 happened, and it's happened in my own home
24 district in Albany, is if you were to look at the

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2 population now, you would disagree with where the
3 line is drawn separating one part of Albany from
4 Uptown Albany, but you'd be looking with today's
5 numbers.

6 Had you looked at those numbers ten
7 years ago, you would say, that makes sense,
8 putting Downtown Albany and Troy together because
9 it has the highest concentration for the minority
10 population, which we're trying to protect and
11 empower. So I'm not sure if you're making a
12 condemnation of what went on in the past. Make
13 sure that that's what those numbers were, and ask
14 yourself why was there not a successful lawsuit
15 throwing that out.

16 The population has shifted enormously
17 through population gain and loss throughout the
18 state, but also in the makeup of our residents,
19 particularly with the shifting of African-
20 American and Hispanics. The--some lines may be
21 obsolete now from that point of view, but it
22 doesn't mean that they were drawn for racist
23 motivation back ten years ago. They reflected
24 what was there ten years ago before we had the

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2 changes that we've had in our population.

3 MS. JOWSEY: Right, and I take your
4 point, but with all due respect, I think though,
5 these issues need to be on the mind when you're
6 continuing with this process, and to be aware of
7 that, which I think often gets lost. And so I
8 take my testimony to reemphasize that, and that,
9 you know, corruption and these things do happen,
10 and I mean, you need to be aware.

11 ASSEMBLY MEMBER MCENENY: Thank you.
12 Please send us suggestions. We'd like to seek
13 that on a map. Senator?

14 SENATOR NOZZOLIO: Thank you,
15 Assemblyman. Good morning. I believe it's still
16 morning. Good morning. I apologize, I was out
17 of the room for the initial portion of your
18 testimony. Are you suggesting that the
19 communities of interest here in the City of
20 Buffalo be consolidated in certain ways?

21 MS. JOWSEY: No, I'm suggesting not
22 consolidation--well, I guess in a matter of
23 speaking--that the lines are drawn to not
24 separate these neighborhoods and these districts

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2 that have, you know, traditionally separated.

3 SENATOR NOZZOLIO: And you will be
4 submitting a map describing those?

5 MS. JOWSEY: I will make sure that you
6 have that information.

7 SENATOR NOZZOLIO: Excellent. Thank you
8 very much. Assemblywoman Peoples-Stokes?

9 SENATOR NOZZOLIO: They only want to be
10 recognized. They don't want to speak.

11 ASSEMBLY MEMBER MCENENY: Welcome.

12 ASSEMBLY MEMBER CRYSTAL D. PEOPLES-
13 STOKES, 141st DISTRICT: Hi. Thank you, and,
14 thank you all for coming to provide this hearing
15 here. It's, --last time I seen a lot of you
16 all was in Albany, so it's nice to see you in
17 Buffalo for a change. I am certainly, honor the
18 fact that you all understand the value of
19 listening to the public across the state on this
20 topic, and I did hear the senator mention earlier
21 that there were 18 more hearings, so to that--and
22 I hope there's at least one more in Western New
23 York area because as you can see, the room is not
24 packed, and there are not a lot of people who

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2 don't have an opinion on this issue. Most people
3 have an opinion on this issue.

4 ASSEMBLY MEMBER MCENENY: There will be
5 three more in Western New York if we--Rochester,
6 Syracuse and Buffalo.

7 ASSEMBLY MEMBER PEOPLES-STOKES: Great.
8 Thank you. Just a brief testimony. I don't have
9 specifics on what I'd like to see happen, but I
10 do have some general statements that I do think
11 are important to your process. Redistricting is
12 a key component for a representative democracy,
13 and this process will define the political
14 geography for the next ten years. So in order
15 for this process to be judged successful, it must
16 be responsive to diverse populations to the state
17 and that will allow them a meaningful opportunity
18 to participate in this discourse. And again, I
19 want to thank you for providing that opportunity.

20 I would also like to thank my colleagues
21 for ensuring that this process has been kept open
22 and transparent as possible. You know, again,
23 everybody has an opinion, and everybody wants to
24 know what it is that you are potentially coming

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2 up with. I am pleased that LATFOR has done the
3 right thing and agreed to stop the travesty of
4 counting prison inmates in districts where they
5 are incarcerated rather than where they would
6 otherwise live. The notion that this bipartisan
7 position and that the law be complied with was
8 assuring to hear from Senator Nozzolio in the
9 Albany Times Union a few days ago. Thank you
10 very much for your comments on that.

11 Along with those assurances, I would
12 like to see the availability of all of the
13 Department of Corrections data for public view as
14 well as reasonably possible. Once this geocoding
15 is completed, it would further help your efforts
16 to submit a detailed plan and allow the public to
17 see just how their communities will be, affected
18 by that particular portion of the issue. I don't
19 know if you have those numbers yet, but I think
20 they're important to the process.

21 I think people can make better decisions
22 as well if they know exactly what those numbers
23 are. Also, I think LATFOR should look closely at
24 maintaining Congressional District 28 that have

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2 historically reflected the fair representation of
3 minority groups within that respective district.
4 Preservation of this district I think is vital to
5 providing opportunity for diversity in the
6 electoral process and providing communities with
7 opportunities to elect candidates of their
8 choice.

9 As we move forward into this issue, I,
10 too, would like to see an independent
11 redistricting commission, not unlike the plans
12 proposed by Governor Cuomo and/or the bills that
13 are currently in the legislature. The common
14 cause and the NAACP. It seems unfortunate that
15 with the pressing time constraints that are
16 before us that this may not happen, but I think
17 that it is the right thing to do. And if there's
18 any way possible, I think it would be beneficial
19 for the citizens of New York to understand that
20 we--as electives, we understand how important
21 this issue is and how important their voices are.
22 To that end, there should be an opportunity for
23 some sort of independent commission. I'm sure
24 you already know that I wasn't one of those

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2 legislators who signed onto a pledge. That's
3 because I don't take pledges. I take an oath of
4 office, and the oath of office says I'm going to
5 fight for the rights of people according to the
6 Constitution of the United States and of New York
7 State. And I think that that is a right of
8 people to have independent council on these sorts
9 of issues. I hope that you all will give that
10 some consideration and make that one of your
11 recommendations. Thank you.

12 ASSEMBLY MEMBER MCENENY: Thank you. We
13 appreciate your input, Assemblywoman, and like
14 yourself, I did not take the pledge, but I am on
15 the governor's bill, which, should it ever come
16 to fruition, should be amended in a number of
17 ways. I was surprised to learn that after your
18 rather painful redistricting process for the
19 county legislature in Erie County, that it went
20 to the courts and that there will not be a
21 primary. Do you have any comments on that as an
22 example or lack of an example of good government
23 and democracy?

24 ASSEMBLY MEMBER PEOPLES-STOKES: Well, I

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2 was surprised to see that it had come to that end
3 as well because I think not only are there, you
4 know, competent and qualified people in the
5 county legislature, but they are competent and
6 qualified people in the County of Erie who would
7 have come up with a plan that would have not had
8 to be forced into the courts. I'm disappointed
9 that that did not happen. I think there's far
10 too much focus on partisan politics as opposed to
11 just getting out a good redistricting plan, and
12 that is unfortunate. And I hope that that does
13 not happen not only anywhere else in New York
14 State, but certainly anywhere else in America
15 because it's unfair to the citizens.

16 ASSEMBLY MEMBER MCENENY: Other members?
17 Bob Oaks.

18 ASSEMBLY MEMBER PEOPLES-STOKES: Thank
19 you.

20 ASSEMBLY MEMBER OAKS: just a couple
21 quick things. , One I know as the prior speaker
22 spoke a little bit about cutting up the city or,
23 or how that was done, whatever. I just in
24 looking at Buffalo and the present population, it

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2 would come out to about two complete districts.
3 Right now I think there's three people who
4 represent a part of it. Any sense on whether it
5 would be better to have the city, you know, more
6 wholly represented or split up?

7 ASSEMBLY MEMBER PEOPLES-STOKES: Well, I
8 think from a historical perspective, at least for
9 the last previous ten years, there have been
10 three representatives for the City of Buffalo
11 because one of us, being myself, have an entire
12 City of Buffalo district, and my other two
13 colleagues representing other surrounding
14 communities. I think that that has boded well
15 for Buffalo in terms of the number of
16 representatives who have a vested interest along
17 with our colleagues from outside of the area. It
18 strengthens our representation. So in my
19 estimation, I think that a plan like that should
20 be made. I hope that the district that I
21 represent, the 141st, can remain all City of
22 Buffalo and that the other two colleagues from
23 this area will also have two portions, be it may
24 be smaller, of the City of Buffalo in their

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2 district because again, I think it adds to the
3 numbers, and certainly bodes for increased
4 representation.

5 ASSEMBLY MEMBER OAKS: You mentioned
6 about different perspectives that people have. A
7 lot of people have an opinion. You mentioned the
8 28th congressional district and hoping that that
9 will remain. As I walked in, I saw some people
10 talking in front of cameras using the 28th as a
11 great example of a gerrymandered district that is
12 the example of what shouldn't be done. And so
13 when you ask--you know, your perspective versus
14 others who are in attendance today and certainly
15 among us, I just lay that out, that that's part
16 of the challenges.

17 ASSEMBLY MEMBER PEOPLES-STOKES: Well, I
18 think, you know, there's always going to be
19 opportunities to agree to disagree. I think that
20 often when we look at the term gerrymandering, we
21 think of it as a negative, that it is doing the
22 wrong thing, it's heading the wrong direction,
23 it's empowering the wrong party, it's empowering
24 the wrong constituency. I think in the case of

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2 the 28th, what it did was empower people of color
3 for an opportunity to not, you know, next year--
4 maybe not two years from now, but to have the
5 option of being able to elect a representative of
6 color. There's not any other district, quite
7 frankly, in upstate New York that provides that
8 opportunity.

9 The vast majority of the African-
10 American community and Latino community in
11 Rochester and Buffalo and certainly I believe
12 Niagara Falls as well, are located within the
13 28th. Now, that spans two counties and a lot of
14 different communities and a couple different
15 media, outlets, but it also puts a group of
16 people in a position where if they wanted to two
17 years from now, four years from now, or even next
18 year, if they wanted to put forth a candidate
19 that would have an opportunity to be elected,
20 then they'd have that opportunity. If that
21 changes, then they don't have that at least not
22 in Western New York.

23 ASSEMBLY MEMBER OAKS: My last comments
24 just come in. You referenced, the prison

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2 counting and the task force's approach to that,
3 and, just, just to give perspective, I think
4 there was questions along the way of saying would
5 the task force follow the law or not, and I think
6 perspective is, is as the law today, the task
7 force is moving forward with following the law as
8 it will. However, just to note, there is a court
9 case that could change the perspective on that.
10 Some of us on this task force voted different
11 ways when that law was originally proposed. Some
12 problems with that--and the only thing that I
13 would say is some people kind of given a
14 perspective of saying that something proactively
15 has been done that needs to be fixed. This
16 really--the, the law as it changed something as
17 the way the census has been carried out since its
18 inception in 1790. And I think the court case
19 questions whether or not that will stand. And of
20 course we will see that as that court case goes
21 through but clearly we as--I can't speak for all
22 the members, although I think we've unanimously
23 said, whatever the law is, whether it's the one
24 that was passed or if it's challenged and reverts

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2 this task force will follow that law.

3 ASSEMBLY MEMBER PEOPLES-STOKES: Thank
4 you. I certainly respect that response, and I
5 believe that the courts will rule in favor of
6 allowing the inmates to be counted in the
7 districts where they'll be returning to as
8 opposed to districts where they're currently
9 incarcerated. Do you all have any numbers on
10 that yet by the way?

11 ASSEMBLY MEMBER MCENENY: Not yet, but
12 we should have them presently.

13 ASSEMBLY MEMBER PEOPLES-STOKES: Just
14 one other question. Can you--do you have any
15 idea what would be the delay with the Department
16 of Corrections in coming up with those numbers?
17 I'm sure they have head counts, and they have the
18 data, so what's going on?

19 ASSEMBLY MEMBER MCENENY: They gave us
20 gross numbers and then gave us an individual
21 listing with the number to protect the
22 individual's private identity, and then
23 possibilities of where their last legal residence
24 was, where they were sentenced from, where their

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2 parents' address was, etc. And we've been
3 geocoding, which means we have to put--we can't
4 just say, they belong in this district or this
5 census track. We have had staff taking every one
6 of these 56 or 57,000 inmates and we're more than
7 half complete with those that can be identified,
8 and assign them to a census block. And it's our
9 hope that we'll be done with this at the end of
10 this month, which is with as many as can be put
11 in, and that the numbers can be changed when we
12 actually start drawing lines, which won't be till
13 October.

14 ASSEMBLY MEMBER PEOPLES-STOKES: Okay.
15 Well, even more important than the numbers and
16 how they impact any district or the other is the
17 fact that I probably have a file about this thick
18 in my office that just speaks to inmates that
19 call with issues that they have. And because
20 they know that they're from Buffalo, and they
21 think that their representative is me. Well,
22 right now, it's really not. It's the person
23 where they're located in and where they're
24 incarcerated at, but that's not the person that

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2 they call when they need help. That's not the
3 person that their family reaches out to when they
4 need help. They reach out to the person from the
5 district where they live at. So I think not only
6 have we made some changes with the law, but the
7 fact of the matter is that the person always look
8 back to the person where they came from as
9 opposed to where they're incarcerated at, and
10 that's just real. So thank you very much.

11 ASSEMBLY MEMBER MCENENY: I have a
12 question for the assemblywoman about the law
13 itself. Do you agree that the prison inmate
14 should be counted somewhere?

15 ASSEMBLY MEMBER PEOPLES-STOKES: Do I
16 agree that they should be counted? Yes, I do
17 agree that they should be counted, and as a
18 supporter of the law, a sponsor of the bill, I do
19 believe they should be counted in the districts
20 they will be returning to or where they reside
21 at--where they used to reside at. Again, people
22 come home from being incarcerated. They still
23 need to use the services of the community where
24 they return to, and I think if census numbers

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2 help allow municipalities to access resources from
3 federal and/or state governments based on
4 numbers, then the numbers should be where they're
5 going to be returning to as opposed to numbers
6 where they're incarcerated.

7 ASSEMBLY MEMBER MCENENY: Assemblywoman,
8 as one who opposed the law I agree with you that
9 the prison inmates should be counted somewhere,
10 but as you are the author of the law and a
11 supporter of the law and a sponsor of the law,
12 the law says that if you cannot find the
13 Department of Corrections, which puts five
14 addresses on an inmate's dossier, their address,
15 their parents' address, their last known address.
16 There's a whole series of addresses. That if for
17 some reason those addresses cannot be verified or
18 if there is some problem with the address, that
19 inmate is just thrown out, is not counted at all.
20 And I guess I'm surprised to hear you as a
21 sponsor of the law, as supporter of the law, one
22 who wants inmates to be counted somewhere, has a
23 law that in effect provides a nowhere place where
24 inmates in the state could end up being counted

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2 nowhere. Not in their prison or not in their
3 address. And that's a job that this task force,
4 because of this law, which in this part of the
5 law seems upside down, and it's certainly against
6 what you're indicating you supported. I think
7 that's a challenge.

8 And we had a meeting yesterday where we
9 will be looking at the methodology of how to
10 count. But the law says that an inmate should
11 not be counted at all if that address is not
12 found, and that, to me, is hurtful to
13 representation in the state.

14 ASSEMBLY MEMBER PEOPLES-STOKES: Well,
15 understanding, you know, that is one of the
16 pieces of the law, I really don't think there
17 will be an inmate that you will not be able to or
18 the Department of Corrections will not be able to
19 identify where they should be counted at. I
20 think everything that folks need in order to do
21 that, I think you'll be able to get that done. I
22 don't see that as being an option that any of
23 those 57,000 inmates will end up not being
24 counted anywhere because nobody can determine

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2 where they're from. I think that's a little
3 unlikely.

4 SENATOR NOZZOLIO: I think to not count
5 them is denying them their humanity if you will,
6 that acting as if those don't exist at all that
7 under the United States census, we have, counted,
8 prisoners at their place of incarceration. Not
9 we. United States Census Bureau has. We're now
10 one of three states that is doing it this way.

11 Pardon me, it's two states that are
12 doing it this way. The state of Delaware did
13 decide to do it this way to decide to count
14 prisoners at their last known address, found out
15 the system was too flawed, too cumbersome and too
16 costly, and they've scrapped the law. That's a
17 third of the states that have decided to do this
18 have scrapped the law after they looked at the
19 logistics involved. But I think to deny the
20 humanity of counting someone anywhere acts like
21 that person just doesn't exist.

22 And that's the law that New York pushed
23 through here.

24 ASSEMBLY MEMBER PEOPLES-STOKES: And I'm

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2 not debating that issue with you, Senator. What
3 I am saying, though, is that in any law that New
4 York State pushes through, there's always
5 compromise, and it doesn't always end up to be
6 exactly like the sponsors intended it to be. But
7 I think at the end of the day, when this law is
8 enforced as it was written, there will be zero
9 inmates who will not be counted and will be
10 denied their right, their human right, their
11 United States right as citizens, to be counted in
12 an area where either they come from or where they
13 currently are. A lot of inmates, when they are
14 released from any institution, they end up
15 staying in the community where they were
16 incarcerated at. There's a huge population right
17 now in Upstate New York that are originally from
18 New York City as a result of that.

19 So I don't think that at the end of the
20 day that there are going to be people who don't
21 have an opportunity to be counted.

22 SENATOR NOZZOLIO: And I hope you're
23 right, that the law could say it to the contrary,
24 and we are going to have to wrestle with that in

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2 the days and weeks ahead.

3 ASSEMBLY MEMBER PEOPLES-STOKES: Well, I
4 thank you for your efforts to wrestle with it and
5 get it done. I really do.

6 SENATOR NOZZOLIO: Thank you very much.

7 ASSEMBLY MEMBER MCENENY: Members?
8 Thank you very much Assemblywoman. Bryan Ball,
9 Western New York.

10 MR. BRIAN BALL, WESTERN NEW YORK
11 STONEWALL DEMOCRATS: Good afternoon. I'd like
12 to thank the members of this task force for
13 holding this hearing today and listening to the
14 citizens of Western New York on the crucially
15 important topic of state legislative and
16 congressional redistricting. The process of
17 creating new districts for our state legislators
18 and congressional representatives is as necessary
19 as it is difficult. Every ten years, we are
20 faced with the task of reevaluating our
21 populations, determining who currently lives
22 where in New York State and deciding how all our
23 people should be represented, which is their
24 right. My name is Brian Ball, and I am from the

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2 LGBT, and that is the Lesbian, Gay, Bisexual,
3 Transgender, Questioning and Queer community and
4 will speak for our interests.

5 I am here today to focus on one of many
6 crucial elements that should be a part of any
7 fair redistricting process, the protection of all
8 minority populations. While we make sure that in
9 drawing districts, that should be done by an
10 independent commission, we draw districts that
11 represent people and not the elected officials
12 that represent them, we need to make sure all our
13 minority communities are protected and have their
14 say in our representative government preserved.
15 It's a sad reality that the populations which
16 make up majorities have inflicted oppression on
17 minority populations. Simply put, a much-needed
18 role of government is to be fair, to protect
19 minorities from oppressive majorities, and to
20 treat all people equally.

21 The African-American community, the
22 Hispanic community, the working class, our
23 immigrant communities, our LGBTQ community. We
24 all need to be treated as equal citizens, and our

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2 civil rights respected by affording us our
3 community's due voice in our representative
4 government. While LGBTQ people, for instance,
5 live and thrive in all areas of our great state,
6 it cannot be denied that areas exist of high
7 LGBTQ populations, though we are not accurately
8 counted to the fullest we could be in the census.

9 For instance, our two Buffalo senate
10 districts both contain the most highly
11 concentrated LGBTQ populations in Western New
12 York. We exist. We live. We work. We pay
13 taxes, all from our proudly LGBTQ and inclusive
14 communities. In our great state, there are no
15 laws which protect all of us in our community
16 from housing and employment discrimination. Up
17 until very recently, I was not allowed to enter
18 into the state civil government contract of
19 marriage with my long-time partner to protect our
20 lives and family. And even now, our federal
21 government denies us the basic civil rights and
22 protections within its power to our families
23 through the segregation of marriage rights.

24 And there are no laws which mandate

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2 LGBTQ citizens be included or considered
3 whatsoever in a redistricting process. But that
4 of course does not mean that whatever the
5 redistricting process is here in New York cannot
6 take our voices and people into consideration as
7 they would any minority population, person or
8 vote. Even apart from the issues of minority
9 community representation is the good that can be
10 done in simply keep to the best it can be
11 communities and communities of interest
12 relatively intact. One would think it is common
13 sense that splitting up areas such as historical
14 districts and areas of high urban economic
15 vitalization with a strong sense of community
16 would be a poor choice. Redistricting is, by its
17 nature, change and will naturally create some
18 separation and disconnect, but it is essential
19 that any process in a clear, transparent and
20 nonpartisan way, do its best to keep communities
21 whole.

22 And this is especially true for urban
23 areas. When communities such as those that
24 thrive in east, west, south and north of the City

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2 of Buffalo are kept whole, we can continue the
3 work that we are doing to constantly improve our
4 community and city. Block clubs, neighborhoods
5 and businesses can, if kept together in a
6 holistic approach, continue to be and grow
7 without having to deal with being split amongst
8 district haphazardly in a manner that has sadly,
9 in the past, only because transparent to the fact
10 that it has been done to protect politicians and
11 not the people they were elected to serve.

12 In closing, I'd like to leave those
13 present with my support for a truly fair
14 redistricting process. This can only be done by
15 an independent commission to rightfully oversee
16 that the process is transparent and of and for
17 the people, not of and for our legislative
18 bodies. A key cornerstone to keeping that
19 promise of fairness is absolutely the protection
20 of minority communities. Our government exists
21 to serve and protect our people.

22 Throughout our histories, minorities
23 have needed that protection, as various
24 minorities have during the course of the civil

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2 rights movement gained victories and thus their
3 civil rights. I ask that any process be as
4 mindful as possible of the LGBTQ community as we
5 are among the most oppressed by our current state
6 and federal government and laws as we are denied
7 basic housing, employment and marital civil
8 rights and protections. I ask any independent
9 and fair redistricting process be mindful of our
10 position, our needs and keep our voice and place
11 at the table, to determine our representatives in
12 government as much intact as possible. Thank
13 you.

14 ASSEMBLY MEMBER MCENENY: Thank you.

15 The Civil Rights Law of 1965 refers to
16 historically disadvantaged communities who have
17 been discouraged from participating fully in the
18 electoral process. Is it your feeling that
19 people in the gay/lesbian, etc. community have
20 been discriminated, discouraged from voting?

21 MR. BALL: While not--for instance,
22 while not as, apparent as certain things like,
23 Jim Crow's [phonetic] laws were in the past in
24 doing that, when you have, all levels of our

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2 government in different ways not recognizing an
3 actual group of people's civil rights and basic
4 dignity as, tax payers, that does discourage
5 people from participating in our government,
6 which is everyone's right. So yes.

7 ASSEMBLY MEMBER MCENENY: Discouraged
8 from voting?

9 MR. BALL: Absolutely. It discouraged
10 people from participating in our government when,
11 year after year, our federal government and
12 different areas of our government does deny us
13 basic civil rights and not treat us as equals.
14 It absolutely discourages people from
15 participating in government.

16 ASSEMBLY MEMBER MCENENY: I'm not sure,
17 and I think we would like more input from you.
18 One of the things that society's progressed
19 tremendously in the last 10 or 20 years as
20 witnessed recently by the Marriage Equality Act,
21 which was passed by this legislature and signed
22 by the governor. And I think one of the things
23 that progress shows is that we don't stereotype
24 people. And I think if there is one thing that

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2 hopefully most New Yorkers have learned is them
3 is us, and that within every family, within every
4 community, within every geographic and social
5 group, there are people who are homosexual and
6 those that are not.

7 And I can understand, we do try to keep
8 neighborhoods together. Little Italy is not
9 protected, but it would be a shame to break a
10 Little Italy. There are stereotypes of areas
11 that are very friendly to the gay community.
12 Lark Street in Albany. There's an area here in
13 Buffalo, etc. But I think we would be making a
14 tremendous mistake thinking that's the only place
15 where these citizens are. It may be where they
16 hang out, but it's not where they live. They
17 live in every town and village and city, rural,
18 suburban and urban throughout the state of New
19 York. So I don't know how redistricting, which
20 is essentially a geographic process, drawing
21 lines on a map, can in any way protect or show
22 respect to the gay community.

23 I can see from a neighborhood point of
24 view when you've got an area that's the Greenwich

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2 Village, the so-called creative class downtown,
3 which is doing so much to revitalize our cities.
4 That's keeping a neighborhood together anyway,
5 which includes an awful lot of people from all
6 orientations. How do we redistrict the State of
7 New York and keep your concerns in mind, and what
8 is it we're trying to avoid doing that would be
9 damaging to that community?

10 MR. BALL: Well, to answer the first
11 part of your question, I think you answered that
12 question yourself in saying that when you're
13 keeping these communities of interest, these
14 LGBTQ communities together, you're keeping whole
15 neighborhoods together, and that is a good thing,
16 and that should be done as much as possible. And
17 I would also just like to state that that
18 argument, while it does have valid points that
19 could be applied to--I did reference that in my
20 testimony. LGBT people live in all areas of our
21 state, but we do have, very highly concentrated
22 areas where our families live and exist and don't
23 just go to hang out.

24 But, and that we are everywhere, but we

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2 are--there are definitely areas where we're
3 highly concentrated, and just like the African-
4 American community, the Hispanic community, any
5 minority community that should have its voice
6 preserved, we should have that taken into
7 consideration, just as they do.

8 ASSEMBLY MEMBER MCENENY: If the LGBT
9 community could advise us of areas of
10 concentration I'm sure we would take that into
11 consideration as we would other neighborhoods as
12 well.

13 MR. BALL: I'd greatly welcome that
14 opportunity to continue a discussion with that,
15 at least here for the Western New York area.

16 ASSEMBLY MEMBER MCENENY: Thank you very
17 much.

18 SENATOR NOZZOLIO: Thank you very much.

19 MR. BALL: Thank you.

20 ASSEMBLY MEMBER MCENENY: Diane
21 Benzachowski [phonetic]. Diane Benzachowski.
22 Art Robinson.

23 MR. ART ROBINSON, PRESIDENT, SENECA

24 BABCOCK COMMUNITY BLOCK CLUB: I want to thank

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2 you all for being here. My name is Art Robinson.
3 I'm a community activist. I also am a president
4 of Seneca Babcock Community Block Club. I also
5 am chairman of Neighborhoods Connecting and many
6 other things with the city.

7 One thing I haven't heard is one person,
8 one vote. Nobody's mentioned that at all, and I
9 think that is the purpose of this all, is the
10 redistricting is being done because you have to
11 have the equalization of districts for one
12 person, one vote. Why don't people understand
13 that? And one thing I really think about is
14 neighborhoods and towns and villages to try to
15 keep them as intact as possible.

16 I mean, it's--I know it's difficult with
17 lines being drawn and that, but it's got to be a
18 priority because to divide them up, I've been
19 involved with this, with the City of Buffalo,
20 where my district is part one, part the other.
21 And it's good sometimes, sometimes it's not. I
22 just feel that there should be an independent
23 commission that could be able to determine this.
24 I mean, this has been going on for decades. This

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2 is something I don't understand is what happened
3 20 years ago, 30, 40 years ago? Every ten years,
4 this comes up. It's not like it just appeared
5 and it just happened this ten years. This
6 happens every ten years. Has anybody looked back
7 to see what happened ten years, 20, 30 years ago,
8 to see how did they handle it and how was it
9 done?

10 ASSEMBLY MEMBER MCENENY: We thank you
11 for your testimony. The two examples of how the
12 state does it for its representation and how the
13 federal government does it for its representation
14 show you two extremes in the dichotomy. One
15 person, one vote, as is required down to one
16 person in the congressional district, can
17 slaughter neighborhoods. It can split towns. It
18 can break up natural communities of people
19 because the goal is math. Make the math work on
20 a census that's already out of date and a year
21 old. That's one extreme. We have to live with
22 it. I don't personally agree with that as a
23 professional historian. I think it's insensitive
24 to communities, and it, it breaks them up.

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2 The other extreme is I think more
3 reasonable for the senate and the assembly. We
4 have, on occasion, respected, for example, a
5 county line. Not taking a little town on the
6 other side because a town on border also applies,
7 and try to get that through because it's not fair
8 to take 1,000 people out of a rural county and
9 put them in with an urban, suburban county so
10 that the math is honored.

11 We live--when we actually draw these
12 lines, we live with the problem that you've
13 described, and the one that has faced every
14 redistricting for the past certainly since the
15 1960s when one person, one vote was first imposed
16 on all governments except the United States
17 Senate by the Supreme Court of the United States.
18 And it's a delicate balance. I can guarantee you
19 and I think my fellow members here, whatever
20 comes out of this process, someone is going to
21 cry foul. Somebody is going to want to go in the
22 other direction. Either they're upset that the
23 math in the case of the state districts varies by
24 as much as 5% above or below the average. We try

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2 to keep it lower than that, but it can
3 conceivably go that way based on past court
4 decision. Or because a neighborhood got
5 butchered for no apparent reason other than to
6 make the numbers come out.

7 That's where human beings who know their
8 area have to make hard decisions, and either way
9 you go, someone is not going to be satisfied. I
10 personally, having done this for many years on a
11 local and one occasion, on the state level, like
12 to see a little variety in the math for the
13 purpose of keeping neighborhoods and communities
14 together.

15 MR. ROBINSON: I will say something. I
16 am very disappointed with Erie County. They've
17 taken away my vote to vote in a primary, and I
18 feel most people in Erie County feel that way. I
19 don't think that should happen anywhere.

20 ASSEMBLY MEMBER MCENENY: I was not
21 aware of that, and, I find it rather shocking.
22 That's a real basic right that didn't used to
23 exist and was fought for with New York as a
24 leader in the early 1900s, and I can't believe

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2 the courts would do that. But you know, I always
3 worry when anything goes to court. I worry if
4 this goes to court.

5 MR. ROBINSON: Well, that's why I'd like
6 to see this done not going to court because when
7 it does, this is what happens. People lose their
8 rights, and when you lose them, it's hard to get
9 them back.

10 ASSEMBLY MEMBER MCENENY: Your testimony
11 both on video and anything you submit in writing
12 or anything you follow up with is part of the
13 official record. The video is then turned over
14 to a court stenographer, so it becomes a part of
15 the written record even if you didn't submit
16 something in writing, plus what you do submit in
17 writing, and we appreciate your sentiments and
18 your understanding of what the challenge is.

19 MR. ROBINSON: Thank you very much.

20 SENATOR NOZZOLIO: Thank you.

21 ASSEMBLY MEMBER MCENENY: Thank you.

22 John Marriott. Welcome.

23 MR. JOHN MARRIOTT, TOWN PARK HOMEOWNERS
24 ASSOCIATION: Thank you, and thank you for the

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2 opportunity to state my case here. My name is
3 John Marriott. I live in the town of
4 Cheektowaga. I am president of an organization
5 in Cheektowaga called the Town Park Homeowners
6 Association. And Cheektowaga, you're probably
7 aware, is immediately adjacent to the City of
8 Buffalo on an eastern border. The neighborhood
9 that I live in and are tax payer group, we're
10 right along the Buffalo border. I live one
11 quarter of a mile from the Buffalo border.

12 And I want to--I want to speak to the
13 role of minorities in this redistricting. And I
14 read in the paper recently, I think a couple of
15 days ago, there was an article, and I believe it
16 was USA Today that this latest census data shows
17 that there's been a very large minority migration
18 into the suburbs surrounding some of our major
19 cities. Not only just in New York State, but all
20 across the USA. We've seen that in our town
21 being that we're immediately adjacent to Buffalo
22 and particularly in the neighborhood where I
23 live.

24 I'm the president of our local tax payer

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2 group in town, and I would say that our
3 membership now is probably 25 to 30% minority.
4 And the minority people that are in our
5 organization and that live in the area, they've
6 adopted that as their home. They participate--
7 they can be a force in town government, in the
8 political arena, and in a social interaction in
9 the neighborhood. And I just would like to
10 impress on the board the need to keep the town
11 boundaries and observe the town boundaries.

12 And I think there's, if I'm not correct,
13 there's a New York State - - called the Home Rule
14 Act or Home Rule Law or something like that where
15 it talks about maintaining the borders within the
16 town. And we have--if we were to, say, break up
17 those borders, which was one of the proposals in
18 the recent county redistricting, what would have
19 happened on one of the proposals was that the
20 minority people that lived in Cheektowaga
21 would've been moved back into Buffalo and that
22 would take their legislative representation, any
23 influence of their legislative representation for
24 issues that they have in the Town of Cheektowage

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2 away from them. Because as we all know, you
3 know, a lot of times you have to have your county
4 legislator to go to the town to sell some issues,
5 and it would dilute that minority representation
6 somewhat from being able to participate and have
7 some say-so in their town government.

8 As it was, the redistricting plan that
9 the judge did, so far as I know--you can't
10 exactly tell yet. So far as I know, there's not
11 too much of that involved in it. I think
12 Cheektowaga largely stays intact, at least in
13 that portion. But it originally--some of the
14 original plans that I saw, it wasn't going to
15 happen. But I just want to impress on the
16 commission, and they seem to be very receptive to
17 the suggestions that have been made here today.
18 I appreciate that. I testified before the Erie
19 County commission, and they didn't seem to be
20 interested at all in what any people testified.
21 They didn't ask any questions like you have or
22 anything like that.

23 They largely seemed to ignore the input,
24 and unfortunately, it went to a judicial

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2 decision, which probably turned out to be the
3 better solution of any one that was proposed,
4 unfortunately. But I thank you for your time,
5 and I appreciate the opportunity to speak to you.

6 ASSEMBLY MEMBER MCENENY: We appreciate
7 your input. In the question of the congressional
8 district what you describe could happen. We
9 haven't even begun to draw these lines. In the
10 case of the state senate and the state assembly,
11 Cheektowaga must be kept whole. You have 88,000
12 people in Cheektowaga. If you were one of these
13 enormous towns on Long Island like Brookhaven or
14 Amstead, it would be a different story. But
15 you're well below the size of either a senate or
16 an assembly district. So you're one of the few
17 people that we can tell you what won't happen, at
18 least for state and, --for state redistricting
19 is that Cheektowaga won't be split. The town
20 must be kept together, and if for example, when
21 we're done, let's say we have a district that's
22 off by 3,000 people, close enough.

23 MR. MARRIOTT: Yeah, yeah, that was our
24 request from the county, that we keep Cheektowaga

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2 intact.

3 ASSEMBLY MEMBER MCENENY: They're not
4 bound by it. But--

5 MR. MARRIOTT: I know.

6 ASSEMBLY MEMBER MCENENY: But Congress
7 is right down to the person, which is very
8 disrespectful of neighborhoods and
9 municipalities, especially when you figure the
10 census is a year old by the time you're playing
11 with it.

12 MR. MARRIOTT: That's true.

13 ASSEMBLY MEMBER MCENENY: Thank you.
14 Thank you very much.

15 MR. MARRIOTT: Yes.

16 ASSEMBLY MEMBER MCENENY: We appreciate
17 it. Eric Walker? Eric Walker? Frank Mesiah.
18 Welcome. Did I pronounce your name correctly?

19 MR. FRANK MESIAH, PRESIDENT, NAACP -
20 BUFFALO BRANCH: Yes.

21 ASSEMBLY MEMBER MCENENY: Thank you.

22 MR. MESIAH: It's M-E-S-I-A-H. The
23 other guy has two S's in his name. That's how
24 you tell us apart.

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2 [Laughter]

3 MR. MESIAH: My name is Frank Mesiah,
4 and I'm president of the Buffalo branch NAACP,
5 and I have basically three concerns, and one,
6 I've--and it's been modified because I heard some
7 things. It changed. I didn't know that as
8 African-Americans are moving into suburban areas,
9 they're moving into ghettoed areas of the
10 suburbs, as I just heard. That the mere moving a
11 line would separate them, so they must be all
12 going in, in a cluster and maintained in a little
13 group. So they're not really being dispersed
14 throughout the community, at least what I just
15 heard.

16 ASSEMBLY MEMBER MCENENY: I didn't hear
17 it that way, in all fairness.

18 MR. MESIAH: Oh, okay. Now, my first
19 concern is the NAACP puts out a report card on
20 all of the US Senators and House of
21 Representative members, and the representative in
22 our area of the 28th and 27th Electoral Districts
23 have received for the past few years As, a
24 grading of A. We would like to see that continue

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2 and we'd like to see that arrangement of how
3 those two Congressional Districts are arranged,
4 that they should remain that way as far as that's
5 what we're--because we see those as districts
6 supporting the NAACP. And so there won't be a
7 misunderstanding, the NAACP is not just about
8 black folks. It's about all people, and some of
9 the legislation, there's 40 pieces of legislation
10 that these Senators, Gillibrand, Schumer and the
11 other House of Representative members had to vote
12 on, and they voted children of undocumented
13 immigrants, job creation federal student loan
14 overhaul. Just a whole myriad of, of laws. 40
15 of them, and I'm not going to take time to read
16 them, but many of them are not geared toward just
17 African-Americans. It's geared toward the total
18 population that all people should be treated
19 fairly and equitably. The other that is this we
20 strongly support the redistricting of prisoners
21 who will now be counted in their homes of record
22 rather than in their prisoner communities.

23 That view is that Assemblyperson
24 McEneny, is that who that is? I heard you were a

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2 historian.

3 ASSEMBLY MEMBER MCENENY: I'm sorry.

4 I'm looking at the map to make sure we're talking
5 about the right district.

6 MR. MESIAH: Okay. And I would just
7 want to say that I'm glad to hear you're a
8 historian and not like one of the presidential
9 candidates who seem to get American History mixed
10 up. But prior, in this country, we have what was
11 called the three-fifth rule, and I don't know if
12 maybe they got students learning mathematics
13 reading and they never get into history and being
14 judged, but at that time, what it was, what
15 congress did was arrange the Africans who were
16 here, African-Americans, really, slaves, that
17 instead of being counted for congressional
18 reasons, it would take, --it was, you know, the
19 three-fifths rule. Take five of them would only
20 be worth three fifths of a person.

21 So that multiplied, but what that did
22 was to give strength to those congressional
23 districts, and now when we go and we see--we
24 travel with the NAACP, looking at where some of

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2 these prisons are, those communities benefit by
3 getting federal monies. They get that federal
4 money because they can show more people. Then
5 the local people, it's easier to get a job if
6 you're close to one of those places. You know,
7 you take the civil service exam, but if you're in
8 a city 50, 60, 70 miles away, it's more
9 difficult. There's a reluctance to take those
10 exams, and the local people provide--help
11 provide--the local businesses help provide the
12 food. So they benefit from those prisoners there
13 in addition to the federal monies they get
14 because they get the extra counts.

15 Now, if you--the point is with the
16 three-fifths, those slaves were not allowed to
17 vote, but the communities received credit for
18 having a population, which brought in certain
19 kinds of benefits.

20 SENATOR NOZZOLIO: Mr. Messiah, sir, sir.

21 MR. MESIAH: Now, if you fast-forward--
22 pardon?

23 SENATOR NOZZOLIO: Sir, I would just like
24 to take that part of your testimony and raise a

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2 couple of questions. Thank you for the
3 interruption. That the federal census is not
4 changed by that statute. The United--the statute
5 that requires prisoners to be counted at their
6 last known address is only applicable for the
7 drawing under the statute as drafted and enacted
8 for state senate and state assembly lines.
9 Nothing changes, just so you know, to be factual.
10 Nothing changed in terms of the way the United
11 States census bureau counts. And that those
12 designations by the United States census bureau
13 continue even though the statute exists. So your
14 thesis about not charging or not counting them in
15 this location regarding federal assistance or any
16 other assistance driven by the census formula
17 just simply isn't a fact.

18 The census still is there. The census
19 still counts them at the prison, and it--that
20 continues. Up in the north country a few weeks
21 ago, a prisoner had a heart attack. It was a
22 local, ambulance core that picked him up, it took
23 him to a local hospital where he took a bed that
24 was otherwise available, and that that local

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2 ambulance care in effect had a cost of that that
3 individual's care and treatment, a cost that
4 isn't going to be reimbursed in all likelihood by
5 any other formula.

6 There also is a, a history replete of
7 communities providing services to prisons. For
8 instance, local district attorneys, whenever
9 there is a crime that is committed within the
10 prison walls, a local district attorney is
11 required to prosecute that crime. That costs
12 local tax payers money. It costs local tax
13 payers resources.

14 So to just willy-nilly say that there is
15 only benefit and no cost to the communities I
16 think is inaccurate, and it belies the facts.
17 Also, to say that the census formula is somehow
18 changed is inaccurate, and lastly, whatever aide
19 is driven by that census formula continues by the
20 law that exists today.

21 [Crosstalk]

22 SENATOR DILAN: I just need a
23 clarification first.

24 MR. MESIAH: Oh, I'm sorry.

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2 SENATOR DILAN: Okay. Because first you
3 said that the federal funds do not change. Then
4 you used an instance of local ambulance, and you
5 said, who's paying for that ambulance. But if
6 the funds don't change, that means there's no
7 loss of money to the--

8 [Crosstalk]

9 SENATOR NOZZOLIO: Let's assume - -
10 Senator, thank you for the question, but the fact
11 is that Medicaid may or may not reimburse the
12 full cost of that trip. It may or may not
13 reimburse the full cost of the healthcare. It
14 certainly won't reimburse--there's no assistance
15 that will reimburse the district attorney for the
16 prosecution of any criminal act that takes place
17 behind the wall. So I thank you for your
18 question, Senator Dilan, but--

19 SENATOR DILAN: Well, my point is that
20 if no--if, if all the funds are still staying in
21 that locality, how can you use an example of
22 who's going to reimburse. But anyway, I know
23 that's not a redistricting issue.

24 SENATOR NOZZOLIO: Senator, I was

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2 reacting to the testifier's question that there
3 was no benefit that there was no cost, basically,
4 only benefits to the communities that house these
5 prisons.

6 SENATOR DILAN: Oh, okay. Oh, okay. So
7 then you agree. So really, the only change in
8 the law is that for the purposes of redistricting
9 the prisoners are being counted in their last
10 home of record. Is that correct?

11 SENATOR NOZZOLIO: no, it isn't totally
12 correct, Senator, and since you're going to split
13 hairs, let me split them a little further.

14 [Crosstalk]

15 SENATOR DILAN: No, I'm just looking for
16 clarification. That's not what I'm doing.

17 SENATOR NOZZOLIO: It's a clarification
18 that I'd be glad to answer, Senator.

19 SENATOR DILAN: I'm not giving you a
20 hard time. I just want the record to be clear,
21 that's all.

22 SENATOR NOZZOLIO: And let me answer your
23 question, Senator. Not for the purposes--not of
24 redistricting--

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2 SENATOR DILAN: [interposing] I can
3 split hair also if you'd like me to. Go ahead.

4 SENATOR NOZZOLIO: Your question was
5 redistricting. It wasn't a question of
6 redistricting for congressional lines.
7 Congressional lines are still redistricted not
8 using this formula based on the law that was put
9 forward. The congressional lines still are going
10 to be using only the United States census
11 figures, which count prisoners at their prison.

12 SENATOR DILAN: We're clear. We're
13 clear with that.

14 SENATOR NOZZOLIO: Thank you, Senator.

15 ASSEMBLY MEMBER MCENENY: Thank you.
16 Did you want to get into this?

17 [Laughter]

18 MR. MESIAH: I guess I'm reacting also
19 to when we lobby, as NAACP in Albany, we see all
20 these people from these rural areas where there
21 are prisons also lobbying you state legislators,
22 and I don't know what about, to either build them
23 more, etc., because there must be a profit in it.
24 They're not doing it because they just feel like

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2 good people. They're making money on it. They
3 have people working there, and it's to their
4 benefit.

5 And this idea of losing some of those
6 prisoners to go back to where their home base is
7 creating, you know--like I say, we see it not
8 much different than back in the three-fifths time
9 when people could not vote and were considered
10 three fifths of a person and are now in these
11 prisons that are making money. They must be
12 making money because the people are lobbying for
13 them, and the prisoners can't vote, but the
14 community around is benefiting.

15 ASSEMBLY MEMBER OAKS: Mr. Mesiah, just
16 a point, I think, of clarification. If you look
17 at the history of the census, the census says on
18 this day, April 1st, every ten years, we're going
19 to take a snapshot of America, and it's going to
20 change on April 2nd. And the only ones--if you
21 die the day of April 1 and you're born the day of
22 April 1 you're both going to get counted. That's
23 about the only one that overlaps a little bit, I
24 guess. But other than that, it's where you're

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2 residing as of that day, and it is a snapshot.
3 The person who is in prison today may get out
4 tomorrow. Maybe they're going to be replaced by
5 someone else who was arrested or whatever from a
6 different community, but as in every other case
7 of the census, a person is tracked only by that
8 date. If you are a college professor teaching in
9 Madrid, Spain for a semester, you're not counted
10 in the census.

11 It's a snapshot of that day, where
12 people are, and you know, the prison structure
13 that you talked about, I think there's legitimate
14 questions to raise, but mostly it was built as
15 the prison system grew much in the '80s, in the
16 '90s they were looking to build prisons in
17 certain places, and many of the urban areas did
18 not want them. I remember a press - - going
19 through of saying, asking the community, the
20 local rural community, would you be willing to
21 build, you know, have that built there. It was
22 not 100%. No one was looking at that as I don't
23 think economic development as some people might
24 suggest.

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2 But I think to use a wide view of that
3 is being a bit you know, expansive. The rural
4 areas, clearly there are prisons there. There
5 are prisons closing because the prison population
6 is going down. If we were to take the census
7 today from two years ago, it would be reduced
8 from what it is. But I think--

9 ASSEMBLY MEMBER MCENENY: Assemblyman,
10 I'm sorry, we want a complete record. We have to
11 change the videotape.

12 [Music]

13 ASSEMBLY MEMBER OAKS: Other people have
14 testified over the last few weeks that we've been
15 doing this, and we really haven't had this
16 discussion. And so some of the responses,
17 whatever, almost in reaction to others' views as
18 well. So that personally directed or your
19 perspectives. But I would just suggest again
20 that if we look at the law that there are issues
21 that would look at it that would, suggest that
22 there are reasons that historically and
23 appropriately would make the count locally. But
24 we will see, and as you've said, whatever the law

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2 says, that's what we're going to do and draw
3 districts as they impact the state.

4 MR. MESIAH: And we don't want to get
5 into the difference in why there's so many
6 African-Americans in some of the prisons, the
7 crack versus powdered cocaine. You know, 100
8 grams versus five, and white people generally use
9 powdered cocaine, and poor people use crack
10 cocaine, so five grams of that sends them away
11 unconditionally. Judges have no options. We
12 have a federal judge here--to refuse to take the
13 some of those drug cases because of that, because
14 the judge had no option.

15 And here there were other people more
16 affluent with, you know, 40, 50 ounces of cocaine
17 powder with a whole different penalty facing
18 them. So why we have more people in prison, and
19 then people start looking at the prisons. And
20 when we, like I say, get to Albany, and we see
21 all these people camp--going around, trying to
22 influence the legislators to do something to
23 build their prisons, and then all of a sudden,
24 somebody comes up and says, let's take the

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2 prisoners out and send them someplace else, and a
3 lot of times now, all these people with the
4 prisons seem very upset over that for a lot of
5 different reasons. I say, wait a minute, why?
6 What's the benefit? Do they lose that much money
7 on somebody, you know, trying to escape or going
8 to a hospital?

9 We have a hospital here, Erie County
10 Medical Center that takes a lot of prisoners.

11 ASSEMBLY MEMBER MCENENY: I think--

12 MR. MESIAH: Are we on again?

13 ASSEMBLY MEMBER MCENENY: Oh, we are on
14 again and have been for a little bit.

15 MR. MESIAH: Maybe we can terminate
16 that?

17 ASSEMBLY MEMBER MCENENY: Well, I think
18 the issue; the truth is always in the middle
19 somewhere. There were communities in the north
20 country, for example, would say you were
21 desperate for a prison. We stepped up to the
22 bat, and I think they would be upset at the word
23 profit, when whether you keep your job is more a
24 case of survival than profit. Profit has

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2 connotations that go beyond that, and while there
3 are many rural communities that for whatever
4 reason showed a willingness to take a prison, and
5 I'm a supporter and a sponsor of that bill, the
6 one that is now the law of the land, we could
7 also say, where were our cities who knew
8 perfectly well where their prisoners were going
9 and never pushed to have a prison built in a
10 metropolis.

11 You know, we've made mistakes. The
12 three-fifth compromise, it took a civil war to
13 end. 50% of our people didn't vote just for
14 being women for a very long time. And American
15 Indians, they weren't counted at all. They
16 weren't even citizens until 1943. So society
17 progresses, and we will be here a very long time
18 if we try and figure out where the blame is.
19 There's plenty to figure out for everyone, but
20 you had additional testimony, I think. We
21 interrupted you, and I would ask you to complete
22 it if you will.

23 MR. MESIAH: No, it's fine, and I
24 believe in change. Things are changing. They're

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2 not like they were, but you have to raise these
3 issues for people to begin to look at them and to
4 begin seeing where can they be changed. It may
5 not be changed this year. It may take next year.
6 It may take five years, but there's people, once
7 they start to think about it, begin to think
8 about how do we improve on this. Schools used to
9 be in the cities when they first started, and all
10 of a sudden, you know, that whole thing changed,
11 and the state started to give 90% reimbursement
12 for schools and 90% reimbursement for bussing
13 that built up the suburbs and changed that whole
14 issue of school development from having control
15 because of the city where all the schools were,
16 they weren't bussing people in the city to
17 school, but they were in the suburbs. So they
18 changed the law. They got 90%.

19 So all of that changes, and now we're,
20 we're faced with that. But I'm--okay. Let me go
21 on with, the other issue I had, the third, was if
22 we go back to--we look at the 60th State Senate.
23 I think it used to be the 58th, wasn't it? It
24 was totally within the City of Buffalo, and the

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2 council--the assembly member here talked about
3 her district is the only one that's totally
4 within the city. And I'm not--and I haven't
5 looked at the figures. I haven't looked at the
6 numbers. I haven't been--because I don't have
7 those kind of resources, but is it possible to
8 return that state senate to Buffalo without
9 increasing the number of senators and retaining
10 the same number of senators because there's some
11 people who feel that Buffalo really loses some of
12 its, relative influence with suburban and rural
13 areas. As we just heard, we have a rural--a
14 suburban area, and they're proud of their so-
15 called minority group, but that if you draw a
16 line through it, you're going to separate that
17 minority group, which means they're all in a
18 cluster. You know, you don't want to call it a
19 ghetto.

20 It's probably not a ghetto, but you
21 understand what I'm saying. So that just because
22 somebody moved to a suburban area does not mean
23 it's--they're accepted and race is not a major
24 issue, and especially when we thought--some

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2 people thought they had--with the election of the
3 president, that everything was now, okay. We
4 don't have any racial problems. Well, just a few
5 months ago, we had a fellow running for governor
6 who drew all kind of votes, many votes, and he
7 was circulating, at least it was alleged, on his
8 e-mails of the president with bones through his
9 nose, big loops, okay? And he saw nothing wrong
10 with this, and nor did all of the people who
11 voted for him.

12 I'm talking about what you're faced with
13 in redistricting where I haven't heard anything
14 about race. See, what we're doing now, we're
15 using a double--white folks think that black
16 folks have never heard this stuff before, and
17 they're stupid. They can't detect the next
18 language.

19 See, I can come in here, and I say, oh,
20 I see you have a girl working for you. That
21 tells you right away if I don't say, I see a
22 woman, I've said something about myself by saying
23 I saw a girl. When some guy running for
24 president says there's a black cloud over the

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2 country, what does that mean? Oh, it doesn't
3 mean anything. You know, it's a lang--it does
4 mean something if you're black. It does mean
5 something when I try to become president and
6 somebody--and he wants to be president, he wants
7 to be president, she wants to be, but they say
8 that I don't have a legitimate birth certificate,
9 and there's no--none of the good people
10 challenging that.

11 And we see that disrespect, etc., coming
12 forward in a lot of these suburban or rural--I
13 don't want to call on the party, but the point is
14 we see that kind of anti-black feeling throughout
15 the country every day when you turn on the
16 television and you hear one of these candidates
17 talking about taking the country back. Taking
18 the country back from who? The Indians? Who are
19 they going to take the country back from? The
20 Arapaho? No. What are they talking about, the
21 way they try to cover their racism that now when
22 you start drawing districts in these same
23 communities where these people, many of the
24 people in the communities have no spoken out

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2 against that racism that we hear going
3 nationally, they haven't said a word.

4 I don't see these communities objecting
5 to that, and then we now are going to have
6 somebody draw districts, and we're going to be
7 blind to that? We're not going to open our eyes
8 to that? How are we going to deal with that kind
9 of racism, the sexism that still exists? How do
10 we deal with that, and I don't know. I don't
11 know if you're planning. From what I've heard
12 since I've been here since 10:00 up until a
13 couple people who just spoke, I didn't even hear
14 anything like that mentioned. I still hear
15 people talking about them fags. All right? They
16 still talk--I still hear people talking about
17 girls. I'll go out with the girls. You know who
18 those girls are? No.

19 Or I have a girl that does my work for
20 me at the office. Oh, you got some--I call up
21 and I'm talking to a full-grown woman. I figured
22 if it was a girl, I'd be talking to some teenager
23 doing you know, work. But look, that's my
24 feelings toward some of this. The--in summary,

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2 the prison situation, the maintaining and keeping
3 the 28th and 27th congressional districts in
4 place, and exercising some type of understanding
5 that when you get into drawing these districts to
6 be aware of some of the subtle racism that is
7 existing that some of us see as African-Americans
8 that other people are closing their eyes to.
9 It's like not seeing the sexism. I noticed when
10 I said the girl; I watched her jump, okay?
11 Because she's aware of that.

12 But there's a lot of men here who will
13 do that and not pay any attention, and there's
14 things that go on with race that are very
15 similar. How, then, when you are drawing these
16 districts that you're able to have the
17 sensitivities to take into consideration all of
18 what you've heard today, not just some of it, not
19 just the numbers, but the affective part. With
20 that, I thank you.

21 ASSEMBLY MEMBER MCENENY: Well, thank
22 you for your testimony. I believe we've
23 mentioned the Voting Rights Act and minorities
24 several times today. I just went out and spoke

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2 to a minority run radio show on the issue of the
3 minority population. It's something that's
4 spoken of very openly, and we encourage that. We
5 appreciate your testimony. Thank you.

6 MR. MESIAH: Thank you.

7 ASSEMBLY MEMBER MCENENY: Ada Clemens.
8 Ada Clemens. Kevin Gallagher. Welcome back,
9 Kevin.

10 MR. KEVIN GALLAGHER: Good afternoon.
11 My name is Kevin Gallagher. I'm from Penfield,
12 New York. Street address 1973 Dublin Road. ,
13 just for your information, I've tried to keep my
14 testimony short, so the black text is what I'm
15 going to read. The gray is for your reading
16 afterwards. I'd also like to make some comments
17 on what other people have said. Meeting on the
18 13th floor should be an omen for the current
19 process. Superstitious architects have removed
20 the 13th floor from apartment buildings.
21 Contentious citizens remove gerrymandering from
22 the redistricting process.

23 Your house leaders have put you in the
24 hot seat, so expect some heat. Election

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2 districts do not define communities of interest.
3 Despite substantial differences in district lines
4 between censuses, the Department of Justice had
5 no objectives to the 2002 districts. The
6 protection of communities of interest or minority
7 voters has not and does not require preservation
8 of election districts. If the Senate size is not
9 going to be 62ed, it needs to be resolved
10 immediately. I'm for a senate size of zero with
11 a unicameral legislature. I thought the issue of
12 prison population was resolved by the
13 Constitution. I have some recommendations for
14 that prison population. We can discuss that if
15 you like later.

16 I've taken time to go back and look at
17 the district sizes, and the numbers show the
18 following. It is occasionally acceptable and
19 necessary to cross county lines to balance
20 district size. In urban and suburban areas due
21 to the ability to adjust boundaries on a by-block
22 level is possible to achieve target district size
23 with remarkable precision. For 137 out of 212
24 districts, the deviation from the target was less

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2 than 0.09%. For 37 districts, here was
3 absolutely no deviation from the target number.

4 The problem is that district authors
5 intentionally set the target numbers incorrectly
6 to achieve political or partisan goals. The
7 target district size is determined by the state
8 census total divided by the number of districts.
9 No other number is an acceptable target. For the
10 state legislature, town boundaries must be
11 respected. Town populations are often larger
12 than urban blocks. Due to this, in rural and
13 less urbanized areas, it may be harder to
14 reconcile district populations, but thorough
15 attempts must be made and documented.

16 A high level of precision has been shown
17 for all districts from Westchester County south.
18 Therefore, a maximum deviation of 1% is
19 achievable and should be the hard rule to protect
20 one person, one vote. You've asked me in the
21 past how districts should be drawn. Every
22 district shows--correction. Every district
23 shares a border with one or more districts. When
24 you have more than one entity making decisions

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2 that affect others, you run into conflicting
3 interests. In place of a self-centered process,
4 I am looking at the bigger picture. A process
5 that is fair to everyone is the goal.

6 There is a hierarchy of responsibility
7 from the federal to the state, which must be
8 respected in descending order. One person, one
9 vote and the Voting Rights Acts are the most
10 important. The governor's bill addresses several
11 failures of the current process. The largest
12 problems are being controlled by the legislature,
13 partisan, large deviations, not contiguous,
14 protection of incumbents, and districts drawn to
15 favor parties. The districts were also drawn to
16 favor regions. Some of them are unwieldy or
17 sprawling, and the current districts use party
18 affiliation as a formation factor. Many of the
19 districts are incompatible, and it violates the
20 public trust. The governor's bill, which goes
21 into greater detail, corrects many of these
22 items.

23 In 2004, a report from the Brown Center
24 clearly identified the dysfunction of New York

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2 State Legislature. Progress reports show little
3 change. So far, the legislature has only
4 addressed the low-hanging fruit such as empty
5 seat or proxy voting. I'm not going to discuss
6 the report with great detail, except it relate to
7 the current redistricting process. This is part
8 of the cycle of dysfunction. It's time to fix
9 this part of the process.

10 Three of the recommendations of the
11 report have to do with the restrictions of
12 discharge motions, leadership control over the
13 calendar, and the power of the speaker and
14 majority leader. If these rules had been made--
15 sorry, if these rule changes have been made, a
16 majority of each house that pledged support could
17 have passed the governor's bill this session, and
18 we might not be here. The lack of an independent
19 commission is unacceptable and a deliberate
20 failure. However, it is not too late to create
21 the commission.

22 Detailed committee reports. For the
23 most part, there are still no committee reports
24 attached to major bills in the Senate or the

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2 Assembly. Without these notes, we are without a
3 source of information regarding the intent of the
4 statutes, so we lack guidance. This is directly
5 concerns Roman Hedges. There was a policy forum,
6 and the paragraph is what I'm quoting from her,
7 so if you'd like to correct my summation, please
8 do. My summation is that you are a partisan
9 party member and believe you should use the rules
10 to advance your interest. And that's what I've
11 gotten from your testimony. That's--I can't
12 quite hear you.

13 MS. ROMAN HEDGES NEW YORK STATE
14 LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH
15 AND REAPPORTIONMENT: I believe it's a correct
16 quote.

17 MR. GALLAGHER: Okay. Thank you. I
18 doubt that you are alone in that opinion. I
19 believe that you all have some sort of personal
20 partisan party interests. The current law
21 through omission of intent allows the
22 manipulation of rules of this process for self-
23 interests, and I believe that is contrary to the
24 public good. If it is a vague law, it needs

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2 revision or replacement. In regards to the
3 counting of inmates, - - Assemblyman McEneny as
4 saying we urge our task force members to join
5 with us in ensuring compliance with both the
6 letter and intent of the law. You can't pick and
7 choose which law you're going to apply that
8 standard.

9 If the intent of the current reapportion
10 law is to create fair districts for the good of
11 the people, you have an ethical road block. It
12 is likely that this entire task force must be
13 disqualified from the actual line drawing
14 process. That does not mean you stop what you're
15 doing now. Good numbers and verifiable data are
16 being generated by this group as they have in the
17 past. However, a chain is only as good as the
18 weakest link. This entire process is jeopardized
19 by one bad decision, and the current districts
20 are proof of that. There must be established an
21 independent, nonpartisan redistricting
22 commission. The commission can create three
23 district plans for assembly, three for the
24 senate, and three plans for the congress.

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2 The role of LATFOR would be to identify
3 prisoner residences, identify communities of
4 interest, solicit input from the community and
5 review redistricting plans. The role of the
6 legislature would be to vote or approve the
7 districts of their house and then send it to the
8 governor. While a Constitutional amendment is a
9 - - desire permanent fix, a statute is a
10 necessary current step.

11 Please consider this scenario. A group
12 of citizens, say from a coalition of good
13 governments, create a full set of district
14 boundaries. After some review, would this task
15 force accept a reapportionment plan? Can a
16 reapportionment plan created outside this task
17 force be presented to the legislature or approval
18 after review or certification? And I'm asking--
19 I'm asking this either as a question that can be
20 answered now, or something that could be asked
21 during a future meeting, and I'm asking from the
22 representatives from minorities to ask that
23 question in the next meeting.

24 ASSEMBLY MEMBER MCENENY: Could you

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2 repeat the specific question that you'd like to
3 see asked at some point in the future?

4 MR. GALLAGHER: I have it in text in the
5 writing. That would cover it.

6 ASSEMBLY MEMBER MCENENY: That's good.
7 Thank you.

8 MR. GALLAGHER: A whole lot of New York
9 State, called a community, are willing to place
10 their face in an independent commission for the
11 good of this community. I don't speak for all
12 those people, but as it turns out, we seem to be
13 in agreement. You've asked me how I believe my
14 district should be drawn. My final answer is
15 fairly through an independent, nonpartisan
16 commission.

17 I also have some comments on some of the
18 other things that came up today. These are not
19 in a particular order. First off is a question
20 about Erie County situation, and I'm only asking
21 it as a rhetorical question. Is the loss of
22 primaries during this cycle in Erie County offset
23 by fairer districts for the next eight cycles?

24 I want to mention that my town is a town

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2 that is split by three congressional districts.
3 I think that's a good thing. It allows me to
4 interact with more of my representatives and
5 perhaps have a greater voice. I understand how a
6 municipal leader would prefer a single contact,
7 though. I don't believe that media markets
8 should be a consideration for congressional
9 districts. That's all I have on that.

10 There is no test for office, particular
11 legislature, but you're asking if there should be
12 some standard for members of an independent
13 commission, and I believe that those that appoint
14 the membership will consider that and provide
15 qualified candidates. I heard you criticize the
16 number of appointments by the governor. The
17 governor does not benefit from any of the line
18 boundaries in this redistricting process, so I
19 don't consider that a valid point.

20 , the thought of barring large
21 contributors from the commission is something
22 that you can resolve in a--either in a conference
23 committee or within the legislature. That's
24 something that you can take care of, and I

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2 appreciate you looking for insight from the
3 people. I believe someone who spoke before me
4 resolved that the governor is appointing two
5 members of each party as part of that commission,
6 which allows a bipartisan, not a shift. There's
7 no two, six, six, two shift. It's still going to
8 be four-four based on those appointments.

9 And another question is, does the
10 current process that's created the 2002 districts
11 allow contractors and lobbyists to influence this
12 process? If it does, then looking at a
13 commission that resolves those issues will
14 correct that problem.

15 Having to do with the number of inmates,
16 while it is important for the federal districts,
17 do you have any idea if there's a significant
18 number of inmates that won't have an address
19 assigned to them? You don't have that
20 information yet?

21 ASSEMBLY MEMBER MCENENY: There will be
22 some.

23 MR. GALLAGHER: There will be some.

24 ASSEMBLY MEMBER MCENENY: We don't have

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2 the numbers yet.

3 MR. GALLAGHER: But would it be
4 statistically significant? You don't know yet?

5 ASSEMBLY MEMBER MCENENY: - - .

6 MR. GALLAGHER: Okay. Because if it's
7 not, it may not be a big issue. The--as far as
8 my understanding, the Constitution allows the
9 legislature to redistrict, and the legislature
10 allows LATFOR to redistrict, and LATFOR allows
11 staff to redistrict. Couldn't the legislature
12 allow an independent commission to draw lines,
13 and then verify it to satisfy the Constitution
14 requirements?

15 And finally, district lines should not
16 divide people. They should join citizens and
17 communities. Thank you.

18 ASSEMBLY MEMBER MCENENY: Thank you and
19 we appreciate your coming back again and
20 elaborating with your testimony. Members? Do
21 you have any questions? Thank you very much.

22 MR. GALLAGHER: Thank you.

23 ASSEMBLY MEMBER MCENENY: Clifford
24 Cawthon of Citizen Action, who is the last person

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2 on my list, and we will then--but anyone who
3 needs to get on the list is welcome to do so.
4 And it's my distinct pleasure to recognize in the
5 room today Tom Reynolds, former assemblyman,
6 former member of congress from this area, and we
7 appreciate you coming, Tom. Welcome, Mr.
8 Cawthon.

9 MR. CLIFFORD CAWTHON, CITIZEN ACTION OF
10 NEW YORK: Thank you very much. Thank you for
11 coming to this hearing, and thank you for
12 pronouncing my last name correctly. You're one
13 of the few people who actually does that.
14 Anyway, I just had a few thoughts. Some I've
15 prepared and some I've scribbled down after
16 hearing other speakers in here. And I think a
17 lot of people hit a lot of really good points and
18 raised some - - on GLBT representation.

19 And one of the things I wanted to bring
20 up was how redistricting does divide us. It
21 divides us on all those lines, but those lines
22 are not just--well, those lines are political,
23 but it affects the development of this region,
24 how people--the quality of people's lives in this

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2 region. And that's why redistricting is a
3 strategically important issue for the future of
4 Buffalo. Oh, sorry, I forgot to say where I
5 live.

6 I am currently a resident of Amherst,
7 but I'm going to be moving soon. So anyway, we
8 as defined by the US Office of Management and
9 Budget and to New York State's Economic
10 Development Strategy are one distinct cultural
11 and economic area. And like other distinct
12 economic areas, we require adequate political
13 representation and prompt quality economic
14 representation. And as some of you know, in
15 particular, I was there on the 30th of March this
16 year, and it was a very grim day for working and
17 low-income people when mainstay [phonetic]
18 workers were laid off, and state funding was
19 radically cut due to the governor's budget
20 against the interests of those folks. That isn't
21 conducive to economic growth, and we, in the
22 Buffalo and Niagara region, know what being
23 deprived of economic stimulus can do.

24 And to secure both state and federal

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2 investment, what we need to do is we need to
3 unite, what many speakers have said here, and I
4 believe that due to our diverse population, that
5 will allow us to have a certain amount of
6 political pluralism and that political pluralism
7 will allow us to address a lot of specific issues
8 for each one of the communities represented in a
9 specific district. But also, that will allow us
10 to be able to come together in a really cohesive
11 way to develop the region.

12 In fact, in the last decade, we've
13 elected not one by two non-white state senators
14 who have helped pass significant legislation and
15 fiercely fought for those that have been
16 disenfranchised in the past. Of the voting - -
17 population in--excuse me, in 2010, 55% were non-
18 white Hispanic, and 37% were black, and making up
19 the gap, a significant amount of those folks were
20 Hispanic, Asian, indigenous, etc. So we are a
21 minority-majority city, and being the seat of the
22 county as well as a big economic engine for the
23 entire region is extremely important.

24 So that allows a certain amount of

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2 representation, an amount of consciousness that
3 Mr. Mesiah alluded to in his speech. And through
4 that, we've been able to build interracial
5 political alliances, and to address those class
6 issues and address socioeconomic justice during
7 the election and after the election. And if we
8 are united, we're stronger to sum all that up.

9 So drawing districts are diverse. It's
10 key to the democracy. I think I've established
11 that, and you esteemed representatives alluded to
12 some state legislative and congressional
13 districts being more kingdoms. I believe someone
14 alluded to the lack of turnover rate in
15 elections, how really an incumbent can stand for
16 life. In fact, while I was up there waiting to
17 speak, I looked up a couple of facts, and from I
18 believe OpenSecrets.org, which is affiliated with
19 OpenCongress.org, it was shocking in 2010, 85% of
20 incumbents were reelected. And according to New
21 York Times--

22 ASSEMBLY MEMBER MCENENY: That number is
23 of incumbents who choose to run. Incumbents who
24 know they're going to lose don't run. Excuse the

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2 numbers.

3 MR. CAWTHON: Well, regardless of that,
4 and I'll double check that, regardless, that is a
5 high number, and it's shocking because an
6 incumbent that chooses to run should basically be
7 able to lose, and from my own personal
8 experiences living in the 26th Congressional
9 District and my former congressman sitting up
10 there, Mr. Reynolds, that it's a highly
11 Republican district, despite the fact that it
12 actually has a pretty diverse population in terms
13 of political registration, ideology, etc. So
14 essentially, if we have even a small mini
15 kingdom, that's not democracy. That's just
16 oligarchy. That's not representative of anyone,
17 right?

18 So an in fact, the New York Times had
19 something a bit more interesting relative to your
20 respective offices. In 2008, more than half of
21 state legislators that ran were reelected with
22 more than 80% of the vote, which, again, feel
23 free to check that, but I find that shocking, and
24 usually I think New York Times is pretty

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2 reputable. So I think there needs to be
3 something considered in this redistricting. How
4 dynamic the districts are going to be in terms of
5 turnover, how competitive the elections are going
6 to be, whether or not the communities are going
7 to be divided up and how conducive they are to
8 overall economic development in our regions and
9 conducive to larger economic development plans.

10 Now, a diverse district that is made
11 fairly and in a rational formation so
12 representative turnover is responsive to the
13 needs and the interests of communities, and any
14 specific cultural and economic district like the
15 Buffalo-Niagara District or Buffalo-Niagara
16 Region, excuse me. I mean, that's just simply
17 pluralism. We have a number of interests working
18 together in getting their needs addressed. So
19 pluralism, as I probably alluded to a couple of
20 times, requires diversity.

21 And on the prisoner issue, just to--my
22 personal opinion, not for the organization
23 because I'm basically just a grad student and
24 activist for hire, but I do believe that counting

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2 the prisoners in their own districts as
3 Assemblywoman--people Stokes said, she was right
4 on the money. And the fact that they can't vote
5 again, this is my personal opinion, I think
6 really is a violation of their civil and
7 moreover, their human rights because prisoners
8 absolutely cannot participate at all in the very
9 basic processes of our republic, and I think
10 that's absolutely horrendous and very silly.

11 And besides that, I'll take any
12 questions you have, and I thank you for allowing
13 me to speak today.

14 ASSEMBLY MEMBER MCENENY: Thank you. We
15 appreciate your--we appreciate your candidness.
16 Do you think that if a civil servant does a good
17 job and goes before the people in two years and
18 said, should I be fired, that most people would
19 fire them, assuming they did a good job, there's
20 no scandals, went everywhere they were supposed
21 to be? Do you think that would be healthy if
22 they fired half of them for example?

23 MR. CAWTHON: Here's the thing. That
24 good job is relative because as a student, and--

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2 ASSEMBLY MEMBER MCENENY: [interposing]

3 Well, and that's why we let everybody vote,
4 because it is relative.

5 MR. CAWTHON: Hold on. I, I, I, I know,
6 but again, I think if maybe I alluded to
7 interests in my, small--in my small testimony,
8 and as a student, I think the governor has
9 blighted us, and there have been many progressive
10 or interesting measures such as the independent
11 council to do redistrictings put forward. But as
12 a student, I would look at Governor Cuomo's
13 record, particularly with the cuts. I'd give him
14 a D-minus, and that's me being nice. So if I was
15 voting as a student, I probably would try to
16 support an independent candidate or someone that
17 is much more progressive than the current
18 governor.

19 Now, as, as an African-American, I would
20 look at his policies toward employment and toward
21 education and toward empowering, especially young
22 African-Americans, which I believe in Buffalo,
23 correct me if I'm wrong, there's a high
24 unemployment rate, almost reaching the 50th

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2 percentile, which is particularly disgusting. So
3 those interests would have to be taken into
4 consideration. And as you definitely know, and
5 as a student of political science I've been privy
6 to that people don't always vote on rational
7 decisions, and there's a lot of spin. So if I
8 was going to--in sum, to answer your question,
9 really, really, good turnover of bureaucrats is
10 good for dynamic representative process, if you
11 know what I mean.

12 ASSEMBLY MEMBER MCENENY: Maybe your
13 answer would be term limits, instead.

14 MR. CAWTHON: Hm?

15 ASSEMBLY MEMBER MCENENY: Maybe you'd be
16 more in favor of term limits, then?

17 MR. CAWTHON: yes, yes, I would.

18 ASSEMBLY MEMBER MCENENY: Okay. Thank
19 you. Any members of the panel have a comment?
20 Thank you very much. I'm going to go through the
21 list for people who may have arrived since.
22 Monica Arias Miranda, who I know has submitted
23 testimony and shown up for a couple of the
24 meetings. Fanny Vilario. Several council

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2 members who only wanted to be recognized in order
3 to show their interest. Diane Benzachowski.
4 Eric Walker, Ada Clemens. Is there anyone else
5 who wishes to be heard? There being no others, I
6 move that this public hearing be ended.

7 SENATOR NOZZOLIO: So moved.

8 ASSEMBLY MEMBER MCENENY: So moved.

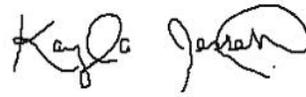
9 Thank you very much.

10 [Music]

11 (The public hearing concluded.)

C E R T I F I C A T E

I, Kayla Jessen, do hereby certify that the foregoing typewritten transcription, consisting of pages number 1 to 197, inclusive, is a true record prepared by me and completed from materials provided to me.



Kayla Jessen, Transcriptionist

August 31, 2011_____ Date